



REFORMS IN MASS MEDIA FROM 2009 - 2013: *from Promises to Actions*

A STUDY

*of the Objectives and Priority Actions
for Mass Media within the Moldovan
Governments' Programs from 2009 to 2013*

THE FOLLOWING INDIVIDUALS CONTRIBUTED TO DEVELOPING THE STUDY
"REFORMS IN MASS MEDIA FROM 2009 TO 2013: FROM PROMISES TO ACTIONS"

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INTRODUCTION

After the parliamentary elections held on 29 July 2009, the Moldovan non-communist political parties gained enough mandates in the Parliament to remove the Communists Party from its eight-year long position as the ruling majority. Our country, according to the new government's statements, began its path to strengthen democratic values based on the ideals of political pluralism and protection of civil liberties. This change in power also created conditions for developing independent media outlets, a commitment publicly and fully made by the new Moldovan authorities. Thus, the priority objectives and actions for the media sector included in the three governments' programs from 2009 to 2013 referred precisely to the problems in this area and referred directly to the Moldovan media situation in 2009, when the country was categorized as having a 'non-free press,' according to credible international organizations that assess democratic development around the world. Even though some of the governments' programs were too general and others had unclear objectives and actions, the scope of reforms included developing or amending a large number of legal acts and interventions in significant areas of the media. The commitments referenced several important problems, including the sufficiency and quality of legal and regulatory acts; transparency in media funding and media ownership; the functioning of the public broadcaster; the operation of the broadcast regulator; the transition to ground digital television; access to public interest information; conditions for developing media outlets and structures related to media activities; and stimulating investigative journalism, etc. Achieving these objectives, as ambitious as they were, would have set a solid foundation for developing a free press, which is essential for democracy, and would have spurred the development of truly democratic principles.

In the following study, we will assess to what extent the authorities have honored their commitments to solve the problems in the media sector. This study includes an overview of the priorities, objectives, and actions of the Moldovan Government in the media sector from 2009 to 2014 and a review of its execution of the major commitments through the end of 2013. The study also contains a short presentation of other media-related initiatives launched in the same period, the topics of importance to the government, and conclusions from the research. The authors have also developed a set of recommendations and proposals that will be useful for solving the existing issues within a reasonable timeframe.

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Priority Objectives and Actions for Mass Media of the Moldovan Government from 2009-2013

- **Filat-1 Government (25 September 2009 – 27 December 2010)** – Activity Program “European Integration: Freedom, Democracy, Welfare” (established from 2009 to 2013);
- **Filat-2 Government (14 January 2011 – 30 May 2013)** – Activity Program “European Integration: Freedom, Democracy, Welfare” (established from 2011 to 2014);
- **Leancă Government (31 May 2013 – present)** – Activity Program “European Integration: Freedom, Democracy, Welfare” (established from 2013-2014)

Filat-1 Government	Filat-2 Government	Leancă Government
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Liberalizing Media Space and Guaranteeing Freedom of Expression

GOVERNING OBJECTIVES		
Align the legal framework that regulates media operation with European norms and standards	Align the legal framework regulating media operation with European norms and standards, including the adoption of a new Broadcast Code.	Modernize the operation of the Public National Broadcaster “Teleradio-Moldova”
Improve editorial freedom and professionalism of the National Public Broadcaster “Teleradio-Moldova.” Eliminate political interferences in the work of the Observers’ Council of “Teleradio-Moldova”	Reform and modernize the operation of the National Public Broadcaster “Teleradio-Moldova”	Ensure press freedom and media pluralism as well as create optimal conditions for the operation of media outlets
Ensure the autonomy of the Broadcast Coordinating Council (BCC) in fulfilling its mission to represent and guarantee the public interest	Ensure press freedom and create optimal conditions for the operation of media outlets	Stimulate investments in the local media market

Filat-1 Government	Filat-2 Government	Leancă Government
GOVERNING OBJECTIVES		
Create the necessary conditions for developing the media	Stimulate investments in the local media market	Guarantee access to public interest information
Integrate Moldova into the European information space	Assure access to public interest information and stimulate investigative journalism	
PRIORITY ACTIONS		
Improve the independence of the public broadcasting by depoliticizing the BCC and not appointing members of the Observers' Council of "Teleradio-Moldova" based on political criteria.	Align the Moldovan legal framework regulating media operation with European norms and standards.	Align the Moldovan legal framework regulating media operation with the European norms and standards.
Ensure transparency in granting and removing broadcast frequencies by publishing the announcements about the contests in the national media and allow for reasonable timeframes to prepare the applications.	Continue the reforms at the Public National Broadcaster "Teleradio-Moldova" by modernizing the management and ensuring sufficient funding.	Accelerate reforms at the Public National Broadcaster "Teleradio-Moldova" by ensuring sufficient funding.
Develop media market in Moldova.	Create adequate conditions for the work of the structures related to media operation (audit bureaus of circulation, audience measuring companies etc.)	Guarantee transparency in granting and removing broadcasting frequencies and assess the use of ground licenses in accordance with their destination.
Develop the Moldovan audiovisual sector and the laws on the operation of public broadcast services in accordance with international recommendations and best practices.	Ensure the autonomy and enhance the operation of the BCC in fulfilling its mission to represent and guarantee the public interest.	Create incentives for producing content for local broadcasting in the state language.
Draft a law on freedom of expression with mechanisms that would prevent political interference in the operation of public broadcast services and would repeal the law on the press.	Guarantee transparency in granting and removing broadcast frequencies and assess the use of ground frequencies in accordance with their destination.	Ensure transparency in funding media and media ownership.
Establish a preferential fiscal framework for the media.	Create equal conditions for the operation of Moldovan media outlets by strictly regulating the relay of foreign channels.	Exempt online media from VAT on revenues from their operation, regardless of their profit margin.

REFORMS IN MASS MEDIA FROM 2009 - 2013: FROM PROMISES TO ACTIONS

Filat-1 Government	Filat-2 Government	Leancă Government
PRIORITY ACTIONS		
Liberalize the local media market.	Improve the legislation with special provisions on transparency of media ownership and limit the concentration of media ownership.	Promote the new version of the law on advertising and law on the press.
Improve the severity of sanctions for restricting access to information and for failure to provide public interest information in the timeframes established by the law.	Immediately exclude from the Tax Code the provision requiring media to pay the local advertising tax of five percent.	Stimulate direct foreign investments in local media and in related areas such as the polygraph industry and distribution.
	Exempt online media from VAT on revenues from their operations, regardless of their profit margin.	Implement digital television and create more informational sources from multiple TV and radio stations at the international (for the Diaspora), national, regional and local levels
	Stimulate foreign investments in the local media and in related areas such as the polygraph industry and distribution.	Facilitate mechanisms for transmitting Moldovan media to the diaspora to help them maintain their relations with the country and increase their level of information about events in the country.
	Implement digital television and create more informational sources from multiple TV and radio stations at the international, national, regional and local levels.	
	Adopt a new version of the law on advertising that complies with the new time requirements and the need to develop a truly free press.	
	Implement a new strategy for developing broadcasting that stimulates the stable development of independent media in Moldova.	
	Remove fees for obtaining public interest information.	

Access to Information

Commitment

Access to information is mentioned in the activity programs of the three governments since they took power in 2009. The objectives of Filat-1 and Filat-2 governments included ***guaranteed access to public interest information and the stimulation of investigative journalism***. The priority actions included ***increasing the penalties for restricting access to information and for failure to provide public interest information within the timeframe established by the law***. It also ***removed fees for obtaining public interest information***. None of the commitments had been kept by the end of 2013, although some improvement were noted in regards to the fees required by state agencies for accessing public interest information. The activity plan of the Leancă Government has only one general provision: ***guaranteed access to public interest information***, without specifying the actions needed to reach this goal.

Background

Access to public interest information generates diverse opinions every time discussions are held about the level of freedom and working environment with the Moldovan media sector. In general, the national legislation creates favorable conditions for exercising the right to information, which is guaranteed by the Moldovan Constitution (article 34) and by the Law on Access to Information¹. These are in compliance with the international norms found in such documents as the Universal Declaration of Human Rights² (article 19) and the Convention on the Protection of Human Rights and Fundamental Freedoms³ (article 10). However, media and civil society representatives in past years have raised many issues about the deficiencies in the laws that hinder the media by restricting or even obstructing journalists' access to public interest information. The roadmaps and memoranda on press freedom prepared by civil society from 2009 point out the difficulties in accessing public interest information due to issues with civil servants and the controversial character of many legislative and normative provisions.

In such a situation, the press cannot fulfill its role to inform the public about what is happening in the society. In order for the information to be credible, journalists need to have access to public interest information, taking into consideration that this access cannot be absolute and can be limited in accordance with legislative provisions (such as considerations of national security, territorial integrity or public safety, or those related to the protection of other people's rights).

1 Law on Access to Information nr. 982 din 11.05.2000: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=311759&lang=1>

2 Universal Declaration of Human Rights: http://legislatie.resurse-pentru-democratie.org/drepturi_onu.php

3 Convention for the Protection of Human Rights and Fundamental Freedoms: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=285802&lang=1>

Provisions

The Law on Access to Information forms the principles of state policy in regards to access to official information, including restricted access to information and non-admission of discrimination among applicants. The law sets out strict timeframes for processing requests but also outlines the requirement to provide explicit reasoning in writing for any refusal. The information and document requests must be provided to the applicant from the moment they are available but no later than 15 working days from the date of registering the request for access to information. The Law establishes the procedure for collecting fees for information and specifies the situations when the information is to be provided free of charge. Also, the Law establishes the functions of the structures and persons responsible for media relations among the public authorities, who are required to provide journalists promptly with any public interest information related to the work of the public institution they represent, as well as provide accreditation to media representatives without delay and discrimination. In addition, they must inform in a timely manner and secure journalists' access to public interest activities and actions organized by the public institutions, etc.

The law sets out the cases when the information is not available for free access, namely when it constitutes a state secret; trade secret; private data; relates to operative and investigation activities; reflects the final or intermediary results of scientific or technical investigations and disclosing it may prevent the authors from the publishing it or may adversely influence other rights protected by the law.

Problems

Since the passing of the Law on Access to Information 13 years ago, media representatives report difficulties with accessing information they need in order to cover accurately and objectively topics of public interest. Although the Law corresponds to international standards, it is not always useful to the media, mainly because civil servants do not enforce it properly. Investigative journalists face many issues when they investigate public interest stories, such as refusals or delayed replies to requests for access to information as well as incomplete answers that do not provide the necessary details and information⁴.

Civil servants many times refuse to provide information, referencing the provision regarding state secrets or trade secrets⁵, as well as other legal provisions that do not contradict the Law on Access to Information. The Law on the State Secret no. 245-XVI of 27 November 2008, for example, provides for restrictions on items published by the media and may limit public access to official information. The Law on Trade Secret no. 171-XIII of 6 July 1994 contains a number of internal contradictions and provisions, which make interpretation very difficult, including a deficient definition of what constitutes a 'trade secret,' as well as an incomplete list of trade secret topics, etc. The Law on Counteracting Extremist

4 Access to Information and Transparency in Decision-Making: Development and ... Inertia. Annual Monitoring Report 2011. Centrul Acces Info: www.acces-info.org.md/upload/UNKNOWN_PARAMETER_VALUE.pdf

5 Monitoring Press Freedom in the Eastern Partnership Countries. Press Freedom Index. Moldova. July-September 2013: <http://media-azi.md/ro/publicatii/indicele-libert%C4%83%C8%9Bii-presei-iulie-septembrie-2013>

Activities no. 54-XV of 21 February 2003 establishes measures for holding the media accountable for disseminating materials promoting extremism. The provisions are too general and vague, whereas the term ‘extremist activity’ can include expressions and actions that usually are tolerated in a democratic state. Penalties, such as shutting down a newsroom for extremist activities (art. 7), may lead to censorship, self-censorship, and discourage media outlets from participating in debates involving public interest topics. Used in bad faith, the law may restrict some human rights, especially freedom of expression and freedom of creation, both set forth in the Moldovan Constitution (art. 32 and art. 33). Although these issues were pointed out in a broad study developed by “Access Info” Center in 2007⁶, in the past six years, the situation has remained unchanged without any improvements to these laws.

The normative acts that impede the full implementation of the Law on Access to Information include the Law on the Code of Conduct of Civil Servant no. 25 of 22 February 2008 that stipulates that only the officers authorized to do so may communicate with the media on behalf of the public authority. This provision may prevent the officers from expressing their opinions, criticizing or reporting fraud and violations of the Constitutional art. 34/1 on the right of each person to access public interest information. Although the law was amended on 27 December 2011⁷, the new provision ensures the protection of officers who in good faith inform the commission about corruption and related actions, including corrupt behavior, failure to observe the rules on declaration of income and property, and violations of the legal obligation on conflicts of interests. Media experts believe that this provision will not make the officers more open to the media. Recently, many state agencies have included provisions in their internal rules that limit communication with the media to only the press officer or the person authorized for this purpose.⁸

An insufficient number of staff necessary to respond to requests is another reason given by public officials. The governments analyzed within this study have been reluctant to allocate enough funds to make the law functional.⁹

Another problem concerns the lack of severe sanctions for those who obstruct access to information. The Code for Contraventions no. 218-XVI of 24 October 2008, for example, imposes somewhat insignificant fines (of 40 to 50 conventional units, one unit being equal to MDL 20), if a public officer fails to provide access to information. For civil servants who deliberately provide erroneous information, the fine can be up to 45 to 55 conventional units.¹⁰ The Criminal Code also stipulates that a deliberate violation of the law on access to information by a person in a position of responsibility, which has caused considerable damages to the rights

6 Normative Acts: Conformity with the Law on Access to Information. Acces Info Center. Chişinău 2007

7 Law no.277 of 27 Dec 2011 on Amending and Completing Certain Legislative Acts: <http://lex.justice.md/md/342057/>

8 Monitoring Press Freedom in the Eastern Partnership Countries. Press Freedom Index. Moldova. July-September 2013: <http://media-azi.md/ro/publicatii/indicele-libert%C4%83%C8%9Bii-presei-iulie-septembrie-2013>

9 Access to Information and Transparency in Decision-Making: Development and ... Inertia. Annual Monitoring Report 2011. Central Acces Info: www.acces-info.org.md/upload/UNKNOWN_PARAMETER_VALUE.pdf

10 Media Landscape of Eastern Partnership Countries, Yerevan Press Club, 2011: http://www.ypc.am/upload/Media%20Landscapes%20of%20EaP%20Countries_eng.pdf

and interests protected by the law of the person who requested information, regarding on public health, public safety, environmental protection, shall be punished by a fine of 150 to 300 conventional units with (or without) the deprivation of the right to hold certain positions or to practice certain activities for a term up to three years. The Code of Administrative Offices stipulates that any violation of the legal provisions on protecting and ensuring the right to access to information can incur a fine of 10 to 150 conventional units. However, these sanctions are not fully applied because, thus far, no significant cases for violating the Law on Access to Information have been reported.

Another problem concerns public officials who ignore the law in bad faith, while others, especially from regional and local structures, are ignorant of the legal provisions. In many cases, the information supplied by the state structures is screened and only such information that is convenient to the officials is provided. In addition, many of them do not provide public interest information without prior approval from a superior and often refuse to answer the telephone calls from journalists, thereby delaying the time it takes to verify certain information.¹¹ This state of affairs is possibly due to a lack of internal rules within public agencies that would clearly establish the functions and obligations of the authorized persons, as well as the procedures and mechanisms for settling requests from registering to responding to it. The studies of the past years¹² have indicated a growth in responsibilities and workload for the persons who provide official information, including additional duties not related to the position. Another observation is the frequent transfer of responsibilities from one person to another or partial delegation thereof, as well as the inefficient, and many times inadequate use of electronic communication means in the settlement of requests pertaining to the Law on Access to Information.

The fee journalists must pay to obtain public interest information is also considered an impediment. Such agencies as the State Company “Cadastru” or the State Registration Chamber (SRC), to which the journalists often appeal when investigating certain subjects of public interest, collect fees that, if accumulated over time, may equal thousands of lei. In this way, newsrooms must pay large amounts of money for investigations, which can put them in difficult financial situations. Media representatives note that after the government changed in 2009, it became much easier to get information from the SRC, sometimes even free of charge; however, information about public officials’ properties is still difficult to obtain. The investigative weekly, *Ziarul de Gardă*, for example, finds that journalists do not have access to data about properties owned by dignitaries and that some categories of officials, such as prosecutors, who are not required to make their income and interest declarations public.¹³ Therefore, documentation in an investigation is rather cumbersome, lengthy, and most of the time, costly. These factors, besides other conditions such as threats and risks to journalists,

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- 11 Monitoring Press Freedom in the Eastern Partnership Countries. Press Freedom Index. Moldova. July-September 2013: <http://media-azi.md/ro/publicatii/indicele-libert%C4%83%C8%9Bii-presei-iulie-septembrie-2013>
 - 12 Access to Information and Transparency in Decision-Making: Development and ... Inertia. Annual Monitoring Report 2011. Central Acces Info: www.acces-info.org.md/upload/UNKNOWN_PARAMETER_VALUE.pdf
 - 13 Eight Hard Years and Eight Hard Problems. *Ziarul de Gardă*, 26 July 2012: <http://www.zdg.md/exclusiv/8-ani-lungi-si-8-probleme-grele>

as well as unfair court trials, have hindered the work of investigative departments in most newsrooms.

Recommendations

In order to facilitate access to information and increase journalists' ability to obtain and use public interest information, it is necessary to:

- ▶ Adjust a number of normative acts to the level of international standards and to adhere to the provisions in the Moldovan Constitution and the Law on Access to Information. These include the Law on State Secrets, the Law on Counteracting Extremist Activities, and the Code for Contraventions, etc;
- ▶ Develop and adopt a legal mechanism that would make the Law on Access to Information more functional and facilitate access to public interest information. This mechanism should:
 - Ensure maximum access to information i.e. any information held by a public institution must be accessible to the public with any exceptions clearly defined;
 - Ensure the publication of the information i.e. public agencies should not only provide information upon request but also publicize documents of public interest;
 - Introduce procedures to facilitate access to information i.e. the requests for access to information must be processed in a timely manner and the officers should be trained on how to formulate official answers so that the response and requested information is clear to citizens;
- ▶ Monitor how the law is implemented and impose sanctions on those who refuse to provide requested information. This could be done by establishing special bodies or institutions to control the implementation of the law, and could include specialized agencies or information commissioners;
- ▶ Eliminate the official fees required of journalists for public interest information. Provide direct electronic access for journalists to the SRC data and unconditioned online access to the asset declarations for prosecutors and other special categories of public and officials. Provide adequate access to the data of the State Company "Cadastru" for the journalists involved in investigations of public interest.

Freedom of Expression

Commitment

Freedom of expression is guaranteed in all the activity programs of the democratic governments since 2009 until today. The governing objectives of the Filat-1 Government included ***aligning the legal framework regulating media operation with European norms and standards***, one of the priority actions being ***drafting the law on freedom of expression that would provide for mechanisms to prevent political interference in public broadcasting***. This law was approved in 2010.

Background

A group of judges from the Supreme Court of Moldova (SCJ), as well as journalists and representatives of civil society, developed the draft law on freedom of expression in 2006 on the initiative of the Independent Journalism Center (IJC), The draft law was endorsed by Moldovan and foreign experts, such as representatives of CREDO, Article 19, ABA CEELI, as well as by the Civil and Administrative Review College of the Moldovan SCJ, and then submitted to the Parliament in 2007. However, the 16th Legislature, with a communist majority, did not show interest in the draft law and, accordingly, did not register it as legislative initiative. After the government changed in 2009, the draft law was placed on the Parliament's agenda and registered as legislative initiative by a group of MPs from the Liberal Party. The Law on Freedom of Expression was passed on 23 April 2010 and published in the Official Gazette on 9 July 2010. In accordance with the current legislation, laws come into force three months after publication in the Official Gazette; therefore, the Law on Freedom of Expression has been in effect since 9 October 2010¹⁴.

To a certain extent, the passing of this law contributed to increasing Moldova's press freedom rating and respectively led to a change in the status of the press from 'not free' to 'partially free,' according to reports by international institutions.¹⁵ The passing of the law was often mentioned as a success by the Moldovan authorities at European forums, especially within the Eastern Partnership.

In 2013, the Criminal Code was completed with additional articles 180 (1) "Deliberate Obstruction of Media Work or Intimidation by Criticism" and Article 180 (2) "Censorship"¹⁶, that established fines of 150 to 1,000 conventional units, with or without deprivation of the right to hold certain public functions, for intimidation by criticism, obstructing the work of media outlets and journalists, and for unjustified censoring or distorting journalists' reporting. These additions were

14 Law on the Freedom of Expression no. 64 of 23 April 2010:
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=335145>

15 Freedom of the press annual report, 2011, Freedom House:
<http://www.freedomhouse.org/report/freedom-press/freedom-press-2011>

16 Law no.40 of 21 March 2013 for Completing the Criminal Code of Moldova no.985-XV of 18 April 2002:
<http://lex.justice.md/md/347483/>

derived from the Law on Freedom of Expression as mechanisms needed to safeguard freedom of expression and protect against censorship.

Provisions

The Law on Freedom of Expression aims to secure the right to free expression and information as well as create a balance between securing the right to free expression and information and the right to protection of honor, dignity, professional reputation and private and family life. The document includes criteria and procedures to protect the right to free expression, freedom of expression in media, prevent censorship in the media, protect the right to criticize the state and the public authorities, the right to respect for privacy (including the privacy of public persons), the right to respect for honor, dignity and professional reputation, the right to presumption of innocence and protection of sources. At the same time, it contains specific procedural provisions that must be followed in examining cases of defamation and in protecting privacy and family life.

According to the law, the media are tasked with informing society about and investigating public interest issues. Any person has the right to receive public interest information through the media. Also, any person has the right to protection of one's honor, dignity and professional reputation if injured by dissemination of false reports and facts, value judgments based on insufficient facts, or by insults. However, protection of honor, dignity or professional reputation cannot prevail over the freedom of citizens to obtain public interest information.

The new law established the procedure for examining cases of defamation and introducing additional requirements in summons to court proceedings, which meant to facilitate the examination of complaints. The manner of calculating the state tax for examining such complaints was changed. The law also explains the burden of proof and the presumptions to be applied in such cases, the manner of publishing of denials and responses and assessing moral damages caused to individuals and legal entities, as well as the circumstances that exclude liability for defamation. The Law also defines the procedure for examining cases to protect privacy.

The Parliament amended article 3 of Law no. 192 of 12 July 2012 on Completing Certain Legislative Acts to forbid propagation and/or use of symbols associated with the totalitarian communist regime (the sickle and the hammer and anything with these symbols) for political purposes and promotion of totalitarian ideologies. Subsequently, the Communists Party appealed to the Constitutional Court on the unconstitutionality of these legal provisions. On 4 June 2013, the Constitutional Court declared article 3 para. (4¹) of the Law no. 64 of 23 April 2010 on Freedom of Expression as unconstitutional, according to the Law nr. 192 of 12 July 2012 on Completing Certain Legislative Acts.

Problems

The need to develop the draft law on freedom of expression was determined by the complexity of court litigations on freedom of expression involving violations of the honor, dignity, professional reputation or privacy of other persons. Although very complex, many such cases were considered superficially with references made to a number of national legislative acts, such as the Civil Code, Code on Administrative Offences, Broadcast Code, Law on Press, but also the Moldovan

Constitution. As a result, plaintiffs often won these cases on insufficient grounds, yet with significant damages ruled in their favor on the principle that freedom of expression was not clearly defined in Moldovan legislation. This situation created impediments to the work of the press, weakened freedom of expression, and often resulted in Moldova being held liable by the European Court of Human Rights (ECtHR). Therefore, it was necessary to align the Moldovan law with European standards.

Civil society supported this law and had high hopes for its implementation. The expectation that the passing of this law would, on one hand, contribute to exempting courts from cases without chances of success but that are used by various persons as a means to intimidate the press and, on the other, would facilitate the adequate examination of this type of cases. The correct application of the law was to prevent violations of the right to free expression and thereby, significantly reduce Moldova's convictions at the ECtHR. Another expectation was that the law would stimulate investigative journalism and provide the necessary safeguards related to the freedom of expression, as established by ECtHR case law.

In order to facilitate understanding and application of the Law on Freedom of Expression, IJC developed a commentary¹⁷ of the legislative text with explanations of the new terms in the law and of the ECtHR judicial practice according to which the new provisions were to be interpreted and enforced. This commentary was distributed to journalists and judges, as well as posted on the IJC website.

Nonetheless, in the years that followed the passing of the law, no visible improvements were noted. Courts have continued to accept defamation complaints when the plaintiff demands significant sums in moral damages from the media. In addition, the development of investigative journalism has stagnated as it did before 2010. Researchers studying the situation after the passing of this law found that it had little impact during the first years of implementation, mainly because journalists were not well informed about the legal provisions relevant for their profession and court representatives did not know about the law.

An IJC study on the impact of the Law on Freedom of Expression from October 2010 to July 2012¹⁸ showed that many journalists did not know about the legal provisions and were not interested in the legal aspects of the law. Most of the media representatives interviewed as part of the study did not know the provisions in the Law on Freedom of Expression and did not have the commentaries thereof. A monitoring of the reports produced by the media showed that in many cases the journalists erroneously interpreted the legal provisions and some fundamental concepts regulating the work of journalists. In most cases, journalists did not know what rectifying, denial, response and apologies were, which prevented an efficient examination of the preliminary complaints. Also, journalists often confused the terms – public person and person who carries out a public function. Many times a journalist's personal curiosity in a topic then raises its status to the level of public interest news.

17 Commentary to the Law on Freedom of Expression, Independent Journalism Center, Vladislav Gribincea, Anastasia Pascari, Olivia Pîrțac, Chișinău 2011: http://www.ijc.md/Publicatii/mlu/legislatie/Comentariul_Legii_privind_libertatea_de_exprimare.pdf

18 The Impact of the Law on Freedom of Expression, October 2010 – July 2012, Independent Journalism Center, Janeta Hanganu, Alexandru Postică, Chișinău 2012: http://www.ijc.md/Publicatii/studii_mlu/Impactul%20legii%20cu%20privire%20la%20libertatea%20de%20exprimare.pdf

Regarding judicial procedures, the study found that courts often failed to observe the preliminary procedure. Thus, of the 62 relevant judgments and rulings issued by courts in the period from October 2010 to July 2012, less than 20 percent referenced the Law on Freedom of Expression. In the other cases, the courts evaluated the cases either under Art.16 of the Civil Code or under Art.10 of the European Convention for Human Rights (ECHR) without making reference to any provisions of the new Law on Freedom of Expression. In some cases of collecting moral damages, the court applied the Civil Code in the general term of three years, and not one year, as guaranteed by the statute of limitations set out in the new law. Another provision of the law often did not include issuing judgments related to paying the state tax of three percent of the amount requested for compensation of moral damages. In nearly all cases, when the court reviewed claims of damages amounting to hundreds of thousands or even millions of lei, it did not request the plaintiff to pay the state tax. According to the law, complaints are rejected if the plaintiff has failed to pay the state tax in the amount prescribed by the law.

In some cases when the parties and the court knew the provisions of the new law, the court settlements were substantially different and many complaints were rejected or cases dismissed for failure to observe the preliminary procedure or pay the state tax. The authors of the study believe that the number of rejections and dismissals could have been higher if the courts had been better informed about the existence of the new legal provisions.¹⁹

It is worth noting that after the Superior Council of Magistracy in 2011 imposed disciplinary sanctions on a judge for failure to take into account the provisions of the Law on Freedom of Expression²⁰, the number of judgments in favor of plaintiffs' claims to exorbitant sums of money for defamation considerably decreased.

In order to ensure greater impact of this law, the Plenary of the Supreme Court of Justice passed an Explanatory Decision²¹ to ensure the uniformity of the judicial practice in applying the Law on the Freedom of Expression and to provide explanations, including to the public at large, about how the law should be applied. According to the Decision, in cases of defamation and respect for privacy and family, courts should apply the provisions of arts. 8 and 10 of the European Convention for the Protection Human Rights and Fundamental Freedoms of 4 November 1950 (the European Convention), arts. 28 and 32 of the Moldovan Constitution, the provisions of the Law on Freedom of Expression no. 64 of 23 April 2010, art.16 of the Civil Code, the Law on Press no. 243-XIII of 26 October 1994, as well as other national or international normative acts related to this matter. The Decision contains many useful explanations, including from ECtHR case law. This Decision also explains many situations that were not detailed in the Law's provisions.

19 Ibidem

20 Situation of the Press in Moldova, 2011 Annual Report, Independent Journalism Center: http://ijc.md/index.php?option=com_content&task=view&id=36&Itemid=64

21 Hotărârea nr. 7 din 24.12.12 cu privire la practica aplicării Legii privind libertatea de exprimare.doc

Recommendations

To improve the impact of the Law on Freedom of Expression, it is necessary to inform judges and lawyers as well as the media and the public at large about the existence of the new law.

- ▶ The Explanatory Decision of the Supreme Court of Justice should be studied in depth by judges and lawyers. The media should publish information about the rights guaranteed to consumers of public information.
- ▶ The Superior Council of Magistracy should impose disciplinary sanctions on judges who do not take into account the provisions of the Law on the Freedom of Expression and commit procedural violations in reviewing cases.
- ▶ Media representatives need training in how to exercise their right to freedom of expression and right to information.
- ▶ The media should hire lawyers in their newsrooms who would advise the journalists in regard to public interest subjects that may eventually lead to defamation cases against the media outlet.
- ▶ The media and persons whose rights have been violated must be encouraged to appeal to self-regulation and mediation structures, such as the Press Council.

Creating the Necessary Conditions for Media Development: Competition and Fiscal Framework

Commitments

One of the general objectives of the first non-communist government after 2009 included: “***Creating the necessary conditions for media development,***” and the priority actions included ***establishing a preferential fiscal framework for the media*** and ***liberalizing the local media market***. The Government’s activity plan for 2010²², involved ***developing the draft law on denationalizing public periodicals***. This law was passed on 17 September 2010.

In the activity program of the Filat-2 Government, the general objective was amended – ***ensuring freedom of press and creating optimal conditions for the work of media outlets***, and the Action Plan of the Government for 2011-2014²³ provided for ***granting tax benefits to the media by excluding the provisions from the Tax Code that require the media to pay the local tax on advertising and exempting the newspapers, magazines and online media from the VAT on their revenues, regardless of their turnover***. Although in 2011 these commitments were honored only partially, on 7 May 2012 the same government annulled the action plan²⁴ and another one was approved for 2012-2015, which does not specify grant tax benefits for the media.

The Leancă Government’s program kept the commitment to grant some tax benefits but only to online media.

Background

A free and independent press is crucial for citizens to have access to objective information. In a fragile democracy, periodicals founded and funded by public authorities are thereby influenced by the founders and cannot be considered objective. The democratic standards recognized at the European and international level do not include financing newspapers from public funds or subsidizing media outlets, thereby creating more a more equal playing field without the existence of administrative or economic favors. The direct and discriminatory funding by public authorities of only certain (state-owned) newspapers impacts the competi-

22 Decision no. 194 of 18 March 2010 of the Moldovan Government “On Approving the Action Plan of the Government for 2010”: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=334058>

23 Decision no. 179 of 23 March 2011 of the Moldovan Government “On Approving the Action Plan of the Government for 2011-2014”: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=337937>

24 Decision no. 289 of 7 May 2012 of the Moldovan Government “On Approving the Action Plan of the Government for 2012-2015”: <http://lex.justice.md/md/343206/>

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tion between public (state) and private periodicals. In Resolution 1666 (2009) on the Functioning of Democratic Institutions in Moldova²⁵, adopted after April 2009, when the Parliamentary Assembly of the Council of Europe recommended that the Moldovan authorities reform the national and local press and encourage media pluralism both through legislation and in practice, and at the same time, denationalize the print and electronic media controlled and funded by local public authorities. The government previously had committed to the Moldova – European Union Action Plan²⁶ that secured “transparent relations between the authorities and media outlets in accordance with the recommendations of the Council of Europe, namely that financial aid for the media from the state, granted under strict and objective criteria, equally applied to all media.” However, it has mainly favored the “state” media at national, local and municipal levels, whose editorial policy was controlled by the authorities through direct and indirect funding provided in non-transparent ways and in conditions of unfair competition with the independent media.

In 2008, the Association of Independent Press (API) developed the draft law on denationalizing public periodicals, which established a legal mechanism for the transition of periodicals founded and funded from the budget to public owners or other forms of ownership. According to the draft law, the founding authorities had to reorganize these publications into official mouthpieces of the districts (municipalities, autonomous territorial units with special legal status), privatize or liquidate them.

Before 2009, the communist government categorically rejected the idea of privatizing public periodicals, while the new authorities supported the draft law and it was registered as a legislative initiative by a group of MPs from the Liberal Party and passed by the Parliament in September 2010.

At the same time, API proposed to establish a transparent mechanism for granting state aid to periodicals based on strict criteria equally applied to all publications in accordance with Recommendation no. R (99) 1 of the Committee of Ministers of the Council of Europe on Measures to Promote Media Pluralism.²⁷ Member states are recommended to examine “the possibility of introducing a system of direct or indirect financial support to print and broadcast media, especially at regional and local levels to promote media pluralism and diversity. The granting of subsidies to print or broadcast media that use the minority languages could also be considered.” For this purpose, API developed a draft law on state aid for periodicals that provided for the creation of a special fund to support the media managed by a board selected by journalists and professional associations, and which also established certain objective criteria for granting the aid. The legislative initiative was registered by a group of MPs from the Liberal Party on 25 June 2010²⁸ but was rejected by the Government and never examined in the Plenary Session of the Parliament. In

25 Resolution of the Parliamentary Assembly of the Council of Europe no.1666 (2009): <http://old.parliament.md/download/apce/1666ro.pdf>

26 Action Plan of the Republic of Moldova – European Union, approved by Decision no.356 of 22 April 2005 of the Moldovan Government: <http://www.gov.md/lib.php?l=ro&idc=447&year=2005>

27 Recommendation no.R (99) 1 of the Committee of Ministers to the Member States on the Measures to Promote the Pluralism of Mass Media: http://www.coe.int/t/dghl/standardsetting/media/doc/translations/romanian/Rec%281999%29001&ExpMem_ro.pdf

28 Draft Law on the State Aid for Periodical Publications: <http://parliament.md/ProcesulLegislativ/Proiectedeactele legislative/tabid/61/LegislativId/175/language/ro-RO/Default.aspx>

2012, the draft law was registered again,²⁹ but the Government issued a negative opinion stating that its provisions contradicted the principles of granting state aid and that the Parliament had not examined the draft law.

The Filat-2 Government's commitment to ***exclude immediately the provision requiring the media to pay the local advertising tax of five percent from the Tax Code*** was prompted by the media and civil society's protests after some provisions were included into the Tax Code (Title VII – Local Taxes) at the end of 2009.³⁰ According to the provisions, radio and television stations, newspapers and Internet resources became liable for paying the local tax for advertising of up to five percent of the advertising area published. The media outlets notified the Public-Private Working Group for Media Strengthening (a structure created in 2008 to develop and strengthen dialog between public and private structures in order to enhance the media's capacity to monitor public policies), which requested the Government to start the legal procedure for excluding the new provisions from the Tax Code. Meanwhile, the media outlets announced that on 3 May 2010, World Press Freedom Day, they would demonstrate in front of the Parliament, the Government and the Ministry of Finance and would request annulment of the local tax on advertising.³¹

As a result of such statements, a group of MPs from the Liberal Democratic Party registered a draft law to exclude the provisions requiring media outlets to pay the local tax on advertising. The Law was amended only in March 2011;³² therefore, some media outlets had to pay this tax in 2010.

Problems

The Law on Denationalizing Public Periodicals³³ contributes to securing freedom of expression and promoting media pluralism by developing fair competition in the media sector, as well as stimulating investments and ensuring efficient management. The international experts who evaluate press freedom in the world expressed satisfaction with the passing of the law. The Report on the Implementation of the Government's Activity Plan "European Integration: Freedom, Democracy, Welfare"³⁴ notes that by passing the law, "a clear signal was given to encourage fair competition in print media with new opportunities for developing media locally, including as a for-profit activity." On 3 October 2012, the Moldovan President Nicolae Timofti stated in the plenary of the Parliamentary Assembly of the Council of Europe (PACE) that "laws have been passed on the denationalization of public periodicals and on freedom of expression, which reflects the case law of the European Court for Human Rights in the national legislation. These laws are

29 Draft Law on the State Aid for Periodical Publications: <http://parliament.md/ProcesulLegislativ/Proiectedeacteleghislativ/tabid/61/LegislativId/1415/language/ro-RO/Default.aspx>

30 Law no.108 of 17 Dec 2009 on Amending and Completing Certain Legal Acts: <http://lex.justice.md/md/333207/>

31 <http://old.api.md/events/10067/index.html>

32 Law no.48 of 26 March 2011 on Amending and Completing Certain Legislative Acts: <http://lex.justice.md/md/337991/>

33 Law no.221 of 17 Sept 2010 on Denationalizing Public Periodical Publications: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=336636&lang=1>

34 Report on Implementing the Activity Program of the Government "European Integration: Freedom, Democracy, Wellbeing" 2011-2014: <http://www.gov.md/lib.php?l=ro&idc=578>

an important success for the national media organizations, which have demanded that the public authorities privatize newspapers and encourage fair competition in the print media sector.”³⁵ It must be noted, however, that the national and local authorities did not take the necessary measures to implement this law and in some cases even opposed its implementation.

The Law on Denationalizing Public Periodicals came into effect on 12 February 2011, three months after its publication. It established that the existing public periodicals had to be privatized in two years and reorganized into official newspapers of administrative-territorial units or privatized as individual projects with investment tenders or liquidated. The Law also requires that the Ministry of Justice create a Registry of Public Periodicals and that budget financing and publishing of publications not registered in this Registry would be forbidden. Unfortunately, the responsible structures did not observe the timeframe for bringing the regulatory acts into compliance with the Law and did not develop the rules necessary for implementing the denationalization. In addition, bureaucratic problems and misunderstandings arose among different ministries and agencies concerning the need to amend some provisions of the Law. The Ministry of Economy proposed that the Government include all the official publications of the district and municipal councils into the *List of Newspapers Not Subject to Privatization*, which contradicts the very principle of denationalization of the state press in Moldova. In order to prevent this, API requested that the Prime Minister, MPs and ministerial advisers get involved. Due to those efforts, the publications issued by district and municipal councils were excluded from the list of newspapers not considered for privatization; however, the legal procedures lasted until July 2013 when the Parliament passed amendments to the law that regulates the administration and denationalization of public property.³⁶ In addition, many MPs, ministry officials, presidents of districts and local counselors sabotaged the implementation of this law out of their desire to maintain control over the periodicals and distribute the public funds depending on journalists’ loyalty to the local power. Most of the authorities financing the newspapers from public funds decided to privatize them after the expiration of the legal term and only after pressure from the prosecutor’s office and financial inspection, which had been notified of the issue by API. Several district councils failed to do it even by the end of 2013. As a result, the practical implementation of denationalizing public periodicals was delayed and the time limit for implementing the law was exceeded.

The Filat-2 Government committed to exempt newspapers, magazines and online media from VAT on their revenues, regardless of their profit. This commitment was never implemented; it was taken from the Activity Program of the Leancă Government but surprisingly, newspapers and magazines were excluded, leaving only online media as beneficiaries of tax exemptions. Such a discriminatory approach is strange if we take into account that print media were most affected by the economic crisis in the previous years.

In fact, the ruling parties, regardless of their political affiliation, regularly rejected the initiatives establishing preferential fiscal and economic treatment for the

35 Speech of the Moldovan President at PACE, 3 October 2012: http://ru.scribd.com/doc/108848420/02-10-12-Discursul-presedintelui-APCE?secret_password=1wywh5c7iocpceowx11b

36 Law no.204 of 12 July 2013 on Amending and Completing the Law no.121-XVI of 4 May 2007 on Administering and Denationalizing Public Property: <http://lex.justice.md/md/349304/>

media, which were launched before and after 2009. Thus, the government before 2009 rejected the proposal of the Public-Private Working Group for Strengthening the Media to amend the Tax Code and exempt periodicals from VAT on revenues from advertising and for amending the Law on Advertising to increase from 30 to 50 percent of the admissible ratio of advertising from a periodical's general issue. Both the communist government and the Alliance for European Integration rejected the proposal to amend the Law on the State Budget in order to decrease the market ratio applied for media outlets in calculating their rent in publicly-owned buildings, which puts the media in the same category as companies that rent the space for selling food products, public catering units with food preparation and sales, or production spaces. In May 2012, the Public-Private Working Group for Strengthening the Media requested that the Parliament, Government and the Ministry of Finance amend the Tax Code to allow periodicals (except for advertising and erotic ones) to request that their registration as VAT payer be revoked if the total amount of taxable deliverables in a given period of 12 months is lower than the amount established for registering the taxable subject as a VAT payer. This proposal was also rejected.

In September and October 2012, print media editors requested the government and Parliament eliminate the difficult conditions for distribution of newspapers and magazines imposed by the State Company "Poșta Moldovei"³⁷ and other obstacles in the development of the local press,³⁸ including conditions of unfair competition between local and foreign publications that do not pay the customs duty or the VAT for the advertising inserts. As a result of these requests, discussions between print media editors and distributors began; however, the tariffs on press distribution continue to be too high compared to the revenues. The editors and experts believe that the solution here would be for the state to apply mechanisms of indirect support to the media by compensating eventual tariff increases. To ensure equal conditions for media development and to eliminate unfair competition created by foreign publications that are distributed on the local market without paying customs duties and the VAT on advertising, the MPs Chiril Lucinchi (Liberal Democratic Party of Moldova) and Corina Fusu (Liberal Party) presented amendments to the Tax Code and the Law on the Customs Tariff regarding taxing magazines imported to Moldova³⁹. The draft law has not yet been examined by the Parliament.

Recommendations

To secure actual beneficial conditions for developing local media and exclude unfair competition, the following actions should be taken:

- ▶ Review the problems in implementing the Law on Denationalizing Periodicals by controlling the implementation of legal provisions and imposing administrative sanctions on persons who fail to ensure the implementation of the law within the established timeframes;

37 Notification about the Abusive Tariff Policy of the State Company Poșta Moldovei: <http://old.api.md/events/39826/index.html>

38 <http://old.api.md/events/39895/index.html>

39 Draft Law on Amending Certain Legislative Acts: <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/1478/language/ro-RO/Default.aspx>

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- ▶ Approve completions to the Code for Contraventions with sanctions for printing public periodicals that are not registered in the Registry of Public Periodicals;
- ▶ Hold additional consultations in regards to the proposal to exempt newspapers, magazines and online media from VAT on their revenues, regardless of their profit;
- ▶ Examine promptly the draft laws registered as legislative initiatives: a) on the state aid for public periodicals, and b) amending the Tax Code and the Law on the Customs Tariff for Taxing Imported Magazines;
- ▶ Reexamine the proposals previously made by the Public-Private Working Group for Strengthening the Media on amending the Law on the State Budget (increase the market ratio applied to media outlets in calculating their rent in publicly-owned buildings) and the Tax Code (grant the right to request cancelation of the registration as VAT payer);
- ▶ Establish methods of indirect subsidizing of costs for print media distribution (except for advertising and erotic media).

Commitment

Passing a new version of the law on advertising that would comply with the new time requirements and the need to develop a truly free press was a very important action in the Activity Plan of the Filat-2 Government. A new law on advertising would not only complete the national legal framework by regulating the operation of broadcasting institutions but it would also ensure more dynamic development of the sector. Although necessary, the law was not passed during the Filat-2 Government, while the program of the Leancă Government included ***promoting a new version of the law on advertising*** as a priority action. In March 2014, the Ministry of Justice started drafting several legislative acts, including a new version of the law on advertising.

Problems

The current Law on Advertising⁴⁰ from 1997 could not secure the proper development of the advertising market and did not protect the sector from the danger of monopolization and the excessive concentration of advertising budgets in the capital city, which “condemned” the local and regional media to an unstable financial situation. The current Law is confusing and contains inaccurately defined terms; it also allows media outlets financed from public funds to operate on the advertising market in the same conditions as the private media. It does not divide advertising into “commercial” and “non-commercial.” According to universal practice and terminology, sometimes advertising can be confused with sponsorship, although a separate law is dedicated to philanthropy and sponsorship. The provisions of the law do not prevent the ‘infiltration’ of foreign advertising in the local market, nor does it define “state advertising” and, therefore, it does not secure transparent and fair distribution, which leaves room for discrimination towards certain actors on

⁴⁰ Law no.1227 of 27 June 1997 on Advertising:
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311557>

the advertising market. It also does not stimulate the growth of the local broadcast production or the development of the state language by using it in the advertising texts. Moreover, the terms “advertising” and “social advertising” are inaccurately defined and improperly used, creating confusion and other problems. There is a range of other provisions in this law and other national legislative acts (the Broadcast Code and Tax Code) that contradict each other and do not contribute to developing free and economically sustainable media. In addition, Moldova does not have a regulatory or self-regulatory authority to identify and qualify the public interest character of the social messages conveyed through the media.

In the Filat-2 Government, no new law on advertising was developed; however, this commitment was included in the Leancă Government’s program. At a meeting on 13 December 2013, the Government endorsed a legislative initiative by a group of MPs from the Liberal Democratic Party⁴¹ to amend the Broadcast Code and the Law on Advertising. The amendment would require television stations to post a chronometer in the bottom right corner of the screen that would indicate the duration of the advertising or the teleshopping. These amendments are in accordance with European directives but they are not sufficient enough to significantly improve the situation in this area.

Recommendations:

- ▶ Revise the national legislation on advertising, including developing amendments, soliciting public input, and subsequently approving a new law on advertising;
- ▶ Include clear provisions in the national legislation for sponsors of public interest messages/calls regarding tax benefits, appearances in messages/calls, etc.;
- ▶ Extend the number of areas considered of interest to the society or the state in order to expand possibilities for promoting public interest messages;
- ▶ Develop a national authority (preferably a self-regulatory one) that would identify the content of public interest messages/calls to be transmitted as social advertising.

41 Draft Law on Amending and Completing Certain Legislative Acts: <http://parlament.md/ProcesulLegislativ/Proiectedeactele legislative/tabid/61/LegislativId/2021/language/ro-RO/Default.aspx>

Broadcasting: Transparency in the Process of Granting and Removing Broadcast Frequencies

Commitment

The Filat-1 Government committed to *ensuring transparency in the process of granting and removing broadcast frequencies by publishing announcements for contests on granting broadcast frequencies in the national press as well as by establishing reasonable timeframes for filing applications for the contest*. The same commitment, but in an amended form – *guaranteeing transparency in the process of granting and removing broadcast frequencies and assessing their use in accordance with the purpose of the ground licenses* – was also included in the activity programs of Filat-2 Government and Leancă Government.

Background

Freedom of expression and free movement of information and ideas without interference from public authorities are fundamental rights in a true democracy. These freedoms, however, are impossible to enjoy without a pluralist and independent media sector that covers as many opinions and ideas as possible. Media pluralism can only be ensured when the granting of licenses and distribution of broadcasting frequencies are done in a transparent manner and based on impartial criteria.

During the communist government, the BCC granted and removed broadcast frequencies in Moldova in a non-transparent manner, which was often based on political allegiances. Civil society and the media as well as foreign institutions and embassies in Chişinău repeatedly drew attention to the specific problems that affected the sector. After a democratic government came to power in 2009, the authorities committed to safeguarding transparency in the process of granting and removing frequencies as well as in assessing the use of the ground licenses according to their purpose.

According to the Report on Monitoring the Implementation of the Activity Program of the Moldovan Government “European Integration: Freedom, Democracy, Welfare,” as concerns the 2012 Action Plan prepared by the National Participatory Council⁴², the activities to preserve transparency in granting and removing broadcast frequencies and to assess the use of ground licenses in accordance with their purpose were not implemented.

42 Report on Monitoring the Implementation of the Activity Program of the Moldovan Government “European Integration: Freedom, Democracy, Wellbeing” with reference to the 2012 Action Plan, National Participation Council: <http://www.google.md/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCgQFjAA&url=http%3A%2F%2Fwww.cnp.md%2Fro%2Fproduse%2Fmonitorizarea-politicilor%2Fgenera%2Fitem%2Fdownload%2F1305&ei=XSyPUu21GMGK4ASPKYDoCg&usg=AFQjCNHJ2-6NkkNFFTmck-FCqVQ87VfUqW&sig2=7bOuCmrqaPrknQTgWoPPOg&bvm=bv.56988011,d.bGE>

According to the authors, ensuring transparency in this process can be guaranteed through mandatory publication of announcements of contests for granting broadcast licenses and frequencies in the national newspapers with the biggest circulations and by establishing reasonable timeframes to apply for participation in the contest, as well as provide sufficient reasoning for any BCC decision.

According to international standards⁴³, the applicants must have access to enough information and receive equal and correct treatment in the process of requesting licenses or frequencies. There are no details about whether or not a regulatory authority can give a broadcaster more time to prepare the application than another. This may undermine the credibility and authority of the regulatory institution, which may be suspected of incorrect or even corrupt behavior.

Legal Provisions

The Broadcast Code, Art. 23 (Broadcast License), includes the Strategy on National Coverage, wherein the BCC decides on and publishes contest announcements for available frequencies in the Official Gazette of Moldova, on the BCC website and in other Moldovan media, including local outlets. This provision gives a list of information that should be included in the announcement, such as the conditions and deadline for submitting requests, type of media outlet (radio, television etc.), the requirements of the program service, the technical parameters for the frequency, the maximum capacity of the transmitter, territorial coverage, validity of the broadcast license, and size of the state tax for the broadcast license, etc.

At the same time, the BCC must publicize the proposed services and programs as well as information about the contest participants within the timeframe prescribed for submitting the bids to ensure a more transparent process. The same article establishes criteria for selecting the winner in accordance with a fair and impartial examination of all the applicants. The results of the contest must be published within 15 days from the date of its adoption and it may be appealed in the court of law.

Problems

During the communist government, civil society and the media often raised issues related to the lack of transparency in granting broadcast licenses and frequencies by the BCC. Some similar situations were also noted after the 2009 change in government. On 19 October 2010, the BCC issued a decision⁴⁴ to grant ten TV frequencies of the 11 tendered to the foreign capital company “Social Media” SRL, instead of to two important stations – Jurnal TV and Publika TV. At the same meeting, the BCC granted four radio frequencies of the seven tendered to just one radio station – Maestro FM. Experts raised concerns about the BCC’s impartiality and independence from political and economic influences.⁴⁵ The media reported that

43 Eve Salomon, *Recommendations for Broadcasting Regulation*, Independent Journalism Center, 2006

44 BCC Decision No.125 of 19 Oct 2010 “On the Results of the Contest for Using Radio and TV Frequencies, announced by Decision no.96 of 25 August 2010”: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=336633&lang=1>

45 Report on the Situation of the Press in Moldova in 2010, IJC: http://www.ijc.md/Publicatii/mlu/Raport_FOP_ro.pdf

at that time, “Social Media,” founded by Global Systems Grup, was administered by the deputy speaker of parliament, Vlad Plahotniuc⁴⁶.

A case study by the Broadcasters’ Association APEL on the contest for granting frequencies by the BCC on 4 May 2012⁴⁷ indicated that the contest participants’ files were evaluated without clear, accurate and measurable criteria, and that the BCC decisions did not include reasonable and justifiable explanations of the contest results.

One of the problems noted by broadcasters in granting frequencies is related to the limited timeframe (two months) that the BCC allows for preparing applications to participate in the contest. In order to prepare the applications with complicated requirements included in the contest announcement, applicants must have more time. Many broadcasters with very good project ideas decide not to participate in the contest due to lack of time. In addition, information about the contest is not broadly publicized through large circulation publications and only reaches a limited number of potential participants for the contest.

Information posted on the BCC website regarding tenders is hard to find. The decisions to launch a contest or its results are posted under the column “Current Decision,” which includes a long list of links that have in the title the word *decision* and date of adoption, making it difficult to identify necessary information. The decisions usually list the number of frequencies, and number of applicants and winners, though without including the arguments and considerations for which the winner was selected, and only noting whether or not the subject was publicly debated and the voting open. Because the BCC decisions do not include arguments as to why most of the members voted in favor of a certain applicant, it generates speculation about the political motivations behind granting certain licenses and frequencies.

The fact that the BCC does not monitor what happens after the licenses and frequencies are granted, may lead to failure to observe the objectives established by the Strategy for Territorial Coverage with Services and Programs in accordance with the National Plan of Radio-electronic Frequencies. Also, some license and frequency holders may deviate from the principles set forth in the program for which they had been selected as winners, thus limiting media pluralism and diversity.

Keeping in mind the difficulty for numerous competitors to access the limited range of frequencies, the BCC should be very selective when distributing the frequencies in order to prevent a monopoly on the broadcast market. The range of frequencies is a valuable public resource desired by many people. To avoid suspicions of political involvement or financial interest, the BCC should distribute the licenses and frequencies in a transparent and correct manner, especially considering that television remains at the most-commonly used source of public information in Moldova. The BCC should provide the public access to as wide a range of news items and opinions as possible. In granting licenses and frequencies, fair evaluation criteria must be applied that would take into account how realistic a proposed program is. Failure to secure transparency for the issue or removal of licenses may result in media concentration in the hands of certain individuals and limit pluralism in the media by creating monopolies.

46 <http://www.jurnal.md/ro/news/cca-furnizor-de-frecvente-pentru-plahotniuc-194908/>

47 Case study “Contest for Using Radio and Frequencies Held by BCC (4 May 2012)”, APEL: http://www.apel.md/public/upload/md_Studiu_de_caz_CCA_2012.pdf

Recommendations

In accordance with Recommendation no. R (2007) of the Committee of Ministers of the Council of Europe on securing media pluralism:⁴⁸

- ▶ The broadcast regulator (BCC) should issue or remove broadcast frequencies based on objective and non-partisan criteria in accordance with transparent procedures;
- ▶ The use of frequencies should be monitored periodically to avoid media concentration;
- ▶ The period of time given to license or frequency applicants to prepare their applications for the tender must be increased to a more reasonable timeframe;
- ▶ State authorities should regularly assess the efficiency of the measures to promote pluralism and/or the existing anti-monopolization mechanisms and, when necessary, revise them in accordance with the economic and technological developments in the media sector; and
- ▶ Parliamentary control over BCC operations should be strengthened.

48 Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content: <https://wcd.coe.int/ViewDoc.jsp?id=1089699&BackColorIntranet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

Broadcasting: Legislative and Normative Frameworks

Commitment

The Activity Plan of Filat-1 Government included the objective to align the legal framework regulating media operation with European norms and standards. One of its priority actions was *drafting the Concept for Media Market Development in Moldova*.

Background

Since Moldova's declaration of independence, local media market development has never been a special concern of the government. This is one of the reasons why the Moldovan media have traveled a road with many forks in it, influenced by the unpredictability of a growing but nascent market economy as well political changes. Thus, after two decades, we witness an exaggerated concentration of media structures in the capital city and rural localities without access to media or struggling with underdeveloped media outlets.

The Law on the Press No. 243-XIII of 26 October 1994, the Broadcast Law no. 603-XIII of 3 October 1995, and the Broadcast Code no. 260 of 27 July 2006 were passed without a strategy or general concept of media development. The Broadcast Code included drafting a strategy for developing the area; however, it would be more logical to have a strategy first that would determine the legislative framework and ensure its implementation. In the absence of a general position on the future of the media, the Filat-1 Government's intention to develop the media market deserves appreciation and support. The concept is also timely due to the country's move towards digitalization, which presents multiple advantages but also potential threats, especially for the media.

Problems

Although a timely issue for the government, the provision on drafting a concept for developing the media market disappeared from the Government's Activity Plan for 2011-2014⁴⁹, first approved on 23 March 2011 and then repealed on 7 May 2012, when a new action plan was prepared for 2012-2015⁵⁰ that still does not include this provision. Thus, the programs of both the Filat-2 Government and the Leancă Government outline the actions necessary for media development but they are separate and lack a clear general concept.

49 Decision no. 179 of 23 March 2011 of the Moldovan Government "On Approving the Government's Action Plan for 2011-2014": <http://lex.justice.md/index.php?action=view&view=doc&lang=1&iid=337937>

50 Decision no. 289 of 7 May 2012 of the Moldovan Government "On Approving the Government's Action Plan for 2012-2015": <http://lex.justice.md/md/343206/>

Recommendations:

- ▶ To include in the Government's Action Plan a provision to create and adopt a strategy for developing media outlets in Moldova as the first priority action;
- ▶ To specify the objectives and actions of the government's plan for the media and eliminate incoherencies found therein;
- ▶ To specify the timeframe for the implementation of the objectives and actions in order to monitor the level of implementation of the commitments made; and
- ▶ To establish a public-private board for supervising and monitoring the fulfillment of the objectives in the media development section of the Action Plan.

Commitment

Another priority established in the Activity Program of the Filat-1 Government was ***drafting the Concept for Developing Broadcasting and the laws on the operation of the public broadcasting services in accordance with the international recommendations and practices***. The Program of the Filat-2 Government includes ***adopting a new strategy for developing broadcasting, which would stimulate the stable development of the independent media in Moldova***.

Background

In April 2011, after hearing the BCC activity report for 2010, the Parliament gave the BCC 60 days to present in the plenary a new strategy to expand broadcast services, an action plan for promoting the digitalization process in Moldova, and an action plan for implementing the Directive 2010/13/UE of the European Parliament and of the Council of 10 March 2010 on Broadcast Media Services.⁵¹

The first Strategy for Covering the National Territory with Broadcast Program Services was passed in 2007 for 2007-2010⁵² and Article 35 of the Broadcast Code stipulates the BCC's obligation to revise the Strategy on an annual basis. Despite this legal obligation, the BCC considered the Strategy only when the Parliament indicated that it should draft a new one. The draft strategy for 2011-2015⁵³ was developed in the spring of 2011 and presented for political debate. Since Moldova, along with other countries of the world, has committed to ensure the transition from analog to digital television by June 2015, it was the transition to ground digital television that was supposed to become the 'red thread' of this strategy.

51 Parliament Decision no.72 of 8 April 2011 on the BCC 2012 Annual Report: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=338713&lang=1>

52 CC Decision no.59 of 10 May 2007 on the Strategy for Covering the National Territory with Broadcast Program Services (2007 – 2010): <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=326607&lang=1>

53 Strategy for Covering the National Territory with Broadcast Program Services (2011-2015): <http://www.cca.md/files/Strategia%202011-2015%20.pdf>

Problems

A review of the draft strategy revealed major content deficiencies due to the lack of objective reviews of the real situation in broadcasting and the fact that the BCC never implemented the objectives of the first Strategy. At the public debates on 22 June 2011, the paper's authors made a number of recommendations, some of which were taken into account in the final revision of the strategy paper. However, the paper was not improved substantially. Certain important objectives for 2011-2013, such as implementing ground digital television; aligning national broadcast legislation to the European standards; securing citizen access to information sources through program services provided by the existing local, regional and national broadcasters – have remained only in the text of the strategy and without adequate practical implementation.

Recommendations:

- ▶ Update the Strategy for Covering the National Territory with Broadcast Program Services after approving the Program for Transition to Ground Digital Television and eventually a new broadcast code to both harmonize the objectives stipulated by each paper in part and unify the terminology used (at present the terminology differs, and is inaccurate and confusing);
- ▶ Adjust annually the content of the Strategy to the new realities and needs of the area;
- ▶ Exercise oversight of the implementation of the Strategy and BCC annually through public meetings to review the implementation of the action plans.

Commitment

The Filat-2 Government developed a major objective to harmonize the legal framework that regulates the work of the media with the European norms and standards by *passing a new Broadcast Code*. This objective was implemented until the resignation of Filat-2 Government; however, for unknown reasons, it was included in the commitments of the Leancă Government.

Background

The need to improve the Broadcast Code appeared in the first year of its operation (2006) and was echoed later at many national seminars and conferences from 2007 to 2010. The participants at such events identified the defects in the national legal system and suggested ways to overcome them. They mentioned such flaws as insufficient legal provisions for securing editorial independence and institutional autonomy of the public broadcaster; inefficient mechanisms for holding actors accountable on the media market; a legal regime of ownership that cannot prevent the danger of unfair competition; inadequate rules on the advertising market; the lack of provisions for the transition to ground digital television; and ambiguous legislative stipulations that can be interpreted in such a way that leads to abuses, etc. The participants who made suggestions and recommendations for improving the national legal framework were **Christian Nissen**, known in Europe for his work in public service radio and TV; the former general director of the public

broadcaster of Denmark, who for many years has been the Chairman of the Strategic Group for the Digital Broadcaster of the EU; **Boris Bergant**, deputy director general of the public broadcaster of Slovenia, chairman of the Standing Committee for Crossborder Television in the Council of Europe (CoE), deputy president of the EU broadcaster; **Vladimir Ristovski**, special representative of the Secretary General of the CoE; **Florence Marchal**, program consultant of the CoE; **Stephen Whittle**, **Andris Mellakauls**, **Maja Cappello**, **Louise McMurchie**, **Jean-François Furnémont** – CoE experts.

In February and May 2010, the participants in two national conferences with European experts stated that it was necessary not only to make amendments to the code but also to draft a new law. A working group was established under the aegis of the Broadcasters' Association APEL that, encouraged by the standing committee of the Parliament (chairperson – Corina Fusu) and financially supported by the Media Program of Soros Foundation Moldova, started drafting the law, using the recommendations from the public forum, during which the topic of the local broadcaster was discussed. In the end, the efforts of the working group were jeopardized by the political situation in the country that led to early parliamentary elections and to a new composition in the parliamentary commission that, although it did not cooperate with the APEL working group, knew about the group and expected a new draft of the Broadcast Code. The latter was completed in April 2011 and on 10 May was submitted to the Chairman of the Parliamentary Commission for Culture, Education, Research, Youth, Sport and Media, Chiril Lucinschi.

The new draft Broadcast Code⁵⁴, on the one hand, removed the existing ambiguities in the current legislation as well as completed it with new provisions to align it with the language and requirements of the European broadcast standards. The draft law introduced a new mechanism for funding the regulator and public broadcasters; stipulated a new manner of appointment and operation of the Broadcast Coordinating Council, the Supervisory Council of the Public Broadcaster, and the Management Committee of the Public Broadcaster; introduced new terms and provisions to regulate the development of broadcasting in general and of the advertising market, in particular, within the era of digitalization; prescribed measures for preventing monopolization of the information space and for excluding possible dominant situations in the formation of public opinion; included provisions to harmonize relations between media service suppliers and distributors and the organizations for the collective management of copyright and other related rights to contribute to counteracting piracy in the area; specified the functions of the regulator and those of the broadcaster supervisory body; and introduced a new section on the operation of community broadcasters, etc. The working group believes that the passing of the code represents a new stage in improving national regulations on broadcasting in the digital information era.

European bodies were more interested in this draft code than the national decision-makers. In summer 2011, four experts of the CoE, OSCE and the EU Broadcasting EBU-UER⁵⁵ reviewed the code and three of them presented their expert opinions in

54 Draft Broadcast Code, May 2011, Broadcasters Association APEL:
http://www.apel.md/public/upload/md_Proiect_Cod_audiovizual_rom_2011.pdf

55 Comments to the Draft Broadcast Code of Moldova. Bernd Möwes, Stephen Whittle, Katrin Nyman-Metcalf, Michael Wagner:
http://www.soros.md/files/publications/documents/Expertiza_Cod_UERT_2011_RO.pdf

Chişinău at public debates on 25-26 October 2011. The experts expressed opinions in favor of the draft and that approving it would represent a 'huge step' in improving the national broadcast legislation and aligning it with European standards.

Problems

Although the passing of a new broadcast code was part of the government's program, it has never become a legislative initiative. In March 2012, the authors of the draft code sent once again a request to the chairman of the parliamentary commission, in which they reasserted their argument that the passing of a new code would develop local broadcasting on the basis of truly democratic principles. The signatories of the request reconfirmed their availability to contribute, as necessary, to finalizing the document. Their request, however, has remained unanswered.

Meanwhile, the parliamentary commission organized public hearings and debates on the draft code that were formal in character. The National Employers Association of Broadcasters (ANPR) spoke at the events and it seemed that they had the task of rejecting the draft code from the beginning and preventing debate on it. Some Chişinău-based media outlets and experts explained that the reluctance towards the new draft code stemmed from the interests in broadcasting and the advertising market that many important members of the parliament allegedly had. Regardless of the influential factors, this objective of the action plan has never been achieved.

Since it seemed that the authorities had abandoned their intention to pass a new law, amendments to the Broadcast Code continued to be developed. In the period from 2009 to 2010, ten amendments to eight articles of the Code were made⁵⁶ - four amendments were made on 20 October 2009; one - on 9 July 2010, and five - on 17 September 2010. Most of the amendments were made not inline with the European standards but rather with the obvious goal of operatively changing the situation at the Public Broadcaster "Teleradio-Moldova".

The amendment to Art. 66 para. (3) of the Broadcast Code was made on the initiative of a group of MPs from the Liberal Party, by which an individual or legal entity **"may hold a maximum five broadcast licenses in the same administrative-territorial unit or zone, without the possibility for exclusivity"**⁵⁷. *Before that, the number of licenses was limited to two. The amendment was passed in July 2010, before the parliamentary vacation and dissolution in September 2010. Previously, no broadcaster had publicly raised the issue of the limited number of frequencies permitted in an administrative-territorial unit. Since it is likely that someone may want to have two or more frequencies in a rural geographic area (district, village), the presumption is that the focus is put on the capital city. Although the media nongovernmental organizations and experts expressed their concern that this amendment "facilitated the establishment of monopolistic positions on the broadcasting market and the 'berlusconization' of the broadcast media; jeopardized the diversity of the media content; and discour-*

56 Broadcast Code of Moldova no. 260 of 27 July 2006:
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=316988>

57 Ibidem

aged competition,”⁵⁸ the law was amended.⁵⁹ In regard to this subject, Angela Aramă, ex-MP and coauthor of the current Broadcast Code, wrote on her blog that someone **“wanted to have a monopoly not only de facto but perfectly legitimately. Which they did, through the... Liberal Party. This is only a deduction but... If I am not mistaken, at the previous session, the Mayor of Chişinău intervened in the Parliament with a letter requesting amending Article 66, paragraph 3 in the sense of legalizing monopoly in broadcasting...”**⁶⁰ The amendment risks creating a situation where certain persons dominate the broadcasting market, which is forbidden by the law but only in a declarative manner and without mechanisms for preventing or counteracting such a situation.

On 18 June 2010, a number of amendments were made to the Election Code⁶¹ that referred to the responsibilities of the BCC in elections, including establishing the procedure for granting the right to reply to election candidates; the obligation of broadcasters to file a statement with the BCC on their editorial policy for the election campaign within the first week of the election period; and the obligation of national broadcasters to provide airtime to election candidates free of charge, etc.

On 17 September 2010, two laws were passed to amend and complete the Broadcast Code. One of these laws amended Article 40 of the Code⁶² and established that the BCC had the obligation not only to allow for coverage of parliamentary election campaigns, general local elections, and republican referenda but also to submit to the Central Election Commission reports on monitoring the coverage of the election campaign by the national broadcasters. The second law⁶³ established that the BCC members hold official positions by appointment and that the BCC staff be composed of civil servants and contracted staff.

In 2011 – the year of political crisis – the parliament amended two articles of the Broadcast Code: Art.16 (right to response)⁶⁴, to align it with the Law on Freedom of Expression, and Art.43, which was completed with new reasons for potential incompatibility of BCC members.⁶⁵

After the political crisis and the election of the country’s president in spring 2012, the government amended its Activity Program. In the media section, the amendments mainly referred to the timeframes and the objectives remained the same. The initiative to pass a new law on broadcasting was neglected.

58 Media NGOs Declaration on the Legislative Initiatives on Broadcasting: <http://old.api.md/events/10454/index.html>

59 Law no.164 of 9 July 2010 on Amending Article 66 of the Broadcast Code: <http://lex.justice.md/md/336158/>

60 http://aarama.blogspot.com/2010_10_01_archive.html

61 Law no.119 of 18 June 2010 on Amending and Completing the Election Code no.1381-XIII of 21 November 1997: <http://lex.justice.md/md/335036/>

62 Law no.216 of 17 Sept 2010 for Amending and Completing Certain Legislative Acts: <http://lex.justice.md/md/336160/>

63 Law no.222 of 17 Sept 2010 for Amending and Completing Certain Legislative Acts: <http://lex.justice.md/md/336464/>

64 Law no.43 of 5 July 2011 for Amending Article 16 of the Broadcast: <http://lex.justice.md/md/339433/>

65 Law no.181 of 19 Dec 2011 for Amending and Completing Certain Legislative Acts: <http://lex.justice.md/md/341744/>

In 2012, 14 amendments were made to 11 articles of the Broadcast Code⁶⁶, including to important articles dealing with copyrights, broadcast licenses, sanctions, advertising, teleshopping, and vacancies in the BCC, etc. According to the regulations:

- ▶ The BCC decision on imposing any sanction shall be proven and become enforceable from the date when it was adopted and made known to the broadcasters and respective service through registered mail and subsequent publication in the Official Gazette of Moldova as well as on the website of the issuing body (***This amendment was an immediate reaction to the removal of NIT TV channel's broadcasting license, as it represented a political rather than a legal issue. On 6 December 2012, the Constitutional Court ruled that the amendment was partially unconstitutional⁶⁷***);
- ▶ The terms “local programs” and “placement of products” were introduced;
- ▶ Amendments were made to the provisions on airtime for advertising, placement of advertising, and teleshopping;
- ▶ Advertising of alcoholic beverages, tobacco products, medical products and treatments, casinos, electronic games was forbidden;
- ▶ It was specified that only local productions could be sponsored and that political programs and newscasts could not be.

On 27 December 2012, the Parliament extended the implementation of the obligation of distributors to cover advertising and teleshopping from relayed foreign program services to 1 July 2013⁶⁸. Also, in 2012, the definition of *local programs* was amended and a new concept - *placement of products* - was introduced. A part of the amendments limited the penetration of the local media market by foreign advertising; however, the manner in which they were made generated controversy. Service distributors, forced to cover advertising and teleshopping from foreign program services, requested an extension on the date the respective provision would take effect, given the additional costs they would have to incur.

The amendment on the advertisement of products in programs of local production is a welcome one; however, it cannot contribute significantly to improving the situation in that area. The local and regional broadcasters, as well as those with a lot of local production, have requested that the placement of commercial advertising be permitted only in local programs to encourage the development of local media and limit some broadcasters on foreign program services with high ratings.

66 Broadcast Code of Moldova no.260 of 27 July 2006:
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=316988>

67 Judgment of the Constitutional Court no.17 of 6 Dec 2012 for the Constitutionality Control of Certain Provisions of the Broadcast Code of Moldova no.260-XVI of 27 July 2006 (Notification no.25a/2012):
<http://lex.justice.md/md/346093/>

68 Law no.323 of 27 Dec 2012 for Amending Law no.165 of 11 July 2012 on Amending and Completing the Broadcast Code: <http://lex.justice.md/md/346348/>

Outcome

In the period from 2009 to 2012, the Broadcast Code was amended several times with changes made to its 68 articles. The amendments, even if they reflect a certain effort to align the legal framework with the European norms and standards, have not yet contributed to visible changes in that regard. For example, none of the amendments dealt with the transition to ground digital television or the ownership regime. Therefore, new amendments are required but in order to avoid the same fate as the ones made to the Broadcast Law (when 22 amendments to the Law become obsolete), it would be advisable to pass a new law.

Recommendation

Reintroduce the commitment to pass a new broadcast code in the Government's Activity Plan and honor this commitment.

Commitment

Implement digital television and create opportunities for informing from a number of TV and radio sources at the national, regional and local levels was established as a priority action for Filat-2 Government and Leancă Government.

Background

In 2006, participants at the Regional Radiocommunication Conference (RRC-06) in Geneva decided on a deadline for transitioning from ground analog television to ground digital by the 16 June 2015. Ground digital television offers solutions for at least two major challenges of the time: improving the flow of information to citizens and improving the limited range of ground radio-electronic frequencies, which have now been exhausted. The Republic of Moldova in 2008 ratified the RRC-06 decision⁶⁹ and along with 104 countries has committed to complete this process in the timeframe established at the international level.

The Moldovan authorities have repeatedly attempted to develop a plan for the transition to ground digital television but each attempt has failed due to lack of knowledge of how to make this transition.

Outcome

In July 2012, the Ministry of Information Technologies and Communication published the draft Program on Transition from Ground Analog Television to Ground Digital Television for public debate.⁷⁰ Civil society's review of this document with the support of the Media Program of Soros Foundation Moldova re-

⁶⁹ Law no.69 of 27 March 2008 on Ratifying the Regional Agreement on Planning the Ground Digital Broadcasting in Region 1, located on the west from 170° meridian of eastern longitude and on the north from 40° parallel of southern latitude, except for the territory of Mongolia) and in the Islamic Republic of Iran in the frequency bands of 174230 MHz and 470862 MHz: http://www.mtic.gov.md/img/law/2008/69_2008-03-27_md.pdf

⁷⁰ Draft Program on Transition from Ground Analog Television to Ground Digital: http://www.mtic.gov.md/img/d2011/download/2013/08/06/Program_tranzitia_tv_CS_23_07_2013.pdf

vealed a number of serious gaps. First, the draft program (as, in fact, the previous drafts as well) focused on the technical part of the problem, although the core of digitalization is improving the information flow to an even larger number of citizens. The draft program had a number of other problems; for example, the review of the actual and current situation was based on obsolete statistics. Furthermore, the stipulation to take over and broadcast through multiplex I ***“national public television stations as well as the programs of existing private suppliers of television and multimedia services, with significant coverage and audience index”*** contravenes the European recommendations to use the multiplex to ensure diversity and pluralism. Preferential conditions were established in the creation of multiplexes for the State Company “Radiocomunicații,” which is contrary to the European recommendations on preventing monopolies and a concentration of ownership, especially on two key segments: infrastructure and content. The authors of the study came to the conclusion that the draft program contributed to an erroneous view of ground digital television due to an archaic mentality that emphasizes formality rather than changing the situation for the better.

The draft program was debated at a roundtable on 3 August 2012 at the initiative of Soros Foundation Moldova in partnership with the ministry, during which proposals and recommendations were made for improving the paper. Part of the proposals were subsequently accepted and included in the final version of the draft. The improved program was submitted to the government but its approval has been delayed. Along with the provisions of the strategy to cover the national territory with broadcasting services, this program would represent the minimum normative framework necessary for the transition to ground digital television. In theory, the respective documents should have a clear and exact plan of action. In practice, however, they have gaps that may create problems in implementing it.

Recommendations:

- ▶ The draft program for transition to ground digital television should be improved in such way that its implementation reaches the essential goal – to bring the advantages of more information to the society;
- ▶ The program should be urgently approved by the government with provisions to exclude the monopolization of the area; and
- ▶ The implementation of the program should be monitored.

Broadcasting: The Regulator (BCC)

Commitment

Prevent political ideologies in public broadcasting by depoliticizing the Broadcast Coordinating Council and not admitting appointing the members of the Observers' Council of the Public Broadcaster Teleradio-Moldova on political criteria – this objective of major importance was included in the Activity Program of Filat 1 Government.

Background

Even though the Broadcast Code establishes a mechanism for the BCC and of the Observers Council (OC) of the Public Broadcaster “Teleradio-Moldova,” which is meant to protect the respective structures from political influences, both the BCC and the OC have been politically dominated and made decisions based on political criteria that were contrary to the broadcast law. Thus, these institutions had become efficient instruments of the ruling party, especially until 2009, to fight against the few broadcasters who were trying to fulfill their professional mission, a situation that concerned local and foreign experts. The communist government before 2009 denied allegations of using political influence over the BCC and OC, while the new authorities committed to depoliticize the BCC and the OC, thereby acknowledging that political control had been exerted over those structures. Even given the government’s declaration in this regard, it should be noted that the commitment still implies a certain influence over the BCC and the OC and there is still a need to reduce political influence over them.

Problems

What followed after 2009 can be described as changing overt political influences to more subtle ones; the appointment of new members to the BCC and OC had taken place using political criteria as before. Moreover, the conflicts between members of the Alliance after 2009 revealed a detail relevant for this study: the BCC, contrary to the law, ‘happened’ to be included in the range of institutions to be ‘taken care of’ by the ruling parties, as it had been shared with the Democratic Party.

For many years the BCC had been harshly criticized both by the ruling power and opposition but also by civil society. The BCC members and staff have several times been suspected of, investigated for and even convicted on corruption charges. In June 2010, for the first time in the BCC history, the Parliament rejected its activity report for 2009 on the grounds that it failed to execute its mission of safeguarding the public interest. In September 2010, the same Parliament amended the law, conferring the status of public dignity to the positions of BCC members and the status of civil servants to the BCC staff. Perhaps such amendments aimed at increasing the accountability of the regulator; however, they are not capable of depoliticizing the BCC or securing its autonomy.

REFORMS IN MASS MEDIA FROM 2009 - 2013: FROM PROMISES TO ACTIONS

Other legislative amendments referred to the composition of the OC, the president of “Teleradio-Moldova” and private broadcasters (Arts. 56, 60 and 66). Two of these amendments, according to which the OC can confirm and remove the president of “Teleradio-Moldova” with a majority vote of its members, and not with a two-thirds vote as it was stipulated earlier, changed the deplorable situation at “Teleradio-Moldova.” In the short-term, the new legal provisions renewed the composition of the OC, dismissing the former administration and appointing a new administration for “Teleradio-Moldova.” In the long term, however, the amendments bear certain risks and do not eliminate the risk of continuous politicization of the public broadcaster. For instance, the confirmation or removal of the public broadcaster’s president with a simple majority of votes by the OC members makes it very convenient for the government to influence the OC and make the broadcaster’s top management structure unstable and susceptible to blackmail. These provisions may also mean new dismissals from and appointments of the broadcaster’s management, depending on the preferences of the new government.

Outcome

The renewed composition of the BCC and OC, the election of new presidents for the two institutions, and the appointment of a new management for the national public broadcaster have benefited broadcasting in certain ways. There have been improvements in the public image of the national broadcaster and continued reforms inside “Teleradio-Moldova.” In general, however, the broadcaster’s management has remained vulnerable to political pressure and the “politicization” of the public broadcaster has not been completely reversed as the BCC and OC have yet to be depoliticized. In other words, the obvious pressure on these two institutions has disappeared; however, their composition is still based on political criteria.

Recommendation:

- ▶ To develop additional mechanisms for reducing and eliminating the amount of political interference in the broadcast regulator’s work and for the decision-makers to observe the legislation in force.

Commitments

Ensuring the autonomy and enhancement of the Broadcast Coordinating Council’s operation and fulfillment of its mission to represent and guarantee the public interest was included as a priority action of the Filat-2 Government. At the same time, the Leancă Government committed to ***creating conditions to stimulate local broadcast content in the state language***. Analyzing the normative acts developed and passed by the BCC can assist in assessing the fulfillment of this commitment.

Background

The Strategy for Covering the National Territory with Broadcast Program Services (2011-2015) stipulates that a decision was supposed to be made by the end of 2011 to regulate the percentage ratios of the amount of local and European

production. Although with some delay, in February 2012, the BCC finally posted a draft decision on its website that stipulated that the share of local products (except for cinematographic products) in broadcast program services should account for no less than 30 percent of the weekly broadcast production, and that the broadcasters having less than 30 percent of local products would have to submit the general concepts of their program services to BCC for approval by 1 May 2012. This draft decision was submitted to specialized institutions within the civil society, including the National Broadcast Employers Association (NBEA), Press Council, Independent Journalism Center, Broadcasters' Association, and to the Civic Association "Apollo." The last organization in this list had a number of suggestions, while the other organizations, including the broadcasters, referred to in the draft decision did not have any objections. In a public meeting on 28 December 2012, the BCC passed Decision 185 "On the Share of Local Programs in Broadcast Program Services,"⁷¹ which established that the share of local programs in the broadcasters' schedules must be no less than 30 percent of the total weekly broadcasting starting from 1 April 2013, and that at least half of them would be broadcasted at prime time and in the state language.

A number of broadcasters reacted only after the decision was published in the Official Gazette of the Republic of Moldova and accused the BCC of exceeding its powers, while the NBEA notified the parliamentary Commission for Culture, Education, Research, Youth and Media that the new provisions would cause a large number of broadcasters to go bankrupt. The Commission debated this subject and sent a letter to the BCC, claiming that Decision 185 was illegal. At the same time, the NBEA appealed the BCC decision in court. The NBEA was founded in August 2010 by 14 Chisinau broadcasters (7 radio stations: Megapolis FM, Europa Plus, Retro FM, Radio 7, Publika FM, Pro FM, Radio 21 and 7 TV stations: TNT, N4, Publika TV, TVC 21, Pro TV, Accent TV, TV 7) as an umbrella organization and after its creation, the founders asserted that the "organization was apolitical and would contribute to developing the Moldovan media."⁷² The NBEA founders also include the TV station TV 7 that relays some programs by the Russian channel NTV and whose owner is the chairman of the parliamentary commission, Chiril Lucinschi.

The lawsuit caused spurred debate among the society. On 28 May 2013, the parliamentary commission held a meeting with the BCC members, broadcasters, and broadcast experts. The discussion was controversial as the BCC and some experts supported the decision, while the chairman of the commission accused BCC of making decision without knowing how television worked. Some broadcasters complained that they could not implement the BCC decision due to lack of funds. Meanwhile, the Chişinău Court of Appeal suspended the BCC decision and, until its final judgment, those broadcasters had not provided at least 30 percent of local production in Romanian during their weekly broadcasts and could not be sanctioned. The Court of Appeal issued its judgment on the eve of the BCC meeting on 2 May 2013 to review a monitoring report on 12 TV stations for the period from 5 to 11 April 2013, regarding the percentage of local production. The BCC had to postpone the monitoring review for a later meeting and examine the observance

71 BCC Decision no.185 of 28 Dec 2012 "On the Weight of Local Programs in Broadcast Program Services": <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=346305>

72 http://www.publika.md/14-institutii-media-au-creat-primul-patronat-media-din-republica-moldova_83201.html

of this percentage of local production not based on the decision of 28 December 2012 but on the televisions' own commitments made through their general program concepts. A decision in this regard was made on 30 May 2013⁷³.

In fact, the BCC decision of December 2012 duplicated what already had existed as a normative framework since 2006-2007. The BCC did not have to issue a special decision but only to supervise the broadcasters' work and adherence to the commitments they had made when obtaining broadcast licenses, which is legal and in accordance with the national broadcast legislation.

This situation showed that there are not sufficiently autonomous safeguards for the BCC to execute its mission to represent and guarantee the public interest. On the other hand, it also revealed the need to develop additional normative acts that would secure the legislative implementation for the benefit of more adequately informing citizens. Some broadcasters, especially from television stations, immediately found ways to avoid the BCC decision; some started capturing foreign images from the Internet, making their own texts to show them as "local" product. While others started producing newscasts with long subjects and broadcast them repeatedly until reaching the 30 percent requirement; and another category of television stations produced 30 percent for one channel and then broadcast the same programs on all its channels. Formally, the broadcasters complied with the BCC requirements, while in reality the purpose of this Code and Strategy provision was not achieved.

Recommendations:

- ▶ Determine exactly the areas of operation among broadcasters and service providers who need additional regulations, unspecified by the legislation, and then task the BCC with developing additional mandatory provisions;
- ▶ Hold public debates on the additional norms developed with the participation of all stakeholders and exercise permanent control over their observance.

73 BCC Decision no.84 of 30 May 2013 "On Monitoring the Program Services of the TV stations "PRO TV CHIȘINĂU," "Prime," "TV 7," "Canal 3," "CTC Mega," "2 Plus," "Super TV," "N4," "Acasă în Moldova," "Bravo," "RTR Moldova" and "Ren TV Moldova" in regard to observing the percentage of local production according to the general concepts and the amount of advertising in accordance with the provisions of the legislation in force": <http://cca.md/files/D.84%20din%2030.05.2013.pdf>

Broadcasting: The Public Broadcaster

Commitments

The public broadcaster has been included in all the government programs since 2009. As a key objective, the governments planned to reform the public broadcaster “Teleradio-Moldova,” **by modernizing the management and ensuring sufficient funding** (Filat-2 and Leancă Government).

Background

Reforming the national public broadcaster became an urgent need, clearly understood by the entire society even before 2009, when the reforms had been copied and the media remained the same – strongly influenced by politics with more emphasis on the ideological affect rather than on honest reporting.

The new composition of the OC and the new management of “Teleradio-Moldova”, appointed in 2010, publicly committed to implement essential reforms. However, it seems the new management did not realize until the end either the ‘inheritance’ they were taking over or the complexity of the reforming of an institution practically ‘conserved’ in time. In 2010, the public broadcaster was funded from the state budget at a little over 70 million lei, which was 57 million less than the necessary amount established in the Terms of Reference and over 20 million less than the 2009 budget allocations (90,973.5 thousand lei). The public broadcaster’s debts amounted to over 30 million at the beginning of 2011, including 17 million in debts from 2007-2009 to the State Company “Radiocomunicații.” (These debts could be paid off only during 2012). Although all the governments until now have stated their position on democratic values and have stressed the need for reforms within the public broadcaster, when establishing the budget for the public broadcaster, the mindset and habit of Soviet-era governments remained – from year to year the budget must be the same or nearly the same. As a result, regardless of the provisions of the broadcast legislation and the commitments made in the governments’ programs, the public broadcaster was funded only enough to “keep it afloat” and not to develop or reform it. Reforms are impossible without investments and some reforms (as in the public broadcaster’s case) require massive short-term investments to be paid back in time. Thus, the new management of “Teleradio-Moldova,” at least declaratively decided to reform the institution and deal with the major challenges, including the need to recover the public character of the public broadcaster; pay off the debts and even with a limited budget, make structural changes to update technology and improve staff members’ professional skills. In addition, the management had to deal with political interference, given the famous sad experience until then. The reforms started at “Teleradio-Moldova” were supported to a larger extent and more consistently by European and international bodies than by national ones.

Outcome

With external assistance, the management of “Teleradio-Moldova” started by developing an internal normative framework that would guide the actions and efforts of the reform process. Thus, in a relatively short timeframe, important documents have been prepared and adopted, such as:

- ▶ Strategic Directions of Development for 2010-2015⁷⁴ (this document also aims to avoid a return to previous and obvious politicized partisan practices);
- ▶ **Regulation on the Internal Monitoring of the Radio and TV Programs of “Teleradio – Moldova”⁷⁵, which represents the methodological framework for monitoring political pluralism, including in electoral programs, and social pluralism and advertising necessary for the qualified internal monitoring of their own programs to achieve truthful and credible results and intervene when needed with appropriate actions;**
- ▶ A new version of the **Bylaws of “Teleradio-Moldova”⁷⁶** was adopted, which has the final goal to strengthen the editorial independence of the institution;
- ▶ **Regulation on the System of Salary Payments at “Teleradio-Moldova,”⁷⁷** which establishes an adequate relation between the work performed and the monetary remuneration;
- ▶ **Regulation on the Bonus System,⁷⁸** which replaced the honoraria with quarterly prizes for professional performance;
- ▶ **Regulation on the Evaluation of Staff Professional Performance⁷⁹** which once in two years determines the professional level of the staff and grants promotions (either in position or in salary) or demotions.

Certain regulations and codes on the operation of the Observers’ Council were passed, including the **Ad Hoc Regulation on Holding the Contest for Filling in the Position of Director of the Public Broadcaster “Teleradio-Moldova”** and the **Code of Conduct of the Member of the OC of the Public Broadcaster.**

Recommendations:

- ▶ The Moldovan Government and the Ministry of Finance should observe the Broadcast Code and its commitments within the Government’s Activity Program to provide sufficient funding for the public broadcaster; and
- ▶ The management of the Public Broadcaster “Teleradio-Moldova” should respect its own internal normative framework, which would contribute to securing the implementation of reforms.

74 Strategic directions of development for 2010-2015: trm.md/files/docs/Strategie_2010_2015.doc

75 Regulation on the Internal Monitoring of Radio and Television Programs of the Public Broadcaster “Teleradio – Moldova”: www.trm.md/.../Hotararea%20N.32%20din%2018.03...

76 The Bylaws of the Public Broadcaster “Teleradio-Moldova”: <http://trm.md/ro/documente/>

77 Regulation on the Salary Payment System of the Public Broadcaster “Teleradio-Moldova”: <http://www.trm.md/ro/documente/>

78 Regulation on the Bonus System: <http://www.trm.md/ro/documente/>

79 Regulation on the Assessment of the Professional Performance of the Staff: <http://www.trm.md/ro/documente/>

Securing the Transparency of Media Ownership

Commitment

The Filat-2 Government included *completing legislation with special provisions on transparency of media ownership and limiting the concentration of media ownership* also as a priority action in its activity program. Nonetheless, from 2011 to 2012, the relevant legislation was not amended and no measures were taken to stop media concentration. The respective provisions are also found in the program of the Leancă Government.

Background

Since 2009 changes in the political arena have had a direct impact on the development of Moldovan media. In the past years, a number of new media outlets have appeared, including online media, which compete for the same audiences interested in political, social and economic issues. The multitude of media outlets on the market does not equally represent a diversity of opinions. Securing media pluralism in a democratic society is directly correlated with securing the transparency of sources financing the media. We cannot speak about a free and pluralistic press as long as a great part of it is funded from the same sources and therefore implicitly is controlled directly or indirectly by the “financers.”

According to reports on the situation of the press in Moldova,⁸⁰ there has been a trend towards media concentration in the past few years, especially within the broadcast media sector that is in the hands of several interest groups. This trend jeopardizes media pluralism as well as the consumer’s right to information. A lack of transparency in the media market includes “fictitious” media owners, while the real owners prefer to remain unknown in the shadows. Despite the governments’ European aspirations since 2009, no improvement in the level of transparency of media ownership can be noted in Moldova. There are obstacles that impede access to information about the media owners, especially if the companies are registered offshore, which protects the owners’ confidentiality. National and foreign studies prove that an offshore company hides the real owners’ identities that are often political officials or civil servants.⁸¹ There is an adequate legal framework in place that would guarantee that the media present a diversity of opinions and would secure media pluralism, or at least would reflect the democratic and political processes in a professional and balanced manner.

Beginning with the role and impact of the media in forming public opinion, the

⁸⁰ Situation of the Press in Moldova, 2011 Annual Report, 2012 Annual Report, Independent Journalism Center: http://ijc.md/index.php?option=com_content&task=view&id=36&Itemid=64

⁸¹ Transparency of Media Ownership in Moldova. Independent Journalism Center, Doina Costin, Mamuka Andguladze, 2012: http://ijc.md/Publicatii/studii_mlu/Transparena%20proprietatii%20mass%20media%20in%20Republica%20Moldova/index.html

IJC started discussing amendments to the Broadcast Code in 2012 to secure the transparency of broadcasting stations' ownership. The subject of transparency of broadcasters' ownership and service distributors is addressed insufficiently in the Code within several articles that contain general provisions on the concentration of ownership and are declarative (art. 7, 23, 27). According to the Broadcast Code, the BCC is required to secure media pluralism by limiting concentration of ownership; however, this obligation cannot be fulfilled because the document does not provide the necessary tools or mechanisms for the regulatory authority.⁸² Accordingly, it is necessary to amend the current Broadcast Code and create mechanisms that would make it possible to enforce the legal provisions.

The amendments have been developed by a group of experts based on the recommendations of a broad study that reviews the situation of media transparency at international and national levels. Local and international experts, representatives of the Parliament, Government, BCC, civil society and broadcast media, have debated these upon. The draft law was submitted to the Parliament in May 2013 and registered as legislative initiative on 12 June 2013⁸³ by a group of MPs from the Liberal Democratic Party. In September 2013, the parliamentary commission organized public hearings and invited representatives of broadcasting programs. The draft law was recommended by the parliamentary commission for approval in the first reading, then followed by other hearings to improve the document before it is considered in the final reading.

Provisions

The purpose of the draft law to amend the Broadcast Code is to secure public access to information about media owners as well as to reduce media concentration and improve pluralism. The amendments aim to secure the transparency of the broadcasters from when they receive their licenses.

The draft law proposes several clear provisions on improving media transparency, including the obligation of broadcasters and service distributors to provide information about the legal owners and the beneficiaries to the BCC when filing an application for a license and then every year after.

The draft law simplifies the terminology so that one single term – *beneficiary owner* – replaces the terms *founder, owner, shareholder, etc.* According to the draft law, the *owner-beneficiary* is the individual who is in one or several of the following situations: under the law and/or the contract: benefits or can benefit from any type of income from a broadcaster's or service distributor's operation and does not have the obligation to deliver this income to a third party; holds the control over the broadcaster or service distributor directly or indirectly through related persons in the sense of article 6 of the Law on Capital Markets; is a member of the managing body of a noncommercial legal entity or of a legal entity in which no individual has a share of participation that is equal or higher than the substantial share and who has the competence to revoke, alone or together with other members, most of the board members, executive body or most of the members of the executive body and/or the censor, or most of the members of the censor commis-

82 Ibidem

83 <http://www.parlament.md/ProcesulLegislativ/Proiectedeactele legislative/tabid/61/LegislativId/1794/Default.aspx>

sion of the broadcaster or of the service distributor. The amendments specify the list of information that private broadcasters are required to make public, including the name(s) of the beneficiary owner(s) and their share in the capital; the list of the members of the board of directors and the name of the director. The procedure for ensuring the transparency of information, namely by posting the applicants' files on their own websites and that of the BCC after they have submitted a bid are also set forth within the draft law. Thus, the general public will have access to the information about the status and contract of establishment of the applicant legal entity and the information about the applicant's ownership. The information is to be updated annually when publishing the annual reports. The reports, to include also the names of the beneficiary owners and the funding sources, will have to be submitted to the BCC.

The draft law also introduces administrative liability for failure to execute the obligation of ensuring the transparency of the broadcasters. It also contains procedural aspects on the enforcement of the law, which is usually problematic in Moldova, despite the Euro-compliant national legal framework.

Problems

Given the role of media outlets in society and their power to influence public opinion, it is necessary that they operate in transparent conditions, especially in regard to the owners and funding sources. In Moldova, public information about media owners is limited, while in the case of trusts that own media companies; the information may be missing altogether. Thus, the society has limited possibilities to access information about the financial resources or the funding of trusts. In addition, the governmental institutions that have such information do not publicize it.⁸⁴

According to media researchers,⁸⁵ most of the time information on Moldovan media ownership is impossible to access or obtain. Journalists then must operate only with information that cannot be verified and, in many cases, in order to report on subjects related to media owners and ownership, they make presumptions or connections based on the editorial policy, a statement previously made, and reports on monitoring media behavior.

The study "Transparency of Media Ownership in Moldova"⁸⁶ reveals one of the factors that affect the transparency of ownership of broadcasters and service distributors is found in flaws of the Broadcast Code. Although the Code places significant emphasis on information about media ownership in the licensing process and generally in securing pluralism, these requirements cannot be applied for various reasons. This mainly refers to the declarative character of certain provisions that do not go further than stipulating certain principles and obligations without defining and specifying specific terms, periods of applicability, and details or instruments for fulfilling the obligations when necessary. In the absence of provisions

84 2012 Media Sustainability Index, IREX: http://www.irex.org/sites/default/files/u105/EE_MSI_2012_Moldova.pdf

85 Transparency of Media Ownership in Moldova, Study, Independent Journalism Center 2012. Doina Costin, Mamuka Andguladze: http://ijc.md/Publicatii/studii_mlu/Transparenata%20proprietatii%20mass%20media%20in%20Republica%20Moldova/index.html

86 Ibidem

on the transparency of ownership of license applicants, these articles cannot be applied.

Another problem is the lack of a clear mechanism in the Broadcast Code, which would allow the BCC to execute its obligation to secure transparency of the broadcast media. The Code imposes on BCC the obligation to secure media pluralism by limiting concentration of ownership, including by removing the broadcast license for violating the provisions on the ownership regime in broadcasting; however, it does not provide the regulator with tools or mechanisms for fulfilling this obligation. In addition, the information accessible to the BCC by virtue of the Code is very limited and does not make it possible to create an opinion about the real situation in regards to broadcaster ownership.

Starting with these issues, civil society has also identified a number of related problems that will occur if the draft law is not approved or if its approval is delayed for a long time. In the absence of transparency and free access to information about media ownership, including information about media holdings in Moldova, it is possible to simplify the trends of direct or indirect media concentration, especially after the amending of the Broadcast Code in 2010 when the number of licenses allowed by an owner in one administrative-territorial unit was increased from two to five.

Accordingly, media concentration would limit media pluralism but also the general public's access to a variety of opinions and informational sources. Manipulation of the masses through the press would continue, especially during election campaigns, as a large number of media consumers outside Chişinău, as surveys show, get their information mainly from TV stations. Information mainly presented from one perspective would contribute to potential manipulation of information and "brain washing."

In conclusion, a diverse and transparent media environment cannot be attained in Moldova as long as there is no clear and well-defined legal framework in place. The absence of information available to the public about those who stand behind the media outlets violates citizens' right to access to information about the ownership, funding sources, editorial policy or political orientation of the media.

Recommendations

In order to avoid the concentration of the press and secure the existence of a free and pluralistic media market, it is necessary to have clear provisions for media ownership transparency and a system of control to prevent a concentration of media ownership. To this end:

- ▶ The Moldovan Parliament must take into account the Recommendation (94) 13 of the Committee of Ministers of the Council of Europe on the Measures Promoting Transparency in Mass Media⁸⁷ and pass the law on amending the Broadcast Code. Thus, after streamlining the terminology *owner-beneficiary* in the legislation and requiring the broadcaster to provide data about them, the BCC would secure the transparency by posting information to its website. And if mechanisms and tools are given to the BCC to perform its duties, including sanctioning violations of the provisions on the ownership

87 Recommendation (94) 13 of the Committee of Ministers on Measures Related to the Promotion of Transparency in Mass Media: http://www.coe.int/t/dghl/standardsetting/media/doc/translations/romanian/Rec%281994%29013&ExpMem_ro.pdf

regime in broadcasting, this would allow consumers to form an opinion about the value of the information;

- ▶ The Moldovan Parliament must take into account the Recommendation no. R (2007) of the Committee of Ministers of the Council of Europe to the Member States on the Media Pluralism and Media Content Diversity⁸⁸ and must take actions to prevent or counteract media concentration, which could jeopardize media pluralism at the national, regional or local levels. Thus, a sufficient variety of media outlets with a diverse number of owners, both private and public, would be available to the public;
- ▶ The authorities responsible for enforcing the law (the BCC) must have enough power to execute their mission. The BCC should oppose media concentrations in any form, especially when it concerns unacceptable levels of concentration and/or when media pluralism is threatened.

88 Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content: <https://wcd.coe.int/ViewDoc.jsp?id=1089699&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

Creating Adequate Conditions for Media-Related Structures to Operate (Audit Bureaus of Circulation, Audience Measuring Companies, etc.)

Commitment

One of the main objectives outlined in the Activity Program of Filat-2 Government included *assuring press freedom and the optimal conditions for media outlets' operations*. The priority actions outlined in the Plan also included *creating adequate conditions for the operation of media-related structures (audit bureaus of circulation, audience measuring companies, etc.)*. Although no changes in this area were made until 2013, this action was not included in the activity plan of the Leancă Government that followed the Filat-2 Government.

Background

The independence and freedom of the press can be secured only in conditions of real financial independence. The quality and value of poorly financed programs is questionable. There is a risk when media operate with inadequate funding as they may broadcast imported or pirated programs, films, and music that are less expensive to show viewers.⁸⁹ When there is a lack of necessary resources, the press becomes susceptible to external actors' influence either from the political or business sectors. As a result, the media become less independent and more susceptible to being used as a tool for manipulation or propagating certain ideologies. A partisan press cannot adequately inform the public in a way that strengthens public participation and the development of democracy in its country.

Financial independence is first of all determined by the economic conditions within the country and by the favorable business climate that generates an adequate amount of advertising. In order to attract more advertising, some Moldovan publications have resorted to inflating their circulations and presenting unrealistic figures to their clients, thereby creating unfair competition based on dishonesty. This affects both honest media editors from the media industry who lose significant amounts of money in lost advertising and the advertising clients who are not able to reach their target audience.

In Moldova, information about media owners and income from advertising and circulation of newspapers is among the least accessible, as the lack of transparency impedes many advertising clients to post their ads in newspapers and magazines. As a result, the biggest share of income from advertising goes to broadcast media,

89 Eve Salomon, Recommendations for Broadcast Regulation, Independent Journalism Center, 2006

while the print media receives less than ten percent⁹⁰ of the total revenues from the advertising industry. In order to change the situation and become more attractive to the market, media editors decided several years ago that it was necessary to have an audit bureau of circulations that would audit the publications and provide clients with real figures on the circulation and composition of each publication's audience. A 2008 IJC project broke the ground for creating an Audit Bureau of Circulations and Internet (ABCI). The ABCI was established in 2009 to enhance the level of transparency in newspaper circulation, thereby increasing investments in print media advertising and implicitly building a viable press in Moldova. The objectives set forth by the ABCI include supplying the Moldovan advertising industry with objective and independent indicators of the performance of various media channels, which are necessary for making professional decisions on allocating advertising budgets and contribute to professionalizing the print media and media industry as a whole.

To attract advertising, broadcasters must have data on the number of viewers supplied by companies that measure those numbers. At present, the Moldovan TV audiences are measured by one research company specialized in investigating TV audiences – TV MR MLD, since 2003 official representative of the AGB Group in Moldova and since 2005 – of AGB Nielsen Media Research,⁹¹ which collected information using people meters.

Problems

With a limited number of press editors, advertising agents and advertising clients as members in the first years, the ABCI faced many financial problems that made it difficult to operate and sustain itself as a permanent structure. Given the low amount of advertising that most member publications have, they do not have sufficient funds to pay their membership fees and the audit costs. Subsequently, a number of the members withdrew their participation, claiming that they did not gain an immediate benefit from their ABCI membership. According to them, advertising clients do not give priority to audited newspapers. The fact is that advertising is concentrated in the capital city, mainly in the hands of one advertising agency specializing in selling advertising space that redirects advertising to certain media. At the same time, posting advertising from public funds is not conditioned on whether the publication has been audited or not. As a result, the necessary conditions for to develop the media sector and strengthen its independence cannot be created in such an environment.

The situation is different for broadcasting, which absorbs a major part of advertising revenues. However, there are also problems in this sector. Certain stations claim that the audience measuring company provides erroneous data and have shown major discrepancies between the actual figures and those presented

90 Who Measures the Ratings of Televisions and How This Influences the Moldovan TV Market, Dumitru Niculăiță, *Economist*, 16 November, 2012: http://eco.md/index.php?option=com_content&view=article&id=7394:cine-msoar-ratingurile-televiziunilor-i-cum-influeneaz-acestea-piaa-tv-din-moldova&catid=105:marketing-pr&Itemid=476

91 The Advertising Market, Under the Pressure of the Monopoly of Casa Media, Olga Ceaglei, *Economist*, 3 februarie 2012: http://eco.md/index.php?option=com_content&view=article&id=4138:piaa-de-publicitate-tv-sub-presiunea-monopolului-casa-media&catid=105:marketing-pr&Itemid=476

by AGB⁹². An audit of AGB in Moldova by the French company CESP on the order of a local TV station shows that in order to provide representative data for the entire population of Moldova, the sampling method must be changed because it did not meet the correct standards. Parallel measurements conducted by a sociological research company also showed a major difference in numbers of viewers. Although certain consulting and marketing sociological research companies provide alternative data to AGB's in regards to TV ratings and other relevant information, they do not have the technical capacity to provide information about the efficiency of a campaign or audience numbers at a certain time on a certain television station.⁹³

There is a need for another company to calculate the data on television ratings and especially the audience numbers registered by the advertisements. Most local televisions appeal only to TV MRMLD /AGB Nielsen Media Research, although they are concerned about data accuracy. This is because foreign advertisers or foreign capital companies in many cases have the most significant advertising budgets and usually do not advertise on those television station that do not provide data about their audience numbers.

In such conditions, it is necessary to have more than one company on the market to calculate audience numbers.

Recommendations

To ensure the development of the media market in Moldova, it is necessary:

- ▶ To create adequate conditions for stimulating foreign investments and encouraging well-known international TV audience measuring companies to enter the Moldovan market. In this way, a monopoly would be avoided and the quality and the credibility of the data would be guaranteed;
- ▶ To amend the Law on Public Procurements in order to fulfill the requirement that advertising from public funds be placed only in audited newspapers or online media. Thus, the print and online publications will receive support and those that are not part of ABCI will be encouraged to join, thereby improving transparency in their circulations and creating more equal competition.

92 ibidem

93 Who Measures the Ratings of Televisions and How This Influences the Moldovan TV Market, Dumitru Nicolăiță, ECOnomist, 16 November, 2012: http://eco.md/index.php?option=com_content&view=article&id=7394:cine-msoar-ratingurile-televiziunilor-i-cum-influeneaz-acestea-piaa-tv-din-moldova&catid=105:marketing-pr&Itemid=476

The Press Law

Commitment

The Filat-1 Government committed to “*Drafting the law on freedom of expression that establish mechanisms to prevent political interference in the operation of public broadcast services and **repeal the Law on the Press.***” Passing the Law on Freedom of Expression in April 2010 fulfilled the first part of this commitment; however, the commitment to repeal the Law on the Press has not yet been fulfilled. In addition, no more actions related to the Law on Press have been included as commitments in the Filat-2 Government’s activity program. This law reappeared in the Leancă Government’s activity plan but not in the context of repealing but rather ***promoting a new version of the law on the press.*** In March 2014, the Ministry of Justice sent a letter to media nongovernmental organizations in which the Ministry announced the drafting of several legal acts, including a new version of the law on the press. The Ministry requires civil society involvement in drafting the laws and announced the creation of a working group that would systematize the proposals and recommendations made and then draft the respective laws.

Background

According to a number of reports and studies by nongovernmental media organizations in the past several years, the Law on Press⁹⁴ is an obsolete one. It does not regulate the independence of the periodical publications but rather describes the organization of their operations and contains provisions to jeopardize press freedom and pluralism.⁹⁵

Since its passing in 1994, the Law has been amended tens of times, with the last time being in 2006 by the communist government.⁹⁶ The multiple amendments to this law, drafted without clear reasoning and without taking into account international experience, made it insufficient and useless.⁹⁷ Media experts note that the law is not functioning fully and a major part of its provisions are found in other laws, including the Law on Freedom of Expression. Just one chapter of the Law is applicable to a limited extent but only in the case of requests for registration by periodical publications at the Ministry of Justice and the chapter that regulates the organization of the operation of periodicals and press agencies. For this exact reason, for many years civil society has insisted on repealing the Law⁹⁸

94 Law on Press no.243-XIII of 26 Oct 94: http://ijc.md/Publicatii/mlu/legislatie/legea_presei.pdf

95 Mass Media and Legislation. Acces Info: <http://www.acces-info.org.md/index.php?cid=169&offset=>

96 The Study “Transparency of Media Ownership in Moldova”, CJI 2012. Doina Costin, Mamuka Andguladze: http://ijc.md/Publicatii/studii_mlu/Transparena%20proprietatii%20mass%20media%20in%20Republica%20Moldova/index.html

97 Mass Media and Legislation. Acces Info: <http://www.acces-info.org.md/index.php?cid=169&offset=>

98 Press Freedom Index in the Member States of the Eastern Partnership. July-September 2013: <http://www.media-azi.md/ro/publicatii/indicele-libert%C4%83%C8%9Bii-presei-iulie-septembrie-2013>

and transferring some of its provisions to other legal acts. A legislative initiative in this regard was submitted in 2000 but was subsequently rejected by members of parliament.⁹⁹

Recommendations

Given the insufficiencies and inadequacies in the current law, it is recommended to repeal the Law on Press of the Republic of Moldova and pass a new law that is more in line with accepted international standards and best practices.

The legal provisions not regulated within other legislative acts in force should be integrated into the content of other normative texts.

If the law is repealed, the media should strictly abide by the Moldovan Journalist's Code of Ethics,¹⁰⁰ which should be endorsed by each newsrooms and journalist in Moldova.

99 Mass Media and Legislation. Acces Info: <http://www.acces-info.org.md/index.php?cid=169&offset=>

100 Moldovan Journalist's Code of Ethics: http://consiliuldepresa.md/fileadmin/fisiere/fisiere/Cod_deontologic_al_jurnalistului_din_Republica_final.pdf

Amending the Election Code

Commitment

The governments' programs did not separately stipulate the objectives and priorities for improving election-related legislation regarding the media's role. However, after 2009, relevant amendments have been made to the Election Code and aligned with the national legal framework and European standards.

Background

During elections in a democratic country, the media should serve as a catalyst for discussions and debates but should also be a correct and impartial 'watchdog' that monitors the entire election process. Although improvements in press freedom have been noted in the past several years, Moldovan media is still inflicted with a multitude of problems that tarnish the image of the press and its potential to fulfill its fundamental 'watchdog' role, including during election periods.¹⁰¹ Many times, the media do not fulfill their obligation to cover election campaigns truthfully and in a balanced and impartial manner, which ultimately affects the electorate's ability to form an opinion about the election candidates' programs. The imperfect and inconsistent legislation on media is often considered a determining factor contributing to the inadequate behavior and activities of the media during elections. Accordingly, regulatory bodies do not always manage to monitor the media's actions during elections and when necessary, impose sanctions for incorrect practices.

The Civic Coalition for Free and Fair Elections insisted that the Parliament amend the Election Code in June 2010,¹⁰² separating electoral propaganda from media coverage of the election campaign, outlining the principles of the media operations in an election campaign, providing additional safeguards for the editorial independence and transparency in broadcasting, outlining the responsibilities of the BCC from those of the Central Election Commission (CEC), etc. Some of these amendments created new perspectives about the media's role and significance in elections and how it reflects European norms and standards. All the actors involved in the election process, including broadcasters and the broadcast regulator, were to be held accountable for their actions. The amendments made to the Election Code have eliminated certain constraints on the media and at the same time have provided more possibilities to act accountably before all the election participants as well as the voters. The benefits of the amendments could already be felt at the national referendum on 5 September 2010 and in the parliamentary election campaign on 28 November 2010. In this period, the CEC's openness and civil society's

101 Media Landscape of Eastern Partnership Countries. Yerevan Press Club, 2011: http://www.ypc.am/upload/Media%20Landscapes%20of%20EaP%20Countries_eng.pdf

102 Law no.119 of 18 June 2010 for Amending and Completing the Election Code: <http://lex.justice.md/md/335036/>

activism contributed to developing regulations on media coverage of elections to include more accurate, concrete and permissive provisions than before.

By reviewing the legislation and media's behavior during the elections in 2009-2011, in 2012, the IJC developed a draft law to amend the Election Code and eliminate inconsistencies within this document. The amendments were not initially debated in public events with civil society, representatives of the CEC, BCC, Parliament and the Government. At the beginning of 2013, these amendments were sent to the Parliament. In the following months, the representatives of the parliamentary Commission for Culture, Education, Science, Youth, Sport and Media organized a number of meetings with lawmakers to discuss certain aspects of the amendments. The latest version with suggestions and recommendations made by CEC, BCC and the Parliament is currently with the parliamentary commission and has not yet been registered as a legislative initiative.

Provisions

The draft law on amending and completing the Election Code no.1381-XIII of 21 November 1997¹⁰³ was prepared based on the need to eliminate contradictory provisions and provisions contrary to best practices in this area. The draft law allows for the CEC to develop and pass a permanent regulation on media coverage of general elections and republican referenda. In the authors' opinion, introducing permanent regulations on the types of elections mentioned will contribute to establishing more predictable regulations in this area. The draft law establishes regulations that are in compliance with the European standards on the operation of public and private periodicals in an election period. It also sets out the obligation of national broadcasters to provide free airtime to the candidates in parliamentary elections and republican referenda with fair conditions (proportional access).

The draft law defines the obligations of various categories of the media in an election period, including those of public periodicals. Therefore, according to the amendments, the requirements for fair, balanced and impartial coverage of elections (as well as republican referenda) should exist only for the public periodicals, while the private ones are exempt from this responsibility. This specification was necessary due to the obligation for the private press found in the regulations on election coverage adopted by CEC in the previous campaigns. According to European standards, only the public print media fall under such provisions. Also, there is a proposal to increase the amount of airtime freely provided to election candidates by the national broadcasters, which the authors believe will create better conditions for informing the electorate about the candidate's election programs and of the participants' in a republican referendum. At the same time, taking into account the considerable increase in the amount of free airtime in general, the proposal eliminates the practice of having public broadcasters provide free airtime for electoral advertising. In the authors' opinion, this would create conditions for establishing fair competition between the private and public broadcasters in an election period.

103 Draft Law for Amending and Completing the Election Code, IJC: http://www.media-azi.md/sites/default/files/Proiect_de_lege_pentru_modificarea_si_completarea_Codului_Electoral_al_Republicii_Moldova.pdf

Problems

Until 2010, the media's behavior in elections was regulated by two laws – the Election Code and the Broadcast Code, with two regulating agencies – the CEC and the BCC – involved in monitoring and sanctioning the media for inappropriate behavior during elections. In 2010 and 2011, after consultations with civil society, political parties and the media, the Parliament amended a number of articles in the Election Code regarding the conduct of the media in election campaigns.¹⁰⁴ In the end, the amendments gave the media more freedom in covering elections. As media experts discovered, those amendments led to certain improvements. At the same time, however, certain provisions conflicted with provisions in the Broadcast Code, while the responsibilities of CEC and BCC in regard to media overlapped.

Another problem concerns the terminology used to define the timeframe within which the media have to act according to the CEC regulation. Thus, it is necessary to establish an exact period of validity for the special regulations and rules of conduct to be followed in such a period. Considering that the electorate can be manipulated even before the start of the official election campaign, the legislation should clearly define such terms as “pre-election period,” “election period,” and “post-election period.”¹⁰⁵

Contrary to the legal provisions that require each media owner to submit a statement on its editorial policy in the election campaign to the BCC and indicate the name of the institution's owner(s), the broadcasters only provide a formal declaration of the editorial policy and the name of the sponsoring trade company. The BCC is mainly to blame for its failure in applying this legal provision as it has not secured the *ad litteram* enforcement of this legal provision i.e. declaring the name of the owner(s) (of shareholders/participants/members) and of the founder or of the owning company.¹⁰⁶

This and other inconsistencies lead to a inappropriate conduct of the media, such as manipulation of the electoral information allowed both by politicians and by the media but also it reduces the authorities' capacity to sanction the media for incorrect practices or to examine complaints filed against the media, given the lack of mechanisms that would secure a correct assessment and impose sanctions for incorrect actions.

In order to avoid denigrating campaigns and information wars that in the end affect the ratio of voters' participation in the elections, it is necessary to find legislative solutions.

104 Regulating Media Conduct in the Election Campaign, Eugeniu Ribca, Ion Bunduchi, Boyko Boev, Chişinău 2012, IJC: http://ijc.md/Publicatii/mlu/studii/studiu_rom_draft.pdf

105 Regulating Media Conduct in the Election Campaign, Eugeniu Ribca, Ion Bunduchi, Boyko Boev, Chişinău 2012, IJC: http://ijc.md/Publicatii/mlu/studii/studiu_rom_draft.pdf

106 Transparency of Media Ownership in Moldova. Doina Costin, Mamuka Andguladze. IJC 2012: http://ijc.md/Publicatii/studii_mlu/Transparenata%20proprietatii%20mass%20media%20in%20Republica%20Moldova/index.html

Recommendations

In order to organize free and fair elections, it is necessary to improve the legal framework on elections by introducing regulations to secure pluralism and media diversity. The Election Code must be amended in such a way as to provide for permanent regulation on election coverage. This will contribute to enhancing the efficiency of the media regulatory bodies to the level of informing and democratizing the society.

OTHER INITIATIVES RELATED TO THE MEDIA

TRANSPARENCY OF PUBLIC PROCUREMENTS

Background

State-supported media are common phenomena in many European countries; the conditions for allocating direct or indirect financial aid are established in normative acts that ensure the transparency of how public funds are used. The Moldovan legal framework on the press does not contain such acts in the case of press supported by the state. To guarantee a more transparent and accountable procurement process and use of public funds for the media, the IJC developed a draft law in 2008 to amend the Law no. 96-XVI of 13 April 2007 on Public Procurements. The draft law takes into account the results of a broad study that monitored how state institutions post advertising in the media; established the criteria based on which financial assistance is provided; and reviewed the international practices on public procurements for the media. The study revealed the absence of a clear and coherent policy for supporting media outlets both at central and local levels that would also facilitate, initiate, maintain, and develop correct relations between the state and the media to benefit the entire society.¹⁰⁷ The draft law was submitted to the Parliament in 2008 but it did not generate interest among the members. After the government changed in 2009, the draft law was re-submitted to the Parliament; however, thus far it has not been registered as a legislative initiative or debated in the Parliamentary Commission for Culture, Education, Science, Youth, Sports and the Media.

Provisions

The draft law to amend the Law no.96-XVI of 13 April 2007¹⁰⁸ on Public Procurement offers legal safeguards for the transparent and accountable use of public funds for the media during public procurement procedures. It creates equal conditions for all the media outlets to access public funds for advertising from institutions and companies funded by the public budget. In preparing this draft law, recommendations of the Council of Europe and European Union as well as international practice in this area were taken into account.

In order to delineate the application of such safeguards, the draft law's authors suggest including four new terms: 'public media procurement;' 'media goods, media works, media services;' 'media public procurement contract;' and 'media economic operator.' In order to ensure the transparent and responsible use of public funds for mass media, the proposal expands the scope of the Law

107 The Relations Between the Media and the State Authorities: To Transparency and Responsibility. IJC. Final Report. Chişinău, 2008: http://ijc.md/Publicatii/presa_stat_raport_final.pdf

108 Draft Law for Amending and Completing the Law no.96-XVI of 13 April 2007 on Public Procurement: http://www.media-azi.md/sites/default/files/Proiect_de_lege_pentru_modificarea_si_completarea_Legii_privind_achizitiile_publice.pdf

on Public Procurements to include media public procurement contracts in the estimated amount of 10,000 lei or more without the value added tax. The authors also propose establishing a contracting authority (in public procurement procedures) for private legal entities “whose activities are secured by public funds or whose management is the object of control by public authorities or by other public legal entities or whose board of directors, managing board or oversight board is made up of members appointed by the said entities in a proportion of 50 percent.” For example, this Law would regulate the distribution of funds in the media sector by all state companies, municipal companies as well as by a number of joint stock companies (S.A. „Apă-Canal Chişinău”, S.A. Moldtelecom” etc.).

To secure the transparency of public procurements, a new article (*Media public procurement contracts*) is proposed, which establishes obligations for the contracting authorities, such as publishing the announcement of intention for all media public procurement contracts expected to be awarded by the end of the budget year, safeguarding access to certain information set out by the current Law, among which the decision for awarding media public procurement contracts; providing documented information about the examination, evaluation and comparison of offers within the media public procurements; submission of a report on the media public procurement procedure, etc. The respective article also stipulates the obligation of the Public Procurement Agency to post on its website all the relevant information about media public procurements (copies of media procurement contracts) and copies of reports on conducting media public procurements in small amounts. The agency is required to provide public access to the relevant information in accordance with the Law on Access to Information.

The draft law also establishes special norms that obligate the contracting authority to open bids for media public procurements (submitted based on the same invitation for bids) during one meeting and to secure the right to access to information during the bid-opening meeting. These provisions must also guarantee the transparent and accountable use of public funds in media public procurements.

Problems

The problem of transparency of public procurements remains an issue that civil society and the media have flagged in the past years,¹⁰⁹ since many provisions of the Public Procurement Law have a declarative character in regard to transparency and the distribution of funds for advertising, subscriptions and direct assistance in many cases remains at the discretion of the central or local authorities. Accessing public procurement funds for applicants is difficult. For the most part, the contracting authorities respond reluctantly to requests for information about the results of authorized controls and especially about the measures taken to liquidate the drawbacks found. Subjective or discriminatory criteria are often used in the distribution of funds to the media and this results in certain media outlets being favored in an unjustified manner, which affects competition on the media market.¹¹⁰

109 Public Procurements: Transparency or Opaqueness? Monitoring Report. Centrul Acces Info, Chişinău 2009: http://www.acces-info.org.md/upload/akizitsii_ultima.pdf

110 ibidem

Advertising from public funds is the most visible form of state funding of the media and an important economic interest. As a rule, the media managed by the public authorities most of the time benefit from a large amount of advertising, despite their small circulation or low ratings. When selecting the media outlets for public advertising, the state institutions do not apply clear criteria for their choices, such as the circulation levels, etc. Given that the Law on Denationalizing Periodicals was not implemented in the established timeframe (by February 2013), many district councils' newspapers continued to be financed from public funds, as well as benefit from public advertising, thereby so creating unfair conditions for competition with the privately-owned press.

The lack of a normative framework that would guarantee the transparent and accountable use of funds from the state budget impacts media development, creating unfair competition and unequal conditions for media outlets to access public funds, including advertising from the public funds by subsidized institutions and businesses in one form or another. As a result, media independence and the role of the media in promoting democratic governance is severely diminished and limited. At the same time, the lack of necessary regulations for securing state funding for the press may contribute to corruption within the public administration.

Recommendations

In order to secure transparency of public procurements, it is necessary to adjust the national normative framework to European Union standards. The legislation on public procurements must be amended so that it establishes obligations for securing transparency of the public procurement files from the media sector, thus ensuring free access to information for the media as well as for the public at large.

In order to create fair working conditions for all media outlets, it is necessary to develop and implement clear and transparent mechanisms for using public funds in the media sector. This is done by:

- ▶ Securing maximum transparency for public procurements by having the authorized authorities exert control so that support is provided non-arbitrarily, thereby observing the principles of equal and fair treatment, public benefit, transparency, etc.;
- ▶ Authorize the placement of advertising only in the periodicals audited by the ABCI;
- ▶ Using credible and measurable criteria in selecting media beneficiaries for financial support.

THE LOCAL LEGISLATION IN THE TAU GAGAUZ-YERI

Problems

For many years, the regional authorities of the Territorial Autonomous Unit Găgăuzia (TAU Gagauz-Yeri) have been deliberately violating the provisions in the Broadcast Code of Moldova¹¹¹, especially articles 39 and 40, which establish the role of the BCC as the guarantor of the public interest, whose responsibilities include establishing conditions, criteria and a procedure for granting broadcast licensing and relay authorizations as well as issue such licenses and authorizations. The authorities of TAU Gagauz-Yeri have illegally assumed competences in this area by entrusting the Main Division for Constructions, Infrastructure Development and Communications in the Executive Committee (whose regulation on operation prescribes the issue of licenses under the local law no.15-IX/II of 7 July 2000¹¹²) with issuing broadcast licenses and relay authorizations in broadcasting. Even if this problem has been flagged repeatedly and some attempts have been made to convince the regional authorities in Comrat to comply with the national law and to end the illegal practices in broadcasting, there are further violations of the Broadcast Code in Gagauz-Yeri by the governor (Bashkan) and the People's Assembly. Even though the courts (Comrat Court of Appeal and Supreme Court of Justice) have canceled many decisions on issue of licenses by the Division for Constructions, Infrastructure Development and Communications of Gagauz-Yeri, the issue of licenses continued and the beneficiary companies have used ground frequencies and cable networks illegally, ignoring the BCC decisions. The 2013 Activity Report of the BCC¹¹³ states that "the latest action of the BCC aimed at returning the broadcasting of the Gagauzian autonomy to the legal framework was its court appeal on 14 December 2013 against the illegal actions of the Main Division for Constructions, Development, Infrastructure and Communications of Gagauzia because of cancelling the broadcast licenses issued and terminating the licenses and operations of the said broadcast companies."

After the election on 9 September 2012, new members to the People's Assembly of TAU Gagauz-Yeri promoted amendments to the legislative and normative frameworks limiting the freedom of expression of the media and instituting elements of political control over the operation of the regional public broadcaster. On 12 December 2012, the People's Assembly approved the Regulation on the Accreditation of Media Representatives,¹¹⁴ a document that imposes exaggerated requirements for the accreditation of journalists for the meetings of the People's

111 Broadcast Code of Moldova:
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=316988>

112 Law on Licensing Certain Areas on the Territory of Gagauzia (Gagauz-Yeri): <http://www.halktoplushu.com/index.php/zakony-ato-gagauziya/103-o-litsenzirovanii-otdelnykh-vidov-deyatelnosti-na-territorii-gagauzii-gagauz-eri>

113 BCC 2013 Activity Report: <http://www.cca.md/files/RAPORT%20CCA%202013.pdf>

114 Decision no. 5-II/V of 12 Dec 2012 of the People's Assembly of TAU Gagauz-Yeri on Approving the Regulation of Accreditation of Representatives of Media Outlets to the People's Assembly:
<http://www.halktoplushu.com/index.php/postanovleniya/15-polozhenie-ob-akkreditatsii-smi>

Assembly, including the requirement for online portals to present a copy of their licenses when Moldovan legislation does not provide licenses for this type of activity. The members of the Assembly passed this regulation despite the fact that some national and regional nongovernmental organizations argued that the document restricted freedom of expression.

On 8 February 2013, the People's Assembly passed a law to amend the local law "On Television and Radio"¹¹⁵. Experts criticized this draft law¹¹⁶ because the members of the People's Assembly assigned to exert control over the media in the region through non-democratic procedures of appointing the Observers' Council and the administration of the regional public broadcaster. The law did not take effect because the Bashkan refused to support it; therefore, it was returned to the regional legislator with a number of comments and proposals for revision.

Recommendations

- ▶ Establish a mechanism of dialog and consultations between the Commission for Culture, Education, Research, Youth, Sports and Media of the Moldovan Parliament and the Commission for Legal Matters, Human Rights, Public Order, Information Policy and Mass Media of the People's Assembly of TAU Gagauz-Yeri in matters related to the legal regulation of the media in order to avoid the passing of local laws and regulations contrary to the national legislation and European practices;
- ▶ Intensify efforts to observe the provisions in the national legislation on licensing in broadcasting by involving the representatives of the EU and OSCE missions;
- ▶ Conduct a national expert examination of the draft law for amending the local law "On Television and Radio" to establish its compliance with the European standards on public broadcasting and the provisions of the Broadcast Code of Moldova;
- ▶ Develop and pass additional legislative and normative amendments to exclude political interferences in the work of the Public Regional Broadcaster "Teleradio-Găgăuzia";
- ▶ The Observers' Council of "Teleradio-Găgăuzia" to monitor the coverage of public interest subjects in the programs of the regional public broadcaster and the public debates of monitoring reports in view of improving the editorial content of programs.

115 Draft Law for Amending and Completing the Law of the TAU Gagauz-Yeri "On Television and Radio" no.66-XXVIII/III din 10.07.2007 – <http://halktoplushu.com/index.php/proekty-zakonov/24-zakon-ato-gagauziya-o-televidenii-i-radio>

116 Report on the Situation of the Press in Moldova in 2013, IJC 2014: <http://www.media-azi.md/ro/publicatii/raport-asupra-situa%C8%9Biei-presei-%C3%AEn-republica-moldova-%C3%AEn-anul-2013>

INTERNET REGULATION

Background

In 2013, the Government took measures to control and sanction Internet crimes and attempted to amend the legislation regulating the Internet. In October, the General Prosecutor's Office came with a draft action plan for preventing and counteracting cyber crime that included "voluntary agreements" and conventions with the public authorities and private internet service providers of Moldova to block and close down "illegal website." Shortly thereafter, the Ministry of Interior (MI) submitted a draft law to amending certain legislative acts to combat cybercrimes that, once passed, initiated changes to the Law on Preventing and Combating Cybercrimes, the Law on Electronic Communication, the Code for Contraventions, the Law on Performing the Medical Profession, the Criminal Code, the Criminal Procedure Code, and the Law on International Legal Assistance in Criminal Matters. Another draft law, submitted towards the end of October, allowed for blocking websites and electronic communication networks on which extremist messages could be posted.

The online community and civil society of Moldova are dissatisfied with the legislation. The draft laws did not initially include any input from civil society and Internet providers on the market and, in the opinion of the media experts, could censor and restrict freedom of expression by allowing the authorities to block sites deemed contrary to the government. After receiving the reactions from civil society and the online community, both documents were taken off the agenda of government meetings and subsequently included in public debates.¹¹⁷

Provisions

The draft law with amendments to counteract cyber crime facilitates the implementation of Moldova's commitments upon ratification of the Convention of the Council of Europe on Cyber Crimes and the Convention of the Council of Europe for Protecting Children against Sexual Exploitation and Sexual Abuses. According to the draft law, this can be achieved by expanding a number of legislative barriers on information security by the authorized bodies.¹¹⁸ As a whole, the draft law contains many necessary provisions that are meant to improve the legislation on combating online child pornography, criminal and terrorist activities, fraud, and illegal access to electronic information. According to the document, the competent state structures and Internet providers will have many powers to forbid or restrict access to websites containing illegal content. At the same time, the draft law proposes provisions to block websites on "a special list, developed and periodically updated by the MI," requiring providers to conserve the internet traffic, provide

117 <http://unimedia.info/stiri/guvernul-a-retras-proiectul-cu-privire-la-site-urile-de-internet-pentru-consultari-suplimentare-67527.html>

118 Decision-Making Transparency Monitor. Volume 1. No.45. Association for Participatory Democracy ADEPT: www.e-democracy.md/files/td/monitor-td-adept-49-ro.pdf
<http://particip.gov.md/proiectview.php?l=ro&idd=1168>

data about the network users, and decipher the information contained in the network protocols, etc.¹¹⁹

The second draft law authorizing the Intelligence Service to block Internet sites and materials containing extremist messages outlines measures to counteract the promotion of extremism through the Internet. For example, when “a network of electronic communication (website, portal, forum, social network, blog, etc.) contains an item extremist in nature, the Intelligence Service issues an order to the network and/or electronic communication service providers to temporarily block access to the item on the territory of Moldova.” The temporary blocking would last 60 days and during this period, the Intelligence Service “is required to notify the court to inquire into the extremist nature of the item and take other legal actions, as necessary.”¹²⁰ According to the draft law, the Intelligence Service must immediately post the order on temporary blocking to its website and from that moment, Internet providers would have four hours to block it. If two or more items considered extremist have been posted to a website, then the Intelligence Service or the prosecutor’s office may request the court to rule on blocking access to the website completely or for up to one year. Based on the final court judgment on terminating or suspending due to extremist activities, the respective media outlet is included in the registry of extremist organizations and material of extremist character.

Problems

According to the authors of the draft law, the virtual space in our country should be regulated, while many civil society experts fear that such actions present a risk of increasing censorship. In addition, passing these laws as currently worded may lead to closure of already-available websites for various reasons, including because of comments or criticism against the government. Also, the new provisions may lead to increasing self-censorship among journalists and thereby more restricted freedom of expression.

The action plan for preventing and combating cybercrimes regulates certain useful and necessary issues such as more severe sanctioning of child pornography consumers. However, as online community representatives and human right experts note, the legislation does not define very clearly the term ‘child pornography’ and does not clearly delineate the actions of persons who violate certain rights or who commit a certain crime.

Civil society experts believe that the amendments are weak and allow for potential abuse by prosecuting bodies¹²¹. An example of an interpretable norm can “require internet service providers to use the necessary technical methods and means to block access to websites containing materials forbidden by the legislation in force and included in special lists prepared and periodically updated by the MI.” In other words, it is not clear who will verify and how the accuracy of such lists will be verified. The draft law is ambiguous in regards to the protection of the interests of Internet service providers and even of freedom of expression in the

119 <http://unimedia.info/stiri/unimedia-si-privesc-eu-cerem-stoparea-modificarii-legislatiei-pentru-cenzurarea-internetului-si-organizarea-dezbaterilor-publice-66923.html>

120 <http://www.media-azi.md/ro/stiri/o-nou%C4%83-%C3%AEncercare-guvernului-de-reglementa-internetul-provoac%C4%83-controverse>

121 <http://www.europalibera.org/content/article/25138638.html>

online environment¹²². The measures are too general and it is not clear to which websites would it apply – only those containing child pornography or also other sites, where, for instance, there is political, commercial or other types of content.

The draft law on blocking Internet sites and online extremist messages contains vague and unclear provisions as well as tough measures that, once adopted, may limit freedom of expression. For example, if a media outlet publishes messages that are considered extremist by the authorities, the item/website may be blocked without receiving a notification period.

Recommendation

Draft laws must take into account civil society's and the online community's suggestions so that the laws do not contain vague, unclear provisions and contradict European standards in ways that would limit the right to freedom of expression and lead to censoring of the Internet.

122 <http://www.media-azi.md/ro/stiri/pre%C8%99edintele-cnp-%C3%AEngrijorat-%C3%AE-nleg%C4%83tur%C4%83-cu-ini%C8%99Biativa-procuraturii-de-bloca-site-urile-ilegale>

Conclusions

The Moldovan media market experienced certain developments and levels of liberalization after 2009, as the authorities had promised, and in 2010, certain laws were passed that were necessary to strengthen media freedom and independence. At the same time, however, from 2011 to 2013, the pace of reforms stagnated; the Moldovan political class postponed the approval of legal and regulatory initiatives that were very important for media development. The practical implementation of the already-existing laws has been delayed. Therefore, the action plan for the broadcasting sector has mostly failed and the priority objectives have not yet been achieved. Except for election legislation, reforms have not been fully implemented in other key areas (legal frameworks, regulators, public service providers, oversight authority, advertising etc.) for developing local broadcasting based on democratic principles.

The development of a new Broadcasting Code, included in the activity program of the Filat-2 Government, has not been completed, although this draft law was developed by civil society and examined by experts in 2011. For unknown reasons, however, this commitment was excluded from the Leancă Government's activity program. The draft law was registered as a legislative initiative only in January 2014 by representatives of the Liberal Party after this political entity ceased being part of the ruling coalition. Complementing the legislation with special provisions on transparency of media ownership and limiting the concentration of media ownership are included as priority actions in the government's program; however, civil society's draft law has only been registered as a legislative initiative by a group of MPs from the Liberal Democratic Party. The law on the denationalization of public periodicals was not implemented in the established timeframe and the use of public funds to promote the authorities' image continued.

Experts have raised concerns about the delays in implementing the necessary media reforms as well as the reluctance on the part of the state to promote them. The main problems that hinder the press's activities in Moldova include difficulties in accessing public interest information, which stymies the development of investigative journalism; the weak impact of the law on freedom of expression because of the lack of knowledge in the courts and also among journalists; insufficient transparency in the issue or withdrawal of broadcast frequencies; and an insufficient assessment of the use of ground licenses in accordance with their purpose, which may lead to a concentration of media structures and limit media pluralism. Another important factor that may encourage media monopolization and concentration is the lack of transparency in the media market, including 'fictitious' owners. Information about media owners, advertising revenues, and newspaper circulations, but also accurate data about readership, is not widely accessible, which creates conditions for unfair competition. This unequal competition may also be due to the concentration of advertising mainly in the capital city as well as the fact that the auditing of publications does not regulate the placement of publicly funded advertising. The existing legal framework does not ensure the neces-

sary transparency when public funds are allocated for the media. This impacts the development of the press and creates unequal conditions for accessing the public funds, including from sources used for advertising in one form or another by the subsidized institutions and business operators.

The commitments in the governments' programs for ensuring optimal conditions for the operation of media outlets, including the introduction of tax benefits and other forms of indirect subsidizing of the media, have not been adequately implemented. Civil society's attempts to promote certain legal and regulatory initiatives in this regard have not had the expected impact.

Even with certain positive trends in media market liberalization in Moldova and the legal framework to ensure a higher degree of media freedom, the authors of the study nonetheless find that most of the government activity programs on the media have not been implemented. The government has achieved certain objectives but the current state of affairs in this area has not changed significantly. Thus, political energy has been wasted in confrontations rather than channeled to building an independent and viable media sector capable of contributing to strengthening democracy in the country.

To support continuity in democratic reforms within the media sector, it is essential to have a new, more qualitative approach to promoting them. The Moldovan political class, from the ruling party to the opposition, must forsake their own ambitions and interests in maintaining control over as large of a number of media outlets as possible. They must expedite the passing and enforcement of important laws that would strengthen pluralism in media coverage by truly independent media outlets.

Recommendations

- Align the Law on State Secrets, the Law on Counteracting Extremist Activities, the Code for Contraventions, and other legal and regulatory acts with international standards on access to information and with the provisions of the Law on Access to Information;
- Create a special structure to supervise the implementation of the Law on Access to Information that would permanently monitor the application of the law and would sanction persons responsible for restricting access to information;
- Cancel official fees for journalists' access to public interest information and provide direct electronic access to the State Registration Chamber data and to Cadastre Agency data for journalists investigating issues of public interest;
- Strengthen knowledge of the provisions in the Law on Freedom of Expression among judges, attorneys, journalists and the public at large to protect the rights of journalists, media outlets and consumers;
- Encourage the Superior Council of Magistracy to impose disciplinary sanctions on judges who do not consider provisions in the Law on Freedom of Expression and commit procedural infringements in hearing cases;
- Train media representatives in how to protect their rights to free speech and information and encourage information consumers who believe their rights have been violated to appeal to mediatory bodies, such as the Press Council;
- Review the problems in the implementation of the Law on Denationalization of Public Periodicals, investigate the implementation of the legal provisions, and impose administrative sanctions on persons who fail to ensure the implementation of the law within the established timeframes;
- Approve completions to the Code on Contraventions with sanctions for publishing public periodicals that are not registered in the Registry of Public Periodicals;
- Provide additional consultations regarding the proposal to exempt newspapers, magazines, and online media from paying VAT on the revenues from their operations, regardless of their profit margin;
- Examine the draft laws registered as legislative initiatives on state aid for periodicals and on amending the Tax Code and the Law on Customs Tariffs in regards to taxing imported magazines;
- Reconsider the previous proposals made by the Public-Private Working Group on Media Strengthening for amending the State Budget Law (in view of decreasing the market coefficient used for media outlets when calculating rent of publicly-owned buildings) and the Tax Code (in view of granting the right to request cancelation of their registration as VAT payer);
- Establish methods of indirect subsidizing of costs for the distribution of print media (except for advertisements and erotic publications);

REFORMS IN MASS MEDIA FROM 2009 - 2013: FROM PROMISES TO ACTIONS

- Revise the national legislation on advertising to include developing, openly debating, and approving a new law on advertising;
- Establish a national authority (preferably a self-regulatory one) with the duty to identify messages of public interest to be transmitted as social advertising;
- Ensure that the Broadcast Coordination Council (BCC) applies objective, transparent, and non-partisan criteria in granting or withdrawing broadcast frequencies;
- Periodically monitor the use of frequencies to avoid media concentration;
- Extend the period of time for applicants to submit applications for licenses or frequencies;
- Assess the efficiency of and revise the measures for promoting media pluralism and anti-concentration mechanisms;
- Strengthen parliamentary oversight of the BCC activities;
- Reintroduce the commitment to passing a new Broadcasting Code in the Government's Activity Plan and ensure this commitment is honored;
- Complete the Government's Action Plan with the provision to develop and pass a strategy for developing the Moldovan media, focusing on improving the quality as the first priority action;
- Specify the objectives and actions of the government's plan for the media in such way that would eliminate incoherence and inconsistency;
- Establish a Public-Private Council for supervising and monitoring objectives achieved in regards to media development;
- Update and adjust annually the Strategy on Covering the National Territory with Broadcast Services and Programs;
- Exercise permanent social oversight of the implementation of the Strategy objectives and the BCC on an annual bases and organize a public meeting to reviewing the planned actions;
- Improve the draft program on transitioning to ground digital television and urgently approve it;
- Exclude monopolization of the digital arena and conduct permanent social monitoring of the implementation of the Program on Transition to Ground Digital Television;
- Develop additional mechanisms that would exclude political interference in the work of the public broadcaster;
- Ensure the Moldovan Government and Ministry of Finance's fulfillment of their commitments to the sufficiently fund the public broadcaster;
- Encourage the National Public Broadcaster "Teleradio-Moldova" to observe the provisions of its own internal regulatory framework;
- Improve the election legislation in regards to the media's actions in elections, including developing and passing a permanent regulation on media coverage of election campaigns;
- Develop and implement clear provisions on media ownership and a system of control over the concentration of ownership. Assign additional powers and responsibilities to the BCC to prevent any form of media concentration, especially when dealing with unacceptable levels of concentration or when media pluralism is threatened;

- Create adequate conditions for stimulating foreign investments and encouraging international TV audience measurement companies to enter the Moldova's market;
- Amend the legislation on public procurements to include the obligation to ensure transparency of public procurement applications in the media sector;
- Require the placement of advertising from public funds only in newspapers or online media that have been audited by credible and specialized entities;
- Establish a mechanism for dialog and consultations between the Commission for Culture, Education, Research, Youth, Sport and Media of the Moldovan Parliament and the Commission for Legal Matters, Human Rights, Public Order, Information Policy and Media of the People's Assembly of the TAU Gagauz-Yeri regarding issues of legal regulation of media operation in order to prevent the passing of local laws and regulations contrary to the national legislation and European practices;
- Intensify efforts to ensure observance of national legislation on broadcast licensing in the TAU Gagauz-Yeri, eventually involving the EU and OSCE missions;
- Conduct national expert examinations of the draft law to amend the local Law on Television and Radio in regard to its compliance with European standards on public broadcasting and with the provisions of the Moldovan Broadcast Code;
- Develop and pass additional legal and regulatory amendments to exclude political interferences in the operation of the Regional Public Broadcaster "Teleradio-Găgăuzia";
- Require the Board of Observers of the Regional Public Broadcaster "Teleradio-Găgăuzia" to monitor coverage of public interest topics in its programs and to publicly debate the monitoring reports in order to improve the editorial content of the programs;
- Repeal the Moldovan Law on the Press and integrate the necessary provisions of the current law into other legal acts;
- Promote the Journalist Code of Ethics in every Moldovan newsroom and among journalists;
- Exclude vague and unclear provisions from draft laws on Internet regulations that contradict with the European standards, limit the right to freedom of expression, and potentially lead to Internet censorship.

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