



# **Freedom of Expression and Defamation: Legal Provisions and Actual Practice**

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*Project Coordinator*

**Petru Macovei**

*Authors:*

**Ion Bunduchi**

In lieu of an Introduction

The School of 2009: Lessons from the Events in April

**Janeta Hanganu**

The European Convention and Court of Human Rights on the Freedom of Expression and Defamation

**Iulian Balan**

The Consistency with European Union Standards of Moldovan Legislation on the Freedom of Expression and Defamation

**Doina Costin**

Justice versus Media: Monitoring Cases Related to the Protection of Honor, Dignity and Professional Reputation Initiated against Media Outlets from 2005 to 2009

*Other contributions:*

Editors: Rodica Mahu, Judith G. Goldman

Assistants: Rodica Malic, Victor Ursu, Natalia Cocean

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## TABLE OF CONTENTS

<b>In lieu of an Introduction .....</b>	
<b>Chapter I. The European Convention and Court of Human Rights on the Freedom of Expression and Defamation.....</b>	
1. <i>Fundamentals .....</i>	
2. <i>Restrictions on the freedom of expression .....</i>	
3. <i>Freedom of expression and defamation .....</i>	
4. <i>Freedom of expression and private life .....</i>	
5. <i>Freedom of expression and public order .....</i>	
6. <i>Freedom of expression and the judiciary .....</i>	
7. <i>The right to receive information.....</i>	
8. <i>Conclusions .....</i>	
<b>Chapter II. The Consistency with European Union Standards of Moldovan Legislation on the Freedom of Expression and Defamation.....</b>	
1. <i>Legal provisions on the freedom of expression in Moldova.....</i>	
2. <i>Freedom of expression in the European Union: standards and tendencies</i>	
3. <i>The compliance with European Union standards of Moldova’s legislative framework on the freedom of expression</i>	
4. <i>The correlation between freedom of expression and defamation</i>	
.....	
<b>Chapter III. Justice versus Media: Monitoring Cases Related to the Protection of Honor, Dignity and Professional Reputation Initiated against Media Outlets from 2005 to 2009.....</b>	
1. <i>Documentation and the collection of information</i>	
2. <i>General information about the cases.....</i>	
3. <i>Overview of well-known cases.....</i>	
4. <i>Tendencies in national case law regarding settling cases against media outlets.....</i>	
5. <i>Regional practices versus practices in the capital.....</i>	
<b>Chapter IV. The School of 2009: Lessons from the Events in April .....</b>	
1. <i>Preliminaries .....</i>	
2. <i>Media at the school of 2009: lessons not learned.....</i>	
3. <i>Media at the school of 2009: lessons learned and lessons to learn.....</i>	
4. <i>Public authorities at the school of 2009: lessons not learned.....</i>	
5. <i>The citizen at the school of 2009: lessons learned?.....</i>	
6. <i>In lieu of a conclusion .....</i>	

## In lieu of an Introduction

To achieve a universal right, hereafter we will freely express opinions on how defamation is judged. These opinions do not bear the stamp of ultimate truth; rather, they are views and have just one fundamental purpose: to enter the “free market of ideas” where they can compete with opposing opinions so that anyone entering the market of ideas can have a choice.

Humanity has entered the Information Age which is characterized by a significant increase in the number of information channels in both virtual and traditional media. This increase in number and, implicitly, in the flow of information has led to an increase in the number of defamation charges brought against media outlets. In Moldova for instance, from 2005 to 2009, the number of court trials in which a media organization was charged with injuring honor, dignity or professional reputations was 73, and the greatest amount requested for moral damage in those cases was 10 million lei.

Of the 165 European Court of Human Rights (ECHR) decisions against the Government of the Republic of Moldova (as of October 1, 2009) nearly 10% were related to violations of the freedom of expression and 7% were related to national proceedings on defamation initiated under Civil Code provisions on the protection of dignity and honor (Article 7 and 7/1 of the old code and Article 16 of the new code).

In Russia, the number of court trials involving media in defamation cases has increased five fold in 10 years.<sup>1</sup> This shows that on one hand that media is more willing to publish denunciations and on the other hand that plaintiffs tend to increasingly consider their that dignity has been injured. Plaintiffs, including those in Moldova, are usually socially influential people which ensures that their court cases will have a public impact.

The involvement of the media in defamation cases causes the loss of three scarce resources: nerves, time and money. In this context, the case of *Flux* newspaper is eloquent. Five years ago Member of Parliament (MP) Victor Stepaniuc filed a civil action against the newspaper stating that his honor and dignity had been injured by the publication of the article “Four More Communists Came into Possession of Houses with Our Money.” A Chisinau court ordered the newspaper to publish a denial and to pay 30,000 lei in moral damages to the MP. Then the Supreme Court of Justice ordered the amount of damages to be reduced to 5000 lei, asserting at the same time that the lower courts had issued correct judgments in the MP’s case. The case ultimately got to the ECHR that convicted Moldova on November 24, 2005 of having violated the right to freedom of expression and obliged the state to pay *Flux* approximately €5000 including €3000 in moral damages.<sup>2</sup>

In November 2009, a Chisinau court ordered *Flux* to pay MP Ion Plesca (of Moldova Noastra Alliance) 100,000 lei (United States [US] \$8620) in moral damages stating that the paper had injured the MP’s honor, dignity and professional reputation by publishing the article “An Inseparable Couple or How Urechean Settled into His Mayoral Seat on July 4, 2008. *Flux* journalists stated that they would appeal the decision to the ECHR, but there is no guarantee that the court will rule in favor of the publication. It should be recalled that in July 2008, the complaint filed by *Flux* that it had been unjustly convicted of libel was rejected by the ECHR on the grounds that press freedom is based on “responsible journalism.” The paper had been convicted of publishing a story in which the director of a high school was accused of

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<sup>1</sup> Potapenko S.V. Problemy sudebnoy zaschity ot diffamatsii v SMI: Avtoreferat dissertatsii na soiskanye ucheonoy stepeni doktora yuridicheskikh nauk

<sup>2</sup> November 25, 2009 // MONITOR MEDIA #0430(31)

misappropriating funds and accepting bribes in exchange for enrolling students in his school. Invoking the right to expression, the paper filed a complaint with the ECHR about the civil action for defamation initiated against it by the high school principal. The Court noted that despite the fact that the accusations published against the director were serious, the paper had not undertaken an investigation nor did it try to get in touch with the schoolmaster. Moreover, it had not granted him the right to reply. According to the ECHR, “The right to freedom of expression cannot be taken to confer on newspapers an absolute right to act in an irresponsible manner by charging individuals with criminal acts in the absence of a basis in fact at the material time.” The Court conceded that, “The newspaper had flagrantly violated the principles of responsible journalism,” and decided there was no violation of press freedom in this case.

In July 2003 in Moscow, Russia, the publisher of the newspaper *Vremea* and journalist Oleg Lurie were ordered to pay 7.5 million rubles (\$250,000) to Alfa-Banc and Alfa-Eco Ltd as compensation for injury to their professional reputations. In November 2009, the English actress Kate Winslet received £25,000 in damages (€28,000) from the British *Daily Mail* which she sued for libel as the newspaper had questioned her gym schedule. In December 2008, Radovan Karadzici’s alleged mistress won a libel case against the tabloid newspaper *Press*. A Belgrade court ordered the newspaper to pay 2.5 million dinars (€28,000) to Milevei Cicak because *Press* stated in an article that she had had a love affair with Radovan Karadzici who was accused by the Hague International Court of Justice.

In November 2008, Robert Murat, a man suspected in the disappearance of a girl from the Praia da Luz resort in Portugal where she was on a holiday with her parents, won his trial against the company British Sky Broadcasting and received £600,000 (€700,000) in damages due to the libelous statements about him published in nearly 100 stories. Murat also sued the Associated Newspapers, Express Newspapers, MGN Limited and News Group, a total of 11 publications. In Russia, in just one year media outlets paid over 43 million rubles (approximately \$1.5 million) in damages for defamation. In the US, although the number of defamation cases has been decreasing, damages paid to plaintiffs by media outlets increased from \$1.5 million in 1980 to \$3.4 million in 2003.<sup>3</sup>

In Moldova, 25 media outlets in the capital and 19 local/regional papers have been involved in cases on the protection of honor, dignity and professional reputation in the last five years. The frequency of cases of media involvement in defamation trials brings this issue to the fore. The problem is quite delicate since in a defamation trial two fundamental human rights acknowledged by the world community are in conflict: the constitutional right to the protection of honor, dignity and professional reputation and the constitutional right to the freedom of expression and the freedom of the media. Within a defamation dispute there lays a further triad of rights: (i) the plaintiff’s right to the protection of his honor, dignity and reputation; (ii) the media’s right to freely disseminate information and (iii) the citizen’s right to information of public interest. So far in Moldovan judicial practice, defamation has been judged basically from the perspective of plaintiffs’ constitutional rights while the constitutional rights of the media have been somehow neglected or even forgotten. Nevertheless, it is important that disputes related to defamation harm neither the citizen’s good name, nor the level of freedom of the media and the freedom of speech. This is extremely hard to achieve.

The perception of defamation itself is complicated since we are actually dealing with a paradox—one of the many in daily life. If we make certain statements that injure someone’s honor and dignity and if the court establishes the existence of other circumstances provided for by law including, for instance, the public nature those statements, what is defamation and when

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<sup>3</sup> [www.medialaw.org](http://www.medialaw.org)

do we deal with it? We should be aware of the fact that at this stage, the matter is not about truth. The law goes only as far as ascertaining the fact that a particular statement is defamatory and should be punished accordingly. Therefore, at this point there is no freedom of the press because in a court trial it is sufficient to establish injury to honor. It is only at that moment that the truth comes into play, that is, the journalist has the right to prove that his statement corresponds to reality, and if he succeeds, he is not guilty of defamation. He must prove that the statement contains actual facts since it is only facts that can be proven. The situation is quite odd. On the one hand, the truth can be offensive and insulting and can equate to defamation. On the other hand, there is a certain “right to defamation” to the extent to which the information corresponds to the truth. This is the paradox: defamation is a crime that may be forgiven. The right to defamation, that is, the right to state insulting truths, is a freedom conditioned by certain circumstances.

Journalists may not always be able to prove the truthfulness of their statements. In those cases, the consequences can follow two possible scenarios depending on the weight that the judge grants to the legal provisions in force. In the first scenario, the journalist should prove that he made the defamatory statements objectively with the frank intent to report to citizens what he considered important, that he did not do this malevolently to injure anyone’s honor and that he acted with sufficient care. In this case the truth, frankness and impartiality could be weapons for self-defense for a journalist. Thus, “the right to defamation” would be the paradoxical result of press freedom in so far as it is used with responsibility. That is, the journalist is responsible for the freedom he assumes when criticizing his fellow nationals. These are the provisions in the law, but they are applied by judges and a possible interpretation of the texts may lead to a denouement other than the one described in this scenario. In this second scenario, legal provisions have the weight assigned to them by the judge.

The difficulty in perceiving and judging cases on injury to honor, dignity and professional reputation has some other roots as well. It comes from the flaws in legal texts including those on defamation. A relevant example is the title of Article 16 of the Moldovan Civil Code: “Protection of Honor, Dignity and Professional Reputation.” Let us “decipher” this title using a dictionary.

- **honor:** (1) moral integrity, a feeling of dignity that prompts acts of bravery, (2) good reputation, prestige, fame, renown; (3) particular appreciation, respect, and esteem granted to someone for his virtues and merits; (4) favor, honor
- **dignity:** (1) the quality of being dignified; moral authority; prestige; nobleness; (2) magnificence; (3) high position; high rank
- **reputation:** (1) public opinion, view about someone or something; the way in which one is seen or appreciated; renown; (2) good name, fame, renown, celebrity<sup>4</sup>

It should be noted that these terms do not have distinct definitions. With certain reservations we could say that “honor” means “dignity and reputation.” This is good for literature but not for a legal text since it leaves room for possible misinterpretation. The above terms on one hand refer to a person’s self-esteem—one’s right to his own image—and on the other hand to a person’s appreciation by others. Usually self-esteem and the esteem of others do not coincide. Therefore, judges would have to establish how much honor, dignity or reputation the plaintiff had and the degree to which they were injured. How should they establish that?

In one of the states in the US, the judge first investigates “the plaintiff’s appreciation” by the community in order to establish if he/she has any “honor, dignity or reputation” because if he

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<sup>4</sup> *Illustrated Encyclopedic Dictionary*, Chisinau, Cartier Printing House, 1999

doesn't, then there's nothing to be protected. In the Russian region Pskov, the verdict of a judge was: "the governor of the region does not have any professional reputation." Nevertheless, judges must determine the extent to which honor, dignity and reputation have been injured. From the perspective of legal science, honor and dignity are legal and moral categories. The Civil Code does not include their definitions, perhaps because the moral framework is wider than the legal one. This engenders serious difficulties in defining terms. Perhaps the legal mechanisms would be more effective if they protected not one's honor and dignity, that is, self-appreciation, but one's good name or reputation which is the appreciation of others. A good name and reputation are important for human relationships as they derive from one's honor and dignity. If a person has no honor or dignity, then reputation and good name may not arise, and thus there is nothing to be protected. In practice this would mean that if we say honor and dignity are legal and moral categories, we should split the prerogatives. Thus, people should take care of their honor and dignity themselves and not beg the court to protect them while legal mechanisms should take care of the differentials of honor and dignity—good name and reputation—without going into morals. Honor and dignity should not be perceived as slogans useful in court hearings. Everyone should determine for him/herself how much honesty and dignity he/she has, while society bestows a good name and reputation if they are deserved. This approach makes it possible to "measure" a good name and reputation; it is namely the latter that should be protected.

It would be useful to think over the question, "How morally just are we to claim that a court should bind others to believe in our moral integrity?" We have lived for decades based on double standards that have undermined the foundation of dignity so much that a new foundation needs to be built. This cannot be done in 20 years. The extent of corruption and the degree of our tolerance for other opinions are indicators of respect for dignity. Another paradox: one has lost honor and dignity, hasn't recovered them yet but claims them in a court of law. In terms of morality, a claim for indemnification for moral damages is nonsense. It is the first proof of a lack of moral integrity. On the other hand, people are the same everywhere and have the same rights, though in Russia, for example, the highest indemnification for moral damage exceeds 7.5 million rubles, while in the Netherlands it is about 3 million (ruble equivalent). How different the cost of honor is in different countries although people are the same everywhere!

In other words, we need precise legal provisions that start from notions. If notions lack clarity, deficiencies will arise in enforcing the law. A law should not have legal force if it is confusing and vague. When I say "law" I'm thinking in the first place of the Constitution. The Civil Code and other laws relating to defamation attempt to mitigate some errors in the supreme law.

In a public debate about defamation, the well-known Dutch judge Villem Alites, a TACIS expert, expressed his bewilderment at the fact that the Russian Constitution contains provisions on the protection of honor, dignity and reputation. *Nota bene!* So does the Moldovan Constitution. It should be noted that neither the European Convention on Human Rights nor Article 10 of that Convention contains direct provisions about the protection of human dignity and reputation. In most western countries such provisions are not constitutional in nature. Article 10 talks about the freedom of expression in so far as the reputation and rights of others are not injured, that is, Article 10 may be also cited in cases when the freedom of expression should be limited. Nevertheless, circumstances restricting freedom of expression may arise only when this is absolutely necessary in a democratic society, that is, in the name and the interest of democracy. This is the guiding principle for a judge: freedom of expression should be limited when it is necessary to maintain and to avoid undermining democracy. In order to resort to limiting the freedom of expression there should be a significant social need. Article 10 protects even shocking information, since information in general may not be only neutral or laudatory.

The ECHR has repeatedly underlined the need for a wider approach to information, a higher degree of tolerance without which democracy may not exist. If the supreme law of our country imposes on the media the obligation to “correctly inform public opinion,” we should ask ourselves to what extent one can put the equals sign between “correctly informing public opinion” and “providing shocking and/or insulting information.”

Freedom of expression allows a journalist to resort to a certain amount of exaggeration. If the issue is important, the overriding interest in the public discussion justifies the author, even if he uses shocking or insulting expressions. Thus, the public interest prevails over the legitimate interest of protecting another’s honor. The right to have a personal opinion also includes a journalist’s right to use insulting epithets against an opponent if the latter instigates this with his behavior and if the use of epithets is necessary in order to confer a greater public impact on a topic of public interest.

Regarding Article 16 of the Civil Code, we need to answer the following question: What is its purpose and how can it actually be implemented? As we have concluded, it is not possible to determine the level of honor and dignity of a person. On the other hand, good name and public reputation may be established since they represent appreciation from outside. Therefore, Article 16 should aim at protecting individuals or legal entities that have the right to be defendants or plaintiffs and whose reputations have been injured thus leading to diminished public respect and putting them into a bad light or causing suspicious treatment by others. Article 16 should not aim at protecting reputations if they are lacking.

Concerning the phrase “professional reputation,” what does this mean? Is it the reputation of people who are members of a profession? If yes, then to what profession do politicians, poets or priests belong for instance?! If “professional reputation” means professional skills in any field, then what should the judge establish: the existence of the actual skills or the result of such skills? What should a terrorist claim, for example?! These questions with no answers suggest that we should delay the enforcement of legal prescriptions until we can measure them. Otherwise, if a meter does not have one hundred centimeters, a person’s deeds will be measured incorrectly. In relation to the media, this means that fearing an incorrect measurement, journalists should be obedient and write only about violets. Still, in real life it happens that violets are squashed by heavy boots, and a journalist’s duty is to write about boots as well if they squash violets. They should write freely, not being afraid that the boot wearer knows Article 16 of the Civil Code by heart.

Without pretending to provide exhaustive coverage, we shall try to answer the following question: Why is it important for a journalist to have freedom of expression and why is this freedom crucial for the destiny of democracies? Long ago, Voltaire was ready to sacrifice himself for everyone’s right to express ideas, even if they were hostile, but what was clear to Voltaire is hard for us to understand.

With the right to have a personal opinion (some lose this capacity due to two main factors: they accept without hesitation the opinions of their superiors or they have lost the capacity for critical thinking) and the legal right to express it publicly, all people have the possibility to acquaint their peers with the essence of their interests, their own views and, appealing to other rights and freedoms, the ability to achieve their interests. Without this right one cannot achieve those interests. All non-democratic regimes conceal the truth, misinform, censor or restrict the freedom of expression. A restriction on the right to have an opinion equates to a restriction on the possibility to learn the truth which thereby endlessly increases the possibility of the regime to stay in power. The authorities know well that in one way or another, knowledge means information, that it arises from information and that a lack of information

excludes the possibility of forming an opinion, be it correct or incorrect, about any state of things that exists. They also realize that the only credible choice is one made by an informed person. That is why they monopolize information, narrowing as much as possible the prospects for a credible choice. Due to this, government power becomes attractive as it limits the possibilities for competing decisions and hence criticism and the denigration of its activities.

High-level restrictions on the flow of information, nondisclosure of internal operations and secrecy in making important decisions are some characteristics of authoritarian regimes. In such regimes censorship, a lack of freedom of expression and reduced transparency are conditions for political stability. The idea is promoted and inculcated that government officials are the only ones able to clearly assess the situation in the state and that their exclusive ability to be the people's mouthpiece and to speak on behalf of the people should be recognized. The collapse of communism in the ex-Soviet area has proved the force of freedom of expression to defeat totalitarian stereotypes and mentalities.

Since the emergence of the press, since the first plea for press freedom and up until now, humanity has had enough experience to reach the unanimous conclusion that a free press is not a Western invention or an amiable concession but a key element in the fair and balanced development of a society. Any attempt to impose strict control over the free flow of information will sooner or later fail. States that have ensured the freedom of the press and freedom of expression have proved to be viable and vigorous and to make social progress. In this context, the opinion of the German human rights activist Antje Vollmer is conclusive.

.Our right to the freedom of expression has a key role in the way one understands democracy. Opinions, appreciations and beliefs, analyses, claims and reflections, wishes and dreams—all these are integral parts that form the common house of a society, the so-called “public space.” Where there is no freedom of expression, no changes are possible, no transformation or social development may be conceived. The possibility to practice criticism in a free manner represents the distinctive sign, the mark of a public space. The exercise of a critical approach is a royal subject matter among the subject matters of a free society.<sup>5</sup>

A free and responsible press (since responsibility is directly related to freedom) provides incontestable benefits to a democratic society by encouraging public debate and actually supporting the freedom to form opinions as it helps to identify the truth, to establish responsible governance, to settle disputes without violence and to fulfill citizens' roles as members of society. Without the freedom to form an opinion, it is impossible to learn and to establish the truth. Thinking engenders disputes, judgments, appraisals, opinions and confrontations that give rise to the truth. This happens only when opinions are freely expressed and may be questioned without hindrance. The legal system of a society should ensure conditions that protect the possibility for a free and unrestrained exchange of any kind of ideas and opinions. The ability of an opinion, a thought, an idea to resist competition is the best way to check the truth. The earth would still be supported by three whales if this “truth” hadn't been questioned.

Without a free press that is able to provide full and truthful information there cannot be a democracy that includes the genuine participation of citizens in decision making. Citizens can make conscious, democratic decisions only if they have access to needed information. In addition, a free press plays an important role in identifying and preventing abuses by government officials. Transparency increases citizens' control over the actions of authorities and reduces the possibility for committing illegalities. A lack of transparency on the part of people in power is antidemocratic and usually gives rise to endless abuses. A free press that contributes to an open debate on all the problems in a society is vital for the well being of any nation.

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<sup>5</sup> Vollmer, Antje. “Despre libertatea cuvintului: forta criticii” // Deutschland. – 2000. – no.1, February/March, p.40

Press freedom and the freedom of expression act as an escape valve for the negative emotions accumulated by people as a result of dissatisfaction and despair. Experience shows that when people have the possibility to freely express their opinions, their desire to achieve their aspirations by violence decreases. The reason is simple: if there's no transparency, no rational solutions may be found, and instead of reason, force is applied. Interdictions slow down any process, be it social change or generating ideas. When interdictions are permanently in place, the actual problems of the society are hidden but do not disappear. In contrast, transparency ensured by the press brings society together and makes it more stable because the citizen who participates freely in decision making is more willing to accept decisions he does not agree with. Thus, the freedom of speech exercised through a free press ensures that divergence and contradiction—without which social development is impossible—do not bring about the collapse of a social regime. In other words, press freedom and transparency as mechanisms for maintaining a balance between stability and change and as tools for directing social change toward legal means are beneficial not only for citizens but also for the government and the state.

Press freedom is an essential part of the fundamental right of each individual to have and to express opinions. This is an element of human dignity that may not be suppressed. Freedom of speech is a means for all citizens to fulfill their capacities, or basically, the purpose of all individuals is to realize themselves as personalities. Therefore, any ban on freely expressing beliefs and opinions injures one's sense of dignity and ignores one as a personality. That is why the restraint, limitation or oppression of this right is unacceptable and should be treated as a crime. No individual, regardless of social status, has the right to pretend to an ultimate truth that could be imposed on others, be it about politics, religion, nationalism or agriculture.

As the Romanian scientific researcher Ion Deleanu said, press freedom is a control mechanism built by society in order to limit governance. Press freedom is one of the most effective means of ensuring the vitality of a social body because a governing power that doesn't know what the feedback is has every chance to become an atrophied and unresponsive power and therefore irresponsible. Press freedom assumes that this fundamental right is not only enshrined but also guaranteed first of all by eliminating prohibitive and preventive measures in this regard. All these reasons show that there is a stringent need for every society heading toward democratization to build a free and independent press through which citizens can exercise their universal rights to freedom of speech and to receive and disseminate information.

Like any other freedom, media freedom is managed according to a paradoxical principle: to organize it is to limit it while to give it full reign is to bury it. What is the solution? The option of full freedom seems appealing, but what would happen if the media could write anything it wanted to without being chastened?! What if media with full immunity chooses to write only falsehoods and to use insults and calumny exclusively? We would witness the emergence of a new tyranny. Some individual elements of this phenomenon have already been noticed. That is why the appeal "Free the press" goes together with the appeal "Free us from the press!"

Press freedom may not be absolute. There are limits determined by political requirements related to protecting state interests or safeguarding the system of social values. Thus, the media acts within a constitutionally delimited area. Such regulation often, however, needs to be complemented by self-regulation, i.e., moral regulation, in the profession. It is essential that regulation and self-regulation are done in a way that does not cause the monster of self-censorship to arise but that instead employs the prerogatives provided by the right to free speech. The journalist should be aware of the number of dangers that the free press has been facing—dangers that will persist as long as some people have things to hide. There will always

be people who want to gag the media. Situations are known, including in the judicial practices in the Commonwealth of Independent States, when plaintiffs in criminal cases request punishment for defendants not for disseminating untruthful information, but for insulting them. It is not convenient for these plaintiffs to contest the truthfulness of the information about their deeds disseminated by the press. Thus, it is not the essence that inconveniences them but rather the way in which things were expressed, and the court responds precisely to this request: it seeks to establish the existence of insulting phrases.

In the US, those who spite the press have “found” another way out: they claim that journalists get information by illegal means. We should note that the first amendment to the US Constitution does not grant immunity to journalists when gathering information. Thus, judges may not invoke the amendment when the media is accused of illegally gathering information if it (the amendment) does not refer to the journalists’ right to have access to information. Plaintiffs have realized that they can win more easily in cases based on the methods for collecting information rather than in those regarding the content of that information. That is why this type of court case prevails in judiciary practice.<sup>6</sup>

We shall conclude that the exercise of freedom is the most complex and difficult democratic exercise; however, there can be no democracy without freedom. There can be no individual or social freedom without the free expression of opinions. Opinions may be shocking since reality and truth cannot be only rosy, and the media, if it is responsible, should tell individuals and society things as they are, based on truth. Responsible journalism is the answer to all legal challenges and tricks, including those related to defamation. It is the only model that can generate democracy. It is the only model that can pretend to be socially legitimate.

Actually this is the general conclusion of the four chapters of this study which is the first of its kind in Moldova and which was developed with the joint effort of the Association of Independent Press (API), the Independent Journalism Center (CIJ) and the media program of the Soros Foundation-Moldova. The first chapter, “The European Convention and Court of Human Rights on the Freedom of Expression and Defamation” has basically two aims: a) to acquaint the reader with the way in which the sense and content of the freedom of expression should be understood; b) to determine the way in which defamation should be “identified” and judged. This chapter is based on the content of the European Convention for Human Rights and the practice of the only body recognized by the states that ratified the Convention to judge, without any right of appeal, cases related to restrictions of the freedom of speech and to defamation. The ECHR is decisive in judging defamation cases at the national level, since the court explains the way in which the provisions of the Convention should be understood.

The second chapter, “The Consistency with European Union Standards of Moldovan Legislation on the Freedom of Expression and Defamation,” is an attempt we consider successful to establish to what extent the national legal framework is in line with European Union (EU) requirements. In addition to the fact that it facilitates a deeper understanding of the correlation between the freedom of expression and defamation, this section of the study identifies the vulnerable points in national legislation and suggests ways to improve them.

The third chapter, “Justice versus Media: Monitoring of Cases Related to the Protection of Honor, Dignity and Professional Reputation Initiated against Media from 2005 to 2009” is the practical part of the study offering valuable empirical material for potential research on this complex and difficult issue. Beyond the summary of information on the court cases in which Moldovan media was involved in this time period, including those with major public impact, this chapter underlines some tendencies in national practice for settling cases against journalists.

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<sup>6</sup> Pember, Don R. *Mass Media Law*. Mc Graw Hill. NY. 2003

The fourth chapter, “The School of 2009: Lessons from the Events in April,” concludes the study. This section was not part of the original plan. When the concept and structure of this study were developed at the end of 2008, no one could have foreseen that 2009 would provide Moldovan society as a whole, including the media, a rare opportunity to study at a distinguished school. Nobody could have guessed what exclusive lessons would be taught at the school of 2009—the lessons of the events of April. Because of its uniqueness, the year 2009 deserves multiple, complex and deep studies, but this chapter has a much more modest task: to emphasize, in a way, a number of issues it describes. This task is important due to the fact that 2009 placed the media at the epicenter of the key events, and observing its behavior from a certain distance and in other social and political circumstances is of interest not only from a professional view.

This study was written by three jurists and a journalist. The authors of chapters I–III were jurists Janeta Hanganu, Iulian Balan, and Doina Costin. The introduction and the final chapter were written by journalist Ion Bunduchi. The study was coordinated by Petru Macovei, executive director of API. The authors hope that the information contained in the study will be useful to everyone who is interested in a value that is essential for democracy: the freedom of expression and the limits beyond which this value turns into an anti-value—defamation.

# Chapter I. The European Convention and Court of Human Rights on the Freedom of Expression and Defamation

## 1. Fundamentals

Many ECHR decisions concerning the observance of Article 10 of the Convention are based on the following assumption: there can be no democracy without pluralism. The freedom of expression is one of the essential foundations of a democratic society and one of the fundamental conditions for its development.

**Freedom of the press and other news media afford the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. It is incumbent on the press to impart information and ideas on political issues and on other subjects of public interest. Not only does the press have the task of imparting such information and ideas, the public also has a right to receive them.**

*Manole and Others v. Moldova*, judgment of September 17, 2009, para. 96.

The ECHR has acknowledged many times that the media is the “watchdog” of a democracy, and in practice there is a very strong presumption of the need for it to carry out its duties without hindrance. The freedom of expression protects not only ideas that are popular and not controversial but also those that may insult, shock or inconvenience. This right protects the content of ideas and information expressed as well as the form in which they are disseminated. This right relates to artistic expression as well as to commercial discourse. The freedom of expression and information acknowledged by Article 10 includes also the freedom to communicate information and ideas through broadcasting. In this regard, Article 10 states that, “This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”

### *Broadcasting*

In addition to the issues described hereinafter that are common to media irrespective of its publishing form, the European Commission and Court of Human Rights<sup>7</sup> were concerned about the way member states grant licenses to broadcasting companies. The ECHR also stated that granting or refusing to grant a license may also depend on the nature and objectives of a proposed station, its potential audience at the national, regional or local level, the rights and needs of a specific audience and the obligations deriving from international legal instruments.<sup>8</sup>

The establishment of a licensing regime was further described in Recommendation No. R (2000) 23 of the Committee of Ministers of the Council of Europe on the independence and functions of regulatory authorities for the broadcasting sector. It states that authorities responsible for regulating broadcasting should monitor the observance of rules relating to the pluralism of media and in certain cases of rules relating to competition. The recommendation further provides that when a broadcaster fails to observe the law or the conditions specified in its license, regulatory authorities should have the power to impose sanctions in accordance with the law and should choose those sanctions based on the seriousness of the infringements. The recommendation also emphasizes the accountability of the regulatory authorities to the public which represents the corollary of the fact that the mission of these bodies is to act exclusively in the interest of the public.

<sup>7</sup> Application no.10746/84, *Verein Alternatives Lokalradio Bern and Verein Radio Drezeckland Basel v. Switzerland*, Judgment of October 10, 1986.

<sup>8</sup> Information in *Lentia and Others v. Austria*, Judgement of November 24, 1993, Series A, No. 276, para. 32.

Therefore, only an arbitrary deprivation of a license or an arbitrary rejection of a licensing application may represent violations of Article 10 of the Convention. “Arbitrary” should be construed here as disproportionate, contrary to the public interest, contrary to pluralism, following a nontransparent procedure or based on an ungrounded decision.

**In *Romanian Television Society v. Moldova* notified to the Government of Moldova on November 6, 2008 and which is now pending before the court, the plaintiff complained about the arbitrary decisions of the authorities to deprive it of the right to broadcast TVR1 programs through state TV network 2 with 80% coverage of the territory of Moldova. This case shows the disproportionate nature of measures taken by the authorities when they announced a contest for the frequencies used by the plaintiff and granted the license to another company alleging a delay in payment for broadcasting rights.**

## **2. Restrictions on the Freedom of Expression**

The freedom of expression may not justify actions aimed at undermining any right or freedom provided in the Convention or at limiting them to an extent greater than an admissible one. Paragraph 2, Article 10 of the Convention lists the restrictions that are admissible and necessary for the exercise of this right.

### **Restrictions on the freedom of expression:**

- **national security, territorial integrity or public safety;**
- **prevention of disorder and crime;**
- **protection of health or morals;**
- **protection of the reputation or the rights of others;**
- **preventing the disclosure of information received in confidence;**
- **ensuring the authority and impartiality of the judiciary.**

We notice that values such as “the image/honor of the state or the government,” “the image or honor of the nation,” “the state symbol or other official symbols,” “the image/authority of public authorities” (other than the judiciary) are not included in this list and therefore are not legitimate purposes for restricting the freedom of expression. That is why courts should not punish criticism of these abstract notions. In addition to the fact that the restrictions listed above should be legal and have a legitimate purpose, they should be construed in a limited way, and the need for them should be demonstrated persuasively. In other words, any court decision or act that restrains the freedom of expression should have clear grounds stating why such a restriction is necessary. In addition, each of these terms should be interpreted in the light of ECHR case law. Although the states have a certain margin for assessment, the observance of the freedom of expression should be reviewed in the context of each individual case.

**The proportionality of a measure should be examined in the light of the case as a whole; it should also be established whether or not the national authorities have provided sufficient and relevant grounds. Among the factors that need to be taken into account in order to establish the balance between the freedom of expression and the other legitimate rights are the nature and seriousness of the restriction; its duration; the public interest for and against the exercise of the right to speech; whether or not the reasons for restriction are still valid after the circumstances and the nature of the publication or the form of expression have changed, particularly its tone and fairness; the accuracy of facts and the importance of the subject for public debate about comments or opinions.**

The most frequently used measures to restrict freedom of speech are court decisions that impose penalties on journalists and the media for facts and opinions expressed. It is curious to observe that in these cases, deviating from the general rule, the ECHR appears as a fourth court, re-examining the merits of the case including the proportionality and size of the penalty imposed.

Although in general interference with the freedom of expression consists of actions rather than inactions, ECHR case law also qualifies any actions of the authorities or of individuals that indirectly put pressure on the freedom of expression as measures restraining this freedom. For this reason, ECHR case law has formulated the notion of the positive obligation of the authorities to take action to protect the freedom of speech from any inadmissible interference.

**In *Manole and Others v. Moldova* (application no. 13936/02), the ECHR stated the following in its judgment of September 17, 2009:**

**A positive obligation arises under Article 10. The State, as the ultimate guarantor of pluralism must ensure through its law and practice that the public has access through television and radio to impartial and accurate information and a range of opinion and comment, reflecting inter alia the diversity of political outlook within the country and that journalists and other professionals working in the audiovisual media are not prevented from imparting this information and comment.**

In this case, the Court considered that the state had failed to observe its positive obligation to protect the freedom of expression since Teleradio-Moldova's monopoly in audiovisual broadcasting in Moldova and the country's deficient legal framework did not provide enough security against government control over the administration of Teleradio-Moldova and its editorial policy. Likewise, in *Timpul de dimineata v. Moldova* (application no. 16674/06, notified on June 9, 2008), the newspaper claimed the state had failed to fulfill its positive obligations to effectively prevent and to investigate the illegitimate actions of protesters who had attacked the newspaper premises, threatened journalists and set the archive on fire in January 2005.

The ECHR has also examined cases of interference in the form of pecuniary sanctions for alleged defiance of a court and for defamation that resulted in closing down a publication and the dismissal of a person.

- **In *Amihalachioaie v. Moldova*, the Chairman of the Moldovan Bar was fined by the Constitutional Court for criticizing its actions in a newspaper interview.**
- **In *Kommersant Moldovy v. Moldova*, the newspaper appealed the decisions of national courts to close the newspaper as punishment for a series of articles it published that criticized the government.**
- **In *Guja v. Moldova*, the press officer of the General Prosecutor's Office was dismissed after he sent two letters to the press in which state representatives gave directions to the General Prosecutor about several individual court cases.**

We should mention other forms of interference with the freedom of speech in Moldova, even though they have not been examined by the ECHR. Some of the most recent cases that can be particularly interpreted as interference are the following: the initiation of a criminal investigation in February 2008 against the publisher of the newspaper *Timpul de dimineata*, Constantin Tanase, for allegedly inciting inter-ethnic hatred;<sup>9</sup> the abduction of the editor-in-

<sup>9</sup> Statements with Regard to the Criminal Case Initiated Against the Journalist Constantin Tanase, <http://old.azi.md/news?ID=48100>

chief of the newspaper *Jurnal de Chisinau*, Rodica Mahu, on April 10, 2009;<sup>10</sup> the rude treatment of reporters from *Ziarul de Garda* on April 8, 2009; assaulting the journalist Oleg Brega while he was doing his job;<sup>11</sup> detaining and expelling without grounds Romanian journalists during the events that took place after April 5, 2009<sup>12</sup> and withdrawing the TV broadcasting license of channel TVR1 in Moldova<sup>13</sup> in September 2008.

With regard to other countries, the ECHR has examined interference in the form of a refusal to register a publication, measures to delay or forbid the publication of an article or a book, the seizure of an issue and a ban on distributing a publication. In the case *Gaweda v. Poland*,<sup>14</sup> the authorities, contrary to the provisions in Article 10, had prevented the publication of two periodicals by refusing to register their titles alleging that the titles “were in conflict with reality.” In *Sunday Times (no. 2) v. United Kingdom*,<sup>15</sup> interference consisted in delaying and forbidding the disclosure or publication of excerpts from a book of unauthorized memoirs that ascribed disloyal acts to the British Security Service and disclosed information obtained by the author while a member of the service. Although generally such measures don’t necessarily represent a violation of Article 10, the ECHR noted that as far as the press is concerned, news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of its value and interest. In *Vereniging Weekblad Bluf! v. Netherlands*,<sup>16</sup> one issue of a newspaper published by the plaintiff association was seized and its distribution was forbidden following the publication of a confidential article on Dutch Security Service activities. This action was considered disproportionate as the information disclosed was six years old and had already become public knowledge through the sale of 2500 copies on the streets.

Although measures such as the exclusion of the press from a courtroom represent interference, they will not necessarily constitute a violation of Article 10 if the parties to the trial have requested this and if the restriction is applied to the media as a whole.<sup>17</sup>

Because the scope of this study is to examine defamation along with the freedom of expression, we will hereinafter refer to special restrictions imposed on the freedom of speech and the forms of interference with this right related to defamation cases.

### 3. Freedom of Expression and Defamation

The right to maintain honor and dignity is one of the restrictions on the freedom of speech. In other words, the freedom of speech ends where the right to a good reputation and to a private life starts. Article 16 of the current Moldovan Civil Code and Article 17 and 7/1 of the Civil Code in force until June 12, 2003 forbid the defamation of a person, that is, the dissemination of defamatory information about him/her that did not correspond to reality. This interference with the freedom of expression was aimed at protecting honor and dignity and was considered by the ECHR as provided by law and as having a legitimate purpose.

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<sup>10</sup> A journalist from *Jurnal de Chisinau* was kidnapped from behind the Moldovan Government building.

[http://www.antena3.ro/stiri/moldova/jurnalista-rapita-la-chisinau\\_69075.html](http://www.antena3.ro/stiri/moldova/jurnalista-rapita-la-chisinau_69075.html)

<sup>11</sup> Declaration of media NGOs from Moldova on the situation of the press, violations of the right to access to information and attacks on journalists, April 8, 2009 <http://www.api.md/declarations/6697/index.html>

<sup>12</sup> Moldovan authorities keep Romanian media out, <http://www.dwelle.de/dw/article/0,,4164985,00.html>

<sup>13</sup> Freedom House 2008 Country Report Moldova:

<http://www.freedomhouse.org/template.cfm?page=47&nit=461&year=2008>

<sup>14</sup> Judgment of March 14, 2002, ECHR 2002-II.

<sup>15</sup> Judgment of November 26, 1991, Series A, no. 217.

<sup>16</sup> Judgment of February 9, 1995, Series A, no. 306-A

<sup>17</sup> Application No. 13366/87, Judgment of December 3, 1990; P4 *Radio Hele Norge ASA v. Norway*, Application no. 76682/01, Judgment of May 6, 2003.

In *Busuioc v. Moldova*, the Court considered that the provisions of the Moldovan Civil Code were in line with the quality standards for a law and noted that the provisions in question were not so vague as to render the consequences of the applicant's actions unforeseeable. Defamation laws, with their emphasis on honor and reputation, inevitably involve a degree of vagueness (see *Rekvényi v. Hungary*). However, this does not remove their "legal" character for purposes of Article 10 of the Convention. It falls to the national authorities to apply and to interpret domestic law (see for example, *Otto-Preminger-Institut v. Austria* judgment of 20 September 1994, Series A no. 295-A, p. 17, § 45).

The most difficult task for a court of first instance is to determine based on the following criteria whether someone's reputation has been affected and whether sanctions are needed:

- if the information disseminated contains facts or value judgments;
- if there is any evidence;
- if the person or information concerned is of public interest;
- whether the person who disseminated the information is a journalist and if so, to what extent she/he fulfilled the obligations of good faith and professionalism;
- based on the above criteria, whether a punishment is needed and justified and whether it is appropriate and proportionate.

The same criteria are used by higher courts and then by the ECHR to determine if the measures applied by the court of first instance represent interference in the freedom of speech and if such measures are necessary in a democratic society.

#### *Facts and value judgments*

In its practice, the ECHR makes a distinction between facts and value judgments: facts can be proven while the truthfulness of the value judgments cannot be. The requirement to prove the truth of a value judgment cannot be fulfilled and infringes on the freedom of opinion that is a fundamental part of the right secured by Article 10.<sup>18</sup> These same principles were confirmed by the Plenum of the Supreme Court of Justice of Moldova in Explanatory Decision no. 8 of October 2006.

If the defamatory statements published are not evidence based, they may justify the application of sanctions. No matter how simple the court's task to check the truthfulness of facts may seem, the court should also take into account additional circumstances. In a democratic society, for example, limiting a defendant's ability to provide evidence that could prove the truthfulness of statements and the subsequent determination that the information was not defamatory is not justified as was ascertained in *Busuioc v. Moldova* and *Savitchi v. Moldova*.

It is important to note that in accordance with national law (Article 27 of the Media Law) there are certain conditions under which journalists and media institutions are exempt from liability for disseminating information, even if it does not correspond with reality. For example, journalists and media institutions shall not be liable for information contained in official documents and press releases of public authorities or for the textual reproduction of public speeches or for appropriately summarizing them.<sup>19</sup>

The situation is different for interviews and stories based on information provided by a third party, in an anonymous letter or based on rumors about topics of public interest. The ECHR noted that criminal punishment or the obligation of journalists to pay damages for the simple fact that they helped to disseminate information coming from a third party seriously hinders the

<sup>18</sup> *Busuioc v. Moldova*, para. 61.

<sup>19</sup> Gribincea, Vladislav. "Legal Practice in Moldova and the Freedom of Expression: Shortcomings in Examining Civil Cases on the Protection of Honor, Dignity and Professional Reputation".

contribution of the media in discussing issues of general interest, and it should occur only if there are especially compelling reasons. Among the reasons that could justify such limitations are unjustified refusals of journalists to disclose their sources, undersigning a third party's statements, a biased tone in an article, an irresponsible investigation and journalists' bad faith.

Although journalists may generally request the protection of their sources, this does not grant them immunity in court decisions requiring the submission of this information or of an audio/video recording if they are relevant in criminal cases. Thus, the BBC's appeal against the sanction applied for its failure to submit a recording from a rebellion was considered inadmissible.<sup>20</sup> In this case, the European Commission considered that the submission of evidence was a common civil obligation and rejected the argument that submitting the recording would have put the crew in greater danger than it had been during the shooting of the film. In contrast, in *Goodwin v. The United Kingdom*,<sup>21</sup> the ECHR considered that the fine of £5000 for a journalist's refusal to disclose his source of information regarding a confidential financial report of a private company could have had a negative impact and discouraged sources from providing information. Apparently, only matters of extreme public interest such as the prevention of serious crimes or the identification of persons who commit serious crimes justify coercive measures to identify journalists' sources.

In September 1994, the ECHR issued a judgment on a violation of Article 10 in the case *Jersild v. Denmark*.<sup>22</sup> A journalist had been convicted for publishing an interview with youths who expressed racist statements. The Court considered that objectively the report was not aimed at disseminating racist ideas and opinions: "The methods of objective and balanced reporting may vary considerably, depending among other things on the media in question. It is not for this Court, nor for the national courts for that matter, to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists."

On the other hand, in its decision in *Purcell v. Ireland* of April 1991, the ECHR considered a request to forbid the broadcast of videos of meetings of certain organizations—more precisely a known political party—as admissible. The Court stressed that the interdiction did not forbid reporting on the respective organizations in general; it restricted only audiovisual broadcasts of meetings. The interdiction aimed at avoiding a semblance of support for organizations that incited violence and intended to disturb the constitutional order through radio and television which according to the Court, "...are of considerable power and influence [...] Their impact is more immediate than that of the print media, and the possibilities for the broadcaster to correct, qualify, interpret or comment on any statement made on radio or television are limited in comparison with those available to journalists in the press."

Concerning biased language, the Court noted the obligation of the press to avoid, "...expressions that are gratuitously offensive to others... and do not contribute to any form of public debate capable of furthering progress in human relations."<sup>23</sup> The use of violent terms, however, has greater protection if such terms are used as a reply to provocation. In the case *Lopes Gomes da Silva v. Portugal*,<sup>24</sup> the journalist criticized the political beliefs of a candidate for the city administration calling them "grotesque," "buffoonish" and "coarse." These critical references were made after the respective candidate had made sharp statements including insulting remarks about the physical features of other public figures. The Court stated that, "The opinions expressed [by the respective candidate] had been worded incisively, provocatively and

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<sup>20</sup> Application no. 25978/94, Judgement of January 18, 1996.

<sup>21</sup> Judgment of March 27, 1996, ECHR 1996-II.

<sup>22</sup> *Jersild v. Denmark*, Judgment of September 23, 1994, Series A no. 298.

<sup>23</sup> Judgment *Otto Preminger Institut v. Austria* of 1994.

<sup>24</sup> Judgment *Lopes Gomes da Silva v. Portugal* of 2000.

at the very least polemically. It is not unreasonable to conclude that the style of the applicant's article was influenced by that of the candidate.”

In calumny cases, the seriousness of charges, the existence of appropriate prior investigations and a material basis to support them and the journalist's loyalty and observance of journalistic ethics should be taken into account. In *Savitchi v. Moldova* and *Flux and Samson v. Moldova*, the ECHR considered that there were no particularly compelling reasons for penalties as in the former the moderate language of the article did not show any intent to defame, while in the latter, the publication had reported the opinion of the other party in a balanced manner and in addition had published an apology. In the case of *Flux v. Moldova (No. 5)*, The Court considered that the publication shouldn't have been punished for assisting the daughter of a victim of a prosecutor's abuses in the dissemination of her open letter, particularly taking into account the fact that the information disseminated was not completely without foundation.

On the other hand, in the case of *Flux v. Moldova (No. 6)*, the court noted that despite the fact that the newspaper referred to a subject of public interest, it had relied on an anonymous letter and had made no attempt to contact the person concerned and ask his opinion on the matter, nor had it conducted any investigation into the matters mentioned in the anonymous letter. Moreover, it refused to publish a reply.

***Flux v. Moldova (No. 6)***

**31. The right to freedom of expression cannot be taken to confer on newspapers an absolute right to act in an irresponsible manner by charging individuals with criminal acts in the absence of a basis in fact at the material time (see *Bladet Tromsø and Stensaas*, cited above, § 66) and without offering them the possibility to counter the accusations. There are limits to their right to impart information to the public, and a balance must be struck between that right and the rights of those injured.**

In *Timpul Info-Magazin and Anghel v. Moldova*, the court found that the publication legitimately communicated information in the form of unconfirmed rumors as no other detailed information was available about a transaction between the government and the plaintiff company, and that other unchallenged facts raised reasonable doubts about the legitimacy of this transaction. Moreover, the publication informed the reader in a clear and unambiguous way about the unconfirmed nature of the information.

***Timpul Info-Magazin and Anghel v. Moldova***

**36. As part of its role as a “public watchdog,” the media's reporting on “stories” or “rumours” emanating from persons other than the applicant or “public opinion” is to be protected where they are not completely without foundation (see *Thorgeir Thorgeirson v. Iceland*, judgment of 25 June 1992, Series A no. 239, § 65).**

Similarly, in the case of *Flux v. Moldova (No. 7)*<sup>25</sup> the ECHR noted that in situations in which a statement of fact is made and insufficient evidence is adduced to prove it while a journalist is discussing an issue of genuine public interest, verifying whether the journalist acted professionally and in good faith becomes paramount. We will tackle these aspects later on when we discuss the obligations and responsibilities associated with the exercise of the right to free expression.

Moreover, a defendant's inability to prove the truthfulness of statements does not always constitute defamation. Since an action brought for the protection of the right to reputation is not

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<sup>25</sup> judgment of November 24, 2009.

subject to a statute of limitations, there are situations when because of the passage of time the defendant can not reasonably prove whether the statements made were facts. In *Flux v. Moldova*, the Court noted that although there was no evidence to support the statements made, taking into account that most were not considered to be untruthful or abusive and that legal proceedings were initiated one year after the reported events took place, the pecuniary sanctions imposed on the publication were not justified. This should encourage journalists to keep evidence that confirms the truthfulness of their reports.

Particularly when the information disseminated contains opinions (value judgments), the nature of interference will depend upon the existence of a basis in fact sufficient for the statement since a value judgment lacking any basis in fact may be excessive. When examining defamation cases related to value judgments, national courts and the ECHR should establish if prior judgments were excessive or biased taking into account the same factors: the seriousness of the research or the investigation, the tone and manner of expressing opinions, the issue covered (if it is an issue of public interest), if the opinion of the person concerned is included, the extent to which the circumstances could reasonably determine the opinion expressed and other circumstances related to the matter.

In *Flux v. Moldova (No. 2)*, the ECHR noted the credibility of the source of the information that allowed the plaintiff publication to formulate a conclusion that represented a value judgment based on credible facts. Therefore, in addition to the details that should reasonably accompany an expressed opinion, the Court puts considerable importance on the professionalism and good faith of journalists and of media institutions.

#### *Obligations and responsibilities*

Article 10, paragraph 2 of the Convention stipulates that the exercise of the freedom of speech also implies certain “obligations and responsibilities” for the media. These obligations and responsibilities acquire a specific sense when they affect the reputation of individuals and “the rights of others.” Due to these obligations and responsibilities that are inherent in the exercise of free speech, the security provided by Article 10 to journalists with regard to the preparation of reports about issues of public interest is conditioned by the fact that they act in good faith with a view to providing accurate and reliable information in accordance with the ethics of journalism.

#### **Flux v. Moldova (No. 6)**

**1. The Court will examine whether the journalist who wrote the impugned article acted in good faith and in accordance with the ethics of the profession of journalist. In the Court’s view, this depends in particular on the nature and degree of the defamation at hand, the manner in which the impugned article was written and the extent to which the applicant newspaper could reasonably regard its sources as reliable with respect to the allegations in question. The latter issue must be determined in light of the situation as it presented itself to the journalist at the material time, rather than with the benefit of hindsight (see *Bladet Tromsø and Stensaa v. Norway [GC]*, no. 21980/93, § 66, ECHR 1999-III).**

As described above, the way journalists carried out their jobs in *Busuioc*, *Timpul Info-Magazin* and *Flux* (except for *Flux 6*) led the Court to state that their rights to freedom of speech had been violated, although the information reported was not necessarily accurate (*Busuioc*) or reliable (*Timpul Info-Magazin*). In *Flux v. Moldova (No. 7)* as in *Timpul Info-Magazin*, it was proved that the journalist acted with professionalism and in good faith as she tried to check the

information she reported as much as she possibly could, and her requests were turned down. The lack of any official information on this matter of genuine public interest and given the other uncontested facts that raised reasonable doubts as to the legitimacy of the distribution of some apartments could reasonably have prompted the journalist to report on anything that was available, including unconfirmed rumors. What is more important, the plaintiff newspaper clearly informed its readers in the same article that it could not check the truthfulness of the information and therefore did not present the rumors as facts. The ECHR noted the difference between this case and the case of *Flux v. Moldova (No. 6)* in which the newspaper not only could not prove the truthfulness of the report, it did not even try to check the information and failed to publish a reply. In the Court's view, due to the unprofessional conduct of the publication and the relatively low amount paid as damages, the pecuniary sanction did not represent a violation of Article 10.

National courts should especially take into account the position of the person who publishes allegedly defamatory information because if the author is a journalist, his/her right to freedom of speech should be protected in a particular way as it is the task of the journalist and the media to investigate and communicate information of public interest. Therefore, the court's decision may differ depending on who the author is or if there is a strong presumption favoring the freedom of the media to disseminate opinions and ideas.

The form in which information is published is also protected as journalists should be able to exaggerate to a certain extent to incite readers. As mentioned above, Article 10 protects not only information that is popular but also information that may be offensive, shocking or inconvenient. Local and possibly international judges should determine whether the way in which ideas are expressed is intentional and needs to be protected as it contributes to public debate about issues of public interest or whether it represents conduct lacking professional ethics that aims to affect the rights and reputations of others.

### *Concerned persons*

According to statistics, most defamation claims are filed by so-called "public persons," that is persons who by virtue of their jobs or positions in society inevitably constitute subjects for journalists' stories on matters of public interest. Usually they are politicians, public employees or business people. The limits on acceptable criticism are wider for politicians as such than for private individuals. Unlike the latter, the former inevitably and knowingly lay themselves open to close scrutiny of their every word and deed by both journalists and by the public at large, and they must consequently display a greater degree of tolerance.<sup>26</sup> Arguments for this view are provided by the fundamentals of a democratic society in which criticism of those who exercise their power represents a fundamental right and duty of the media, of ordinary citizens and to a great extent of society as a whole. This type of criticism should not be restricted as it is the only means of subjecting shortcomings to public debate and of finding possible remedies.

Conversely, in the case of *Janowski v. Poland*, the ECHR ruled that the criminal prosecution of the plaintiff for insulting two municipal guards did not represent a violation of Article 10. The Court noted that the plaintiff was sanctioned not for expressing his critical opinion about the actions of the guards but for the way he addressed them, namely with insults. Then the Court observed that although the plaintiff was a journalist by profession, he had expressed his discontent with the guards as a private individual. The Court underlined in this regard that civil servants must enjoy public confidence under conditions free of undue perturbation if they are to be successful in performing their tasks. Although open to a less

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<sup>26</sup> *Lingens v. Austria* judgment of July 8, 1986, Series A no. 103, § 42; *Incal v. Turkey*, judgment of June 9, 1998, § 54

thorough scrutiny than the reputations of politicians, the reputations of civil servants are protected against injurious or insulting verbal assaults during or in relation to their duties if such assaults go beyond the limits of allowable criticism. However, the requirements of such protection should be assessed with respect to the interests of media freedom or to open discussions about issues of public interest.<sup>27</sup>

In *Savitchi v. Moldova*, the plaintiff in the civil defamation case was a policeman, a public servant, and therefore enjoyed a higher level of protection from offensive, abusive and defamatory attacks when on duty. However, since the journalist's reports concerned a matter of public interest and the language used in the article was moderate, and it appeared that she did not act in bad faith in her position as journalist, the ECHR concluded that there was interference with her freedom of expression. After reviewing the excerpts of the journalist's article subject to litigation, the Court noted that her statements were value judgments rather than facts.

This rule is not an absolute one. In *Busuioc v. Moldova*, referring to the applicant's articles about dealings at the Chisinau International Airport and the State Agency for Civil Aviation related to the sale of a number of planes, the Court considered that the plaintiffs in the civil action were neither law-enforcement officers nor prosecutors and that it would have gone too far to extend the Janowski principle to all persons who are employed by the state or by state-owned companies. Second, the applicant's remarks formed part of an open and ongoing discussion of matters of public interest (namely the management and alleged misuse of public funds).

At the same time, referring to the company Steel and Morris, the Court regarded large companies as public entities that inevitably and knowingly lay themselves open to public scrutiny.<sup>28</sup> As in the case of the business persons who manage them, the limits of acceptable criticism are wider with regard to such companies. Nevertheless, in addition to the public interest in open debates about business practices, there is a competing interest in protecting commercial success and the viability of companies not only for the benefit of shareholders and employees but also for the greater economic welfare. The state therefore enjoys a margin of appreciation as to the means it provides under domestic law to enable a company to challenge the truth and to limit the damage from allegations that risk harm to its reputation.

**In *Timpul Info-Magazin and Anghel v. Moldova*, the plaintiff company in the civil defamation case could not be considered to be a large company like Steel and Morris. It should therefore enjoy comparatively more protection of its reputation. Nevertheless, the Court considered that when a private company decides to participate in transactions in which considerable public funds are involved, it voluntarily exposes itself to increased scrutiny by public opinion. In particular, if there are allegations that such transactions were detrimental to public finances, such a company must accept criticism by the public.**

As noted above, in addition to the position of the person subject to criticism, an essential factor in ECHR case law has confirmed that there is little room for restricting political speech and debate on matters of public concern. Thus, the management of public funds, corruption in government or private institutions and political corruption are issues of public interest that the media as a "watchdog" is obliged to investigate and expose as they are important in a democratic society, they fall under the scope of political debate and the public has a legitimate interest in being informed about them.<sup>29</sup>

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<sup>27</sup> *Janowski v. Poland* [GC], no. 25716/94, § 33, ECHR 1999-I.

<sup>28</sup> *Steel and Morris v. the United Kingdom* (no. 68416/01, § 94, ECHR 2005-II)

<sup>29</sup> *Flux no. 4*, para. 33.

### *Amount of pecuniary sanctions*

A pecuniary sanction (a fine) may determine interference or non-interference in the freedom of expression not only by its imposition but also by its amount. In this regard, the ECHR has stated that fines that may lead to closing down a media outlet or that are obviously excessive are capable “of discouraging open discussions on matters of public concern” by silencing a dissenting voice altogether.<sup>30</sup> Thus the fine for *Timpul Info-Magazin* of 1.35 million lei ordered by the district court that was reduced to 130,000 lei by the Supreme Court of Justice of Moldova was an additional reason to ascertain a violation of Article 10. On the other hand, the imposition of relatively modest pecuniary sanctions in situations in which a journalist or a media outlet fails to behave professionally may represent a proportionate and necessary measure in a democratic society without affecting media freedom as a whole.<sup>31</sup>

Even if sanctions are modest, however, the ECHR has ruled that they must be justified so they do not violate the freedom of speech. In *Urbino Rodrigues v. Portugal*,<sup>32</sup> the Court examined the case of a newspaper editor who had been fined for libeling another journalist in an article that said the latter used “mafia style methods” and accused him of deliberately omitting certain facts. The Court considered that these expressions could not be qualified as defamatory and the conviction of the plaintiff, regardless of the minimal nature of the punishment applied, represented a violation of Article 10.

To assess whether a sanction is modest or excessive, national courts should take into account not only the amount but also the ceiling provided by law, if any. Therefore, in the case of *Amihalachioaie v. Moldova*, although the fine imposed was 360 lei, the fact that this was the highest fine provided by the law constituted an important reason for ascertaining a violation of Article 10.

### *Court grounds and court proceedings*

Courts are encouraged to analyze defamation cases in accordance with the abovementioned benchmarks to decide whether a reputation or the right to freedom of expression should be protected. Whatever the final court decisions may be, they should be grounded, and the proceedings should be in line with the standards of a fair trial. The failure to assess evidence provided by the defendant or the unfounded refusal to grant terms for the defendant to prepare his case may constitute a violation of the guarantee of a fair trial and a violation of the freedom of speech. To date, in the Moldovan cases related to the both types of violations, the ECHR has preferred to examine indictments on the freedom of expression as they include the issue of a guarantee of a fair trial. Nevertheless, the Court has repeatedly stated that the fairness of procedures may be taken into account when examining interference in the exercise of the rights guaranteed in Article 10.

**In *Flux v. Moldova (No. 4)*, the Court could not help but observe the peculiarity of the manner in which the proceedings were conducted before the domestic courts. Indeed, the Court noted a series of elements which, examined cumulatively, led it to such a conclusion. In particular, Mr Stepaniuc's action was examined despite the fact that he had failed to pay court fees, which fact, by itself, should normally have rendered the action procedurally inadmissible. Moreover, not only did he fail to appear before the courts, he was not even represented. At the same time, the applicant's requests for adjournment were rejected**

<sup>30</sup> *Timpul Info-Magazin and Anghel v. Moldova*, para. 39, *Cumpana and Mazare v. Romania* [GC], no. 33348/96, § 114, ECHR 2004-XI

<sup>31</sup> See above *Flux v. Moldova (No. 6)*.

<sup>32</sup> *Urbino Rodrigues v. Portugal*, no. 75088/01, judgment of November 29, 2005.

without any reasons given while the evidence presented by the paper was entirely disregarded by the judges. The Court of Appeals and the Supreme Court of Justice failed even to examine the applicant's submissions concerning Judge I. M.'s alleged lack of independence and impartiality.

#### 4. Freedom of Expression and Private Life

While the right to honor and dignity is not protected *per se* by the Convention, the right to private life is expressly provided for in Article 8. When the publication of information about a person's private life causes a conflict between two rights, the courts should find the appropriate balance between them. In an application examined in December 2000, the director of a periodical and a journalist complained that they had been convicted for publishing an illustrated article on the private lives of two celebrities. The ECHR found that the, "The reports at the origin of the litigation, in focusing their content on purely private aspects of the lives of the persons concerned, could not be considered to have contributed to any debate of general interest in society, in spite of their celebrity status." Consequently, the legal measure was accordingly deemed necessary in a democratic society to protect the rights of others, and the application was declared inadmissible.<sup>33</sup> Conversely, in a case examined in November 2004,<sup>34</sup> the Court ruled that punishing the applicants for violating the private life of an MP constituted an infringement of Article 10. The newspaper article in question mentioned the MP indirectly, stating that she was the wife of the subject of the court investigations reported in the article. A female politician should accept the fact that certain aspects of her private life might be addressed as her behavior can influence voters. In this case, the Court considered that the MP used her status and immunity in order to impose a greater restriction on the applicants.

When establishing a balance between conflicting rights, national courts should take into account the position of the person concerned, whether or not he/she is a public person, the content of the information published, whether or not the information is a matter of public interest and whether or not the reason for publishing the information was legitimate and done in good faith .

#### 5. Freedom of Expression and Public Order

When restrictions are imposed to suppress publications in response to a terrorist threat, states are relatively free to assess the seriousness and complexity of the situation. The main criterion in assessing the need and proportionality of such measures seems to be the perceived impact of the material in question. The ECHR examines whether it may be considered as capable of inciting or propagating violence which offers the national authorities a wide margin for interpretation. If, however, the language, content or context of the material examined cannot be interpreted as liable to incite violence, no conviction or criminal investigation is justified, even if it contain opinions that are very different from those in government policy.

After publishing a number of articles criticizing the negotiations between the Moldovan government and the authorities of the self-proclaimed Transnistrean Republic, the Moldovan newspaper *Kommersant Moldovy* was closed down because of a decision by Moldovan courts. Upon notification from the prosecutor's office, the courts agreed that in those articles the newspaper provided support to the illegitimate Transnistrean authorities thus undermining national security, territorial integrity and public order. The ECHR noted that the national tribunals had failed to clearly indicate in what way those articles could have genuinely endangered national security and territorial integrity given the fact that they basically contained

<sup>33</sup> *Campmany and Lopez Galiacho Perona v. Spain* (decision), no. 54224/00, December 12, 2000, ECHR 2000-XII.

<sup>34</sup> *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, judgement of November 16, 2004, ECHR 2004-X.

statements critical of various Russian and Transnistrean leaders addressed to Moldovan authorities. In the absence of any plausible justification regarding the impact of the articles on national security, the court order to cease publication was in violation of Article 10.<sup>35</sup>

## 6. Freedom of Expression and the Judiciary

In *Prager and Oberschlick v. Austria*<sup>36</sup> in April 1995, the ECHR concluded that the conviction of a journalist and an editor for defaming a judge by publishing critical commentary did not constitute a violation of Article 10. Despite the “pre-eminent role” of the media in a state governed by the rule of law, it must not overstep certain established bounds. The severe criticism against the personal and professional integrity that the journalist expressed against the plaintiff magistrate lacked good faith and did not comply with the ethics of journalism. Under these conditions, the Court considered that the sanction applied was not disproportionate to the protection of a person’s reputation and of the judiciary.

In *Tourancheau and July v. France*,<sup>37</sup> the Court examined the application of the editor and a journalist of the daily newspaper *Liberation* who were fined for publishing documents in a case file before proceedings began in open court. The article in question described the circumstances of a murder while the criminal investigation was still pending and two suspects had been placed under investigation. Each accused the other of the crime, but the paper published the account of only one of them. The Court considered that the article thus backed the version of events given by one suspect to the detriment of the version supplied by the other and that the sanction imposed aimed at protecting “the reputation and rights of others” and “maintaining the authority and impartiality of the judiciary.” Consequently, the Court considered that the national tribunals were correct in their assessment that by publishing the article, the newspaper had violated the presumption of innocence of the suspects.

## 7. The Right to Receive Information

Article 10 may not be used to restrict the general right of access to information. In *Guerra v. Italy*,<sup>38</sup> the ECHR noted unequivocally that the freedom to receive information prohibits a government from restricting a person’s access to information that others wished to impart to him/her though in this case the Court didn’t impose an obligation on the authorities to collect and disseminate information about a matter of public concern. Likewise, in *Open Door and Dublin Well Woman v. Ireland*,<sup>39</sup> the Court concluded that the imposition by the national courts of an interdiction on counseling services for abortions was a violation of Article 10 given that the services were neutral and that the information was readily available from other sources. In a similar case against Turkey, the Court considered that the censorship of school books written for Greek Cypriots by the authorities of the Turkish Republic of Northern Cyprus constituted a violation of the freedom to receive information.<sup>40</sup>

## 8. Conclusions

The freedom of expression as an indispensable right for a democratic society implies the assumption of all responsibilities related to the exercise of this right. Therefore, if democracy

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<sup>35</sup> *Kommersant Moldovya v. Moldova*, no. 41827/02, judgement of January 9, 2007.

<sup>36</sup> *Prager and Oberschlick v. Austria*, judgement of April 26, 1995, Series A no. 313.

<sup>37</sup> *Tourancheau and July v. France*, no. 53886/00, judgement of November 24, 2005.

<sup>38</sup> judgement of February 19, 1998, RJD 1998-I.

<sup>39</sup> judgement of October 20, 1997, Series A, no. 246.

<sup>40</sup> *Cyprus v. Turkey*, judgement of May 10, 2001, ECHR 2001-IV.

means pluralism, the freedom of expression must allow the expression of various contradictory, critical or even shocking ideas. At the same time, democracy also means fairness, order and justice. Consequently, the freedom of speech does not legalize abuse, calumny or defamation.

Freedom of expression is one of the conditions for creating and maintaining a democracy, not a tool for fighting against it. The inappropriate use of this freedom undermines democratic values including human honor and dignity and is thus inadmissible. Any restrictions imposed on the freedom of speech are mainly aimed at ensuring the lasting exercise of this freedom in the democratic spirit in which it was granted to everyone. The ECHR thus encourages Moldovan journalists to exercise honestly and professionally their role as “watchdog” of democracy and approves of journalistic investigations if they refer to an issue of public interest and do not disproportionately affect people’s private lives or otherwise overstep acceptable limits.

At the same time, the Court encourages Moldovan tribunals to make fair judgments, to clearly establish acceptable limits in the context of each case and to promote the principles of exercising the freedom of speech in the ways provided in Article 10 and ECHR case law.

## **Chapter II. The Consistency with European Union Standards of Moldovan Legislation on the Freedom of Expression and Defamation**

### **1. Legal Provisions on the Freedom of Expression in Moldova**

Freedom of speech is closely related to the freedom of conscience and can be defined as one's right to publicly express thoughts, opinions, religious beliefs and spiritual creations of any kind in writing, images, sound or any other means of communication. Following its proclamation of independence, Moldova undertook the task of establishing the rule of law including the observance of all fundamental rights and freedoms. In order to render the new democracy and fundamental freedoms legitimate, Parliament has adopted various regulatory acts including general and specific legal provisions on the freedom of expression. This legal framework refers particularly to the media which disseminates information on specific issues, in a specific geographic area and to a specific target audience. With the rule of law, all rights and freedoms have a legal basis that indicates the behavior to be followed in certain circumstances or related to certain factors. The importance of codifying behavioral standards for media to establish norms and regulations is widely recognized.

Restrictions on the freedom of expression claim to be an effective mechanism for fighting defamation or any deviation from the principles of fair journalism. While any source irrespective of type has the right to express an opinion about an event, the state may impose certain limits on that expression if it finds it contains an attack on a national value or on the honor and dignity of a person or institution. Although media outlets follow the principle of providing timely information, they must nevertheless broadcast or print material that has been thoroughly studied and investigated and is of an informative nature. The right to freedom of expression should be limited only under legal provisions following a thorough investigation of the issue and in line with universally recognized principles.

For the most part, the general legal provisions on the freedom of speech are included in the Constitution of the Republic of Moldova. According to Article 4 paragraph (1), the provisions for human rights and freedoms shall be understood and implemented in accordance with the Universal Declaration of Human Rights and with other conventions and treaties the country has endorsed. In this connection it is worth mentioning Decision No. 55 of 14 October 2000 of the Constitutional Court interpreting some provisions in Article 4 which states that the article guarantees not only the fundamental human rights and freedoms of international law enshrined in the Constitution but also those unanimously recognized principles and norms of international law. Unanimously recognized principles and norms of international law are those that are general and universal in nature. Conventions and treaties endorsed by the Republic of Moldova comprise international treaties the country has ratified including those to which Moldova has acceded and that are enforceable in Moldova. These unanimously recognized principles and norms and international treaties are thus a part of the Moldovan legal framework and therefore of national law. When disagreements arise between international conventions and treaties on fundamental human rights and Moldovan laws, according to Article 4, paragraph (2), international conventions and treaties shall prevail.

It is important to mention that the Civil Code, Contravention Code, Criminal Code, Criminal Procedure Code and the Electoral Code contain either direct or indirect legal provisions on the freedom of expression that pertain to the areas each regulates. The most specific and important legal provisions with a direct impact on media are contained in the following instruments: Audiovisual Code of the Republic of Moldova (law no. 260-XVI of 27 July 2006), Law on the Press (no. 243-XIII of 26 October 1994), Law on Editorial Activities (no. 939-XIV

of 20 April 2000), Law on the Protection of State Secrets (no. 245-XVI of 27 November 2008), Law on Commercial Secrets (no. 171-XIII of 6 July 1994), Law on Information Processing and State Information Resources (no. 467-XV of 21 November 2003), Law on Combating Extremist Activity (no. 54-XV of 21 February 2003), Advertising Law (no. 1227-XIII of 27 June 1997), Law on Protection of Personal Data (no. 17-XVI of 15 February 2007), Code of Conduct for Civil Servants (no. 25-XVI of 22 February 2008) and Explanatory Decision of the Plenum of the Moldovan Supreme Court of Justice (no. 8 of 9 October 2006).

The freedom of speech is specifically enshrined in Article 32 of the Constitution which guarantees the freedom of opinion and expression and in Article 34 which guarantees the right to information. Paragraph 1 of Article 32 guarantees all citizens the freedom to form opinions as well as the freedom to publicly express thoughts in words, images or any other means of communication. This is a general provision that sets the course that Parliament should follow in passing laws related to the freedom of expression that at the same time offers special security for the observance of this right. Paragraph 2 of Article 32 prescribes limits on the freedom of expression to safeguard democratic values. It states that the freedom of expression may not harm the honor, dignity or the rights of people to have and express their own opinions. Paragraph 3 of this article is more controversial. Fervent discussions have occurred on the phrase, "The law shall forbid and prosecute all actions aimed at denying and slandering the State or the people." According to a number of specialized organizations, this provision could be used by the government as a mechanism to repress freedom of expression. This paragraph also forbids communication that incites war or aggression; ethnic, racial or religious hatred or discrimination; territorial separation; public violence or other actions that threaten constitutional order.

The provisions in the Civil Code relating to the freedom of expression provide a particular mechanism for protection against its unjustified "misuse." In this regard, Article 16 offers protection for honor, dignity and professional reputation. This has caused a great deal of controversy among media outlets, civil society and politicians. There have been attempts to amend this provision, but they have been rejected both by the non-government organizations (NGOs) in the field and by the media in general. Both a literal interpretation and an analysis by experts<sup>41</sup> of Article 16 find that it enshrines legal and civil guarantees for protecting the intangible rights of individuals and of legal entities to honor, dignity and professional reputation. The honor of an individual is how that person is appreciated by society. Dignity is one's own appreciation of one's moral and professional qualities. Professional reputation is the appreciation of an individual's professional qualities. If a person's honor, dignity or professional reputation has been injured, he/she has the right to request protection and may ask that the information that caused the injury be refuted if and only if it is not accurate. ("Information" means any report about an event, opinion or idea in writing, sound and/or image.) Likewise, if information is disseminated that injures the professional reputation of a legal entity, that entity is entitled to ask for a refutation, for changes to documents issued or for the publication of a reply in the media stating that the information was untruthful. In the opinion of the authors of the commentary on the Civil Code, which is in conflict with some of the practical solutions offered by courts, a person is also entitled to request compensation for damage caused by psychological or physical suffering. Legal entities, on the other hand, may not be compensated for moral damage.

In instances of refuting information injuring honor, dignity or professional reputation, both the plaintiff and the defendant have to provide evidence. The defendant is bound to prove that the information disseminated is true. The plaintiff is bound to prove only that the information in question was disseminated by the defendant. The plaintiff may bring evidence that the information is not accurate, but this is a right, not an obligation.

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<sup>41</sup> *Commentary on the Civil Code of the Republic of Moldova, Vol. II*, Arc Printing House

The honor, dignity or professional reputation of a natural person after his death may be protected as well if so requested by interested parties. If a court establishes that the information disseminated is false, it will uphold the complaint issuing a judgment in which it should indicate the way in which the false information will be refuted.

If information injuring honor, dignity or professional reputation is disseminated by a mass media outlet, the court shall require the outlet to publish a denial in the same column, page, program or series of programs within 15 days from the day on which the judgment became final. Any means of refuting information disseminated by means other than those already mentioned is set by the court depending on the type of case and taking into account the way the information was originally disseminated.

Article 16 of the Civil Code sets out a specific way to protect the rights and interests safeguarded by law. If information disseminated in the media is untrue and its dissemination violates a person's rights and humiliates him/her, that person is entitled to publish a denial in the media at the outlet's expense. Although publishing a denial is a means of protection for the dissemination of information through the media, this method may also be applied to the dissemination of information by other means. Article 16 also provides for the use of general methods to protect honor, dignity and reputation. Among these, the most frequently used is compensation for material or moral damage in accordance with the norms contained in Chapter XXXIV ("Obligations Arising from Causing Damage"). According to these norms, compensation for material damage may be offered only if the information was disseminated with fault (Article 1398) while moral damage may be compensated regardless of the author's fault (Article 1422).

Paragraph 9 in Article 16 includes another special way of protecting honor, dignity or professional reputation if it is not possible to identify the person who spread the information, that is, when the source is anonymous. The injured person is entitled to file an action declaring that the information is false. The case is reviewed according to the provisions in Chapter XXIV of the Civil Procedure Code. Publication in the media of information without indicating the source is not considered to be an anonymous dissemination of information. In such situations, the entity responsible for the dissemination of information is the media outlet.

In the interest of protecting society as a whole, the Criminal Code sets out strict rules for establishing limits on the freedom of expression. Article 140 makes it a crime to disseminate biased or false information that incites war or that causes any other actions aimed at starting a war. Article 177 makes it a crime to illegally collect or disseminate legally protected information. In Article 341, the Criminal Code also limits freedom of speech that publicly calls for the overthrow or for a violent change in the constitutional or territorial order of the Republic of Moldova. Inciting national or racial hostility or discord is also a crime according to Article 346.

Amendments to the code in May 2009 decriminalized certain actions thus providing more scope for the freedom of expression. Article 304 removed criminal liability for calumny of a judge or of a body conducting a criminal investigation or contributing to dispensing justice, and the punishments for these former crimes were mitigated.

In 2009, the new Code of Contraventions of the Republic of Moldova was adopted. This is a legal instrument containing a series of provisions directly or indirectly related to the freedom of expression or to actions connected with it. Measures are provided for restricting the freedom of expression in order to maintain and ensure public order and the observance of legal provisions. The following are thus not allowed: (i) posting electoral information in unauthorized places (Article 50), (ii) posting or making electoral propaganda on the day before elections or on election day (Article 52), (iii) insults (Article 69), (iv) calumny (Article 70), (v) disclosing confidential information about a medical examination to detect HIV (Article 75), (vi) obtaining

or disclosing information that constitutes a trade or tax secret (Article 107) and (vii) violations of legislation on advertising (Article 364). It is very important that insults and calumny are not considered crimes and are not criminally sanctioned but are instead offences with much milder effects and consequences for the offender. Psychologically this secures greater protection for the freedom of expression. Unfortunately the code (Article 70) still provides for the arrest for up to 15 days as a punishment for calumny. According to European case law, this is excessive, a consequence of the fact that the European case law does not differentiate between administrative and criminal punishments.

Differentiating actions considered insulting from those calumnious is another important issue. Parliament defines insults as public speeches or actions that injure honor and dignity. The law defines calumny as making deliberately false statements defaming another person accompanied by accusations of especially or exceptionally serious crimes or crimes resulting in severe consequences. These offenses are described in a similar way by the *Explanatory Dictionary of the Romanian Language*. Based on these definitions, the major difference between insults and calumny is that calumny is the direct intention to spread defamatory information accompanied by an accusation of an especially or exceptionally serious crime, i.e., a crime punished by the deprivation of liberty for 12 years to life imprisonment. Unfortunately, the notion of “severe consequences” is ambiguous, so its definition has a much larger margin of interpretation.

Special provisions in the Audiovisual Code aim at ensuring (i) the protection of the rights of program consumers to receive correct and objective information that contributes to the free formation of opinions, (ii) the rights of broadcasters to editorial freedom and freedom of expression, (iii) democratic principles in broadcasting in Moldova and (iv) the establishment of legal frameworks regulating all broadcast-related processes in the spirit of constitutional rights and freedoms. The Audiovisual Code also provides punishment for violations, and the Broadcast Coordinating Council can take a case to court .

The Law on the Press guarantees the freedom of the press, the freedom of expression and advertising limitations. It is divided into seven chapters. Chapter I contains general provisions on the goal and objective of the law. Chapter II regulates the organization of the activities of periodicals and press agencies. The distribution of the press is regulated in Chapter III, while the rights and obligations of journalists are stipulated in Chapter IV. Chapter V regulates the activities of foreign journalists in Moldova and of Moldovan journalists abroad. Chapter VI is entitled “Responsibility for Violations of this Law,” and international cooperation is covered in Chapter VII. The Law on the Press was adopted with great difficulty and provoked controversial discussions and objections on matters of principle by local NGOs and experts of the Council of Europe. After it passed, this law was modified by other eight laws. There have also been many amendments to it, but with no clear concept of or consideration for international experience, its imperfection and unsuitability for establishing a free press are evident. The law does not regulate the independence of periodicals; rather, it merely describes how they should be organized and contains provisions that contrary to appearances threaten the principles of freedom of the press and the pluralism of opinions.

One of the objectives of the Law on Editorial Activities is to ensure freedom of thought, speech, expression and the right to form opinions. Through this law, the state can control certain editorial activities by not allowing monopolies, by respecting absolute freedom and by consolidating and modernizing material, technical, organizational, legal and scientific resources in this field. Modifications made to the law in 2008 aimed at interdicting the appearance of literature prohibited in Article 32 paragraph (3) of the Constitution. According to the informative note on the draft suggesting the modifications submitted by the Ministry of Culture, this

comprises literature denying or slandering the state and its people; instigating war, aggression, ethnic, racial or religious hatred or inciting discrimination, territorial separatism, public violence or other actions threatening constitutional order. Directors of the most important publications in Moldova as well as writers and NGOs criticized the draft amendments for encouraging censorship, despite the fact that the same law prohibits it. As a result, the amendment was adopted in a shortened form containing only a general prohibition against publishing “material contravening the legislation in force.” Censoring literature published in Moldova was, in fact, the goal of the amendments.

In this context, it is worth mentioning the decision of the Constitutional Court on the draft law modifying Article 32 paragraph (3) of the Constitution. In November 2007, the government approved a legislative initiative suggesting that Parliament remove the phrase “denying or slandering the state and its people.” In December 2008, the court by the vote of five judges rejected the government initiative saying it would lead to violations of constitutional provisions that would threaten the sovereignty of the country and constitutional order and to the loss of fundamental civil rights and freedoms and their guarantees. The court further considered that the removal of this provision from the Constitution would not contribute to exercising the freedom of expression more efficiently. Thus, the risk of public authorities arbitrarily interpreting as slander statements expressing discontent, doubt and opinions by people exercising their freedom of expression continues to exist. In a dissenting opinion filed by Judge Victor Puscas, he states that this decision was unreasoned and that the commitment of the Republic of Moldova to freedom of expression will be met only if the Constitutional Court reconsiders its decision.

The Law on Information and State Information Resources imposes certain limitations on the freedom of expression to protect and regulate legal aspects of creating, forming and using computerized state information resources and information technology systems and networks. Chapter VI regulates the use of information resources. Article 27 stipulates that state information resources are public and accessible to all with the exception of information legally attributed to the category of information with limited access. The law clearly and unequivocally establishes information that can be communicated and the circumstances necessary for limiting access.

The Law on the Protection of Personal Data aims to protect the right to privacy and to keep personal and family information confidential. With the advent of electronic communication and data accumulation, processing and storage, the legal and ethical aspects of this issue have gained new dimensions. The development of information technology and the global issues it raised probably influenced the development of ways to protect against invasions of privacy in Europe, especially via computers. The notion of “personal data protection” is now current. While in the recent past data about people was poorly organized, processed and disseminated and was virtually inaccessible and often did not identify a person, our private lives now have an electronic profile that includes bank accounts, electronic conversations and correspondence, Internet sites visited, program menus viewed, publications subscribed to and goods purchased and paid for with electronic credit cards. All these data can be accessed at a distance, offering a reliable description of a person. Both the Council of Europe and the EU legislative bodies (the Committee of Ministers and the European Parliament) have thus adopted regulations and recommendations on personal data protection to harmonize legislation in various states.

According to Article 5 of the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, these data must be (i) obtained and processed fairly and lawfully; (ii) stored for specific and legitimate purposes and not used in a way incompatible with those purposes; (iii) adequate, relevant and not excessive in relation to the purposes for which they are stored; (iv) accurate and, where necessary, kept up to date; and (v) preserved in a form which permits identification of the data subjects for no longer than is

required for the purpose for which those data are stored. This convention further identifies a special category of extremely sensitive personal data and stipulates that personal data revealing racial origin, political opinions or religious or other beliefs as well as that concerning health or sexual life may not be processed automatically unless domestic law provides appropriate safeguards. The same conditions are stipulated in relation to criminal convictions (Article 6). In order to ensure the efficient protection of personal data stored in automated data files, it is necessary to take appropriate security measures against loss, accidental or unauthorized destruction and unauthorized access, alteration or dissemination.

The new Law on the Protection of State Secrets passed in 2008 aims at establishing a legal framework to ensure the interests and/or the security of the Republic of Moldova. State secrets are protected by the Organization for the National System of Protection of State Secrets. For transparency, Article 9 provides a list of information classified as state secrets stipulating that in order to promote a unified state policy on classifying information, the government approves the List of Information Classified as State Secrets which includes, among others, public bodies authorized to deal with this information. Paragraph 2 mentions that this list shall be published in the *Official Monitor of the Republic of Moldova* and may be revised if necessary.

This law is closely related to the Law on Commercial Secrets that imposes certain restrictions on the freedom of expression in order to protect secrets not classified as state secrets that are related to the production, technology, administration or financial or other activities of an economic entity, the disclosure (transmission, leakage) of which could affect the interests of that entity.

The Law on Combating Extremist Activity limits the freedom of expression if this expression is classified as extremist. It also stipulates the responsibility of a media establishment for disseminating materials of an extremist nature and for conducting extremist activities. This law was intensely criticized by civil society as an instrument dangerous to democracy. Although no punishment has yet been applied based on this law, it has been repeatedly used to frighten organizations like the NGO Hyde Park. This law raises many issues related to the freedom of expression and of the press because its provisions are too general and vague and are capable of including in the category of extremist activity expressions and actions that must be tolerated in a democratic society. The law targets media institutions and certain community-based organizations and generates censorship and self-censorship because of the sanctions that can be applied for “conducting extremist activity.” The issue of the admissibility of punishment for certain categories of expressions considered “extremist” thus arises. In addition, serious doubts about this law are a result of the facts that it duplicates provisions in other laws and that it contains discrepancies and shortcomings. According to European standards, speeches instigating hatred or violence must be prohibited. Because of the excessively broad wording in this Moldovan law, a speech that should be tolerated in a democratic society might be also classified as “extremist.”

Civil society, media experts and various international organizations considered the adoption of the Code of Conduct for Civil Servants a limitation on the freedom of expression and a blow to access to information. On February 22, 2008, Parliament adopted the code which states that, “Only authorized civil servants shall contact and communicate with mass media,” which discourages civil servants from communicating with members of the press. The provision included in Article 10 of this code, “While building relations with the representatives of other states, the civil servant shall not express personal opinions regarding national issues or international disputes,” raises doubts as well. Civil society has reacted to the adoption of this code in a declaration criticizing the prohibitions imposed on civil servants aimed at, “...intimidating, scaring civil servants, who, in order not to be sanctioned, will not dare to express personal opinions, to criticize or to disclose lawlessness.” According to experts, this new

regulatory act was hastily conceived and adopted to provide camouflage for those interested in limiting the freedom of expression.

The Explanatory Decision of the Plenum of the Moldovan Supreme Court of Justice dated 9 October 2006 (No.8) is an important legal document related to the freedom of expression and the protection of honor and dignity. It offers both specific notions on them as well as mechanisms for law enforcement. This decision reflects the direct application of the principles of European democracy enshrined in the European Convention on Human Rights.

## **2. Freedom of Expression in the European Union: Standards and Tendencies**

Freedom of expression in the EU is regulated by a number of general documents that for the moment have overshadowed the old provisions of each individual state. The Universal Declaration of Human Rights (adopted by the General Assembly of the United Nations on December 10, 1948) ratified by Moldova on July 28, 1990 has had an incontestable role in establishing standards related to freedom of expression. Based on this declaration, on 4 November 1950 governments of the member states of the Council of Europe adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms (ratified by the Republic of Moldova on July 24, 1997) with Article 10 providing for the freedom of expression. This right includes the freedom to hold opinions and to receive and impart information and ideas without interference from public authorities and regardless of frontiers.

The International Covenant on Civil and Political Rights of December 16, 1966 (ratified by Moldova on July 28, 1990) stipulates the following.

- Everyone shall have the right to hold opinions without interference.
- Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: a) for respect of the rights or reputations of others; b) for the protection of national security or of public order, or of public health or morals.

In addition to the abovementioned conventions, in the EU a crucial role in the establishment of standards for freedom of expression is played by the rulings of the ECHR. According to some analyses, one can state that starting with the Handyside ruling (December 7, 1976, §49), the ECHR has recognized that the freedom of expression stipulated in Article 10 is one of the fundamental rights peculiar to a democratic society based on pluralism, tolerance and a spirit of openness.

Tendencies to protect or to limit the freedom of expression in the EU are indissolubly related to ECHR case law and to the practices of the Court. Socioeconomic processes and technological developments require the EU to address new fields related to the freedom of expression or to review certain older concepts. Terrorist activities can be considered the genesis of the tendency to limit the freedom of expression in religion, mainly in Islam. Excessive zeal among reformers raised heated discussions in France when women were forbidden to wear a burqa (a loose garment covering the whole body and face of Muslim women). Sexual minorities have also created a new tendency in EU countries that involves limiting the freedom to denigrate and deride them, in particular by expressing religious opinions.

Dutch liberals suggest annulling penalties for “incitement to discrimination and hatred.” According to this concept, people should be free to say what they want to say. Even denials of the Holocaust should not be sanctioned; only incitement to violence should be punished by law. This initiative has not, however, been supported by the European Community or at the national level.

The Internet is a great concern of the European legislative forum. Until recently, the global network was considered an efficient foil for censoring ordinary methods of expressing opinions that was subject to no limitations or to only formal and inefficient ones. The Internet offers many possibilities to exercise the freedom of expression. Nowadays, the EU tends to limit certain Internet content by setting clear and very strict rules. Many countries seek to control Internet content through a number of technical and legislative means. For example, countries outside the EU such as China censor both local and foreign content, Singapore blocks access to specific Internet content, while Saudi Arabia filters all Internet traffic through a single central server. According to a report entitled “Internet Enemies,” Internet censorship persists in 22 countries of the world; Saudi Arabia, Myanmar, China, North Korea, Cuba, Egypt, Iran, Uzbekistan, Syria, Tunisia, Turkmenistan and Vietnam in particular are criticized by the authors.

The EU promotes self-regulation by content monitoring plans through codes of conduct developed by the industry. The industry is encouraged to distribute filtering tools and classification systems, and users are educated through increased Internet-related information. The EU is particularly concerned about two major issues related to freedom of expression: extremist activities and pornography. In this context, the following are of special interest at the moment:

1. adult pornography;
2. child pornography;
3. racism and xenophobia;
4. insult and calumny;
5. instructions on fabricating explosive materials;
6. complaints about commercial products;
7. methods of disseminating certain contents.

The problem of applying rules on electronic content and, as a result, the difficulty in formulating an option for a specific legislative approach resides in the specific nature of the Internet, because virtual space in its essence provides the freedom to express opinions and to receive and impart information. Requiring compliance with certain rules aims at limiting this fundamental freedom. Taking into account the global nature of the Internet, concern about creating an adequate legal framework at the international level is natural. At the moment, there is no clear, unequivocal definition of real space compatible with the means of expression specific to virtual space.

The Internet is more than just a new means of communication or another form of traditional mass media because it offers a public space in which communication becomes very easy. At the same time, it offers the possibility to interact and exchange opinions in more than a predefined format. The number of discussion lists or forums has significantly increased in recent years. Moreover, more and more blogs are appearing allowing a unique way of exchanging opinions and ideas. The multiplier effect allows for copying and disseminating information in so many places that it is practically impossible to control it. Anonymous access allows placing information on the web without being identified.

In general, EU standards and tendencies related to freedom of expression aim at establishing an efficient balance between exercising that freedom and applying limitations. Regulatory tendencies are particularly related to making the application and implementation of legal provisions more efficient and to offering new, efficient solutions to new challenges. In its recommendations, the Council of Europe sets out problems related to the transparency of communication, the protection of journalists and the promotion of a culture of tolerance. These recommendations also refer to media promoting pluralism and addressing the issue of journalists and their right not to divulge their sources of information. The Council of Europe also decided to address the issue of election campaigns as one of the “hottest” periods from the viewpoint of media coverage, formulating a recommendation with regard to measures for media coverage. Although its opinions are in the form of recommendations, the Council of Europe is also effectively involved in democratizing institutions of the Republic of Moldova.

### **3. The Compliance with European Union Standards of the Moldovan Legislative Framework for Freedom of Expression**

International organizations have concluded that political will and decision makers (government, court system) are the most important factors in respecting the freedom of expression. Based on an analysis of the Moldovan legislative framework, one can state that EU standards in the field are not alien to us. The existence of many of our legislative regulations is a result of various reforms often imposed by international bodies or caused by the natural development of society, but the decisive contribution of ECHR case law is worth mentioning as it has served as a catalyst for bringing national legislation in line with European standards.

Although Parliament is well informed about ECHR case law and recommendations and with the democratic principles that European society strives for, some Moldovan laws and draft laws are not in line with those standards. This is the case with the Law on State Secrets passed on 25 November 2008 despite the fact that Moldovan authorities were warned by international bodies that it needed to be improved. The representative for freedom of the media of the Organization for Security and Co-operation in Europe (OSCE), Miklos Haraszti, announced in Vienna that the law does not encourage access to information possessed by government bodies and that a clearer definition of state secrets and types of confidential information was necessary.

Laws on information security have an impact on the right of individuals to express their opinions by imposing restrictions on what can be published and on their right of access to information held by public authorities. The right of access to information is one of the fundamental human rights recognized in international legislation ratified by the Republic of Moldova. The Charter for European Security of OSCE to which the Republic of Moldova is a party is, “...an essential component of any democratic, free and open society.” In 2001, the European Parliamentary Assembly urged participating countries, “...to strengthen their efforts to promote transparency and accountability.”

A key problem arises when a public authority refuses to divulge information or when freedom of expression is restricted. In international legislation, the right to freedom of expression may be restricted in compliance with the requirements of Article 19 paragraph (3) of the International Covenant on Civil and Political Rights (ICCPR) namely:

The exercise of the rights [to freedom of expression and to information] may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) for respect of the rights or reputations of others;
- (b) for the protection of national security, public order, public health or morals.

Any restriction of the right to freedom of expression or access to information should satisfy a test that has been established by the UN Human Rights Committee. This test stipulates three requirements for restricting these rights: a) a restriction must be provided by law; b) it must be done in order to protect a specific, legitimate interests; and c) it must be necessary in order to protect this interest. The first condition cannot be met merely by specifying a restriction in national legislation. It should comply with the principles of human rights recognized in ICCPR. ECHR case law stipulates two fundamental requirements: 1) the law should be accessible in a corresponding way and 2) people should be able to have knowledge of it. The law should be formulated in a precise manner so that people are able with or without legal advice to reasonably foresee the possible consequences of their actions. Restrictions formulated in a vague or general way do not meet the requirement “to be provided by law.” Another condition is that restrictions should pursue one of the goals mentioned in Article 19 (3) of ICCPR, namely protection of the rights or reputations of others, national security, public order, public health or morals. Any such measures taken to protect legitimate interests should meet the standard established by the term “necessity.”

The Moldovan law does not stipulate protection for individuals communicating secret information in good faith and with reasonable confidence that this information, in essence, is correct and exposes illegal activities. Protection for divulging information in the public interest should also apply to staff with access to protected information if it reveals illegal activities and if it is divulged in good faith. The concept of illegality should be defined in detail and should include committing offences, failure to fulfill an obligation imposed by law, miscarriages of justice, corruption or fraud or inappropriate administration of a public authority. It should also provide protection for individuals divulging information about a serious danger to health, security or the environment, regardless of whether this information is or is not related to illegal actions by an individual. Protection provided to informers encourages responsibility in the public domain and is a fundamental element of an open and responsible government. The Joint Declaration on Freedom of Information and Legislation on the Information Constituting a State Secret of 2004<sup>42</sup> emphasize the need for information “protection valves” such as whistleblowers and urge the protection of those divulging information in good faith.

The legislation of some countries protects these individuals, while in other countries they are subject to special laws. For example, the Criminal Code of Slovenia provides for the disclosure of information constituting an official secret when, “...the intention is to disclose information on irregularities committed in the field of organization, functioning and administration of the office (...), provided that this disclosure will not involve the occurrence of considerably harmful consequences for the state.” According to Austrian legislation, a state secret is not violated when there is a justified interest of a public or a private nature for revealing it.

According to Article 19, the Global Campaign for Free Expression, the Audiovisual Code of the Republic of Moldova fails to meet all EU recommendations, and certain aspects of it are not even close to the standards established in Europe. OSCE has also identified similar problems and has suggested a number of amendments and reference points to consider. One problem relates to the independence of the Coordinating Council of the Audiovisual (CCA), the regulating body, while another addresses the financing and management of the public broadcaster. There are shortcomings in the technical and programming aspects of the broadcast licensing system and a lack of a uniform procedure for applicants. There is also a recommendation to include clearer provisions on property, including on preventing

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<sup>42</sup> Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression

concentrations and monopolies. Another problem relates to guarantees for minority languages which should be consolidated and/or clarified. There are no provisions on licensing fees for broadcasters and there is no fee for subscription to the public broadcaster, which is a violation of international standards. Vague procedures for appeal with regard to granting and withdrawing licenses raise another problem; it is necessary to clarify these procedures in a clear and unequivocal legislative framework. There are also risks related to certain confusing articles regarding the guarantee of freedoms that could be interpreted as limitations on those freedoms because they are related to aspects in which constitutional guarantees and fundamental freedoms should be sufficient. Any specialized legislation can leave an impression that such freedoms are not general and absolute. More importantly, these articles contain provisions that are not adequately regulatory or enforceable. In addition, a number of articles should be removed because they might be interpreted as limitations, even if the intention is to enhance freedom of expression.

The new Civil Code came into force on 12 June 2003 and no longer provided limitations on compensation for moral damage caused by injuring honor, dignity or professional reputation. Since then there have been more cases of excessive sanctions, and media organizations have ceaselessly advocated for the re-establishment of an upper limit based on the model in the previous Civil Code (1964–2003). In Resolution 1465 (2005) on the functioning of democratic institutions in Moldova, the Parliamentary Assembly of the Council of Europe (PACE) included this issue as an essential one. In this resolution, PACE urges the Moldovan authorities to strengthen all the necessary guarantees and practical steps for respecting the freedom of expression as defined in Article 10 of the European Convention on Human Rights and in compliance with ECHR case law, and in particular to revise the legislation on the public broadcasting service (both national and local) and the audiovisual sector in general; to pursue the transformation of Teleradio-Moldova into a genuine public service broadcaster, as defined in Assembly [Recommendation 1641 \(2004\)](#) “On Public Service Broadcasting” and to revise the laws on defamation to “ensure that any fines imposed are reasonable in quantum.” Moldovan authorities took the PACE resolution seriously and studied, with the participation of civil society, several options for amending Article 16 of the Civil Code. In the end, the Moldovan Parliament deemed the limitation of compensations inopportune and instead included a number of criteria that could help judges decide on a “reasonable” value of compensation for defamed individuals. In addition, although the Supreme Court of Justice has recommended that judges be less protective of public figures in defamation cases, judges do not seem to take this recommendation into account in practice. On 27 October 2008, based on a request filed by the Gagauz-Yeri Prosecutor, the Comrat court ordered the seizure of accounts of the newspaper *Edinaya Gagauzia* in the amount 500,000 lei. The plaintiff claimed that two articles published by the newspaper hurt his honor and dignity.

Even though the Constitution of the Republic of Moldova stipulates that, “All citizens are guaranteed the freedom of opinion, as well as the freedom to publicly express their thoughts and opinions by way of word, image or any other means possible,” certain constitutional and legislative provisions can be used as a pretext for barring the freedom of expression. As previously noted, Article 32 paragraph (3) of the Constitution states, “The law shall forbid and prosecute all actions aimed at denying and slandering the state and the people.” On 8 November 2007, the government passed a legislative initiative to exclude that sentence from the Constitution but the Constitutional Court overturned it. Similarly, Article 347 of the Criminal Code stipulates punishment for “profanation of the flag, coat of arms or anthem of the Republic of Moldova or of another state,” which is not in compliance with international norms regarding human rights and freedom of expression.

Although defamation has been decriminalized, the Code of Administrative Offences stipulates up to 15 days of imprisonment for calumny. Article 16 of the Civil Code provides for refuting inaccurate information and claiming moral and material compensation for damage unless the person who has disseminated it proves it to be true, but the law does not limit the maximum amount of moral compensation, and the burden of proof is on the journalist (defendant). Additional problems are that the Law on the Press fails to define the notion of “information that injures honor and dignity,” and a journalist’s obligation to prove that information is true is not time bound. In Moldova, one can demand the refutation of information even after 10 years. Naturally, the defendant’s position in this case will be very difficult, because the testimony of witnesses will have little credibility after the passage of a significant amount of time. In other countries (e.g. France), the statute of limitations for filing a defamation complaint is limited to several months.

In order to ensure the genuine freedom of the press in compliance with the principles of an open and democratic society and international norms, the Moldova authorities should:

- stop aggressive actions and the intimidation and harassment of journalists and of the independent press and media NGOs;
- react and punish those guilty of aggression against journalists, intimidation and harassment of the press, violations of freedom of expression, limitations of access to information of public interest;
- ensure the application of ECHR case law and practices by Moldovan courts and law enforcement bodies;
- ensure transparency of assets owned by media and avoid monopolization of media by political forces and interest groups;
- improve the legal framework and ensure the functioning of current laws including depoliticizing CCA and improving the legal framework on licensing and distribution of frequencies, revising the legislation to ensure the genuine independence of the public broadcaster, amending the Civil Code so that the amount of compensation is proportional to damage caused in cases of defamation and so the law is less protective of public figures;
- not allow discrimination against the media based on political or ownership criteria;
- take measures to encourage local and foreign investments in the media.

The problem in Moldova consists not just in the degree of compliance with EU standards on the legislative framework on freedom of expression but also in mechanisms of application and interpretation of legal provisions. Thus in many cases, the ECHR has found Moldova guilty of violating the freedom of expression due to erroneous applications of the law.

#### **4. The Correlation between Freedom of Expression and Defamation**

Freedom of expression and defamation are interdependent: freedom of expression is a fundamental right and defamation is the exercise of that right in bad faith. A law on defamation is justified only if its genuine purpose and demonstrable effect is to protect the reputation of individuals and is totally unjustified if its purpose and effect are to prevent the publication of articles or programs criticizing the authorities, in particular for corruption and offences they can be accused of.

According to international standards, public institutions at any level, including those in the legislative, executive and judicial branches, cannot bring actions for defamation. This is in

recognition of the vital importance of the ability to openly criticize state and public authorities. Depriving liberty, suspending employment for specific periods, excessive fines and other harsh criminal penalties cannot be punishments in defamation actions, no matter how egregious or blatant the defamatory statement may be. Moreover, disseminating certain categories of information should not entail even civil liability unless malicious intent can be proven. The overriding goal in calumny actions should be to redress the harm done to the reputation of the plaintiff, not to punish those responsible for disseminating the information.

When examining cases of protecting honor, dignity and professional reputation, it is necessary to distinguish between defamation and insult. Defamation involves the dissemination of information that can negatively affect those qualities while insult is dissemination of an opinion, conclusion or judgment with regard to information that is offensive, shocking or disturbing—what the ECHR calls “value judgments.” This would indicate that Article 16 of the Civil Code of the Republic of Moldova is applicable only to defamation and not to insult because the condition for rejecting a claim of defamation is to prove the veracity of the information disseminated. No one can be obliged to prove the veracity of one’s own opinion, conclusion or judgment because it is impossible to do so and violates Article 10 of the European Convention on Human Rights (*Lingens v. Austria*, judgment of 8 July 1986, § 46).

It should be mentioned that insult is not expressly prohibited in Moldovan civil law, but that does not preclude filing a complaint in court. The question is whether one can claim compensation for moral damage from a “civil insult.” Currently, national legal practice compensates for moral damages only if the legislation expressly provides for that possibility, so one cannot claim compensation for moral damage from a civil insult.

#### *Exoneration from responsibility in Moldovan legislation*

There are cases when according to the national legislation (Article 27 of the Law on the Press), journalists and media institutions are exonerated from responsibility for distributing information even when that information is not true. This includes information contained in official documents or communiqués of public authorities and articles quoting public speeches verbatim or suitable abstracts from them. Moldovan judges construe these cases of exoneration from responsibility very narrowly. Thus, for, “information contained in official documents and communiqués of public authorities,” the judges refer only to written information officially presented by those authorities. Frequently information that comes from public authorities but that is not disseminated through their press offices is not considered “official,” and journalists and media institutions are not exonerated from responsibility for distributing it.

An “official document” in the context of Article 27 of the Law on the Press means a document officially originating from a public authority; however, in *Ghenadie Sarafulin v. Aciâc Ghioz* (9 June 2004), the Supreme Court of Justice concluded that the newspaper was not exonerated from responsibility for publishing a secret act provided by the plaintiff because the plaintiff had taken possession of this document illegally. In other words, the distribution of information contained in official documents that are not public and are obtained in a manner contrary to law shall not exonerate journalists or media institutions from responsibility based on Article 27.

“Public speeches” in the context of Article 27 for judges means only speeches made before a crowd of people or as part of a TV or radio program. The meaning of the phrase “suitable abstract” of a public speech, official communiqué or official act is not clear in the text of this article; however, it is clear that journalists and media outlets shall not be exonerated from responsibility for distributing official communiqués or statements or their suitable abstracts issued by someone other than a “public authority” (see the ruling of the Supreme Court of Justice

of 19 October 2003 in *Solomon v. Flux*). A “public authority” is any exponent of public power in charge of the executive, legislative or judicial functions of the state. The purpose of Article 27 follows from the presumption of the legal nature of an official document and the behavior of public authorities and is meant to build the trust of society in those authorities. The reasoning behind such a narrow interpretation of the provisions in Article 27 of the Law on the Press is thus not clear.

#### *Pecuniary responsibility of journalists according to ECHR practice*

The ECHR has repeatedly stated that any limitations on the freedom of expression shall be set convincingly (*Handyside v. the United Kingdom*, 7 December 1976, § 49; *Jersild v. Denmark*, 23 September 1994, § 37). National courts, however, levy fines on media outlets and journalists when they distribute statements of third parties, the truth of which has not been proven (see the ruling of the Supreme Court of Justice of 20 February 2003 in *Calugaru v. Flux*). Judges construe the obligation to prove the veracity of information, with the exceptions set out in Article 27 of the Law on the Press, in absolute terms. Thus, a journalist must prove not only that the information is true but also that it is an absolutely exact rendition (see *Solomon vs. Flux* 19 October 2003). Such a strict interpretation is not very compatible with the standards on freedom of expression drafted and developed by the ECHR according to which journalistic freedom also covers possible recourse to a degree of exaggeration or even provocation (*Prager and Oberschlick v. Austria*, 26 April 1995, § 38).

As emphasized by the ECHR, Article 10 of the Convention protects not only the substance of the ideas and information expressed but also the form in which they are conveyed (*Oberschlick v. Austria*, 23 May 1991, § 57). In this regard, the ECHR ruled that punishing a journalist because as a result of an article he/she wrote the reader had a negative impression of the plaintiff, a public figure, when the article concerned issues of public interest contravened Article 10 of the Convention (*Lingens v. Austria*, § 41). In examining similar cases, the judge should primarily take into account the journalist’s intention and not the public’s impression. If the judge cannot find that it was the journalist’s intent to defame the plaintiff, compelling the journalist to repair damages could be contrary to Article 10 of the Convention. Moreover, impressions often represent “value judgments;” the obligation to prove the veracity of value judgments contravenes the freedom of expression.

#### *The role of the press on issues of public interest and with public figures*

The concept of “the role of the press in a democratic society” is a product of ECHR rulings and not of national case law. According to the ECHR, without pluralism, tolerance and openness there is no democratic society, and the role of the press in this democratic society is that of “watchdog” of democracy. The ECHR has also stated that freedom of expression is one of the essential foundations of a democratic society as well as one of the basic conditions for its progress and for everyone’s personal fulfillment. It is applicable not only to “information” or “ideas” that are favorably received or regarded as inoffensive, but also to those that offend, shock or disturb (*Handyside v. the United Kingdom*, § 49; *Jersild v. Denmark*, § 37) while restrictions on political speeches or debates on matters of public interest are very limited (*Sürek v. Turkey (No. 1)* [GC], 8 July 1999, § 61). According to the Court, although the press must not overstep certain bounds, its duty is to impart in a manner consistent with its obligations and responsibilities information and ideas on all matters of public interest (*De Haes and Gijssels v. Belgium*, 24 February 1997, § 37). Not only do media outlets have the task of imparting such information and ideas, the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of public watchdog (*Thorgeir Thorgeirson v. Iceland*, § 63; *Bladet Tromsø and Stensaas v. Norway* [GC], 20 May 1999, § 62). In Moldova, however,

because the Law on the Press fails to ensure the right of media institutions to bring actions in cases of intervention on the part of public authorities, the institutions are often forced to serve the interests of the ruling political party.

According to statistics, most defamation actions are brought by “public figures” who, due to their function or position in society, inevitably constitute the subject of journalists’ reports on issues of public interest. Usually, they are politicians, officials or business people. According to the ECHR, politicians shall have the right to the protection of reputation even when they are acting in a private capacity; but in such cases the requirements for such protection have to be weighed in relation to the interests of open discussion of political issues (*Lingens v. Austria*, § 42; *Oberschlick v. Austria*, § 59). The limits of acceptable criticism are wider for a politician than for a private individual. Unlike the latter, the former inevitably and knowingly lays him/herself open to close scrutiny of every word and deed by both journalists and the public at large, and he/she must consequently display a greater degree of tolerance (*Lingens v. Austria*, p. 26, § 42; *Incal v. Turkey*, 9 June 1998, § 54).

These postulates are very important when compensation is to be paid if it is found that the information distributed about a public figure is incorrect. When examining cases initiated by public figures involving freedom of expression, it is necessary to distinguish between the private lives of public figures and their behavior when fulfilling their public duties. While one cannot say that a public figure has no private life (*Von Hannover v. Germany*, 24 June 2004, § 61-81), protecting that private life should be very limited in cases of open discussions on political issues or those of public interest.

At the same time, the ECHR has suggested that in principle in a democratic society, it is not necessary to impose criminal sanctions or fines for criticizing a public figure for activities not related to his/her private life or even distributing incorrect information about such a figure that forms part of an open discussion on issues of public interest and in which the journalist has met the obligations imposed by the Code of Ethics (*Fressoz and Roire v. France*, judgment of 21 January 1999; *Busuioc v. Moldova* § 90). Unfortunately, Moldovan judges fail to distinguish between the private life and the public activities of a public figure, and the protection of public figures from criticism in the press is extremely strict. In *Stepaniuc v. Jurnal de Chisinau*, (3 March 2004), however, the Supreme Court of Justice did conclude that the newspaper’s statement that the accusations against the plaintiff were incorrect was sufficient to repair any moral damage caused.

#### *Moral damage*

According to the Civil Code of Moldova (Article 1422), moral damage is compensation for mental and physical suffering caused by a civil offence, in this case by defamation. The extent of moral damage in cases of defamation must be established by the court and should depend on the nature and severity of the suffering and should bring satisfaction to the injured party (Article 1423). The intensity of physical and mental suffering should be demonstrated by the plaintiff who also has to justify the amount requested as compensation. When establishing the amount, the court should take into account the defendant’s financial situation and the realities of the Republic of Moldova (see *Busuioc v. Moldova*, § 96).

After the Civil Code became effective, an inevitable question emerged: Can a legal entity claim compensation for moral damage? A legal entity can have neither honor, dignity nor physical or mental suffering as those can exist only for private individuals. Can, however, a legal entity claim moral compensation for a damaged professional reputation? The professional reputations of legal entities are usually established through commercial output, so a damaged

professional reputation will inevitably lead to material and not moral damage. Nevertheless, the Supreme Court of Justice ruled in *Gagauz and the Railway of Moldova v. Moldavskie Vedomosti* that the legal entity could claim moral compensation from the newspaper for defamation.

Unlike the constitutions of many European countries, the Constitution of Moldova does not establish the independence of public media in a separate article. Article 34 specifies only the following: “The public media shall not be subject to censorship,” (item 5) and, “The state and private media are obliged to ensure that correct information reaches public opinion” (item 4). Article 34 provides guarantees for any type of creation (freedom of artistic and scientific creation, (paragraph 1) but not for freedom of the press. The same article also guarantees everyone’s access to all information of public interest; however, in the Audiovisual Code the state limits this right stipulating priority access for central authorities to public broadcasters. Despite the fact that citizens should have access to information of public interest, there is no legal definition of what that information is, though in general any message from public authorities can be considered to be of public interest. Information about certain individuals and legal entities can also be considered to be of public interest if they interact with state bodies.

### **Chapter III. Justice versus Media: Monitoring Cases Related to the Protection of Honor, Dignity and Professional Reputation against Media Outlets from 2005 to 2009**

Libel actions, when we look at them in perspective, are an ornament of a civilized society. They have replaced, after all, at least in most cases, a resort to weapons in defense of a reputation.

Henry Grunwald  
Editor of *Time Magazine* (1968-1977)

In 2004, the freedom of the press of the Republic of Moldova went into a recession and was classified by Freedom House as “not free,” a position it has maintained to the present. Despite the fact that again in 2004 Parliament removed calumny from the Criminal Code, media outlets continued to be a target of political reprisals on the part of officials and were burdened with enormous amounts demanded as compensation for moral damage in cases related to protection of honor, dignity and professional reputation. At the ECHR, Moldovan journalists have placed the government on the dock accounting for approximately 8% of the total number of cases the government has lost.

Media as the fourth estate has characteristics specific to the level of democracy in the country along with the executive, judicial and legislative branches. All these branches suffer from deficiencies in independence and integrity. Through their social responsibilities and roles in the state, the judicial branch and media have common characteristics and likewise anomalies. Although both of them serve society and protect its interests, they often deviate from their genuine purposes and become oppressive instruments. Thus, media loyal to the government becomes a propaganda instrument while justice punishes dissidents.

This chapter reflects on one hand the relationship between the press and the judiciary and on the other emphasizes the relationship between the media and public officials who are often journalists’ leading characters. It comprises a statistical and qualitative analysis of law suits against journalists; observes the quality of justice and judges’ attitudes with regard to the right to freedom of expression and the right to the protection of honor, dignity and professional reputation; identifies the level of tolerance and resistance of public officials to media criticism and identifies tendencies and currents in defamation in the Republic of Moldova.

#### **1. Documentation and the Collection of Data**

Documentation involves intense contact with national courts, in particular with the staff of those courts from court presidents initially to archivists. The documentation for this chapter started with letters of access to information addressed to 54 municipal and district courts (Annex 1) requesting information about the number of case files on the protection of honor, dignity and professional reputation examined from 2005 to 2009, as well as information about the number of cases with journalists and media institutions as defendants. Of the total number of courts contacted, two (Causeni and Sangerei) did not reply, three (Economic Court of Appeals in Chisinau, the Military Court and the Economic Court) answered that this category of case was beyond their competence, and two (Rascani and Ungheni) stated they did not have statistical data and could not supply that information.

From the viewpoint of compliance with legislation on access to information, the majority of the courts took the maximum 15 days to deliver the information requested. Twelve courts (Supreme Court of Justice, Court of Appeals in Cahul and the courts in Anenii Noi, Briceni, Ceadir-Lunga, Dubasari, Nisporeni, Leova, Stefan-Voda, Slobozia, Straseni and Rascani in

Balti) replied to the request after a delay which in the case of the the Straseni Court was the longest at a month and a half.

Of the 49 courts with the competence to examine cases on protection of honor, dignity and professional reputation, 17 were selected (Annex 2) because of the number of cases examined and their locations in Moldova thus ensuring balanced representation from a geographical point of view. Additional written requests to provide access to the files were sent to these selected courts. Only five (Buiucani and Ciocana sectors; Rezina and Comrat and the Court of Appeals in Comrat) replied to our requests.

It is worth mentioning the reply of the Rezina Court that in an extremely polite tone provided access to the files and was surprisingly helpful in creating all the necessary conditions to obtain the information within a very reasonable time period. On the other hand, the reply to our second request of the Court of Appeals in Comrat contradicted the data contained in the first reply. In the first, the court indicated a total of 19 cases on the protection of honor, dignity and professional reputation and that 7 of them involved journalists. In replying to the second request, however, the court stated that from 2005 to 2009 it did not examine any cases against journalists based on Article 16 of the Civil Code.

The Hancesti Court and the Court of Appeals in Balti contacted us by phone in order to inform us about access to their files. Because in courts of appeal and cassation and the Supreme Court of Justice files go back to the courts of first instance after examination, it is difficult (sometimes even impossible) to locate them between these two courts. For this reason, courts of appeal and cassation were removed from the list.

The next stage of documentation was carried out in court archives and registries. All the files examined by court judges are sent to the archives and the registry. As there is not enough space for storing these files, archives and registries are extremely crowded. Each court has its own method of file storage and systematization. For example, the Rascani Court keeps only 2009 files in the registry, while the registry of the Court of Buiucani keeps files starting with 2005.

The files are systematized and registered manually. The registers for each year contain the following information: defendant's and plaintiff's names, file number and the object of dispute, and the name of the judge who examined the case. Using the file number indicated in the register, one can look for the file itself in the archives or the registry. Because of heavy workloads and reduced staff (Rascani and Buiucani), we were invited to find all the files by ourselves. The Nisporeni and Comrat courts, on the other hand, proved to be surprisingly well organized. In addition to the fact that they are located in modern, renovated buildings, they have enough space to store and keep the archives as well as enough staff to work with the public.

Local media institutions represented another source to document the study. In all, 49 media institutions (Annex 3) were interviewed in order to complete the picture of legal cases involving media. The dialogue with them was very often complicated by the fact that many editorial offices did not have a lawyer responsible for these files, and editors-in-chief did not have time to document them.

## **2. General Information about the Cases**

In cases on the protection of honor, dignity and professional reputation as in other categories of cases presented below, journalists and media institutions have the same rights and guarantees provided to all defendants. Journalists and periodicals may enjoy a certain degree of social importance due to their profession and utility, but this is not often the case in legal

proceedings. Journalists will most often figure in cases as the authors of the disputed material, while the media institution they work for will appear as the source of distribution of the item or the information subject to litigation. Thus, although the ECHR has repeatedly recognized that media is the “watchdog” in a democracy,<sup>43</sup> journalists are often judged by national courts as ordinary citizens with no priority given to the fact that their social function should provide them more scope in their right to freedom of expression. Cases on the protection of honor, dignity and professional reputation are the most important and imposing category of cases and those in which journalists have the status of a party. These actions are initiated based on Article 16 of the Civil Code of the Republic of Moldova; in these cases, the roles of the media and the judiciary are reversed and the judiciary becomes the watchdog.

In western case law and theory, cases involving protecting a person’s reputation are called defamation cases. There are two types of liability covered by the term defamation: civil liability (tort) and criminal liability. The first type is covered in Moldovan legislation by Article 16 of the Civil Code and aims at protecting honor, dignity and professional reputation as well as repairing any damage caused. Criminal liability for defamation emerges when defamation has elements essential to a criminal offence. Before the Criminal Code of Moldova was amended in 2004 and Article 179 on calumny was removed, a journalist risked being condemned to up to five years of imprisonment for publishing an article judged to contain calumny; however, according to available statistics and civil society reports, no such cases were ever registered.

Although the offence of calumny was removed from the Criminal Code, the Code on Administrative Offences kept calumny and “insult” on the books until May 2009, stipulating a punishment of up to 30 days of administrative arrest for them. The case of the journalist Oleg Brega is an example. He was detained in April 2008 and sentenced to three days of administrative arrest because the Court of Buiucani Sector considered the poster “50 Years of Lies” he displayed on the occasion of the 50<sup>th</sup> anniversary of the founding of TV station Moldova 1 to be “insulting.” Under the new Code on Administrative Offences, journalists no longer risk arrest for insults though they may be fined or obliged to do unpaid community work. They can, however be arrested for up to 15 days in addition to alternative punishments for committing the administrative offence of calumny.<sup>44</sup>

In civil cases the dispute is between the plaintiff and the defendant; the plaintiff is the one who summons the journalist to appear in court. In criminal cases, the state is the plaintiff. Cases on the protection of honor, dignity and professional reputation allow the plaintiff to demand that the disputed information is refuted, that a response is published or that compensation for moral damage is paid. These are procedural remedies offered to the plaintiff by the legislature. The journalist or media institution responsible for the publication of the disputed material or information appears as respondent/defendant or co-respondent/co-defendant in court, which means that they bear the liability for the information published. In the majority of cases initiated based on Article 16, journalists and media institutions are considered jointly liable; however, there are cases when an action is initiated against the periodical or the TV station that ultimately assumes responsibility for the publication of the information provided by a journalist. On the other hand, there are also cases when a media institution is the defendant while a journalist/employee appears as a third party intervener, or cases when the defendant is a private individual who has communicated the defamatory information while a media institution appears as a third party intervener for disseminating the information.

According to Article 16, refuting information injuring honor, dignity and professional reputation is the essence or the main object of cases on protecting them. Refuting defamatory

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<sup>43</sup> See Chapter I section “General Principles”

<sup>44</sup> See details in Chapter II

information and the plaintiff's response are meant to redress the injury; however, in the majority of cases, a refutation by itself does not repair in full the damage caused to the plaintiff. In this case the plaintiff can seek pecuniary compensation proportionate to the damage suffered. Article 16 does not, however, contain a maximum for such compensation, a fact that has permitted a great variety in the amounts ordered by courts to be paid to plaintiffs.

The journalist's work attached by the plaintiff to the claim is the main evidence in the case. Frequently, the plaintiff's injury is considered to stem from the work as a whole and not from specific expressions, phrases or information, so a request for refutation will refer to the entire item. In this regard, Part 2 of Article 16 stipulates that, "Anyone shall have the right to demand refutation of information that infringes upon his/her honor." Decision of the Plenum of the Supreme Court of Justice No. 8 of 9 October 2006 states that "information" is a narration of a fact, an opinion or an idea. The same decision stipulates that the court shall indicate in its judgment the information that is to be refuted if it is recognized as defamatory. Thus, it means that in order to make it possible to establish whether the plaintiff's honor and dignity have been injured, the plaintiff must indicate the phrases/information deemed defamatory. In practice, when a plaintiff contests an entire piece, the court asks him/her to specify the information deemed defamatory though this often happens under appeal or cassation when a superior court transmits the case for reexamination of its merits or requests the court of first instance to issue an additional decision indicating the defamatory information to be refuted.

According to national legislation, the defendant (journalist) must prove that the information contested by the plaintiff corresponds to established facts while the plaintiff must prove the dissemination of the information injured his/her honor, dignity or professional reputation and the existence and extent of any moral damage caused by the injury. In practice, journalists must provide evidence in court in the form of documents and/or witnesses or other proof that the information they published corresponds to reality, while in the case of the plaintiff, filing a claim is most often deemed by the court sufficient to support their contention. Thus, in national case law, the journalist or the media institution carries the burden of proof in cases on the protection of honor, dignity and professional reputation. This unbalanced distribution of the burden of proof between the plaintiff and the defendant is contrary to ECHR case law and to the principle of competitiveness and equality of parties in civil cases.

In addition to the claims presented, the plaintiff can ask the court to apply one or several measures in Article 175 of the Civil Procedure Code. When there are sufficient grounds to believe that without specific measures it will be difficult or impossible to enforce the court's decision, the plaintiff can demand the sequestration of a media institution's assets or of a journalist's bank account in the amount of the action, or the plaintiff can request that the publication or distribution of articles/programs on the disputed topic be prohibited until the case is settled. Based on Part 2 of this article, the court can also apply other measures for this purpose.

Actions regarding the protection of honor, dignity, and professional reputation do not fall under a statute of limitation, that is, they can be brought to court regardless of the date of publication of the allegedly defamatory information, while claims for moral compensation fall under the statute of limitations of three years after the information is published (from the moment the plaintiff learnt or should have learnt about the existence of this information).

Moral damage in cases on the protection of honor, dignity and professional reputation can be repaired in the absence of guilt or offence, except for cases of liability in tort. The amount of moral compensation should be reasonable and proportional to the severity of the infringement. When establishing the amount of moral compensation, courts shall take into account the criteria set out in Part 8, Article 16 of the Civil Code.

Due to the specific nature of cases against journalists, courts may find it difficult at a certain stage of the trial to assess the defamatory nature of the material contested. In this case, either at the request of a litigant or ex officio in certain cases, the court can order an expert examination. Item 22 of the Code of Professional Ethics for Journalists of the Republic of Moldova stipulates that, “Should there be a corresponding request from legal bodies, the National Ethics Board may issue an examination resolution for litigation involving the journalist himself or the product of his professional activity.” According to this document, the National Ethics Board is the only expert body in this area of professional self-regulation.

According to national case law, Article 16 of the Civil Code shall be also applied to the dissemination of false or defamatory information about private and family life. If, however, the information is true, only a superior public interest can justify its publication without the person’s consent if it will be injurious. Nevertheless, according to statistics from 2005 to 2009 on cases against media based on Article 16 of the Civil Code, *Stamat Dumitru* (Mayor of Tomai Village) v. *Novoie Vremea* was the only case in which the court assessed the information published by the newspaper based on Article 8 of the European Convention on Human Rights.

Cases on the protection of honor, dignity and professional reputation are originally examined by common law courts at the defendant’s domicile. These court decisions can be subject to appeal or cassation and are then examined by a court of appeals or the Supreme Court of Justice.

### 3. Overview of Well-Known Cases

Case 2-118/05 *Iurie Rosca v. the National Public Broadcasting Company Teleradio Moldova, T. Tataru, S. Kirilov, A. Busmachin, St. Matei* was initiated and examined during the campaign for 2005 parliamentary elections. At the request of the other codefendants, Teleradio Moldova had broadcast the film “Opriți extremismul” (“Stop Extremism”) about the political activities of the Christian Democratic People’s Party (PPCD) that, through certain editing tricks, associated Mr. Rosca with various international terrorists. Mr. Rosca requested that the court oblige the public company to provide him with the right to a response and, along with other defendants, to pay moral damage. All the courts (of first instance, appeal and cassation) found that the film defamed the honor of Mr. Rosca by insinuating relations between him and terrorists and partially satisfied his claims by obliging Teleradio Moldova to provide airtime for a disclaimer and to repair moral damage by paying 20 lei compensation.

*Pruteanu Liuba v. Avram Aliona, Ziarul de gardă, Timpul and others* is a case (2-481/06), in which a judge in a Chisinau court appears as the plaintiff because she was the subject of articles published by these two newspapers. The articles in question brought up for discussion Pruteanu’s actions as a judge, in particular her actions in two criminal cases she examined. The plaintiff wanted the newspapers to publish apologies and to refute the information they had published, to collect 1 million lei (in total) from the defendants and third party interveners as compensation for moral damage and to assure this action by sequestering the defendants’ accounts and assets. The plaintiff’s claim was, however, not decided because she repeatedly failed to appear at hearings.

Case 2-2270/07c was *Cristina Butucel v. Timpul de dimineață, Info-Prim Neo* with Ion Siman, Valentin Todercan, Alecu Vicol and the Ministry of Culture and Tourism as third party interveners. *Timpul de dimineață* and *Info-Prim Neo* published a press release stating that at the general meeting of S.A. Moldova Film, Ion Siman, Valentin Todercan and Alecu Vicol were dismissed from the administrative board based on alleged complaints from various film industry workers. The press releases cited Cristina Butucel, head of the Cinema Directorate of the

Ministry of Culture and Tourism, as the source of information. This case is related to *Valentin Todercan, Ion Siman, Alecu Vicol v. Cristina Butucel on protection of honor, dignity, and professional reputation*. In the first case, in addition to a refutation of the incorrect information, the plaintiff wanted to collect 150,000 lei from each defendant as compensation for moral damage. As a result of negotiations between the litigants, *Info-Prim Neo* published the refutation signed by Ion Siman and Valentin Todercan and undertook to pay 10,000 lei to each intervener. Later on the process was closed based on a waiver of the claim signed by the plaintiff.

Case 2-74/07 *V. Cimpoes v. Gagauz halkî* was filed with the Comrat Court in 2005 by prosecutor Cimpoes as a result of the article “Prokuror v zakone” (“Prosecutor in Law”) published by the newspaper about the criminal prosecution initiated against Mihail Formuzal (at that time, the Mayor of Ceadir-Lunga) who was suspected of abuse of power and office. The plaintiff’s action was left undecided because he failed to appear at hearings, and his claims, including collecting 200,000 lei as compensation for moral damage, were not examined.

Case 2-256/07 was *Ion Lipcean v. NIT*. According to one of the news items on the TV station’s program “Curierul,” a criminal case was opened against Ion Lipcean, a former law enforcement officer, for smuggling Viagra pills in the amount of 80,000 lei based on information presented by the Ministry of Internal Affairs. The plaintiff considered that this news item denigrated his honor and dignity and requested 1 million lei in compensation as well as the broadcast of a refutation in order to restore his honor. The court of first instance passed a judgment in favor of the plaintiff because previously he had only been fined under the Code of Contraventions and ordered NIT to broadcast a refutation and pay 60,000 lei in compensation for moral damage and an additional 33,300 lei to reimburse litigation expenses. The Court of Appeals reduced the amount of compensation to 5000 lei and litigation expenses to 3,100 lei; the Court of Cassation left the decision of the Court of Appeals in force declaring that cassation was inadmissible.

The case *Ministry of Internal Affairs v. Jurnal de Chişinău and Raisa Lozinschi* (2-2151/08) was filed as a result of the article “Voronin a majorat suma mitei dată agenţilor de circulaţie” (“Voronin Increased the Amount of Bribes Offered to the Traffic Police”) written by journalist Raisa Lozinschi which brought up for discussion a case of corruption among Ministry of Interior Affairs officers. The court of first instance found the information presented in the article to be correct because the driver who said he had paid a bribe to a traffic policeman bore witness in court; thus, this information did not denigrate the honor, dignity and professional reputation of the traffic police or of the Ministry of Internal Affairs in general. In similar situations, the ECHR has stipulated that the duty of the press is to communicate information and opinions discussed in society on issues of public interest. The Court of Appeals in Chisinau supported the decision of the first court, while the Supreme Court of Justice declared the plaintiff’s cassation inadmissible.

The case *Vladimir Dorojco v. Gazeta MD (Balti)* (2-930/08) was initiated as a result of the article entitled “Byla takaya partia” (“There was such a Party”) published by the newspaper. The author reproduced the critical statements of a member of the Socialist Party about the plaintiff who was the Balti municipal councilor and a member of the Socialist Party. The plaintiff asked the court to oblige the newspaper to publish apologies for presenting false information, to provide space in the newspaper for the plaintiff to respond and to pay 101,000 lei in compensation for moral damage. The court ruled that some of the findings were value judgments that could not be proved while others were facts that corresponded to the truth and that although one of the sentences did not correspond to the truth, the newspaper, “...cannot be made to repair moral damage for an incorrect phrase because it has the right to freedom of expression guaranteed by Article 10 of the European Convention for Human Rights.” On appeal,

the Balti Court of Appeals maintained the decision of the court of first instance and the Supreme Court of Justice cited the definition of value judgments in Article 10.

*Viorel Iachim v. Jurnal de Chişinău* (case 2-1800/08) was based on Article 16 of the Civil Code as a result of the article “Cei reţinuţi în dosarul „Heroina” au decis să vorbească” (“Those Detained in the ‘Heroin’ Case Decided to Talk”) published in one of the issues of *Jurnal de Chişinău*. The article printed a letter received by the editorial office from a group of law enforcement officers involved in the heroin case investigation.<sup>45</sup> Viorel Iachim was the director of the company Selani Lux. According to the letter, this company was protected by law enforcement officers. The plaintiff requested publication of a refutation and moral damage in the amount of 200,000 lei. Unlike the court of first instance, the court of appeals stated that the information in question was a value judgment that the editorial office could not be responsible for and denied the claim.

Case 2-1402/08 *Ion Neagu v. Jurnal de Chişinău and Ivanita Stanislav* was initiated by Ion Neagu five years and, respectively, three years after the publication of articles “Procurorul de Donduşeni acuzat de violarea unei femei de 62 de ani” (“Donduseni Prosecutor Accused of Raping a 62-Year-Old Woman”) and “A doua Transnistrie” (“The second Transnistria”). The first article told about a case of rape in which Ion Neagu (at that time the Prosecutor of Donduseni District) appeared as the suspect. The second article reproduced an interview with the Mayor of Corbu Village, S. Ivanita, recalling the problems they had had with a communist MP and Prosecutor Neagu. The plaintiff considered that those two articles denigrated his honor and dignity and requested the court to oblige the newspaper to publish a refutation and to pay 300,000 lei as compensation for moral damage. This was the amount sequestered by the court of first instance at the plaintiff’s request thus blocking the accounts of the publication. In the court’s decision, the plaintiff was to receive 7,000 lei in compensation since the statute of limitations within which he could claim compensation was three years. *Jurnal de Chişinău* was also obliged to publish a refutation of the information that denigrated Mr. Neagu’s honor and dignity of. The court of appeals supported the decision of the first court. The case is pending at the Supreme Court of Justice.

In case 2-2048/09 *Constantin Tanase v. Moldova Suverană*, the independent national daily newspaper *Moldova Suverană* Serie Nouă S.R.L. was taken to court by journalist Tanase for the allegedly defamatory article “Cum şi de cine a fost pregătită lovitura de stat din 7 aprilie” (“Who Prepared the Attack on the State on April 7 and How was it Done”). The article alleged that Constantin Tanase was receiving a large amount of money from an influential Moldovan businessman on a monthly basis. Mr. Tanase requested that the court oblige the newspaper to publish a refutation of this information and to award him 30,000 lei in moral damage. The court of first instance found that the information in question denigrated his honor and dignity and obliged *Moldova Suverană* to publish a refutation of this information and to reimburse the plaintiff’s litigation expenses in the amount of 200 lei.

#### **4. Tendencies in National Case Law regarding Settling Cases against Media Outlets<sup>46</sup>**

According to the data provided by Moldovan courts from 2005 to 2009, 165 cases on the protection of honor, dignity and professional reputation with Moldovan media institutions as defendants were examined or are still under examination. The number of cases differs slightly in

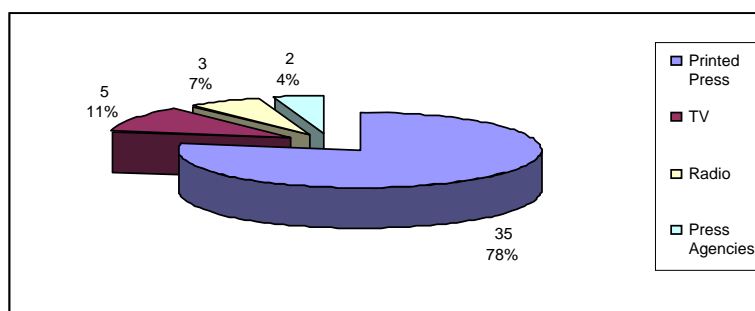
<sup>45</sup> On 20 May 2009, the police seized the largest heroin haul in Moldova’s history—about 200 kg. Two citizens of Turkey and three Ministry of Internal Affairs officers were detained as suspects in this case.

<sup>46</sup> Statements and tendencies presented in this chapter are based on the data and information provided by local courts and media institutions.

data collected at editorial offices of media institutions and from court archives. According to these sources, 126 cases were brought to courts of first instance from 2005 to 2009 of which 73 files from 10 courts (Centru, Buiucani, Rascani, Ciocana, Hancesti, Nisporeni, Comrat, Ceadir-Lunga, Balti, Cimislia) were studied as part of this documentation. Data provided by national courts indicate that media outlets appeared as defendants in 26% of all defamation cases in the time frame specified.

According to data published by CIJ in 2004,<sup>47</sup> the statistics of the Supreme Court of Justice indicate a total of 1,123 cases on the protection of honor, dignity and professional reputation were examined by national courts from 2000 to 2003, and in data collected as part of this study, national courts indicated a total of 624 cases from 2005 to 2009. This indicates that the total number of cases dropped by half from 2005 to 2009 compared with 2000 to 2003. A comparative analysis of the data collected by this study and the data presented by CIJ in June 2004 finds that courts in Chisinau, Balti, Soroca, Orhei, and Nisporeni examined 235 cases on the protection of honor, dignity, and professional reputation initiated against media from 1998 to 2003 which shows a slight decrease for the period 2005 to 2009 (165 cases).

Of the media institutions taken to court for defamation from 2005 to 2009, 35 were print outlets which is 78% of the total (Diagram 1). This number makes up only 13% of the total number of 258 periodicals (147 newspapers, 111 magazines<sup>48</sup>) in the country.

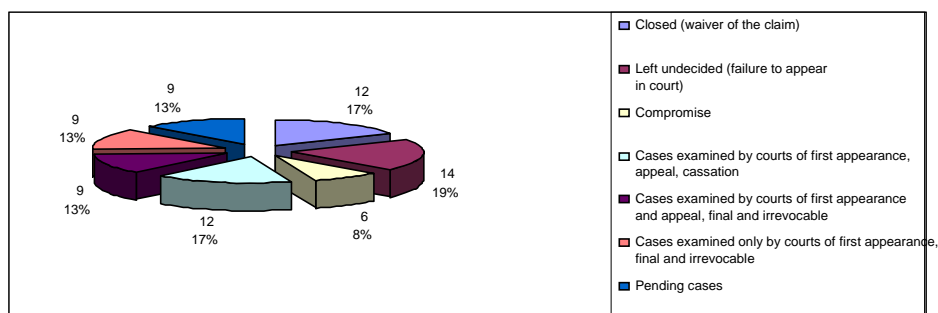


**Diagram 1. Media institutions taken to court for defamation from 2005 to 2009 by category (based on data collected from courts and editorial offices)**

Of the total number of 73 cases on the protection of honor, dignity and professional reputation documented at national courts, 12 cases were closed based on waivers of the claims signed by the plaintiffs and 14 cases were left undecided because the plaintiffs failed to appear at hearings (Diagram 2). Six cases were settled by compromise between the parties, while 33 cases were examined by courts of first instance, appeal and cassation. Nine cases on the protection of honor, dignity, and professional reputation initiated against media outlets are pending at national courts. Among them are *Dovgani vs. TV7*, *Patrascu s. Vocea Basarabiei radio station*, *Plesca vs. EuTV*, *SA Termocom v. ProTV*, *Urecheanu v. Moldova Suverană and Mihai Contiu*.

<sup>47</sup> Analytical magazine *Mass-media in Moldova*, June 2004, page 22, [http://ijc.md/bulmm/2004iunie/BMM\\_print\\_web.pdf](http://ijc.md/bulmm/2004iunie/BMM_print_web.pdf)

<sup>48</sup> Guide *Mass Media in the Republic of Moldova*, 2008, issued by the Independent Journalism Center



**Diagram 2. Statistics on cases on the protection of honor, dignity, and professional reputation initiated against the press in national courts from 2005 to 2009 (based on data collected directly from the files studied)**

According to Diagram 2, almost 50% of defamation cases initiated against media were closed before a judgment was made. Most plaintiffs failed to appear at hearings although they had been legally summoned as a result of which their claims were left undecided. Long court trials, slow procedures and financial and mental costs all convince plaintiffs not to participate in court hearings and to abandon their cases. Very often, the fact that the defendant newspaper publishes the refutation requested by the plaintiff prior to the examination of the case by the court makes the plaintiff abandon the case. Only six cases on the protection of honor, dignity and professional reputation were settled by compromise. In *Ciocoi Oleg* (president of the Municipal Society of Hunters and Fishermen) v. *Argumenty i facky* the plaintiff waived his claims while the periodical published a refutation of the contested information. In *Grusca G. v. Timpul and Sorina Stefart*, the newspaper published a refutation and paid 3,500 lei to the plaintiff in moral damage.

The plaintiffs in 46 of these cases were public figures for a total of 63% of cases studied. The Ministry of Internal Affairs which brought an action against *Jurnal de Chişinău* and the journalist Raisa Lozinschi for publishing the article “Voronin a majorat suma mitei dată agenţilor de circulaţie” (“Voronin Increased the Amount of Bribes Offered to the Traffic Police”), was also included in the category of public figures. The Communist Party of Moldova (PCRM) brought an action against the Social Democratic Party of Moldova (SDP) with the public company Teleradio Moldova as intervener for broadcasting an electoral item on SDP. Other legal entities included in the category of public-figure plaintiffs include the community-based association Protecţia Consumatorului that brought an action against *Novoie vremea* for defamation in the article “Nujny li nam takie zashchitniki” (“Do We Need Such Defenders”) and the National Youth Center that brought an action against *Flux* for the article “O chestiune de onoare pentru justiţia noastră moldovenească. Poate fi trasă Europa Trust la răspundere?” (“A Question of Honor for Our Moldovan Justice. Is It Possible to Bring Europa Trust to Justice?”).

One of the most frequent plaintiffs was public figure Nicolae Dabija who initiated six cases against *Moldova Suverană* for the following articles: “Naţionalitate fără patriotism” (“Nationality without Patriotism”), “Martor ocular. Nomenclaturiştii PCUS din RSSM, RM şi mai nou, România” (“Eyewitness. CPSU Members of Bureaucratic Elite from the MSSR, RM, and Romania”) and “Jos masca lui Dabija” (“Unveil Dabija”). In five other cases Nicolae Dabija and the publication *Literatura şi arta*, where he worked as editor-in-chief appeared as defendants. These actions were brought by their colleagues as a result of the publication of a number of mutually critical articles that sometimes violated the ethical principles of journalism.

Iurie Rosca is also one of the more frequent public-figure plaintiffs appearing in cases initiated against *Jurnal de Chişinău* for the article “Corabia beată” (“Drunken Ship”), *Accente libere* for the article “Nepotul caporalului Schelgruber” (“Grandson of Schelgruber Corporal”), and the public company Teleradio Moldova for broadcasting the film “Opriţi extremismul” (“Stop Extremism”). The following persons also appeared in cases initiated against media: a

judge from Buiucani Court; the Mayor of Vorniceni Village in Straseni District; the Mayor of Tomai Village in Ceadir-Lunga District; journalists Constantin Tanase, Evgheni Tkaciuk, Petru Poiata, Mihai Contiu; politicians Serafim Urecheanu, Valeriu Plesca, Ion Sturza; current or former law enforcement officers prosecutors, policemen, inspectors and other public servants.

As for media outlets appearing as defendants, nine defamation cases were initiated against *Flux* from 2005 to 2009 followed by *Moldova Suverană*, *Timpul de dimineață* and *Moldavskie vedomosti* with eight cases each according to data collected from courts and editorial offices (Annex 4).

*Liuba Pruteanu v. Avram Aliona, Ziarul de Gardă, Timpul and others*, briefly presented in Chapter 3 is one of the most relevant cases where the publications mentioned in the previous paragraph appeared as defendants. The final decision made in the case *Tkaciuk Evgheni vs. Moldavskie vedomosti and Dmitri Ciubasenco* rejecting the plaintiff's action is no less important. As a result of the article "Evgheni Tkaciuk sravnil veteranov KPSS s patsientami Costiujeni" ("Evgheni Tkaciuk Compared CPUS Veterans with Costiujeni Patients") published by *Moldavskie vedomosti*, journalist Evgheni Tkaciuk brought an action against this publication asking both the editorial office and journalist Ciubasenco to refute the information presented in the article. The plaintiff also requested 400,000 lei from the defendant publication and 200,000 lei from the codefendant in compensation for moral damage. The court of first instance partially satisfied the plaintiff's claims and, in addition to the publication of a refutation, obliged *Moldavskie vedomosti* to compensate moral damage in the amount of 100 minimum salaries and the codefendant in the amount of 10 minimum salaries. The appeal lodged by the periodical was rejected by the Court of Appeals in Chisinau, but the Supreme Court of Justice passed a judgment in favor of the defendants and annulled the decision of the first court and rejected the plaintiff's action. The judgment passed by the Supreme Court of Justice was based on Article 10 of the European Convention on Human Rights that public interest prevails when certain information about political figures is disseminated in the media. The Supreme Court of Justice emphasized in its judgment that the right to freedom of expression enjoyed by *Moldavskie vedomosti* and the journalist Ciubasenco protects, among others, information that shocks, offends or disturbs, allowing a certain degree of exaggeration.

This case is very important for national case law on freedom of expression. This judgment in 2006 was one of the first by a central court that referred to ECHR case law and the European Convention. The Supreme Court of Justice started to consistently examine cases on the protection of honor, dignity and professional reputation based on the European Convention in 2007. Also in 2007, the first references to European case law made by courts of first instance in their decisions appeared. In this context, *Nicolae Dabija, Grigore Vieru v. Moldova Suverană and Mihai Contiu* examined by the Central Court is relevant. The plaintiffs in this case asked the court to apply assurance measures by sequestering the assets and bank accounts of the publication. The request was rejected by the court on the grounds that those measures would have shut the publication down thus violating Article 10 of the European Convention.

The case *Petru Poiata v. Literatura și arta and Nicolae Dabija* was examined only by the court of first instance, and the 2007 decision of the Buiucani Court to reject the plaintiff's action referred to Article 10 of the European Convention distinguishing between value judgments and statements of fact and emphasizing the fact that harsher criticism of public figures is allowed.

So while the Republic of Moldova ratified the European Convention on Human Rights in 1998, it took 10 years for national courts to start examining defamation cases based on the Convention and on ECHR case law on a consistent basis. The determining factors include 11 ECHR judgments against Moldova referring to Article 10 of the Convention starting in 2007 and

Decision of the Plenum of the Supreme Court of Justice No. 8 of 2006 on applying the legislation on the protection of honor, dignity and professional reputation to individuals and legal entities.

A decision that is worth mentioning was issued by Buiucani Court in *C. Cheles* (manager of the state enterprise AT Prolin) v. Timpul. The case was generated by the publication of a picture made by the plaintiff that was later the subject of readers' comments. The publication of this picture was preceded by the publication of the article "Calaretul fara... obraz" ("A Shameless Rider") which discussed a gift—a horse—offered by the plaintiff to President Voronin and the supposed return favor provided to the plaintiff. The plaintiff asked for 100,000 lei in compensation and for the publication of a disclaimer in the printed and Internet versions of the newspaper as well as on the pages of *Nezavisimaia Moldova* newspaper printed in Russian. In the first instance the Buiucani Court determined that the opinions of the readers contested by the plaintiff were value judgments for which no one can be prosecuted and denied the case. However, the importance of this decision is its basis in European law. Of all cases documented, the judgment in this case is the only one issued by the court of first instance that refers not only to the cases lost by Moldova in the ECHR on the grounds of Article 10 but also to other judgments of the ECHR on freedom of expression. In order to emphasize the importance of protecting journalists from sanctions for circulating statements made by third parties, and especially to emphasize the importance of the good will of the journalist when publishing certain information, the court made reference to the judgments of the ECHR in the cases *Observer & Guardian vs. United Kingdom* and *De Haes & Gijssels v. Belgium*.

#### *Moral damage and assurances*

In cases on the protection of honor, dignity and professional reputation, the main procedural instrument provided by the lawmaker to the plaintiff is the denial of information and the right to respond. The goal is to restore honor, dignity or professional reputation. Should a denial and response not be sufficient and proportional to the damage caused, pecuniary compensation for moral damage will make up this difference. Still, the plaintiffs almost always ask for pecuniary compensation, and the courts always grant moral damage when the application of the plaintiff is accepted.

Of the 73 cases documented in national courts, in only one did the plaintiff not claim moral damage (*Ministry of Interior v. Jurnal de Chişinău and Raisa Lozinschi*) This is the only exception to the deeply entrenched national practice of always requesting compensation for moral damage. The greatest amount of compensation for moral damage from 2005 to 2009 was 10 million lei requested by Nicolae Dabija from *Moldova Suverană* followed by 7 million lei that Grigore Vieru asked from journalist Mihai Contiu. The smallest amount was 1 lei which Ion Sturza asked from *Moldova Suverană*, Ilie Bratu from *Jurnal de Chisinau* and Vitalie Nagacevschi from *Novoie Vremea*.

The greatest amount awarded by national courts was 500,000 lei awarded by the Central Court to Nicolae Dabija in *N. Dabija v. Moldova Suverană and Mihai Contiu*. The amount was to be collected from Mihai Contiu; however, the court of appeals reduced this amount to 2500 lei. Other cases in which the court ordered excessive amounts were *Iurie Rosca v. Accente libere and Ion Stratan* where the Court of Rascani considered that 150,000 lei was an equitable amount and *Ion Ciutac v. Novoie Vremea and Liubov Cegarovscaia* in which the Court of Rascani awarded damage of 100,000 lei.

Nicolae Dabija was the public-person plaintiff awarded the largest amount of compensation for damage to dignity. In addition to the 500,000 lei awarded by the Central Court,

when examining the appeal of Mr. Dabija against the decision of the court of first instance in another case, the Court of Appeals of Chisinau increased the amount of compensation from 3,000 lei to 200,000 lei. The court of appeals decided on this amount because Nicolae Dabija is a, "famous person in Moldova and has certain merits in the state and the society, as well as the highest national and international distinctions."

The smallest amount awarded by national courts in this category of cases was 20 MDL, by the Central Court in the case *Iurie Rosca v. Teleradio-Moldova and others*. The court had to award this amount because of the status of each party in the trial. Iurie Rosca as an MP did not intend to get rich at the expense of Teleradio-Moldova funded from the state budget and only wanted to clear his reputation.

In 22% (16 cases) of the documented cases, the plaintiffs asked the court to take assurance measures. In most cases the court resorted to sequestration of bank accounts and assets of the editorial offices. Vladimir Gorgos (director of the Millenium Group) asked for the sequestration of assets and accounts of the *Copiii Europei* newspaper and Tudor Popa (deputy head of the Principal Legal Division of the National Office of Social Insurance) asked for the sequestration of the assets and bank accounts of the *Novoie Vremea* newspaper. Judge Liuba Pruteanu asked for the sequestration of the assets and bank accounts of the periodicals *Timpul* and *Ziarul de Gardă*. Other measures were less popular among the plaintiffs and included prohibitions on airing electoral spots and on making changes in the cadastral register and with the State Registration Chamber.

Even though the number of cases in which assurance measures have been requested is rather large, in only three of them did the court agree. In *Ion Neagu* (prosecutor of Donduseni) v. *Jurnal de Chişinău*, the accounts of the newspaper were blocked and 300,000 lei in the account of the defendant was sequestered. Later on the measure was cancelled by a higher court. Before they were cancelled, those measures would have put the publication under the threat of liquidation as for more than a week it was unable to make any payments or to publish. In the case *Iurie Rosca v. Accente libere*, the amount of 1.5 million lei in the account of the defendant and the assets of the editorial office were sequestered. In the *PCRM v. SDP*, the court admitted the request of the plaintiff to prohibit Teleradio Moldova from airing the electoral spot of SDP before a judgment was issued. In this context it is important to mention the position of the Central Court in *Nicolae Dabija, Grigore Vieru v. Moldova Suverana and Mihai Contiu* in which the plaintiffs wanted to sequester the bank accounts and the assets of the newspaper. The court rejected the claim as those measures could shut the paper down which would violate Article 10 of the European Convention.

Of the 36 documented cases in national courts where final and irrevocable judgments were issued, 19 were resolved in favor of the media institutions that were the defendants in those cases. In *V. Iachim v. Jurnal de Chisinau*, the court ruled that the information in question was a value judgment and *Jurnal de Chisinau* could not therefore be punished for its publication. As the information contested by the plaintiffs in *P. Gutul and the Consumer Protection Association v. Novoie Vremea and others* was supported with evidence, the court rejected the case of the plaintiffs. In *M. Ivantoc and I. Ivantoc v. Moldavskie vedomosti*, the court rejected the case of the plaintiff as the conclusions of the journalist in the article in question were not slander.

Of all the editorial offices interviewed for this study, *Moldova Suverană* was involved in the most cases of protecting honor, dignity and professional reputation over nine years at 50 cases while *Moldavskie vedomosti* has been involved in 15 cases since 1995 and *Timpul de dimineață* has had 14 lawsuits since 2001 when it first appeared in the Moldovan media market.

## 5. Regional Practices versus Practices in the Capital

An analysis of practices in cases of protecting honor, dignity and professional reputation is important as it will emphasize some aspects of the situation of journalists and of the quality of justice in the Republic of Moldova as a whole and in the capital specifically. In all, 70% of the documentation was collected in the courts and editorial offices in Chisinau. Nevertheless, the data that we could access in the regional centers of Moldova are relevant and allow us to trace differences and tendencies.

Outside the capital in almost 100% of the cases, the print press was brought to court by the subjects of their articles. Only Balti District had two cases against local radio stations. According to the information published in 2007 by CIJ,<sup>49</sup> 70% of the print press is concentrated in the capital. This percentage shows proportionally the number of lawsuits to protect honor, dignity and professional reputation, where the editorial offices are defendants. In all, 36 cases on these protections have involved regional media.

### *Plaintiffs who are public figures or private individuals*

Out of 18 cases documented at 6 district courts (Hancesti, Nisporeni, Comrat, Ceadir-Lunga, Balti, and Cimislia), 9 were initiated by individuals in public positions. In 2008, the Secretary of the Nisporeni District Council and his wife, Head of the Social Department of the District Council, brought an action against *Gazeta de Vest* and the author of an opinion article, a public servant as well; the same publication was taken to court by the Mayor of Nisporeni town in 2009 for an opinion article signed by a municipal councilor. *Business Info* in Cimislia was involved in a court trial with Lidia Lupu, President of the Hancesti District Council, as plaintiff, while in Comrat District, the Mayor of Budjac Village, the president of the district, and a municipal councilor appeared as plaintiffs in cases against the newspapers *Edinaia Gagauzia* and *Vesti Gagauzii*. In Balti, the municipal councilor from the Socialist Party, V. Dorojco, appeared as plaintiff against *Gazeta MD*. D. Arabadji a member of the political party Patria-Rodina who brought a civil case in Ceadir-Lunga against *Znamea* newspaper founded by the district council, and the prosecutor V. Cimpoes, who brought an action against *Gagauz Halki* in 2005 in Comrat were also included in the category of public figures in civil cases.

The fact that 50% of the cases on the protection of honor, dignity and professional reputation filed against regional press outlets were initiated by persons occupying important public positions in local public administrations allows us to state that public figures in the districts are more tolerant of criticism than their counterparts in the capital as public figures including state institutions, political parties and NGOs there have figured or figure as plaintiffs in 67% (37 cases) of the cases. Although fewer in number compared with their colleagues in the capital, public-figure plaintiffs in the provinces are more insistent on obtaining a favorable final decision. Only four of the total of nine cases initiated by public servants were closed before a final decision could be made. In two cases—*D. Arabadji v. Znamea*, and *P. Nezalizov v. Edinaia Gagauzia*—the plaintiffs waived their claims and the cases were closed. In *V. Cimpoes v. Gagauz Halki*, the case was left undecided because the plaintiff repeatedly failed to appear at hearings, and in *S. Buzadji v. Vesti Gaguzii* the parties compromised. The newspapers published apologies and refutations of the information contested and reimbursed litigation expenses born by the plaintiffs in the amount of 1,100 lei.

Unlike public-figure plaintiffs who insist on obtaining a favorable final decision, private plaintiffs in the majority of cases waive their claims against editorial offices. All nine cases initiated by private individuals were closed before a final decision could be made in court. Seven

<sup>49</sup>“Analiza necesitatilor mass-media din Moldova”, <http://ijc.md/Publicatii/Peisajul.pdf>, diagram 3

in which a doctor, a driving instructor, a driver and ordinary citizens were plaintiffs were closed based on waivers signed by the plaintiffs, and two were left undecided because the plaintiffs failed to appear at hearings.

This difference between the results of the cases initiated against the press by public figures and private individuals is understandable to a certain extent. A legal process requires the involvement of a legal representative and a significant amount of effort to bring the necessary evidence to court, and the information contested by private individuals always concerns their private lives. These additional efforts may greatly exceed their capabilities. In their turn, public figures are criticized in the majority of cases for their actions in public service, and the effort involved in the legal process is insignificant compared with the necessity to restore their reputations. This necessity is clearly seen in the way the plaintiffs formulate their claims in court. In all the cases initiated by public figures, the priority is contesting the correctness of the information, refuting that information and publishing apologies while private individuals in the majority of cases ask the court first of all to award compensation for moral damage caused by information deemed defamatory.

### *Moral damage*

The compensation for moral damage demanded by provincial plaintiffs from defendant newspapers in cases of protecting honor, dignity and professional reputation is similar to that in the capital. The amounts of money they demand are excessive and do not reflect the actual damage caused; however, there is a slight tendency for provincial plaintiffs to assess the damage in a more balanced way. Thus, public servants Ion and Ecaterina Tugulea who brought an action against *Gazeta de Vest* in Nisporeni each asked for 2,500 lei in compensation while another public servant who brought an action against the same publication requested only 20,000 lei. In the three cases examined by the court in Hancesti District, the plaintiffs—all private individuals—demanded compensation of 50,000 lei each.

The largest sum demanded in district courts was \$300,000 (about 3.5 million lei) by the Rezina mayor's office from the newspapers *Cuvântul* and *Ziarul de Gardă* and codefendants journalists Cornelia Cozonac and Victor Sofroni for publishing an article investigating the misappropriation of public money. Second was the 1 million lei demanded by the director of a company from the newspaper *Edinaia Gagauzia* in Comrat. The following amounts should be also mentioned: 500,000 lei demanded by D. Arabadji, a Patria-Rodina candidate for 2005 parliamentary elections, from *Znamea* in Ceadir-Lunga and 300,000 lei demanded by the president of Comrat District from *Vesti Gagauzii*. In Cimislia, the president of Hancesti District demanded 200,000 from *Business Info*, while in Balti, the largest amount demanded was 101,000 lei by municipal councilor V. Dorojco.

Regarding the amounts of money awarded by district courts in these cases, there is an obvious discrepancy compared with the amounts awarded by Chisinau courts. The Central Court ordered journalist Mihai Contiu to pay 500,000 lei in compensation to Nicolae Dabija which was reduced to 2,500 lei by the court of appeals, but the largest amount awarded by district courts was 10,000 lei in *Lidia Lupu v. Adelina Coroi and Business Info* in Cimislia. Despite the fact that district courts are more reserved in the amounts awarded to plaintiffs, the fines are still very significant for the local press. For example, the three defamation trials *Gazeta de Vest* in Nisporeni went through from 2005 to 2009 caused significant financial losses and reduced the paper's budget as it was obliged to pay for moral damage in two of them. Allowing local inhabitants to express their opinions and to criticize local officials thus proved to be expensive because the newspaper was jointly liable with the authors of the articles contested. In the case initiated by the secretary of the Nisporeni District Council and his wife who was also a public

servant, the newspaper published an article signed by the wife of the district president criticizing both of them. The court found that because the article was not edited or changed before publication, it violated Article 4 of the Law on the Press which allows for a restriction on the freedom of expression to protect the rights of another person. The fact that the article contained information of public interest about how public money was spent was not convincing enough for the court to exonerate the publication from civil liability. As a result, *Gazeta de Vest* paid 7,000 lei in compensation to the plaintiffs for moral damage and litigation expenses and published a retraction.

The experiences of the local press in court can be advantageous as well. Even though *Cuvântul liber* in Leova went through three court trials on defamation right after it began operations, it became more popular with readers as it won the cases. Similarly, despite the fact that it suffered losses of time and money, the law suits against *Cuvântul* in Rezina raised its prestige in the region. These two newspapers gained popularity and enhanced their reputations due to the quality of the articles contested in court. In the case of *Cuvântul*, the court found that the paper's investigation of the misappropriation of public money corresponded to reality. According to the court, this information could not denigrate the honor, dignity and professional reputations of public-figure plaintiffs because publishing information of public interest is not just the right but also the obligation of media.

Another point of comparison between plaintiffs from the capital and those from the provinces concerns measures for assuring action. According to data collected from district courts and the local press, this practice is not widespread among provincial plaintiffs but is much more widespread for public figures and private individuals in the capital. In the 36 cases involving regional media outlets from 2005 to 2009, no plaintiff endangered the existence of the local media outlets by sequestering the money in their accounts.

As for the access of the regional press to legal assistance, the data show that 14 of the 18 periodicals that were defendants benefited from this assistance. *Gazeta de Vest* and *Business Info* got free legal assistance from CIJ's "Free legal assistance for journalists" program, eight papers used the services of lawyers or advocates and *Gazeta MD* in Balti was represented in court by the paper's commercial director.

### *Justice and freedom of the press*

Of the 18 cases on protection of honor, dignity and reputation documented in six district courts, decisions in the first instance and under appeal were pronounced in four cases, and *V.Dorojco v. Gazeta MD* was decided by cassation in the Supreme Court of Justice. Two decisions were favorable to the plaintiffs. In *I.Tugulea and E.Tugulea v. Gazeta de Vest*, the Nisporeni Court ruled that the information published in the newspaper was not accurate and that it denigrated the honor, dignity and business reputation of the claimants and ordered the paper to pay 7,000 lei in moral damage to each and to pay court expenses in addition to publishing a retraction. That decision was upheld by the Chisinau Court of Appeals.

The second favorable decision was made by the Cimislia Court in 2007 in *Lidia Lupu v. Adelina Coroi and Business Info*. This case was about an article in the paper summarizing the decision of the Court of Accounts on the validity and use of the Hancesti District budget in 2005.<sup>50</sup> The article was accompanied by a picture of Lidia Lupu who was chair of Hancesti District at that time. Although the plaintiff had not appealed the decision of the Court of Accounts when it was delivered in 2005, she wanted the newspaper to publish a disclaimer of the

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<sup>50</sup> The decision of the Court of Accounts on the report on the correctness of Hancesti District budget and use in 2005 No. 54 of 15.06.2006, published in the Official Monitor.153-156/55 of 29.09.2006

findings. Based on Article 27 of the Press Law, however, the newspaper could not be obligated to disclaim the decision of a state institution. Nevertheless, the Cimislia Court found that the lead to the item, “The old administration of Hancesti district headed by Lidia Lupu worked as they pleased generating losses of dozens or even hundreds of millions of lei from the local budget,” denigrated her honor. The court also found that the phrase “worked as they pleased” was not a value judgment and that publishing her picture without her permission violated Article 8 of the European Convention. The court’s decision was influenced by the fact that at the time the article was published the claimant was not a public person and was unemployed and further that publishing the article two years after the decision of the Court of Accounts appeared in the *Official Monitor* was tendentious.

The reasoning of the court suggests that public persons are responsible for their actions only while exercising their public duties and that after they leave office they can no longer be criticized publicly for their actions while serving their mandates. This decision of the Cimislia Court which was upheld by the Chisinau Court of Appeals discourages media from performing in its role as watchdog<sup>51</sup> in society and hinders the public scrutiny of public officials that is absolutely necessary in a democratic society.

An example of a court decision that supports the freedom of the press was the decision of the Balti Court upheld by the Balti Court of Appeals and the Supreme Court of Justice in *V.Dorojco v. Gazeta MD*. The court ruled that some of the findings presented in the article “Byla takaya partiya” (“There use to be such a party”) were value judgments that could not be proved while others were facts that corresponded to the truth. The Balti Court also established that although one of the contested sentences did not correspond to the truth, the newspaper, “...cannot be made to repair moral damage for an incorrect phrase because it has the right to freedom of expression guaranteed by Article 10 of the European Convention for Human Rights.” On appeal, the Balti Court of Appeals maintained the decision of the court of first instance emphasizing that the ECHR in *Jersild v. Denmark* had established that journalists could not be sanctioned for acceptable criticism of public persons. The Supreme Court of Justice cited the definition of value judgments in Article 10.

Another important decision by the Balti Court, although the case was suspended, was in September 2005 in *N. Reus v. Kindergarten No. 3 et al*, in which the newspaper *SP* appeared as an auxiliary party. The importance of this decision for court practices in the Republic of Moldova lies in the invocation of ECHR jurisprudence and the European Convention in a district court. In its decision, the Balti Court rejected the action of the plaintiff arguing that, “The newspaper *SP* cannot be made to repair moral damage because it has the right guaranteed by Article 10 of the European Convention on Human Rights, and the contested information is free a expression in a democratic society and a value judgment, not an insult.”

A major reason for these successful defenses of the freedom of expression was the legal representation of the press in court. The way the defendant’s counsel pleads, the arguments brought to support the freedom of the press, the invocation of court precedents from national and ECHR jurisprudence and Article 10 of the European Convention all convince the court of the importance of public debates to which media has the right and obligation to contribute.

Public persons are not very tolerant of criticism of their actions in the media. Moldovan society, especially politically elite public officials, has not fully realized the role of the media in democracy, and the Moldovan judiciary instead of encouraging public control over the way public money is spent and over the way public officials carry out their duties often plays the role of a master punishing the “watchdog” when it bays at the robber. Often, this is a result of the

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<sup>51</sup> CEDO Decision in *Sunday Times (No.1) v. the United Kingdom 1979*

quality of journalism practiced by some of domestic media outlets. Consolidating democracy in the Republic of Moldova and strengthening the media by improving the quality of professional journalism and the conditions in which journalists function depend to a great extent on the realization by the journalistic community and by public officials of the social responsibility and the role of media in society.

**Annex 1: Cases in national courts on the protection of honor, dignity and professional reputation from 2005 to 2009**

<i>Court</i>	<i>Total number of cases</i>	<i>Including journalists</i>
Supreme Court of Justice	61 under cassation	19 under cassation
Chisinau Court of Appeal	208 under appeal	-
Balti Court of Appeal	28 under appeal	3 under appeal
Bender Court of Appeal	0	0
Cahul Court of Appeal	9 under appeal	0 under appeal
Comrat Court of Appeal	19 under appeal	7 under appeal
Anenii Noi Court	1	0
Balti Court	23	6
Chisinau Buiucani Court	197	92
Chisinau Centru Court	162	16
Chisinau Ciocana Court	27	4
Chisinau Rascani Court	-	-
Chisinau Botanica Court	14	2
Bender Court	0	0
Basarabasca Court	0	0
Briceni Court	0	0
Cahul Court	19	0
Cantemir Court	0	0
Calarasi Court	12	0
Causeni Court	-	-
Ceadir-Lunga Court	17	5
Cimislia Court	32	2
Comrat Court	29	12
Criuleni Court	7	0
Donduseni Court	2	0
Drochia Court	2	2
Dubasari Court	7	0
Edinet Court	0	0
Falesti Court	4	1
Floresti Court	0	0
Glodeni Court	0	0
Grigoriopol Court	-	-
Hancesti Court	11	4
Ialoveni Court	2	0
Leova Court	1	0
Nisporeni Court	6	2
Ocnita Court	0	0
Orhei Court	9	0
Rezina Court	11	4
Rabnita Court	-	-
Rascani (Balti) Court	3	3
Sangerei Court	-	-
Stefan-Voda Court	2	1
Slobozia Court	1	0
Soroca Court	2	1
Soldanesti Court	0	0
Straseni Court	4	0
Taraclia Court	4	0
Telenesti Court	0	0
Ungheni Court	-	-
Vulcanesti Court	8	1
Military Court	incompetent	incompetent
Economic Court	incompetent	incompetent
Economic Court of Appeal	incompetent	incompetent

## Annex 2: Cases Selected for Analysis

<i>Court</i>	<i>Total number of cases</i>	<i>Including journalists</i>
Supreme Court of Justice	61	19
Chisinau Court of Appeal	208	-
Buiucani Court	197	92
Centru Court	162	16
Ciocana Court	27	4
Rascani Court	-	-
Botanica Court	14	2
Nisporeni Court	6	2
Balti Court of Appeal	28	3
Balti Court	23	6
Rascani (Balti) Court	4	4
Comrat Court of Appeal	19	7
Comrat Court	29	12
Ceadir-Lunga Court	17	6
Hancesti Court	11	4
Rezina Court	11	4
Cimislia Court	32	2

### **Annex 3: Media outlets interviewed that were defendants in cases on the protection of honor, dignity and professional reputation**

1. „Teleradio Moldova” Public Company
2. „Teleradio Gagauzia” Public Company

#### **TV channels**

3. Albasat TV (Nisporeni)
4. EU TV
5. N4
6. NIT
7. PRO TV

#### **Radio stations**

8. Antena C
9. Fresh FM
10. Polidisc
11. Radio Noroc
12. Radio Plai
13. Radio Sangera
14. Retro FM
15. Radio Nova

#### **Periodical publications**

16. „Argumenty i fakty”
17. ”Business info” (Cimisia)
18. ”Cahul Expres”
19. ”Kishinevskie Novosti”
20. ”Câmpia Glodenilor”
21. ”Comunistul”
22. ”Curieul de Cantemir”
23. ”Cuvântul liber” (Leova)
24. ”Cuvântul” (Rezina)
25. ”Dobryi Den” (Ribnita)
26. ”ECO”, Magazin economic
27. ”Economicheskoe obozrenie”
28. ”Ecoul Nostru” (Sangerei)
29. ”Edinaia Gagauzia” (Comrat)
30. ”Făclia”
31. ”Farul Nistean” (Rezina)
32. ”Flux”
33. ”Gazeta de Vest” (Nisporeni)
34. „Jurnal de Chişinău”
35. ”Moldavskie Vedomosti”
36. ”Moldova Suverană”
37. ”Observatorul de Nord” (Soroca)
38. ”Săptămîna”
39. ”Timpul de dimineaţă”
40. ”Unghiul” (Ungheni)
41. ”Vesti Gagauzii” (Comrat)
42. ”Vremea”

#### **News Agencies**

43. Deca-Pres
44. Info-Prim Neo
45. Infotag

#### **Magazines**

46. ”Analytique” Moldpresa
47. ”Business Class”
48. ”Punkt”
49. ”VIP Magazin”

#### Annex 4: Media outlets that were defendants from 2005 to 2009

<i>Editorials</i> <sup>52</sup>	<i>2005-2009 processes based on art. 16 CC</i>
TV Moldova 1	2
PRO TV	3
EU TV	2
NIT Noile Idei Televizate	1
Deca-Pres	3
”Flux”	9
”Jurnal de Chişinău”	6
”Economicheskoe obozrenie”	2
”Literatura şi Arta”	7
”Moldova Suverană”	8
”Nezavisimaia Moldova”	1
”Săptămîna”	1
”Timpul de dimineaţă”	8
”Argumenty i fakty”	5
”Vreamea”	6
”Comunistul”	5
”Moldavskie vedomosti”	8
Info-Prim Neo	3
”Ziarul de Gardă”	7
Radio Vocea Basarabiei	1
TV7	1
”Novoe vremea”	5
”Glasul”	1
„Copiii Europei” Newspaper	1
”Accente libere”	1
<b>Local press</b>	
”Business info” (Cimislia)	1
”Curierul de Hancesti” (Hancesti)	3
”Golos Bălţi” (Balti)	1
”SP” (Balti)	4
”Gazeta MD” (Balti)	1
”Cahul Expres” (Cahul)	2
”Cuvântul” (Rezina)	1
”Farul Nistrean” (Rezina)	1
”Ecolul Nostru” (Sangerei)	1
”Gazeta de Vest” (Nisporeni)	3
”Observatorul de Nord” (Soroca)	1
”Cuvântul Liber” (Leova)	1
”Gagauz Halki” (Comrat)	1
”Edinaia Gagauzia” (Comrat)	4
”Vesti Gagauzii” (Comrat)	2
”Znamea” (Ceadir-Lunga)	1
”Nastoiascheie Znamea” (Ceadir-Lunga)	1
”City FM”	1
”Star FM”	1

<sup>52</sup> includes only editorials that have had at least one suit for protection of honor, dignity and business reputation according to the data offered by domestic courts and media institutions

## Chapter IV. The School of 2009: Lessons from the Events in April

### 1. Preliminaries

The events in April 2009 constitute a school that if attended with a desire to study and especially with the ability to learn could give us rare lessons in democracy. There is no contradiction between what happened in April and what this sentence claims. The thing is that—and it is a total paradox—freedom was born under historical circumstances of a lack of freedom (revolutions, rebellions, protests), and the freedom of expression was born under conditions of censorship with regard to anything that referred to freely expressed opinions (the first great promoter of abolishing censorship was J. Milton who was himself a state censor).

Lessons in totalitarianism and democracy can be learned *grosso modo* from a historical experience like that of 6–7 April. It all depends on the one who wants to learn. That one is going to ponder consequences that can in turn be two: the establishment of totalitarianism or the consolidation of democracy. Moldovan society knows what totalitarianism is but still has not known democracy. At the intuitive level, however, (because no one has lived under a democracy) we feel that it is when life is normal when normality supposes decent living standards, human dignity, the possibility to say what you think without fear of punishment, as well as penalizing those who try to limit this normality regardless of whether they are the governors or the governed.

The April events are such a tangled skein that the first state commission constituted by a presidential decree to study the protests did not come up with any results (possibly it was created namely for that purpose), while a new commission—a parliamentary one—after spending 60 days trying to figure them out requested an extension until April 2010. We shall not wait for the conclusions of the commission. We shall refer to what is evident, to the aspects that require additional investigation such as, for instance, the conduct of the media, of the state and of the citizen.

Events like those in April 2009, which do not happen every day and not even every decade, raise a major general interest and place the media as the main information provider under maximum attention. April yet again gave another chance to the media to get its social utility and legitimacy evaluated. People need social institutions as long as they see they are useful. In seeing this usefulness, they legitimize their existence.

The media was in the thick of the events, but not all media outlets were. Some preferred to exchange the place where history was made for the corridors of authority where they mistakenly considered that the “credible” information anxiously awaited by the citizen was stored. The “information” started flowing from those corridors to citizens through major media channels. The voice of that part of the media joined the voice of the governors in a harmonious chorus so that media singers could not be distinguished from singer-governors. The “watchdog” instead of barking fawned on the master. They confused social coordinates and humbly returned to what they knew how to do: to protect the monarch from his subjects. They saw it as their purpose and professional mission.

Let us briefly reconstruct some episodes that brought Moldovan society out of its daze and sent European bodies into a fever immediately after the parliamentary elections in the spring of 2009. On 6 April, thousands of young people came to the main square of the capital to contest peacefully the results of the parliamentary elections of 5 April that they considered to be fraudulent. The next day, they returned to the square in even greater numbers. The protests degenerated into clashes with law enforcement bodies, then into violence and finally into

damaging the Parliament and executive office buildings. President Voronin convened an extraordinary sitting of government followed by negotiations with the leaders of the three opposition parties in Parliament: D. Chirtoaca, Liberal Party (PL), V. Filat, Liberal Democratic Party of Moldova (PLDM) and S. Urechean, Our Moldova Alliance (AMN). The President accused the opposition of violence. On 8 April, the Ambassador of Romania in Chisinau and two embassy officials were declared *persona non grata* and had to leave the territory of the republic within 24 hours, while on 9 April visa requirements for Romanians were introduced.

The arrests of young people that had started on the night of 7 April continued. Absolutely degrading treatment was applied to them. Journalists on duty were intimidated, harassed, and bullied. On 9 April, after a number of journalists had been assaulted and while some foreign journalists (e.g., Romania, Georgia, Ukraine) had not been allowed to enter the territory of the republic, NGOs expressed their concern with regard to the deteriorating situation of the press and the limitation of access to information of public interest. On 10 April, over 200 representatives of civil society made public a declaration announcing that there were possibilities in the Republic of Moldova for the institution of a police state and a dictatorship and requested the authorities to ensure the freedom of opinion and expression while “all press institutions, especially Teleradio-Moldova Company, cover the social and political changes after the elections of 5 April correctly and impartially with the equal and non-discriminatory participation of the parties involved.”<sup>53</sup>

European bodies also reacted to the situation in the Republic of Moldova. On 7 April the European Commissioner Benita Ferrero-Waldner requested an end to the violence in Chisinau and called on the parties to initiate a dialogue. The Czech President of the EU condemned the use of violence in Chisinau and called on the parties to show restraint. On 8 April the European observer Baroness Emma Nicholson declared that the OSCE report on elections in Moldova was too mild and friendly. On 9 April the foreign ministers of Czech Republic, France and Sweden called on the government of Moldova to re-establish normal relations with Romania. On 13 April the EU decided to send a mission to monitor the post-election situation in Chisinau. On 15 April EU Special Representative Kalman Mizsei declared that the leaders of the four parties that had entered Parliament had to work on national reconciliation and assure that the basis of democracy and of freedom of the press would be preserved in Moldova, while the EU would do its best to reconcile the conflicting participants. The Committee for Foreign Affairs of the European Parliament and delegation for relations with the Republic of Moldova met in an extraordinary session on the political situation in Moldova. European parliamentarians called for calm and emphasized solidarity with Romania.

## **2. Media at the School of 2009: Lessons not Learned**

*April 2009*

How did the main media institutions with the greatest impact on the public, i.e., television, react to the events of those days? The results of monitoring seven main TV channels in the country carried out under the aegis of CIJ from 6 to 10 April that we shall refer to are eloquent in this regard.<sup>54</sup>

On 6 April, the national public TV broadcaster (Moldova 1) did not include a single report about the protests of young people in the center of the capital in its newsreel as, according to a “plausible” argument of the President of IPNA Teleradio-Moldova Company, their journalists did not know about the protests. The television station with the largest audience—

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<sup>53</sup> [http://www.ipp.md/files/Evenimente/Declaratie\\_proteste\\_7\\_8\\_aprilie\\_r.pdf](http://www.ipp.md/files/Evenimente/Declaratie_proteste_7_8_aprilie_r.pdf)

<sup>54</sup> [http://www.ijc.md/Publicatii/monitorizare/monitorizare\\_raport\\_postelectoral.pdf](http://www.ijc.md/Publicatii/monitorizare/monitorizare_raport_postelectoral.pdf)

Prime—ignored the protests in the news on 6 April and did not broadcast a newscast on 7 or 8 April at all. TV N4 did not inform its audience about the protests on 6 April either. EuTV gave a brief account on 6 April, but suspended newscasts the next day.

Starting on 7 April, Moldova 1 dedicated more space to the events in the center of the capital emphasizing the special session of the government chaired by President Voronin, the reaction of international bodies that disapproved of the violent actions in Chisinau and the reaction of citizens who condemned violence and advocated bringing the “offenders” from the opposition (?) to account. The next day Moldova 1 broadcast the statement of President Voronin that directly accused the three political leaders—V. Filat, M. Ghimpu, and S. Urechean—of a “coup d’état” and the President’s charges about Romania and his accusations expressed to the teaching staff at a meeting with district chairs, rectors and representatives of civil society (“Mesager” on 8 April at 21.00).

At the same time, Moldova 1 totally ignored the declarations of NGOs with regard to repression, cases of violation of human rights and the freedom of expression and the danger of establishing a dictatorship. Instead, the public channel presented a declaration of several civil society representatives that requested the authorities to take measures against the “rough attack of the unionist forces” that endangered the statehood of the country. (During Communist rule, the authorities created several pocket NGOs, the so-called GNGOs, which had to “take a stand” expected by the authorities “if necessary.”) Moldova 1 broadcast a news report about one of their cameramen who was assaulted by a protestor recalling in that context when Omega (an agency sympathetic with the authorities during the election campaign) journalists were assaulted by a member of PLDM in March, but said nothing about the abuses of Moldovan journalists by the authorities and the prohibition of access to the Republic of Moldova for foreign journalists or the apprehension and expulsion of Romanian journalists on 8–10 April.

Prime TV, which resumed operations on 9 April, broadcast several news items mainly about the accusations of the President about the opposition, the reaction of the international community to the situation in Moldova and the congratulations the Russian president passed to his Moldovan counterpart for correctly managing the situation. NIT covered the events from the viewpoint of the central authorities, accusing the opposition of organizing the protests and emphasized the President’s accusations of an attempted coup d’état. For channel N4, the angle of approach to the events was similar to that adopted by Moldova 1, NIT and Prime. N4 excelled in broadcasting news that tried to transfer the blame for the consequences of the protests to certain leaders of the opposition. Starting on 8 April, EuTV informed the public about the events often invoking the opinion of PPCD leader I. Rosca.

Pro TV and TV7 were the only channels monitored that presented the events both from the perspective of the authorities and the political opposition and protesters. The other five filtered the news taking care of the interests of the governors, not of the public. They covered the protests in a partial and partisan way. Moldova 1, NIT and N4 “were hard at work” polishing the image of the central authorities and President Voronin. The opposition leaders were labeled in the news as “state offenders” and “bandits” capable of destruction only. Those stations manipulated the audience instead of informing it. For instance, on 7 April Moldova 1 started the main newscast “Mesager” with the news that thousands of protesters had destroyed Parliament and the executive office buildings, “forgetting” to mention the motives for which young people had come out in the streets in the report. On the same day in the news on NIT about the negotiations between the leaders of the opposition and top government officials, the reporter stated that the discussions “ended with no encouraging result, because the opposition denied responsibility for the disaster they had caused in the square.” On 8 April, the newscaster began the report in the following way: “Society is shocked by the devastating actions of the

opposition.” NIT characterized the three leaders of opposition parties who had access to Parliament as destroyers of statehood, organizers of a “rough outlawry,” “offenders,” instigators of vandalism, initiators of “outlawry,” “morons,” and “cretins.” On another occasion, NIT openly resorted to a lie. In the news bulletin on 7 April, the presenter distorted the message of the EU High Representative for Common Foreign and Security Policy stating that, “International observers indicated in their preliminary statements that the elections had complied with a number of international standards and engagements, but additional improvements to ensure an electoral process free of inappropriate administrative interference *are not* (our italics) necessary.” In reality, the text of the declaration said that, “...improvements *are* necessary...”

Stations N4 and NIT did not distinguish between facts and opinions in the news as often journalists’ labels and accusations expressed their personal opinions. Thus on 7 April, the news bulletin “Obiectiv” started with a report in which the journalist stated, “Because they lost the parliamentary elections on Sunday, Vladimir Filat, the leader of the Liberal Democratic Party, Serafim Urechean, the head of the Our Moldova Alliance and Chiril Lucinschi, one of the leaders of the Democratic Party, tried to organize a coup d’état.” On 8 April, a news item started with the following: “The actions of politicians who did not want to recognize their defeat are condemned.” In the same newscast the journalist states: “The protests organized by Petru Lucinschi and his son Chiril Lucinschi and Vladimir Filat, Serafim Urechean and Dorin Chirtoaca with the so-called non-governmental organizations involved resulted in over 200 victims, the majority of whom were from law enforcement bodies.”

For “impartiality,” journalists from those television stations frequently turned to surveys like “vox populi” formulating questions and “sifting” answers so that finally the “guilty” persons were slandered. For instance, in a survey inserted by N4 in the news bulletin on 7 April, the first question invited the passers-by to give their opinions on the violent protests; then the people interviewed said what they thought about Petru Lucinschi and only negative answers were selected (“did not pay pensions,” was “involved in aircraft business”), and finally that one and all were “happy with the results of the elections,” with the “Communists who are good” and who “made good roads,” and that all were all longing for stability. Such playing with answers aims at a certain media (ideological) effect and not at informing the public about the opinions of citizens on one problem or another.

The majority of material on the public channel Moldova 1 and on the private channels NIT, Prime, N4 and to some extent EuTV was written based on a single source of information: the one that expressed the position of the central authorities on the events of 6 and 7 April. On Moldova 1, out of 78 news items and reports on the events in the capital broadcast from 6 to 10 April, not a single opinion of a participant in the protests was presented while TV7 and ProTV offered broad access to representatives of the political opposition as well as to representatives of the party in power.

The majority of TV stations mainly broadcast the announcement of President Voronin claiming that, “The leaders of the opposition have chosen the way of serious crime,” had “conducted a coup d’état,” and that their goal was “to destroy statehood.” Some stations constantly referred to the serious, unprecedented accusations of the President, presenting them as the ultimate truth and not “recalling” the presumption of innocence. Thus in newscasts on NIT, journalists often made statements like, “The leaders instigated acts of vandalism,” (7 April) and “Those who planned the barbarity fled the country” (9 April). An N4 journalist at the end of the newscast on 7 April stated without presenting any evidence that, “Hundreds of young people guided by the opposition held a demonstration [*manifestă* in Romanian] (author’s note: the correct form is *manifestează*) against the results of the parliamentary elections in the center of

the capital,” and in the newscast on 9 April that both opposition leaders and some representatives of fascist organizations like Noua dreaptă in Bucharest stood behind the protests.

Legal, as well as professional norms indicate the obligation of a journalist to avoid insult, injury, defamation and the language of hatred or confrontation. Journalists often failed to follow these norms in covering the April events. Moreover, while citing the accusations of the head of state against the opposition, they did not look for evidence to confirm or deny those accusations. Such widespread circulation of a single opinion as the only truth either willfully or accidentally creates a propagandistic effect. In this context, the role of the media in escalating a conflict and polarizing society is incontestable.

A number of television stations during the reference period showed excellent abilities to use images in order to obtain certain ideological effects. Moldova 1, for example, in the news about the assault on their cameraman by a protester did not “cover” the filthy, obscene expressions of the aggressor. Instead, they were repeated by means of a technical procedure in order to amplify the effect (“Mesager” on 9 April). The episode was rebroadcast many times in newscasts in the following days. For what purpose? In order for TV viewers to shed their tears for the poor cameraman or maybe to demonstrate the “wildness” of the protesters?! The same Moldova 1 illustrated the concern of the heads of schools about the risk their students were running in the protests by showing the images of a young lady who had fainted and young people destroying the two state buildings (“Mesager” on 7 April).

Some channels used technical means to tamper with images to distort the truth. Thus, on 9 April, Moldova 1 under the rubric “No comment” which had been very rarely used up till then, broadcast images of the protests mentioning the date 7 April, but the images repeatedly featured the Chairman of PLDM V. Filat and a representative of the Democratic Party C. Lucinschi during the peaceful protests on 6 April who were following what was happening and appeared to be pleased. Those images followed ones showing protestors throwing eggs at the executive office building which actually happened on 7 April. The “architects” of this clip did not seem to notice the fact that Mr. Lucinschi appeared to be dressed in different clothing in several of the shots. If ordinary TV viewers are presented with that sequence as a single event and see opposition leaders in good moods during the attack on the executive office building, what are they supposed to think?

In the newscast on 7 April, Moldova 1 broadcast images filmed during the violent clashes between the protesters and law enforcement bodies. The leader of PLDM V. Filat calling on the protesters to leave the front of the executive office building and go back to the Great National Assembly Square also appeared in the images, and his voice was clearly heard against the background of the whistling and chanting of the protesters. On 9 April, Moldova 1 re-broadcast the same images, but the voice of Mr. Filat was no longer heard as it was “drowned out” (the work of the sound technician) by whistling. If the voice is not heard, it leaves the impression that Mr. Filat was instigating young people to violence.

N4 TV also demonstrated the ability to manipulate images. On 7 April, the news bulletin “Obiectiv” started with images that presented the executive office building followed by images from the square in which V. Filat announced he was going to a meeting with S. Urechean and D. Chirtoaca to discuss an action plan. The following shot showed the clash of the protesters with the police in front of the building. The voice of the journalist announced, “Because they lost the parliamentary elections on Sunday, Vladimir Filat, the leader of the Liberal Democratic Party of Moldova, Serafim Urechean, the head of Our Moldova Alliance, and Chiril Lucinschi, one of the leaders of the Democratic Party, try to organize a coup d’état.” In the N4 newscast on 9 April, the rubric “No comment” (this channel “accidentally” remembered its existence) featured images

for 11 minutes ending with a summary against a musical background in which V. Filat appeared laughing. The sequence was repeated followed by the images of two wounded police officers and the devastated buildings.

The N4 newscast on 8 April started in the following way: “Society is shocked by the devastating actions of the opposition in the center of the capital. The consequences are appalling, and people think that it will cost a lot to reconstruct the main buildings of the country.” The lead belonged to the journalist who did not refer to a source. Then images accompanied by militant music appeared featuring V. Filat in front of a crowd with a loudspeaker in his hand, followed by the announcement by the journalist that, “The opposition has gathered up to 5000 demonstrators in the Great National Assembly Square. President Voronin has described the actions as a coup d’état and promised the nation to protect the country from robbers and putchists.” The images and music lasted for about five minutes.

The conduct of the majority of TV channels monitored did not comply with professional standards, flagrantly violating ethical and moral principles in covering conflicts. Moldova 1, Prime TV, NIT and N4 treated the protesting parties incorrectly by constantly creating positive images of the central authorities and PCRM on the one hand and negative stereotyping of the leaders of the three opposition parties—PL, PLDM and AMN—on the other. Selective presentation of the news; biased information on the motives and on the way the events unfolded; the use of a single source of information, mainly the official one and the manipulation of text and images misinformed viewers. Only two channels, Pro TV and TV 7, demonstrated care for their audiences by offering impartial and complete information thus complying with professional requirements.

*July 2009*

This dangerous juggling of information and misinformation, legality and illegality and truth and lies on the part of the media covering the events in April 2009 continued in the election campaign for preliminary parliamentary elections on 29 June as well as in the post-election period. For instance, the Association of Electronic Press (APEL) mentioned in its general conclusions to the final monitoring report on the presence of political/electoral figures in programs on 9 television channels from 17 June to 29 July that a number of TV channels presented political figures, especially electoral candidates, in an inequitable, disproportionate and tendentious way, thus infringing upon the ability of the electorate to freely form an opinion about them. On some stations, especially NIT, N4 and Moldova 1 the broadcasts about political figures representing the government and PPCD (N4 and Moldova 1 in particular) were overwhelmingly positive as were those on EuTV about PPCD. Similarly, those four stations’ broadcasts about the opposition were predominantly negative. The news on N4 and NIT in particular and on EuTV and Moldova 1 to a lesser extent about the leaders of the opposition parties was generally unfavorable. On the other hand, ProTV and TV7 adopted a more balanced attitude in this sense and did not demonstrate biased or tendentious attitudes toward political figures.

A tendency toward a selective approach was evident on stations N4, NIT and Moldova 1 with regard to the principle of using several sources in reporting on a conflict. Thus, news items about PCRM members usually lacked the opinions of the opposition representatives they criticized while reports on the campaign events of the opposition always contained the opinions of the corresponding representatives of PCRM and the government and usually at greater length. Some program series broadcast during the campaign by EuTV, N4 and NIT were strongly aimed at spreading the “official opinion” and not at balanced and impartial reporting to the audience. These three TV channels also broadcast campaign messages camouflaged in programs that directly or indirectly concerned electoral subjects but were not identified as such. Moreover, N4

openly promoted a candidate on the program “Revista preseii” broadcast during the campaign showing a newspaper in the foreground featuring the campaign slogan of PCRM in violation of the law. On 28 July, EuTV rebroadcast the newscast about the candidates from the previous day thus violating Article 47 paragraph 14 of the Electoral Code that stipulates: “No electoral campaigning is allowed on the day of elections, as well as on the previous day.” (Elections were scheduled on 29 July.)

Monitoring during the campaign demonstrated that the majority of the country’s television stations frequently, seriously and repeatedly violated provisions in relevant national legislation, professional ethics and recognized international standards which evidently did not contribute to creating and ensuring favorable conditions for free and conscious elections.<sup>55</sup> On 13 July, NIT included a campaign publicity spot of PCRM in the newscast, and EuTV repeatedly broadcast publicity spots of three candidates that exceeded the rule of 2 minutes/day/candidate. Candidates from PLDM and AMN withdrew from the debates on EuTV shortly after they began accusing the station of serving the government. In response, EuTV publicly declared it would ignore the campaign events of the two parties in its newscasts which violates provisions in the law.

When presenting the results of the public opinion barometer on the eve of elections as required by the Institute of Public Policies, Moldova 1 said, “The Party of Communists shall obtain the majority of votes for the Parliament of the XVIII Legislature” and claimed that AMN would not be represented in Parliament because it would not pass the electoral threshold of five percent. On the final day of campaigning (27 July), Moldova 1 openly favored PCRM in two items on “Mesager.” The second item—the message of PCRM Chairman addressed to the electorate—concluded the public television station’s coverage of the campaign. By an “accidental” coincidence, Radio Moldova also concluded 27 July with material favoring PCRM.<sup>56</sup>

Private channel NIT with quasi-national coverage distinguished itself by its blatantly tendentious conduct in promoting PCRM and denigrating liberal parties. Some broadcasts used language that was insulting and that instigated hatred against certain candidates. For instance, on 20 July, NIT broadcast an item about the resolution of the Republican Assembly of Veterans that called on people to vote for PCRM. After the speakers and President Voronin praised PCRM and degraded the opposition, the opinions of four participants in the debates followed that were actually repeats of the electoral slogans of PCRM. Opposition leaders were not cited although they were accused of wanting to come to power in order to have access to public money and to escape punishment for the disorder provoked on 7 April. In another item (24 July), the reporter appeared in the role of an expert and announced that, “On 5 April in Cainari, around 60 percent of inhabitants voted for the Communists, while on 29 July they expect that number to be over 80 percent as people believe in those who can and want to offer them an easier life.” With regard to the creation of a coalition on the local level between PCRM and PPCD (22 July), NIT reported that after two years of liberal governance, the District of Hancesti had been transformed from a prosperous locality into a ruin and that was why there was a need to consolidate forces. On 20 July, NIT broadcast an item stating that the PL had allegedly violated the Electoral Code and included a number of sources with a fragment at the end that presented this verbal attack by a woman on D. Chirtoaca:

You look very much like Hitler. You have to put on a mustache and voila—a copy of Hitler. Here we go also with Filat and that one, Mr. Urechean. I’ve known him for many years ‘cause I used to

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<sup>55</sup> [http://www.apel.md/public/upload/md\\_13\\_Raport\\_Monitor\\_FINAL\\_rom.pdf](http://www.apel.md/public/upload/md_13_Raport_Monitor_FINAL_rom.pdf)

<sup>56</sup> [http://www.ijc.md/Publicatii/monitorizare/monitorizare\\_raport\\_postelectoral.pdf](http://www.ijc.md/Publicatii/monitorizare/monitorizare_raport_postelectoral.pdf)

be under his wing. I used to be a chair of a trade union committee at an enterprise and I used to be a lawyer-economist and I know what a bandit Mr. Urechean is, and all of you are bandits who want to come to power. But you will not make it, do you understand? You have to get 61 deputies to elect a president, but you will get nothing. You will be happy if you get at least 11. Communists are going to win because they are a strong party. And you only lie and blame and threaten pensioners that you will take our passports away.

It is not clear in the broadcast who this person is or where or when the incident took place. On 21 July, this insert was rebroadcast by NIT as a separate piece of news, after which the presenter announced, "The voice of the people follows representatives of the Liberal Party. Some people who have more courage by nature do not wait for meetings with the electorate and decide to say what they think about the Liberals right in the street. The most visited news item on our website is the one in which the PL deputy chairman is told off by a woman." The "voice of the people," i.e., the accusations of the woman, is then broadcast in its entirety and ends with the phrase, "Won't you get one in the face, Mr. Chirtoaca, hah?!!!" On 23 July, NIT included the same insert at the end of the newscast under the rubric "No comment." The fact that NIT broadcast the diatribe of this person in its entirety in the news and then isolated and repeated it indicates serious deficiencies in ethics and morals especially in terms of promoting the language of hatred. The labels "bandits" and "liars" and associating politicians with Hitler intensified by repetition fall under Article 13 of the Broadcaster's Code of Conduct adopted by CCA in 2007 which obligates broadcasters not to instigate hatred or violence against individuals or groups of people. The repetition of that sequence that did not comply with the most basic requirements for press material suggests that NIT intended to implant feelings of disgust and hatred in the audience.<sup>57</sup>

Based on video material taken from the Internet, NIT claimed that PLDM was seeking support in elections from people with criminal records. Because of the poor quality of the image and sound, it is not clear who the people are and what they are talking about, but the reporter claims that they are former prisoners whose bodies are covered in tattoos (24 July). In other cases, NIT reporters did not separate facts from opinions and included their own views of certain events in the news. Thus, they claimed that inhabitants of Edinet were recalling the time when the country was ruled by democrats with horror (27 July), that inhabitants of Cainari refused to be intimidated and that memories of 7 April still set their teeth on edge (24 July) and that 27 July would remain an historical date for a locality in the district of Causeni as a gas pipe was commissioned on that day (27 July).

On 27 July, NIT cited M. Tkaciuk of PCRM saying that the opposition had lost the moral right to a victory in the elections and made various accusations about its leaders: "They are evil totalitarian sects," and "the political racket for which thousands of young people held demonstrations spit on them, used them as cannon fodder." The opposition was not offered the right of reply. In some cases the channel resorted to subterfuge in order to intensify the propagandistic effect of a message. In the joint press conference of PL, PLDM and AMN, S. Urechean said that he would not aspire to be the president of the country, but the coverage on NIT switched statements and images and showed Mr. Urechean claiming, "I want, I want, I want and I will become the president" followed by a shot of Mr. Filat smiling ironically. By technical means that are inadmissible in news broadcasts, the station thus tried to create an impression that there were disagreements among the leaders of the opposition (21 July).

On 22 July, EuTV broadcast a report on a press conference of the General Prosecutor V. Gurbulea who declared that, "The mass disorder on 7 April was organized, which is clear." While the reporter recalls the words of the prosecutor about, "...the members of some radical

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<sup>57</sup> [http://www.ijc.md/Publicatii/monitorizare/monitorizare\\_raport\\_a\\_nticipate\\_5.pdf](http://www.ijc.md/Publicatii/monitorizare/monitorizare_raport_a_nticipate_5.pdf)

groups who have come to Moldova from abroad,” images of 7 April featuring the opposition leaders D. Chirtoaca and V. Filat were shown. EuTV did not request a reply from the leaders of the opposition to the accusations of V. Gurbulea, thus violating professional norms.

As part of a project of the Council of Europe, the Broadcast Media Monitoring Mission monitored the way several important media institutions in Chisinau covered certain events that took place from 6 to 29 July. The conclusions of the monitors are contained in a final report and are of interest for this study. The comments of the Mission on the way NIT reported on the press conference of Vice Premier I. Rosca, Minister of Justice V. Pirlog, General Prosecutor V. Gurbulea and Vice Minister of Interior V. Zubic that presented preliminary conclusions about whether law enforcement bodies had allegedly resorted to violence during the demonstrations on 7–8 April were the following:

The story is unilateral and they insist on a great number (130) of wounded police officers compared to several dozens of demonstration participants. There are no alternative opinions. NIT does not mention the complaints filed with the European Court for Human Rights and neither about the fact that 7 police officers are under examination for torture and abuse of authority.

On 8 July, *Moldova Suverana* published the names of two Serbian citizens who claimed to have been involved in the events of 7 April. The article also described the Council of Europe as indifferent, accepting activists who had participated in “the attempted coup d’état” as collaborators. TV Moldova 1 broadcast an item on this topic commented on by the Broadcast Media Monitoring Mission as follows:

Two feet and 24 inches are dedicated to a report presented as true and verified, although there has been no attempt to contact the accused, the Council of Europe or a commentator to protect them. The practice of giving the names of the accused does not comply with the principle of presumption of innocence. Video sequences from the archives support the idea of an organized riot involving the leader of PLDM presented addressing “foreign nationals” in a loudspeaker. This report is based on a single source and thus is not argued.

The way in which TV N4 covered the arrest of a group of money counterfeiters (\$2 million) and accused representatives of opposition parties of being involved was commented on by the monitors as follows: “The use of fragments from a story not related to the case for the mere purpose of undermining the idea of the report (and namely that of a political attack) is equal to the old-time propaganda.” On another item on N4 presenting statements of the General Prosecutor on the violence on 7 April 2009, the monitors concluded:

The report represents a long list of biased misinformation. Here are some examples: the violent images at the beginning are associated with the phrase “coup d’état” thus presenting the hypothesis of the authorities as an established fact; the neutral words of the prosecutor “the involved political factor...” are associated with the images of the opposition suggesting that they are responsible for the whole event; the subject of the telephone conversation is not explained at all, although they present it as an essential element for the organization of a coup d’état. The journalist is intentionally ambiguous in his comments, thus creating an impression that Chirtoaca is a suspect and guilty.<sup>58</sup>

After the April events, *Ziarul de Gardă* wrote:

A month after the events of 7 April, the power-affiliated press as well as authorities still do the same thing: they lie. Probably they hope that they are doing it in favor of political stability and

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<sup>58</sup> Broadcast Media Monitoring Mission. Independent Consultation Trans Euro Media, Final Report / 6-29 July 2009, Moldova – July 2009, 75 pag.

civic peace that have become the most discussed subjects in Moldova, especially after the elections of 5 April. I do not want to act as an arbiter here; I do not have the right to do so being from the same profession, but I have an impression that the great risk for political stability in the Republic of Moldova is generated not by the governments but by the media that engage themselves to serve the interests of those governments. And the reproach goes not so much to the press as to the authorities who due to obsession more than fantasy have tried to make a comfortable bed out of it. Have they managed to do it? They have, partially and even to a greater extent because the way in which “this press” proceeded with regard to the events of 7 April is rather delinquent, both morally and professionally. We have here an example of court press mass complicity with the atrocities of the government...

During her recent visit to Chisinau, European Parliamentarian Marianne Mikko, co-chair of the EU-Moldova Parliamentary Cooperation Committee, made a surprisingly serious declaration in this sense, which was not just a statement on the actual situation but probably the greatest shame of all that has happened since the launch of Chisinau on the path of European integration. “The fight for the freedom and independence of the Moldovan media has been lost.”

The change of name of Tele-Radio Moldova Company was just a superficial one...If the Communists had the ambition or courage at least of self-respect as a pro-European party, we would have at least one thing of two settled: free equal access to the media, at least public, for all political classes, including the associative sector, and further ensuring of equal treatment for all the press without the arbitrary division from the “center” by colors and influence zones. Otherwise, the Todercans, the Starises, the Petcovs, the Barbovs, the Belceankovs and other “them” and “they” would not do anything from now on but just exchange the names of presidents or prime ministers in their interviews and commentaries.<sup>59</sup>

It has to be mentioned that the press referred to by the newspaper, including the television stations we have referred to, basically continued informing/misinforming the audience in the same manner after the elections of 29 July. A monitoring report on the presence of political figures in the programs on 9 television channels from 30 July to 31 August 2009 established that some violated the right of citizens to complete, impartial and reliable information, the right to the free expression of opinions and the right to freely communicate information stipulated in Article 10 of the Audiovisual Code. The media coverage of political figures in the news and programs, both quantitatively and qualitatively, was marked by an imbalance in ensuring political pluralism, subjective attitudes and lack of equality. The disproportions during that period were mainly due to unbalanced media coverage of political figures by NIT, Moldova 1, N4 and, in certain segments, EuTV. The newscasts on Moldova 1, NIT and N4 largely favored representatives of certain parties (especially PCRM) and disfavored representatives of other parties (especially PLDM, PL, PDM and AMN). The editorial policies of those televisions did not pursue genuinely informing the audience on the post-election process. The distribution of airtime allocated to the coverage of political figures was not equal thus resulting in over reporting on certain political figures and insufficient reporting on others which substantially reduced political pluralism. At the same time, EuTV and NIT informed their audiences about the post-election process in a distorted way that contravened standards of professional journalism. NIT continued favoring mainly the government and PCRM in their programs while EuTV favored PPCD and both stations continued to disfavor representatives of liberal democratic parties and Alliance for European Integration<sup>60</sup> components. In contrast, ProTV and TV7 reconfirmed their tendency to promote an editorial policy based on respect for professional standards ensuring pluralism and relative balance, equality and impartiality in informing the general public on the events involving political figures during the post-election period.<sup>61</sup>

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<sup>59</sup> <http://www.zdg.md/editoriale/stabilitate-fara-libertate>

<sup>60</sup> The Governing Coalition comprising the Liberal Party, the Alliance Moldova Noastra, the Democratic Party and the Liberal-Democratic Party of Moldova

<sup>61</sup> <http://apel.md/news.php?l=ro&idc=147>

Regrettably, the television stations that did not do the job properly included Moldova 1. It continued to use manipulation, including in covering the new legislature. For instance, the item on electing the Chairman of Parliament (“Mesager” on 28 August) said, “After the Party of Communists had left the meeting room, liberal democrats proceeded to elect the Chairman of Parliament showing insufficient knowledge of the procedure here and there.” Opinions were also presented as facts, for example, “We remind you that the chairman of today’s meeting of the legislature, PCRМ deputy Ivan Calin, announced a break until 4 September, the term stipulated in legislation, which was however ignored by liberal-democrats.” The date of 4 September was cited by the author as “the term stipulated in legislation.” Similarly, in a broadcast by Moldova 1 about the first meeting of Parliament the journalist stated, “The representative of the Party of Communists Maria Postoico declared that PCRМ requested a break until 4 September in order to form a parliamentary coalition. Thus, according to parliamentary procedure, Ivan Calin announced a break in the activity of the legislature until 4 September.” Again, the personal interpretation of the author is presented as a fact “according to the parliamentary procedure.” The right of citizens to correct and impartial information was limited by presenting a single point of view on a controversial situation, and the options of the other parliamentary factions were not presented by the journalist.

Unlike other media outlets, Moldova 1 omitted the verbal abuse by the leader of PCRМ on the leader of PLDM. Mr. Voronin insulted him and shouted in Russian, "Idi na hren! My s toboi razberionsia drugimi metodami, patsan!" (“Go to hell! We shall deal with you by other methods, boy!”).<sup>62</sup> The omission indicates not so much the modesty of Moldova 1 but rather selecting which facts to publish.<sup>63</sup> Moldova 1 did not hesitate to broadcast repeatedly the incident when one of their cameramen was attacked by a participant at a PLDM meeting who used obscene language. The zeal of Moldova 1 to maintain the image of someone at any price, even by concealing a fact that is expected to be largely covered by all the press, is inexplicable.

What has made Moldova 1 so docile and humble in front of the authorities and unfair to its audience? Conformism? Dependency on power and independence from citizens? Respect for the authorities and lack of respect for those who pay them? One thing is certain: the citizen, the one who pays, has been offered an altered, harmful, toxic information product. Let us remember that many parents, especially in the rural areas, receive only Moldova 1’s signal and watched the station curse their offspring for starting “a coup d’état” in April. The station demonstrated professional immaturity by defiantly refusing to broadcast live important sessions of the newly elected government, referring to difficulties in making changes to the TV viewing grid, to a lack of financing or to the interference of the new government in its editorial policy. Its primary mission to expand the access of its audience to information of major interest was “forgotten.” Paradoxically, private outlets such as radio Vocea Basarabiei, JurnalTV, AP Info-Prim Neo, news websites azi.md, unimedia.md and privesc.eu.md with no public funds informed the public adequately at their own expense in real time without making excuses and without the direct legal obligation to serve the public. They offered all the information from primary sources about the events they considered first of all of interest to citizens and then for business. So the question remains: Why do the initiative and capacity of private media exceed the initiative and capacity of the media paid with public money?

Basically, what did Moldova 1 and the other television stations we referred to do? They misinformed the citizenry, consciously and with ill intent. They slandered both methodically and massively in the long run. They abused of the freedom of speech and in the end shook

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<sup>62</sup> Cited by <http://www.interlic.md/2009-08-28/conducerea-radiodifuziunii-publice-acuza-noul-parlament-de-dictatura-11664.html>).

<sup>63</sup> <http://apel.md/libview.php?l=ro&idc=159&id=376>

Moldova's democracy which was squeaking along as it is. The fire warms, but it also devours. The freedom of speech can build but can also demolish; in order to build, a counterbalance is necessary.

Therefore, at the school of 2009, some of the media outlets "failed" the exam on socially responsible journalism though media did not compromise itself totally thanks to the professionals who did their jobs regardless of their political color, the color of events or that of their protagonists. Their message was dictated by the truth and not by the political masters. This type of journalism was necessary and timely for citizens, but the authorities did not like it. It was the professionals from the outlets that fell into disgrace by bowing to power who failed.

#### **4. Media at the school of 2009: lessons learned and lessons to learn**

Good media professionals, whether covering the April events or the election and post-election periods, did their jobs despite those who wanted the press either to keep silent or to communicate what the authorities wanted. An initial report on the reaction of Moldovan authorities to the violence of the police during post-election protests in April 2009 drawn up under the legal program of the Soros Foundation-Moldova indicates among other things that, "Apparently, the police beat and harassed journalists to stop them making reports on demonstrations."<sup>64</sup> Reporters Sans Frontiers on 10 April appealed to the authorities to stop violence against journalists.<sup>65</sup> On 11 April, AP Television announced that journalists applied for asylum in the US following cases of intimidation on the part of authorities. The South East Europe Media Organization announced on 10 April that journalists were denied entrance to Moldova and that they were attacked, apprehended and interrogated by police officers.<sup>66</sup>

On 17 April, Amnesty International expressed concern about the actions of the police during and after the events of 7 April in Chisinau in a memorandum. At least 18 Romanian journalists who traveled from Romania to Chisinau were stopped and sent back at the Galati-Giurgiulesti and Oancea-Cahul border crossings according to data of ActiveWatch Press Monitoring Agency from Romania and the Romanian Center for Investigative Journalism. Moldovan customs officers referred to the failure of their computer system and requested more documents from the journalists, although there was a need only for a foreign passport to cross the border between Romania and the Republic of Moldova. The journalists represented the agencies Associated Press, EPA, France Press, Intact Images, NewsIn, Mediafax, Reuters, newspapers *Evenimentul Zilei*, *Jurnalul Național*, *Ziua*, and *Realitatea TV*.

On 8 April, several events occurred. Two journalists from Antena 3 TV (Romania) were held at Chisinau Airport for a night under police guard only to receive expulsion documents later. On 9 April, they were sent on a plane to Budapest. A photojournalist from the Bucharest publication *Adevărul* who arrived at Chisinau Airport had to go back to Romania after spending five hours under military guard. After more than an hour of waiting with no explanation, a special reporter and a sound technician from the public station Radio România Actualități who had come to Chisinau on Air Moldova were told that they would be accompanied to the departure terminal and would get their passports back from the pilot of the aircraft that would take them to Romania (such treatment is usually applied to deportees). A journalist from the Romanian daily *Gândul* was held at Chisinau Airport for a night after which he was expelled from the country.

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<sup>64</sup> Sub acoperirea impunității: Raport despre reacția autorităților moldovenești la violența poliției în timpul protestelor postelectorale din aprilie 2009/ Clarisa Bencomo, -Ch.:Cartier, 2009 – p.114

<sup>65</sup> [[http://arabia.reporters-sans-frontiers.org/article.php3?id\\_article=30808](http://arabia.reporters-sans-frontiers.org/article.php3?id_article=30808)

<sup>66</sup> [http://www.ifex.org/Moldova/2009/04/13/journalists\\_prevented\\_from\\_entering/](http://www.ifex.org/Moldova/2009/04/13/journalists_prevented_from_entering/)

Natalia Morari, a Chisinau-based reporter for the Moscow publication *The New Times*, was accused of organizing the violent protests on 7 April in Chisinau. She was under house arrest for 15 days starting on 16 April. A group of Georgian journalists from Imedi, Rustavi-2 and Pervyi canal were not allowed to enter the Republic of Moldova even after the Georgian consulate got involved. On 9 April, a team from Romanian television station Realitatea was held for four hours by law enforcement bodies, intimidated and forced to leave the country.

On 10 April a team from Romanian television station Antena 3 was harassed and threatened by security bodies and decided to leave Moldova. On the same day, a reporter from the Romanian public channel TVR was held for six hours at the Operative Service Department of the Ministry of the Interior with no access to a lawyer, and his mobile phone was confiscated. On 13 April, the reporter received an ultimatum to leave the territory of the Republic of Moldova within 24 hours.

After the April protests, NGOs also were subject to pressure. Thus, on 28 April, CIJ was visited by a representative of the State Tax Authority who requested a number of documents on the origin of sources of financing of the organization for verification. Previously, on 24 April, CIJ received a summons to the office of that authority to present documents on its activities in the last two years. Similar summons from tax authorities were also received by the Association for Participative Democracy (ADEPT), IDIS Viitorul Institute, the Institute of Public Policies and APEL all of which had repeatedly drawn attention to cases of serious violations of electoral legislation and human rights during the pre-election and election periods.<sup>67</sup>

It must be remembered that journalists had been assaulted, harassed and intimidated before the April events as well. In such situations it would not be superfluous to learn one more lesson: the conduct of journalists in critical situations. In the world of which Moldova is a part, journalists find themselves in such situations more and more frequently. They most often involve collecting information, filming, taking pictures or reporting from within/outside a crowd of people gathered for various reasons.

The majority of social psychologists are unanimous in the opinion that a crowd is a special biologic organism. It functions based on a different law and does not always take into account the interests of its components, including their integrity. Very often a crowd becomes more dangerous than a natural calamity. But a crowd indicates an event, a happening of great social importance and it is inevitable, justified and necessary for the journalist to be there. Among the characteristics of a crowd, psychologists enumerate the following:

- decreased level of intellect and increased level of emotions;
- sharp increase in the feeling of panic;
- decreased ability of components to think independently;
- the imperious need to have a leader or an object of hate they would obey without hesitation or would annihilate without hesitation.

In the street life of a crowd (especially a sociopolitical one), the first stone thrown through the window or the first drop of blood is very important. Such steps can raise the crowd to a fundamentally new level of danger in which collective irresponsibility transforms each crowd member into an offender/criminal. Journalists have to know it, because they will have to act within such a crowd to do their jobs.<sup>68</sup>

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<sup>67</sup> <http://www.civic.md/comunicate-de-presă/memoriu-privind-libertatea-presei-in-republica-moldova.html>

<sup>68</sup> Knyazev V., Jurnalistika konflikta. Posobie// <http://evartist.narod.ru/text3/10.htm>

Surely, Moldovan journalists in April 2009, like their colleagues everywhere, thought about the alternatives: to report or to escape. Sometimes, personal safety becomes a priority: if the reporter does not survive there will be no one to think about his/her professional duty. It is the hardest for TV reporters to act in a crowd because of their equipment. They need room, so their ideal place would probably not be in the middle of a panic-stricken crowd.

It may be rational for journalists to think about a way to identify themselves as journalists from a distance (unless the crowd, including instigators from the crowd and law enforcement bodies, targets journalists). The Extreme Journalism Center of the Journalists' Union of Russia has made high-visibility vests with the inscription "Press" that clearly distinguishes those wearing them in a crowd. There is logic in this as very often out of either negligence or ardor journalists, become the target of parties involved in a conflict especially during police interventions when they try to disperse the demonstrators. For instance, in April 2007 during "The March of Objectors" ("Marsh nesoglasnyh") in the cities of Moscow, Sankt-Petersburg and Nizhniy Novgorod, 72 journalists suffered because they did not have signs identifying them as belonging to the press while none of the journalists wearing identification vests suffered. We have to remember that the goal of the journalist is not to participate in the event but to cover it, to communicate about it, and the police, if they are not acting malevolently, must not hinder them from accomplishing their mission.

A code of conduct for journalists in critical situations would not hurt either. Such codes exist. They are all the more necessary as critical situations become more frequent. A crisis is by definition abnormal when the scope of freedom including that of the journalist, is limited. But the journalist cannot avoid it. On the contrary, in a crisis like that in April 2009, the social responsibility of journalism and that of the journalist increases. The essence of the profession shows the benefits of total liberty, not of critical situations. Journalism has to prevent such situations, and if they occur, citizens cannot find out about what is happening unless the journalist is there.

There are various recommendations for journalists. For instance, rules for CND-CBS staff (7 April 1977) on demonstrations, rebellions and other civil disorders stipulate the following.

Television amplifies by its presence the disorder or aggravates it, but it does not mean the TV has to hide or to report only about floods and hurricanes. Professional duty obliges the journalist to cover disorders that are worth attention from the news perspective. But it is absolutely necessary to do it:

- as reporters and not as participants;
- with total impartiality, exactness and reserve;
- as unobserved and non-possessive as circumstances allow it.

Accumulated experience allows giving the following advice.

- If possible, transport equipment and staff to the place of the disorder in vehicles without identification signs.
- Install the equipment as unobserved as possible; use the priorities of equipment—microphones with directed action, radio microphones, color reproduction amplifiers, mini cameras and registering equipment.
- If your presence can amplify the disorder, disguise the equipment regardless of what other news companies do.
- Work as unobserved as possible, not talking to each other.
- Be reserved, neutral and impartial in comments and conduct, regardless of the possibility of verbal or physical insult on the part of demonstrators.
- Avoid reports featuring leaders or groups who want to go public.
- Tell what is happening without staging anything or asking to repeat something.

- Listen to the police, but report to the president or first vice president of CND about any ordinance that in your opinion is meant to limit the news or manipulate it or hinder broadcasting it.
- Take care of physical security. Even if we try not to let the danger of violence to hinder coverage of the event, the health and safety of CND staff is more important than the possibility of losing the report. That is why you are to estimate the possibility of bodily injury yourself and choose one of the alternatives: to continue the report, to move to another place where it is less dangerous and to continue the report, to leave the place of the event.
- Tell about the disorder in a reserved way based on facts, not on emotions.<sup>69</sup>

There is some advice on the part of colleagues with more experience in critical situations. In other times we would have considered it irrelevant for Moldovan journalists. Now it is topical. In addition to concern for a journalist's integrity, we shall mention care for the accuracy of communication about such events. Reports on the scene that were reserved, impartial and based on facts were lacking during the events in April 2009. Some outlets preferred to play the television game of "turning off" the filming of law enforcement bodies. They preferred the silence of offices and options of subterfuge to "illustrate" "the attack on Moldova." Only journalists used to honestly doing their jobs continued to do them, risking their health and lives without any training "adjusted" for critical situations. Placed in a hostile environment by the events, whatever else we may say, they deserve the admiration and respect of those for whom they have worked and continue working. Thanks to them, citizens can find out what happened in Chisinau in April 2009 from a primary source.

## **5. Public Authorities at the School of 2009: Lessons not Learned**

The behavior of some media organizations in covering the April events was identical to the one adopted by the authorities and first of all by the central authorities. Misinformation, labeling and defamation were tacitly raised to the level of state policy. The head of state himself took on the prerogatives of a court and from the very first public appearance after the events of 7 April started presenting charges with no evidence, investigation, trial or the right to appeal. Other state institutions—the Prosecutor's Office, the police, the SIS—had to lay down and demonstrate "the truth" to the head of state.

Let us remember that initially the authorities qualified the April events as a "coup d'état." Then they continued to identify and prosecute certain people for organizing and participating in demonstrations. More than 260 people were prosecuted for alleged offences related to demonstrations, of which 164 were accused of or suspected of organizing or participating in "mass disorders." At least 168 people were tried and fined or detained for administrative contraventions related to demonstrations. Often, criminal or administrative proceedings were deeply vicious.<sup>70</sup>

On 15 April, the President announced a so-called "total amnesty" while on 16 April, the Press Service of the General Prosecutor's Office announced that the Office "has initiated the process of revoking repressive measures" and on 21 April that it had "finalized the process of revocation repressive measures." The General Prosecutor's Office was quick to react to the order of the President which, we stress, did not have any legal grounds. In compliance with national legislation, only Parliament is authorized to declare general amnesties. Did the General Prosecutor's Office not know that?! Is it legal ignorance or interference in the duties of the Prosecutor's Office? Maybe the "amnesty" of the President was necessary for the officials

<sup>69</sup> Osveschenie jurnalistami ekstremal'nyh situatsii/avt.-sost. G.Yu.Arapova i dr., -M.:Elitcomstar, 2007. – 160 pag. – p.p. 143-145]

<sup>70</sup> Sub acoperirea impunității: Raport despre reacția autorităților moldovenești la violența poliției în timpul protestelor postelectorale din aprilie 2009/ Clarisa Bencomo, -Ch.:Cartier, 2009 (Tipogr. „Bons Offices”SRL), - p.135]

involved in criminal acts? Those who are not guilty do not need an amnesty which in addition is illegally granted by the President.

Let us remind you that on 21 April a state commission to elucidate the causes, conditions and consequences of the events of 7–8 April was created by presidential decree. How credible was it supposed to be if it did not have members of opposition parties, NGOs and media in its structure if it did not accept witnesses' testimonies?! How was it going "to elucidate the causes" of the April events? According to its chairman, the commission requested information "from the secret service, border guards and other services on the circulation of citizens in the Republic of Moldova [from Romania]" and on "the use of the Internet to instigate and gather people with that aim [to make a demonstration]..."<sup>71</sup> In other words, the commission was to find evidence of Romania's involvement in the attempted "coup d'état" in Chisinau, otherwise how could the accusations of the President turn out to be correct?!

The evidence was also meant to convince Moldovan citizens and international bodies. For instance, the Ministry of the Interior informed the Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, during his visit to Moldova from 25 to 28 April 2009, that following the actions on 6–7 April, "They had 106 people suspected of criminal offences and 216 people accused of administrative contraventions apprehended, a total of 322 arrests. At the same time, the Crisis Group, a group of activists for human rights and advocates affiliated with important Moldovan human rights organizations who documented abuses of human rights during demonstrations in April managed to identify 674 cases, including determining the date of the apprehension of 411 people. Among those, 394 were apprehended from 7 to 12 April 2009. In other words, the Ministry of the Interior concealed from Moldovan citizens and the Commissioner of the Council of Europe, "...at least 352 apprehensions documented by the Crisis Group until 29 July 2009."<sup>72</sup> In this context, the newspaper *Ziarul de Garda* was right when it wrote a month after the post-election protests of 6-7 April:

The head of state lies, the ministers and prime minister lie, the deputies from the ruling party, the police, the SIS all lie, the pretended successors to the new presidential mandate lie unscrupulously, legal medicine lies, "the watched witnesses" lie, all those who one way or another have been involved in those events, have their interest in them or depend on the will of those involved lie. The situation is even more ridiculous as President Voronin has been reiterating the idea of some suspects guilty of "an attempted coup d'état" for a month, with nominal accusations against a number of states and political parties, the leaders of which, despite these serious accusations are free anyway. It is an absolute premiere of a case of a coup d'état.<sup>73</sup>

The risky, dangerous and at the same time very naïve idea and business of concealing information in the age of information did function in the short run. Who knows now how many copies of "The Attack on Moldova" were spread by Moldovan embassies all around the world? In how many villages of the country and how many times the film was shown (who knows how many TV channels broadcast it and how many times)?

The situation when the same authorities who declare adherence to European values (among which is the freedom of expression) in reality profane them every day is ridiculous. Remember how in June 2008 they searched homes of certain young people, took their computers and accused them of "having launched numerous public calls to a violent overthrow of the constitutional system and liquidation of statehood and territorial integrity of the Republic of Moldova through the portals forum.md, torrentsmd.com, desteptarea.info and unimedia.md"? After the protests on 7 April 2009, access to certain portals on the Internet was blocked for

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<sup>71</sup> idem -p.136

<sup>72</sup> ibidem -p. 107

<sup>73</sup> <http://www.zdg.md/editoriale/stabilitate-fara-libertate>

several days. On 8 April, the server of the news portal unimedia.md was repeatedly attacked. Retransmission of Romanian channels in Moldova was suspended by at least two service distributors—SunTV and AraxTV. On 9 April, Facebook.com portal and Odnoklassniki.ru social network became inaccessible for users in Moldova. On 10 April, the websites of Unimedia, *Jurnal de Chisinau*, JurnalTV and ProTV were inaccessible. What did the government want to hide from its own citizens?

The debauchery of TV channels that were totally devoted to the former government encountered the counter reaction it deserved but not on the part of the audience or on the part of the CCA regulatory authority. A case study of the way in which CCA fulfilled its legal duties during the campaign for Parliamentary elections of 5 April by APEL shows that CCA's actions were marked by incompetence and passivity. The authors of the study established that during the campaign (2 February–5 April 2009), CCA held eight public sessions and adopted 35 decisions, of which only 9 referred to the way broadcasters covered the election campaign, and presented the results of only a single monitoring session to the public. CCA declined the obligation stipulated under Article 37 of the Audiovisual Code to exercise control ex officio, and in cases when they did exercise their functions of supervision and control as a result of requests and complaints filed, the regulator did not honor its obligation to supervise whether the output of the broadcaster sanctioned became legal (the case of EuTV).

Ignoring the provisions of “The concept of covering 2009 election campaign for the Parliamentary elections by broadcasting institutions of the Republic of Moldova,” CCA did not show ongoing concern about whether broadcasting institutions complied with internal regulations on covering the campaign. The approval of internal concepts (regulations) of broadcasters on covering the campaign was just a formality in the opinion of the monitors. The fact that CCA monitored the main newscasts of six or seven TV channels only once during the campaign and made the results public much later raises well-justified bewilderment. Why did CCA not react to the monitoring reports made public by civil society (CIJ, API and APEL) that offered CCA sufficient data and arguments on violations of national legislation by certain broadcasters? The monitors established that CCA did not fulfill its duty to be an autonomous and independent public authority in a responsible and exhaustive way with a mission to supervise compliance with the provisions of the election law by broadcasters. In cases when CCA members did engage in fulfilling their duties, they did not show exigency, often demonstrating incompetence and superficiality in knowledge of the relevant legislation and the specifics of the activities of the broadcasting media.<sup>74</sup>

In the campaign for early parliamentary elections on 29 July 2009, CIJ produced five monitoring reports that were made public at press conferences and distributed by e-mail and placed on the CIJ website and the news portal Moldova Today ([www.azi.md](http://www.azi.md)). Cases of flagrant violations of ethical and professional principles were analyzed in case studies. All the reports were sent to CEC and CCA with a request to take the necessary measures to ensure impartial, balanced reporting that favored forming free opinions. CCA did not react in any way. On 13 July, for instance, they issued a press release that, “...recommends broadcasters to ensure that their newscasts are impartial and balanced and favor the free formation of opinions by presenting the main visions of the opponents and when covering subjects related to conflicts, to respect the principle of getting information from a number of sources in compliance with Article 7 of the Audiovisual Code.” Three days later, CCA issued another press release saying that they had lately received indications from many program consumers that the program service of a number of broadcasters included shows of an electoral nature outside the viewing grid and internal regulations approved by CCA. In both cases, the releases were addressed to all TV and radio stations that covered the campaign and did not refer to any specific violations. On 23 July, CCA

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<sup>74</sup> [http://apel.md/public/upload/md\\_STUDIU\\_DE\\_CAZ\\_CCA\\_300409.pdf](http://apel.md/public/upload/md_STUDIU_DE_CAZ_CCA_300409.pdf)

warned 6 TV channels—Moldova 1, NIT, ProTV, EuTV, TV7 and N4—about non-compliance with pluralism of opinion in informative programs.

It is worth mentioning that national and foreign monitors established in all their reports that ProTV and TV7 demonstrated adequate conduct in covering the election campaign. However CCA “mixing all the TV channels” in fact camouflaged serious gaps in the conduct of some stations thus encouraging them in a way. CCA, as well as central public institutions we have referred to, mimed concern for adequately informing the public instead of “making themselves aware and taking measures to ensure the right of the citizens of the Republic of Moldova to complete, impartial and reliable information, the right to freely express opinions and the right to freely communicate information by means of television and radio.”<sup>75</sup>

## **6. The Citizen at the school of 2009: Lessons Learned?**

I do not have a decisive answer to this question. On 29 July 2009, the ordinary citizen was the one who gave a lesson both to the political class and to the media. But such lessons/reactions are really needed not only in elections. A reaction, I mean an adequate reaction to all that is happening, is always opportune, including a reaction to the distorted information that has been offered to the citizen with a shameful insistence and without exception in absolutely all the election campaigns, especially since 2003. Starting with general local elections in 2003, all international and national groups monitoring the process have noted the continuous degrading of the media message and pointed out negative, hostile language used by the media. But there has been no reaction: citizens have kept silent. If the independent press or the outlet that is trying to offer honest coverage is intimidated, harassed or even liquidated (e.g., Catalan TV, Antena C radio, EuroTV, 103.5 FM, *Accente* weekly), this is perceived as a problem of the media and journalists and not of information beneficiaries. The disappearance of any media institution confines “the free market of ideas,” makes it poorer and affects citizens as far as their constitutional and universal right to get information is concerned.

In the new history of the Republic of Moldova, the citizen has made modest efforts to protect the media, that is, to protect the right to information. I am talking about the isolated protests against the abuses committed with regard to Antena C radio, ProTV and TVR 1. There has even been an effort to stand up for consumer rights in compliance with the Audiovisual Code on the part of a citizen, Oazu Nantoi, who requested the closing of the talk show “Resonance” on Moldova 1. Contrary to the law, however, CCA readdressed the request to the public broadcaster. The administration of the latter opposed the legitimate request of the consumer who actually did not want to be misinformed by the talk show. The administration at that time repeatedly referred not to the essence of the request but to the political figure of the claimant, as if the legislation was different for ordinary people and politicians. Later, a former member of the Supervisory Board of IPNA Teleradio-Moldova when appointed to CCA was asked by Parliament why he had not “suspended the ‘Resonance’ talk show.” The answer was, “You don’t slaughter a hen that produces golden eggs.” The man apparently referred to the show’s rating not realizing that the difference between a public television station and a private one consisted in the fact that the former worked for the citizen and did not pursue ratings at any cost, while the latter worked for the consumer, thus trying to gain popularity at any price.

Popularity, that is ratings, is not always equal to value. Misunderstanding the mission of a public TV service did not prevent the former Teleradio Supervisory Board member from becoming a member of CCA. In the same order of ideas, we mention the praise by some CCA members at the end of 2009 for the candidates for vacancies on the Teleradio-Moldova

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<sup>75</sup> Drepturile omului și instituțiile democratice în perioada postelectorală în Moldova/ 6 aprilie – 1 iulie 2009/ Alexandru Postică, Ion Manole, Nadine Gogu et al., -Ch.:”Depol-Promo” SRL, 2009, -p.94

Supervisory Board, including for the applicants' intentions to attract foreign investment in the company. (!) You can only cross yourself: what does the board have to do with investments?! Neither the applicants for Board positions nor those for CCA membership had realized by 2009 what the actual mission of the Board was. Do we still have to wonder that the first Supervisory Board of IPNA transformed the public's advocate into the advocate of the administration of the public company?!

The majority of citizens is still being fooled by a good part of the media. At the same time, they still give it credit and their trust in it is inexplicably high. After church, citizens have most trust in the media. Twice as many citizens (61.5%) trust the media as trust political parties (29.4%).<sup>76</sup> So what do politicians who are good in image fabricating do? They "migrate" onto the pages, to the microphones and the screens of the media, which shares the trust of citizens with politicians. And they fake it out. They feel full of self-sufficiency and self-comfort. They do not have to win trust. Such a feeling is both misleading and harmful, both for the press and the citizen. In the short run, the situation is appreciated as stagnation; in the long run it is degradation.

## 6. In Lieu of a Conclusion

I read the latest news...

"Wars and contested elections are the most dangerous events for journalists..." "Parliament approved the candidatures of the six new members of the Supervisory Board of the National Public Broadcaster Teleradio-Moldova..." "BASA-press announced suspension of its activities from 1 January 2010 for an indefinite term..." "The government requests NIT television to vacate its rented premises..." "The Supervisory Board of Teleradio-Moldova dismissed television and radio managers after having dismissed Valentin Todercan from the chair of President of the company..." "[In Balti, the Komsomol show solidarity with NIT...](#)". "Two judges involved in 7 April cases were deprived of authority...". "Speaker Mihai Ghimpu is suing NIT TV for one million lei specifying that the civil action on the protection of honor and dignity related to the documentary 'The Attack on Moldova' is still open..." "The audit organized by the Court of Accounts within the Ministry of Interior established the withdrawal of funds of over 40 mil lei..." "In 2009, Moldova was placed among the top 10 countries with the greatest number of complaints to the ECHR..." "The General Prosecutor ordered the creation of a working group to investigate the criminal case against the former Minister of the Interior and the former Commissar General of the capital..."

I read the latest news at the turn of a new year. Although quite vague, a slight change for the better is perceived. Will it become more evident? It depends on the new government, but all the more on a government-independent media. It depends on media that will abide by the law and not by the government. The year 2009 indicates that both the former government and a good number of media institutions should take the exam on social responsibility again. The former government was sanctioned. The corresponding part of the media sooner or later shall be sanctioned too, not by the governors but by the governed—those who actually give their money because it is worth it or do not when they realize that it is not. This happens sooner or later, but it does happen. The sage surely would not wait for it.

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<sup>76</sup> Public Opinion Barometer, Chisinau, November 2009, -p.73//<http://www.ipp.md>