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About Moldovan Helsinki Committee for Human Rights

Moldovan Helsinki Committee for human rights is an independent, non-for-profit human rights organization founded by a group of human rights activists in Tiraspol, Transdnistria region of the Republic of Moldova in 1992 in the wake of dissolution of the Soviet Union.

Moldovan Helsinki Committee monitors the respect for human rights obligations undertaken by the Republic of Moldova before OSCE, United Nations, Council of Europe. It advocates for respect, protection and promotion of human rights values through providing independent expertise of human rights legal and practices compliance, public interest advocating and litigation, raising awareness of specific groups and general public of the serious human rights concerns guided by understanding of universal superior values of individual freedoms, social justice, equality and nondiscrimination.

Moldovan Helsinki Committee is a full member of the International Helsinki Federation for Human Rights (Vienna).

Moldovan Helsinki Committee comprehensive subject based and overall reports on the respect of human rights in the Republic of Moldova are solicited and relied on by many specialized entities, including those of the Council of Europe, as for instance, the Council of Europe High Commissioner for Human Rights (<http://www.commissioner.coe.int/documents/translsanshighlights.doc>), European Committee for the Prevention of Torture (<http://www.cpt.coe.int/fr/rapports/inf2000-20fr.htm>), PACE Monitoring Committee on the observance of obligations by the Republic of Moldova.

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Report Summary

The Report objective is to give an overview of the recent developments with regard to respect by the Republic of Moldova the obligations on freedom of expression and freedom of information. The submission is based on the series of reports produced by the Moldovan Helsinki Committee.

One of the most positive developments is considered to be the adoption by the Parliament of the Republic of Moldova in early 2000 a Law on access to information. The law is considered a major break through in guarantying the right to access to information; it contains essential substantive and procedural instrumental elements, as well as public interest test to balance different interests. However, the freedom of information guarantees could be significantly hampered by new provisions of the draft Civil Code (which will have superiority over the existing Law on access to information) and the variety of restrictive and actually contravening to the Law on access to information legal acts. Most notable they are: regulations on limiting access to parliamentary hearings records, practice of limiting access to court hearings, excessive costs charged for information disclosure.

Freedom of expression receives substantive limitations through unbalanced heavy burden imposed by civil legislation, requiring speaking exclusively truth. Draft provisions of Penal and Civil Codes enlarge public authorities control over freedom of expression, aiming to reinstall penal liability, including for offending public authorities. Political interests lacking institutional independence and public and civil participation unreasonably control public media.

Thus, all in all the Report overviews:

- recent drafting initiatives of the Penal Code and Civil Code relevant to the report subject;
- current relevant legislative provisions and practices supporting the significant drawback of the proposed drafts;
- noncompliance of the existing practices with the obligations to respect freedom of expression and information;
- critical situation with regard to the freedom of expression in public and private audiovisual media;

The Report overall conclusion is that authorities of the Republic of Moldova do not draw adequate conclusions and take necessary steps to improve the respect for freedom of expression and information. Moreover, upcoming initiatives will impose even higher and more restrictive conditions for functioning of press and exercising free speech.

Draft Penal Code Provisions Affecting Freedom of Expression

Moldovan Parliament has approved in the second reading the draft Penal Code. The present draft Penal Code contains provisions for even greater restrictions of freedom of expression than the present one¹. The draft Code penalizes expression of propaganda of incitement to war², expression of state secret³, defamation (calumny)⁴, insult⁵, confection or dissemination of works that make propaganda of violence and cruelty⁶, produce or dissemination of pornographic objects⁷, calumnious advertising⁸, insult (offense) of a judge⁹, calumny of a judge, prosecutor, investigator¹⁰, civil disobedience¹¹, profanation of state symbols¹², insulting a military servant.¹³

¹ See opinion of Moldovan Helsinki Committee on the provisions of draft Penal Code affecting freedom of expression (Ro).

² See Art. 135 "Propaganda of war" of Draft Penal Code. "1) Propaganda of war, dissemination tendencies or invented information, of nature that serves the incitement to war, or any other manifestation in favor of launching of a war, made in written, by voice, radio, television, cinema or by other means, - is penalized with a fine up to 500 minimal salaries or detention for up to 3 years, in both cases with ban to occupy a certain activity for a period of up to 5 years..."

³ See Art. 135 "State Secret" of Draft Penal Code. "State secret constitutes the information protected by state in the fields of military, economy, technical and scientific, external politics, intelligence, contra-intelligence and operative investigation which dissemination, opening, loss, unlawful give away or destruction may submerge the state security."

⁴ See Art. 167 "Calumny" of Draft Penal Code. "1) Calumny, the good known dissemination of false information that defame another person: a) by printed means; b) multiplied by other means; c) by a person previously condemned for the same doing—is penalized with a fine of up to 200 minimal salaries or with unpaid labor in favor of community for up to 100 hours or a detention for up to 3 years.

2) Calumny: a) followed by grave consequences; b) alongside with accuse of deed of an extreme grave crime;-- is penalized with detention for up to 5 years."

⁵ See Art. 168 "Insult" of Draft Penal Code "1) Insult, intentional lowering of honor or dignity of a person by actions, verbally or in written, -- is penalized with a fine for up to 100 minimal salaries or with unpaid labor in favor of community for up to 100 hours. 2) Insult: a) in a published work; b) multiplied by other means; c) by a person prior condemned for insult—is penalized with a fine up to 200 minimal salaries or unpaid work in the benefit of community for up to 200 hours..."

⁶ See Art. 235 "confection or dissemination of works that make propaganda of violence and cruelty" of Draft Penal Code "Confection, dissemination demonstration or depositing with the aim to disseminate or demonstrate of movies or videos or other works that propaganda the violence and cruelty – is penalized with a fine for up to 300 minimal salaries or unpaid labor in the benefit of community from 180 to 240 hours or with detention for 2 years.

⁷ See Art. 234 "Produce or dissemination of pornographic objects" of draft Penal Code. "Produce or dissemination of pornographic objects, printed publications, pictures or other objects with pornographic character as well as commerce with them or depositing them with the aim of selling or dissemination, -- is penalized with a fine for from 200 to 500 minimal salaries or with unpaid labor in the benefit of community from 180 to 240 hours, or detention for up to 2 years"

⁸ See Art. 291 "Calumnious advertising" of draft Penal Code. "Using in calumnious information intended to products, works or services, as well as to producers (authors , sellers), made in the interest of profit, if produced a considerable downs to the interests protected by law of juridical or physical persons, is penalized with a fine from 200 to 500 minimal salaries or detention up to 2 years."

⁹ See Art. 345 "Offense of a judge" of draft Penal Code, "Offense of a judge or parties of the process that contributes to the administration of justice or other gross violation of a public order in the court, - is penalized with a fine from 200 to 500 minimal salaries or with unpaid labor in the benefit of community from 180 to 240 hours, or detention for up to 6 months."

¹⁰ See Art. 346 "Calumny of judge, prosecutor, investigator, penal investigation person, sentence executor" of draft Penal Code, "(1) Calumny of a judge, or another person that contributes to administration of justice in relation with examination of case or materials in court, -- is penalized with a fine for from 200 to 500 minimal salaries or arrest for up to 6 months or detention for up to 2 years; (2) same actions, made towards a prosecutor, investigator, a person that administrates penal investigation, sentence executor in relation to administration of justice or execution of a sentence, of a judicial decision or other judicial act, -- is penalized with a fine up to 300 minimal salaries or arrest from 3 to 6 months, or detention up to 2 years. (3) Actions provided in (1), (2) of the article, combined with accusation of a grave or exceptional crime, is penalized with a fine for up to 300 to 600 minimal salaries or detention up to 4 years."

¹¹ See Art.381 "Civil disobedience" of draft Penal Code, "(1) Persons that impede in active manner the implementation of requirements of the Constitution of Moldova and other laws of Moldova by open civil disobedience and provoke others for same actions, -- is penalized with a fine for 400 minimal salaries or unpaid labor in the benefit of community from 200 to 240 hours or detention up to 3 years. (2) Same actions, followed by an appeal for civil disobedience in mass of the requirements of the Constitution and other laws of Moldova, as well as organization of them, -- is penalized with a fine from 300 to 600 minimal salaries or detention from 3 to 7 years, (3) Actions stated in (1) or (2), made by the leaders of state administration, enterprises, institutions and organizations

The proposed provisions represent clearly a step towards establishing a criminal sanctioning machine against freedom of expression in the Republic of Moldova. Notable, the current provisions of the Penal Code do not contain them.

Draft Civil Code Provisions Affecting Freedom of Expression

Moldovan Parliament has approved in first reading the draft Civil Code. The draft contains a number of provisions that affect the freedom of expression and freedom of information: prohibition of dissemination of information that violates non-patrimonial personal rights¹⁴, protection of honor and dignity¹⁵, right to secrecy of family life¹⁶, right to image¹⁷, general limitation clause for non-patrimonial rights¹⁸, new rules for regulation of freedom of information¹⁹.

In the light of discussions that follow, the new provisions are not considered a satisfactory development in view of better protection of freedom of expression and right to information²⁰.

disregarding the type of property that bring prejudices to the interests of state or public, -- are penalized with detention up to 3 years with privation to occupy some positions or exercise some activities for a period more than 5 years."

¹² See Art.382 "Profanation of state symbols" of draft Penal Code, "(1) Profanation of state symbols (flag, hymn, sign) of the Republic of Moldova or another state or violation of the way of using of them, -- is penalized with a fine up to 500 minimal salaries or with detention up to 3 years. (2) The same actions, made: a) in a repeated way; b) by a prior agreement by a group of persons, -- is penalized with a fine from 200 to 700 minimal salaries or detention from 2 to 6 years, (3) Actions mentioned in (1) or (2) made by persons occupying functions of responsibility for using of state and national symbols, -- is penalized with a fine from 500 to 800 minimal salaries or detention from 4 to 7 years in both cases with privation of right to occupy certain functions or exercise certain actions for a period up to 5 years "

¹³ See Art.415 "Insulting a military servant" of draft Penal Code, "(1) Insult of a superior by an inferior, and the inferior by superior in relation with exercising of obligations of military service, -- is penalized by sending the guilty to a disciplinary military troops up to 2 years or detention up to 3 years (2) Same action made: a) in the time of war; b) in the time of fighting, -- is penalized with detention up to 5 years."

¹⁴ See Art. 32 of draft Civil Code "if personal non-patrimonial right can be violated by means of materials prepared for publication in journals, papers, radio, tv, cinema programs, at the request of the interested person, court is in right to forbid the dissemination or publication of this materials. And if the information is already disseminated, at the request of interested person, the court is in right to decide to seize and destroy the whole journals, papers, books, program, etc"

¹⁵ See art 14. of draft Civil Code: "1. any person has the right for respect of honor and dignity. 2. any person has the right to ask for denial/refutation of affirmations that slander person's honor and dignity, unless the person who disseminated the information proves that the information corresponds to the reality. 3..."

¹⁶ See art. 44 of draft Civil Code: "No one is in right to interfere with family life without the respective consent of the person, and to disseminate data about private personal life and family life, that have become known in relation with the exercise of person's function or from other sources."

¹⁷ See art.55 of draft Civil Code: "1. No one is in right to make photo, create, publish and disseminate or by other means spread the person's affecting information (photo, movie, audio-visual recording, drawing, or other artistic opera, etc) without the consent of the person. 2. The person's consent is presumed for making photo, audio-video recordings if they are done at meetings, gatherings, conferences, etc and in other places of concentration of people in mass. 3. At the gatherings, meetings, conferences, etc making photos of the participating persons, can be done by persons who have respective authorization of the organizations. 4. Obtaining person's photo without person's consent, can be effectuated according to legislation. 5. The photo can be disseminated against person's will if this information protects person's interest or the interests of other persons. 6 The person's consent for publication or dissemination of photo is presumed if he/she received payment for it"

¹⁸ See art. 30(3) of draft Civil Code "...3. Physical person is in right to dispose himself/herself, if not violating the rights and liberties of others, public order or good morals"

¹⁹ See art. 51 of the draft Civil Code: "1. A person has the right, in conformity with the law, to obtain, utilize, and disseminate information. 2. The right to information should not cause prejudices to the measures of legal protection of persons or state security. 3. Researching of information that constitute state secret or commercial secret, as well as selecting, keeping, using and disseminating of information about private life of a person against his/her will is not allowed. 4. Information presented by a person, while exercising his/her function as well as information from official sources is considered true. 5. A person that utilizes and disseminating information is obliged to be convinced about the truth ness of information and is fully responsible for the risks and effects resulted from the non-execution of this obligation."

²⁰ Excerpt from Moldovan Helsinki Committee analysis of the draft Civil Code provisions:

Current Civil Defamation Provisions

Civil legislation of Moldova inherited the traditions of Soviet law and places severe restrictions to freedom of expression. It is characterized by a lack of clear concept of the interests protected, persistence of the Soviet collectivist morality codified and applied by judges, lack of the standard of liability for the media, failure to make distinctions of opinions from facts, non-recognition of the constitutional dimension of defamation and non-compliance with the European Convention case-law.

Constitutional Court sustained constitutionality of defamation provisions of art. 7²¹ of the Civil Code limiting of freedom of expression. In its June 8, 2000 decision the court failed to make distinction between "facts" and "value judgment" interpreting the notion of "information". It cites in decision's support provisions of art. 32(2, 3)²² of the Constitution of Moldova and art. 4 of the Press Law. Both referred provisions received as earlier as in 1998 critics as being unacceptable vague and broad. These provisions were subjects of modifications to be brought in the line of the European standards.

In a June 19, 2000 explanatory decision of the Plenum of the Supreme Court of Justice of the provisions of art. 7 of Civil Code, however stated clearly that the notion of "information" should invoke liability only if "the critics are false from the point of view of facts or are excessively offensive". At the same time the second part of the explanatory decision contains further explication of the definition "information-to be understood any wording of fact, a opinion or an idea..." Although, the decision of the Supreme Court of Justice is extremely elaborated and specific it still seems to be controversial and fails to give several other guarantees for freedom of expression, developed by the European Court of Human Rights and other courts: exception from liability in case of fact inexactitudes proving reasonable journalistic practice, weight of public interest, etc.

- draft art. 42 (1) does not give the definition of "honor", "dignity" that uses in the law. The great confusion in Moldovan court practice imposes the imperative for clear definition of these terms and needs for different reglemntation.

- draft art. 42 (2) uses the notion "affirmation" that includes both facts and opinions that is in this context imposes unreasonable restriction.

- draft art. 42 (2) imposes burden of proof of truth on the journalist:

a. It is out of logic to request from the journalist to demonstrate that his/her opinions corresponds to reality and is true;

b. Before the journalist is hold liable the versus party should demonstrate the actual loss or damage caused;

- draft art. 42 fails to provide journalists legitimate defense:

a. There is a greater public interest in knowing than to protect "reputation".

b. There is no malicious intention in journalist action.

c. Journalist cited with accuracy the public sources and due references.

d. Journalist made reasonable investigations and made use of normal practices of documenting practices in the field and in the country..

- Draft art 42 does not give the definition of "public person" or the person that by virtue of the subject becomes a public person, and therefore requiring a different legal arrangements or at least corrections for interpretation.

²¹ relevant portion words "any person ...has a right to judicially revert the information that abuses his/her honor and dignity, if that who disseminated the information fails to prove the information corresponds to reality...".

²² Article 32. Freedom of Opinion and Expression. (1) All citizens are guaranteed the freedom of opinion as well as the freedom of publicly expressing their thoughts and opinions by way of word, image or any other means possible. (2) The freedom of expression may not harm the honor, dignity or the rights of other people to have and express their own opinions or judgments. (3) The law shall forbid and prosecute all actions aimed at denying and slandering the State or the people. Likewise shall be forbidden and prosecuted the investigations to sedition, war, aggression, ethnic, racial or religious hatred, the incitement to discrimination, territorial separatism, public violence, or other actions threatening constitutional order.

Moldovan Helsinki Committee submitted an amicus curiae to the Constitutional Court hearings, bringing in its attention art. 10 of the European Convention case law, leading Lingens and other cases and Moldovan courts practices violating the freedom of expression under auspices of art 7 of Civil Code.

Courts Civil Defamation Practice

In May 1999, the Moldovan Parliament modified Art. 7 of the Civil Code, invoking compliance with European norms following the observation made by the PACE²³ Committee on honoring of obligations undertaken by Moldova. The new wording states that: "any person ...has right to judicially revert the information that abuses his/her honor and dignity, if that who disseminated the information fails to prove the information corresponds to reality... ". The proposed formulation so again fails to distinguish opinions from facts. In several cases-Rosca v. Nezavisimaia Moldova²⁴ paper (Chisinau Tribunal and Court of Appeal), Ionascu and others v Busuioc and Express paper²⁵ (Court of first instance, Chisinau Tribunal, Court of Appeal) and many others, newspapers and journalists are limited thus in the freedom of expression when commenting on the political performance and doctrine of a politician or quality of services given by an air company. Also, the law stipulates that the journalist should prove the information correct, otherwise he/she could be found guilty. In absolutely all cases, be it the case²⁶ of a politician - which runs contrary the decision of the Lingens v Austria of the European Court - or a public servant, the court requests the plaintiff (the journalist) to present evidence that provided information is true.

The persistent Soviet mentality of interpretation, although not decisive, still influences the Plenary of the Supreme Court of Justice of the honor and dignity failing to clearly distinguish interests protecting of self-esteem and appreciation by public. The same rules gather both interests. The standard of liability is lacking thus the national courts developed strict and rigid standard of liability in all cases involving defamation. The same way court decisions impose the burden of proof on the journalist in all cases unless the journalist proves the truth, even where the truth is unavailable.

Freedom of Commercial Expression

The Moldovan Parliament passed in its second reading an amendment to Art. 8(3) of the Law on advertisements that would pose limits and threats to freedom of commercial expression²⁷. The modifications, if adopted and enforced, would eventually lead to the closure of several commercial advertising papers, most of

²³ PACE- Parliamentary Assembly of the Council of Europe.

²⁴ the phrase '...coming to power of his allies in the name of Mr Rosca,...would mean the catastrophe for the Republic of Moldova as an independent state' was classified as defamatory by 6 judges (N.Cibotaru, N.Cernati, A. Cobaneanu, T.Vieru, V. Bogos, T.Lazar) in two instances.

²⁶ See cases: Loteanu v. Nezavisimaia Moldova, Munteanu v. Tineretul Moldovei, Rosca v Nezavisimaia Moldova, Ionasco v. Express, Dinu v. Libertatea (1999), etc in the report 'Civil Defamation vs Freedom of Expression in the Republic of Moldova' by the Moldovan Helsinki Committee for Human Rights.

²⁷ 'Advertisements are placed in the official language and upon the request of the person placing adds with a parallel translation in other acceptable languages. Exteriors advertising in other languages than the official are admitted only by duplication in the official language (with the exception of the registered trade mark). The text in the official language is written as primary one. It is not admitted placement of the advertisements in media, dissemination of leaflets, other written carrier only in the language other than the official one'

which publish in Russian, a matter dictated by market circumstances. Also, the amendments fail to distinguish ads of private character from others, and impose greater restriction on commercial expression in the language other than the official one. The amendment fails to comply with the case law on the freedom of political expression adopted by the United Nations Human Rights Committee in the *Ballantine v. Canada* case.

Access to Court Hearings

A representative of the Moldovan Helsinki Committee was denied access to courtroom to monitor a case of public interest without motivation. On 21.06.2000, the Chisinau Court of Centru district – a court first instance scheduled hearings of Mihaiescu case, the later being accused for illegal participation in an unauthorized student strike. The presiding judge D. Suschevici denied repeatedly access of the representative of Moldovan Helsinki Committee to observe the trial proceedings giving effectively no motivation. The parties raised no objection for the trial to be observed.

The president of Centru court of Chisinau – a court first instance refused the Moldovan Helsinki Committee complaint and the Chisinau Tribunal in its 17.08.2000 decision found that "courts lack jurisdiction to trial" of the alleged violation of access to court hearings in this case. The Court of Appeal annulled the Tribunal decision and sent the case of alleged violation of access to court hearings to be examined by Centru section of Chisinau Court of first instance disconsidering other allegations of the Moldovan Helsinki Committee.

Access to Parliamentary Hearings Records

On April 2001, the permanent Bureau of the Parliament of the Republic of Moldova adopted an unpublished decision nr 7-XV on the way of keeping the records of parliamentary hearings and a Regulation describing the way the records could be accessed and used.

Regulation on accessing the parliamentary hearings records provides a limited and closed list of people²⁸ and cannot be accessed by people outside of the Parliament²⁹.

The access to records is decided by the consent of chief of Parliamentary apparatus and the records of closed sessions of the Parliament by president of the Parliament, vice presidents or by general director of the apparatus of the Parliament³⁰. Finally, the information about parliamentary sessions to the representatives of different

²⁸ See art. 1 of the Regulation: "Parliamentary hearings records can be given upon solicitation to: a) parliamentarians, b) consultants of the permanent commissions, c). Public servants of the Parliament, d) members of the Government, president of the Constitutional court, and president of Accounting Chamber".

²⁹ See art. 4 of the Regulation: "Hearings records are not given to persons outside of the Parliament, with exception of cases provided by law."

³⁰ See art. 2 of the Regulation: "Parliamentary hearings records are given only by the permission of the heads of the Parliament apparatus, the records of closed hearings by permission of the president of the Parliament, vice-presidents or general director of the apparatus" and art. 6 "in case when parliamentarians solicit the records of the parliamentary hearings to present as an evidence in court or to give it large circulation, the permission is given by president or vice-presidents of the Parliament."

public authorities is given only with the permission of the heads of the commissions³¹.

The decision does not provide any substantive provisions for disclosing or forbidding access to records.

Limitations on Grounds of “defaming nation and state”

Coordinating Audiovisual Council (CCA) decided withdrawal of license to broadcast of a private TV company on the grounds of “contesting and defaming the state and nation”. On August 29, 2000 CCA decided to suspend the license of a private TVC21 cable TV station for a period of three months. It motivated its decision that on 29 July, 2000 TVC21, in the informative news program aired an interview with one of the leader of self-proclaimed “Dniester Moldovan Republic” (“DMR”) about “DMR” recent local elections. CCA arguments that “...the interview with Maracuta, a person that fights for separation of Moldova as a unitary state and incites for territorial separatism” violates the Constitution. The decision grounds on the provisions of art 32 (3)³² of the Constitution of Republic of Moldova and art. 3³³ of law on Audiovisual.

The incident takes place while provisions of art. 32(3) of the Constitution and art. 3 of law on Audiovisual had been under scrutiny of monitoring of PACE³⁴ Committee on honoring of Moldova’s obligations before the Council of Europe in the context of not application these limitations of freedom of speech. Moldovan Government proposed draft modifications of the mentioned legal provisions to comply with the mentioned obligations.

Limitations to Broadcast in Unofficial Language

Coordinating Audiovisual Council initiated the withdrawal of broadcasting licenses of several radio-stations that “were violating the provisions to broadcast at least 65% of total airtime in the official language”. The Coordinating Audiovisual Council warned with withdrawal of licenses “Russkoe radio”, “Radio Nostalgie”, “Radio D’or”, “Serebreannii Dojdi” for failure to respect art. 13(3)³⁵ of the Law on Audiovisual. On

³¹ See art. 5 of the regulation: “Ministers, departments, other public institutions that solicit information about parliamentary sessions, hearings records are given with the permission of heads of permanent parliamentary commissions, head of the parliamentary apparatus, and records of closed hearings only with permission of president and vice-presidents of the Parliament.”

³² Article 32. Freedom of Opinion and Expression.

...

(3) The law shall forbid and prosecute all actions aimed at denying and slandering the State or the people. Likewise shall be forbidden and prosecuted the investigations to sedition, war, aggression, ethnic, racial or religious hatred, the incitement to discrimination, territorial separatism, public violence, or other actions threatening constitutional order.

³³ Article 3. The freedom of audio-visual expression presupposes the strict observance of the Constitution and does not allow the detriment of other persons' honor, dignity, private life and right to have their own views.

³⁴ PACE-Parliamentary Assembly of the Council of Europe

³⁵ Article 13. (1) The public audio-visual companies are broadcasting operatively and free of charge all communications of public interest, sent from the Parliament, from the President of the Republic of Moldova and from the Government. The procedures to diffuse the official information are established with the agreement of the TV & Radio Coordination Council. (2) The audio-visual companies, public or private, are required to inform within the established period of time about the emergency situation and natural calamities. (3) Audiovisual institutions, public or private, broadcast at least 65% of their audiovisual programs in the state language. This provision does not extend to the TV programs broadcast via satellite and provided by cable, as well as foreign stations and stations that broadcast in areas compactly populated with ethnic minorities. (4) At least 50% from the programs of public audiovisual institutions will consist of products made in the Republic of Moldova.

Court of appeal satisfied the petition brought by Club of Students graduated from High Education Institutions from Abroad and Romania (CAIRO) against Coordinating audiovisual council and eventually against the mentioned radio-stations obliging the Council to withdraw the respective licenses.

Meanwhile, The Parliament of Moldova interpreted art. 13 (3) of the law on audiovisual in a such a manner that the obligation to air at least 65% of the total airtime applied only for local (Moldovan based) radio-stations, excluding retranslating stations. The Supreme Court of Justice is to examine the case on appeal in late January 2001.

Limitations on Electoral Political Propaganda

Moldovan Parliament modified art. 23/1³⁶ of the law on Audiovisual forbidding local broadcasters to insert local information in programs produced and retranslating on the territory of Moldova. That modification targeted primarily political adds during elections. Constitutional Court, however, declared on 14 December 2000, the modifications unconstitutional.

Transdnister Region

Local Transnistria authorities created a very aggressive informational environment towards any deviation from the official ideology. As cited in paper "Baltiscaia gazeta" in the opinion of "chairman" of the Supreme Soviet of DMR, G. Maracuta those who do not recognize the DMR should be not tolerated and Sevtov-Antiufeev, the chief of DMR security added,; "it is necessary to pull out of the circulation a certain number of people! ... today in DMR as well as in the ex USSR, was created a similar situation as in Moscow. We have an attitude towards this situation according to the position of the 1980-1990 years, and this is not right. We have to have an attitude like in 1945-1947, when all activities directed against the order was equal to a crime against the state order."

With overall population in DMR of probably less than 500 000, a number of military: military detachments of a special destination and security forces of DMR as well as other paramilitary reaches the number for about 8 000-10 000.

Mass-media is activating in the conditions of a serious censorship, imposed by the Tiraspol administration. Already for 8 years by the means of mass-media is very insistently created the image of the enemy that is for them the constitutional power from Chisinau and all the attempts to relieve the situation from a tolerant point of view is considered as a betrayal. As an example of the freedom of expression is the one of the paper "Novaia gazeta". On January 28, 1999 the officers of the "ministry of security" confiscated without any legal support the circulation of the paper "Novaia Gazeta" only because this paper published more opinions regarding the perspective of solving the transnistrian conflict. Although the general prosecutor of Transnistria considered these actions illegitimate, later were confiscated two papers more. On June 4, 1999 the "ministry of security" confiscated again the circulation of the paper.

³⁶ Article 23/1 (2) of law on audiovisual says "Audiovisual institutions cannot combine retranslating with making, producing and emitting of original audiovisual programs on frequencies (channels) which carry the retranslating of programs of news produced abroad, with exception of commercial adds.", 22.06.2000.

DMR press law forbids creation of media by foreign citizens as citizens of Moldova are considered. At the moment there are no non-state or state papers published in Moldovan, Ukrainian or other languages in the region. There are several programs on DMR state television (mainly official news) in Moldovan language and the same in Ukrainian with total time about two hours per day. There are no private audiovisual operators in any language, according to rule, only the Government of Transnistria may set up an audiovisual media.

Police Disperse of Students Strike

On 17-18.04.2000 a group of around 6 000 students get together in National Assembly plaza and in front of City Hall in a strike protesting against recent decision of the City Hall council lifting travel and other social benefits. The announcement of the public went on in mass media a day before the events took place.

On 18.04.2000 there were detained³⁷ around 50 students on the grounds of "active participation in an unauthorized strike", provided in art. 174/4³⁸ of the Code of Administrative sanctions, on the grounds of " using in public place injurious expressions" provided in art. 164/4³⁹ of the Code of Administrative sanctions. The strikes on 17.04 and 18.04 were dispersed by police. The police relied on the provisions of art. 5,⁴⁰ 11,⁴¹ 12(2)⁴² of the law on peaceful assembly and carrying out public events to justify illegality of the meetings. The organizers complained of the restrictive and actually unachievable formulation and procedure of obtaining the authorization that allows the police to outlaw the strikes and meetings and detain the participants.

On 18.04.2000 M.Mihaiescu, participating in the event was bitten to unconscious, afterwards transported by police to hospital and detained in custody for 8 hours resulted on "active participation in an unauthorized strike" grounds. On 18.04.2000 C. Ziliberberg, participating in the event was hunted out by police, detained for 7 hours and sanctioned on "active participation in an unauthorized strike grounds. Similar 20 other cases are registered only by the Moldovan Helsinki Committee.

Police Ban a Constituting Meeting of Gay and Lesbian Organization

On 23.10.2000 a group of gay and lesbian planned to hold a constituting meeting at public library hall of Hajdau library for which concluded a contracted for this place. On the day event the director of library advised tem to change the meeting in a Art

³⁷ This is the estimation made according to the data collected and researched by the Moldovan Helsinki Committee.

³⁸ Art. 174/1(4) provides "Active participation at the an authorized meeting in the condition of art. 174/1 (2)"
Art. 174/1 (2) provides "Organization and carrying out a meeting without the consent of City Hall , as well as for violations of conditions (way, place, time) of carrying out a meeting indicated in consent"

³⁹ Art. 164 provides "Petty hooliganism, injurious words and expressions in public places, ... other similar actions that tulburate public order and peacefulness of citizens..."

⁴⁰ Art. 5 says "Declaration of meetings. Meetings can take place only after being declared by the organizers at City Hall."

⁴¹ Art. 11 says "Beforehand declaration. 1. Organizer of the meeting submits to City Hall, at least 15 days in advance of the date of meeting, a declaration of intention"

⁴² Art. 12(2) says "City Hall, examines the beforehand declaration submitted in its extraordinary or ordinary session, ...and takes the decision of authorization"

Library at Izmail street, "since the Chisinau police would be very angry"-as the director of the public library hall of Hajdau library said them and that a group of aggressive students of theology will boycott the meeting outside. The group went to Art library at Izmail street where started the meeting, when at the certain moment the vice Commissioner of Chisinau Police-Mr. A.Covali, intruded and asked A.Marcikov-the leader of organization for the certificate of registration of the Gender-Doc and other constituting documents. There produced heated discussions and as participants said threats on behalf of police, the event half-way resulted in discontinuation of the meeting.

The police justified its intrusion relying on law on assembly and holding public meetings that requires consent of public authorities to hold a public meetings⁴³ and in principle prevent unregistered groups to exercise peaceful assembly.

Privacy, Private Data Protection⁴⁴

The Law on postal services and the Law on telecommunications provide that the prosecutor, the executive authority responsible for criminal investigation, presenting charges in court and supervising the enforcement and application of the legislation, authorizes the wire-taping, control of the correspondence and home interference. The respective law provisions lack clear and narrowly worded conditions when these activities may be undertaken and are deemed basically as normal practice rather when other measures are not effective or failed in results. The respective authorities are not compelled by duty to provide notification to the investigated persons, usually the authorizations are with no indication of time limit, the information collected is available to the respective institution with no control and consent whatsoever by the investigated person. The courts as a rule accept evidence obtained in this way and no cases are known when the legality of the data or the way it has been collected would be challenged or dismissed in court. Theoretically, the judicial review of the authorized interception is available and one may seek only afterwards, still, no legal remedy is prescribed by law and the intercepted is disadvantaged since he/she has to present evidence before the court, demonstrating the fact of the intervention and the investigating authorities bear no positive obligation to disclose data collected this way.

Moldova, however signed the Council of Europe Convention (108) on data protection and is under a positive obligation to pass a national law protecting the administration of private data. To date it has done little to elaborate, modify and adopt necessary laws. The mentioned Convention has no legal force, until a national law is passed. Meanwhile, a number of laws provide for the collection of data by the public authorities. For instance, Art. 9(h) of the law on security and intelligence services provide this collection of data, with no obligations towards citizens. Access to private data, collected, stored and used, sometimes, when deciding upon the individual, as for example provided in Art. 9(I) of the law on security and intelligence services, is completely beyond the control of the individual. The provision states that the public authority, "before engaging a public servant, will receive data on the person" from the security and intelligence service. A person has no statutory right to demand from the public authorities to disclose this data under any circumstance. An individual

⁴³ See Student strike section discussions of legal provisions

⁴⁴ See also chapter on Government Accountability

cannot rectify or erase incorrect data. Moreover, pursuant to Art. 5(3) of the law on security and intelligence services, the institution is exempt from disclosing the information if it may "...damage the honor and dignity of person..." Explicitly, there is no judicial review available in this respect. As for the moment there are no cases known before the judiciary.

The protection of data in the financial sphere of banking system is poorly regulated, so that in private banks, for instance, one needs consent from the police to get information about the details of a bank account of a third person.

The Moldovan Helsinki Committee receives letters and complaints from prisoners and detainees that are stamped and accompanied by information about the content of the letters provided by the institution's authorities.

Freedom of Expression and Audio-Visual Broadcasting

Up-dates on the law on audiovisual media?

In May 1999 Moldovan Parliament modified several provisions proposed by the representatives of the civil sector⁴⁵ and mass media. Also other modifications of the law intervened, so that according to Art. 7(1) directors of National television and Radio-the only nation-wide covering broadcast stations - are appointed and dismissed by the political majority with no statutory grounds provided for in the law.

Modified Art. 13 (3) of the law provides an obligation for all private and public audiovisual media to air at least 65% of the total airtime in the official language with the exception of territories compactly populated by the ethnic minorities. It is, yet, unclear what regions, with exception of the Gagauz Autonomous and Administrative Unity, will be considered regions compactly populated by ethnic minorities as there is no statutory provision in this respect. Art. 32 (1) obliges all audiovisual institutions, including private one's, given the license for satellite retransmission to broadcast also programs of national television. Also, Art. 47 (3, 4) requires the consent of the Coordinating Audiovisual Council (CAC) on making agreements of airing programs of audiovisual institutions of other states as well as all agreements and conventions between Moldovan and foreign audiovisual institutions to enter in force after being validated by Coordinating Audiovisual Council. The same institutions, according to modified provisions of the Art. 13(1) stipulate, that they should air other official materials, upon the decision of the CAC, with no explicit conditions and cases provided.

The above-mentioned modifications are considered by Moldovan human rights advocates and media representatives even more harsh and restrictive, allowing a very broad margin of potentially abusive interpretation by the Coordinating Audiovisual Council and political majority.

⁴⁵ See 1999 IHF Annual Report and IHF Human Rights and Civil Society newsletter.

Interpretation of the Law on Audio-visual Broadcasting

The Law on Audiovisual was adopted in October 1995 and promulgated in December same year. The government has passed the decision # 4 of April 8, 1997 and since then the Coordinating Council on Audiovisual (CCA) has begun functioning. Therefore, only in 1997, the conditions were created for the application of Law on Audiovisual. Since then it went through a series of misinterpretations and missapplicatons. The most outrageous examples of abusive interpretation of the law provisions were due to both imperfection of the law and inadmissible interference by the legislative and the executive branches.

Beyond that, the law also contains certain provisions that contravene or conflict with international human rights principles on freedom of expression and right to information, principles of independent mass media.

General Consideration on Freedom of Expression

The Constitution of the Republic of Moldova on the freedom of expression does not serve a favorable interpretative framework for the Law on Audio-visual. Article 3 of the law⁴⁶ requires strict respect of the Constitution, i.e. specifically art. 32⁴⁷. Beside the restrictions in the law, the Constitution itself imposes considerable limitation on the freedom of expression. The third part of art. 32 "forbid[s] and prosecute[s] all actions aimed at slandering the State or the people" as well as "other actions threatening constitutional order". The broad and inexplicit formulation coupled with the tendency to criminalize these actions cannot be considered acceptable. The last portion "other actions threatening constitutional order" requires mandatory the specification of qualified manifestations. Otherwise, any opinion or manifestation expressed contesting the legitimacy of the state or constitutional order is suppressed totally. The wording of limitation cannot exceed the limitations on the exercise of the freedom of expression stipulated in art. 10 of the European Convention. It is obvious that the law provisions are more restrictive.

The Constitution lacks essential provisions to guarantee the independence of the press and audio-visual institutions as well as the independence/autonomy of the public administration/authority to assure the autonomy and independence of the mass media. Art. 107⁴⁸ of the Constitution of the chapter on Public Administration, constitutionalizes only "other administrative authorities" "in order to manage, coordinate and control...areas outside the direct responsibility of ministries". In comparison with the article of Constitution, art. 14⁴⁹ of the law stipulates that the

⁴⁶ Art. 3 say "Freedom of audio-visual expression presupposes strict respect of the Constitution and cannot prejudice one's dignity, honor, private life and right to personal imagine."

⁴⁷ Art. 32 of the Constitution say "(1). All citizens are guaranteed the freedom of opinion as well as the freedom of publicly expressing their thoughts and opinions by way of word, image or any other means possible. (2). The freedom of expression may not harm the honor, dignity or the rights of other people to have and express their opinions or judgments. (3). The law shall forbid and prosecute all actions aimed at denying and slandering the State or the people. Likewise shall be forbidden and prosecuted the instigation to sedition, war, aggression, ethnic, racial or religious hatred, the incitement to discrimination, territorial separatism, public violence, or other actions threatening constitutional order.

⁴⁸ Art. 107 of the Constitution say "(1) Ministries constitute the state's specialized agencies. They put into practice under the law the Government's policy, decisions and orders exercise control over their areas of competence and are answerable for their activities. (2) In order to manage, coordinate and control the national economy, as well as other areas outside the direct responsibility of ministries, other administrative authorities may be set up in accordance with the law."

⁴⁹ Art. 14 of the law say "Coordinating Council of Audio-visual is an independent public authority..."

autonomy of the CCA lacking the provision on independence and autonomy of public mass media. There is an essentially obvious difference between the restrictive constitutional provision and declarative autonomy of CCA in the law. Thus, one may well have argumentatively based doubts of the weakness of both the law and the Constitution to provide legislatively the independence of public mass media.

The law lacks the necessary reference to international human rights treaties applicable to Moldova in view of its interpretation. As of the date of adoption of the law, the Republic of Moldova adhered to several European and International human rights instruments⁵⁰ directly applicable, according to art. 4 of the Constitution, and providing well elaborated and established interpretative standards of the principles on mass-media independence, freedom of expression, right to information and other. Unfortunately, it has not been implemented through the direct reference to those international instruments available directly, as the international principle requires.

Independence/Autonomy of CCA⁵¹

The Law invests the CCA with two basic functions: to provide regulatory framework for functioning of private audio-visual institutions; to assure the independence of public audio-visual mass media in view of providing democratic pluralism of opinions. As we will see later the CCA, in exercising the first objective lacks essential exclusive legislative provisions and therefore suffers from substantial interference by the Government (Ministry of Communication and Information); and to the second objective lacks functional autonomy that is substituted by the discretion of the Parliamentary majority.

The Law on Audio-visual fails to guarantee fully statutory and functional independence of the CCA from the interference of other public authorities. Art. 7(2)⁵² of the law refers to the procedure of appointing audio-visual officials of the public mass media institution. The stipulations in the law appointment procedure essentially infringe upon the independence of the CCA and public mass media institutions. The declared autonomy of CCA, in art.14, is overlapped by interference on behalf of the legislative. The current political parliamentary majority validates the proposal of CCA.

Moreover, the withdrawal procedure of public mass media officials was not even stipulated in the first version of the law as of October 1997. Subsequently, in November 1997, the Parliament interpreted the appointment procedure as the right to withdraw without even prior approval of CCA. The CCA is simply excluded from assuring public mass media independence with the legislative directly exercising functions of the autonomous public authority.

The case of Usatai and Turcanu clearly demonstrated the weakness of the law to provide CCA autonomy. After the Parliament's abusively conventional interpretation of the art 7(2) it subsequently attempted to amend the law integrally disregarding the CCA from the appointment/withdrawal procedure. Thus, it once again emphasizes the overall weakness of the Constitution to provide the independence of

⁵⁰ International Covenant on Civil and Political Rights, European Convention of Human Rights and Fundamental Freedoms.

⁵¹ Art. 31 (1) say "CCA is constituted from 9 members: 3 by the Parliament (one specialist in audio-visual); 3 by the President (one specialist in audio-visual); 3 by Government (one specialist in audio-visual)..."

⁵² Art. 7(2) of the law say "President of the State Teleradio Company, Director General of television and Director General of radio... as well as other leaders of public radio institutions are named (appointed) by Parliament upon the proposal of CCA for the term of 5 years".

specialized public authorities (read CCA) to assure the independence of public mass media from direct infringements and politically convenient maneuvers.

The CCA does not have exclusive functional jurisdiction to issue authorization and licenses for the functioning of an audio-visual institution. On several steps, as one can see according to the law,⁵³ the Ministry of Communication and Information (MCI) requires its acknowledgment and approval. The technical based grounds for nonapproval or nonacknowledgment by the MCI used, as many private audiovisual mass media institutions alert⁵⁴, to question and undermine the independence of the CCA and exercise actually content-based restrictions.

Content Based Restrictions

The law stipulates considerable restrictions on criticizing public officials when exercising their duties. Art. 3 contains two provisions; "freedom of expression presupposes strict respect of the Constitution" and freedom of expression "cannot prejudice one's dignity, honor, private life and right to personal image". Provisions of the article lack the distinction of private person from the public official. It is essential, because the level of openness to criticism of a public official is much higher than of the private person. Namely, the dissatisfaction of the current situation by people may eventually refrain upon the personnel of the public officials. Therefore, Moldovan mass media is in a vulnerable situation when criticizing a public official. Moreover, as it will be shown later on, Penal Code provisions still maintain criminalization of criticism directed to a public official when exercising his/her duty.

Article 37 (1)⁵⁵ coupled with art. 43⁵⁶ allege the substitution of society self-censorship with the state one, institutionalized through the CCA and the MCI (read the Government). The mandatory norms imposed to private audio-visual institutions on publicity may be legitimately interpreted as considerable commercial speech limitation. The commercial speech, and there is no doubt about it, should bear the same scrutiny on limitation as symbolic one. The article provision lacks it and even furthermore, limits the volume of commercial speech. The legitimacy of such a limitation may be questioned for simply the reason that commercial speech, as it is well known, promotes private trading. The final sintagma of art 37(1) leaves the CCA with impermissible broad jurisdiction "to establish...other norms related to the application of the present law". It may undoubtedly be amounted to abusive interpretation.

An audio-visual institution may be sanctioned for airing the information reflecting the position of the journalist and not of the audio-visual institution. Provisions of Art. 40⁵⁷ allows the Government (see article 43 and provisions of Penal Code discussed later

⁵³ Art. 16(1) say "Number of licenses to emission is approved by CCA with prior acknowledgement of Ministry of Communication and Information.

Art. 20(1) say "Ministry of Communication and Information (MCI) together with the audio-visual mass media set up the conditions of broadcasting/airing" (2) "MCI issues technical license..."

⁵⁴ See V. Osipov, executive director of Radio d'Or, "Licenses fight back", in Mass Media in Republic of Moldova, July 1997. Published by Center for Independent Journalism. The same is said in many private conversations.

⁵⁵ Art 37(1) say "CCA establishes for all audio-visual institutions mandatory norms as to: publicity (that cannot exceed 25% of total airtime), sponsoring, the contestations to be solved out, as well as the other norms related to the application of the present law"

⁵⁶ Art. 43 say, "In case when a bearer of license and of authorization does not respect the obligations resulted from them and does not conform the public alert, CCA or MCI are entitled to apply sanctions provided in legislation."

⁵⁷ Art. 40 (1) say "The liability for the content of the information aired by means of equipment of the audio-visual institution that resulted in moral or material downs goes, from case to case, in conformity with the legislation, to producer, author or bearer of the license".

on) have the audio-visual institution liable, determined by broad and not explicit wording of the law. The liability of the audio-visual institution for the journalist's position aired should be excluded or at least clearly and explicitly stipulated in the present law. The reference to legislation entirely, in that case, otherwise encourages application and invocation of content-based restrictions contained in the Moldovan legislation.

The difficult and long procedure to obtain authorization, in which the MCI implied twice, allows direct content-based interference of the Government. Articles 15(2, 5)⁵⁸, 16(1)⁵⁹ and 19(1)⁶⁰ establish a three step procedure. The procedure undermines the autonomy and independence of the CCA first, with the condition to have a prior technical admission from the MCI to apply for a license of emission from the CCA, and afterwards to apply for technical license from the MCI for granting authorization to broadcast from the CCA. Furthermore, the MCI admits number of frequencies available to be open for competition. All of these regulations actually, as experience and conversations with private audio-visual mass-media institutions show, make the interference of the Government quite substantially sound. This procedure contravenes, moreover, an international principle that stipulates that only one independent public authority with public and private audio-visual related, with clearly drawn up jurisdiction, is exempted from the infringements of the Government.

The Government may propose a court to seize the activity of an audio-visual institution on content-based grounds. Art. 41⁶¹ in the first paragraph invests the CCA to control the content-based obligations assumed, if issued the license of emission. The license of emission refers only to content of the programs as found in art. 15(1)⁶². The second paragraph invests the MCI as well as the CCA with control over the information aired by an audio-visual institution. Here again is a clear imixtion on behalf of the Government with the CCA's jurisdiction and direct interference with mass media.

Restrictions on Activities of Journalists

The law imposes further limitations, than those stipulated in international human rights instruments applicable. Article 30 (1)⁶³ coupled with 44(b)⁶⁴ violate fundamental freedoms and liberties which are being restricted by labor contracts, and provisions of essentially restrictive art. 3. Art. 44(b) allows the Government to prosecute, invoking Penal Code provisions, journalists that prepared and distributed the programs with violation of art.3.

⁵⁸ Art. 15(2) say, "License of emission is issued by CCA through competition of audio-visual institutions bearers of technical admission (issued by MCI). Technical admission is issued within 30 days since the solicitation lodged...(5) Access of social-political, cultural, religious and other organizations to audio-visual programs is made in conformity with the present article, and in conditions established in the license of emission".

⁵⁹ Art. 16(1) say, "Number of licenses of emission, for which the competition is announced, is made by CCA with prior admission by MCI."

⁶⁰ Art. 19(1) say, "Authorization to broadcast is granted by CCA on the basis of license of emission (issued by CCA with prior technical admission by MCI) and technical license (issued by MCI)."

⁶¹ Art. 41 say, "(1) CCA controls the respect of obligations resulted from the license of emission. (2) In case of violation of these obligations, CCA or MCI warns, in public, respective audio-visual institution or initiates the motion of seizure of the institution in court."

⁶² Art. 15(1) say, "License of emission composes all categories of information to be aired in public."

⁶³ Art. 30 (1) say, "Journalist (a) will not commit violation of art.3; (b) will respect the requirements that resulted from the present law, statute of audio-visual institution and labor contract concluded."

⁶⁴ Art. 44(b) say, "(b) preparation and distribution of programs with violation of provisions of art. 3"... "is prosecuted in conformity with the legislation."

The "Law on Audio-visual" lacks the relevant provisions providing the journalists' accreditation and the remedy for the accreditation refusal. The respective regulation may be found in "Press Law" and a variety of Government's rules.

Monopolistic Restrictions

The Government has priority access to public audio-visual institutions. Art. 13(1)⁶⁵ legitimizes the priority access to public audiovisual institutions of the government. The priority access is conditioned with the "of public interest" information. One, as logic helps, can hardly, if at all, imagine the information of nonpublic interest from the Government. Therefore, it can be undoubtedly concluded that the Government simply legitimized the priority of access to information in the Republic of Moldova. At the moment, it is inadmissible, when state television covers the whole territory and the private one has just made its first steps. It might be much more reasonable to leave the Government priority access with the information of vital interest for the society or something more restrictive and clearly worded. Moreover, the last phrase "other official information is established in common with the CCA" allows pressure on behalf of the Government on the CCA.

Penal Provisions

Moldovan Penal Law contains several provisions that criminalize "profanation of national symbols", "outrage of a public official" and "calumny of state official without malicious intent".

Expression of criticism or insult, by means of symbolic speech, of the national symbols is outlawed and penalized by the present Penal Code. Art 203(2)⁶⁶ allows the government suppression of symbolic speech of a social value having as the means of expression national state symbols of the Republic of Moldova or symbols of other state. The absolute protection of the state national symbols by a vague and broad formulation of wording "profanation" (in Romanian "profanation" carries the meaning of treatment without respect) cannot be legitimately justified in a democratic society. Symbolic speech, having a social value and contributing to societal discussions presents an inalienable part of an expression targeted on insatisfaction of the Government, its agencies and public officials. The broad meaning of "profanation", being abusively interpreted, inadmissibly limits peaceful expression of criticism (through teaching, publication, research, etc...) or even insults that do not intend or are not likely to incite imminent violence. Moreover, Symbolic expression with state national symbols may have different aspects of the message: economic, political, social, and all of them may present vital interest for the society. The article's wording does not relate the likely or imminent effect or consequences produced by speech with the content of the message and its societal value.

Public officials enjoy higher criticism protection than non-official persons and have immunity against criticism targeted at exercising their functions. Arts 205⁶⁷ and 205

⁶⁵ Art. 13(1) say, "Public audiovisual institutions air with priority and free of charge the information of public interest from the Parliament, the Presidency and the Government. The airing of other official information is established in common with CCA"

⁶⁶ Art 203 (2) of the Penal Law say, "Profanation of state national symbols of the Republic of Moldova or a of other state, is penalized with deprivation of liberty of up to 3 years or with correctional work for up to two years, or with penalty of up to 50 minimal salaries. The same actions, made for the second time or with an agreement of group of people, is penalized with deprivation of liberty with up to 7 years or with a penalty from 50 to 70 minimal salaries...."

⁶⁷ Art. 205 of the Penal Law say, "Outrage against of a representative of state power or against a representative of a nongovernmental organization that maintain public order when they exercise their functions, is penalized with

(1)⁶⁸ essentially restrict the expression of information communicating about personal abilities and skills of a public official, a member of the Ministry of Interior or a servant of a nongovernmental organization that exercise the function to maintain public order and combat criminality. It is an inadmissible limitation to consider the insult of a public official, viewed in certain situations as the extreme response to inadequate and provocative behavior on their behalf, an act to undergo penal prosecution. The broad and inexplicit wording of outrage may also raise legitimate concerns in view of the state's attempts to considerably restrict the speech. There are also overwhelmingly many known cases of police violence and intimidation-provoking individuals a back word fight reaction. Art. 205 (1) goes even farther on tabooing personal criticism of the police officer justifying it with the extremely broad "outrage of honor and dignity".

The public affirmations of a private individual or a journalist without malicious intent are the subject of state prosecution. Art 205 (2)⁶⁹ defines the calumny as spreading or circulation of obvious false information, be it in printed or written form. It is easy to see that the obviousness of one's opinion on the origin or truth of information does not necessarily coincide with the other's opinion on that. Mass media namely serves the role of the watchdog in the society and make the information transparent of abuses of power and force, etc. There is also the another side at stake, even if the information is found to be not true; one should always weigh the intent of the mass media. The large wording of the article allows outlawing the information positively intended to contribute to discussion having social value, however wrong it is later confirmed to be.

Concluding Points

In the authors' opinion, the following provisions are considered vulnerable as to international human rights standards and require modifications:

- Art. 32 (2), art (2-4) of the Constitution of the Republic of Moldova;
- Art. 3 of the Law on Audio-Visual in view of defining of level of openness to criticism of public officials and their delimitation from private persons;
- Art. 30 and art. 44 in view of more restrictive obligations imposed by labor contracts;
- Art. 13 (1) in view of eliminating of priority of state central authorities access to mass media;
- Art. 7(2) and art. 31(2) in view of exempting the CCA from infringements of legislature's abusive interpretations;
- Art. 29 in view of providing with remedy the access to information;
- Art. 37 and art. 43 in view of exercising of right to private property and separation of powers;

correctional work for up to 6 months or with penalty of up to 30 minimal salaries or calls for application of measures of social influence. The same actions made in public are penalized with correctional work for up to one year."

⁶⁸ Art 205 (1) say "Outrage of the police officer (outrage of his honor or dignity), outrage of other person from Ministry of Interior or of a person serving in an official capacity as well as in a nongovernmental organization to maintain public order and combating of criminality, expressed by actions, verbally or in written, made repetitively within the period of one year after an administrative sanction against similar actions, is penalized with the deprivation of liberty for up to 6 months or with correctional work for the term of up to one year, or with penalty for up to thirty minimal salaries."

⁶⁹ Art. 205 (2) of the Penal Code say, "Calumny of a collaborator of order protection state organizations, or distribution of obvious false and defaming information as to his/her professional activities including calumny by printing or other mean of multiplication through mass media, anonymous letters, is penalized with deprivation of liberty of up to 3 years or with correctional work for up two years or with penalty of up to 30 minimal salaries."

- Art. 41 (2) and art 43 in view of providing the CCA with sole independence and independence from the Government;
- The modifications of Penal Code provisions.