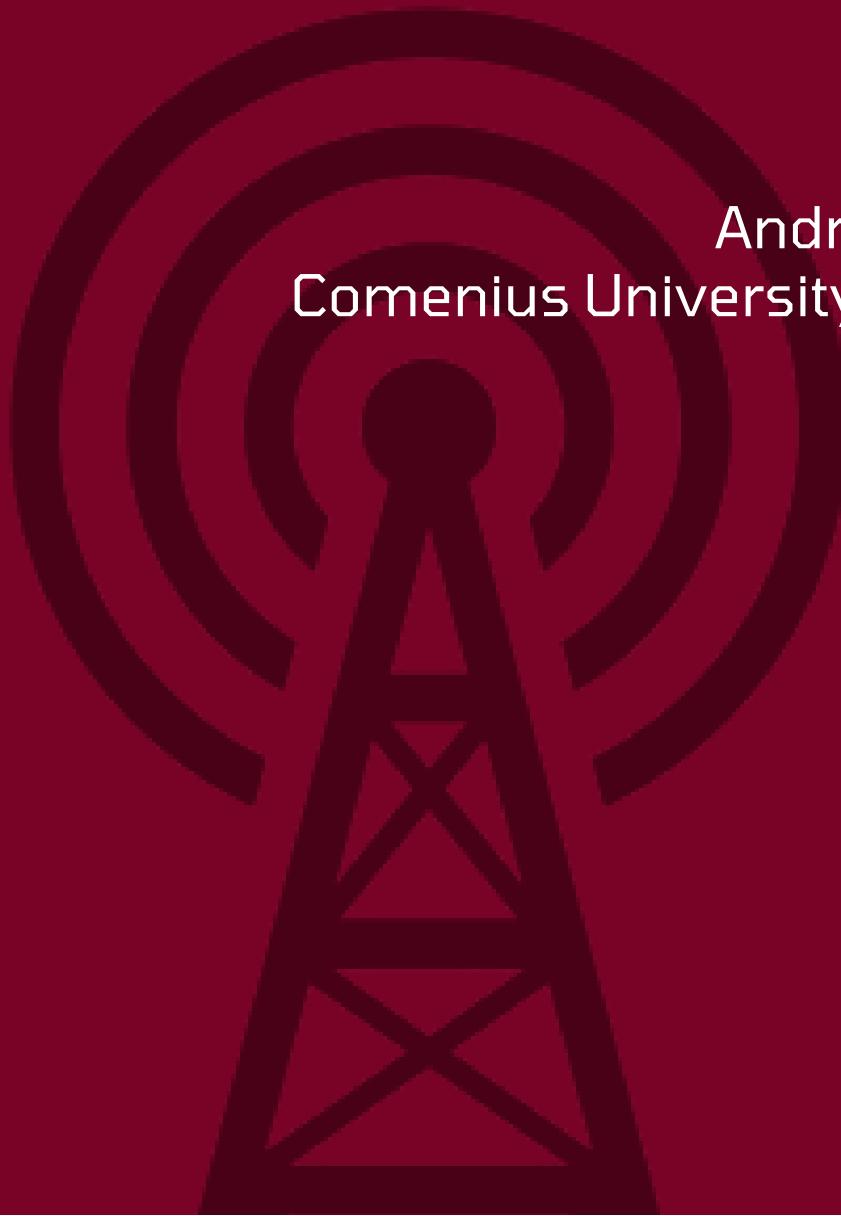




**LEGAL NEEDS AND A ROADMAP FOR THE REPUBLIC OF
MOLDOVA TO EFFECTIVELY PROTECT ITS PEOPLE
AGAINST PROPAGANDA, MANIPULATION,
DISINFORMATION: A STUDY**

Andrei Richter
Comenius University, Slovakia



Chisinau
2023

This publication was developed within the project: „Legal Protection of the Freedom of expression against Manipulation and Propaganda” implemented by the Institute for Public Policy, with the support of the Soros Foundation Moldova. The views expressed in this publication belong exclusively to the author.

Published by:

Institute for Public Policy,
Pușkin, 16/1 str., MD-2012,
Chisinau, Republic of Moldova
tel. +373 22 276 785,
e-mail: ipp@ipp.md

This document was prepared by **Andrey Rikhter** (Andrei Richter), a researcher Professor at Comenius University in Bratislava, Adjunct Professor of the Webster University in Vienna, and a fellow at the Media and Journalism Research Center (Estonia).

This document was issued with the financial support of the **Soros Foundation Moldova**. The opinions expressed are solely those of the author.

Bio of the Author

Andrey Rikhter (Andrei Richter) is Researcher Professor at Comenius University in Bratislava, Adjunct Professor of the Webster University in Vienna, and a fellow at the Media and Journalism Research Center (Estonia).

In 2011-22 he served as Director and a Senior Adviser at the Office of the OSCE Representative on Freedom of the Media.

An Austrian citizen, Richter holds university degrees in law, journalism and foreign languages, a doctorate of philology in Russia and a habilitated professorship in media studies from Slovakia.

He has authored more than 250 publications on media law and policy in Russian, English, Albanian, Armenian, Azeri, Bosnian, Croat, German, French, Lithuanian, Serbian, Slovak, Tajik and Ukrainian, including the standard media law textbook for journalism students in the Russian Federation (2002, 2009, 2016), a textbook on international standards of media regulation (2011), a textbook on online media law (2014), and a book on censorship and freedom of the media in post-Soviet countries, published by UNESCO (2007). Dr Richter sits on the editorial boards of a number of international journals on communications and the media.

Andrei Richter was a long-time professor at the School of Journalism, Lomonosov Moscow State University, where he chaired a department in media law and history. He founded and led Moscow Media Law and Policy Center, a Russian NGO on media freedom in 1990-2010s.

He also served as a commissioner at the International Commission of Jurists and the Chair of the Law Section of the International Association for Media and Communication Research.

Table of Contents

List of abbreviations	8
Introduction	9
I. Description of methodology	11
II. International framework on existing instruments, legislation, and practices	13
II.1 General principles of freedom of expression and recognized threats of propaganda and disinformation	13
II.2. Definitions.....	16
II.2. Countering propaganda.....	29
II.3. Countering disinformation.....	43
III. National practices in other Eastern & Central European countries	59
III.1. Armenia: national strategy to combat disinformation.....	59
III.2. Ukraine: a toolbox against Russian media	60
III.3. Baltics: policy of secondary sanctions.....	67
IV. Moldovan national framework analysis	71
General	71
Definitions	73
Legal provisions on freedom of expression, propaganda and disinformation	76
Policy documents and draft laws.....	90
Decisions of the regulators	91
Case law	95
Self-regulation of the media	97
Moldova-related judgments of the ECtHR	99
International assessment of the media freedom situation in Moldova.....	101
V. Analysis and conclusions	104
V.1 Legal needs assessment on existing national instruments, legislation and practices	104
V.2 Key legal issues and possible solutions.....	106
Annexes	126

LEGAL NEEDS AND A ROADMAP FOR THE REPUBLIC OF MOLDOVA TO EFFECTIVELY PROTECT ITS PEOPLE AGAINST PROPAGANDA, MANIPULATION, DISINFORMATION: A STUDY

Author: Andrei Richter (Comenius University, Slovakia)
6 October 2023, Chisinau

EXECUTIVE SUMMARY

This Study is a product of the project “Legal Protection of the Freedom of Expression against Manipulation and Propaganda”, executed by the Moldovan Institute for Public Policy (IPP) and supported by the Justice and Human Rights Department (JHRD) of the Soros Foundation – Moldova. The project aims to contribute to the legal protection of freedom of expression against fakes, disinformation, and manipulation through adjustment of the legal framework, practices, and procedures in the judicial system of Moldova.

The Study provides an analysis of existing legal and political instruments that counteract alien propaganda and harmful disinformation in the European countries, focusing on the national examples of the Baltic states, Ukraine and Armenia, as well as those suggested by intergovernmental organizations: UN, European Community organizations, Council of Europe and the OSCE.

In view of the expert, Ukraine presents the case wherein the duration and spectrum of actions against Russian media and propaganda is probably the widest possible among the world nations. The country has tested a number of approaches and instruments to stop disinformation and achieved certain successes alongside with failures on this way, finding “an overall good balance between the preservation of media freedom and measures against pervasive Russian hybrid and massive disinformation attacks, being multiplied by some local media outlets.”¹

Further on, the Study reviews the current state of Moldova’s relevant law and policy. The analysis is provided in comparison with the applicable international legal standards in order to identify potential gaps, shortcomings, and solutions for resilience focused on both preventing and sanctioning policies and legal framework. In general, the juridical infrastructure against illegal propaganda is in place in Moldova, but it needs certain

¹ Communication from the Commission to the European Parliament, the European Council and the Council, “Commission Opinion on Ukraine’s application for membership of the European Union”. Brussels, 17.6.2022 COM(2022) 407 final. P. 12, <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-06/Ukraine%20Opinion%20and%20Annex.pdf>.

amendments to adapt to the modern propaganda capacities and enable prosecution of criminal violators, when necessary. As to the harmful, but legal disinformation and propaganda in the media, the expert suggests specific steps to refine the law, policy (including intergovernmental European cooperation), self-regulation and existing oversight to make counteraction effective.

In the end, the Study attempts to answer the most pertinent questions on the sensitive balance between the right to free expression and the dangers of propaganda, as well as to provide relevant recommendations.

The Study underlines that the future of media freedom lies in the quality journalism, which is upheld by journalistic practices that “serve the public interest and are based on good faith and the ethics of the profession.”² Such practices, irrespective of whether performed by journalists or other media actors, seek to provide the public with accurate and reliable information that complies with the principles of fairness, independence and transparency, public accountability and humanity. It is journalism committed to these principles that should be acknowledged as a public good with its key role and value for societies. The public authorities of Moldova are encouraged to join other European states in ensuring promotion and support of such a concept of journalism through national law and policy.

Disinformation can be a propaganda tool, but in itself both – propaganda and disinformation – are forms of legitimate free expression. International law prohibits some narrow types of speech, for example propaganda for war and hatred, but not because they are false but because they are harmful to other human rights and public interests.

The EU institutions believe that when imposing restrictions on speech in the mass media, certain objectives are of paramount importance today, namely,

- the cessation of continuous and concerted propaganda activity in favor of Ukraine’s military aggression addressed to civil society in the European Union and in neighboring countries, which falls within the objective of safeguarding the values of the European Union, its fundamental interests, its security, its integrity and its public order, and
- the protection of territorial integrity, sovereignty and independence of Ukraine and the promotion of a peaceful resolution of the crisis in that country, which are part of the broader objective of maintaining peace and of international security.

These objectives should become valid for the national policies of Moldova as a country neighbouring to Ukraine and subject to propaganda of aggression that undermines its values as a candidate country to the EU. They are recommended to be formally recognized in the national law and policies.

This Study has assessed the legal needs in relation to the existing domestic instruments, which may be enumerated as follows:

² Declaration by the Committee of Ministers on the financial sustainability of quality journalism in the digital age (Adopted by the Committee of Ministers on 13 February 2019 at the 1337th meeting of the Ministers’ Deputies).

- Recognition of economic sanctions in the domestic law and policy as the key instrument of the EU and its member states in countering alien propaganda, including a ban on rebroadcasting and any other form of retransmission of the programmes of the sanctioned media.
- Considering that the restrictions on freedom of expression and freedom of the media in exceptional situations, such as state of emergency, may be broad, but they become null and void once the emergency situation regime is over.
- While the mass media should continue to enjoy the liberty of reporting statements by the politicians without fear of being sanctioned if the stated facts are untrue, the deliberate omissions or false narratives of public officials are recommended to be put under the scrutiny of the Parliament and the Government. Such misbehavior should result in a public correction of the errors and lies, as well as resignation offered by those who mislead the public offices and – via the media – the public at large. In this sense, the law shall restrict the impunity for disinformation currently enjoyed by the parliamentarians and public actors.
- Public service media and community media, once functioning as trustworthy news media, are capable to establish a professional standard for the commercial media in the provision of timely and reliable information to the public, especially in emergency situations. We recommend that TRM reviews and improves its professional standards through a strict observance of the Deontological Code, full compliance with the Press Council decisions, and improved work of its Ombudsperson to gain trust of the audience and provide reliable information to the public.
- For the same reason of provision of timely and reliable information to the public, it is recommended that specific legal and policy acts are adopted to establish community media in Moldova as an important news source for the population outside of the capital.
- While internal pluralism is essential in the work of the PSM and community media, it is recommended to be extremely cautious when using the argument of lack or even absence of “internal pluralism” in the content of an individual commercial media to impose changes of independent editorial policy through legal sanctions.
- It is recommended to reinterpret the legal essence of the right to reply, to refute and to replicate in the national law in line with the legal traditions of the European Community rather than the post-Soviet model. The public authorities are recommended to widely use the right of reply to refute harmful disinformation in the national media, as well as use this right as provided in the Deontological Code of Journalists and self-regulation mechanisms.
- Moldova is recommended to accede the UN Convention on the International Right of Correction and the International Convention concerning the Use of Broadcasting in the Cause of Peace, as well as to join European institutions in the audiovisual sphere as it fits its current necessities to open markets and share experience.
- Moldova is recommended to review and amend the legal definitions of the national law that relates to disinformation and propaganda in the media, such as “media”, “journalist/journalism”, “disinformation”, “misinformation”, “propaganda”, “propaganda for war”, “national security”, “hate speech”, “public harm”, “national interest”, “information war”, in line with the international law, the standards of the EU and recommendations of the Council of Europe, including the Venice Commission.

- Well-grounded, transparent and publicized decisions of the national Press Council, that should become a legal entity and be reinforced to enable its sustainability, shall evaluate the journalistic practice from the perspective of professional and ethical standards. The decisions are essential for the courts and the national media regulator CA in adjudicating conflicts related to objectivity, duties and responsibilities, as well as fairness of reporting of the media actors. They are also essential to distinguish journalists and other media professionals from propagandists who should not be protected by the existing media privileges, such as protection of sources or fair reporting.
- In the view of the intergovernmental organizations (UN, CoE, EU, NATO), Russia conducts an unprovoked aggression against Ukraine's sovereignty. Intergovernmental human rights expert bodies point to the possibility of restricting propaganda of the aggressor state, or aggressive propaganda and disinformation. We find this as a type of restriction that better fits the human right framework, rather than the current criteria based on the origin of AV programmes in a country that has not acceded to the ECTT or is not a member state of the EU.
- To gain and sustain public trust, the government is recommended to be transparent to the public and quickly provide trustworthy socially important information. The just adopted Law on Public Information of Public Interest does not envision the key instrument that will make it effective – an independent oversight mechanism. We recommend that the Law is amended in this regard.
- Public display of communist symbols in today's Moldova poses threats to national security and public order. It is recommended to reintroduce a ban on propaganda of "totalitarian ideologies" and use of "totalitarian communist symbols" in line with the earlier decisions of the Constitutional Court of Moldova and the relevant case law of the ECtHR.

To make these legal needs on existing national instruments, legislation and practices feasible, we suggest also practical steps in the field of law and policy for consideration of relevant authorities. The Action Plan is designed to efficiently protect freedom of expression against manipulation and propaganda with a focus on policies and legal framework and corresponding means of implementation. It proposes measures for national stakeholders including the legislators, government, law-enforcement bodies, as well as the Audiovisual Council. It may serve as the basis for the national policies to efficiently protect against falsities and propaganda.

In a nutshell, in relation to the propaganda and disinformation from abroad, Moldova is recommended to respond to the call of the Ukrainian Parliament, in line with the wording of the UNGA resolution "Aggression against Ukraine", as well as the rationale of European Council's decisions concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine by recognizing – through a resolution of the Parliament – the Russian Federation as "aggressor state".

Then relevant amendments in the national media law and policy could follow. Singling out the aggressor state, a country which breaks the international law through violations of human rights and other protected interests, will allow Moldova to establish a system of legal mechanisms to enable protection of its population from propaganda and disinformation that

originates in Russia and disseminated by the Russian and/or Moldovan media, online and offline. We find it the most reasonable method that would fit the human rights system in Europe, as the special regime of sanctions and restrictions would naturally end with the end of the violations, and be proportionate to the legitimate aim of protecting national security and public order in times of the war next to the Moldova's borders.

Disinformation by the public officials and parliamentarians, political parties should be considered from the viewpoint of their compliance with the Code of Conduct of the Civil Servant and adoption of similar regulation for the deputies of all levels and for political parties. A requirement to provide a public correction of the errors and falsities could be in the center of such amendments.

In relation to the propaganda and disinformation that originates in Moldova and is disseminated by the local media actors in line with the ideology of the aggressor state, it could be countered by the decrees of the national bodies, such as the Audiovisual Council, but based on the review and relevant decisions of the Moldova's Press Council.

The other side of this policy is for the government to make earnest steps (1) in making the public authorities accessible and transparent to the public, (2) to provide timely and accurate responses to lies, and (3) to make audiovisual current-affairs programmes and information that originate from the third countries – in Russian – widely available to the population of Moldova.

As to the local media that engage in legal, but harmful to the population and national security activities, the key instrument should be the modernized, transparent and effective Press Council. Here the civil society and international donors should enable the Press Council to work on a sustainable basis without compromising its independence and authority.

The expert does not overestimate the legal component of a counteraction to propaganda and disinformation. There are also other avenues to enforce public resilience. They include economic initiatives, like developing a pluralist market, promoting and providing financial benefits to the national media products, educational programmes in media and digital literacy, training of public officials and law-enforcement staff, etc.

List of abbreviations

AV – audiovisual
AVMS Code –Audiovisual Media Services Code (of Moldova)
AVMSD – Audiovisual Media Services Directive (of the European Union)
CA – Audiovisual Council (of Moldova, since 2018)
CCA – Coordination Council for the Audiovisual (of Moldova, before 2018)
CIS – Commonwealth of Independent States
COJ – Court of Justice (of the European Union)
CSE – Commission for Exceptional Situations (of Moldova)
EAO – European Audiovisual Observatory
ECHR – Convention for the Protection of Human Rights and Fundamental Freedoms, or the European Convention on Human Rights.
CSO – civil society organization
ECJ – European Court of Justice
ECRI – European Commission against Racism and Intolerance
ECtHR – European Court of Human Rights
ECTT – European Convention on Transfrontier Television
ERGA – European Regulators Group for Audiovisual Media Services
EU – European Union
GRT – Găgăuziia Radio Televizionu
ICCPR – International Covenant on Civil and Political Rights
IHL – international humanitarian law
IHRL – international human rights law
IPP – Moldovan Institute for Public Policy
JHRD – Justice and Human Rights Department of the Soros Foundation Moldova
MDL – Moldovan Lei
NCTRB – National Council on Television and Radio Broadcasting (of Ukraine)
NRA – national regulatory authority
ODIHR – Office for Democratic Institutions and Human Rights (of the OSCE)
OSCE – Organization for Security and Co-operation in Europe
PACE – Parliamentary Assembly of the Council of Europe
PKK – Kurdistan Workers Party
PSB – public service broadcasting / public service broadcaster
PSM – public service media
RFOM – OSCE Representative on Freedom of the Media
SIS – Intelligence and Security Service (of Moldova)
SOMS – Network of Organizations of Media Self-Regulation
TEU – Treaty of the European Union
TRM – Teleradio-Moldova
UK – United Kingdom of Great Britain and Northern Ireland
UN – United Nations Organization
UNESCO – United Nations Educational, Scientific and Cultural Organization
UNGA – UN General Assembly
UN HRC – UN Human Rights Council
UDHR – Universal Declaration of Human Rights
WWII – World War II

Introduction

The project “Legal Protection of the Freedom of Expression against Manipulation and Propaganda” is a half-year programmed action, executed by the Moldovan Institute for Public Policy (IPP) and supported by the Justice and Human Rights Department (JHRD) of the Soros Foundation – Moldova. The project aims to contribute to the legal protection of freedom of expression against fakes, disinformation, and manipulation through adjustment of the legal framework, practices, and procedures in the judicial system of Moldova.

Whereas demands of freedom of speech and freedom of the media, on the one hand, require states to refrain from interference with media production and to protect the independence of media organisations, it is widely accepted that states, on the other, are required to set a normative framework in order to guarantee the existence of a diversified and pluralistic media landscape.³

As seen throughout the world, societies are increasingly becoming vulnerable to the vast exposure to disinformation and propaganda. This phenomenon is particularly emphasized in the Republic of Moldova, due to its geographical, social and political setting and the present circumstances surrounding the war against Ukraine and numerous other crises. In this context, the addressing of these issues is a necessary prerequisite for maintenance of democratic principles in the country. While this project identifies the need to provide a tangible and concrete recommendations for the Moldovan decision-makers, and law enforcement and judiciary bodies in particular, it is also savvy and highly alert to the fact that any attempts to protect the country from dangerous disinformation and propaganda must per default, be done in accordance with the best international practices, respecting and protecting the right to freedom of expression, without which the very core of the democratic fabric of the society is jeopardized.

In her recent speech, President of Moldova Maia Sandu noted that the country is constantly attacked, through lies, propaganda, and misinformation in the mass media and the social networks: “Daily, the Kremlin launches hybrid attacks, using the weapon of propaganda to sow hatred in Moldova, to weaken our trust in each other and the trust in our own state.” She pointed that propaganda presents “a direct threat to the security of the country and endangers the free, democratic and prosperous future of Moldova,” it has become “the most dangerous weapons with which we are attacked today.” To respond to these threats, to combat propaganda and help protect the information space of Moldova the nation needs concrete, coherent measures and a well-established plan. In this regard the President named providing objective and correct factual information, developing critical thinking and citizens' resistance to misinformation the best antidote to propaganda.⁴

³ European Audiovisual Observatory, “The independence of media regulatory authorities in Europe: IRIS Special” September 2019, <https://pure.uva.nl/ws/files/43914397/43914163.pdf>.

⁴ President Maia Sandu's message about the initiative to create the National Center for Information Defense and Combating Propaganda – PATRIOT, 29 May 2023: <https://www.presedinte.md/eng/discursuri/mesajul-presedintei-maia-sandu-despre-initiativa-de-creare-a-centrului-national-de-aparare-informatiionala-si-combatere-a-propagandei-patriot>.

Experts underline that independent Moldova “never developed real and sustainable policies on the media system, including... protection of the Moldovan information space. Hence, the Moldovan media landscape has developed chaotically and is dependent mainly, on the one hand, on political parties and politicians who invest in media in order to win political capital, and on the other, on external investments such as grants and projects.”⁵

In Moldova the policy on restrictions of alien disinformation also has on/off development. For example, several times the country banned and then withdrew the ban on audiovisual news, information and analysis with military and political content if produced outside the EU, the USA, Canada and the states parties to the ECTT. ⁶ No wonder, the EU notes that Moldova “has put sustained effort into fighting disinformation”⁷, but is of an opinion that further efforts are needed⁸

For this Study, the author has reviewed the existing international legal and political toolbox designed to counter harmful disinformation and hateful alien propaganda in Europe and in intergovernmental organizations, such the UN, OSCE, EU, and the Council of Europe. With the assistance of academic research papers, enumerated were the general principles of free expression, as well as its specific balances with threats of propaganda. Relevant international definitions were put in comparison with the domestic law of Moldova.

The analysis of the Moldova’s relevant legislation and practices of protecting freedom of expression while resisting the dissemination of fakes and propaganda is provided in comparison with applicable international legal standards. It is designed to identify potential gaps, shortcomings, and solutions for resilience and is focused on policies, legal framework and process, aimed to protect Moldova and its people against fake news, and propaganda. It mainly focuses on prevention and sanctioning.

Additionally, interviews were held by the author in Chisinau in June 2023 to assess the quality and efficiency of Moldovan legal instruments, and the capacity of the justice delivery sector

⁵ Aneta Gonța, “Dependent in Independence: Moldovan Media System Swings Between Political Submission and Sustainability”, In *Three Decades Later: The Media in South East Europe after 1989*, ed. by Nikoleta Daskalova and Hendrik Sittig, Konrad-Adenauer-Stiftung Media Programme South East Europe: 2021, p. 195, <https://www.kas.de/documents/281902/281951/Three+Decades+Later+-+The+Media+in+South+East+Europe+after+1989.pdf/6faa04eb-2cda-9572-87ad-6d0322b657de?version=1.0&t=1631513601726>.

⁶ See more: Andrei Richter, *Sanction law against Russian and Belarusian audiovisual media*, IRIS Extra 2022, European Audiovisual Observatory, Strasbourg, 2022, p. 19-22, <https://rm.coe.int/iris-extra-2022-sanction-law-against-russian-and-belarusian-audiovisua/1680a8ff9f>.

⁷ Commission Staff Working Document, “Analytical Report following the Communication from the Commission to the European Parliament, the European Council and the Council Commission Opinion on the Republic of Moldova’s application for membership of the European Union”, Brussels, 1 February 2023 SWD(2023) 32 final. P. 4, https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-2/SWD_2023_32_%20Moldova.pdf.

⁸ Communication from the Commission to the European Parliament, the European Council and the Council, “Commission Opinion on the Republic of Moldova’s application for membership of the European Union”, Brussels, 17 June 2022, COM(2022) 406 final. P. 9-10, <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-06/Republic%20of%20Moldova%20Opinion%20and%20Annex.pdf>.

and the law enforcement to counter propaganda, manipulation, disinformation, and “fake news”.

This Study aims to contribute to the development of an efficient and well-balanced system of legal protection of the right to freedom of expression by conducting an in-depth assessment of the legal framework and practices used to protect it against manipulation, disinformation and propaganda, as well as to use the findings of this assessment in the form of recommended coherent measures and a well-researched course of actions for relevant stakeholders.

In addition, the author would like to express his gratitude to the staff of the Institute for Public Policy (Chisinau) for their assistance in designing and drafting the Study and Ms. Cristina Frumosu-Durnea, Program Manager, Media Policies, Legislation and Research Program, Independent Journalism Center (Chisinau) for her careful review of the manuscript.

1. Description of methodology

The author uses the following methodology principles in order to meet the requirements and in order to ensure the highest quality of requested deliverables:

Tailor-made, solution-oriented approach

The approach that is tailored to this Study and takes specific goals as a priority is used. With extensive background in all issues related to the relevant concepts, international and national legislations, as well as practices, a unique perspective with up-to-date, innovative and creative solutions is provided. Inspiration is drawn from and build on international standards and practices in this field, with special attention paid to the domestic circumstances and the national idiosyncrasies to make applicable and implementable solutions.

Mixed methodology to developing a robust evidence-base

First of all, it is understood that any decision-making should be based on evidences. In that sense, an effective and efficient research is undertaken, including analyzing data in the context of the current, and often evolving legal and political environment. A range of quantitative and qualitative data gathering methods is employed ranging from desk research, literature reviews, document analysis, overview of existing data, reporting tools, interview guide preparation and the follow-up stakeholders’ interviews, data gathering and its analyses. In terms of analysis, applied is a combined method of document analysis (policy and legal analysis) and interpretative analysis of information gathered.

Potential inconsistencies in the analysis or disagreements regarding the findings are addressed by additional research, follow-up meetings and other forms of communication to ensure information gap filling and levelling of opinions.

Efficient project management and open communication

From the start of a project, the expert has worked closely with the IPP and JHDR to fully understand the needs and objectives. The benefit of having both international and national

expertise was additionally enabled by regular contact and exchanges. This included meetings (face to face and virtual), regular documented updates and opportunities for feedback (via written reports, emails etc.), as well as ad-hoc updates and opportunities for feedback (via telephone and video meetings etc.).

Effective reporting and presentation

Identifying the issue, developing the research questions, data gathering and analyzing of the evidence are all critical stages of the Study. But the ability to communicate complex findings to a range of audiences, and when required, to present focused and well-reasoned recommendations and policy options in an accessible and engaging manner is equally important and applied. In that sense, the results of the inquiries are presented with the needs and objectives in mind. They take form of a report that is concise, well-organized and delivered in “plain English”. Where possible, the report includes visualization of data for maximum accessibility. The report strictly distinguishes between facts, assessments, suggestions and recommendations. The recommendations and policy proposals are clearly thought-out and concrete. The author at the end will also deliver major points to the stakeholders at the public presentation, adjusting the scope, tone and objective of the presentation to the targeted audience.

Based on the aforementioned methodology principles, the Study is organized and delivered around collection of data, research and preparation of the Study as follows:

1. Organization of online meetings between the experts and contracting authority
2. Assessment and inquiry into the Moldovan circumstances regarding disinformation and propaganda
3. Preparation of an interview guide
4. Conducting the information-gathering mission and executing the interviews
5. Providing an international context to the topic of balancing the counteraction to disinformation and propaganda and the right to freedom of expression, with the selected number of best practices on the level of the EU and international organizations, such as OSCE, UNESCO, etc
6. Drafting the report and recommendations
7. Preparing for and participating at the public presentation of the study
8. Preparation of an activity report

II. International framework on existing instruments, legislation, and practices

II.1 General principles of freedom of expression and recognized threats of propaganda and disinformation

This section provides an applicable **review of the international framework** in relation to freedom of expression as well as countering disinformation and propaganda with a particular focus on the relevant developments in the European Union since 2015.

In the post-WWII world a balance between freedom of expression and an obligation to stop funneling of armed conflicts, violence, and discrimination, as well as protecting national security and public order is best exemplified in Articles 19 and 20 of the *International Covenant on Civil and Political Rights* (ICCPR). The former says:

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

It is widely recognized that Article 19 is an **enabler of other fundamental rights** such as freedom of assembly, association and participation in democratic processes. It is also integral to the UN Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development, which recognize a target of “public access to information and fundamental freedoms, in accordance with national legislation and international agreements”⁹

Both article 19 of the Universal Declaration of Human Rights (UDHR) and article 19 of the International Covenant on Civil and Political Rights guarantee the right to hold opinions without interference and to seek, receive and impart information and ideas of all kinds, regardless of frontiers and through any media. Under them, while freedom of opinion is absolute, freedom of expression may be restricted under certain circumstances. Still, the human right to impart information and ideas “of all kinds” may not be limited to statements deemed “correct” by the authorities, it extends to information and ideas that may shock, offend and disturb. This means that States may only impose restrictions on the right to freedom of expression and freedom of the media in accordance with their obligations under international human rights law.

The States are to respect, protect and fulfil human rights: they have a duty to refrain from interfering with human rights; an obligation to ensure that others, including businesses, do

⁹ UN Sustainable Development Goals, SDG 16.10, <https://unstats.un.org/sdgs/indicators/indicators-list/>.

not interfere with them; as well as to facilitate and promote them (including legislative, budgetary, and other actions) so as to enable and assist individuals and communities to enjoy them.

Though the right to freedom of opinion (Article 19(1) of the ICCPR) is inviolable,¹⁰ freedom of expression is not absolute. Article 19(3) of the ICCPR states that the exercise of the right to freedom of expression “carries with it special duties and responsibilities.” “For this reason, noted the UN Human Rights Committee (UNHRC), “two limitative areas of **restrictions** on the right are permitted, which may relate either to respect of the rights or reputations of others or to the protection of national security or of public order (*ordre public*) or of public health or morals. However, when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.”¹¹

To avoid such a danger, the States should observe the **three-part test** for the conditions of admissible restrictions. The latter must be “provided by law”; they may only be imposed for one of the two limitative areas set out in paragraph 3; and they must conform to the strict tests of necessity and proportionality. “Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated”, noted the UNHRC.¹²

While the above provisions of Article 19 of the ICCPR on freedom of expression and its possible limitations are well-researched and rehearsed, there is less political focus on Article 20, which stipulates:

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

The importance of efforts to prevent wars and discrimination in relation to the values of human rights is widely known and clear enough: modern history is abundant with examples of funnelling aggression and incitement of racism and intolerance giving rise to military hostilities, genocide and crimes against humanity. Propaganda for war as well as calls for discrimination and violence based on nationality, race or beliefs result in abuses of core human rights stipulated in the ICCPR, they also attempt at the “inherent dignity” and “equal and inalienable rights of all members of the human family” as the “foundation of freedom, justice and peace in the world” (as provided in its Preamble). Such exercise of freedom of expression often has an aim to destroy the rights and freedoms of the weaker parts of the population, an aim at the humanity itself.

¹⁰ See also: UN Special Rapporteur on freedom of opinion and expression, Report on disinformation, 13 April 2021, para 31, 34-36, <https://www.ohchr.org/en/calls-for-input/report-disinformation>.

¹¹ General Comment 34, para 21. See also: Taylor, P.M. (2020), A commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights, pp. 553-578; UN Special Rapporteur on freedom of opinion and expression, Report on disinformation, 13 April 2021, paras. 39-40, <https://www.ohchr.org/en/calls-for-input/report-disinformation>.

¹² General Comment 34, para 22. See also Taylor, P.M. (2020), A commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights, pp. 554-562.

The two paragraphs of Article 20 are intrinsically interconnected. Propaganda for war is in fact a form of incitement to violence based on advocacy of national, racial or religious hatred. Such incitement to violence often leads to propaganda for war and wars as such. *Travaux preparatoires* of Article 20 allow to claim that the first paragraph of Article 20 meant direct incitement to war while the second paragraph – antecedent propaganda for war. Moreover, some states insisted on keeping the second paragraph because a prohibition of propaganda for war by itself would not be in itself effective for securing a lasting peace and preventing conflicts.¹³

There is little doubt that disinformation and propaganda pose numerous threats to democratic societies, such as to national security, public order, and public health. Disinformation and propaganda aim at manipulating individuals and distorting public opinion, including the open and frank exchange of ideas.

In this sense they also present threats to **freedom of the media** and freedom of expression, and in particular freedom of individuals to obtain and circulate information on current affairs without hindrance, as well as to circulate their thoughts and opinions among a number of people that is sufficiently large to satisfy their desire to take part in public dialogue and have a say in politics and decisions on matters of public interest.

An ultimate aim of manipulating individuals – through indoctrination, “brainwashing”, or content curation – is to infringe their **freedom of opinion**, often without knowledge and consent of the objects of disinformation.

Disinformation and propaganda pose threats to freedom of the media, freedom of information and freedom of opinion.

The current use of digital technology and artificial intelligence enables new pathways for creation, dissemination and amplification of disinformation various actors for political, military, ideological or commercial motives at an alarmingly growing scale, speed and reach.

By definition, manipulation and disinformation are against professional standards and the core **values of journalism**, as confirmed, in particular, by the Global Charter of Ethics for Journalists (adopted by the International Federation of Journalists in 2019), which proclaims: “Respect for the facts and for the right of the public to truth is the first duty of the journalist.”¹⁴

The problem of how to counteract the dissemination of false reports and information has naturally existed since the birth of the press. The desire to find an *international* solution intensifies today with the transborder role that broadcast and online media, in particular social networks now play in informing the public. The political and legal permissibility of disinformation (and of dissent), as well as of the restrictions of free speech to counter them,

¹³ Kearney, Michael G. *The Prohibition of Propaganda for War in International Law*. Oxford University Press, 2007. P. 128, 131.

¹⁴ See: Global Charter of Ethics for Journalists, 2019, <https://www.ifj.org/who/rules-and-policy/global-charter-of-ethics-for-journalists.html>.

have come to the forefront of academic and diplomatic discussions on media freedom and journalism practice. High-level groups of experts and oversight boards have been established to provide recommendations¹⁵ to decision-makers on the matter.

Countering disinformation requires international, multidimensional and multi-stakeholder responses that are in compliance with freedom of expression and the proactive engagement of intergovernmental organizations, States, business enterprises, civil society, including the media and all other stakeholders.

II.2. Definitions

The terminology relating to offences of propaganda and disinformation is rather vague in international law and national legislation. This contributes to the risk of a misinterpretation of restrictions provided or made possible in the ICCPR and other international law. For national application of the restrictions, it is important to provide definitions of several key notions.

Media freedom

In its commentary to Article 19 of the ICCPR, the UNHRC recognized that “a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression” and the enjoyment of other rights. Free media constitutes one of the cornerstones of a democratic society. Therefore, it is to inform public and to comment on public issues without censorship or restraint. “The public also has a corresponding right to receive media output.”¹⁶

International documents speak of an independent, pluralistic and free press as essential to the development and maintenance of democracy in a nation, and for its economic development.¹⁷

Freedom of the press or **freedom of the media** is likely to imply that with the technical facilities to do so, individuals can circulate their thoughts and opinions among a number of people that is sufficiently large to satisfy their desire to take part in a public dialogue and have a say in politics and decisions on matters of public interest. It also means that individuals can circulate and obtain information on current affairs without undue hindrance.¹⁸

¹⁵ See, e.g. European Commission, Final report of the High Level Expert Group on Fake News and Online Disinformation, 2018, <https://www.ecsite.eu/activities-and-services/resources/final-report-high-level-expert-group-fake-news-and-online>.

¹⁶ General Comment No. 34, para 13. <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

¹⁷ The Declaration of Windhoek, endorsed by UNESCO's General Conference at its twenty-sixth session (1991), https://digitallibrary.un.org/record/171129?ln=zh_CN; Declaration of Alma Ata on Promoting Independent and Pluralistic Asian Media (1992), https://digitallibrary.un.org/record/167474?ln=zh_CN; The Sana'a Declaration on the Arab media (1996) <https://al-bab.com/documents-reference-section/sanaa-declaration-arab-media>; Declaration of Santiago on Media Development and Democracy in Latin America and the Caribbean (1994) <https://digitallibrary.un.org/record/163564?ln=fr>; Charter of Fundamental Rights of the European Union (2012), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012P%2FTXT>.

¹⁸ See: Richter, Andrei, Defining media freedom in international policy debates, *Global Media and Communication*. August 2016. vol. 12, no. 2, 127-142.

The term “media freedom” is also used to mean the freedom, independence and plurality of the news media, including the production, publication and dissemination of journalistic content across all mediums and platforms.¹⁹

Freedom of the media rests on freedom of expression and its core element – freedom of information. These freedoms entered international agreements adopted by the United Nations (UN) (including the UN Educational, Scientific and Cultural Organization, or UNESCO) and regional intergovernmental organizations, such as the Organization for Security and Co-operation in Europe, the Council of Europe, and the European Union.

Media pluralism is the existence of multiple actors, spanning public, private and community media, as a precondition for content diversity and for the promotion of media’s public service in and through the media.²⁰

Media independence is typically understood as editorial freedom from “from governmental, political or economic control or from control of materials and infrastructure essential for the production and dissemination” of media product²¹, often balanced with the adherence to the shared professional journalistic standards through self-regulation.

Lack of independence leads to a decline of the level of **public trust** in the credibility of journalism.²² At the same time, “trust in the free media is not based on the belief of its “infallibility” in a democracy”, but rather on audience’s scepticism, experience and knowledge of how the media and journalists operate.²³ Public trust depends on journalistic integrity and availability of effective and sustainable self-regulatory complaint mechanisms.

Journalism/journalist

The media organizations and journalists are core enablers of journalism. The effect is that those practicing it are traditionally entitled to certain privileges. Through legal provisions, journalists and media entities obtain recognition of protecting from discovery their confidential sources of information and the unpublished information provided by the latter. Hence international standards and national laws protect the anonymity of news informants or whistleblowers that helps encourage the free flow of information.²⁴ Often they also

¹⁹ Joint Declaration on Media Freedom and Democracy, the United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information in Africa. 2 May 2023, <https://www.ohchr.org/sites/default/files/documents/issues/expression/activities/2023-JD-Media-Freedom-and-Democracy.pdf>.

²⁰ Ibid.

²¹ The Declaration of Windhoek, endorsed by UNESCO's General Conference at its twenty-sixth session (1991), https://digitallibrary.un.org/record/171129?ln=zh_CN; reconfirmed in Windhoek + 30 Declaration: information as a public good, World Press Freedom Day 2021, <https://unesdoc.unesco.org/ark:/48223/pf0000378158>

²² World trends in freedom of expression and media development: global report 2017/2018, UNESCO, 2018, P. 105, <https://unesdoc.unesco.org/ark:/48223/pf0000261371>

²³ Richter, Andrei, Self-Regulation. The SAGE Encyclopedia of Journalism, 2nd edition, 2022.

²⁴ See: McGonagle T. and Y. Donders (eds.) (2015), The United Nations and Freedom of Expression and Information, Cambridge UP, pp.361-363. See also: Peter Noorlander -- Is there a global norm for the protection

provide journalists an access to certain events and otherwise restricted areas, speedy response to requests for State-held information, special communication opportunities with public offices, as well as fair report privileges that protect media outlets and journalists from liability for disseminating speech of other actors. There are also exceptions to the strict rules on the use of personal data when this happens for journalistic purposes.²⁵ The Article 19 freedoms also “resist restrictive schemes for registration or licensing of journalists.”²⁶

Today’s digital communications opportunities mean that journalism should not be seen as confined exclusively to news organizations. Therefore, the demarcation line between a “professional journalist” employed by a news outlet, and others generating journalism, has blurred. That means that such privileges “should be based on functional criteria, such as disseminating information and ideas in the public interest, rather than a formal definition of a journalist”.²⁷ Accordingly, the UN Human Rights Committee put the emphasis on the activity as primary by recognizing that “[j]ournalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere”.²⁸

Journalism is rather a function, than a profession.

UN Human Rights Committee

At the same time as not diminishing the right, and the value of other actors doing journalism, it can be recognized that institutional bases for journalism, as constituted by news media organizations, retain core significance for sustainable output of journalism, with quality assurance coming from the professional standards, editorial control and self-regulatory systems.

of journalistic sources? / Lee C. Bollinger and Agnes Callamard (eds.) (2021), *Regardless of frontiers: Global Freedom of Expression in a Troubled World*, pp. 116-144.

²⁵ Capello, M. (Ed). 2017. *Journalism and media privilege*. IRIS Special. European Audiovisual Observatory. Strasbourg. <https://rm.coe.int/journalism-and-media-privilege-pdf/1680787381>

²⁶ Taylor, P.M. (2020). “A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee’s monitoring of ICCPR rights.” P. 546. See also *Koktish v Belarus*, CCPR/C/111/D/1985/2010, 24 July 2014 [8.3].

²⁷ Joint Declaration On Media Independence and Diversity in the Digital Age, The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, 2 May 2018, https://www.ohchr.org/sites/default/files/Documents/Issues/Opinion/JointDeclaration2May2018_EN.pdf.

²⁸ Human Rights Committee, General Comment 34, Clause 44. See also: Recommendation No. R (2000) 7 of the Committee of Ministers to Member States on the Right of Journalists Not to Disclose their Sources of Information (Adopted by the Committee of Ministers on 8 March 2000, at the 701st meeting of the Ministers' Deputies) <https://www.work-press.org/the-right-to-collect-information-and-protection-of-journalistic-sources-council-of-europe/>

Propaganda (for war)

The dictionary definition of “propaganda” is ambiguous: propaganda might be false or true,²⁹ however, the aim to influence people’s opinion is essential to understand it.³⁰ Today, a major tool of propaganda undoubtedly remains disinformation.

There is a need to distinguish—at the level of law and policy—two sorts of propaganda. The first is propaganda for war, as well as national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, as defined in international and national law. It is illegal and therefore demands judicial action with the appropriate measures in line with international human rights law (IHRL) standards. The second type of propaganda combines all the rest. It may be an inappropriate and scornful activity, it damages the profession of journalism, but does not necessarily call for legal action.

In one of its recent Opinions, the Venice Commission of the Council of Europe stated that “‘propaganda’ usually makes reference to an activity aimed at proselytising people to certain ideas and opinions.”³¹ According to a 2020 law review article aimed at defining propaganda, there is consensus that it includes an element of manipulation or distortion of the rational will of a person, and that it must also have both persuasive power and persuasive effect.³²

While there is no fixed definition of propaganda in international law, it is much clearer what is the scope of propaganda for war.

True, a recent report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the UNHRC and the General Assembly notes a “confusion among some States and companies about [the] scope [of propaganda for war], which underlines the need for further clarification”.³³ Additionally, a freedom of expression watchdog, ARTICLE 19, points out that there is no agreed definition of propaganda (of war) or hate speech in international law.³⁴ Some experts echo this observation by pointing to “war” and “propaganda” as two instances of “definitionally problematic terms.” They note that “propaganda” is a sufficiently broad notion “to cover a range of different types of expression

²⁹ Brian Cathcart, “Written evidence submitted by Brian Cathcart,” UK Parliament: Culture Media and Sport Committee (FNW0050), Mar. 2017, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/culturemedia-and-sport-committee/fake-news/written/48065.html>.

³⁰ See Richter, Andrei, Propaganda and Freedom of the Media, Organization for Security and Cooperation in Europe, pp. 31-38 (Vienna, 2015), <http://www.osce.org/fom/203926>.

³¹ Venice Commission & OSCE/ODIHR, CDL-AD(2015)041, Joint Interim Opinion on the Law of Ukraine on the Condemnation of the Communist and National Socialist (Nazi) Regimes and Prohibition of Propaganda of their Symbols, para 85, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)041-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)041-e).

³² See Sinha, G. A. (2020). Lies, gaslighting and propaganda. *Buff. L. Rev.*, 68, 1037.

³³ Disinformation and freedom of opinion and expression during armed conflicts, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/77/288, (Aug. 12, 2022) at 26. <https://www.ohchr.org/en/documents/thematic-reports/a77288-disinformation-and-freedom-opinion-and-expression-during-armed>.

³⁴ Callamard, Agnes, Expert Meeting of the Links Between Articles 19 and 20 of the ICCPR: Freedom of Expression and Advocacy of Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence. UN HCHR, October 2-3, 2008, Geneva. (Article 19). URL: <http://www.article19.org/data/files/pdfs/conferences/icpr-links-between-articles-19-and-20.pdf>.

which vary in terms of the harmfulness of their content, the sophistication of their presentation and strategies of dissemination and the gravity of their effects.”³⁵

Apparently, they missed several resolutions of the UN General Assembly (UNGA) that were adopted at the earlier stage of the global efforts to stop propaganda for war. UNGA Resolution 290 (IV) from 1949 suggested to promote “full freedom for the *peaceful* [italics are mine - AR] expression of political opposition” and to “remove the barriers which deny to peoples the free exchange of information and ideas” – but only as long as it is “essential to international understanding and peace”. It also called on the five permanent members of the UN Security Council to “exercise restraint in the use of the veto” power in order to make this body an effective “instrument for maintaining peace.”³⁶

In another resolution, the UNGA gave a rather distinct definition to war propaganda by saying that it “[c]ondemns all forms of propaganda, in whatsoever country conducted, which is either designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression.”³⁷ The UN thus gave an intent or a threat of hostilities as the criteria for the illegal act.

It is important to note that then the UN General Assembly further elaborated on the definition of the propaganda for war by stating that it also includes “propaganda against peace”, that is “measures tending to isolate the peoples from any contact with the outside world, by preventing the Press, radio and other media of communication from reporting international events, and thus hindering mutual comprehension and understanding between peoples.” Thus, an intrinsic element of such propaganda became the activities by governments “tending to silence or distort the activities of United Nations in favour of peace or to prevent their peoples from knowing the views of other States Members.”³⁸

By establishing a link between propaganda and suppression of free speech, the UN General Assembly pointed out that propaganda’s success is generally possible when the media are monopolized and/or deprived of its freedom to report on relevant events and dissenting opinions.

Any distinct formula of propaganda for war will follow the 1947 UNGA resolution and will have to take into account the scope of the crime suggested in 1983 by the UN Human Rights Committee (UNHRC) in its General comment No. 11, which is dedicated to interpretation and lack of compliance with Article 20. This one-page document notes that the prohibition extends to all forms of propaganda threatening or resulting in an act of aggression or breach

³⁵ McGonagle, Tarlach, *Minority Rights, Freedom of Expression and of the Media: Dynamics and Dilemmas*, School of Human Rights Research Series, vol. 44, 2011, Intersentia, Cambridge – Antwerp – Portland, p.272.

³⁶ *Essentials of Peace*, Resolution adopted by the UN General Assembly, 290 (IV) Dec. 1, 1949, <http://www.un-documents.net/a4r290.htm>.

³⁷ *Measures to be taken against propaganda and the inciters of a new war*, Resolution adopted by the UN General Assembly, 110 (II) Nov. 3, 1947, <http://www.un-documents.net/a2r110.htm>.

³⁸ *Condemnation of propaganda against peace*, Resolution adopted by the UN General Assembly, 381 (V) Nov. 17, 1950, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/059/79/PDF/NR005979.pdf?OpenElement>.

of the peace contrary to the Charter of the United Nations and aims both to the internal and external public to the State concerned.³⁹

While the UNHRC refers to *all* forms of propaganda for war, it makes an important exclusion from the scope of the crime by saying that “[t]he provisions of article 20, paragraph 1, do not prohibit advocacy of the sovereign right of self-defence or the right of peoples to self-determination and independence in accordance with the Charter of the United Nations.”⁴⁰ By self-defence, the Charter means exclusively measures taken by a Member of the United Nations “if an armed attack occurs against” it.⁴¹ Other forms of propaganda inciting to such manifestations of violence as civil war or rebellion against the government are either treated under Article 20(2) or Article 19(3) of the ICCPR in the context of the Preamble of the Universal Declaration of Human Rights⁴². In the current context in Europe, it is important to watch attempts to include within the meaning of propaganda for war a propaganda for and conduct of an “ideological war”, an “information warfare” or a “hybrid war”.⁴³ It is important to note the comment of the UNHRC that, for the purposes of the ban, it does not matter “whether such propaganda or advocacy has aims which are internal or external to the State concerned”.⁴⁴

Definitional broadness does not necessarily bring about vagueness of the notion. The leading world expert on the issue, Michael Kearney from the UK, states that the meaning of propaganda for war is “only as imprecise as states wish it to be”.⁴⁵ He considers that the key issue of the definition is whether the term is limited to direct “incitement to war” or whether it additionally encompasses propaganda which serves either as a means of preparation for a future war or to preclude peaceful settlement of disputes.⁴⁶ ARTICLE 19, a global freedom of expression campaign, for example was critical of the latter part of the interpretation as being “too broad” by pointing to all States, which “routinely convey a narrative that portrays their own war efforts in a favourable light”.⁴⁷ The latter seems to be a weak argument, since

³⁹ See, Human Rights Committee, 19th session, Geneva, 29 July 1983, General Comment No. 11, Prohibition of Propaganda for War and Inciting National, Racial or Religious Hatred (Art. 20), Off. of the UN High Comm’n for Hum. Rts. (OHCHR), CCPR/C/GC/11 (Sept. 7, 1983), para 2, <http://www.ohchr.org/Documents/Issues/Opinion/CCPRGeneralCommentNo11.pdf>.

⁴⁰ Ibid.

⁴¹ Charter of the United Nations, San Francisco, 26 June 1945, art. 51, <http://www.un.org/en/documents/charter/chapter7.shtml>.

⁴² “Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”. The Universal Declaration of Human Rights. Proclaimed by the General Assembly of the United Nations on 10 December 1948, <http://www.un.org/en/documents/udhr/>.

⁴³ Richter, Andrei, The Relationship between Freedom of Expression and the Ban on Propaganda for War. In: European Yearbook on Human Rights 2015. W. Benedek, F. Benoit-Rohmer, M. Kettemann, B. Kneihns, M. Nowak (Eds.). Graz: Intersentia, 2015, p. 499.

⁴⁴ See, General Comment No. 11, supra note 37, para 2.

⁴⁵ Michael G. Kearney, The Prohibition of Propaganda for War in International Law (2007) at 189.

⁴⁶ Ibid., at 5-6.

⁴⁷ Response to the consultation of the UN Special Rapporteur on Freedom of Expression on her report on challenges to freedom of opinion and expression in times of conflicts and disturbances: ARTICLE 19’s Submission (19 July 2022) at 6, <https://www.ohchr.org/sites/default/files/documents/issues/expression/cfis/conflict/2022-10-07/submission-disinformation-and-freedom-of-expression-during-armed-conflict-UNGA77-cso-article19.pdf>.

portraying an *aggressor* state a mighty power and a victor does not necessarily mean undermining – through propaganda – the very possibility of finding a peaceful solution.

Recently doubts were also voiced as to whether prohibition of propaganda for war can be applied during an armed conflict, or is appropriate only in times of peace. Perhaps, the latter understanding is rooted in the concept that during war the rules of the international humanitarian law (IHL) prevail, while the international human rights law (IHRL) goes into shadow while the parties to the war derogate from its provisions under the ICCPR (including under its Art. 20). On the other hand, it is broadly recognized today that both IHL and IHRL apply during armed conflicts and that they provide complementary and mutually reinforcing protection. This means that while the emergence of an armed conflict triggers the applicability of IHL, it does not suspend the applicability of IHRL.⁴⁸ Such a position was also confirmed by the European Court of Justice (ECJ), which noted that propaganda for war should be stopped even *after* the war has started.⁴⁹

As for the methods employed by propaganda that would allow courts to distinguish it from other forms of speech, Manfred Nowak, the principal interpreter of the ICCPR, pointed out that they constitute “intentional, well-aimed influencing of individuals by employing various channels of communication to disseminate, above all, incorrect or exaggerated allegations of fact. Also included thereunder are negative or simplistic value judgements whose intensity is at least comparable to that of provocation, instigation, or incitement.”⁵⁰ Thus, disinformation is the key instrument of the forbidden propaganda for war. Lumley put the set of propaganda techniques laconically: they are a combination of “suppression, distortion, diversion and fabrication.”⁵¹

The role of lies in the modern techniques, specific of propaganda during wars, was described by Morelli, taking examples of armed conflicts in Kosovo, Afghanistan, Iraq, as well as the Second Gulf War.⁵² She assessed them to be: (1) “We don't want war”; (2) “The opposing side is solely responsible for the war”; (3) “The enemy has the face of the devil”; (4) “It is a noble cause that we defend and not particular interests”; (5) “The enemy knowingly causes atrocities; we make mistakes but involuntarily”; (6) “The enemy uses unauthorized weapons”; (7) “We suffer very few losses, the enemy's losses are enormous”; (8) “Artists and intellectuals support our cause”; (9) “Our cause has a sacred character”; (10) “Those who question the propaganda are traitors”.

Propaganda for war is designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression.

(Resolution of the UN General Assembly, 1947)

⁴⁸ This complementarity is underlined in: Disinformation and freedom of opinion and expression during armed conflicts, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/77/288, (Aug. 12, 2022), paras 33-35.

⁴⁹ Judgment of the General Court of 27 July 2022 – *RT France v Council*, Case T-125/22, See (Fr.), <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62022TJ0125>.

⁵⁰ Nowak, Manfred, U.N. Covenant on Civil and Political Rights – CCPR Commentary (2nd rev. ed. 2005), p. 472.

⁵¹ Lumley, Frederick E., *The Propaganda Menace*, 1933, pp. 116-117.

⁵² Morelli, Anne, *Principes élémentaires de propagande de guerre*, 2001.

Disinformation / misinformation

Dictionary definitions of “disinformation” range from “false information deliberately and often covertly spread (as by the planting of rumors) in order to influence public opinion or obscure the truth” (Merriam-Webster), and “false information spread in order to deceive people” (Cambridge), to “false information which is intended to mislead, especially propaganda issued by a government organization to a rival power or the media” (Oxford).⁵³

The European Commission has described **disinformation** as *verifiably false or misleading information that, cumulatively, is created, presented and disseminated for economic gain or to intentionally deceive the public and that may cause public harm*. Public harm includes threats to democratic processes as well as to public goods such as Union citizens’ health, environment or security. Disinformation does not include misleading advertising, reporting errors, satire and parody, or clearly identified partisan news and commentary.⁵⁴

In its turn, “misinformation” means “incorrect or misleading information” (Merriam-Webster), “wrong information, or the fact that people are misinformed/information intended to deceive” (Cambridge), or “false or inaccurate information, especially that which is deliberately intended to deceive” (Oxford).⁵⁵

The European Commission has defined **misinformation** as false or misleading content shared without harmful intent though the effects can be still harmful, e.g. when people share false information with friends and family in good faith.⁵⁶

Spreading outright false content is only one technique used in disinformation, others include:

- a) distortion of information,
- b) misleading the audience and manipulative tactics such as fake profiles and false engagement to artificially amplify narratives on specific political issues and exploit existing divisions in society.⁵⁷

These elements should be also considered a form of disinformation.

⁵³ Merriam-Webster, definition of “Disinformation,”

<https://www.merriamwebster.com/dictionary/disinformation>; Cambridge Dictionary, definition of “Disinformation,” <http://dictionary.cambridge.org/dictionary/english/disinformation>; Oxford Dictionary, definition of “Disinformation,” <https://en.oxforddictionaries.com/definition/disinformation>.

⁵⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “Tackling online disinformation: a European Approach”, 26.4.2018, COM(2018) 236 final, <https://eur-lex.europa.eu/legal-content/en/txt/html/?uri=celex:52018dc0236&from=en>.

⁵⁵ Merriam Webster, definition of “Misinformation,”

<https://www.merriamwebster.com/dictionary/misinformation>; Cambridge Dictionary, definition of “Misinformation”, <http://dictionary.cambridge.org/dictionary/english/misinformation>; Oxford Dictionary, definition of “Misinformation,” <https://en.oxforddictionaries.com/definition/misinformation>.

⁵⁶ European Commission, Code of Practice on Disinformation (2018).

⁵⁷ EC European Democracy Action Plan, 3.12.2020.

Disinformation is verifiably false or misleading information that, cumulatively, is created, presented and disseminated for economic gain or to intentionally deceive the public and that may cause public harm.

(Communication of the European Union, 2018)

Hate speech

Definitional problems exist with the notion of “hatred,” a crucial term to understand Article 20 (2). “There is no universally accepted definition of the expression ‘hate speech,’” the ECtHR observes.⁵⁸

Experts explain that existing formulas are circular, as they define “hatred” through “hate” and “hate” through “hatred.”⁵⁹ Indeed, even the Council of Europe’s Committee of Ministers’ Recommendation No. (97) 20 on “hate speech,” describes the term as “covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.”⁶⁰ It is widely criticised for lack of clarity of boundaries of the notion.⁶¹

Another Council of Europe instrument, *Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems*, further attempts to define criminally punishable “racist and xenophobic” speech. In particular, it includes public insults or threats “with the commission of a serious criminal offence as defined under its domestic law, (i) persons for the reason that they belong to a group, distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors, or (ii) a group of persons which is distinguished by any of these characteristics.”⁶²

Of particular relevance for defining “hate speech” is the “Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” released by the UN Office of the High Commissioner for Human Rights (OHCHR) in 2012. The Rabat Plan of Action represents an effort in clarifying governments’ obligations to prohibit incitement to hatred, while providing coherent protection to the rights to freedom of expression and freedom of religion. The Rabat Plan of

⁵⁸ European Court of Human Rights, Factsheet on hate speech, 2013, http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf

⁵⁹ Mendel, Toby, Does International Law Provide for Consistent Rules on Hate Speech? In *The Content and Context of Hate Speech: Rethinking Regulation and Responses*. Eds.: M. Herz and P. Molnár. Cambridge: Cambridge University Press, 2012. P. 427.

⁶⁰ Council of Europe’s Committee of Ministers’ Recommendation No. (97) 20 on “hate speech”, 30 October 1997.

⁶¹ Верховский А. М. (2014). Уголовное право стран ОБСЕ против преступлений ненависти, возбуждения ненависти и языка вражды. М.: Центр «Сова». P.23.

⁶² *Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems*. CETS No.: 189. 28.01.2003. URL: <http://conventions.coe.int/Treaty/EN/Treaties/Html/189.htm>. So far the Additional Protocol is ratified by 24 OSCE participating States.

Action when dealing with terminology refers to the Camden Principles on Freedom of Expression and Equality (Camden Principles), drafted by ARTICLE 19.⁶³ Under “hatred” and “hostility” the Camden Principles understand “intense and irrational emotions of opprobrium, enmity and detestation towards the target group”.⁶⁴

Hate speech is expression of intense and irrational emotions of opprobrium, enmity and detestation towards the target group.

(Camden Principles, 2009)

Genocide

Hate speech should be distinguished from genocide, which is a somewhat different and clearly defined legal concept. It denotes an aggravated internationally wrongful act for which responsibility may nowadays be also attributed either to a State or to a private individual. In accordance with Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide⁶⁵, this crime “means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children of the group to another group.”

Alongside with genocide, a direct and public incitement to commit genocide shall be punishable in accordance with this UN Convention (Article 3), which Moldova accessed in 1993. Its Criminal Code reflects the above Convention (Art. 135).⁶⁶

On the basis of Article 5 of the Rome Law the crime of genocide falls under the jurisdiction of the International Court of Justice (ICJ). According to the case law of the ICJ and the International Criminal Tribunal for Rwanda, for the crime of genocide to be made out, it is not sufficient for the members of a particular group to be targeted because they belong to that group, but the acts in question must at the same time be perpetrated with intent to destroy the group as such in whole or in part. Genocide is therefore a very narrow legal concept which, moreover, is difficult to prove.

⁶³ Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Conclusions and recommendations emanating from the four regional expert workshops organized by OHCHR, in 2011, and adopted by experts in Rabat, Morocco, on 5 October 2012. Para.

19. http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf.

⁶⁴ The Camden Principles on Freedom of Expression and Equality. ARTICLE 19 Global Campaign for Free Expression. London, 2009. Principle 12. <https://www.article19.org/data/files/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf>

⁶⁵ Convention on the Prevention and Punishment of the Crime of Genocide, Adopted by Resolution 260(III)A of the United Nations General Assembly on 9 December 1948. URL: <http://www.hrweb.org/legal/genocide.html>

⁶⁶ See: https://www.legis.md/cautare/getResults?doc_id=138720&lang=ro.

Genocide means specific acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.

(UN 1948 Convention)

Hate crime

Hate speech should be distinguished from hate crimes, generally described as “criminal acts motivated by bias toward a victim’s real or perceived group affiliation. A victim of a hate crime may be targeted based on race, ethnicity, gender, sexual orientation, disability, and/or religion. Hate crime incidents include acts such as physical assault, bullying, harassment, and intentional damage to property.”⁶⁷ It should be noted in this context that many forms of hateful activity, such as marches, meetings and maintaining websites, do not necessarily constitute a crime.

Hate crimes are criminal acts motivated by bias or prejudice towards particular groups of people. To be considered a hate crime, the offence must meet two criteria. The first is that the act constitutes an offence under criminal law. Secondly, the act must have been motivated by bias.⁶⁸

Hate crimes are criminal acts motivated by bias toward a victim’s real or perceived group affiliation.

(Encyclopedia 2013)

Incitement

There is also lack of distinct definitions of “incitement” in international law, or interrelation between “incitement” and a wider term of “advocacy” of hatred. There are fewer problems in its judicial interpretation, at least on the national level, as the term seems to be part and parcel of criminal law in relation to incitement to lawlessness.

In the *Roj TV* case, the European Court of Justice, following the opinion of the Advocate-General (determined by the usual meaning of the terms in everyday language), interpreted the words “incitation” and “hatred” as referring to, first, an action intended to direct specific behaviour and, second, a feeling of animosity or rejection with regard to a group of persons: thus, the concept “incitement to hatred” “is designed to forestall any ideology which fails to respect human values, in particular initiatives which attempt to justify violence by terrorist acts against a particular group of persons.”⁶⁹ “Incitement to hatred, observed the Advocate-General of the ECJ, actually means seeking to create a feeling of animosity towards or

⁶⁷ Cortés, Carlos E. (ed.), *Multicultural America: A Multimedia Encyclopedia*. Thousand Oaks, USA: Sage, 2013. P. 1032.

⁶⁸ See: <http://hatecrime.osce.org/>.

⁶⁹ Joint cases C-244/10 and C-245/10 *Mesopotamia Broadcast and Roj TV v Federal Republic of Germany* [22 September 2011] ECR I-08777. Para 42 and 41.

rejection of another person, which leads to the person who experiences that feeling no longer being able to live harmoniously, and therefore in understanding, with that other person".⁷⁰

National security

The issue of threats to national security as a protected public interest and its balance with the human right to freedom of expression deserves particular review, as national security and public order arise as specific reasons to restrict the right to freedom of expression, including the right of access to information and freedom of the media. Threats to national security, though, may be justified as the reason for restrictions of free speech – with false or true information – under particular clear conditions. Some of them were defined in the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*.⁷¹ According to the documents, the Government should first demonstrate that the expression *is intended* to incite imminent violence, that *it is likely to incite* such violence and that there is a *direct and immediate connection* between the expression and the likelihood or occurrence of such violence (principle 6).⁷²

Restrictions of free speech on the grounds of national security can only be based on a clear intention to incite imminent violence that is likely to incite it.

The Johannesburg Principles

A restriction of free speech sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government (principle 6).

The peaceful exercise of the right to freedom of expression shall neither be considered a threat to national security, nor punishable if, for example, the speech: (i) advocates non-violent change of government policy or the government itself; (ii) constitutes criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agencies or public officials; (iii) constitutes objection, or advocacy of objection, on grounds of religion, conscience or belief, to military conscription or service, a particular conflict, or the threat or use of force to settle

⁷⁰ Opinion of Advocate General Bot delivered on 5 May 2011, Joined Cases C-244/10 and C-245/10, *Mesopotamia Broadcast A/S METV and Roj TV A/S v Bundesrepublik Deutschland*, <http://curia.europa.eu/juris/document/document.jsf?docid=80715&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=334641>

⁷¹ These Principles have been endorsed by Mr. Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, in his reports to the 1996, 1998, 1999 and 2001 sessions of the United Nations Commission on Human Rights (replaced by the UN Human Rights Council in 2006), and referred to by the Commission in its annual resolutions on freedom of expression since then.

⁷² The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1 October 1995, see <https://www.refworld.org/docid/4653fa1f2.html>.

international disputes; (iv) is directed at communicating information about alleged violations of international human rights standards or international humanitarian law (principle 7).

A legitimate restriction of access to governmental information is recommended to be permitted in narrowly defined areas, such as defence plans, weapons development, and the operations and sources used by intelligence services. Also, Governments may withhold confidential information supplied by foreign governments that is linked to national security matters.⁷³

Cyber-war-related definitions

A warfare in cyberspace should be separated from digital propaganda – the key element of an “information warfare” and/or “information [special] operations” – and treated differently. “*Information operations*”, are understood as “campaigns by States or political actors to influence the views, attitudes and behaviour of adversaries or the public in order to achieve political and military objectives.”⁷⁴

Information instruments of war, such as propaganda and disinformation, including propaganda for war – among troops, civilian population, potential friends and foes in the international arena – have traditionally belonged to an armed conflict. These days they are definitely “cyber-enabled”. While cyberattacks *per se* are effectively responded with strengthening cyber defense, temporary internet shutdowns, and/or with cyber counterattacks, “government counter-propaganda” is not considered by media experts an appropriate answer to malicious propaganda.⁷⁵

“*Information warfare*” should also be separated from the “hybrid war” although the former can be – but not necessarily is – an integral part of the latter. Internationally, the hybrid war is defined as “a combination of military and non-military measures of a covert and overt nature, deployed to destabilise the political, economic and social situation of a country under attack”.⁷⁶ Russian military doctrine, for example, explicitly recognises information warfare as one of its domains.⁷⁷

In their turn, modern *hybrid wars* necessarily include cyberwars, inasmuch as information warfare is an element of a modern armed conflict. In both hybrid war and armed conflict, arms are to be used, thus they might truly qualify as wars. At the same time, information war and cyberwar are unlikely to be qualified today in the same manner.

⁷³ Tshwane Global Principles on National Security and the Right to Information, 2013, <https://www.justiceinitiative.org/publications/global-principles-national-security-and-freedom-information-tshwane-principles>.

⁷⁴ Disinformation and freedom of opinion and expression during armed conflicts, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/77/288, (Aug. 12, 2022), para 15.

⁷⁵ Propaganda and Freedom of the Media, OSCE Representative on Freedom of the Media, (2015), p. 7, <https://www.osce.org/files/f/documents/b/3/203926.pdf>.

⁷⁶ European Parliament resolution of 23 November 2016 on EU strategic communication to counteract propaganda against it by third parties (2016/2030(INI)). Para D. <https://tinyurl.com/ydyfy89k>.

⁷⁷ Kofman, Michael, Anya Fink, Dmitry Gorenburg, Mary Chesnut, Jeffrey Edmonds, and Julian Waller, Russian Military Strategy: Core Tenets and Operational Concepts, Center for Naval Analyses (2021) at 24. https://www.cna.org/archive/CNA_Files/pdf/russian-military-strategy-core-tenets-and-operational-concepts.pdf.

II.2. Countering propaganda

During the Cold War, propaganda was the main weapon used by both sides, while jamming of foreign radio broadcasts was probably a defence instrument used by the East. In itself, jamming of radio signals has been condemned by the International Telecommunication Convention in 1947 and UN General Assembly in 1950.

An almost forgotten international agreement remains relevant in this context. The *International Convention concerning the Use of Broadcasting in the Cause of Peace*, a 1936 League of Nations treaty,⁷⁸ binds states to “restrict expression which constituted a threat to international peace and security.” The Convention, to which a few European countries, such as the Russian Federation, Latvia and Estonia, at least formally remain parties, obligates governments to prohibit and stop any broadcast transmission within their territories that are “of such a character as to incite the population of any territory to acts incompatible with the internal order or the security of a territory.” It also contains a similar mandate in regards to “incitement to war against another high contracting party.” This provision makes no distinction between the speech of the state and the speech of private individuals.

Incidentally this Convention also prohibits the broadcasting of false news. It is a good reminder to keep the balance between freedom of expression and an obligation to stop war propaganda and hate speech.

If disputes regarding the implementation of the Convention cannot be settled between the parties through diplomatic channels, they can be taken to the Permanent Court of International Justice, the predecessor of the UN International Court of Justice. If they are not parties to the Court, the dispute shall be submitted for the review by an arbitral tribunal, constituted in conformity with the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes (revised by the UN in 1949).

Republic of Moldova is not a party to the Convention.

United Nations

One of the recurring issues within the United Nations Organization from its dawn has been the maintenance of peace and the building of friendly relations among States. “Propaganda”, in the sense of propaganda for war and hatred has clearly been considered as a threat to the future world. In addition to a number of resolutions by the UN General Assembly that underlined the need to prohibit propaganda for war (see above in chapter Definitions), the United Nations addressed the issue of other types of propaganda.

A number of UN instruments relate to the prohibition of racial discrimination, which includes the prevention of **propaganda of racist views and ideas**. This can be found in, for example, the 1945 *United Nations Charter* (paragraph 2 of the Preamble, Articles 1 para. 3, 13 para. 1 (b), 55 (c) and 76 (c)), the 1948 *Universal Declaration of Human Rights* (Articles 1, 2 and 7) and the 1966 *International Covenant on Civil and Political Rights* (Articles 2 para. 1, 20 para. 2 and 26).

⁷⁸ The *International Convention concerning the Use of Broadcasting in the Cause of Peace*, 23 September 1936, https://treaties.un.org/pages/LONViewDetails.aspx?src=LON&id=518&chapter=30&clang=_en.

The most directly relevant treaty is the 1965 *International Convention on the Elimination of All Forms of Racial Discrimination*, which has been ratified by almost all European states. It includes Article 4, which provides:

“States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of this Convention, inter alia:

(a) shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof”.

Republic of Moldova is a party to the Convention.⁷⁹

Of some importance for the assessment of the modern response to war propaganda are the two recent reports issued by the **UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression** and presented to the UN Human Rights Council and the General Assembly in 2021-2022. Both are based on a number of formal submissions by the UN member states, academia, and human rights CSOs, and thus provides a broad context on the issue.

One is titled “Disinformation and freedom of opinion and expression during armed conflicts”,⁸⁰ but despite the topic it stays away from going deep into the propaganda for war.⁸¹ Still, the Study questions the necessity and proportionality of the ban of Russian channels in Western Europe, “a region where independent media and fact-checkers are able to challenge disinformation and where other less drastic measures could have been considered.”⁸²

The other, *Disinformation and freedom of opinion and expression*, only mentions propaganda in the passing, for example by stating that certain actors “frequently engage in the dissemination of false news and narratives as part of their propaganda”.⁸³

The *Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda* and the reports of the previous mandate holder also provide important guidance

⁷⁹ See https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&clang=_en.

⁸⁰ Disinformation and freedom of opinion and expression during armed conflicts, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/77/288, (Aug. 12, 2022) at 26. <https://www.ohchr.org/en/documents/thematic-reports/a77288-disinformation-and-freedom-opinion-and-expression-during-armed>.

⁸¹ *Ibid.*, para 39.

⁸² *Ibid.*, para 64.

⁸³ “Disinformation and freedom of opinion and expression”, Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. HRC, 47th session, 21 June–9 July 2021, para 19. <https://digitallibrary.un.org/record/3925306>.

on human rights standards applicable to propaganda.⁸⁴ The Joint Declaration, for example, pointed that a key means of addressing *any propaganda* is for the States “to promote a free, independent and diverse communications environment, including media diversity”.

Council of Europe

The Convention for the Protection of Human Rights and Fundamental Freedoms, often called as the European Convention on Human Rights (ECHR),⁸⁵ is the founding document of the Council of Europe. Its text contains no “propaganda-for-war” equivalent to Article 20 of the ICCPR.⁸⁶

Its Article 10 (“Freedom of expression”), though, says as follows:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

A particular attention should be paid to the *Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis*, as by “crisis” the document also considers wars. Its text guides media professionals to provide “accurate, timely and comprehensive information” as they “can make a positive contribution to the prevention or resolution of certain crisis situations by adhering to the highest professional standards and by fostering a culture of tolerance and understanding between different groups in society.”⁸⁷

⁸⁴ Joint declaration on freedom of expression and “fake news”, disinformation and propaganda. Declaration by the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information. 3 March 2017, available at: <https://www.osce.org/fom/302796>.

⁸⁵ Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, https://www.echr.coe.int/documents/convention_eng.pdf

⁸⁶ Unlike another regional mechanism, the American Convention on Human Rights, which in Article 13 (5) stipulates: “Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law”: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

⁸⁷ Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis (Adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Ministers' Deputies). URL: <https://wcd.coe.int/ViewDoc.jsp?id=1188493>.

European Court of Human Rights

In the absence of the ban on propaganda for war and hatred in the ECHR, a question arises: Do members of the targeted by propaganda group have to wait for some of them to be killed (to establish a violation of its Art. 2 – “Right to life”) or do they have some means under the ECHR, such as Article 10 (“Freedom of expression”), of obliging the State to act before then?⁸⁸

The question seems to be a rhetorical one, as commentators and case law of the European Court of Human Rights (ECtHR, or the Court), the key instrument of implementation of the European Convention on Human Rights, often point to Article 17 of the ECHR, as an instrument to counteract war propaganda and hate speech. Article 17 (“Prohibition of abuse of rights”) is worded as follows:

“Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

This norm empowers the ECtHR to affirm any activity aimed against the human rights specified in it (such as, in particular, right to life and non-discrimination) as activity that may not rely on the protection of the ECHR in general, including Article 10 on freedom of expression.

The European Court of Human Rights believes that using the right to freedom of expression for ends which were contrary to the text and spirit of the ECHR is not protected by the ECHR itself.

The Court has held in particular that a “remark directed against the Convention’s underlying values” is removed from the protection of Article 10 by Article 17.⁸⁹ Thus, in the case of *Garaudy v. France*,⁹⁰ which concerned, *inter alia*, the conviction for denial of crimes against humanity of the author of a book that systematically disputed such crimes perpetrated by the Nazis against the Jewish community, the Court found the applicant’s Article 10 complaint incompatible *ratione materiae* with the provisions of the Convention. It based that conclusion on the finding that the main content and general tenor of the applicant’s book, and thus its “aim”, were markedly revisionist and therefore ran counter to the fundamental values of the Convention, namely justice and peace, and inferred from that observation that he had attempted to deflect Article 10 from its real purpose by using his right to freedom of expression for ends which were contrary to the text and spirit of the Convention. The Court reached the same conclusion in *Norwood v. the United Kingdom*⁹¹ and *Pavel Ivanov v.*

⁸⁸ Hampson, Françoise J. Freedom of expression in situations of emergency and armed conflict. In: Freedom of Expression: Essays in honour of Nicolas Bratza. Casadevall, J. et.al. (eds.). Strasbourg: Council of Europe, 2012. P. 456.

⁸⁹ See *Lehideux and Isorni v. France*, 23 September 1998, §§ 53 and 47, Reports of Judgments and Decisions 1998-VII, and *Orban and Others v. France*, no. 20985/05, § 34, 15 January 2009.

⁹⁰ No. 65831/01, ECHR 2003-IX.

⁹¹ No. 23131/03, ECHR 2004-XI.

*Russia*⁹², which concerned the use of freedom of expression for Islamophobic and anti-Semitic purposes respectively.

In *Molnar v. Romania*⁹³ the Court had to determine the case of a person who had been convicted of distributing visual propaganda material (posters) whose content stirred up inter-ethnic hatred, discrimination and anarchy. The Court found that the posters discovered at the Applicant's home contained various messages expressing his own opinions. While some of the messages were not shocking as far as their content was concerned, others could have contributed to tensions within the population, especially in the Romanian context. In that connection, the Court took particular note of the messages containing references to the Roma minority and the homosexual minority. Through their content, these messages sought to arouse hatred towards the minorities in question, constituted a serious threat to public order and ran counter to the fundamental values underpinning the Convention and a democratic society. Such acts were incompatible with democracy and human rights because they infringed the rights of others; on that account, in accordance with Article 17 of the Convention, the applicant again could not rely on his right to freedom of expression.

On the contrary the ECtHR did not apply Article 17 of the Convention when it found that the rejection of the legal characterization as "genocide" of the 1915 events was not *per se* such as to incite hatred against the Armenian people. The applicant had never been prosecuted or convicted for seeking to justify genocide or for inciting hatred. Therefore, the Court rather found his disputed conviction an "interference" with the applicant's exercise of the rights provided in Article 10.⁹⁴

The ECtHR has also a solid case law on Article 10 alone that can be applied in the context of propaganda. It maintained in a number of judgments that the right to freedom of expression is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference but also to those that offend, shock or disturb the State or any section of the community.⁹⁵ Such are the demands of pluralism, tolerance and broadmindedness without which there is no democratic society.

The Court has consistently underlined that Article 10 does not guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern. Under the terms of paragraph 2 of the Article the exercise of this freedom carries with it "duties and responsibilities", which also apply to the media. These "duties and responsibilities" are liable to assume significance when there is a question of endangering, for example, the national security and the territorial integrity of a State.⁹⁶ As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly.

By reason of the "duties and responsibilities" inherent in the exercise of the freedom of expression, the safeguard afforded by Article 10 to journalists and other media actors in

⁹² No. 35222/04, 20 February 2007.

⁹³ No. 16637/06, 23 October 2012.

⁹⁴ *Perinçek v. Switzerland*, no.27510/08, 17 December 2013. Grand Chamber, 15 October 2015.

⁹⁵ *Stoll v. Switzerland* ([GC], no. 69698/01, § 101, ECHR 2007-V; *Mouvement raëlien suisse v. Switzerland*, No. 16354/06, § 48, ECHR 2012; *Animal Defenders International v. the United Kingdom*, No. 48876/08, § 100, ECHR 2013.

⁹⁶ *Han v. Turkey*, no. 50997/99, 13 September 2005.

relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism.⁹⁷

The test of necessity in a democratic society requires the Court to determine whether the “interference” complained of corresponded to a “pressing social need”, whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it are relevant and sufficient.⁹⁸

In the case of *Zana v. Turkey*⁹⁹ the Grand Chamber of the Court looked into the nature of the statement by former mayor of Diyarbakır in interview published in major national daily newspaper on a terrorist organization, the Kurdistan Workers Party (PKK). Although the particular phrase contained both a contradiction and an ambiguity, the judgement concluded that the prison term imposed on the Applicant for it was not a violation of Article 10. It could not be looked at in isolation and had had a special significance in the circumstances of the case – interview had coincided with murderous attacks carried out by the PKK on civilians in south-east Turkey. Thus, the eventual support given to the PKK, described as a “national liberation movement”, had had to be regarded as likely to aggravate an already explosive situation in that region. Penalty imposed could therefore reasonably have been regarded as answering a pressing social need, and interference in issue was found proportionate to legitimate aims pursued. The judgment said, in particular: “at a time when serious disturbances were raging in south-east Turkey such a statement – coming from a political figure well known in the region – could have an impact such as to justify the national authorities’ taking a measure designed to maintain national security and public safety.”

In the case of *Ceylan v. Turkey*¹⁰⁰ the Applicant, a trade union leader, was imprisoned to 1 year and 8 months’ imprisonment and further loss of certain political and social rights for the “offence to incite the population to hatred and hostility by making distinctions based on ethnic or regional origin or social class.” The ECtHR found the sentence unproportional as the article in question, despite its virulence, did not encourage the use of violence or armed resistance or insurrection. In the Court’s view, this is a factor which it is essential to take into consideration.

The same argument of lack of incitement was used in *Erdoğdu and İnce v. Turkey*.¹⁰¹ Here the Applicants were convicted of disseminating separatist propaganda through the magazine of which they were the editor and a journalist. The Court observed that the magazine had published an interview with a Turkish sociologist in which the latter had explained his opinion on potential changes in the Turkish State’s attitude to the Kurdish question. It found that the interview had been analytical in nature and had not contained any passages which could be described as an incitement to violence. The domestic authorities did not appear to have had sufficient regard to the public’s right to be informed of a different perspective on the situation in south-east Turkey, however unpalatable that perspective might have been for them. In the

⁹⁷ See *Goodwin v. the United Kingdom*, judgment of 27 March 1996, Reports 1996-II, § 39, and *Fressoz and Roire v. France* [GC], no. 29183/95, § 54, ECHR 1999-I.

⁹⁸ See *Sunday Times v. the United Kingdom* (no. 1), judgment of 26 April 1979, Series A no. 30, § 62.

⁹⁹ No. 69/1996/688/880, 25 November 1997.

¹⁰⁰ No. 23556/94, 8 July 1999.

¹⁰¹ Nos. 25067/94 and 25068/94, ECHR 1999-IV.

Court's view, although the reasons given by the Istanbul National Security Court for convicting and sentencing the applicants had been relevant, they could not be considered sufficient to justify the interference with the applicants' right to freedom of expression.

At the same time, it is important to know that only in *Perinçek v. Switzerland*¹⁰² the ECtHR case law refers to "propaganda for war" proper, and even there in passing.

The ECtHR recognizes that in considering the scope of "separatist propaganda against the indivisibility of the State... it may be difficult to frame laws with absolute precision and that a certain degree of flexibility may be called for to enable the national courts to assess" it. It ruled in this regard, that "[h]owever clearly drafted a legal provision may be, there is an inevitable element of judicial interpretation. There will always be a need for elucidation of doubtful points and for adaptation to changing circumstances."¹⁰³

Many other cases of the ECtHR on complaints in the context of propaganda dealt rather with issues of pluralism in public broadcasting; the need for journalists to observe professional ethics and the general design of the Convention to maintain and promote the ideals and values of a democratic society.

European Union

The Charter of Fundamental Rights of the EU provides in Article 11(1) that everyone has the right to freedom of expression.¹⁰⁴ This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. According to Article 11(2) of the Charter, freedom and pluralism of the media shall be respected.

Article 52(1) of the Charter of Fundamental Rights stipulates that any limitation on the exercise of the rights and freedoms recognized by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others.

The Audiovisual Media Services Directive, AVMSD, (Article 3(1))¹⁰⁵ of the EU stipulates that Member States shall ensure freedom of reception and shall not restrict retransmission on their territory of audiovisual media services from other Member States for reasons which fall within the fields coordinated by the AVMSD.

¹⁰² No.27510/08, 17 December 2013.

¹⁰³ *Başkaya and Okçuoğlu v. Turkey*, nos. 23536/94 and 24408/94, 8 July 1999.

¹⁰⁴ The Charter of Fundamental Rights of the European Union is addressed, according to its article 51, to the bodies of the European Union and to the member States when they apply the EU law. The application of the principle of subsidiarity gives pre-eminence to national Constitutional protections. The provisions of the European Convention on Human Rights also determine the scope and the interpretation of the rights protected in the Charter, despite the fact that the European Union as such is not a signatory of the ECHR.

¹⁰⁵ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive). URL: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:en:PDF>

Article 3(2) of the Directive also allows derogating from the principle of freedom of reception and retransmissions of television broadcasting on their territory from other Member States under certain condition. These conditions include manifest, serious and grave infringements of Article 6, which stipulates as follows:

Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality.

In the *Mesopotamia Broadcast / Roj TV* joint case¹⁰⁶, the European Court of Justice (ECJ) ruled based on the predecessor of Article 6 – Article 22a of Council Directive on Transfrontier Television¹⁰⁷. *Mesopotamia Broadcast*, a Danish holding company with its registered office in Denmark, is the holder of a Danish television licence for the channel Roj TV, also a Danish company. The latter broadcasts programmes by satellite, mainly in Kurdish, throughout Europe and the Middle East. It commissions programmes from, among others, a company established in Germany. In 2006 and 2007 government authorities in Turkey lodged complaints with the Danish Radio and Television Board, that, by its programmes, Roj TV supported the objectives of the Kurdistan Workers Party, PKK, which is classified as a terrorist organisation by the European Union. The national regulator gave a ruling on those complaints which held that Roj TV had not infringed the Danish rules implementing Articles 22 and 22a of the Directive. The broadcasts did not incite hatred on grounds of race, sex, religion or nationality, but merely broadcasted information and opinions, while the violent TV images reflected the real violence in Turkey and the Kurdish areas. Later, in 2008, the German Federal Interior Ministry, took the view that the operation of the Roj TV television channel conflicts with the ‘principles of international understanding’ within the meaning of the Law on associations, read in conjunction with the Basic Law. It prohibited Mesopotamia Broadcast and Roj TV from carrying out its activities promoting PKK in Germany that violate the scope of the Law on associations. In particular the Ministry based its decision on the fact that Roj TV’s programmes called for the resolution of the differences between Kurds and Turks by violence, including in Germany, reflecting to a large extent the militaristic and violent approach on the differences. The plaintiffs each brought a court action seeking to have that decision set aside on the grounds that according to the Directive only the Danish authorities may exercise control over those activities.

The judgment of the European Court of Justice was that the AVMSD’s ban on any incitement to hatred on grounds of race, sex, religion or nationality also covers facts such as those of national law prohibiting infringement of the principles of international understanding. The Directive’s regulation on the jurisdiction does not preclude a Member State from adopting measures against a broadcaster established in another Member State, pursuant to a general law such as the Law on associations, provided that those measures do not prevent retransmission *per se* on the territory of the receiving Member State of television broadcasts

¹⁰⁶ Joint cases C-244/10 and C-245/10 *Mesopotamia Broadcast and Roj TV v Federal Republic of Germany* [22 September 2011] ECR I-08777.

¹⁰⁷ Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997.

made by that broadcaster from another Member State, this being a matter to be determined by the national court.

This decision served as a basis for the 2015 European Commission Decision issued in response to the notification by Lithuania of certain alleged infringements of Article 6 of the Directive in programmes of *RTR Planeta*, a Russian-language channel retransmitted in Lithuania via cable and satellite.¹⁰⁸ In particular, it reviewed the arguments of the Lithuanian authorities that the content of the broadcaster's programmes instigated discord and a military climate and referred to demonization and scapegoating with reference to the situation in Ukraine. Reportedly they were aimed at creating tensions and violence between Russians, Russian-speaking Ukrainians and the broader Ukrainian population. Meanwhile, Lithuania has a sizable Russian-speaking minority which appears to be the addressee of *RTR Planeta*. Some of the statements could also be considered as inciting tensions and violence between the Russians and the Ukrainians but also against the EU and NATO States. The programmes could therefore be considered to foster a feeling of animosity or rejection. The Lithuanian authorities also found that the statements made in these programmes can be considered as incitement to hatred, since they involve express language that can be considered on the one hand as an action intended to direct specific behaviour and, on the other hand, as creating a feeling of animosity or rejection with regard to a group of persons.

The European Commission decided that Lithuania has sufficiently demonstrated that there have been infringements of manifest, serious and grave character of the prohibition of incitement to hatred in the television broadcast of *RTR Planeta* on two occasions in the twelve months previous to the notification of 24 February 2015 and that the infringement persisted after having failed to find an amicable settlement with the transmitting Member State (Sweden). The measures taken by Lithuania were found not discriminatory and rather proportionate to the objective of ensuring that media service providers complied with the rules of Article 6 of the AVMSD according to which audiovisual media services should not contain any incitement to hatred based on race and/or nationality.

The measures taken by Lithuania were found by the European Commission not discriminatory and rather proportionate to the objective of ensuring that media service providers do not disseminate any incitement to hatred based on race and/or nationality.

In order to ensure the effectiveness of Article 3 of the AVMSD, the European Commission is required to examine only the effects of the decision of the Lithuanian authorities on the freedom of expression which exceed those which are intrinsically linked to the suspension of retransmission of *RTR Planeta*. The EC concluded that the freedom of expression of the

¹⁰⁸ On the compatibility of the measures adopted by Lithuania pursuant to Article 3(2) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services. 10.07.2015. C(2015) 4609 final. URL: http://ec.europa.eu/newsroom/dae/document.cfm?action=display&doc_id=10299

broadcaster has been affected by Article 3 of the AVMSD for the purpose of stopping incitement to hatred. On the circumstances of this case, given that the qualification of these programmes was validly decided by the Lithuanian authorities and also that the procedure of Article 3(2) was followed by the said authorities, the Commission concluded that the measures notified by Lithuania were compatible with the EU law.

In a similar manner, the National Electronic Mass Media Council (NEPLP) of Latvia suspended for six months *Rossiya RTR*, a Russian-language channel under the jurisdiction of Sweden and retransmitted in Latvia via cable, online and direct-to-home satellite. The suspension – only for cable operators – followed infringements of Article 6 of the AVMSD and Latvian media law, in particular, through “incitement to hatred and a call for military action” (against Türkiye).¹⁰⁹ It was suspended, first in 2019 for a period of three months – approved by the EC¹¹⁰ and then, in 2021, for 12 months – also sanctioned by the EC¹¹¹ – after consulting the European Regulators Group for Audiovisual Media Services (ERGA).

ERGA comprises independent national regulatory authorities of EU Member States in the field of audiovisual media services. An opinion of ERGA is now required under the newly formulated Article 3(2) third subparagraph of the AVMSD. ERGA’s role in this procedure is to assess the aspects that fall “within both legal and practical remit of individual ERGA members” (in this case the Latvian regulatory authority) and to extensively take account of “all the actions, or omissions thereof, of the relevant parties” by checking the file of a case – but without verifying the content of the facts or doing a secondary check of the conclusions drawn by the national regulatory authority (NRA).¹¹²

According to our interlocutors, Moldova intends to join ERGA as observer and other European institutions that enable cooperation in audiovisual sphere, including cooperation in counteraction to propaganda and disinformation, such as the European Audiovisual Observatory (EAO).

Kiselev case. Since March 2014, the EU has progressively imposed restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. In particular, Dmitrii Kiselev, a popular Russian TV host and

¹⁰⁹ Latvia suspends Rossiya RTR channel. 7 April 2016. Public broadcasting of Latvia. <https://eng.lsm.lv/article/society/society/latvia-suspends-rossiya-rtr-channel.a177088/>

¹¹⁰ Commission Decision of 3.5.2019 on the compatibility of the measures adopted by Latvia pursuant to Article 3(2) of Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

¹¹¹ Commission Decision of 7.5.2021 on the compatibility of the measures adopted by Latvia pursuant to Article 3(2) of Directive 2010/13/EU of the European Parliament and of the Council to restrict retransmission on its territory of an audiovisual media service from another Member State.

¹¹² “ERGA concludes, in consideration of the circumstances of the case, that the procedural conditions for derogation from the principle of the country of origin laid down in Article 2(1) of the Directive, as foreseen points (a) to (d) of Article 3(2) of the Directive, have been met. ERGA is of the opinion that the decision (No. 68/1-2) by NEPLP to provisionally derogate from Article 3(1) was substantiated and is compatible with the Directive.” See the ‘Opinion by the European Group of Audiovisual Media Services (ERGA) on decision No. 68/1-2 of the Latvian National Electronic Mass Media Council restricting the retransmission of the channel Rossiya RTR in the territory of Latvia for 12 months’ (April 2021) at <https://erga-online.eu/wp-content/uploads/2021/04/2021-03-10-ERGA-Opinion-on-decision-No.-68-1-2-of-the-Latvian-National-Electronic-Mass-Media-Council-as-adopted.pdf>

Director-General of the “International news agency ‘Rossiya Segodnya’” was included on the lists of persons subject to the sanctions provided for the following reasons:

“Appointed by Presidential Decree on 9 December 2013 Head of the Russian Federal State news agency “Rossiya Segodnya”. Central figure of the government propaganda supporting the deployment of Russian forces in Ukraine.”¹¹³

In other words, he was sanctioned for organizing propaganda for Russian war efforts, though “war propaganda” was not directly quoted in the EU act.

Mr Kiselev’s attempt to challenge his personal sanctions was dismissed by the European Court of Justice (CoJ), which, in particular pointed that the applicant was not a regular Russian journalist. On the contrary, he engaged in propaganda “by using the means and power available to him as Head of RS, a position which he obtained by virtue of a decree of President Putin himself.”¹¹⁴ It is important that the CoJ referred in its decision also to the resolution made in 2014 by the Russian self-regulation body in response to a complaint relating to a programme which Kiselev had presented. In that resolution the press council considered that the TV show contained propaganda which presented the events in Kyiv in a biased manner and contrary to the journalistic principles of social responsibility, minimisation of harm, of truth, impartiality and justice, – in order to manipulate Russian public opinion through disinformation techniques.¹¹⁵ Mr. Kiselev at that time refused to stand before the Collegium.

EU sanctions against Kiselev were used by the Governments of several European states as the reason to additionally sanction the national media subsidiaries of “Rossiya Segodnya”, as economic resources controlled by the sanctioned person, while the restrictive measures against Bank Rossiya were used to apply them also to its media company (see below).¹¹⁶

The personal sanctions against Kiselev were not unique, as earlier, in 2011-2016, they were enforced in relation to several Belarusian pro-Lukashenko journalists who held media executive positions.

RT and Sputnik case. In March 2022, following the invasion of Ukraine by the armed forces of the Russian Federation, the EU has banned the state-owned media outlets RT and Sputnik, as well as their regional subsidiaries, as one of its measures in response to it. According to the Recitals of the EU Decision and Regulation, the Russian Federation “has engaged in a systematic, international campaign of media manipulation and distortion of facts in order to enhance its strategy of destabilisation of its neighbouring countries and of the Union and its Member States.” Those actions “have been channelled through a number of media outlets under the permanent direct or indirect control of the leadership of the Russian Federation. Such actions constitute a significant and direct threat to the Union’s public order and security” and “are essential and instrumental in bringing forward and supporting the aggression against Ukraine, and for the destabilisation of its neighbouring countries”.

¹¹³ Council Implementing Regulation (EU) No 284/2014 of 21 March 2014, implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, point 5, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0284&from=FR>.

¹¹⁴ *Dmitrij Konstantinovič Kiseľov, vs Council of the European Union*, judgment of the CoJ, 15 June 2017.

¹¹⁵ Propaganda and Freedom of the Media, OSCE RFOM, 2015, P. 55-57. <https://www.osce.org/files/f/documents/b/3/203926.pdf>

¹¹⁶ See: Cabrera Blázquez F.J., The implementation of EU sanctions against RT and Sputnik, European Audiovisual Observatory, Strasbourg, 2022. P.15, 18.

The Russian TV channels were found by the EU as constituting a significant and direct threat to the Union's public order and security and instrumental for destabilization of Ukraine's neighbouring countries.

The abovementioned restrictive measures have been established “until the aggression against Ukraine is put to an end, and until the Russian Federation, and its associated media outlets, cease to conduct propaganda actions against the Union and its Member States”. These measures “do not prevent those media outlets and their staff from carrying out other activities in the Union than broadcasting, such as research and interviews”.¹¹⁷ It was prohibited for “operators to broadcast or to enable, facilitate or otherwise contribute to broadcast, any content by the legal persons, entities or bodies [on the banned media list], including through transmission or distribution by any means such as cable, satellite, IP-TV, internet service providers, internet video-sharing platforms or applications, whether new or pre-installed.” Further, any “broadcasting licence or authorisation, transmission and distribution arrangement with the legal persons, entities or bodies” [on the banned media list] was suspended. While it was also prohibited to “participate, knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions”, there are reports of successful flouts by the Russian state media of the prohibitions.¹¹⁸

This decision was appealed by RT-France in the European Court of Justice (ECJ).¹¹⁹ On 27 July 2022 it issued its decision.¹²⁰

In dismissing the claims of the broadcaster, the ECJ referred to Article 20(1) of the ICCPR which calls to ban propaganda for war, and treated the ban broadly by saying that propaganda for war includes (1) propaganda “in favour of the military aggression against Ukraine targeted at civil society in the [European] Union and neighbouring countries”, (2) broadly understood propaganda *at war*, described as propaganda being “part of the context of an ongoing war”, started by an aggressor State, “in breach of the prohibition on the use of force”, and (3) “not only incitement to a future war, but also continuous, repeated and concerted statements in support of an ongoing war”, unleashed contrary to international law, “especially where those statements come from a media outlet under the direct or indirect control of the aggressor State.”¹²¹

The key to understand the decision of the ECJ is in its para 202, which says:

“In fact, the importance of the objectives pursued by the contested acts, namely (i) the cessation of a continuous and concerted propaganda activity in favour of the military aggression against Ukraine targeted at civil society in the Union and neighbouring countries, which comes within the objective of safeguarding the Union’s

¹¹⁷ Op. cit., p. 8-9.

¹¹⁸ Scott, Mark, Russian state media flouts European sanctions. POLITICO, 20 July 2022, see <https://www.politico.eu/article/russia-europe-sanctions-social-media-rt/amp/>

¹¹⁹ *RT France v Council*, Case T-125/22, see: <https://curia.europa.eu/juris/documents.jsf?num=T-125/22>

¹²⁰

See:

<https://curia.europa.eu/juris/document/document.jsf?jsessionid=1A2B6B52388300B5E0ACD8A64C9806A5?text=&docid=263501&pageIndex=0&doclang=FR&mode=req&dir=&occ=first&part=1&cid=2496439>.

¹²¹ *RT France v. Council of the European Union*, at para. 202, 210, 2022 E.C.R. T-125/22, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62022TJ0125>.

values, fundamental interests, security, integrity and public order, and (ii) the protection of Ukraine's territorial integrity, sovereignty and independence and the promotion of a peaceful settlement of the crisis in that country, which are part of the wider objective of maintaining peace and international security, in accordance with the objectives of the Union's external action stated in Article 21(2)(a) and (c) TEU, is such as to prevail over the possibility that, for certain [media] operators, the consequences of those measures may be negative, even significantly so.¹²²

In view of continuing Russia's actions destabilising the situation in Ukraine, other programmes, Rossiya RTR/RTR Planeta, Rossiya 24/Russia 24, and TV Centre International, NTV/NTV Mir, Rossiya 1, REN TV, Pervyi Kanal were added to RT's various language versions and Sputnik by the Decision and Regulation of the Council of the European Union. There were also additional sanctions against Russian individuals occupying positions in the media, similar to Mr Kiselev's. They were found "responsible for supporting actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine".¹²³

OSCE

In a number of decisions taken at the regular Summits of Heads of State or Government and meetings of the Ministerial Council, the participating States of the Organization for Security and Co-operation in Europe (OSCE) have consistently reaffirmed that freedom of expression is a 'fundamental' and 'internationally recognized' human right and 'a basic component of a democratic society'.¹²⁴ They take as their guiding principle to safeguard this right, as well as maintain freedom of information and freedom of the media.¹²⁵

All OSCE participating States committed themselves, in their 1991 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, to maintaining freedom of expression and freedom of information even under difficult situations. With a view to enabling public discussion on the observance of human rights and fundamental freedoms, as well as on the lifting of the state of public emergency, they pledged to take no measures aimed at barring journalists from the legitimate exercise of their profession other than those strictly required by the exigencies of the situation.¹²⁶

When referring to the freedom of the media, the OSCE political commitments particularly highlight the rights of independent free and pluralistic media, that is those "which enjoy maximum editorial independence from political and financial pressure."¹²⁷ For example, the

¹²² Ibid.

¹²³ Consolidated text: Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, see Annex XV at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0833-20230427>.

¹²⁴ OSCE, Freedom of the Media, Freedom of Expression, Free Flow of Information; Conference on Security and Co-Operation in Europe (CSCE) and Organization for Security and Co-operation in Europe (OSCE) 1975–2017; 4th edition, OSCE Representative on Freedom of the Media, Vienna 2017, pp. 21, 29, 31, 41, 71 72, <https://www.osce.org/fom/13881>.

¹²⁵ OSCE, "CSCE Budapest Document 1994, Summit of Heads of State or Government", Towards a Genuine Partnership in a New Era, Budapest Decisions (VIII. Human Dimension), 5–6 December 1994. See Freedom of the Media, Freedom of Expression, Free Flow of Information, p. 29. See also *ibid.*, pp. 21, 26, 30, 31, 37 and 38.

¹²⁶ *Ibid.*, p. 26.

¹²⁷ *Ibid.*, p. 46.

states committed themselves “to take all necessary steps to ensure the basic conditions for free and independent media”¹²⁸ and not “discriminate against independent media with respect to affording access to information, material and facilities.”¹²⁹

Aside from acknowledging human rights and fundamental freedoms being an essential factor for peace and security in Europe, the States participating in the Conference on Security and Co-operation in Europe highlighted in the 1975 **Helsinki Final Act** a number of agreed commitments on freedom of information, of expression and of the media. They include a pledge to improve the conditions under which journalists from one participating State exercise their profession in another, to facilitate dissemination of broadcast information and printed press from the countries of the region. In particular, they promised that “the legitimate pursuit of their professional activity will neither render [foreign] journalists liable to expulsion nor otherwise penalize them”.¹³⁰

In Helsinki they also solemnly pledged “to refrain from propaganda for wars of aggression or for any threat or use of force inconsistent with the purposes of the United Nations and with the Declaration on Principles Guiding Relations between Participating States, against another participating State”.¹³¹

For the OSCE, freedom of the media is especially important in times of war. In the **Charter for European Security**, adopted in Istanbul in 1999, the heads of state or government of the OSCE participating States, the need to strengthen security and stability in the OSCE region, made them “deeply concerned about the exploitation of media in areas of conflict to foment hatred and ethnic tension and the use of legal restrictions and harassment to deprive citizens of free media.”¹³²

The current Representative of the Organization for Security and Co-operation in Europe (OSCE) on Freedom of the Media, Ms Teresa Ribeiro, has expressed her position on propaganda by reminding the OSCE participating States that Article 20 of the International Covenant on Civil and Political Rights carries an important exception to the right to freedom of expression, as it explicitly forbids propaganda for war. The Preamble to the ICCPR indicates that such propaganda would be an assault to the “inherent dignity” and “equal and inalienable rights of all members of the human family” as the “foundation of freedom, justice and peace in the world”. “The heinous nature of propaganda for war requests a particular strong call from my side on all OSCE participating States to refrain from such practice.”¹³³

¹²⁸ Ibid., p. 37.

¹²⁹ Ibid., p. 26.

¹³⁰ OSCE, “Conference on Security and Co-operation in Europe (CSCE): Final Act”, Helsinki, 1 August 1975, p. 13, available at <https://www.osce.org/helsinki-final-act?download=true>.

¹³¹ OSCE, Freedom of the Media, Freedom of Expression, Free Flow of Information; Conference on Security and Co-Operation in Europe (CSCE) and Organization for Security and Co-operation in Europe (OSCE) 1975–2017; 4th edition, OSCE Representative on Freedom of the Media, Vienna 2017, <https://www.osce.org/fom/13881>.

¹³² Ibid., p. 38.

¹³³ See <https://www.osce.org/files/f/documents/7/c/513313.pdf>

II.3. Countering disinformation

United Nations

Alongside with the propaganda for war, the use of false and distorted reports was considered by the UN a major threat to peace and a deterrent to the institution of a productive dialogue among countries.¹³⁴ In its first years, in preparation to its Conference on Freedom of Information, the United Nations General Assembly adopted a Resolution to invite the Governments of States Members to study such measures as might, with advantage, be taken on the national plane to combat, within the limits of constitutional procedures, the diffusion of false or distorted reports likely to injure friendly relations between States.¹³⁵

The majority of democracies then replied that false information is usually counteracted by official denials and press conferences, while the governments should assure the availability of a multiplicity of unfettered sources of news and information. Provided that peoples of a democracy have access to sufficient information from diverse sources, they are competent to distinguish the true from false and the wise from stupid, and on the basis of their judgment to form their own opinions and make their own decisions.¹³⁶

While interpreting freedom of expression as a human right under the ICCPR, the UN Human Rights Committee similarly noted that “[at] least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence.”¹³⁷

In early 1950s a French initiative led the UNGA to adopt the **Convention on the International Right of Correction** aimed to maintain peace and friendly relations among nations.¹³⁸ It considered that, as a matter of professional ethics, all correspondents and information agencies should, in the case of news dispatches transmitted or published by them and which have been demonstrated to be false or distorted, follow the customary practice of transmitting through the same channels, or of publishing, corrections of such dispatches (both the “correspondents” and “information agencies” were broadly defined therein).¹³⁹

The Convention acknowledged the impracticality to establish an international procedure for verifying the accuracy of media reports that might lead to the imposition of penalties for the dissemination of false or distorted reports. However, it did prescribe that if a contracting

¹³⁴ Ligabo, Ambeyi, Civil and Political Rights, Including the Question of Freedom of Expression, Report of the Special Rapporteur, U.N. Doc. E/CN.4/2005/64, Dec. 17, 2004, 17.

¹³⁵ See United Nations, “Measures to Counteract False Information” in Freedom of Information: A Compilation (Lake Success, V1, 1950).

¹³⁶ Ibid. at 204-05, 211, 214, 217

¹³⁷ Human Rights Committee, 102nd session Geneva, 11-29 July 2011, CCPR/C/GC/34, General comment No. 34, “Article 19: Freedoms of opinion and expression”, para 47, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

¹³⁸ United Nations, Convention on the International Right of Correction, in Treaty Series 191 (New York, Vol. 435, 1953) (entered into force on August 24, 1962), https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVII-1&chapter=17&clang=_en#:~:text=The%20Convention%20was%20adopted%20by,session%20of%20the%20General%20Assembly.&text=Official%20Records%20of%20the%20General,A%2F2361%2C%20p.

¹³⁹ Id. at 194.

State's international relations or "national prestige or dignity" suffers from false or distorted by a news dispatch, it has the right to submit its version of the facts to those States where such dispatch has been disseminated, with a copy to the journalist and media outlet concerned to enable a correction. Then, within five days, the recipient State is obliged to release the correction to the media operating in its territory. In case of failure to do so, the correction will be given appropriate publicity by the UN Secretary-General. Nevertheless, the Convention on the International Right of Correction has rarely been enforced in the past years. Thus, it is not clear how effectually it has served its original purpose.¹⁴⁰

Republic of Moldova is not a party to the Convention.¹⁴¹

Several recent documents of the UN and its agencies and other statutory bodies disclose the current focus of its counter-disinformation policies.

In the summer of 2021, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, presented to the UN Human Rights Council a report titled "**Disinformation and freedom of opinion and expression.**"¹⁴²

The report paid particular attention to the dangers of state-sponsored disinformation by saying, that it can emanate from State institutions directly or from proxies targeting audiences within the State's own territory or abroad. "In the digital age, – noted the Report – new techniques have significantly expanded the scale, speed and spread of such operations. When combined with the power, means and reach of a State, their impact can be devastating for human rights." The effect of state-sponsored disinformation is particularly dangerous, where States systematically and simultaneously suppress other sources while promoting their own false narratives.

Another specific aspect of the Report is the use of criminal laws. It points to the fact, that in the past decade, there has been a flurry of national laws prohibiting "false news" of various forms on the Internet and social media platforms, most recently using the need to address pandemic-related problematic information. Their key deficiencies are named to be:

- 1) a failure to meet the three-part test of legality, necessity and legitimate aims;
- 2) lack of precision in defining with sufficient precision what constitutes false information or what harm they seek to prevent and the link between the act of disinformation and the harm caused by it;
- 3) unfettered discretion given to executive authorities without judicial oversight, opening the possibility for abuse and arbitrary decision-making; and

¹⁴⁰ Kyu Ho Youm, *The Right of Reply and Freedom of the Press: An International and Comparative Perspective*, 76 GEO. WASH. L. REV., (2008), at 1023-24.

¹⁴¹ See: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVII-1&chapter=17&clang=_en#:~:text=The%20Convention%20was%20adopted%20by,session%20of%20the%20General%20Assembly.

¹⁴² *Disinformation and freedom of opinion and expression*. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan. Human Rights Council Forty-seventh session, 21 June–9 July 2021, A/HRC/47/25, <https://undocs.org/A/HRC/47/25>

- 4) a chilling effect on freedom of expression made by the prescribed punishment on disinformation.

Taken together, this nature of such laws allows Governments to use them against independent journalists, as well as to compel social media platforms to remove users' content that the national authorities deem disinformation and thus illegal. Failure to comply is sanctioned with significant fines and/or content blocking. The Special Rapporteur concludes that criminal law "should be used only in very exceptional and most egregious circumstances of incitement to violence, hatred or discrimination."

The two latter points follow conclusions of a report by Ms Khan's predecessor, Mr David Kaye. He called the national governments to stop disseminating disinformation themselves rather than introduce criminal punishments for "false news" stemming from other voices.¹⁴³

Further, the 2021 Report provides a detailed description of how – in response to the challenges raised by disinformation and misinformation – the largest United States-based social media platforms use a range of policies and tools to stop and/or label what they consider to be "false news" and various deceptive practices that undermine authenticity and integrity on their platforms. The Special Rapporteur considers these measures to be "generally positive", although insufficient.

The Special Rapporteur remarks, that the right to freedom of expression is not part of the problem, it is the objective and the means for combating disinformation. Moreover, disinformation "thrives where public information regimes are weak and independent investigative journalism is constrained." Freedom of expression applies "irrespective of the truth or falsehood of the content" and therefore the "prohibition of false information is not in itself a legitimate aim under international human rights law".¹⁴⁴

Freedom of expression applies irrespective of the truth or falsehood of the content, therefore prohibition of false information is not in itself a legitimate aim under international human rights law.

UN Special Rapporteur on Freedom of Expression, 2021

Taking note of this report of the Special Rapporteur, the UN General Assembly (UNGA) adopted, in 2021, resolution "**Countering disinformation for the promotion and protection of human rights and fundamental freedoms**".¹⁴⁵ It called upon the States to counter all forms of disinformation, and especially the dissemination of disinformation which undermines the promotion of peace and cooperation, through policy measures, including education, capacity-

¹⁴³ Kaye, David (2020), Disease pandemics and the freedom of opinion and expression, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, New York: UN, A/HRC/44/49, paras. 44-50, https://www.ohchr.org/Documents/Issues/Opinion/A_HRC_44_49_AdvanceEditedVersion.docx.

¹⁴⁴ "Disinformation and freedom of opinion and expression", Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. HRC, 47th session, 21 June–9 July 2021, paras. 38, 40.

¹⁴⁵ General Assembly resolution 76/227 A/RES/76/227, <https://undocs.org/A/RES/76/227>.

building for prevention and resilience to disinformation, advocacy and awareness-raising. The UNGA urged all stakeholders to promote media and information literacy, as a way to assist in countering disinformation. It also encouraged online platforms, including social media companies, to review their business models and ensure that their design and development processes, their business operations, data collection and data processing practices are in line with the UN Guiding Principles on Business and Human Rights.

The Resolution stressed that responses to the spread of disinformation must comply with IHRL and the principles of legality, necessity and proportionality, moreover they should promote and protect everyone's freedom of expression and freedom to information – and not violate it. Free, independent, plural and diverse media and access to independent, factual and evidence-based information are, in fact, important to counter disinformation. Awareness-raising about deliberate false news stories and disinformation can be done by means of media and information-related technology literacy, and independent and free media can help in the process.

As a practical step, the General Assembly welcomed the efforts of the UN Secretary-General to promote international cooperation in countering disinformation, and in this regard took note of his call for a “global code of conduct that promotes integrity in public information”. Later on, in 2022, the UN delegates supported an initiative by its Department of Global Communications to draft a code of conduct to promote integrity in public information¹⁴⁶ and tabled a draft resolution which further encouraged the Secretary-General to initiate the preparations for such a code.¹⁴⁷

Also in 2022, the UN Human Rights Council (UNHRC) adopted a resolution “**Role of States in countering the negative impact of disinformation on the enjoyment and realization of human rights**”.¹⁴⁸ It welcomed and took note of earlier relevant documents of the UN bodies and expressed similar concerns. In particular, they related to State engagement – through State institutions or proxies – in the dissemination of disinformation to promote false narratives, control freedom of information, public debate and limit the exercise of the rights to freedom of opinion and expression. These concerns are connected with those at States and State-sponsored actors being “part of hybrid influence operations that exploit and undermine the freedom of societies, and can accompany serious violations of international law”. The document not only called upon all States “to refrain from conducting or sponsoring disinformation campaigns domestically or transnationally for political or other purposes,” it also encouraged them “to condemn such acts”.

The UNHRC warned against the use by the States of countering disinformation “as a pretext to restrict the enjoyment and realization of human rights or to justify censorship, including through vague and overly broad laws criminalizing disinformation”. It actually called that their

¹⁴⁶ See: “Concluding Session, Committee on Information Calls for Fighting Misinformation, Protecting Journalists,” press release, 13 May 2022, <https://press.un.org/en/2022/pi2301.doc.htm> and “Delegates Welcome Code of Conduct Initiative, Call for Mainstreaming Multilingualism, as Committee on Information Continues Session”, press release, 4 May 2022, <https://press.un.org/en/2022/pi2300.doc.htm>.

¹⁴⁷ Draft resolution B “United Nations global communications policies and activities,” 13 May 2022 A/AC.198/2022/L.3, Para 108, <https://digitallibrary.un.org/record/3972730>.

¹⁴⁸ Human Rights Council resolution 49/21, 1 April 2022, <https://undocs.org/A/HRC/RES/49/21>.

efforts to counter disinformation “promote, protect and respect individuals’ freedom of expression and freedom to seek, receive and impart information.”

Once again the Resolution emphasized “the role of States in promoting access to diverse and reliable information to counter disinformation, including by increasing their own transparency, proactively disclosing official data online and offline and reaffirming the commitment to media diversity and independence, and in ensuring the protection of the right to freedom of opinion and expression, including the freedom to seek, receive and impart information and ideas of all kinds, through any media.”

The Resolution put disinformation on a par with arbitrary or unlawful surveillance and malign cyber activities in the sense that they all can pose a threat to the enjoyment and realization of human rights.

The United Nations Educational, Scientific and Cultural Organization (UNESCO), a specialized agency of the UN, as part of its ongoing work to promote freedom of expression and universal access to information has commissioned and published – in many languages of the world – important research into disinformation and ways to counteract it. **“Journalism, “Fake News” and Disinformation”** is the title of UNESCO handbook for journalism education and training. For those directly involved in empowering journalists and student journalists, it provides a framework for inquiry, and lessons to help navigate the information environment. It examines the deployment of «fake news’ as a term to discredit journalism, and sets out an alternative framework covering disinformation and misinformation, and (to a lesser extent) mal-information and emotive propaganda. The lessons are contextual, theoretical and in the case of digital verification, extremely practical. The curriculum falls into two distinct parts: the first three teaching modules frame the problem and give it context, while the last four focus on responses to «information disorder’ and its consequences.¹⁴⁹

UNESCO has also provided and promoted two policy briefs offering critical insights into the COVID-19-related disinformation that is impeding access to trustworthy sources and reliable information.¹⁵⁰ If information is empowering, then disinformation is disempowering, says the first brief. Access to verifiable, reliable information makes the right to freedom of expression meaningful. It noted that regulatory steps enabling the prosecution of people for producing or circulating disinformation carry with them the risks of “catching legitimate journalism in the net” and of “infringing freedom of expression rights more broadly”.¹⁵¹

The second policy brief assesses the responses that work to cut the supply of production, filter disinformation during transmission, help inoculate targets from reception and prevent viral re-circulation. The assessment specifically looks at these responses in relation to their impact on the right to freedom of expression, access to information and to privacy.

¹⁴⁹ See: Ireton, Cheryl and Julie Posetti (eds.), Journalism, 'Fake News' and Disinformation: A Handbook for Journalism Education and Training, 2018, <https://en.unesco.org/fightfakenews>.

¹⁵⁰ See Communication and Information: Response to COVID-19, <https://en.unesco.org/covid19/disinfodemic>.

¹⁵¹ Posetti, Julie, and Kalina Bontcheva, UNESCO Policy brief #2, <https://en.unesco.org/covid19/disinfodemic/brief2>

Together with the **International Telecommunications Union** (ITU), another specialized agency of the United Nations responsible for many matters related to information and communication technologies, UNESCO commissioned a report **“Balancing Act: Countering Digital Disinformation while respecting Freedom of Expression”**.¹⁵² The recent report suggested a hierarchical typology of 11 responses to disinformation elaborated as part of the research carried out for this report. The responses are categorised by their aim of targeting particular aspects of the problem, rather than in terms of the actors behind them (e.g. internet companies, governments, civil society, etc.). The typology distinguishes four top-level categories.

The first, **identification responses** involve monitoring and analysis of information channels (e.g. social media and messaging, news media, websites) for the presence of disinformation. The objective here is to pinpoint the existence and extent of disinformation through two subtypes of identification responses: (1) monitoring and fact-checking responses, which tend to be carried out by news organisations, internet communications companies, academia, civil society organisations, and independent fact-checking organisations; and (2) investigative responses, which go beyond the question of whether a given message/content is (partially) false, to provide insights into disinformation campaigns, including the originating actors, degree of spread, and affected communities.

The second, **responses aimed at producers and distributors of disinformation through altering the environment that governs and shapes their behaviour** is about law and policy responses. They include three subtypes: (1) legislative, pre-legislative, and policy responses, which encompass regulatory interventions to tackle disinformation; (2) national and international counter-disinformation campaigns, which tend to focus on the construction of counter-narratives; and (3) electoral responses, designed specifically to detect, track, and counter disinformation that is spread during elections.

The third umbrella category includes **responses within the processes of production and distribution of disinformation**: (1) curation, (2) demonetisation, and (3) technical and algorithmic responses.

The final broad type of the toolbox clusters **responses aimed at supporting the target audiences of disinformation campaigns**. Such responses include: (1) ethical and normative responses carried out on all levels involving public condemnation of acts of disinformation or recommendations and resolutions aimed at thwarting these acts and sensitising the public to the issues; (2) educational responses to promote media and information literacy, critical thinking and verification in the context of online information consumption, as well as journalist training; (3) empowerment and credibility labelling efforts using content verification tools and web content indicators, as practical aids to empower citizens and journalists. These efforts may also be intended to influence curation (see above) in terms of prominence and amplification of certain content.¹⁵³

¹⁵² Broadband Commission for Sustainable Development Study “Balancing Act: Countering Digital Disinformation while respecting Freedom of Expression”, 2020, https://www.broadbandcommission.org/wp-content/uploads/2021/02/WGFoEDisinfo_Report2020.pdf

¹⁵³ Op.cit., pp. 36-40.

Council of Europe

The starting point of discussions and recommendations on the issue of disinformation within this organization is, perhaps, a Resolution of the Parliamentary Assembly of the Council of Europe (PACE) titled “**Online media and journalism: challenges and accountability**”.¹⁵⁴ The Resolution referred to an undefined line “between what could be considered a legitimate expression of personal views in an attempt to persuade readers” and disinformation or manipulation. It noted with concern the growing number of online media campaigns designed to misguide sectors of the public, through intentionally biased or false information, hate campaigns against individuals and personal attacks, often in a political context, aimed at harming democratic political processes.¹⁵⁵

The Resolution suggested a number of steps to be taken by national authorities, such as inclusion of media literacy in the school curricula, support to awareness-raising projects and targeted training programmes to promote the critical use of online media, and support for professional journalistic training.¹⁵⁶

In another of its earlier resolutions, PACE, while acknowledging that the internet “belongs to everyone; therefore, it belongs to no one and has no borders” and that there is a need to preserve its openness and neutrality, also noted that the internet “intensifies the risk of biased information and manipulation of opinion.” As such, it “must not be allowed to become a gigantic prying mechanism, operating beyond all democratic control” or “a *de facto* no-go area, a sphere dominated by hidden powers in which no responsibility can be clearly assigned to anyone.”¹⁵⁷ The Parliamentary Assembly recommended to the CoE member States to consider actions that would prevent the risk of information distortion and manipulation of public opinion, mostly through coherent regulations and/or incentives for self-regulation concerning the accountability of the internet operators.¹⁵⁸

In October 2017, the CoE published a popular report titled “**Information Disorder: Toward an interdisciplinary framework for research and policy making**”.¹⁵⁹ The document examines the way in which “information disorder” (an umbrella term) and disinformation campaigns, in particular, have become widespread and, heavily relying on social media, contribute to a global media environment of information disorder. Its authors advocate for definitional rigour, rejecting the term “fake news” as inadequate to describe the complex phenomena at stake.

The report provided a new framework of the three elements of information disorder for policy-makers, legislators, researchers, technologists and practitioners working on the theoretical and practical challenges. They are:

- a) ***misinformation***, when false information is shared, but no harm is meant;

¹⁵⁴ Parliamentary Assembly of the Council of Europe. Resolution 2143 (2017) Online media and journalism: challenges and accountability. Text adopted on 25 January 2017. <https://tinyurl.com/ydxzsc8k>

¹⁵⁵ Op.cit., Para 6.

¹⁵⁶ Op.cit., Para 12.1.

¹⁵⁷ PACE. Resolution 1970 (2014) Internet and politics: the impact of new information and communication technology on democracy. Text adopted 29 January 2014. Paras 12, 14 <https://bit.ly/2qEvqze>

¹⁵⁸ Ibid. Para 19.9.

¹⁵⁹ Wardle, Claire, and Hossein Derakhshan, Information Disorder: Toward an interdisciplinary framework for research and policymaking. Published by the Council of Europe, October 2017. <https://bit.ly/2jNx3Yg>

- b) **disinformation**, when false information is knowingly shared to cause harm; and
- c) **malinformation**, when genuine information is shared to cause harm, often by moving information designed to stay private into the public sphere.

“The complexity and scale of information pollution in our digitally-connected and increasingly polarised world”, says the report, “presents an unprecedented challenge.” It examines solutions that have been rolled out by the social media networks and considers ideas for strengthening existing media, news literacy projects and regulation. The authors claim that, while they deem fact-checking and debunking initiatives admirable — an appendix to the report lists such actions in Europe, — there is an immediate need to understand the most effective formats for sparking curiosity and scepticism in audiences, about the information they consume and the sources from which that information stems.

There is a need to work collaboratively on workable solutions, and the report provides a framework for the different stakeholders. In particular, the national governments are advised to commission research to map information disorder; draft regulations to prevent any advertising from appearing on disinformation sites; require transparency around social media ads; support public service media organisations and local news outlets; roll out advanced cybersecurity training; and enforce minimum levels of public service news on to the platforms.¹⁶⁰

In 2022 adopted was the Recommendation **on promoting a favourable environment for quality journalism in the digital age** that deals a lot with measures to counteract disinformation in the media and the harm it makes to the trust in the media. It approved the **Guidelines on promoting quality journalism in the digital age**, which again state that democracies have experienced “growing threats posed by the spread of disinformation and online propaganda campaigns, including as part of large-scale co-ordinated efforts to subvert democratic processes.” The document points out: “disinformation undermines trust in the media and threatens the reliability of information that feeds public debate and democracy. Concerted national and/or transnational efforts to address disinformation and propaganda should receive full support from States in a manner that does not undermine their independence”.

Efforts to address disinformation and propaganda should receive full support from States in a manner that does not undermine media independence.

Council of Europe

An essential part of the defence against manipulation in a democracy remains a well-informed and media-literate society (including journalists, the media, online platforms, non-governmental organisations and individuals).

The Guidelines recommend studying the impact on the free flow of information and ideas of the “considerable efforts” by some online platforms “made to prevent the use of their

¹⁶⁰ Ibid., p. 8.

networks as conduits for large-scale disinformation and manipulation of public opinion, as well as to give greater prominence to generally trusted sources of news and information.”¹⁶¹

Media and information literacy through “the media sector”, transparency of advertising, fact-checking, up-skilling of journalists and other media actors are singled out by the Guidelines as instruments to prevent and counter disinformation in the media.

The specialized Ministers of the Council of Europe member states, on the occasion of the latest **Conference of Ministers responsible for Media and Information Society**, held in 2021, also pledged to address, domestically, the challenges of increasing disinformation, misinformation and malinformation. In particular, they singled out their support of a “media ecosystem based on a plurality of independent media actors and other relevant organisations that represent the whole diversity of the society.” Such media actors are, though, expected to “(i) share commitment to truth seeking and reporting in line with journalistic ethical guidelines, (ii) adopt transparent journalistic practices that enable individuals to assess information and develop trust in both the media and the content provided, and (iii) empower individuals, through widely available content of public interest across all platforms, including public service, to make autonomous decisions about their life, work and public participation”.¹⁶²

The Ministers, in the context of the impacts of the Covid-19 pandemic on freedom of expression, noted that good practice in the member States of the Council of Europe member States has been to introduce “measures to promote the circulation of reliable Covid-19 related information and analysis considered to be of high quality”. The wrong practice amounted to controlling information, including by outright restrictions on content considered to be false. “Restrictions appear to have been applied most forcefully in those member States where freedom of expression was already in decline”, said the Ministers.¹⁶³

European Court of Human Rights

The overall bulk of the case law of the European Court of Human Rights (ECtHR) related to dissemination of false information is about the restrictions or penalties imposed by the national authorities for the protection of the reputation or – to a lesser degree – the right to respect for private and family life. The relevant case law of the ECtHR usually takes into account the role of the press in a democratic society, public interest factors, and possible status of the defamed person as a public figure whose limits of acceptable criticism are wider than those of private individuals. In addition, the ECtHR is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation.¹⁶⁴

¹⁶¹ Recommendation CM/Rec(2022)4 of the Committee of Ministers of the Council of Europe to member States on promoting a favourable environment for quality journalism in the digital age (*Adopted by the Committee of Ministers on 17 March 2022 at the 1429th meeting of the Ministers' Deputies*), https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a5ddd0

¹⁶² Resolution on the changing media and information environment. European Ministerial Conferences on Mass Media Policy & Council of Europe Conferences of Ministers responsible for Media and new Communication Services: Texts Adopted. Strasbourg: Council of Europe, 2021. P. 80. 1680a3ba26 (coe.int)

¹⁶³ Resolution on the impacts of the COVID-19 pandemic on freedom of expression. Op. cit. P. 82.

¹⁶⁴ See *Prager and Oberschlick v. Austria*, judgment of 26 April 1995, Series A no. 313, p. 19, § 38; *De Haes and Gijssels v. Belgium*, judgment of 24 February 1997.

Freedom of expression is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness which constitute a “democratic society”.¹⁶⁵ The European Court has also consistently held that “there is little scope under Article 10 para. 2 of the Convention for restrictions on political speech or on debate of questions of public interest.”¹⁶⁶

The Court also finds the right of reply “an important element of freedom of expression”, that falls within the scope of Article 10 of the Convention. This comes from both the need to be able to contest untruthful information, and to ensure a plurality of opinions, especially on matters of general interest such as political debate.¹⁶⁷

The ECtHR has repeatedly noted that the safeguards afforded by Article 10 to journalists and other media actors, in relation to their factual reporting on issues of general interest, are subject to the proviso that they are acting in *good faith*, in order to provide *accurate and reliable information* in accordance with the *ethics of journalism*, that includes an ordinary obligation to verify factual statements.¹⁶⁸ For example, in the *Goodwin* case, the ECtHR noted that the central rationale for the shielding of journalists’ confidential sources was to strengthen “the vital public-watchdog role” of the media and not to adversely affect its ability “to provide accurate and reliable information.”¹⁶⁹

Safeguards afforded by Article 10 to journalists and other media actors, in relation to their factual reporting, are subject to the proviso that they are acting in good faith, in order to provide accurate and reliable information in accordance with the ethics of journalism, that includes an ordinary obligation to verify factual statements.

ECtHR, *Goodwin v U.K.*

Despite the dominance of defamation and privacy case law among the applications on freedom of expression, there are several judgments of the ECtHR that relate to the topic of this Study, by evaluating false statements in the political speech, unrelated to reputation or private life. Experts summarize the ECtHR case law by saying that “[i]f the speaker is a politician or a journalist, the target of the speech is a public figure, or if the matter being

¹⁶⁵ See *Jersild v. Denmark*, judgment of 23 September 1994, Series A no. 298, §23-24, § 31 and *Steel and Morris v. the United Kingdom*, no. 68416/01, § 87, ECHR 2005-II.

¹⁶⁶ Case of *Wingrove v. the United Kingdom* (Application no. 17419/90), 25 November 1996, para 58, <https://hudoc.echr.coe.int/eng?i=001-58080>.

¹⁶⁷ Case of *Kaperzyński v. Poland*, no. 43206/07, § 66, 3 April 2012, <https://hudoc.echr.coe.int/eng?i=001-110171>; *NIT S.R.L. v. the Republic of Moldova [GC]* - 28470/12, Judgment, 5 April 2022, § 200, <https://hudoc.echr.coe.int/fre?i=002-13629>.

¹⁶⁸ See the *Goodwin v. the United Kingdom*, p. 500, § 39, *Fressoz and Roire*, § 54, and *Bladet Tromso and Stensaas*, § 65.

¹⁶⁹ *Goodwin v. the United Kingdom*, § 39. Judgment no. 17488/90, 27 March 1996. <https://bit.ly/2KRQYCO>

discussed relates to the public interest, the speech as a whole enjoys a greater level of protection, whether in the defamation context or otherwise.”¹⁷⁰

First of all, the ECtHR systematically finds inadmissible all applications for violation of freedom of expression that are related to Holocaust denials, on the grounds that such speech not only goes against facts established by international tribunals, but also violates Article 17 (“Prohibition of abuse of rights”) of the European Convention on Human Rights (ECHR). This article empowers the ECtHR to affirm any activity against the human rights specified in it (such as right to life and non-discrimination) as activity that may not rely on the protection of the ECHR in general, including Article 10 on freedom of expression.

As to the few other judgments on falsities in political speech or in debates on questions of public interest, in one of them, allegations that false information violated freedom of expression of applicants were dismissed (*Bader v. Austria*¹⁷¹); in another (*Balsytė-Lideikienė v. Lithuania*¹⁷²) the ECtHR found administrative penalties for disseminating false information proportionate, and in yet another (*Salov v. Ukraine*¹⁷³) found criminal penalties for disseminating forged parliamentary newspaper during election campaign violating freedom of expression. In the latter case the ECtHR said, in particular:

“...Article 10 of the Convention as such does not prohibit discussion or dissemination of information received even if it is strongly suspected that this information might not be truthful. To suggest otherwise would deprive persons of the right to express their views and opinions about statements made in the mass media and would thus place an unreasonable restriction on the freedom of expression...”

Thus, the ECtHR places the criteria for limitation of speech not so much on the falsity or truthfulness of information, but rather on other criteria, such as the harm that it has or has not inflicted.

Venice Commission

The Venice Commission (European Commission for Democracy through Law) has a similar opinion as the ECtHR. The majority of its relevant legal reviews deal with the provisions of privacy and defamation law, although in the same context it once came to a controversial and overbroad conclusion of total inadmissibility of lies in the media:

“[T]here may be situations where a journalist deliberately distorts the intercepted conversation, or maliciously misrepresents its content. **Such abuses should be punishable; the freedom of the press should not cover false factual assertions made maliciously or with reckless disregard to the truth.** [...] [I]t should be the professional duty of a journalist to verify, by taking reasonable steps, the authenticity of any material s/he intends to publish. Such verification may include, for example, contacting the persons concerned by the conversation and asking their comments.”¹⁷⁴

¹⁷⁰ Milanovic, Marko, Viral Misinformation and the Freedom of Expression: Part I, EJIL: Talk!, 13 April 2020, <https://www.ejiltalk.org/viral-misinformation-and-the-freedom-of-expression-part-i/>.

¹⁷¹ *Bader v. Austria*, Application No. 26633/95. Decision on admissibility, 15 May 1996. <https://bit.ly/2G3H0tl>

¹⁷² *Balsytė-Lideikienė v. Lithuania*, Application No. 72596/01, 4 November 2008. <https://bit.ly/2wtV0x5>

¹⁷³ *Salov v. Ukraine*, 65518/01, Judgment, 06/09/2005, para 113: <http://hudoc.echr.coe.int/eng?i=001-70096>

¹⁷⁴ CDL-AD(2016)008, Opinion on the law on the protection of the privacy and on the law on the protection of whistleblowers of “The former Yugoslav Republic of Macedonia”, §§45-47, the emphasis is author’s,

In other cases, the right of reply was recognized by the Venice Commission as the main instruments to counter falsities:

“It is, on the other hand, permissible to provide for specific obligations for the media, such as to correct a false statement, to give the complainant a right of reply or to publish a court judgment which finds a statement to be false.”¹⁷⁵

In the review of Moldova’s restrictions of disinformation, the Venice Commission observed that, their “emphasis is placed, on the one hand, on preventing the broadcasting of programmes with a certain content, namely those spreading disinformation, extremist ideas or justifying international crimes; and, on the other hand, on limiting the broadcasting of programmes of a certain origin, namely those coming from outside the EU and some more countries (effectively, that means those coming from the Russian Federation). While the content-based approach is legitimate, the origin-based approach consisting of a general referral to states that have ratified the European Convention on Transfrontier Television and to some other states seems more problematic. The proportionality of the different measures therefore needs to be examined more in detail.”¹⁷⁶

European Union

Among intergovernmental organizations in the OSCE region, the European Union, has provided, probably, the most comprehensive political response to disinformation. It consists of the *Action Plan on Strategic Communication* (2015), the European Parliament’s resolution on *EU strategic communication to counteract propaganda against it by third parties* (2016), the *Communication Tackling online disinformation: A European approach*, (2018), *Code of Practice on Disinformation* (2018), the European Commission’s *Action Plan against Disinformation* (2018), the *Communication Tackling COVID-19 disinformation - Getting the facts right* (2020), the European Commission’s *European Democracy Action Plan* (2020), and – last but not the least – the just voted for in 2022 *Digital Services Act*, that transforms the *Code of Practice on Disinformation* into *Strengthened Code of Practice*.

The latest document suggests co-regulation of big social media corporations, that so far enjoy an essentially unchecked power and market monopoly. Such co-regulation is expected to balance truths and lies in the social networks without limiting the freedom of speech or producing propaganda.

Harmful disinformation is countered with (1) improving the capabilities of the European Union institutions to detect, analyse and expose it; (2) strengthening coordinated and joint responses to disinformation (including establishing a rapid alert system); (3) mobilising

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)008-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)008-e). See also CDL-AD(2013)038, Opinion on the Legislation on Defamation in Italy, §§36-42 [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)038-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)038-e).

¹⁷⁵ CDL-AD(2013)024, Opinion on the Legislation pertaining to the Protection against Defamation of the Republic of Azerbaijan, §43, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2016\)011-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2016)011-e). See also CDL-AD(2020)013, Opinion on Draft Amendments to Law N°97/2013 On the Audiovisual Media Service (Albania), adopted by the Venice Commission on 19 June 2020, §49, see [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)013-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)013-e)

¹⁷⁶ CDL-AD(2022)02624, Republic of Moldova, Opinion on Amendments to the Audiovisual Media Services Code and to some normative acts including the ban on symbols associated with and used in military aggression actions, adopted by the Venice Commission on 24 October 2022 §92, see <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282022%29026-e>.

private sector to tackle disinformation (hence the above-mentioned *Code of Practice*); (4) raising awareness and improving societal resilience.

The **Strengthened Code of Practice** has appeared to be the key to understanding the EU policy towards disinformation in social media. It consists of the following elements:

1. Demonetization: cutting financial incentives for purveyors of disinformation (such as avoiding the placement of advertising next to disinformation);
2. Transparency of political and issue advertising (by providing efficient labelling);
3. Ensuring the integrity of services (by coming to an understanding of unpermitted manipulative behaviours and practices, including relevant tactics, techniques and procedures);
4. Empowering users (including through flagging of unreliable content and media literacy);
5. Empowering researchers (including better and wider automated access to non-personal, anonymized, aggregated data);
6. Empowering the fact-checking community (including ensuring fair financial contributions for fact-checkers' work and better access of fact-checkers to information facilitating their daily work);
7. Establishing Transparency Centre and Task Force, composed of signatories, ERGA, the European Digital Media Observatory and the European External Action Service, and chaired by the European Commission (to allow for an easy overview of the implementation of the Code);
8. Strengthened monitoring framework (including 6-months reports for the so-called Very Large Online Platforms, and 12-months for others).

Of interest on the EU judicial approach to restrictive measures taken in regards to the disinformation in Russian TV channels, is the case of *Baltic Media Alliance*, a Riga-based media company that mainly rebroadcasted Moscow programming. Therein, the CoJ confirmed the view of the national regulatory authority of Lithuania that the disputed measure they had taken in 2016 did not fall under the temporary derogation procedure of AVMSD and therefore did not have to be notified to the Commission.¹⁷⁷ In its original decision the NRA had not suspended the retransmission of the Russian-language channel *NTV Mir Lithuania* which was under UK jurisdiction but ordered that it could only broadcast in pay (not free) cable TV packages for a period of 12 months.¹⁷⁸

The Lithuanian NRA stressed that the decision was taken based on a programme on the channel containing false information which incited to hatred by falsely portraying a collaboration of Lithuanians and Latvians with the Nazis during the Holocaust. The authorities also found that the programme alleged the existence of neo-Nazi politics in the Baltic States which threatened the Russian ethnic minority.¹⁷⁹ In its decision, the CoJ emphasised that this type of action did not constitute a second control of the channel, similarly as it had decided

¹⁷⁷ C-622/17 *Baltic Media Alliance Ltd v Lietuvos radijo ir televizijos komisija* [2019], para. 84.

¹⁷⁸ C-622/17 *Baltic Media Alliance Ltd v Lietuvos radijo ir televizijos komisija* [2019].

¹⁷⁹ *Ibid.*, para 79.

for the measures in RojTV (see above). To date, none of the derogation procedure cases have reached the CoJ.¹⁸⁰

OSCE

Journalists provide credible information; hence there is public trust and confidence in the credibility of journalism itself and respect for the importance of independent journalism. It was in this context, that the 2018 Decision of the OSCE Ministerial Council “On safety of journalists” expressed an alarm of the participating States about increasing ‘targeted campaigns undermining the work of journalists’.¹⁸¹

At the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991), the participating States affirmed that the media in their territories should “enjoy unrestricted access to foreign news and information services. The public will enjoy similar freedom to receive and impart information and ideas without interference by public authority regardless of frontiers, including through foreign publications and foreign broadcasts”.¹⁸² The agreement to ensure a free flow of information across borders by all kinds of media, including foreign media, came at a time of “profound political change”.¹⁸³ This provision was reaffirmed in the 2018 Decision “On safety of journalists” which relays to the specific unrestricted access of the media *and* the public to foreign news and information services, and that any restriction thereof will be prescribed by law and be in accordance with international standards. Recalling this commitment many years later was apparently called by the situation that emerged following the conflict in and around Ukraine and several times summarised by the RFOM.¹⁸⁴

Speaking of the particular issue of putting counter-disinformation policies in the context of the OSCE media freedom commitments, the key document that explains the position of both the OSCE Representative on Freedom of the Media and other intergovernmental experts on freedom of expression is probably the 2017 Joint Declaration on freedom of expression and “fake news”, disinformation and propaganda.¹⁸⁵ It sets out key principles drawn from IHRL to guide States, companies and others. Therein, the free speech rapporteurs took note of the growing prevalence of disinformation and propaganda in legacy and social media, fueled by

¹⁸⁰ Institut für Europäisches Medienrecht (Mark D. Cole, Christina Etteldorf), Implementation of the revised Audiovisual Media Services Directive Background Analysis of the main aspects of the 2018 AVMSD revision, European Union, 2022, P. 17, [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/733100/IPOL_STU\(2022\)733100_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/733100/IPOL_STU(2022)733100_EN.pdf).

¹⁸¹ OSCE, Decision No 3/18 of the Ministerial Council on ‘Safety of Journalists’, Milan 2018, 7 December 2018, MC.DEC/3/18, available at <https://www.osce.org/chairmanship/406538?download=true>

¹⁸² OSCE (2017), Freedom of the Media, Freedom of Expression, Free Flow of Information, p. 41.

¹⁸³ *Ibid.*, p. 29.

¹⁸⁴ OSCE RFOM, “Communiqué by OSCE Representative on Freedom of the Media on blocking television channels”, 27.03.2014; “Communiqué by the OSCE Representative on Freedom of the Media On the right of the media to freely collect, report and disseminate information, news and opinions, regardless of frontiers”, 3 May 2021, available at <https://www.osce.org/representative-on-freedom-of-media/119497>.

¹⁸⁵ Joint declaration on freedom of expression and “fake news”, disinformation and propaganda. Declaration by the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information. 3 March 2017, available at: <https://www.osce.org/fom/302796>.

both States and non-State actors, and the various harms to which they may be a contributing factor or primary cause.

The rapporteurs agreed therein on a number of ground laying general principles in regard to responses to disinformation and propaganda. They include (1) a call to abolish general prohibitions on the dissemination of information based on vague and ambiguous ideas (such as “false news” or “non-objective information”) as incompatible with international standards for restrictions on freedom of expression, and (2) a call to State actors not to make, sponsor, encourage or further disseminate statements which they know or reasonably should know to be false (disinformation) or which demonstrate a reckless disregard for verifiable information (propaganda).

Moreover, the State actors were urged, in accordance with their domestic and international legal obligations and their public duties, to ensure that they disseminate reliable and trustworthy information, including about matters of public interest, such as the economy, public health, security and the environment.

With the start of the invasion of Ukraine by the Russian Federation and the continuation of the Russian war of aggression against Ukraine, the intergovernmental mandate-holders, clearly expressed concern at the spread of disinformation on the conflict in Ukraine in the Russian state-owned media. However, said their Joint Statement, “we believe that disinformation cannot be addressed by blocking or banning media outlets.”

The Joint Statement also reminded the States of the need to respect the three-part test of legality, legitimate aim, and necessity and proportionality. In this regard, the rapporteurs referred to the EU’s decision to ban Russian state-owned media outlets, as a potentially “disproportionate response”: “Promoting access to diverse and verifiable information, including ensuring access to free, independent and pluralistic media, is a more effective response to disinformation.”¹⁸⁶

They also warned of the risks of the proliferation of lawful disinformation and misinformation at the time of the armed conflict on digital and social media platforms, “as a result of their business models, policies and practices”. The rapporteurs urged the social media companies “to strengthen their human rights due diligence and impact assessment, accountability, transparency and equal and consistent application of policies to uphold the rights of all users.”¹⁸⁷

Even earlier, the RFOM noted that the answer to the threats posed in the armed conflict lies in more debate and media pluralism which is under threat in societies with the dominant state-owned and state-controlled media which can be easily used to promulgate state propaganda and disinformation. Participating States have been called to stop the information war and manipulation with the media. She recalled the need to strengthen and further develop compliance with relevant OSCE principles and commitments, including alleged

¹⁸⁶ Ukraine: Joint statement on Russia’s invasion and importance of freedom of expression and information, 4 May 2022, <https://www.ohchr.org/en/statements-and-speeches/2022/05/ukraine-joint-statement-russias-invasion-and-importance-freedom>

¹⁸⁷ Ibid.

serious instances of intolerance by participating States which utilize media in violation of the principles referred to in the OSCE documents.¹⁸⁸

The current Representative on Freedom of the Media, Ms Teresa Ribeiro, has expressed her position on disinformation a number of times. In her 2022 Communiqué, titled **A call to protect media freedom during armed conflict and to stop propaganda for war**, she was critical of certain governmental responses to the problem by saying, that the answer to disinformation “can never be found in a blanket ban; a complete shutdown of the internet; or fully blocking media outlets from their possibility to disseminate information. Nor is it found in a governmental demand that all journalists use only information from official sources and [in] official language when reporting on a military action. The latter amounts to censorship.”¹⁸⁹

As a positive response to disinformation, in 2021-22, the RFOM held a series of roundtables on disinformation and media freedom. The six meetings were designed to touch upon the least researched and/or most problematic issues in the area and strived to bring together experts from various countries and international organizations within the OSCE region. Their topics were:

1. “International law and policy on disinformation in the context of freedom of the media”
2. “Disinformation and media self-regulation”
3. “The role of independent national media regulatory authorities in regaining trust in the media”
4. “Deepfake news – Artificial intelligence and disinformation as a multilateral policy challenge”
5. “Freedom of Media in Elections and Counteracting Disinformation”
6. “The role of public service media in countering disinformation”.

The records, policy papers, reports and other materials of all the six roundtable meetings are available on the website of the OSCE.¹⁹⁰

¹⁸⁸ Communiqué by OSCE Representative on Freedom of the Media on blocking television channels. 27 March 2014. URL: <http://www.osce.org/fom/116888>.

¹⁸⁹ <https://www.osce.org/files/f/documents/7/c/513313.pdf>.

¹⁹⁰ <https://www.osce.org/representative-on-freedom-of-media/488890>.

III. National practices in other Eastern & Central European countries

This chapter reviews the policies and laws adopted and implemented in Armenia, the Baltic states, and Ukraine. They are definitely not the only Eastern European countries affected by the Russian propaganda and disinformation campaigns since 2014.

In the Baltic states, though, the template seemed to be an interpretation of economic sanctions on Russian individuals as covering also the media assets affiliated with them, as well as “hate speech” in the broadcasts.

Ukraine applied the widest range of tools against propaganda and disinformation, though not always with success.

Armenia works on a “strategy” and “roadmap” to counter disinformation, though when and if the Government adopts it, remains to be seen.

In Georgia, the project titled “Information Integrity Program” aims to build a platform for stakeholders to coordinate efforts in countering disinformation and strengthen the capacity of local actors to put out fact-based messages and diagnose, track, and respond to disinformation.¹⁹¹ In existence since 2020, the program, despite the significant assistance from the Western donors, has not seemed to lead to tangible results yet.¹⁹²

As to Belarus and Azerbaijan, both under authoritarian rule, there is no credible information on counterpropaganda policies in place.

III.1. Armenia: national strategy to combat disinformation

Armenia claims to be the first among the countries of the EU Eastern Partnership¹⁹³ to develop a national strategy to combat disinformation, including through better access to information. It was presented for public discussion in 2022 by the Public Relations and Information Center of the Prime Minister's Office and the Freedom of Information Center with the support of the Center for International Private Enterprise.¹⁹⁴

The prime pillar of the draft strategy is “strengthening the capabilities of public institutions of Armenia to detect, analyze and expose disinformation.” Under the pillar it is planned to implement the following activities:

1. Improve the strategic communication in the government agencies, strengthen the human, financial and technical resources of their public communication departments;
2. Improve the proactive transparency of government agencies.
3. Introduce a self-assessment and evaluation system of transparency and accountability of the government agencies.

Public communication is one of the essential directions in the toolkit of combating disinformation. When an information vacuum occurs, it is quickly filled with disinformation,

¹⁹¹ See: <https://www.devex.com/jobs/chief-of-party-georgia-information-integrity-program-744360>.

¹⁹² See: <https://www.globalcitizen.org/en/content/mikheil-benidze-georgia-information-integrity/>.

¹⁹³ https://www.eeas.europa.eu/eeas/eastern-partnership_en

¹⁹⁴ See: <http://www.foi.am/en/news/item/2274/>

and consequently, timely and complete communication can significantly reduce disinformation.

To increase the efficiency of communication with government institutions, it appears necessary to take the following steps:

- Establishment of a unified framework of communication subdivisions of government institutions and replenishment with human, financial and technical resources;
- Regular trainings and capacity building for staff;
- Reorganization of the work for communication departments;
- Development of a general communication strategy and communication guide (protocol) for the government.

The draft strategy¹⁹⁵ and action plan¹⁹⁶ are still under consideration of the Government of Armenia,¹⁹⁷ although following a public discussion they were to be formally approved in 2022. 198 Though they go beyond the tasks of this Study these documents may serve as a blueprint for broader action plans for Moldova.

III.2. Ukraine: a toolbox against Russian media¹⁹⁹

Ukraine presents the case wherein the duration and spectrum of actions against Russian media and propaganda is probably the widest possible in the world. The country has tested a number of approaches and instruments to stop disinformation and achieved certain successes alongside with failures on this way.

In the view of the European Commission, “Ukraine has found an overall good balance between the preservation of media freedom and measures against pervasive Russian hybrid and massive disinformation attacks, being multiplied by some local media outlets.”²⁰⁰

To assess the policies of the contemporary Ukraine it is important to understand that its modern identity is rooted, first, in a departure from the earlier dominance of Russian and Russian-language culture; second, in the replacement of the Soviet or even post-Soviet ideology with common European values; and third, in countering hostile propaganda from Moscow. This has been the case for many years since modern Ukraine’s independence (1991),

¹⁹⁵ National Strategy Against Disinformation 2022-2024. Freedom of Information Center of Armenia, Yerevan, 2022. See: http://www.foi.am/u_files/file/DOCs%202022/Strategy_FOICA_CIPE_ENG.pdf.

¹⁹⁶ Roadmap for 2023-2025 Strategy Against Disinformation, see http://www.foi.am/u_files/file/DOCs%202023/Roadmap%20for%202023-2025%20Strategy%20against%20Disinformation.pdf.

¹⁹⁷ See <http://www.foi.am/en/news/item/2390/>

¹⁹⁸ <http://www.foi.am/en/news/item/2252/>

¹⁹⁹ This chapter is largely based on the publication by Andrei Richter, *Sanction law against Russian and Belarusian audiovisual media*. IRIS Extra, European Audiovisual Observatory, Strasbourg, 2022. – P. 1-29. <https://rm.coe.int/iris-extra-2022-sanction-law-against-russian-and-belarusian-audiovisua/1680a8ff9f>.

²⁰⁰ Communication from the Commission to the European Parliament, the European Council and the Council, “Commission Opinion on Ukraine’s application for membership of the European Union”. Brussels, 17.6.2022 COM(2022) 407 final. P. 12, <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-06/Ukraine%20Opinion%20and%20Annex.pdf>.

but is particularly true in the context of military threats and aggression from Russia in the country.²⁰¹ These trends are well reflected in the national media law and policy.

Even before the start of the aggression in 2014, the Ukrainian authorities made steps to limit the influence of Moscow's media in the country. All Moscow TV channels were forced out of the Ukrainian terrestrial broadcasting as early as in 1996. They remained popular on cable, although in early 2000s the authorities had them pushed from basic into prime packages.

Appeals of the NRA in the courts on the basis of the threat to sovereignty

On the eve of annexation of the Crimea, in March 2014, some of the members of the Ukrainian media regulator, the National Council on Television and Radio Broadcasting (NCTRB), referring to the Russia's threat to the sovereignty of Ukraine, made a strong appeal to the cable operators to suspend certain Russian news and public affairs channels from their services. Within a week, the appeal was voluntarily followed by 347 out of 703 existing cable operators.

The NCTRB also applied to the courts to cancel the licenses of the non-compliant cable operators and ban Russian channels based on their content.²⁰² The administrative court procedures lasted for more than six years until the administrative chamber of the Supreme Court of Ukraine decided that the national law does not provide for the claimant, the NCTRB, to present its claims in court.²⁰³ In view of the experts, this protracted court case on the ban of a number of Russian TV channels indicated that the judges were reluctant to make decisions on the existing weak grounds and, rather, expected the lawmaker and the executive to come up with more effective legal instruments.

Conformity with the ECTT

In 2015 the Supreme Rada (the Parliament) adopted amendments to the 1996 Law on Advertising and 1994 Law on Television and Radio Broadcasting that introduced a practical ban on commercials in TV programmes of foreign broadcasters, unless the latter were under jurisdiction of the States that are members of the EU or parties to the ECTT. They also introduced a requirement that an Ukrainian entity that intended to rebroadcast programmes of foreign entities that are not under such jurisdiction might start rebroadcasting only if it had a licence from the rightsholder, and only under condition that such programmes (channels) corresponded to the laws of Ukraine or to the ECTT and were included in the *list of programmes (channels) that are permitted to be retransmitted by a decision of the NCTRB*.²⁰⁴

²⁰¹ See: Richter, Andrei, *Cultural security of Ukraine in times of conflict: legal aspects*. In: *Handbook of cultural security*. Ed. by Yasushi Watanabe. Edward Elgar Publishing: Cheltenham, UK. 2018. P. 461-486.

²⁰² See the case in detail here: Richter, Andrei, *Cultural security of Ukraine in times of conflict: legal aspects*. In: *Handbook of cultural security*. Ed. by Yasushi Watanabe. Edward Elgar Publishing: Cheltenham, UK. 2018. P. 461-486.

²⁰³ See Richter, Andrei, "[UA] Supreme Court on Russian broadcasts", IRIS 2021-4:1/2, <https://merlin.obs.coe.int/article/9132>.

²⁰⁴ The Law of Ukraine 'On amendments to certain Laws of Ukraine as to particularities of transmission (retransmission) of advertising in programmes of foreign TV broadcasters' (Про внесення змін до деяких законів України щодо особливостей трансляції (ретрансляції) реклами, яка міститься у програмах та

With the use of these provisions, by 2017 the NCTRB suspended or stopped retransmission of 74 Russian channels on Ukrainian cable TV thus sanctioning them for failure to meet the ECTT standards.²⁰⁵ They were dropped from the “List of foreign programmes whose content meets the requirements of the European Convention on Transfrontier Television and Ukrainian legislation”.²⁰⁶ It should be noted that each of the numerous changes to the List has been provided with an explanation of the grounds, and in the majority of cases of broadcasters dropped from the list the reasons were found in non-conformity with Ukrainian law, although the standard unbreakable formula said: “failure to meet the requirements of the European Convention on Transfrontier Television and Ukrainian legislation”. Still, the procedure and criteria for entering and dropping (suspending) television programmes remained vague and subject of public and judicial controversy, such as were the cases of Dozhd-TV and RTVI.²⁰⁷

Programmes “fit” for rebroadcasting

A partial success of judicial appeals to the NCTRB decisions, highlighted the need to have a firmer base in relation to the programmes permitted in Ukraine. Hence came the idea to make another list the prime instrument of curbing Russian propaganda.

The “List of programmes of foreign television and radio organizations that are rebroadcasted”²⁰⁸ was envisioned by the amendments to Article 42 of the Law on Television and Radio Broadcasting, adopted in 2015.²⁰⁹ Prior to September 2022, it was compiled by the NCTRB in a somewhat chaotic and unclear way. By a decision of the NCTRB²¹⁰ that entered

передачах іноземних телерадіоорганізацій), 14 Мау 2015, No 422-VIII, <https://zakon.rada.gov.ua/laws/show/422-19#Text>. Earlier the Law had just a requirement that content of programmes from non-EU and non-ECTT jurisdictions are “adapted” to Ukrainian law, without specifying what that means and how that can be proven.

²⁰⁵ Len', Olga, “Yuri Artemenko: The earlier we get rid of Russian media products the earlier we rebuild Ukraine” (Юрій Артеменко: Чим раніше ми позбавимось російського медіапродукту, тим раніше відбудуємо Україну), Espresso.tv, 26 January 2017. <http://espresso.tv/article/2017/01/26/len32>.

²⁰⁶ List of foreign programmes, the content of which reflects the demands of the European Convention on Transfrontier Television and Ukrainian Law (Перелік іноземних програм, зміст яких відповідає вимогам Європейської конвенції про транскордонне телебачення і законодавства України), 2 April 2008, as amended, <https://zakon.rada.gov.ua/rada/show/vr652295-08#Text>.

²⁰⁷ See: Decision of the Sixth Administrative Court of Appeals of Ukraine dismissing the right of the national authorities alone to judge on compatibility of programmes to the ECTT: Case N 640/21109/20, 9 November 2021 (upheld by the Supreme Court of Ukraine on 25 January 2022), https://reyestr.court.gov.ua/Review/101120538?fbclid=IwAR0oWTANmia4VMH_xbUJMN3RNNol6RZG-I7FvHnFvzpUHOOn3y2auvstN24s#; and Decision N 17 and Dissenting opinion of Natalia Humenyuk, International Media Council member, in the case of legitimacy of restricting Dozhd TV retransmission in Ukraine, 21 January 2017, (in English, published by Detector Media): <https://detector.media/infospace/article/122475/2017-01-23-vysnovok-nezaleznoi-mediynoi-rady-shchodo-pravomirnosti-obmezhennya-retranslyatsii-telekanalu-dozhd-v-ukraini/>.

²⁰⁸ Consolidated list of 114 programmes (Перелік програм іноземних телерадіоорганізацій, що ретранслюються) as of 22 March 2023 can be found on the website of the NCTRB: https://www.nrada.gov.ua/regulatory_base/#category-63.

²⁰⁹ Про внесення змін до деяких законів України щодо особливостей трансляції (ретрансляції) реклами, яка міститься у програмах та передачах іноземних телерадіоорганізацій (Відомості Верховної Ради (ВВР), 2015, № 29, ст.265), <https://zakon.rada.gov.ua/laws/show/422-19#Text>. See Richter A., “[UA] Foreign TV severely restricted”, IRIS 2015-7:1/30, <https://merlin.obs.coe.int/article/7337>.

²¹⁰ On approval of the procedure for approval of the List of programmes of foreign television and radio entities that are rebroadcasted (Про затвердження Порядку формування Переліку програм іноземних

into force in February 2022, the producers and/or rightsholders of foreign audiovisual programmes that aimed to stay rebroadcasted in Ukraine were to submit new applications and documents. On the basis of the applications, the NCTRB made the decision to include them in the List, or not.

The principal aim of the new list was not only to establish a clearer procedure of registering foreign programmes that intended to be rebroadcast, but also prevent broadcasters tied to the Russian Federation even to apply by pointing that the applications from the producers/rightsholders of the programmes that were under jurisdiction of the Russian Federation should be dismissed without review.

Restricting aggressor state

In January 2015, the Supreme Rada of Ukraine adopted a resolution on recognizing the Russian Federation “an aggressor state”.²¹¹ Such a non-binding decision of the Parliament turned out to be a useful tool to restrict Moscow interventions in the Ukrainian audiovisual sphere without directly mentioning Russia each time it is used.

In April 2015, the Law to protect information television and radio sphere of Ukraine was promulgated.²¹² In particular, it amended the Broadcasting Law of Ukraine²¹³ by introducing a ban on broadcasting of audiovisual programmes that in particular “popularised institutions of the aggressor state”; films and TV programmes with the participation of a person included in the “List of persons who pose a threat to national security”.²¹⁴

телерадіоорганізацій, що ретранслюються), Decision of the National Council on Television and Radio Broadcasting, N 1727, 18 November 2021, entered into force on 1 February 2022, <https://zakon.rada.gov.ua/laws/show/z0061-22#n14>.

²¹¹ Про Звернення Верховної Ради України до Організації Об'єднаних Націй, Європейського Парламенту, Парламентської Асамблеї Ради Європи, Парламентської Асамблеї НАТО, Парламентської Асамблеї ОБСЄ, Парламентської Асамблеї ГУАМ, парламентів держав світу про визнання Російської Федерації державою-агресором. (On the Appeal of the Supreme Rada of Ukraine to the United Nations, European Parliament, Parliamentary Assembly of the Council of Europe, Parliamentary Assembly of NATO, Parliamentary Assembly of the OSCE, Parliamentary Assembly of the GUAM, parliaments of the world countries on recognizing the Russian Federation an aggressor state). Resolution of the Supreme Rada of Ukraine, 27 January 2015, N 129-VIII. <https://zakon.rada.gov.ua/laws/show/129-19#Text>.

²¹² Про внесення змін до деяких законів України щодо захисту інформаційного телерадіопростору України (Відомості Верховної Ради (ВВР), 2015, № 18, ст.131) <https://zakon.rada.gov.ua/laws/show/159-19#Text>. See Richter, Andrei, “[UA] Barrier established for Russian programmes”, IRIS 2015-5:1/37, <https://merlin.obs.coe.int/article/7263>.

²¹³ Про внесення змін до Закону України "Про телебачення і радіомовлення" (Відомості Верховної Ради України (ВВР), 2006, N 18, ст.155), <https://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3317%2D15#Text>. See Shevchenko Taras, “[UA] Sweep changes in broadcasting Law”, IRIS 2006-5:1/34, <https://merlin.obs.coe.int/article/3834>.

²¹⁴ Перелік осіб, які створюють загрозу національній безпеці (List of persons who pose a threat to national security), see on the official webpage of the Ministry of Culture and Information Policy of Ukraine <https://mkip.gov.ua/content/perelik-osib-yaki-stvoryuyut-zagrozu-nacbezpeci.html>. Currently (May 2023) the List contains 211 names.

Individual sanctions

But the key legal instrument that has been used against Russian broadcasters turned out to be the sanctions introduced in order to punish aggressive actions against Ukraine.

The Law “On sanctions” adopted in 2014 has become the legal foundation for all national sanctions in Ukraine.²¹⁵ It provides, *inter alia*, an annulment of available licenses of the entities under “economic sanctions or other restrictive measures” and a ban for them to use radio frequencies, telecommunication networks or services in the country. According to the Law, requests for sanctions from certain state institutions are first reviewed by the Council on National Security and Defence of Ukraine and then introduced, upon the Council’s recommendation, by a decree of the President.

Among the grounds for the sanctions, the amended Law envisions “informational support” for taking actions or making decisions that target national security, sovereignty or territorial integrity of the country. In 2015, the President’s decree introduced sanctions in relation to four Russian national TV companies: First Channel – World Network, RTR-Planeta, Rossiya-24 and NTV.²¹⁶ Then in 2017, the President expanded the sanctions to such Russian TV companies as TV-Centre, TNT, RBC, NTV-Plus, Zvezda, Moskva-24, Peterburg, Ren-TV and the “public television” OTV.²¹⁷

In addition to the broadcasters, the second decree introduced sanctions against certain Internet companies, including popular Russian services Yandex, Mail.ru and social networks Odnoklassniki (OK.ru) and V Kontakte (VK).²¹⁸ The effectiveness of these restrictions may be proven by the fact that in 2017 alone the number of Facebook users in Ukraine rose from 6.6 to 11 million, apparently migrating from the Russian social networks.²¹⁹

The sanctions against Russian media, journalists and online resources were challenged in the court system. Some of them reached the Supreme Court of Ukraine, which dismissed the claims by ruling that the decree had a legitimate aim of an “urgent and effective response to the threats to the national security of Ukraine” (para 42), which corresponds to the provisions of Article 10 of the ECHR. The sanctions were prescribed by the national law and “necessary

²¹⁵ Про санкції (On sanctions), Law of Ukraine, 14 August 2014, N 1644-VII, <https://zakon.rada.gov.ua/laws/show/1644-18#Text>.

²¹⁶ Про рішення Ради національної безпеки і оборони України від 2 вересня 2015 року “Про застосування персональних спеціальних економічних та інших обмежувальних заходів (санкцій)” (On the Decision of the Council on National Security and Defence of Ukraine of 2 September 2015 “On introduction of personal special economic and other restrictive measures (sanctions)”, Decree of the President of Ukraine N 549/2015, 16 September 2015, <https://www.president.gov.ua/documents/5492015-19437>.

²¹⁷ See Richter, Andrei “[UA] Sanctions against Russian online and broadcast companies”, IRIS 2017-7:1/33, <https://merlin.obs.coe.int/article/7973>.

²¹⁸ Про рішення Ради національної безпеки і оборони України від 28 квітня 2017 року ‘Про застосування персональних спеціальних економічних та інших обмежувальних заходів (санкцій)’ (On the Decision of the National Security and Defense Council of Ukraine of 28 April 2017 ‘On introduction of individual special economic and other restrictive measures (sanctions)’). Decree of the President of Ukraine N. 133, 15 May 2017, <http://www.president.gov.ua/documents/1332017-21850>.

²¹⁹ Olha Minchenko, “As many as 12 million Ukrainians use Facebook” (Вже 12 мільйонів українців користуються Facebook), Watch, 8 August 2018, <http://watcher.com.ua/2018/08/08/vzhe-12-milyoniv-ukrayintsiv-korystuyutsya-facebook/>.

in a democracy”, as there was an urgent need to introduce and continue the sanctions in view of the “facts of aggression against Ukraine” (para 44).²²⁰

Sanctions against domestic media

Sanctions were introduced not only in relation to foreign (Russian and Belarusian media entities), but also in relation to the domestic companies that were believed to be proxies for the Russian disinformation and propaganda.

In 2021 the President of Ukraine introduced broad sanctions against a deputy of the Supreme Rada and eight domestic television companies affiliated with him.²²¹ Prior to the measure, the government had alleged the broadcasters were under “malign Russian influence” and were financed from the Russian Federation.²²² The Ukrainian authorities stated then that over the past few years, these media got warnings issued by the NCTRB for various violations of Ukrainian legislation including those “related to hate speech, distortion of facts, recognized by the international community, and other exclusively propaganda techniques on the air.”²²³

The decree on sanctions against the domestic TV channels was also challenged, as a violation of the freedom of information, in the chambers of the Supreme Court of Ukraine, and eventually dismissed by the Grand Chamber.²²⁴ In essence, said the court, the claimant acted in the interests of another person – the one under the sanctions, as the decree does not interfere into the direct rights of the claimant. Once the person under these particular sanctions challenges them in court, the claims will be materially reviewed.²²⁵

Criminal persecution of individual propagandists

Probably, the first ever case of criminal persecution of an individual media actor, who was accused for speech crimes, in particular for public calls to genocide, ended in 2023 with a sentence by a Kyiv court.²²⁶

²²⁰ Decision of the Grand Chamber of the Supreme Court of Ukraine, case No. 9901/138/20, 4 November 2020, <https://reyestr.court.gov.ua/Review/93217974>.

²²¹ Про рішення Ради національної безпеки і оборони України від 2 лютого 2021 року «Про застосування персональних спеціальних економічних та інших обмежувальних заходів (санкцій)» (On the Decision of the Council on National Security and Defence of Ukraine of 2 February 2021 “On introduction of personal special economic and other restrictive measures (sanctions)”), Decree of the President of Ukraine N 43/2021, 2 February 2021, <https://www.president.gov.ua/documents/432021-36441>

²²² “TV Channels 112 Ukraine, NewsOne and ZIK TV Suspended by Presidential Decree”, Platform to promote the protection of journalism and safety of journalists, No. 21/2021, 23 June 2021, <https://fom.coe.int/en/alerte/detail/90213139;globalSearch=true>.

²²³ Statement in response to the Report by the OSCE Representative on Freedom of the Media, Ms. Teresa Ribeiro, 13 May 2021, <https://vienna.mfa.gov.ua/en/news/zayava-u-vidpovid-na-dopovid-predstavnika-obsyey-z-pitan-svobodi-zmi-terezi-ribejro>.

²²⁴ Decision of the Grand Chamber of the Supreme Court, case No. 9901/26/21, 6 October 2021, <https://reyestr.court.gov.ua/Review/101424457>.

²²⁵ Ibid., paras 69-73.

²²⁶ See more in: Richter, Andrei “[UA] Russian journalist sentenced for calls to genocide”, IRIS 2023-4:1/29, <https://merlin.obs.coe.int/article/9702>.

On 13 February 2023, Shevchenkivsky district court in Kyiv sentenced Anton Krasovsky to five years imprisonment with confiscation of his personal property for public calls to an overthrow of constitutional order of Ukraine and dissemination of such calls in the mass media (para 3 of Art. 109 of the Criminal Code of Ukraine) as well as for public calls to genocide and dissemination of such calls (para 2, Art. 442 of the Criminal Code of Ukraine), a maximum term of imprisonment envisaged by both articles, – *in absentia*.²²⁷

At the time of the crime, Krasovsky was presenter of the talk show “Antonimy s Antonom Krasovskim” (Antonyms with Anton Krasovsky), as well as the director of Russian-language programming on the RT television (RT-Rossiya). According to the verdict of the court in Kyiv, in January-March 2022 in the YouTube channel of RT (then accessible in Ukraine) he disseminated audiovisual statements denying the existence of an independent Ukraine, such as (in Russian): “Bitch! This country should not exist! And we shall do everything that it would not be there.” In the comments in his personal Telegram-channel “Anton Vyacheslavovich” (in response to a presumed Ukrainian attack in Belgorod), in April 2022, he called to kill “brothers” (Ukrainians).

The “Notice of Suspicion” substantiated the accusations that were later confirmed by Shevchenkivsky court. It said, in particular, that the statements were made “by a public figure, which has influence on the audience of the TV channel in question, clearly understanding that his categorical expressions, in a material form of publications and video recordings, are made available to an unlimited number of individuals and are capable to form a negative mass perception of Ukraine”.²²⁸

Krasovsky is under EU sanctions since 28 February 2022 for being “responsible for actively supporting or implementing actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, as well as stability and security in Ukraine”.²²⁹

Ban “on the propaganda from the Russian Nazi totalitarian regime”

In 2022, the Law “On the ban on the propaganda from the Russian Nazi totalitarian regime”²³⁰ entered into force in Ukraine. It defines such propaganda as “dissemination of information aimed at supporting or justifying the criminal nature of the activities of the Russian Federation, the authorities of the terrorist state (aggressor state), their officials, employees (including servicemen) and/or representatives who openly or covertly act on behalf of the

²²⁷ Shevchenkivsky district court of Kyiv (Шевченківський районний суд міста Києва), in case No. 761/17683/22, 13 February 2023, Verdict (Вирок), see <https://reyestr.court.gov.ua/Review/109397364>.

²²⁸ Повідомлення про підозру (Notice of suspicion), Security Service of Ukraine, 14 June 2022.

²²⁹ Consolidated text: Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, para 688, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02014D0145-20230607#toCId9>.

²³⁰ Про заборону пропаганди російського нацистського тоталітарного режиму, збройної агресії Російської Федерації як держави-терориста проти України, символики воєнного вторгнення російського нацистського тоталітарного режиму в Україну (On the ban on the propaganda of the Russian Nazi totalitarian regime, of the armed aggression of the Russian Federation as a terrorist state against Ukraine, of the symbols of the military invasion of the Russian Nazi totalitarian regime in Ukraine), Law of Ukraine, N. 2265-IX, 22 May 2022, https://zakon.rada.gov.ua/laws/show/2265-20?fbclid=IwAR09wyjVSmAlz88xarZHaTPNzR7AhSuCVP4KeBQc-NKGZ_E1mfVs2_XfkGk#Text.

Russian Federation on the territory of Ukraine or from the territories of other states against Ukraine; a public denial, including through the media or using the Internet, of the criminal nature of the armed aggression of the Russian Federation against Ukraine; or the public use of the symbols of the military invasion of the “Russian Nazi totalitarian regime” in Ukraine, the use, production, distribution of products containing such symbols in Ukraine and/or abroad”. Propaganda regarding the “Russian Nazi totalitarian regime” or the armed aggression of the Russian Federation as a terrorist state against Ukraine is prohibited.

A new Law “On the Media” entered into force on 31 March 2023 to replace, among others, the Law “On Television and Radio Broadcasting”.²³¹ In particular, the new one provides “severe restrictions on freedom of expression” as to the possibilities of dissemination of media content if owned and/or managed by subjects affiliated with a state acknowledged by the Parliament as an aggressor state, both for the period decided by the Parliament and for five years after Parliament has revoked that status.

Following the adoption of Law, the Directorate General of Human Rights and Rule of Law of the Council of Europe (CoE) published an Opinion (based on the expertise of two CoE experts) on the correspondence of the new Law with the EU Audiovisual Media Services Directive (AVMSD) as well as with CoE standards. The Opinion recommends that after the end of the armed aggression, the Parliament examines the likelihood of threats to national security, territorial integrity or public safety from the former aggressor state, or the extent to which the relevant restrictions act to prevent disorder or crime. It suggests a more nuanced approach, rather than blanket prohibitions at that time, in which instance the NCTRB may need to be given greater discretion to assess the risks on a case-by-case basis. It noted that the recommendation of the experts to delete the reference to Russian “Nazi” totalitarian regime has been actioned.

The Opinion also refers to an existing practice where registration of foreign linear media is refused by the national media regulator for violations of the ECTT. It concludes that “[t]his solution is not inconsistent with the ECTT, according to which States are to guarantee freedom of reception and should not restrict the retransmission on their territories of any programmes originating from parties to the Convention which comply with the terms of the Convention.”²³²

III.3. Baltics: policy of secondary sanctions²³³

EU sanctions against “designated person” Kiselyov of “Rossiya Segodnya” information agency were used by the governments of Estonia and Latvia as a reason to additionally sanction “non-designated entities”: national media affiliates of the Russian agency in those countries, as

²³¹ Закон України Про медіа (Law of Ukraine “On the Media”), 13 December 2022, No. 2849-IX, <http://www.golos.com.ua/article/367279>,

²³² Council of Europe, Opinion of the Directorate General Human Rights and Rule of Law, Information Society and Action against Crime Directorate, Information Society Department, prepared on the basis of the expertise by Council of Europe experts: Eve Salomon and Tanja Kerševan on the Law “On Media” of Ukraine. DGI (2023)03, Strasbourg, 24 February 2023. <https://rm.coe.int/dgi-2023-03-ukraine-tp-law-on-media-2751-9297-4855-1-2753-6081-2551-1/1680aa72df>

²³³ This chapter is largely based on the publication by Andrei Richter, *Sanction law against Russian and Belarusian audiovisual media*. IRIS Extra, European Audiovisual Observatory, Strasbourg, 2022. – P. 1-29. <https://rm.coe.int/iris-extra-2022-sanction-law-against-russian-and-belarusian-audiovisua/1680a8ff9f>

economic resources controlled by the sanctioned person. In a similar manner, the restrictive measures against the designated Rossiya Bank, its chair and key shareholders were also applied to the bank's media assets.²³⁴

In **Estonia**, where one third of the population are Russian speakers, the sanctions against Kiselyov forced the Russian state-controlled media portal Sputnik to move its office out of rented space in Tallinn in November 2021 as Estonian banks stopped accepting Sputnik payments. In June 2020, the Estonian Internet Foundation, which oversees domain registration in the country, imposed a restraint on the disposition of two domains – baltnews.ee and sputnik-news.ee – registered to RT. The restraint on disposition means that legal actions are forbidden. For example, the domains cannot be sold or transferred to another person and thus used as an economic resource.²³⁵

The University of **Latvia's** Institute of Mathematics and Computer Science, which oversees domain registration in the country, suspended the baltnews.lv domain in July 2019. This led, at least initially, to a significant decrease in its audience size.²³⁶ In 2016, the domain registry had shut down the Latvian domain of Sputnik, also identified by the Foreign Ministry as a propaganda tool.²³⁷

Several journalists of both Baltnews and Sputnik were warned again in late 2020 by the security services on the inadmissibility of violating EU sanctions by cooperating with these RT affiliates, even as freelancers.²³⁸

In June 2020, the Latvian media regulator, the National Council on Electronic Media (*NEPLP*), "in compliance with the information received from security institution," and following the EU sanctions against Kiselyov decided to suspend the distribution via cable of seven RT television programmes in Latvia.

In **Lithuania**, the national media regulator, Radio and Television Commission (LRTK), almost simultaneously, and following advice from the Foreign Ministry suspended the rebroadcasting of five programmes affiliated with RT.²³⁹

To arm themselves in further disputes about the applicability of adopted restrictive measures in a democracy, the foreign ministries of Estonia, Latvia and Lithuania requested the European

²³⁴ See Cabrera Blázquez F. J., op.cit. pp. 15-18; Council Regulation (EU) No. 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, consolidated text, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0833-20230427>.

²³⁵ "Estonia 'does not exclude the possibility' of banning RT", Estonian Public Television ERR, 8 July 2020, <https://news.err.ee/1110560/estonia-does-not-exclude-the-possibility-of-banning-rt>.

²³⁶ "Baltnews Latvia's audience size decreased after domain suspension", Medium Policy, 22 January 2020, <https://medium.com/dfrlab/baltnews-latvias-audience-size-decreased-after-domain-suspension-d636018f8a06>.

²³⁷ "Russian Disinformation in Latvia", Warsaw Institute, 11 December 2020, <https://warsawinstitute.org/russian-disinformation-latvia/>.

²³⁸ See <https://rus.postimees.ee/7125477/v-latvii-zhurnalistam-rossiyskih-smi-za-narushenie-sankciy-es-grozit-tyurma>. In Lithuania, the national domain name of Lithuanian Sputnik was blocked in July 2019 by a court decision for violations of copyright by means of reprinting stories from the national public broadcaster. See <https://rus.postimees.ee/6728994/sud-razreshil-zablokirovat-portal-sputnik-litva> and <https://emerging-europe.com/news/lithuania-to-block-russias-sputnik-news-over-copyright-issues/>.

²³⁹ Gunkel E., В Литве запретили ретрансляцию российского телеканала RT ("Rebroadcasting of the Russian channel RT banned in Lithuania"), DW, 8 July 2020, <https://www.dw.com/ru/в-литве-запретили-ретрансляцию-российского-телеканала-rt/a-54100195>.

Commission's opinion on whether they were rightly reading the implementation of economic sanctions in this case.²⁴⁰ Without naming RT or Kiselyov, the Commission replied in June 2020 with an Opinion.²⁴¹ It confirmed its policy that "making funds or economic resources available to a non-designated entity [meaning: not under the sanctions - AR], which is owned or controlled by a designated person, entity or body, amounts to making them indirectly available to the latter". Further, "if the designated person is determined to have control over the Entity, the Commission takes the view that the assets of the Entity must be frozen". Therefore, making payments to any bank account of the Entity is generally prohibited, while providing services to or working for the non-designated Entity can be considered as making economic resources indirectly available to the designated person.

Making funds or economic resources available to an entity that is not under the sanctions, but which is owned or controlled by a person, entity or body under sanctions, amounts to making them indirectly available to the latter.

European Commission

Even earlier, the Lithuanian media regulator several times suspended the retransmission of state-run *RTR-Planeta* TV channel via cable and satellite for instigating "discord and a military climate", "inciting tensions and violence between the Russians and the Ukrainians", as well providing "unambiguous threats of occupation and/or destruction of other States, including the Baltic States. The European Commission, in its decisions in 2015, 2017, and 2018 confirmed that the restrictive measures by Lithuania were compatible with the EU law.²⁴² In a similar manner, in 2019, the European Commission confirmed compatibility of the Latvian media regulator suspending retransmission of *Rossiya RTR* TV channel for incitement to hatred, which involved express language "that can be considered on the one hand as an action

²⁴⁰ "Estonia 'does not exclude the possibility' of banning RT", Estonian Public Television ERR, 8 July 2020, <https://news.err.ee/1110560/estonia-does-not-exclude-the-possibility-of-banning-rt>.

²⁴¹ Commission Opinion of 19 June 2020 on Article 2 of Council Regulation (EU) No. 269/2014, 19.6.2020 C(2020) 4117 final, https://ec.europa.eu/info/sites/default/files/200619-opinion-financial-sanctions_en.pdf and https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1126.

²⁴² Commission Decision of 10.7.2015 on the compatibility of the measures adopted by Lithuania pursuant to Article 3(2) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation, or administrative action in Member States concerning the provision of audiovisual media services, Brussels, 10.7.2015, C(2015) 4609 final; Commission Decision of 17.2.2017 on the compatibility of the measures adopted by Lithuania pursuant to Article 3(2) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation, or administrative action in Member States concerning the provision of audiovisual media services, Brussels, 17.2.2017, C(2017) 814 final; Commission Decision of 4.5.2018 on the compatibility of the measures adopted by Lithuania pursuant to Article 3(2) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation, or administrative action in Member States concerning the provision of audiovisual media services, Brussels, 4.5.2018, C(2018) 2665 final, see <https://digital-strategy.ec.europa.eu/en/news/lithuanias-decision-suspend-broadcast-russian-language-channel-rtr-planeta-complies-eu-rules>.

intended to direct specific behaviour and, on the other hand, as creating a feeling of animosity or rejection with regard to a group of persons”.²⁴³

It is worth noting, that while assessing the arguments of the broadcaster against the Lithuanian and Latvian sanctions, the European Commission noted absence of indication that, even though the problematic statements were made during live broadcasts, “the host has on any occasion corrected or taken distance from such statements”.²⁴⁴

²⁴³ Commission Decision of 3.5.2019 on the compatibility of the measures adopted by Latvia pursuant to Article 3(2) of Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation, or administrative action in Member States concerning the provision of audiovisual media services, Brussels, 3 .5 .2019, C(2019) 3220 final, see <https://digital-strategy.ec.europa.eu/en/library/commission-decision-measures-taken-latvian-regulator-suspend-broadcast-russian-language-channel>.

²⁴⁴ See para (22) of C(2018) 2665 final and para (14) of C(2019) 3220 final.

IV. Moldovan national framework analysis

General

Having declared its independence on 27 August 1991, the Republic of Moldova stands today as a sovereign, independent, neutral and democratic country governed by the rule of law. Moldova has a civil law legal system with codified laws. The country's legal framework consists of its constitution, organic, and ordinary laws passed by the Parliament and normative acts issued by the government and other public authorities.

The current Constitution, adopted on 29 July 1994, sets out the main principles of the structure of the state, the powers granted to state bodies, both the economic and social rights and the civil and political rights of citizens and provides legal guarantees for the observance of these rights by third parties and by public authorities. The constitutional provisions uphold the democratic principles of the separation of powers and of checks and balances between the State powers (legislative, executive and judicial) ²⁴⁵.

Moldova is a unitary state with local governments operating at two tiers. There are thirty five territorial units corresponding to the second level of local government authority: thirty two districts (*raioane*), two municipalities (*municipii*), and *Gagauazia* – an autonomous territorial entity established on the basis of Article 111 of the Constitution and operating under an organic law of 23 December 1994 (N 344-XIII) on its special legal status. Moldova also has a breakaway Transnistrian region, which does not consider itself subject to the jurisdiction of Moldova.

The legislative power is vested in the Parliament of Moldova. It consists of 101 members elected for a four-year term by universal, equal, direct, secret and freely expressed suffrage. The Parliament *inter alia* passes laws, decisions and motions, declares the conduct of referenda, provides legislative interpretations, approves the main directions of the policy of the State, exercises control over the executive power, ratifies, terminates, suspends and repeals international treaties, approves the state budget and declares the state of national emergency, martial law, and war.

Moldova is a member state of the UN, the Council of Europe, and the OSCE. It was granted EU candidate status in June 2022 and needs to harmonize its law with that of the European Union.

Media environment

The Moldovan media landscape encompasses a total of 42 linear television media channels today (56 in 2021), and about a hundred online new media outlets active in the country.²⁴⁶

²⁴⁵ Constitution of the Republic of Moldova, <https://presedinte.md/eng/constitutia-republicii-moldova>.

²⁴⁶ Lista serviciilor media audiovizuale libere la retransmisiune ale furnizorilor de servicii media aflați în jurisdicția Republicii Moldova. Consiliul Audiovizualului, Decizie Nr. 150, din 19-05-2023 cu privire la actualizarea Listei serviciilor media audiovizuale libere la retransmisiune ale furnizorilor de servicii media aflați în jurisdicția Republicii Moldova, https://www.legis.md/cautare/getResults?doc_id=137136&lang=ro; OSCE Office for Democratic Institutions and Human Rights, Election Observation Mission. Republic of Moldova, Early Parliamentary Elections, 11 July 2021, Final Report, Warsaw, 22 December 2021, p. 17,

Teleradio-Moldova Company (TRM) is the national public provider of media services in the Republic of Moldova. It currently has two TV channels – Moldova 1 and Moldova 2 – and three radio channels. Beside the national broadcaster, a regional public broadcaster (Gagauziya Radio Televizionu, GRT) also operates in Moldova. It comprises a TV station and a radio station.

According to the data of the Public Opinion Barometer (BOP), the main source of information for the country's inhabitants is the internet (45%), followed by television (41%). However, as a source of information about events in the country and abroad, news and television programmes are the most popular, accounting for 55.8% of respondents.²⁴⁷ Our interlocutors assessed that 80 percent of the population receives TV signal via cable.

Until recently the audiovisual space of Moldova was under the influence of the Moscow broadcasters which were retransmitted via domestic affiliate channels or directly.²⁴⁸ As recently as in 2020, the available Russian media were trusted by 35 percent of Moldovans, while the national media were trusted by 24 percent and those from the EU (most likely, Romania) by 42 percent.²⁴⁹

Given Russia's strong information presence, it managed to systematically manipulate public opinion and weaken social cohesion in the country. Traditionally, the Russian Federation promotes various manipulative narratives related to the Soviet past and, implicitly, the idea that the Republic of Moldova belongs to the so-called "Russian World".²⁵⁰

The situation has changed today. If the analysis conducted in 2018 found a total dominance of Russian state media in forming opinion on international issues (66%), then after 5 years, it is simply missing in the licensed audiovisual space. Some influence was preserved through TV channels indirectly affiliated with Russia, which continued to subtly promote the Kremlin's propaganda narratives. But their cumulative influence is not so great – around 19%. But the omission of information about foreign affairs, particularly Russian aggression in Ukraine, has helped to preserve the effects of multi-year propaganda and disinformation among viewers of these channels.²⁵¹

<https://www.osce.org/files/f/documents/0/5/508979.pdf>; Centrul pentru Jurnalism Independent, Studiul de Necesități ale Instituțiilor Mass-Media din Republica Moldova, Ianuarie, 2022, Chisinau - p. 8, <https://cji.md/studiul-necesitati-mass-media-2022/>.

²⁴⁷ "Reflection of the main geopolitical actors in Moldovan TV news in November 2022", WatchDog.MD Report, p. 3.

²⁴⁸ See: Rosca A., "Media in Moldova: Between Freedom and Monopoly", Foreign Policy Research Institute, Philadelphia, September 2017, <https://www.fpri.org/article/2017/09/media-moldova-freedom-monopoly/>.

²⁴⁹ Анализ и стратегия проведения информационно-разъяснительной работы по повышению устойчивости Республики Молдова к дезинформации (Analysis and Strategy of information and literacy activity to promote resistance of the Republic of Moldova to disinformation), Chisinau, December 2021, p. 11, https://ipre.md/wp-content/uploads/2022/01/%D0%90%D0%9D%D0%90%D0%9B%D0%98%D0%97-%D0%98-%D0%A1%D0%A2%D0%A0%D0%90%D0%A2%D0%95%D0%93%D0%98%D0%AF-%D0%9F%D0%A0%D0%9E%D0%92%D0%95%D0%94%D0%95%D0%9D%D0%98%D0%AF_compressed.pdf.

²⁵⁰ Analysis and strategy for increasing resilience to disinformation in the Republic of Moldova, P. 7, https://iepb-berlin.de/site/assets/files/2083/informd_study_against_disinformation_in_moldova.pdf.

²⁵¹ "Reflection of the main geopolitical actors in Moldovan TV news in November 2022", WatchDog.MD Report, p. 34.

In 2022, in terms of quantity and popularity of TV channels (according to BOP), the largest role in informing Moldovan viewers on national and international affairs was played by the news programmes at independent TV channels (57%). This is an increase of almost 6 times. Experts say that this is due not only and not so much to the increase in popularity of these sources of information, but to the increase in the amount of external news on these channels.²⁵²

Definitions

Legislation of Moldova provides definitions to a number of phenomena regulated therein, they often enable to understand the scope and essence of the regulation. Below we provide some examples important for the Study.

The **Criminal Code of Moldova** does not define directly what is *propaganda for war*, but provides a group definition by saying that the crime consists of “propaganda for war, dissemination of biased and fictitious information conducive to inciting war, or other actions with the aim of starting a war, committed orally, in writing, by radio, television or cinema, or otherwise” (Art. 140).

It also defines:

incitement - disseminating or otherwise making public a message with the intent that the message will induce, or in the knowledge that the message may induce the commission of a crime.

The Criminal Code specifically bans *propaganda of genocide or crimes against humanity*, defining it as “public dissemination of information, including through an IT system, or any other public actions aimed at total or partial denial, approval or justification of crimes of genocide or crimes against humanity, recognized by a decision of an international tribunal established by international instruments and whose competence is recognized by the Republic of Moldova, made in a manner that may cause the commission of crimes with the application of violence” (Art. 135-2).

The **Audiovisual Media Services Code** (2018) provides definitions for the following notions used in this Study:

audiovisual pluralism – audiovisual context, which meets the following cumulative characteristics: a) diversity of providers of media and audiovisual media services; b) diversity of audiovisual programmes within the same audiovisual media service; c) presence of opinions of the general public on audiovisual media services, especially linear ones; d) presence of free, autonomous, independent in economic and editorial sense service providers; e) access of the general public to the range of opinions present in audiovisual media services;

autonomous public authority – institution that meets the following cumulative requirements: a) is established by law; b) carries out its activity on the territory of the Republic of Moldova

²⁵² Ibid.

according to the legislation in force; c) acts under a public power regime in order to achieve a public interest; d) uses public financial resources; e) is competent to issue normative acts; f) is not subordinated to the Government and has no other overarching administrative authority; g) reports to Parliament on the work carried out;

disinformation – intentional dissemination, by any means, in the public space, of information whose false or misleading nature can be verified and which is capable to inflict harm to national security; *(we find this definition somewhat unclear as to types of the harm and suggest a revision in line with the EU regulations)*

editorial responsibility – exercising effective control over selecting audiovisual programmes and over their organisation, either in a time schedule, in the case of TV/radio transmissions, or in a catalogue, in the case of the on-demand audiovisual media services;

hate speech (calls to hatred) – a message that propagates, incites, promotes or justifies racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance or discrimination on the basis of gender, race, nationality, religion, disability or sexual orientation;

information security - state of protection of information resources, society and state, including the availability of a set of measures to ensure the protection of the society and the state from potential disinformation attempts and/or manipulation of information in the country and/or from abroad, including prevention of media aggression aimed against the Republic of Moldova;

national audiovisual space - an informational and media space constituted structurally and compositionally by the local, community, regional, national or international, public or private, generalist or thematic, information, educational and entertainment audiovisual media services, available to the public by means of electronic communications networks;

protection of the national audiovisual area - a set of measures meant to eliminate the internal or external factors, those being intentional or involuntary, which harm or may negative influence on the institutional, functional, structural, content, technological or other type of integrity of the area, as well as to establish a favourable social environment for the functioning of the national audiovisual area under legal, political, economic, cultural or other security.

The **Law on Freedom of Expression** (2010)²⁵³ provides additional relevant definitions:

censorship – an unjustified distortion of journalistic material or an unjustified ban to disseminate certain information made by the management of the mass media entity; any actions of public authorities or persons exercising public functions that present an interference in the editorial activity of the mass media outlet or its employees or are aimed to prevent replication or dissemination of information;

²⁵³ Law of the Republic of Moldova “On Freedom of Expression” of 23 April 2010, No. 64. https://www.legis.md/cautare/getResults?doc_id=126675&lang=ro.

hate speech (calls to hatred) - any statement which causes, propagates, promotes or justifies racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance; (*we find this definition less effective than the one in the Audiovisual Code, see above, for example it does not mention link with violence or discrimination*)

public interest - interest of the public (and not mere lowbrow curiosity of individuals) to the events related to the exercise of public power in a democratic country or to other issues that naturally arouse the interest of the public or a part of it.

The **Law on the Press** (1994)²⁵⁴ provides the definition of:

journalist – a person engaged in literary-journalistic activities in the mass media under a contract or on other conditions in accordance with applicable law.

The **Law on State Security** (1995) defines:

state security as protection of the sovereignty, independence, territorial integrity and constitutional order of the country, its economic, scientific, technical and defense potential, lawful rights and freedoms of the individual from intelligence and subversive activities of foreign special services and organizations, as well as from criminal encroachments of particular groups or individuals.

The **Law on Counteraction of Extremist Activity** (2003) defines:

extremism as a position, doctrine of certain political trends which, on the basis of extreme theories, ideas or views, seek to impose their programme through violent or radical measures.

A number of useful notions are also provided by the **Concept of Information Security** of the Republic of Moldova:²⁵⁵

propaganda – an act of systematic dissemination of information to influence the attitudes, beliefs and behavior of people, in support of or to the detriment of certain institutions, ideas or individuals through the manipulative presentation of information and/or selective coverage of events, in order to undermine the national interests of the state; (*we treat the definition so that the intention to undermine the national interests of the state is only a separate act of systematic dissemination of information, or propaganda, and does not necessarily relates to other types of propaganda acts, still this should better be clarified in revision*)

information war – a set of actions carried out in the information space by state or non-state actors through propaganda, media aggression, manipulation and disinformation, including

²⁵⁴ Lege Nr. 243 din 26-10-1994 Presei (Law on the press), https://www.legis.md/cautare/getResults?doc_id=109428&lang=ro.

²⁵⁵ Lege Nr. 299 din 21-12-2017 privind aprobarea Concepției securității informaționale a Republicii Moldova (Law on approval of the Concept of Information Security of the Republic of Moldova), https://www.legis.md/cautare/getResults?doc_id=105660&lang=ro.

digital, cyber and psychological operations, with the aim of undermining the sovereignty, independence and territorial integrity of the state;

information security – the state of protection of information resources, as well as the individual, society and the state in the information space.

It should be noted, though, that the Concept of Information Security of the Republic of Moldova is currently being reassessed and will be part of the draft Concept of National Security, to be presented to the Parliament in September 2023.

In addition, the Law on the Center for Strategic Communication and Countering Disinformation²⁵⁶ suggests a definition of:

actions of information manipulation and foreign interference - intentional and coordinated efforts by foreign actors, such as governments, their agencies, or non-state actors, to manipulate or influence public opinion, information, or narratives in another country with the aim of achieving their own strategic, political, or ideological objectives, and capable of inflicting harm to national security and national interests as defined by regulatory acts.

Legal provisions on freedom of expression, propaganda and disinformation

Constitutional provisions

A chapter of the **Constitution** of the Republic of Moldova (Chapter 2 of Title II) is devoted to fundamental rights, freedoms and duties. Moldova adhered in its national constitution to the principle of freedom of expression (Art. 32), it also prohibits censorship of the public media (Art. 34, para 5).

The Constitution proclaims in Article 32 (“Freedom of Opinion and Expression”):

“(1) Every citizen shall be guaranteed the freedom of thought and opinion, as well as the freedom of expression in public by way of word, image or any other means possible.

(2) The freedom of expression may not harm the honor, dignity or the rights of other people to have and express their own opinions or judgments.

(3) The law shall forbid and prosecute all actions aimed at denying and slandering of the State and people, instigation to sedition, war of aggression, national, racial or religious hatred, incitement to discrimination, territorial separatism, public violence, or other manifestations encroaching upon the constitutional order.”²⁵⁷

Criminal Code and anti-extremism law

The Criminal Code (2002) stipulates that “war propaganda, spreading of pretentious or invented information inciting to war, or any other actions aimed at unleashing war committed

²⁵⁶ Lege Nr. 242 din 31-07-2023 privind Centrul pentru Comunicare Strategică și Combatere a Dezinformării și privind modificarea unor acte normative, https://www.legis.md/cautare/getResults?doc_id=138661&lang=ro&.

²⁵⁷ Constitution of the Republic of Moldova, <https://www.presedinte.md/titulul2#2>.

verbally; in writing; on radio, television, cinema; or by any other means” is punishable by imprisonment for up to 6 years (Art. 140).²⁵⁸

Art. 176 para 2 of the Code provides a ban on promulgation or support in the mass media of a separation, exclusion, restriction or preference in the rights and freedoms of a person or a group of persons, any support for discriminatory behavior in the political, economic, social, cultural and other areas of life, based on race, nationality, ethnic origin, language, religion or belief, sex, age, disability, opinion, political affiliation or any other criterion.²⁵⁹

Article 346, in its turn, provides punishment for incitement to manifestation of hatred or violence, expressed in public appeals, in dissemination of information or in other forms of informing the public, including through the mass media, in writing, in the form of drawings or images, or through an information system, against a category of persons on the basis of prejudice.²⁶⁰

According to the press reports²⁶¹ and information, provided by our local interlocutors in Moldova, following the start of the full-scale aggression in Ukraine, Prosecution Office for Combating Organized Crime and Special Cases (PCCOCS) led on several cases of possible violation of the above articles of the Criminal Code. Those cases concern dissemination of such illegal speech in the social media. A working group was established by the Prosecutor-General. The cases were later united into a single case, which awaits submission to the court.

The Law on Counteraction of Extremist Activity (2003) is aimed to stop such activity, including in the mass media, in particular “propaganda of exclusivity, superiority or inferiority of citizens on the basis of their attitude to religion or on the basis of their race, nationality, ethnicity, language, religion, gender, views, political affiliation, property status or social origin” and “display, manufacture, distribution... of well-known... symbols used in the context of acts of military aggression, war crimes or crimes against humanity, as well as propaganda or glorification of these actions”. The Law foresees that upon a second violation of the ban within 12 months the court suspends the activity of the media outlet for one year (Art. 7).

“Hate speech” and various forms of expressing intolerance were noted to be increasingly prevalent in the country. Some national civil society organizations also reported that hate speech is used in a political or religious context, and remains unpunished.²⁶² At the same time,

²⁵⁸ The Criminal Code of the Republic of Moldova. N 985-XV. Promulgated on 18 April 2002. Official Monitor no. 128-129/1012 of 13 September 2002 URL (in English):

https://legislationline.org/sites/default/files/documents/d4/Moldova_CC_2002_am2018_en.pdf.

²⁵⁹ Ibid.

²⁶⁰ Cod Nr. 985 din 18-04-2002 Codul Penal al Republicii Moldova (Criminal Code of the Republic of Moldova), N 985-XV, https://www.legis.md/cautare/getResults?doc_id=136765&lang=ro.

²⁶¹ See, e.g: <https://newsmaker.md/rus/novosti/propaganda-voyny-razzhiganie-nenavisti-prokuratura-proveryaet-zayavleniya-patriotov-moldovy/>; <https://www.zdg.md/ru/?p=95035>; <https://tv8.md/ru/2023/03/02/lider-odnoi-iz-politicheskikh-partii-moldovi-nakhoditsya-pod-sledstviem-za-propagandu-voyni/221910>.

²⁶² See Committee of Ministers of the Council of Europe. Activities for the development and consolidation of democratic stability Council of Europe Action Plan for the Republic of Moldova 2021-2024. 29 October 2020, p.15-16,

<https://rm.coe.int/0900001680a029ad#:~:text=The%20Council%20of%20Europe%20Action,rule%20of%20law%20and%20democracy.>

Art. 11 para 3 allows to bring to justice foreigners for crimes against peace or crimes against Moldova's interests (such as public order and national security). Recommendations of the European Commission against Racism and Intolerance (ECRI) on amending the Criminal Code to include relevant elements were positively reviewed by the Parliament which adopted additional norms (Art. 134-18, 134-19, 135-2 of the Criminal Code).

The Council of Europe Action Plan promotes capacity building for all those involved in investigating hate speech, strengthening the capacity of the police to identify hate crime and process cases, as well as on enhancing people's trust in the police in this regard.²⁶³

Law on Freedom of Expression

The Law on Freedom of Expression provides a broad protection to the journalists and others exercising their right to this freedom. In particular, it provides certain privileges to the mass media when disseminating untrue statements of facts or fact-based opinions, if they were originally pronounced in official documents or "in the course of sessions of the public authorities by the persons performing public functions or any person invited to the session".²⁶⁴ These guarantees are generally available in the context of court cases on defamation and violation of privacy, although they probably can be called for in the cases related to "political disinformation", meaning intentional dissemination of false information which does not harm personal reputation so as to distinguish disinformation from defamation.

The core elements of the Law incorporate the formulas borrowed from the case law of the European Court of Human Rights by saying that "freedom of expression protects both the content and the cast of information, including that which offends, shocks or disturbs" and that "freedom of expression of the media additionally allows for a degree of exaggeration or even provocation", provided that the essence of the facts is not distorted (Art. 3, para 2, Art. 4, para 3). It also quotes the ECHR by saying that "the exercise of freedom of expression may be subject to restrictions as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public calm, for the prevention of disorder and crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary" (Art. 3 para 3). A seizure of the print-run or banning of a print mass media outlet may take place upon a court decision that entered into force and only when is necessary in a democratic society for national security, territorial integrity or public safety or to prevent a disclosure of information that constitutes a state secret (Art. 6, para 3).

The restrictions must be proportionate to the situation and observe the balance of the protected interests and freedom of expression and the right of the public to be informed (Art. 3 para 4). Freedom of expression, says the Law, does not extend to the speech that incites hatred or violence, promotes fascist, racist or xenophobic ideologies, or a Holocaust denial (Art. 3 paras 4-2 and 5).

²⁶³ Ibid.

²⁶⁴ Law of the Republic of Moldova "On Freedom of Expression" of 23 April 2010, No. 64 Art. 28. https://www.legis.md/cautare/getResults?doc_id=126675&lang=ro.

Anyone may criticize the state or public authorities, which are deprived of the right to protect their reputation (Art. 9). Confidential sources of information are protected in Art. 13. Censorship in the mass media, as well as intentional illegal interference in the mass media activity shall result in a criminal liability (Art. 5, para 5).

Audiovisual Media Services Code

The current Moldova's Audiovisual Media Services Code (*further on – AVMS Code*)²⁶⁵ was adopted in 2018 to align national broadcasting standards with the EU's Audiovisual Media Services Directive (AVMSD). The AVMS Code regulates audiovisual commercial communications, provides for a list of major events to be broadcast on free-to-air, provides minimum quotas for the production of local content, as well as for the distribution of European content, and regulates transparency of media ownership. The AVMS Code *inter alia* sets content requirements on impartiality and balance in news and current events, including discussion programmes.²⁶⁶

The AVMS Code is very detailed as to ensuring reliable information in media services (Art. 13). It says that “by virtue of the fundamental right to be informed”, media service providers must comply with the certain requirements, including ensuring a clear distinction between facts and opinions; and reporting on a fact or event in a reliable way, while information must be verified and presented impartially and in good faith. In news programs and talk shows, coverage of matters of public interest, as well as issues of a political, economic, social or cultural nature, must comply with the requirements of “internal political pluralism” through impartiality, balance and encouraging the free formation of opinions through obligatory presenting of “major opposing points of view” on relevant issues. In such programs, media service providers should ensure a balanced representation of both the authorities and the opposition.

These provisions originate from the previous 2006 Audiovisual Media Code. The “Explanatory Memorandum” appended to its draft stated the following: “This bill aims at establishing the democratic principles of functioning of the audiovisual [sector] of the Republic of Moldova, ensuring protection of the rights of programme consumers ...”. And: “The draft seeks to balance broadcasting freedom with ‘more responsibility’ on the part of broadcasters, especially with regard to observing ‘the rights of the programme consumer’, who will now have ‘the possibility to address the competent authorities to ensure the appropriate conditions for free formation of opinion’.” The Council of Europe's Media Division requested media experts to analyze and comment on the draft bill. These experts, in their report of May 2006, expressed the view that the principle on the political and social balance and pluralism was “commendable”. No comment was made by the experts in respect of what became Article 7 para 4 of the final text of the 2006 Code and Art. 13 of the current AVMS Code.

²⁶⁵ Codul serviciilor media audiovizuale al Republicii Moldova în Republica Moldova (Code of the Republic of Moldova on the Audiovisual Media Services in Republic of Moldova”), №174 of 8 November 2018, https://www.legis.md/cautare/getResults?doc_id=138546&lang=ro#.

²⁶⁶ OSCE ODIHR, Election Observation Mission. Republic of Moldova, Early Parliamentary Elections, 11 July 2021, Final Report, Warsaw, 22 December 2021, p. 19, <https://www.osce.org/files/f/documents/0/5/508979.pdf>.

The current 2018 AVMS Code²⁶⁷ initially introduced a complete ban on commercials and teleshopping in foreign broadcasts rebroadcast in Moldova. That provision and the penalties imposed under the same Code were appealed by Moldovan cable and telecom operators in the Constitutional Court as an overbroad intrusion of the state into freedom of expression and information and an unnecessary demand for the service providers to edit and delay retransmission of foreign broadcasts so as to delete possible commercials. The Constitutional Court reviewed the appeal in 2021 and concluded that the disputed norm does distinguish between foreign broadcasters from states parties to the ECTT and other states. At the same time, the ECTT does not envision or permit such obstacles to the free transfrontier circulation of programmes. Therefore, an absolute ban on foreign commercials and/or teleshopping was found to be unconstitutional, and was indeed struck out of the Code.²⁶⁸

Several noteworthy legal changes happened in the regulation of the AV sector in Moldova in 2021-23. The AVMS Code, in particular, was amended to redefine disinformation and propaganda in linear broadcasting and introduce specific gradual penalties for this violation in 2023.²⁶⁹ On 30 September 2021, and 4 November 2021, the AVMS Code underwent amendments to introduce new levers of parliamentary control over the public broadcaster and the national media regulator, the Audiovisual Council (AC). The initial amendments, inter alia, eliminated the immovability guarantees for AC members, allowing the Parliament to revoke their mandates. The subsequent law subjected the Director-General of the public service broadcaster TRM to the political choice of the Parliament, including the decisions regarding his/her appointment, performance assessment, and dismissal. This parliamentary control replaced the control over these matters previously held by TRM's Supervisory and Development Board.²⁷⁰

The amendments also introduced provisions regarding the requirements and qualifications for appointment and possible dismissal of the members of the Audiovisual Council (CA), the national media regulator. The related provisions on this are essentially identical to those applicable to the governance body of TRM. The dismissal of members of the CA can now be made at any time on the basis of a performance review by Parliament.

In the opinion of the European Commission, such regulation “is not aligned with the EU Audiovisual Media Services Directive which states that appointment and dismissal procedures

²⁶⁷ Codul serviciilor media audiovizuale al Republicii Moldova (Audiovisual Media Services Code of the Republic of Moldova), No. 174, 8 November 2018, Article 66, paragraph 7, https://www.legis.md/cautare/getResults?doc_id=138546&lang=ro#.

²⁶⁸ Privind excepția de neconstituționalitate a articolelor 66 alin. (7) și 84 alin. (13) din Codul serviciilor media audiovizuale (excluderea publicității și a teleshopping-ului din programele retransmise) (“On an exceptional instance of unconstitutionality of Article 66, paragraph 7 and Article 84, paragraph 13 of the Audiovisual Media Services Code”), Decision of the Constitutional Court of the Republic of Moldova (“On the exclusion of advertising and teleshopping programmes from retransmission”), No. 36, 23 November 2021 (appeal No. 25g/2021), paragraph 70, https://www.legis.md/cautare/getResults?doc_id=128967&lang=ro.

²⁶⁹ Lege Nr. 248 din 31-07-2023 pentru modificarea Codului serviciilor media audiovizuale al Republicii Moldova nr. 174/2018, see: https://www.legis.md/cautare/getResults?doc_id=138540&lang=ro.

²⁷⁰ *Lege pentru modificarea Codului serviciilor media audiovizuale al Republicii Moldova nr. 174/2018* (Law on amendments of the Code of the Audiovisual Media of Republic of Moldova), N 158, 04.11.2021.

must ‘guarantee the requisite degree of independence’ [of the NRA]”.²⁷¹ A legal analysis of the amendments by an OSCE expert also warns against putting in the hands of the parliamentary majority the decision to dismiss and replace CA members “based on mere convenience and political criteria” thus allowing for an erosion of “the independence and the proper performance of managerial decisions” by the members of the Council.²⁷²

On 2 June 2022 Moldovan Parliament adopted a set of amendments to the AVMS Code that received the informal title of the “Law on counteracting disinformation and propaganda”, and was designed to counter Russian propaganda about the war in Ukraine.²⁷³ In particular, it reintroduced the disputed provision of Article 17 paragraph 4:

“[M]edia service providers shall not broadcast, and media service distributors shall not retransmit, audiovisual television and radio programmes with news, information and analysis, military and political content which have been produced in States other than the Member States of the European Union, the United States of America, Canada and the States which have ratified the European Convention on Transfrontier Television, with the exception of films and entertainment programmes which have no military content.”

The amendments specifically reintroduced the norm for the providers and distributors of media services that totally bans to include in their service offerings (including rebroadcasting) television and radio programmes of public affairs, news, political or military nature, produced in the countries outside of the above list.

In view of the European Commission, again “[t]his is not in line with the [AVMSD] as it could bar content produced in a banned country, but distributed by a media service provider established in the EU, from being retransmitted.”²⁷⁴

The law does not explicitly prohibit Russian propaganda, but the intention is clear as it is Russia which has not ratified the CoE Convention on Transfrontier Television (ECTT). In its

²⁷¹ European Commission. Analytical Report following the Communication from the Commission to the European Parliament, the European Council and the Council. Commission Opinion on the Republic of Moldova’s application for membership of the European Union. Brussels, 1.2.2023 SWD(2023) 32 final, p. 25. See: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-02/SWD_2023_32_%20Moldova.pdf.

²⁷² Organization for Security and Co-operation in Europe. The Office of the Representative on Freedom of the Media. Legal Analysis on the Law on Amendment of the Code of Audiovisual Media Services of the Republic of Moldova. Commissioned by the OSCE Representative on Freedom of the Media from Dr. Joan Barata Mir, December 2021, <https://www.osce.org/files/f/documents/3/2/509792.pdf>.

²⁷³ Pentru modificarea Codului serviciilor media audiovizuale al Republicii Moldova, Lege No. 174/2018 (“On the amendment of the Audiovisual Services Code of the Republic of Moldova”, No. 174/2018), Law No. 143, 2 June 2022, https://www.legis.md/cautare/getResults?doc_id=131800&lang=ro. Official English translation of the amendments is available here: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2022\)027-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2022)027-e).

²⁷⁴ European Commission. Analytical Report following the Communication from the Commission to the European Parliament, the European Council and the Council. Commission Opinion on the Republic of Moldova’s application for membership of the European Union. Brussels, 1.2.2023 SWD(2023) 32 final. See: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-02/SWD_2023_32_%20Moldova.pdf.

turn, Moldova has signed and ratified the ECTT.²⁷⁵ Experts in Moldova believe that this provision can only be viewed as a provisional measure and “definitely does not correspond to democratic principles”.²⁷⁶

The “Law on counteracting disinformation and propaganda” amended the AVMS Code by including an overbroad ban on disinformation and propaganda in the following norm (Art. 17 para 3):

“Within the limits of the national audiovisual space, a broadcasting of audiovisual programs that are inciting to hatred, presenting in themselves disinformation, propaganda of military aggression, content of an extremist nature, content of a terrorist nature or a threat to national security shall be prohibited.”

The Venice Commission assessed the provisions of Article 17, paragraphs 3 and 4(b) “as necessary and proportionate, especially since there is a pressing social need in the Republic of Moldova at this moment to combat propaganda, disinformation and other threats countering the fundamental values of the ECHR. Possible negative impacts of audiovisual media are much more immediate and powerful than the impact of the written press, which is why it is even more important to implement safeguards against disinformation and attacks on democracy. Therefore, the interference of these provisions with the editorial independence is *justifiable* on the grounds of Article 10, paragraph 2 of the ECHR, especially because programmes with the mentioned content run counter to the fundamental values of the Convention and are detrimental to democracy.”²⁷⁷

The Venice Commission also noted that the sanctions foreseen by the AVMS Code for violations of the provisions introduced by “Law on counteracting disinformation and propaganda” are problematic, as the formula on “gradual application” of sanctions was found “too vague” and “does not provide sufficient guarantees against the risk of misuse or extensive interpretation of the provision.”²⁷⁸

In response to the criticism the AVMS Code was again amended in July 2023 to clarify that the Audiovisual Council may “suspend the broadcast license for a period of up to 7 days, or as applicable, to deprive the broadcaster of the right to use the national coverage multiplex – for media service providers who, after being penalized, repeatedly broadcast content qualified as disinformation”.

²⁷⁵ European Convention on Transfrontier Television (ETS No. 132), entry into force 01 May 1993, see: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=132>.

²⁷⁶ Анализ и стратегия проведения информационно-разъяснительной работы по повышению устойчивости Республики Молдова к дезинформации, Chisinau: IPRE December 2021, P. 20.

²⁷⁷ Opinion on Amendments to the Audiovisual Media Services Code and to Some Normative Acts Including the Ban on Symbols Associated with and Used in Military Aggression Actions, Adopted by the Venice Commission at its 132nd Plenary Session (Venice, 21-22 October 2022), Para 100, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2022\)026-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2022)026-e)

²⁷⁸ Ibid., para 103.

In addition, in August 2023, the CA put forward a draft “Methodology on evaluating disinformation in the audiovisual media” for public discussion.²⁷⁹ The suggested criteria cover both false and misleading information. The CA pledges here that each potential case of disinformation will be examined “to establish the false and misleading nature of the information, the intentional nature of its distribution, as well as the likelihood that it will harm the national security of the Republic of Moldova.”

Law on the Stratcom Center

In May 2023, President Maia Sandu announced the legislative initiative to establish an institution that would combat propaganda harmful to the Republic of Moldova and defend its citizens from manipulation and propaganda attacks. The Law on such institution – Center for Strategic Communication and Combating Disinformation – was adopted in July 2023.²⁸⁰

The Center is empowered by the Law to do the following:

- a. elaborate and develop a cooperation and coordination model between public authorities and institutions for the achievement of strategic communication, as well as manage and support the implementation of that model;
- b. elaborate, develop and coordinate mechanisms for the dissemination of national narratives and communication guidelines, including for the purpose of strengthening the security of the information space;c) recommend and coordinate the development and implementation of communication strategies and campaigns;
- c. elaborate and develop centralized capabilities for monitoring and analyzing the information space, including regarding *information manipulation actions and foreign interference (furher on – alien actions)*;
- d. elaborate and develop inter-institutional cooperation mechanisms to identify, prevent and counter alien actions and to strengthen the resistance of state institutions and society;
- e. recommend to national and international public authorities and institutions, media institutions and social networks companies and platforms taking steps to eliminate the causes and conditions that contribute to disinformation and alien actions that threatens national security;
- f. establish and develop cooperation on this with social networks companies and content sharing platforms;
- g. provide training and develops other measures to strengthen the state's capabilities for strategic communication and countering alien actions;
- h. provide support in the process of strategic communication in crisis situations;
- i. elaborate and develop cooperation mechanisms between the authorities and public institutions, civil society and media institutions in order to strengthen the capacities and counter alien actions;

²⁷⁹ Metodologie privind constatarea și evaluarea cazurilor de dezinformare în conținuturile audiovizuale, <https://consiliuaudiovizual.md/news/ca-initiaza-consultari-publice-asupra-metodologiei-privind-dezinformarea-in-continuturile-audiovizuale/>.

²⁸⁰ Lege Nr. 242 din 31-07-2023 privind Centrul pentru Comunicare Strategică și Combatere a Dezinformării și privind modificarea unor acte normative, https://www.legis.md/cautare/getResults?doc_id=138661&lang=ro.

- j. develop international cooperation and represent Moldova in bilateral and multilateral formats in the field;
- k. elaborate, implement and adjust instructions, guides, methodologies and procedures in order to coordinate and plan strategic communication processes and to prevent, identify and counter alien actions.

From the text of the Law, it is clear that it has again failed to follow the definitions provided by the EU law, even though all of them exist in Romanian language.²⁸¹

There are concerns that the composition of the Center's Council can lead to the lack of independence of the Centre from political influence (nine public officials and just two civil society representatives with zero academics).

The Center's functions are too vague but still fail to focus on analytical and consultative work for the authorities. The Law fails to identify the aims of possible or actual "information manipulation actions and foreign interference" and the source of such activity – the aggressor State. Those aims should clearly be linked to infliction of public harm, and not just national security or national interests²⁸². They are probably actions already illegal as per the Criminal Code of Moldova, namely:

- "war propaganda, spreading of pretentious or invented information inciting to war, or any other actions aimed at unleashing war committed verbally; in writing; on radio, television, cinema; or by any other means" (Criminal Code, Art. 140).²⁸³
- promulgation or support in the mass media of a separation, exclusion, restriction or preference in the rights and freedoms of a person or a group of persons, any support for discriminatory behavior in the political, economic, social, cultural and other areas of life, based on race, nationality, ethnic origin, language, religion or belief, sex, age, disability, opinion, political affiliation or any other criterion (Art. 176 para 2).
- incitement to manifestation of hatred or violence, expressed in public appeals, in dissemination of information or in other forms of informing the public, including through the mass media, in writing, in the form of drawings or images, or through an information system, against a category of persons on the basis of prejudice (Art. 346).
- "propaganda of exclusivity, superiority or inferiority of citizens on the basis of their attitude to religion or on the basis of their race, nationality,

²⁸¹ Such as here: Comunicare a Comisiei Către Parlamentul European, Consiliu, Comitetul Economic și Social European și Comitetul Regiunilor privind Planul de acțiune pentru democrația europeană, "dezinformarea înseamnă conținut fals sau înșelător care este difuzat cu intenția de a înșela sau de a obține câștiguri economice sau politice și care poate produce un prejudiciu public", <https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52020DC0790>.

²⁸² Such as here: "Prejudiciul public cuprinde amenințări aduse proceselor democratice politice și de elaborare a politicilor, precum și amenințări aduse bunurilor publice precum protecția sănătății cetățenilor, mediul sau securitatea.", Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Tackling online disinformation: a European Approach", 26.4.2018, COM(2018) 236 final, <https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52018DC0236>.

²⁸³ Cod Nr. 985 din 18-04-2002 Codul Penal al Republicii Moldova (Criminal Code of the Republic of Moldova), N 985-XV, https://www.legis.md/cautare/getResults?doc_id=136765&lang=ro.

ethnicity, language, religion, gender, views, political affiliation, property status or social origin” (Law on Counteraction of Extremist Activity, Art. 7)²⁸⁴.

- “display, manufacture, distribution... of well-known... symbols used in the context of acts of military aggression, war crimes or crimes against humanity, as well as propaganda or glorification of these actions” (Law on Counteraction of Extremist Activity, Art. 7).

The Law fails to place the new Center into the existing in the EU system of Stratcom centers and/or to focus on European integration in this regard, or note the relevant activities of the European institutions. It uses terms that have been found problematic, such as “impeccable reputation”²⁸⁵ in defining the qualities of the candidates to lead the Center, but fails to prescribe legal education as a possible qualification.

Our local interlocutors were generally critical of the draft Law as it was at the time. They focused on the controversy of the public authority defining what is true and what is disinformation, on the unusual method of its funding through direct foreign grants, on the President interfering in the function of appointing the first head of the Centre which is beyond her competences, arbitrary possibility to dismiss the members, their eligibility criteria and potential political affiliation, on the lack of independence of the Centre from political influence, on the unbalance of its public profile at the expense of analytical and consultative work for the authorities, etc.

Regulation of access to information

Currently, the key law in this sphere is the 2000 Law “On Access to Information”.²⁸⁶ According to the international observers, courts display an uneven enforcement of this law, the right to access public information is not upheld consistently. ODIHR noted that in March 2018, the Supreme Court upheld a court decision granting RISE Moldova access to information on a number of criminal investigations. However, the ruling did not set a precedent.²⁸⁷

In June 2023 the Parliament adopted the Law “On access to information of public interest”, earlier submitted by the Government.²⁸⁸ Adoption of the Law was recommended by the Council of Europe Action Plan for the Republic of Moldova (2021-2024) and is part of the

²⁸⁴ Lege Nr. 54, din 21-02-2003 privind contracararea activității extremiste, https://www.legis.md/cautare/getResults?doc_id=27714&lang=ro

²⁸⁵ Moldova - Interim opinion on the Draft Law on limiting excessive economic and political influence in public life (de-oligarchisation), adopted by the Venice Commission at its 134th Plenary session (Venice, 10-11 March 2023), Para 52, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2023\)010-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)010-e)

²⁸⁶ Lege Nr. 982 din 11-05-2000 privind accesul la informație, https://www.legis.md/cautare/getResults?doc_id=88225&lang=ro.

²⁸⁷ OSCE ODIHR. Republic of Moldova, Early Parliamentary Elections, 11 July 2021, Election Observation Mission Final Report, Warsaw, 22 December 2021, p. 18, <https://www.osce.org/files/f/documents/0/5/508979.pdf>.

²⁸⁸ Lege privind accesul la informațiile de interes public. Proiect (Law on access to information of public interest. Draft.), N 1003/MJ/2022. See on the website of the Government (in Romanian): https://cancelaria.gov.md/sites/default/files/document/attachments/1003_mj.pdf.

country's commitments as a candidate to the EU.²⁸⁹ The explanatory note to the Law also speaks of Moldova's obligations as a party to the Convention on Access to Official Documents (Tromsø Convention) of the Council of Europe.²⁹⁰

The new Law will enter into force in early 2024. Its article 3 expands the list of the parties that fall under the obligation to provide information to the public. They are now public authorities; public institutions; state or municipal enterprises; legal entities under private law founded or co-founded by the above entities, or controlled by them; legal entities that provide public services (in terms of information which refers to the provision of public services); professional associations; bailiffs and notaries (with regard to information relating to exercising their legal duties); political parties and public associations.

According to Art. 19, information of public interest is communicated to the applicant not later than 10 days from the date of registration of the request. It can be extended by no more than 7 days, when a large volume of information is requested, which requires additional time for its processing.

The Art. 16 of the current law provides a term of 15 working days with the possibility of extension for another 5 working days, if the volume of requested information is very large or when additional consultations are necessary to satisfy the request. A chapter of the Law is devoted to the "proactive transparency" of the public bodies. Article 8 therein provides for a list of obligatory types of information to be published on the official websites of public authorities; it also speaks that they must be adapted for their access by persons with disabilities.

Despite the reform, the Law does not necessarily follow the best practice in access to information. For example, it does not establish an ombudsperson or any other oversight institution over the access to information. A global report by UNESCO on access to information, says that, in 2022, out of the 114 responding countries and territories with legal guarantees of access to information, 90% (103) answered that they specify the need of a dedicated oversight institution(-s). Today, Information Commission/ers are the most common type of oversight mechanism (47), followed by governmental departments/ministries/agencies (33) and ombudspersons/institutions (29). Other oversight mechanisms include converged bodies that combine data/privacy protection and Access to Information (27), data protection or privacy commission/ers (16), and the human rights commissions (10).²⁹¹ It is clear that reliance on courts and police in these matters has proven

²⁸⁹ Council of Europe Action Plan for the Republic of Moldova, 2021-2024, CM(2020)161, 29 October 2020, <https://rm.coe.int/0900001680a029ad#:~:text=The%20Council%20of%20Europe%20Action,rule%20of%20law%20and%20democracy.>

²⁹⁰ European Commission. Analytical Report following the Communication from the Commission to the European Parliament, the European Council and the Council. Commission Opinion on the Republic of Moldova's application for membership of the European Union. Brussels, 1.2.2023 SWD(2023) 32 final, p. 25. See: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-02/SWD_2023_32_%20Moldova.pdf.

²⁹¹ Richter, Andrey, *A Steady Path Forward: UNESCO 2022 Report on Public Access to Information (SDG 16.10.2)*. Paris: UNESCO, 2023, p. 17, <https://unesdoc.unesco.org/ark:/48223/pf0000385479>.

faulty due to a significant rate of refusals to provide information upon request or be proactive enough in transparency measures.²⁹²

The monitoring of the situation in Moldova, conducted by the Freedom House in 2021 and 2022, comes to overall pessimistic assessment of the situation, demonstrating systemic shortcomings and deficits in the practical application of the current legal norms.²⁹³

The Law on State Security provides for an obligation of State security bodies, in accordance with their competence, “to ensure that citizens are informed, at their request, on issues affecting their personal interests.” While it is not allowed to disclose information “constituting a state secret, or other official information of limited access, the disclosure of which may damage the observance of the rights and reputation of another person, the protection of national security, public order, public health or public morals”, there is a particular exception in cases “when the public interest in knowing the information outweighs the harm that disclosure of information may cause” (Art. 8 para 2).²⁹⁴ In its turn, “public interest” is defined in the Law on Freedom of Expression (see above).

Advertising Law

The Law on Advertising, adopted in 2022, regulates, in particular, political advertising and “statements of public interest”. It provides that advertising shall “contain information that relates to reality”. This provision, though, is without prejudice “to the current and lawful advertising practices” that involve exaggerated statements or those “not to be taken literally” (Art. 7 para 2).²⁹⁵

According to our interlocutors, sections of the law concerning “statements of public interest” remain unenforceable. This is due to the Government's failure to meet its obligation of developing (within three months from the Law's entry into force) regulations pertaining to the structure, establishment, organization, and operation of the Council for Public Interest Messages.

Election law

The Election Code of Moldova, supplemented by a Central Election Commission regulation, requires fair, accountable, balanced and impartial media coverage of contestants' campaigns.²⁹⁶

²⁹² See, e.g. Новый закон о доступе к информации: каковы были цели, за что проголосовали и что будет дальше? CJJ, 9 June 2023, <https://cjj.md/ru/%D0%BD%D0%BE%D0%B2%D1%8B%D0%B9-%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD-%D0%BE-%D0%B4%D0%BE%D1%81%D1%82%D1%83%D0%BF%D0%B5-%D0%BA-%D0%B8%D0%BD%D1%84%D0%BE%D1%80%D0%BC%D0%B0%D1%86%D0%B8%D0%B8-%D0%BA%D0%B0%D0%BA/>

²⁹³ Sześciło, Dawid, Stela Pavlov, Freedom of Information Index: Measuring Transparency of Public Institutions in Moldova Authors, Freedom House, p. 4, https://freedomhouse.org/sites/default/files/2022-11/fh-Moldova_Access-to-Info-Report-2022_Eng-v5.pdf.

²⁹⁴ Lege Nr. 618 din 31-10-1995 securităţii statului, https://www.legis.md/cautare/getResults?doc_id=131343&lang=ro.

²⁹⁵ Lege Nr. 62 din 17-03-2022 cu privire la publicitate, https://www.legis.md/cautare/getResults?doc_id=134924&lang=ro.

²⁹⁶ Codul Electoral (Election Code), Nr. 325 of 8 December 2022,

By law, contestants are granted access to political advertising under equal conditions, while broadcasters with nationwide coverage provide free airtime for political advertising and organize debates or may rebroadcast debates organised by the national public broadcaster.²⁹⁷ The oversight in the media compliance with the Election Code is conducted by the CA, although the latter has no competence over the Internet. Our interlocutors stressed that there is no need for a specific ban on disinformation in the Election Code as there is such a ban provided in the AVMS Code.

The recently approved Regulations regarding the coverage of the elections by mass media entities explains equity, balance and impartiality of the media coverage of the campaigns.²⁹⁸ The candidates have the right to a reply (*replica*) to the untrue facts and/or value judgments without sufficient factual basis to be published in the same media.²⁹⁹ It also states that during the electoral debates, it is prohibited to disseminate misinformation.³⁰⁰

In practice, the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE monitoring revealed that public TV was rather balanced in its coverage of the latest major candidates' campaigns "with predominantly neutral or positive tone" of reporting. At the same time, some private TV channels displayed "an explicit bias" in both the amount of coverage and its tone.³⁰¹

Ownership regulation

Media pluralism, proclaimed in the Charter of Fundamental Rights of the European Union,³⁰² includes a variety of programming of the different media players and an effective presence of a multitude of media owners so as to avoid an excessive concentration of the market. Media pluralism, and related issues of transparency of media ownership, including transparency of finance, structure, control or influence, has been widely explored by legislation and case law both at the national and European levels.³⁰³

Moldova mandates that broadcast media ownership is restricted. In particular, a person may not provide more than two TV channels, there are bans to own broadcasters for the political parties, unions, public and elected officials, etc. The broadcast media are also to be

https://www.legis.md/cautare/getResults?doc_id=134589&lang=ro.

²⁹⁷ OSCE ODIHR, Election Observation Mission. Republic of Moldova, Early Parliamentary Elections, 11 July 2021, Final Report, Warsaw, 22 December 2021, p. 19, <https://www.osce.org/files/f/documents/0/5/508979.pdf>.

²⁹⁸ Regulamentul privind reflectarea alegerilor de către instituțiile mass-media din Republica Moldova, Approved by the decision of the Central Electoral Commission no. 1137 of July 28, 2023, para 5, https://www.legis.md/cautare/getResults?doc_id=138818&lang=ro.

²⁹⁹ Ibid., Chapter VII.

³⁰⁰ Ibid. para 62 (2).

³⁰¹ OSCE ODIHR, Election Observation Mission. Republic of Moldova, Early Parliamentary Elections, 11 July 2021, Final Report, Warsaw, 22 December 2021, p. 20.

³⁰² Charter of Fundamental Rights of the European Union, Art. 11: "The freedom and pluralism of the media shall be respected." See https://eur-lex.europa.eu/eli/treaty/char_2012/oj.

³⁰³ See: Cappello Maja (ed.), *Media ownership - Market realities and regulatory responses*, IRIS Special 2016-2, European Audiovisual Observatory, Strasbourg, 2016, <https://rm.coe.int/media-ownership-market-realities-and-regulatory-responses/168078996c>.

transparent, with the owners of outlets listed in a register released by the CA.³⁰⁴ Nonetheless, even with this regulation, “several outlets have owners with either foreign ties to Russia or murky ties to Moldova’s own political elite that create opportunities for hidden influence.”³⁰⁵ To guarantee media pluralism in Moldova, the European Commission suggested that the concentration of media ownership and non-transparent media financing be properly tackled.³⁰⁶

The draft [Action] *Plan of measures to limit the excessive influence of private interests on economic, political and public life (de-oligarchization)*³⁰⁷ was submitted to the Venice Commission of the Council of Europe, where it underwent a review on 9-10 June 2023, alongside with the 2021 Ukrainian Law on “de-oligarchisation”³⁰⁸ and the relevant draft Law of Georgia. Following an interim opinion of the Venice Commission, the Draft Law of the Republic of Moldova on limiting excessive economic and political influence in public life (de-oligarchisation) was abandoned by the national authorities.

The final conclusions of the Venice Commission recommend that the Moldova’s draft Action Plan *should also not be adopted*.³⁰⁹ The key problem is its “personal” approach to solving the existing real problems with the attempts to “states capture”, unlike the systemic, recommended in the opinion of the Venice Commission. It refers to “the great paradox of de-oligarchisation laws,” which is presented as follows:

“If the administration and the judiciary are strong and independent enough to support the implementation of “personal measures” of the kind described, then such measures are no longer needed because the preconditions are met to deploy a much more systemic and effective strategy. If conversely the administration and judiciary are “captured” by the interests that the “personal measures” intend to fight, then such measures are either ineffective or – having to be adopted through executive acts that

³⁰⁴ Codul serviciilor media audiovizuale al Republicii Moldova în Republica Moldova (Code of the Republic of Moldova on the Audiovisual Media Services in Republic of Moldova), №174 of 8 November 2018, Art. 21, 28, https://www.legis.md/cautare/getResults?doc_id=138546&lang=ro#.

³⁰⁵ Dumont, Emily, Jonathan Solis, and Lincoln Zaleski, *Moldova: Profile of Media Ownership and Potential Foreign Influence Channels*, William & Mary’s Global Research Institute, 11 April 2023, p. 5, <https://docs.aiddata.org/reports/media-resilience/mda/Moldova-Profile-of-Media-Ownership-and-Potential-Foreign-Influence-Channels.pdf>.

³⁰⁶ Communication from the Commission to the European Parliament, the European Council and the Council, “Commission Opinion on the Republic of Moldova’s application for membership of the European Union”, Brussels, 17 June 2022 COM(2022) 406 final. P. 9-10, <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-06/Republic%20of%20Moldova%20Opinion%20and%20Annex.pdf>.

³⁰⁷ Plan of measures to limit the excessive influence of private interests on economic, political and public life (deoligarchization), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2023\)026-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2023)026-e).

³⁰⁸ Про запобігання загрозам національній безпеці, пов’язаним із надмірним впливом осіб, які мають значну економічну та політичну вагу в суспільному житті (олігархів) (On the prevention of threats to national security associated with the excessive influence of persons who have significant economic or political weight in public life (oligarchs)), Law of Ukraine, N 1780-IX, 23 September 2021, <https://zakon.rada.gov.ua/laws/show/1780-IX#Text>

³⁰⁹ Republic of Moldova - Final Opinion on limiting excessive economic and political influence in public life (de-oligarchisation), adopted by the Venice Commission at its 135th Plenary Session (Venice, 9-10 June 2023), CDL-AD(2023)019-e, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)019-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)019-e)

are not fully subject to effective judicial control – profoundly dangerous for human rights, democracy and the rule of law.”

The Venice Commission noted that in the in the Action Plan the oligarchs are defined by their influence on media. A “central issue” therefore is a need to strengthen media pluralism, including by the enforcement of competition law and merger control procedures, as well as to ensure transparency of media ownership, in line with the Recommendation of the Committee of Ministers of the Council of Europe on media pluralism and transparency of media ownership. Such ownership information should cover all media actors and be easily available and accessible to the public.

The Audiovisual Council provides tables with data on ownership of audiovisual media, audio media and media distribution services in the country.³¹⁰ At the same time there is no data on ownership of even the most popular AV resources for the public in Moldova in the online world.

Policy documents and draft laws

The Moldovan **Information Security Strategy** was adopted in 2018. It acknowledges that disinformation campaigns are part of hybrid warfare and can create internal instability within the country and damage its reputation internationally. In order to counter this threat, the strategy lists several objectives, the main ones being the development of a national strategic communication mechanism, enhanced cooperation between civil society and national security institutions and better regulation of media outlets, especially on the internet. The concrete actions to be undertaken to achieve each objective are not very ambitious and occasionally unrelated to the objective itself.³¹¹ Our interlocutors in Moldova pointed to the current drafting of the new National Security Strategy that will include provisions on information security.

The **National Concept for the Development of Mass Media** aims to improve the legislative and regulatory framework, to increase the independence of the mass media regulatory bodies, to improve managerial capacities in this sector, to help media outlets achieve financial independence, and so on. The document was received positively upon its adoption, but was not followed up by measures to achieve the listed objectives, namely the National Programme

³¹⁰ See Date privind proprietarii beneficiari ai furnizorilor și distribuitorilor de servicii media audiovizuale, <https://consiliuaudiovizual.md/transparencyof-ownership/>.

³¹¹ WatchDog.MD team, Moldova, In: Pavel Havlíček, Andrei Yeliseyev (eds), Disinformation Resilience Index in Central and Eastern Europe in 2021, Warsaw: EAST Center, 2021, p. 166, <https://east-center.org/wp-content/uploads/2021/09/DRI-report-2021.pdf>.

of the Development of Mass Media.³¹² In June 2023, the Programme, currently for 2023-2026, was positively assessed by the Government.³¹³

Meanwhile, the Parliament started to review a draft Law that would establish a mechanism for the State to subsidize the news media through establishing a special fund.³¹⁴ Our interlocutors pointed that the future Law³¹⁵ would define what are the mass media and provide for a register of the media to be conducted by the Ministry of Culture of Moldova. The draft law will provide that the subsidies are eligible only for the media that observe the professional standards (Deontological Code), and it mentions in this regard the Press Council.

Decisions of the regulators

Audiovisual Council

The NRA in Moldova, the Audiovisual Council (CA), is an “autonomous public authority”, “organizationally independent from any other entity”.³¹⁶ It is bound by the national Audiovisual Media Services Code to be “a guarantor of the public interest in the audiovisual field”. Its mission consists in “contributing to the development of audiovisual media services” in line with the principles of the Code, but also international norms, standards and best practices in the field. The public interest is defined as “ensuring a pluralistic and objective information of the population”, which is superior “to political, economic, commercial, ideological or other interests.”³¹⁷

The AVMS Code was amended in September 2021 regarding, inter alia, the dismissal of members of the NRA, which can now happen at any time on the basis of a performance review by Parliament. In practice that was the case weeks after the amendment entered into force. A legal opinion on the amendments by the OSCE expert found the submission of an annual report of the Council to the Parliament “a good accountability tool since it facilitates a proper oversight and exchange about the ways the public service media institutions have interpreted and implemented their role and remit.” However, he noted, “this must not give the

³¹² See Proiectul de hotărâre pentru aprobarea Programului național de dezvoltare a mass-mediei pentru anii 2023-2026 și a Planului de acțiuni privind implementarea acestuia, 25.04.2023, <https://www.parlament.md/ProcesulLegislativ/Proiectedeactelelegislative/tabid/61/LegislativId/6433/language/ro-RO/Default.aspx>.

³¹³ Hotărâre Nr. 375 din 07-06-2023 cu privire la aprobarea Avizului la proiectul hotărârii Parlamentului pentru aprobarea Programului național de dezvoltare a mass-mediei pentru anii 2023-2026 și a Planului de acțiuni privind implementarea acestuia, https://www.legis.md/cautare/getResults?doc_id=137239&lang=ro.

³¹⁴ See: În Moldova ar putea fi creat Fondul de subvenționare în domeniul mass-media – inițiativa a fost supusă consultărilor publice, 27.06.2023, <https://www.parlament.md/Actualitate/Comunicatedepresa/tabid/90/ContentId/9348/language/ro-RO/Default.aspx>, <https://tribuna.md/2023/06/28/in-republica-moldova-va-fi-creat-fondul-de-subventionare-in-domeniul-mass-media/>.

³¹⁵ Lege cu privire la Fondul de subvenționare în domeniul mass-media. Proiect (versiune iunie 2023), see: <https://www.parlament.md/LinkClick.aspx?fileticket=bJcCRg9ks4k%3D&tabid=285&language=ro-RO>.

³¹⁶ Codul serviciilor media audiovizuale al Republicii Moldova în Republica Moldova (Code of the Republic of Moldova on the Audiovisual Media Services in Republic of Moldova”), N 174 of 8 November 2018, Art. 74, https://www.legis.md/cautare/getResults?doc_id=138546&lang=ro#.

³¹⁷ Op.cit, Art. 73.

Parliament the power to alter one of the basic pillars of public service governance: independence based on clear mandates of high-level bodies' members."³¹⁸

In 2018, on the basis of the recently adopted ban on newscasts from countries other than EU member states, the USA and Canada, as well as parties to the ECTT (see above), the NRA of Moldova, then called the Coordination Council for the Audiovisual (CCA), imposed on a national television network, *Prime*, a maximum possible fine of Moldovan Lei (MDL) 70 000 (roughly amounting to EUR 3 500).³¹⁹ The reason was a live rebroadcast of the annual address of Russian President Vladimir Putin to the Federal Assembly of the Russian Federation. At the NRA hearings on 5 April 2018, the broadcaster claimed that the programme had not fallen under any of the categories defined by law. It also said that the live broadcast was neither unforeseen in the listings, nor initiated by *Prime*, whereas its editorial content could not be anticipated by the rebroadcaster. It assured the CCA that it would do its utmost to ensure that "such problems do not arise in the future".

On 3 February 2023, the current NRA, the Audiovisual Council of Moldova (CA) sanctioned the *REN-Moldova* television station with six fines totaling 30,000 MDL (about EUR 1,500) and a public warning.³²⁰ The violations were found by the CA during the monitoring of the programming of *REN-Moldova* on 9-15 January 2023. *REN-Moldova* rebroadcasts programming of the Russian national TV channel *REN-TV*, owned by the National Media Group. Since December 2022 it is under EU economic sanctions. The monitoring found violations related to the non-compliant placement of advertising in the main "Evening News" bulletin, as well as lack of indication of the sources of the images in the news that were not produced by the broadcaster itself, and an absence of a link between the images and the narrative of the news, thus, violating the provisions of Art. 13 ("Truthfulness of Information") para. 5) subparas (b) and (e), as well as of art. 66 ("Advertising and Teleshopping") para. 3) of the AVMS Code. In accordance with the AVMS Code, the sanctioned media service provider is obliged to broadcast the text of the decision in the 48 hours following from the date of adoption of the decision, with sound and/or visual image, at least three times, during peak audience hours, including at least once in the main news program.

Meanwhile, on 17 February 2023, the CA ordered to monitor newscasts of Canal 5, Cinema 1, Exclusiv TT, ITV, Orizont TV, PEH TV, and TVC channels that rebroadcast Russian TV programming. As a result of the monitoring, at the meeting of the CA on 7 April 2023, Cinema 1, PEH TV, and TVC 21 were publicly warned for breaching the rules on rigor and accuracy in

³¹⁸ Organization for Security and Co-operation in Europe. The Office of the Representative on Freedom of the Media. Legal Analysis on the Law on Amendment of the Code of Audiovisual Media Services of the Republic of Moldova. Commissioned by the OSCE Representative on Freedom of the Media from Dr. Joan Barata Mir, December 2021, p. 15, <https://www.osce.org/files/f/documents/3/2/509792.pdf>.

³¹⁹ Decision of the Coordination Council for the Audiovisual, No. 9/53, 5 April 2018, <http://cca.md/files/D.%209-53%20din%2005.04.2018%20-%20Cu%20privire%20la%20examinarea%20sesizarii%20Asocia%C8%9Biei%20Obstesti%20Comunitatea%20pentru%20advocacy%20si%20politici%20publice%20WatchDog1.pdf>.

³²⁰ „REN MOLDOVA” sancționat de CA cu amenzi în valoare de 30 000 lei pentru plasare de publicitate în știri și neindicarea surselor imaginilor ("REN MOLDOVA" sanctioned by the CA with fines in the amount of 30,000 Lei for placing advertising in the news and not indicating the sources of the images). Press release of the CA. 3 February 2023. See the text (in Romanian) at: <https://consiliuaudiovizual.md/news/ren-moldova-sanctionat-de-ca-cu-amenzi-in-valoare-de-30-000-lei-pentru-plasare-de-publicitate-in-stiri-si-neindicarea-surselor-inregistrarilor/>

editing and presenting news, and Orizont TV for breaching three other provisions of the AVMS on providing correct information, including lack of impartiality and failure to present “essential opposing views”.³²¹

The CA apparently provides oversight of the linear audiovisual media services, although currently is in the process of developing a Guide for providers on what is considered linear and non-linear AV programmes, so as to facilitate their oversight.

It should also be noted that the previous CA chair signed, in 2020, a directive instructing all of Moldova’s media outlets to mandatorily reflect the position of national and international authorities in reporting on Covid-related topics, and to abstain from presenting “arbitrary,” unofficial positions and opinions. In view of a CSO, under the guise of fighting Covid-related disinformation, the CA “attempted to establish a nationwide censorship regime”. The public outcry then forced the CA to withdraw it two days later, in order “to calm down society.”³²²

Government

In April 2023 the Government formally denounced Moldova’s participation in the Agreement of the CIS on the intergovernmental broadcaster “MIR” and refused to finance it further on. As of lately, “MIR” does not have a TV or radio license in Moldova. The decision was substantiated, in particular, by its propaganda and disinformation through omission of publicly important information.³²³

Commission for Exceptional Situations

By the Ordinance of the Parliament N 41 of 24 February 2022 on declaration of the emergency situation, during the state of emergency, the Commission for Exceptional Situations (CSE) is mandated to issue decisions aimed to implement a number of measures, including (Art. 2 para 13c) “introduction of specific rules on... counteraction to disinformation, false news and hate speech”. The CSE was originally established in January 2022 to counteract the energy crisis in the country. Its decisions are obligatory for public authorities, legal entities and individuals in the country.

On 16 December 2022, CSE, chaired by the Prime Minister and having the President of the CA as its member, adopted a resolution that affected the audiovisual landscape of Moldova. The official statement says: “In order to protect the national information space and prevent the risk of disinformation through the spread of false information or attempts to manipulate public opinion, based on the list of natural and legal persons subject to international sanctions, as well as the multiple findings of the Audiovisual Council for the lack of correct information in the coverage national events, but also of the war in Ukraine, during the state

³²¹ Public warnings for Cinema1, PEH TV, TVC 21, and Orizont TV for Breaches of Ensuring Correct Information for the Audience, Media Azi, 10/04/2023, <https://media-azi.md/en/avertizari-publice-pentru-cinema1-peh-tvc-21-si-orizont-tv-pentru-incalcari-privind-asigurarea-informarii-corecte-a-telespectatorilor/>.

³²² See: WatchDog.MD team, Moldova, In: Pavel Havlíček, Andrei Yeliseyev (eds), Disinformation Resilience Index in Central and Eastern Europe in 2021, Warsaw: EAST Center, 2021, pp. 156-175, <https://east-center.org/wp-content/uploads/2021/09/DRI-report-2021.pdf>

³²³ See: The Government Approves Termination of the Agreements on Creation and Activity of the MIR Interstate TV Channel, Media-AZI, 19/04/2023, <https://media-azi.md/en/guvernul-a-aprobat-denuntarea-acordurilor-privind-crearea-si-activitatea-televiziunii-interstatate-mir/>

of emergency the broadcasting license of six audiovisual media services” was suspended.³²⁴ Those services include the following TV channels: Primul in Moldova, RTR Moldova, Accent TV, NTV Moldova, TV6, Orhei TV. They still keep their websites with news and other information. “Primul in Moldova” retransmits programming of the Moscow’s First Channel, RTR Moldova – programmes of the Russian state broadcaster Rossiya TV, Accent TV – Moscow’s entertainment channel “Pyatnitsa!”, NTV Moldova – those by Moscow’s NTV channel, TV6 – programmes by TV6 Moscow, and Orhei TV – programmes by “Tsentralnoe televidenie” owned by Moscow’s TV-Center company.

Following the CSE decision, three of the six TV channels whose licenses were suspended migrated to other TV channels, along with their teams and editorial policy for which they were charged. NTV Moldova moved to EXCLUSIV TV, RTR Moldova – to Cinema 1, and TV6 – to ORIZONT TV. The new “hosts” are reportedly affiliated with the Socialist Party of the Republic of Moldova, or with the leader of the currently outlawed political party Șor, Mr Ilan Șor, who is hiding from Moldovan justice in Israel. Liliana Nicolăescu-Onofrei, chair of the Parliamentary Commission for Culture, Education, Research, Youth, Sports and Media, said that these transformations were the result of loopholes in the legislation, and that the lawyers of the Parliament were working to remove them.³²⁵ Those would probably require revision of the AVMS Code to avoid broadcasting under the “false flag”.

In March 2023, the license of Orhei TV, suspended by the CSE and associated with the Șor political party, expired on 31 May 2023 and was not extended by the CA for previous violations.³²⁶ In June, the party itself was declared unconstitutional.

Moreover, our interlocutors in Moldova and local reports say that in the Gagauz Autonomous Region, cable television operators rebroadcast, without hindrance, Russian TV stations including political programs and propaganda news. Both the TV distributors and the officials of the autonomy defy national regulations, citing local “specificity.”³²⁷ Apparently, the CA makes a case of the violation to impose lawful penalties on the operators.

Intelligence and Security Service

On 26 February 2022, two days after the invasion of Ukraine by the Russian Federation, the Intelligence and Security Service (SIS) of Moldova, tasked to provide an “efficient protection of fundamental rights and freedoms of citizens, society and state against risks and threats to state security, promotion of democratic values and national interests of the Republic of

³²⁴ CSE a aprobat măsuri privind securitatea energetică și protecția spațiului informațional, Press release of the Government of Moldova, 16 December 2022, see: <https://gov.md/ro/content/cse-aprobat-masuri-privind-securitatea-energetica-si-protectia-spatiului-informational>.

³²⁵ Cheptanaru, Vadim, The “9 lives” of TV channels of Șor and PSRM parties, Centre of Anti-corruption Journalism “Anticoruptie”, 2 March 2023, <https://anticoruptie.md/en/investigations/social/the-9-lives-of-tv-channels-of-shor-and-psrm-parties>. See also: <https://euvsdisinfo.eu/how-moldova-is-trying-to-regain-control-of-its-informational-space/>

³²⁶ Pakholnitskiy, Nikolay, “Телеканал Шора Orhei TV остался без лицензии. Как объяснил свое решение СТР?” NewsMaker.MD, 3 March 2023, <https://newsmaker.md/rus/novosti/telekanal-shora-orhei-tv-ostalsya-bez-litsenzii-kak-obyasnil-svoe-reshenie-str/>.

³²⁷ Cheptanaru, Vadim, The “Brainwashing” of Gagauzia: Who Is Protecting Russian Propaganda Channels, Centre of Anti-corruption Journalism “Anticoruptie”, 27 April 2023, <https://anticoruptie.md/en/investigations/social/the-brainwashing-of-gagauzia-who-is-protecting-russian-propaganda-channels>.

Moldova”³²⁸, banned *sputnik.md* website on the territory of the Republic of Moldova, because it “promotes information that incites hatred and war in time of the state of emergency”. The relevant authorities blocked the site immediately under the SIS decision. After a short while, *md.sputnik.news.com* appeared, with the same content.³²⁹

Similar incidents apparently happened during COVID-19 pandemic, when SIS ordered blocking of 54 web pages “promoting fake news about coronavirus evolution and protection and prevention measures”.³³⁰

Case law

Constitutionality of restrictions on news due to information security. When in 2017 the then President of the Republic of Moldova, Igor Dodon, refused to sign either the amendments or the new Audiovisual Code, he primarily objected to a provision, which, in order to protect the “national audiovisual space and to ensure information security”, allowed providers and distributors of media services to broadcast “informational and current affairs, military-political television and radio programmes” produced in EU member states, in the USA and Canada, and in other countries that have ratified the ECTT (paragraph 4 of Article 17). At that time, the President challenged the constitutionality of the amendment in the Constitutional Court of Moldova. The court observed first of all that the disputed provision in fact “establishes a blanket ban for broadcasters and service distributors from transmitting” such types of programmes produced in states other than those specified therein.³³¹ Using the three-part test for limiting freedom of expression prescribed by Article 10 ECHR as interpreted by the ECtHR, the Constitutional Court further noted that the amendments *comply with the general legitimate aims established by the Constitution*: ensuring national security and protecting the rights of others.³³² This conclusion was based on the presumption that broadcasters from states which have not ratified the ECTT might fail to comply with its requirements and the high democratic standards in the EU, the US and Canada.³³³

The court noted that there were available alternative means to access such programmes, as long as free Internet access to the broadcast programmes from the states in question remained. On the other hand, the court held that it was not unreasonable to apply the ban only to broadcast programmes, as television remained the most influential means of communicating ideas in Moldova.³³⁴

³²⁸ Security and Intelligence Service of the Republic of Moldova, Mission, Vision and Values, see <https://www.sis.md/en/content/mission-vision-and-values>.

³²⁹ Cheptanaru, Vadim, The “9 lives” of TV channels of Shor and PSRM parties, Centre of Anti-corruption Journalism “Anticoruptie”, 2 March 2023, <https://anticoruptie.md/en/investigations/social/the-9-lives-of-tv-channels-of-shor-and-psrm-parties>.

³³⁰ See <https://csometer.info/updates/state-emergency-republic-moldova>.

³³¹ Hotărâre privind controlul constituționalității Legii nr. 257 din 22 decembrie 2017 cu privire la completarea Codului audiovizualului al Republicii Moldova (Decision on the constitutionality of Law No. 257 of 22 December 2017 on additions to the Audiovisual Code of the Republic of Moldova), Application No. 2a/2018, 4 June 2018, paragraph 49, <https://constcourt.md/ccdocview.php?tip=hotariri&docid=663&l=ro>.

³³² Op. cit., paragraph 55.

³³³ Op. cit., paragraph 58.

³³⁴ Op. cit., paragraphs 59-60.

With regard to the existence of less intrusive means by which to protect legitimate interests, the court held that a case-by-case review of every broadcast programme with informational, analytical, military and political content that is not produced in member states of the EU, in the USA or Canada, nor in states that have ratified the ECTT, could lead to uncertainties, numerous litigations, costs and delays, which may give rise to arbitrariness. It would present “an excessive burden” for the state, as the authorities would then have to monitor programmes of broadcasters from jurisdictions outside the scope of the disputed provision. Furthermore, such monitoring would give excessive discretion to the overseeing authorities.³³⁵

The Constitutional Court therefore examined whether a fair balance was struck between the contested blanket ban and the legitimate aims pursued. It noted that the “free market of ideas” in Moldova is unbalanced in favour of broadcasters from outside the parties to the ECTT, the EU, the US, or Canada. It noted that there is “no European consensus among Council of Europe member states on how to regulate the rebroadcasting of radio or television programmes produced abroad that could jeopardise national security”.³³⁶ It cautiously avoided naming the Russian origin of the dominant programmes in the country.

The court also considered that the ban did not cover other types of broadcast programmes from the outside the parties to the ECTT, the EU, the US, or Canada, nor did it cover the sources of audiovisual programmes other than broadcasting. Consequently, persons allegedly affected by the restriction had access to other sources of information.³³⁷

The decision concluded by saying that there was no reason to believe that the impact of the ban in question amounted to a disproportionate interference with freedom of expression or the right of access to information. In view of the above, the court *rejected* the constitutional complaint filed by the President of the Republic of Moldova and *declared the disputed provision in the Code constitutional*.³³⁸

Unconstitutionality of the ban on commercials in foreign programming. On 23 November 2021, the Constitution Court of the Republic of Moldova adopted a judgment on constitutionality of certain provisions of the AVMS Code regarding advertising. In particular, it reviewed the provision of Art. 66 para 7 that bans “advertising and teleshopping programmes in retransmitted foreign audiovisual media services”. The Constitutional Court found such an “absolute” ban contradicting freedom of expression (Art. 32 of the Constitution) and Moldova’s obligations under the European Convention on Transfrontier Television (ECTT) on retransmission freedoms. The ban makes no difference between media services from the countries that ratified the ECTT and those from other countries. In the first case retransmitted advertising and teleshopping do not specifically or systematically address

³³⁵ Op. cit., paragraph 65.

³³⁶ Op. cit., paragraphs 70-71, 73, 76.

³³⁷ Op. cit., paragraphs 74-75.

³³⁸ Op. cit., paragraph 80.

Moldovan audience or violate Moldova's national legislation. The provision was found *unconstitutional*.³³⁹

According to the press reports and information provided by our interlocutors in Moldova, the recent appeals against restrictive measures of the Audiovisual Council in relations to TV channels have been dismissed by courts (in the first instance), this is also confirmed by the available press reports.³⁴⁰

Self-regulation of the media

It is important to take note of the recent decisions of the Network of Organizations of Media Self-Regulation (SOMS) adopted in Tbilisi and Vienna. Currently SOMS is supported by the Council of Europe and comprises of the national press councils of Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia, Tajikistan and Ukraine. They agreed to lay in the foundation of its work the set of "systemic features of propaganda".³⁴¹ For the purpose of this Study, we also note the appeal by SOMS "Journalistic Duty and Disinformation are Incompatible", which defines disinformation in the news media, and warns that "propaganda campaigns in the media that use lies and disinformation are capable to lead to real clashes, violence and oppression that result in innocent victims, including from among the audience of the media."³⁴²

In Tbilisi, in June 2016, representatives of SOMS decided that disputes related to propaganda in international affairs shall be reviewed by a special supranational commission of SOMS.³⁴³ Although the Commission adopted only a handful of decisions in 2017, while the SOMS does not seem to be operational since 2019, the documents adopted with the active participation of the Press Council (Consiliul de Presă) of Moldova can be instrumental for future decisions of the national self-regulation media mechanism.

The Press Council of the Republic of Moldova, a national self-regulatory body for traditional and online media, was founded by six associations/media and human rights institutions in 2009.

³³⁹ Curtea Constituțională, Hotărâre privind excepția de neconstituționalitate a articolelor 66 alin. (7) și 84 alin. (13) din Codul serviciilor media audiovizuale (excluderea publicității și a teleshopping-ului din programele retransmise) (sesizarea nr. 25g/2021) (Judgment of the Constitutional Court on an exceptional case of unconstitutionality of Art. 66 (7) and Art. 84 (13) of the Code of the Audiovisual Media (exclusion of advertising and teleshopping from retransmitted programmes) (application N25g/2021)), N36 of 23.11.2021: (in Romanian) https://www.legis.md/cautare/getResults?doc_id=128967&lang=ro

³⁴⁰ See news reports here: <https://nokta.md/sovet-po-televideniju-i-radio-vyigral-sud-u-telekanala-ntv-moldova-neobektivno-osveshHAVshego-vojnu/>; [https://esp.md/ru/sobytiya/2023/04/05/rtr-moldova-ne-udalos-osporit-reshenie-suda-telekompaniya-vyplatit-shtraf-za](https://esp.md/ru/sobytiya/2023/04/05/rtr-moldova-ne-udalos-osporit-reshenie-suda-telekompaniya-vyplatit-shtraf-za;); <https://locals.md/2022/pomenshe-russkogo-mira/>

³⁴¹ "Recommendations as to the dissemination of propaganda in the media", 17 June 2016, see (in Russian) https://www.mediacouncils.org/wp-content/uploads/2017/12/Recommendations_rus.pdf.

³⁴² "Journalistic Duty and Disinformation are Incompatible", 14 December 2018, see (in Russian), <https://www.mediacouncils.org/zhurnalistskij-dolg-i-dezinformatsiya-nesovmestimy/>

³⁴³ By-laws of the Consultative Commission on Counteraction to Propaganda, see (in Russian) https://www.mediacouncils.org/wp-content/uploads/2017/12/Consultative-Commission_Reg_rus.pdf.

Moldovan Journalist's Code of Ethics (Deontological Code), updated in 2019, states that the professional activity of the journalist is incompatible with political propaganda (para 1.16), while disinformation, and manipulative messages disseminated through the media are considered harmful and dangerous for the public and for the democracy (preamble). The Code of Ethics contains a special subchapter on verification of information, which provides:

“2.16 The journalist usually verifies the information from at least two sources independent from each other. The journalist publishes only the information that he considers truthful after verifying it.

2.17 If it is impossible to verify the information and the sources, such information can be made public only if failure to publish it may cause harm to the society. In such situation, one should indicate that the information has not been checked.

2.18 The journalist ignores the information if, after verifying the facts, it proves to be false, manipulative, or irrelevant to the topic tackled.”³⁴⁴

By September 2022, 145 print, broadcast and online media outlets and institutions, have signed the Code of Ethics, including those from the left bank and Gagauzia.³⁴⁵

The Code of Ethics makes the Press Council of Moldova responsible for the monitoring of the application of this Code and the review of the infringements of its provisions. Although the Press Council can only issue declaratory decisions and recommendations, such peer evaluations may serve as expert opinions in the courts of law. There have been several decisions related to disinformation adopted by the Press Council, although they do not necessarily cover political disinformation. The Press Council reportedly suffers from lack of a legal status in Moldova and support.

Some of our local interlocutors suggested establishing a co-regulation body for the Moldova's media, including in the online world, which could be based on the model of the Meta's Oversight Board.

Since 2013, the public broadcaster Teleradio-Moldova has the Office of Ombudsperson. Lately, her services have been considered deficient”, and a new work concept is to be drafted for the Office. According to the Supervision and Development Council (SDC) of the public provider, the Ombudsperson's activity for the TRM audience in 2022 was “inefficient”. During 2022, she filed only one monthly activity report, “subsequently refusing

³⁴⁴ Moldovan Journalist's Code of Ethics, 2019, <https://consiliuldepresa.md/upload/Moldovan%20Journalist%E2%80%99s%20Code%20of%20Ethics%202019.pdf>.

³⁴⁵ See: Consiliul de Presă din Republica Moldova, 1 May 2023, <https://consiliuldepresa.md/ro/page/lista-semnatarilor>.

to fulfill her obligations.”³⁴⁶ There are no other known media outlets in Moldova with an ombudsperson.

Moldova-related judgments of the ECtHR

Moldova-related judgments of the ECtHR on Article 10 (“Freedom of expression”) reveal an assessment of the practice of domestic courts on protection of this freedom, as well as correspondence of the national media law, and practice of the NRA on the issues discussed in the Study.

A detailed description of the media freedom situation at various periods since Moldova’s independence can be found in the ECtHR judgment in the case *of Manole and Others v. Moldova*. Here journalists from the national public broadcaster TRM alleged, inter alia, that they had to comply with a policy of devoting a disproportionate amount of airtime to reporting on the acts of members of the ruling political party, with little or no coverage of the acts and views of the opposition parties³⁴⁷. In 2002 the journalists protested against this practice: they went on strike and barricaded themselves in the TRM premises. Eventually, the building was stormed by special forces and the journalists were dismissed from work. The situation gave rise to large-scale demonstrations organised by the opposition to protest against the practice of censorship on public television, and strong international reactions, including from the Council of Europe.³⁴⁸

In its judgment the Court noted the following:

“... during most of the period in question [2001-2004] [NTM] was the sole Moldovan broadcasting organisation producing television programmes which could be viewed throughout the country ... Moreover, approximately 60% of the population lived in rural areas, with no or limited access to cable or satellite television or, according to the Secretary General’s Special Representative, newspapers ... In these circumstances, it was of vital importance to the functioning of democracy in Moldova that [NTM] transmitted accurate and balanced news and information and that its programming reflected the full range of political opinion and debate in the country and the State authorities were under a strong positive obligation to put in place the conditions to permit this to occur.”³⁴⁹

The Court found that the authorities had failed to comply with their positive obligations under Article 10 of the Convention as the legislative framework was flawed and held that there had been a violation of freedom of expression.³⁵⁰

³⁴⁶ The TRM Ombudsman Is Offered a Period of Three Months to Improve Professional Activity, Media Azi, 21/03/2023, <https://media-azi.md/en/ombudsmanului-trm-i-a-fost-oferit-un-termen-de-trei-luni-pentru-remediarea-activitatii-profesionale/>; Teleradio-Moldova SDC Qualifies the Activity of the TRM Ombudsman as Inefficient. Carmelia Albu’s Reaction, Media Azi, 24/02/2023, <https://media-azi.md/en/csd-al-teleradio-moldova-califica-drept-ineficienta-activitatea-ombudsmanului-de-la-trm-reactia-carmeliei-albu/>.

³⁴⁷ *Manole and Others v. Moldova* (no. 13936/02, ECHR 2009), § 105, <https://hudoc.echr.coe.int/eng?i=001-94075>.

³⁴⁸ *Ibid.*, §§ 72-78.

³⁴⁹ *Ibid.*, § 108.

³⁵⁰ *Ibid.*, § 111.

In the case of *NIT v. the Republic of Moldova* the ECtHR reviewed whether the revocation of broadcasting licence of *NIT* national TV channel in 2012, after repeated and serious breach of the statutory requirement to ensure political balance and pluralism in news bulletins, was indeed justified. The internal pluralism governance practice put in place by the Moldovan authorities did not seem to the Court to be markedly different from that of many other Council of Europe member States. Still, this case was apparently the first one in which the Court has been called upon to review the revocation of the licence of a national broadcaster on grounds of “internal pluralism” or failure to provide balanced political coverage.

In reporting about protests organised by the communist party in 2012 *NIT* had often not complied with the requirements concerning the diversification of sources, and had also used images, editing tricks or comments in order to distort the real facts or to denigrate the image of other subjects.³⁵¹

It should be made clear that the judgment of the ECtHR was adopted taking into account the situation of scarcity of available terrestrial analogue TV broadcasters at the material time of the conflict with *NIT*. The ECtHR noted in the judgment that “the internal pluralism policy chosen by the national authorities might be seen as rather strict”, the *NIT* case relates to a period before Moldova transitioned to terrestrial digital television, when the number of national frequencies was very limited (five channels) and when, following the protests with the TRM (see above), the authorities were under a positive obligation to put in place broadcasting legislation ensuring the transmission of accurate and balanced news and information reflecting the full range of political opinions.³⁵² At the material time, the news bulletins, broadcast nationwide, had been capable of having a considerable impact. The AV media situation has since changed to the omnipresence of digital media, including digital audiovisual media services with 13 national terrestrial TV channels and numerous online media resources and social networks.

It was “in the specific circumstances of the present case” that the domestic authorities had acted within their margin of appreciation in achieving a reasonable relationship of proportionality between the competing interests at stake, noted the Court. According to its judgment, there was no violation of the right to freedom of expression found.

In the case *Kommersant Moldovy v. Moldova*,³⁵³ the ECtHR found violation of Article 10 as the newspaper (*Kommersant Moldovy*) was forced to close without detailed reasoning or identification as to which phrases published therein threatened Moldova’s national security and territorial integrity. The Applicant published a series of articles criticizing the authorities of Moldova for their actions in respect of the breakaway Moldavian Republic of Transdniestria (MRT) and reproducing harsh criticism of the Moldovan Government by certain MRT and Russian leaders. The domestic courts ordered the closure of the newspaper as it considered that the articles had exceeded the permissible limits in the law by endangering the territorial integrity of Moldova, national security and public safety and creating the potential for disorder and crime, thus violating the Constitution. The domestic courts did not specify which

³⁵¹ *NIT S.R.L. v. the Republic of Moldova* [GC]- 28470/12, Judgment, 5 April 2022, § 39, <https://hudoc.echr.coe.int/fre?i=002-13629>.

³⁵² *Op.cit.*, § 202.

³⁵³ *Kommersant Moldovy v. Moldova*, No. 41827/02, 9 January 2007.

expression or phrase constituted a threat but maintained that the articles did not represent a fair summary of public statements by public authorities.

The ECtHR found that although the newspaper was subsequently re-registered under the name “*Kommersant-Plus*”, its closure constituted an interference with the Applicant's right to freedom of expression. The interference could be considered to have pursued the legitimate aims of protecting the national security and territorial integrity of the Republic of Moldova, given the sensitive topic dealt with in the disputed articles and the sometimes harsh language used. However, the ECtHR considered, the domestic courts did not give relevant and sufficient reasons to justify the interference, limiting them essentially to repeating the applicable legal provisions. The domestic courts did not specify which elements of the applicant's articles were problematic and in what way they endangered the national security and the territorial integrity of the country or defamed the President and the country. The domestic courts avoided all discussion of the necessity of the interference. The only analysis made was limited to the issue of whether the articles could be considered as good-faith reproductions of public statements for which the Applicant could not be held responsible in accordance with the domestic law. In light of the lack of reasons given by the domestic courts, the ECtHR found their judgements as not based on an acceptable assessment of the relevant facts.

Thus, the safeguard afforded by Article 10 to journalists and other media actors in relation to reporting on issues of public interest greatly depends on whether they report in good faith and aim to provide accurate and reliable information in accordance with the professional standards of journalism.

The test of necessity in a democratic society requires the Court to determine whether the “interference” complained of corresponded to a “pressing social need”, whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it are relevant and sufficient.³⁵⁴

International assessment of the media freedom situation in Moldova

Media outlets are considered by the OSCE ODIHR to be “in dependence on financing by political and economic interests”. This results in reducing of political pluralism, and also influences the agenda of public debate and undermines the watchdog function of the media. The interference into editorial autonomy results in self-censorship of journalists and renders media self-regulation attempts ineffective. Independent news production and investigative journalism significantly rely on international funding.³⁵⁵ Another report by this intergovernmental organization qualifies the media landscape in Moldova as “overall diverse”, while television stays as the primary source of political information.³⁵⁶

“The World Press Freedom Index” is probably the most authoritative instrument to evaluate the standing of the five countries in relation to freedom of the media. It is an annual global ranking of countries compiled and published, since 2002, by *Reporters without Borders* (RSF), an international non-governmental organisation safeguarding freedom of expression and

³⁵⁴ See *Sunday Times v. the United Kingdom* (no. 1), judgment of 26 April 1979, Series A no. 30, § 62.

³⁵⁵ Op.cit., p.17-18.

³⁵⁶ OSCE ODIHR, Limited Election Observation Mission. Republic of Moldova, Presidential Election, 1 and 15 November 2020, Final Report, Warsaw, 26 February 2021, p. 17, <https://www.osce.org/files/f/documents/1/5/479972.pdf>.

freedom of information. It is based upon the organisation's assessment of the countries' records in the previous year. The purpose of the Index is to compare the level of freedom enjoyed by journalists and media in 180 countries of the world. The figures below point to the place Moldova occupies in the Index, wherein the most advanced country as to the media freedom is ranked the 1st, while the least protective of the freedom country is the 180th.

	2021	2022	2023
Moldova	89	40	28

Source: Reporters without Borders, <https://rsf.org/en/index>. The Index is a snapshot of the situation during the calendar year (January-December) prior to its publication year.

According to the latest RSF report, the general situation with the media freedom is “satisfactory” in Moldova. Over the last three years it has significantly improved.

From 2022 onwards RSF evaluates also the level of the legal framework for freedom of the media, scoring the degree to which journalists and media are free to work without censorship or judicial sanctions, or excessive restrictions on their freedom of expression; their ability to access information without discrimination and to protect sources; as well as the level of impunity for those responsible for acts of violence against journalists. It is largely based on the responses of press freedom experts (including journalists, researchers, academics and human rights defenders) to an RSF questionnaire.³⁵⁷ This enables to put just the legal regulation in the countries under this review in a perspective of legal conditions for media freedom.

	2022	2023
Moldova	21	14

Source: Reporters without Borders, <https://rsf.org/en/index>. The Index is a snapshot of the situation during the calendar year (January-December) prior to its publication year.

In its latest assessment of the situation in Moldova, the RSF pointed to “certain audiovisual legal developments”.³⁵⁸ Over the two-year period the legal framework for media freedom there, according to the RSF, has improved.

The progress with media freedom is also assessed in the reports and papers issued in Brussels. As an EU candidate country, Moldova has achieved “some level of preparation” in the area of digital transformation and media, although, “secondary legislation needs amending, including the laws on freedom of expression... and access to information”, while “best media practice needs to be more widespread”.³⁵⁹ This means, in particular, that media can generally report freely, while legislation on access to information and freedom of expression “is largely in line with international standards,” though more needs to be done to ensure the full

³⁵⁷ Methodology used for compiling the World Press Freedom Index 2023, <https://rsf.org/en/methodology-used-compiling-world-press-freedom-index-2023>.

³⁵⁸ See: The World Press Freedom Index 2023, <https://rsf.org/en/index>.

³⁵⁹ Commission Staff Working Document, “Analytical Report following the Communication from the Commission to the European Parliament, the European Council and the Council Commission Opinion on the Republic of Moldova’s application for membership of the European Union”, Brussels, 1 February 2023 SWD(2023) 32 final. P. 25, https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-02/SWD_2023_32_%20Moldova.pdf.

implementation of the law.³⁶⁰ The framework for fundamental rights and freedom of expression reportedly follows European and international standards. Moldova has made important progress in freedom of the media.³⁶¹

³⁶⁰ Communication from the Commission to the European Parliament, the European Council and the Council, “Commission Opinion on the Republic of Moldova’s application for membership of the European Union”, Brussels, 17 June 2022 COM(2022) 406 final. P. 9-10, <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-06/Republic%20of%20Moldova%20Opinion%20and%20Annex.pdf>.

³⁶¹ Op.cit., p. 15.

V. Analysis and conclusions

V.1 Legal needs assessment on existing national instruments, legislation and practices

Future of media freedom lies in the quality journalism, which is upheld by journalistic practices that “serve the public interest and are based on good faith and the ethics of the profession.”³⁶² Such practices, irrespective of whether performed by journalists or other media actors, seek to provide the public with accurate and reliable information that complies with the principles of fairness, independence and transparency, public accountability and humanity. It is journalism committed to these principles that should be acknowledged as a public good with its key role and value for societies. The public authorities of Moldova are encouraged to join other European states in ensuring promotion and support of such a concept of journalism through national law and policy.

Disinformation can be a propaganda tool, but in itself both – propaganda and disinformation – are forms of legitimate free speech. International law prohibits some narrow types of speech, for example propaganda for war and hatred, but not because they are false but because they are harmful.

The EU institutions believe that when imposing restrictions on speech in the mass media, certain objectives are of paramount importance today, namely,

- the cessation of continuous and concerted propaganda activity in favor of Ukraine’s military aggression addressed to civil society in the European Union and in neighboring countries, which falls within the objective of safeguarding the values of the European Union, its fundamental interests, its security, its integrity and its public order, and,
- the protection of territorial integrity, sovereignty and independence of Ukraine and the promotion of a peaceful resolution of the crisis in that country, which are part of the broader objective of maintaining peace and of international security.

These objectives are valid for the national policies of Moldova as a country neighbouring to Ukraine and subject to propaganda of aggression that undermines its values as a candidate country to the EU. They are recommended to be formally recognized in the national law and policies.

This Study assessed the legal needs in relation to the existing domestic instruments, which may be enumerated as follows:

- Recognition in law and policy of economic sanctions as the key instrument of the EU and its member states in countering alien propaganda, including a ban on rebroadcasting and any other form of retransmission of the programmes of the sanctioned media.

³⁶² Declaration by the Committee of Ministers on the financial sustainability of quality journalism in the digital age (Adopted by the Committee of Ministers on 13 February 2019 at the 1337th meeting of the Ministers' Deputies).

- Considering that the restrictions on freedom of expression and freedom of the media in exceptional situations, such as state of emergency, may be broad, but they become null and void once the emergency situation regime is over.
- While the mass media should continue to enjoy the liberty of reporting statements by the politicians without fear of being sanctioned if the stated facts are untrue, the deliberate omissions or false narratives of public officials are recommended to be put under the scrutiny of the Parliament and the Government. Such misbehavior should result in a public correction of the errors and lies and resignation offered by those who mislead the public offices and – via the media – the public at large. In this sense, the law will restrict the impunity for disinformation currently enjoyed by the parliamentarians and public actors.
- Public service media and community media, once functioning as trustworthy news media, are capable to establish a standard for the commercial media in the provision of timely and reliable information to the public, especially in emergency situations. We recommend that TRM improves its professional standards through a strict observance of the Deontological Code, full compliance with the Press Council decisions, and exemplary work of its Ombudsperson to gain trust of the audience and provide reliable information to the public.
- For the same reason of provision of timely and reliable information to the public, it is recommended that specific legal and policy acts are adopted to establish community media in Moldova as an important news source for the population outside of the capital.
- While internal pluralism is essential in the work of the PSM, it is recommended to be extremely cautious when using the argument of lack or even absence of “internal pluralism” in the content of an individual commercial media to impose changes of independent editorial policy through legal sanctions.
- It is recommended to reinterpret the legal essence of the right to reply, to refute and to replicate in the national law in line with the legal traditions of the European Community rather than the post-Soviet Russian model. The public authorities are recommended to use the right of reply to refute harmful disinformation in the national media, as well as use this right as provided in the Deontological Code of Journalists and self-regulation mechanisms.
- Moldova is recommended to accede the UN Convention on the International Right of Correction and the International Convention concerning the Use of Broadcasting in the Cause of Peace, as well as joins European institution in the audiovisual sphere as it fits its current necessities.
- Well-grounded decisions of the national Press Council that evaluate the journalistic practice from the perspective of professional and ethical standards are essential for the courts and the national media regulator in adjudicating conflicts related to objectivity, duties and responsibilities, as well as fairness of reporting of the media actors. They are also essential to distinguish journalists and other media professionals from propagandists who should not be protected by media privileges.
- In the view of the intergovernmental organizations, Russia conducts an aggression against Ukraine. Intergovernmental human right expert bodies point to the possibility of restricting propaganda of the aggressors, or aggressive propaganda and disinformation. We find this as a more applicable to the human right framework type

of restriction based on the country origin of AV programmes rather than the current criteria of a non-accession to the ECTT or not being a member state of the EU.

- To gain and sustain public trust, the government is recommended to be transparent to the public and quickly provide trustworthy socially important information. The just adopted Law on Public Information of Public Interest does not envision the key instrument that will make it effective – the independent oversight mechanism. We recommend to have the Law amended in this regard.
- Public display of communist symbols in today's Moldova poses threats to national security and public order. It is recommended to reintroduce a ban on such activity in line with the earlier decisions of the Constitutional Court of Moldova and the relevant case law of the ECtHR.

To make these legal needs on existing national instruments, legislation and practices feasible, we suggest also practical steps in the field of law and policy for consideration of relevant authorities (see Annex 1).

Below we describe in detail the rationale behind these recommendations, based on our analysis of the national legal framework and relevant international standards.

V.2 Key legal issues and possible solutions.

Can propaganda and disinformation be prohibited as such?

Preserving freedom of the media and freedom of expression while countering harmful disinformation is a principled angle of the study. Security concerns should not overtake the discussion on disinformation today, on the contrary the issue should be tackled jointly within both human rights framework and that of national security and other public interests. Comprehensive security principles entail the need to address security issues from the viewpoint of the human dimension as well.

Disinformation (sometimes labeled as “fake news”), misinformation, and propaganda, all have non-dissimilar meanings. Important factors to separate the terms are, however, the intent and motivation of the speaker.

An analysis of the international documents points to a differentiation between the following three types of political lies: (1) illegal disinformation, (2) legal disinformation that “may cause public harm”, and (3) legal and harmless disinformation. Let us take a look at the three categories.

Under international law *illegal (dis)information* is prohibited if it amounts to propaganda for war of aggression, advocacy of national, racial or religious hatred that constitutes incitement to discrimination or violence (International Covenant on Civil and Political Rights: art.20). It may also be subject to certain restrictions if it *violates* the rights of others or national security, public order, public health or morals (International Covenant on Civil and Political Rights: art.19). But with certain exceptions, it remains generally irrelevant though, whether such illegal information is false or truthful.

Harmful but legal disinformation consists of threats to democratic processes as well as to public goods, which include health, the environment and security.³⁶³ On the EU level, it can be countered with (1) improving the capabilities of its institutions to detect, analyse and expose disinformation; (2) strengthening coordinated and joint responses of the states to disinformation; (3) mobilising private sector to tackle disinformation through co-regulation and self-regulation; (4) raising awareness and improving societal resilience.

All *other falsities* are harmless and therefore should remain legal and exist without governmental or intergovernmental interference; this category may include, in particular, satire and parody, or clearly identifiable partisan news and voices.

There is no doubt that current disinformation campaigns in the context of the Russia's armed invasion in Ukraine, present risks to the comprehensive security in the region. The exercise of the freedom of expression is not absolute and may indeed be subject to restrictions, for instance when it comes to the protection of public order or national security. Such limitations may be relevant for both truthful and untrue information; however, they should always be proportionate and entail the least intrusive measures.

Dissemination of false and distorted reports – even systematic and intentional, even in the narrow cases of them undermining international peace – have not been recognized as a sufficient reason for restrictions of free expression. Academic discussion shows that there is no effective legal prescription that would establish a separate tort or crime of disinformation *per se*.³⁶⁴ At the same time, those who engage, through the media, in propaganda for wars of aggression, in advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence should not be shielded by their right to freedom of expression. Such propaganda and advocacy widely use disinformation as its instrument, therefore judicial interventions to provide more accountability in this context should be encouraged.

Disinformation is especially dangerous, as long as it comes on the background of lack of pluralism of the media, lack of professional standards and values of the mainstream media and in the climate when independent media and journalists are systematically stigmatized as enemies and foreign agents. It is not a coincidence that while major social networks step on the road of ensuring the integrity of their services through their shared Code of Practice and Transparency Centre, the key broadcasters and news agencies under EU sanctions neither embrace professional codes of journalists, nor bow to the existing self-regulation bodies.

Experts believe that fighting back disinformation with freedom of expression, with a plurality of media content emanating from a variety of sources, “is the ideal”. “Maintaining the idea of positive content rather than prohibitions is still to be preferred from a freedom of expression viewpoint, but it must be recognised that this is not a quick and efficient way forward”.³⁶⁵

³⁶³ EU Action Plan against Disinformation, 5.12.2018 JOIN(2018) 36 final, https://www.parlament.gv.at/dokument/XXVI/EU/47402/imfname_10865686.pdf.

³⁶⁴ See, e.g. Milanovic, Marko, Viral Misinformation and the Freedom of Expression: Part I, *EJIL: Talk!*, 13 April 2020, <https://www.ejiltalk.org/viral-misinformation-and-the-freedom-of-expression-part-i/>.

³⁶⁵ Nyman Metcalf, Katrin, Aggression in the Information Space – Russia and its neighbours / *The Uppsala Yearbook of Eurasian Studies II*. Ed. by: Kaj Hober, Anna Jonsson Cornell, Leonid Polishchuk, 2017. P. 172.

Disinformation also presents challenges to freedom of the media and the values of the human dimension in general. Omnipresent disinformation is currently the main challenge to the public trust in the media. Disinformation and propaganda hit at the core of the prestige and respect the independent media enjoys in a democratic society. Therefore, journalists are also victims of intentionally false and manufactured biased news, though in most cases they are not their authors.

International law and intergovernmental organizations clearly warn against governments' overreacting and knee-jerk internet shutdowns, banning or blocking of websites, social media accounts and TV channels. Such measures establish a dangerous precedent as they are not based on clear international norms and proper juridical process in line with the rule of law.

Some national governments in Europe (and beyond) became known for aiming to suppress political dissent by ostracising and outlawing disinformation in the media as such. They have taken an opportunity of the global drive of anti-COVID-19 measures. This trend comes clear from the reports of intergovernmental organizations.

Since the COVID-19 pandemic, the introduction of bans on so-called disinformation, and severe legal liability for violations thereof, has been on the rise in the world. The COVID-19 pandemic has exacerbated an already existing trend of authorities that want to repulse the dissemination of information, news, or opinions they consider false with penal measures. Far too often any information that does not fit or coincide with the current official position may be declared false. Even if this does not lead to the actual imposition of criminal and administrative penalties, such legal restrictions bring about self-censorship and the fear of sanctions.

Often referring to it as “untruthful socially significant information” or “fear-mongering news,” authorities are quick to block websites, unless the content providers speedily and effectively remove this information.

An implementation of a regulatory framework can potentially threaten the freedom of expression. This is currently the case in Greece. In November, 2021, Greece amended Article 191 of the Penal Code, which penalises the dissemination of false news.

The new Article provides that “Anyone who publicly or via the internet spreads or disseminates in any way false news that is capable of causing concern or fear to the public, or of undermining public confidence in the national economy, the country's defence capacity or public health, shall be punished by imprisonment of at least three (3) months and a fine. If the act was repeatedly committed through the press or via the internet, the perpetrator is punished with imprisonment of at least six (6) months and a fine. The owner or issuer of the medium through which the acts of the previous paragraphs were performed shall be punished with the same penalty”.³⁶⁶ This amendment can be perceived as being a risk to freedom of expression, as it grants regulators or prosecutors the power to decide what is true and what should be considered to be false information.³⁶⁷

³⁶⁶ Penal Code of Greece, Art. 191 para 2.

³⁶⁷ Papadopoulou, L. (2022). Monitoring media pluralism in the digital era: Application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey in the year 2021. Country report: Greece. Centre for Media Pluralism and Media Freedom, <https://cadmus.eui.eu/>,

The authorities of several States have resorted to pronouncing state of emergency or exceptional situations, or special legal orders and similar regimes, to base such measures upon. The accompanying penalties can bear heavy fines or imprisonment of up to several years. It is very worrisome that some of the recent anti-disinformation norms, presented as necessary to help fight the spread of COVID-19, are in fact neutral to the pandemic, and sometimes clearly encompass more than the mere pandemic-related types of information. As these measures are introduced for an indefinite or undefined timeframe, there is a strong risk that they will remain in force independent of when the pandemic ends, unless the required action to repeal them is taken.

This can have extremely harmful consequences for media freedom. Regulatory steps, enabling the prosecution of people for producing or circulating disinformation, carry with them the risks of catching legitimate journalism in the net and of infringing freedom of expression rights more broadly. Criminal law is one of the most intrusive forms of interference with the freedom of expression and should be applied only in exceptional circumstances. The dominant position of the government makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks of its adversaries and criticisms in the media.

Even though it is clear that the war in Europe is an extraordinary situation, it is also clear that the authorities do not always act with great caution when restricting the fundamental right to freedom of expression thus inducing serious chilling effects on those reporting on issues of public interest. This is all the more poignant, since such measures often condone the dissemination of knowingly or recklessly false statements by official or State actors. In addition to other possible harms, they have a boomerang effect, as they undermine confidence in government information at large and lead to public distrust in public health authorities and public media.

Summary: Disinformation can be a propaganda tool, but in itself both – propaganda and disinformation – are forms of legitimate free speech. International law prohibits some narrow sorts of speech and propaganda for war and hatred, but not because they are false.

Are special economic measures (sanctions) in relation to propaganda media and propagandists in line with freedom of the media principles?

Since 2014, the European Union adopted a number of sanctions in relation to the Russian and Belarusian media and media workers. Several times they were appealed in the European Court of Justice.

In 2022, the restrictions were based on an indirect interpretation by the European institutions of the “propaganda for war,” although the term was not straightforwardly used in relation to the programming of the Russian channels, but rather hinted at. For example, the European Council referred to Russia’s “continuous and concerted propaganda actions” to “justify and

see also Centre for Media Pluralism and Media Freedom (CMPF). Monitoring Media Pluralism in the Digital Era, p. 118, <https://hdl.handle.net/1814/74712>.

support its aggression against Ukraine”.³⁶⁸ In its turn, the European Commission substantiated the sanctions by referring to the “massive propaganda and disinformation” of the Russian media outlets in relation to “*this outrageous attack on a free and independent country,*” and that they pour “*their toxic lies justifying Putin’s war*”, and pose a “significant and direct threat to the Union’s public order and security.”³⁶⁹ According to the EU documents, the Russian Federation “has engaged in a systematic, international campaign of media manipulation and distortion of facts in order to enhance its strategy of destabilisation of its neighbouring countries and of the Union and its Member States.” Those actions “have been channelled through a number of media outlets under the permanent direct or indirect control of the leadership of the Russian Federation. Such actions constitute a significant and direct threat to the Union’s public order and security” and “are essential and instrumental in bringing forward and supporting the aggression against Ukraine, and for the destabilisation of its neighbouring countries”.³⁷⁰

Such a tense narrative even allowed some authors to refer to the Regulation as restrictions of “[pro-war] propaganda” by inserting the attribution in square brackets.³⁷¹

In another interpretation of the reasons of the sanctions, the Denis Diderot Committee,³⁷² in France, said:

“The comments made on these channels, in particular on Rossiya 1, go beyond the “false narratives and disinformation” mentioned in the documents of the European Council. In addition to legitimizing the rhetoric of aggression against Ukraine, they broadcast calls for the kidnapping and even the assassination of foreign leaders visiting Ukraine, statements inciting the genocide of Ukrainians, homophobic and antisemitic statements, legitimisation of possible use of nuclear weapons against ‘40 Nazis States’, announcement that World War III has begun and that Russia must ‘demilitarize NATO’”.³⁷³

The legality of the sanctions against the Russian media was confirmed by the Court of Justice of the European Union (CJEU).³⁷⁴ In dismissing the claims of the RT branch in France, it treated the ban in Article 20(1) of the ICCPR quite broadly by saying that propaganda for war included also “propaganda of military aggression against Ukraine addressed to the civil society in the Union”. The judgment concluded by saying that the scope of the prohibition imposed by Article 20(1) includes not only incitement to a future war, but also “comments made continuously, repeatedly and concertedly in favour of an ongoing war”, unleashed contrary to international law, “in particular if these comments come from a media controlled, directly

³⁶⁸ Ibid. at (7).

³⁶⁹ Ukraine: Sanctions on Kremlin-backed outlets Russia today and Sputnik, European Commission Press release (2 March 2022), https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1490.

³⁷⁰ *Concerning Restrictive Measures of Russia’s Actions Destabilising the Situation in Ukraine*, Council Reg. (EU) 2022/350 Amending Reg. (EU) No 833/2014 (Mar. 1, 2022), para 7-9, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R0350>.

³⁷¹ See Arturo J. Carrillo, *Between a Rock and a Hard Place? ICT Companies, Armed Conflict, and International Law*, 46 Fordham J. Int’l L. 57 (2023), at 83, <http://dx.doi.org/10.2139/ssrn.4205028>.

³⁷² Comité Denis Diderot / Denis Diderot Committee is a French CSO, aiming at the exclusion of war propaganda and disinformation in the Russian and Belarus electronic media. See: <https://www.denisdiderot.net/about>.

³⁷³ Rossiya 24, RTR Planeta and TV Centr International, Denis Diderot Committee (June 25, 2022), <https://www.denisdiderot.net/3russianstatetv>.

³⁷⁴ RT France v Council, European Court of Justice, Case T-125/22.Judgment of the General Court.

or indirectly, by the aggressor State” (para 210). In this way, the Court also rejected the vision that propaganda for war is legitimate once the war began.

Speaking of the sanctions in the context of freedom and pluralism of the media, guaranteed by the EU Charter, the Court noted that the importance of the objectives pursued by the sanctions “outweigh the negative consequences, however considerable, of these measures for certain [media].”³⁷⁵ In its decision, the CJEU failed to address the arguments of the complainant on censorship or prior restraint that was introduced by the sanctions on the media concerned.

The EU sanctions against the Russian media were met with certain criticism by the international mandate-holders on freedom of expression,³⁷⁶ scholars³⁷⁷ and human right organizations³⁷⁸ as damaging the recognized interpretation of freedom of the media. Others believed that they were appropriate as they “paled” by comparison “when contrasted with the Kremlin’s iron-fisted repression and blocking of all independent media inside Russia”.³⁷⁹

It is worth noting that the EU sanctions were modeled, to a degree, after similar sanctions introduced earlier by Ukraine and some other Eastern European states.³⁸⁰

Summary: The Court of Justice of the EU believes that the importance of the objectives, namely,

- 1) the cessation of continuous and concerted propaganda activity in favor of Ukraine’s military aggression addressed to civil society in the Union and in neighboring countries, which falls within the objective of safeguarding the values of the Union, its fundamental interests, its security, its integrity and its public order,**
- 2) the protection of territorial integrity, sovereignty and independence of Ukraine and the promotion of a peaceful resolution of the crisis in that**

³⁷⁵ Op.cit, para. 202 (as translated from French into English).

³⁷⁶ See: *Ukraine: Joint Statement on Russia’s Invasion and Importance of Freedom of Expression and Information*, (May 4, 2022), United Nations Office of the High Commissioner of Human Rights, <https://www.ohchr.org/en/statements-and-speeches/2022/05/ukraine-joint-statement-russias-invasion-and-importance-freedom>.

³⁷⁷ Popović, Igor, *The EU Ban of RT and Sputnik: Concerns Regarding Freedom of Expression*, EJIL (Mar. 30 2022), <https://www.ejiltalk.org/the-eu-ban-of-rt-and-sputnik-concerns-regarding-freedom-of-expression/>; Björnstjern Baade, *The EU’s “Ban” of RT and Sputnik: A Lawful Measure Against Propaganda for War*, *VerfBlog*, 2022/3/08, <https://verfassungsblog.de/the-eus-ban-of-rt-and-sputnik/>. See also FN 43 in Institut für Europäisches Medienrecht (Mark D. Cole, Christina Etteldorf), *Implementation of the revised Audiovisual Media Services Directive Background Analysis of the main aspects of the 2018 AVMSD revision*, European Union, 2022, [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/733100/IPOL_STU\(2022\)733100_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/733100/IPOL_STU(2022)733100_EN.pdf).

³⁷⁸ *Fighting disinformation with censorship is a mistake*, European Federation of Journalists (Mar. 1 2022); *Statement on banning of RT and Sputnik*, International Press Institute (Mar. 4, 2022); *Response to the consultation of the UN Special Rapporteur on Freedom of Expression on her report on challenges to freedom of opinion and expression in times of conflicts and disturbances: ARTICLE 19’s Submission* (19 July 2022) at 10-11, <https://www.ohchr.org/sites/default/files/documents/issues/expression/cfis/conflict/2022-10-07/submission-disinformation-and-freedom-of-expression-during-armed-conflict-UNGA77-cso-article19.pdf>.

³⁷⁹ See Arturo J. Carrillo, *Between a Rock and a Hard Place? ICT Companies, Armed Conflict, and International Law*, 46 *Fordham J. Int’l L.* 57 (2023), p.85, <http://dx.doi.org/10.2139/ssrn.4205028>.

³⁸⁰ See Richter, Andrei, *Sanction law against Russian and Belarusian audiovisual media*, IRIS-Extra, European Audiovisual Observatory (2022) at 1-29, <https://rm.coe.int/iris-extra-2022-sanction-law-against-russian-and-belarusian-audiovisua/1680a8ff9f>.

country, which are part of the broader objective of maintaining peace and of international security,

- is such as to outweigh the negative consequences, however considerable, of the economic sanctions for certain Russian media.³⁸¹

Such sanctions include a ban on rebroadcasting and any other form of retransmission of the programmes of the sanctioned media, although permit their correspondents work in the EU.

Does state of emergency / martial law allows to restrict freedom of the media?

It is important to underline, that under UN³⁸² and Council of Europe³⁸³ human rights' regimes, freedom of expression and freedom of information are derogable human rights. That means that in time of officially proclaimed state of public emergency, the States may take measures that deviate from their obligations on these freedoms.

In modern times, the states generally prefer not to derogate - in emergencies of all sorts - from standards on freedom of expression. Within the OSCE, they committed themselves to maintain freedom of expression and freedom of information under emergency situations, "with a view to enabling public discussion on the observance of human rights and fundamental freedoms as well as on the lifting of the state of public emergency." In this regard, they pledged to "take no measures aimed at barring journalists from the legitimate exercise of their profession other than those strictly required by the exigencies of the situation"³⁸⁴.

The ECtHR has also emphasized that even in a state of emergency "must not serve as a pretext for limiting freedom of political debate", "any measures taken should seek to protect the democratic order from the threats to it, and every effort must be made to safeguard the values of a democratic society, such as pluralism, tolerance and broadmindedness." (ECtHR 2018a: para 210; ECtHR 2018b: para 180).³⁸⁵

The Johannesburg Principles on National Security, Freedom of Expression and Access to Information explain that in time of public emergency which threatens the life of the country and the existence of which is officially and lawfully proclaimed (under any name, such as "state of emergency" or "special situation") in accordance with both national and international law, a state may impose restrictions on freedom of expression and information

³⁸¹ *RT France v Council*, European Court of Justice, Case T-125/22.

³⁸² "International covenant on civil and political rights", Adopted and opened for signature, ratification and accession by UN General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, Art. 4, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

³⁸³ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome: 4.XI.1950, Art. 15, https://www.echr.coe.int/Documents/Convention_ENG.pdf.

³⁸⁴ "Document of the Moscow meeting of the conference on the human dimension of the CSCE", 1990, para 28.9, <https://www.osce.org/files/f/documents/2/3/14310.pdf>.

³⁸⁵ Case of *Mehmet Hasan Altan v. Turkey*, Application no. 13237/17, judgment, 20 March 2018, para 210, <http://hudoc.echr.coe.int/eng?i=001-181862>; Case of *Şahin Alpay v. Turkey*, Application no. 16538/17, judgment, 20 March 2018, <http://hudoc.echr.coe.int/eng?i=001-181866>.

but only to the extent strictly required by the exigencies of the situation and only when and for so long as they are not inconsistent with the government's other obligations under international law. Expression shall not be subject to prior censorship in the interest of protecting national security, unless the public emergency is introduced because of the threats to the life of the country (principles 3 and 23).³⁸⁶

This interpretation of the limits of freedom of expression under emergency rule correlates to the position of the OSCE participating States which "endeavor to maintain freedom of expression and freedom of information, consistent with their international obligations and commitments, with a view to enabling public discussion on the observance of human rights and fundamental freedoms as well as on the lifting of the state of public emergency."³⁸⁷

The Constitution of Moldova and the Law no. 212/2004 "On the regime of the state of emergency, siege and war"³⁸⁸ permit the Parliament to declare and extend the state of emergency in the country in case of threat to national security. Considering "the situation related to the regional security and the menace to the national security" it was indeed declared by the Parliament in February 2022 and extended since then several times.³⁸⁹ During the period of the current state of emergency, the Commission for Exceptional Situations of the Republic of Moldova is empowered by the Decision of the Parliament to "make provisions" – obligatory for all public institutions, businesses and citizens, such as implementing "introduction of special rules for the use of telecommunications, the fight against misinformation, fake news and hate speech".³⁹⁰

Summary: International standards and national law permit restrictions on freedom of expression and freedom of the media in exceptional situations, such as state of emergency, in case of serious threats to national security and life of the nation as such, for example under a real and imminent threat of an armed aggression or mutiny. It should be understood that these restrictions are to become null and void once the emergency situation regime is canceled.

Is propaganda for "information war" a form of propaganda for war as understood by the ICCPR? Are calls for "cyber aggression" a propaganda to be prohibited in the national law?

Judging from the above, information war is to be considered, in itself, part of aggressive policy through the media. We do not think, however, that it should be considered a form of the prohibited "war propaganda".

³⁸⁶ The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1 October 1995, see <https://www.refworld.org/docid/4653fa1f2.html>.

³⁸⁷ Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 3 October 1991, para (28.9).

³⁸⁸ Закон о режимах чрезвычайного, осадного и военного положения, N 212-XV от 24.06.2004, https://gov.md/sites/default/files/document/attachments/zakon_o_rezhimah_chrezvychaynogo_osadnogo_i_voennogo_polozheniya.pdf.

³⁸⁹ Decision on the declaration of the state of emergency. 24 February 2022, N 41, <https://rm.coe.int/1680a5b609>

³⁹⁰ Ibid., Art. 2.

On the other hand, there are growing arguments to believe that if hybrid aggression is likely to bring about casualties among the military personnel and/or civilians, calls to such an aggression might probably be equaled with propaganda for war (at least in the future).

Is there a way to stop the media repeating and disseminating lies by politicians?

The national law of Moldova provides certain privileges to the media that disseminate untrue statements of facts or fact-based opinions if, originally, they were pronounced in official documents or “in the course of sessions of the public authorities by the persons performing public functions or any persons invited to the session”.³⁹¹ This corresponds to the law and policies that exist in a number of other countries in Europe.

At the same time, we are aware that the politicians use the media to make controversial and purely untrue statements in order to sway the public opinion and gain public support. In some cases, it happens in conflict situations that might endanger public order and national security. We suggest, while keeping the privileges of the media, to look into the legal practice in other European states on the conduct of politicians.

In the U.K, for example, the December 2022 edition of the Ministerial Code, a set of the standards of conduct expected of the Cabinet ministers and how they discharge their duties, states in its very first article (as did its predecessors) that:

It is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister.³⁹²

But the Ministerial Code is not a law, and it is ultimately up to the UK Prime Minister to order an investigation into whether the code has been breached, decide how to interpret and enforce it, though the convention is that indeed ministers offer their resignation if they break the code.³⁹³

Also in the UK, the Seven Principles of Public Life (known as the Nolan Principles) apply to anyone who works as a public office-holder, both those who are elected or appointed, nationally and locally, including the police, courts, those in the health, education, and care services, as well as those in other sectors delivering public services. These people are considered both servants of the public and stewards of public resources. Principle 6 states:

³⁹¹ Law of the Republic of Moldova “On Freedom of Expression” of 23 April 2010 No. 64 Art. 28. https://www.legis.md/cautare/getResults?doc_id=126675&lang=ro.

³⁹² See: <https://www.gov.uk/government/publications/ministerial-code>

³⁹³ Worrall, Patrick, What are the consequences for politicians who lie? 28 April 2021, Channel 4 (UK), <https://www.channel4.com/news/factcheck/factcheck-what-are-the-consequences-for-politicians-who-lie>. See also: Russell, Meg, The misleading of parliament greatly troubles the public: something should be done, The Constitution Unit, 20 February 2023, <https://constitution-unit.com/2023/02/20/the-misleading-of-parliament-greatly-troubles-the-public-something-should-be-done/>

“Holders of public office should be truthful”.³⁹⁴ Like the Ministerial Code, the Nolan Principles are not law, though they are taken into account when the authorities are investigating MPs for breaking their code of conduct.

In 2021, following the scandal of the UK Prime Minister lying in the Parliament, there were attempts to introduce legislation to make lying in the House of Commons a criminal offence. This would mean that all MPs, including Ministers, would face a serious penalty for knowingly making false statements in the House of Commons, as is the case in a court of law. The petition was rejected based on the need to respect both the freedom of speech and the right of the Parliament to regulate its own affairs.³⁹⁵

The Code of Conduct of a Civil Servant in Moldova, approved by the Law³⁹⁶ has failed to include provisions related to truthfulness of information provided by the officials to the citizens (Art. 8). A draft Law on the code of conduct for the deputies also failed to be passed in 2016.

Summary: While the mass media should continue to enjoy the liberty of reporting statements by the politicians without fear of being sanctioned if the stated facts are untrue, the deliberate omissions or false narratives of public officials may be put under the scrutiny of the Parliament’s Ethics Committee and the Prime Minister’s office. That would result in a public correction of the errors and lies and resignation offered by those who mislead the public offices and – via the media – the public at large. In this sense, the law will restrict the impunity for disinformation currently enjoyed by the parliamentarians and public actors.

What should be the specific responsibility of public service and community media?

The current situation and the role of Moldova’s public broadcaster is determined by such factors as the war in Ukraine (along with its economic and political consequences) and undemocratic developments in autocratic regimes. They are creating huge challenges for free societies and liberal democracies with a pluralistic media landscape. Targeted disinformation based on fake news and deep fakes is being used to create a destabilising effect which – even for experienced media audiences – poses serious threats in relation to shaping of their opinion. This makes it all the more important to provide a strong response through the public service media.

The recommendations of and assessments by international organisations have been particularly influential in the development of public service broadcasting in Moldova. We are aware of the current project of BBC Media Action funded by UK so as to facilitate

³⁹⁴ The Seven Principles of Public Life, 31 May 1995, <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>.

³⁹⁵ Make lying in the House of Commons a criminal offence. 14 October 2021, <https://petition.parliament.uk/petitions/576886>.

³⁹⁶ Lege Nr. 25 din 22-02-2008 privind Codul de conduită a funcționarului public, see https://www.legis.md/cautare/getResults?doc_id=107130&lang=ro.

transformations of TRM ³⁹⁷ and recommend a particular focus of training of its journalists on professional standards and on countering harmful disinformation and propaganda. TRM should become a model for commercial media in the sense of observance of the Deontological Code, compliance with the Press Council decisions, exemplary work of its ombudsperson. Only through such measures it may gain trust of the audience and lead in providing truthful news and public affairs programmes.

In response to changing media consumption habits, TRM is advised to focus on efforts to increase the broadcaster's reach by strengthening its regional expertise, coverage and presence in the *raions*. In this sense, it is worth considering establishing and developing small-scale **community media** in Moldova. In the EU, such media take the form of radio broadcasting and/or multimedia projects and share some of the following characteristics: independence from the government, business companies, religious institutions and political parties; not-for-profit orientation; voluntary participation of civil society members in the devising and management of programmes; activities aiming at social gain and community benefit; ownership by and accountability to local communities and/or communities of interest which they serve; commitment to inclusive and intercultural practices. Community media are civil society organisations, usually registered as legal entities that offer and encourage participation at different levels of their structures. Also referred to as "third media sector", community media have a clearly distinct identity alongside national public service media and private commercial media. ³⁹⁸ Following consultations with the local CSOs, we consider that some of them, such as the Association of Electronic Press (APEL), could contribute in this matter.

The main standards for the public service media (PSM) governance in Europe have been established by the Council of Europe's Committee of Ministers through a set of consistent recommendations. "Public service broadcasting is an essential factor of pluralistic communication which is accessible to everyone at both national and regional levels, through the provision of a basic comprehensive programme service comprising information, education, culture and entertainment." ³⁹⁹

In the past years, the EU has also produced PSM-related legislation and recommendations on the evolution of the sector by saying that "the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism" and that Member States are excepted from EU regulation on fair competition, state aid, etc. in matters of funding of public service broadcasting insofar as such funding is granted to PSBs for the fulfilment of the public service

³⁹⁷ See press releases by TRM: <https://trm.md/ro/comunicate-trm/transformarea-teleradio-moldova-guvernul-regatului-unit-si-bbc-media-action-lanseaza-un-proiect-de-colaborare-pentru-abilitarea-mass-media> and <https://trm.md/ro/comunicate-trm/ip-compania-teleradio-moldova-va-fi-modernizata-dupa-modelul-bbc-vlad-turcanu-sprrijinul-pe-care-il-vom-primi-va-adeuce-schimbarea>.

³⁹⁸ Community Media: Brief overview of the latest Council of Europe guidelines and activities to support community media. See: <https://rm.coe.int/leaflet-community-media-en-january-2019-v2/168094b816>.

³⁹⁹ *Recommendation No. R (96) 10 of the Committee of Ministers of Council of Europe on the guarantee of the independence of public service broadcasting.*

remit.⁴⁰⁰ A comparative legal survey conducted by the ECtHR Research Division found that out of the thirty-four CoE States covered, all but one (Monaco) have a public broadcaster on which a duty of political pluralism is imposed.⁴⁰¹

Summary: Public service media and community media, once functioning as trustworthy news media, are capable to establish a standard for the commercial media in the provision of timely and reliable information to the public, especially in emergency situations. We recommend that TRM improves its professional standards through a strict observance of the Deontological Code, full compliance with the Press Council decisions, exemplary work of its Ombudsperson to gain trust of the audience and provide reliable information to the public. It is recommended that specific legal and policy acts are adopted to establish community media in Moldova as an important news source for the population outside of the capital.

Is model of “internal pluralism” an internationally recognized principle that allows to restrict commercial media?

A comparative legal survey conducted by the ECtHR Research Division in thirty-four CoE States points out that a duty of political pluralism of private broadcasters is imposed in twenty States or local jurisdictions, as for whereas in fifteen States or jurisdictions there is no such duty whatsoever. Nevertheless, even in the States where private broadcasters are not held to a duty of pluralism, there are some general requirements concerning the contents of their programmes: for example, news broadcasts must contain truthful information, and facts must be separated from comments and opinions.⁴⁰²

However, sanctions for failing to observe political pluralism have been exceptional across Europe. In the United Kingdom, on 27 March 2020, the High Court of England and Wales (Administrative Court) delivered the *Autonomous Non-Profit Organisation TV-Novosti* judgment, dismissing the challenge to a fine of 200,000 pounds imposed by Ofcom (the United Kingdom NRA) on the Russia Today channel for breaches of “due impartiality”. In Romania, a broadcaster had its licence withdrawn for carrying out political advertising outside the election campaign; however, this sanction was imposed after the broadcaster had failed to pay a fine.⁴⁰³

We consider that the *NIT v. Moldova* judgment of the ECtHR does not provide a *card blanche* for the future delicensing national private AV media for lack or absence of internal pluralism alone, or bias. Overall, internal pluralism tends to be in significant tension with the principle of the editorial autonomy of each individual media outlet, a cornerstone of media freedom. In relation to “political pluralism” standards, the Council of Europe Recommendation notes:

⁴⁰⁰ See, in detail, Cabrera Blázquez F.J., Cappello M., Talavera Milla J., Valais S., *Governance and independence of public service media*, IRIS Plus, European Audiovisual Observatory, Strasbourg, February 2022, <https://rm.coe.int/iris-plus-2022en1-governance-and-independence-of-public-service-media/1680a59a76>.

⁴⁰¹ *NIT S.R.L. v. the Republic of Moldova* [GC] - 28470/12, Judgment, 5 April 2022, § 111, <https://hudoc.echr.coe.int/fre?i=002-13629>.

⁴⁰² Ibid.

⁴⁰³ Op.cit., § 112.

“A careful balance should be struck between stimulating political pluralism and respecting the editorial independence of media outlets. Privately owned media are entitled to follow an editorial line which might show a specific political preference. Therefore, impartiality as a quality for political reporting cannot be required of this type of media. Nonetheless, political coverage, even that by privately owned broadcasters and newspapers, should at least be fair and accurate”.⁴⁰⁴

The changing role of broadcasting in the digital era has its implications for both external and internal pluralism. The switchover to digital TV, together with the expansion in the diversity of information and opinion to be found in the online environment, affects the traditional rationales for stricter regulation of broadcasting, such as spectrum scarcity or audience behaviour.

It is noteworthy that the current AVMS Code of Moldova, that has superseded the one, which served the basis for the national judiciary in the NIT case, is not as strict on “internal pluralism” and is generally much closer to the international standards in its description of the duties of fair and balanced news coverage.

Summary: While internal pluralism is essential in the work of the PSM, it is recommended to be extremely cautious when using the argument of lack or even absence of “internal pluralism” in the content of an individual commercial media to impose changes of independent editorial policy through legal sanctions. Unlike in the ECtHR case of NIT v. Moldova, it might not find again support of the intergovernmental organizations.

Can the right of reply serve an instrument to counter disinformation?

The right to refutation has emerged in early 19th century, in France, as the right of the State, which lost control over the press, to publish, free of charge, statements on its interpretation of publicly important events that are misrepresented by the journalists. With time it was complemented by the provisions on the right of reply of private persons in factually wrong similar situations, and later merged in many European countries into a single right – right of reply.

In Moldova, following the regional traditions, these rights somewhat differ. The right of refutation is provided in the Law on Freedom of Expression (Art. 26) as the right of everyone to demand a refutation of false and defamatory statements. Such a refutation should be made timely and prominently in the same media, a violation is punished by a monetary fine. There is also a separate right of reply to “a value opinion that has no sufficient factual basis” and affects the rights and interests of a person, with the same procedure as exist for the dissemination of a refutation (Art. 27). Their detailed implementation is provided in the by-laws of the CA.⁴⁰⁵

⁴⁰⁴ Council of Europe Recommendation (2007)2, on media pluralism and diversity of media content.

⁴⁰⁵ Consiliul Audiovizualului Regulament Nr. 63 din 22-01-2021 privind conținuturile audiovizual, https://www.legis.md/cautare/getResults?doc_id=125023&lang=ro

In addition, the Election Code (Art. 89 para 5) provides for a right of the candidates to reply.⁴⁰⁶ This might create certain confusion. Moreover, the Law on Advertising foresees a possibility to refute advertising (including political advertising) that contains untrue information.⁴⁰⁷

As such, the right of reply is **not** capable to ensure an overall political pluralism, especially in terms of diversity of opinion. It is often impossible for a media outlet to grant a right of reply to everyone who disagrees with any and all opinions expressed therein. Conversely, a general duty to provide an opportunity to present opposing views during the public debate on relevant issues to all the main sides to a particular debate or controversy seems a more reasonable basis (see Art 13, para 6a of the AVMS Code).

Still, it is worth considering a reinterpretation of these three rights in the Law on Freedom of Expression, the Law on Advertising, the AVMS Code, and the Election Code by providing the State and its institutions the right to correct false (and non-defamatory information) in the media through publication of their statements of facts. The right of reply on a website may only be required when it is not possible for anyone to respond directly (for example, if comments to the posts are not allowed by the owner/author). For the reform, the existing norms are advised to be streamlined into one “right of reply”⁴⁰⁸ in line with the relevant CoE documents: Art. 8 of the ECTT, *Recommendation on the right of reply in the new media environment* and *Resolution on the right of reply*.⁴⁰⁹

Additionally, Moldova could join the UN Convention on the International Right of Correction, as its mechanisms and aims perfectly fit the current situation of transnational disinformation.⁴¹⁰ That will allow the Government to exercise this right if disinformation is disseminated by the media of a foreign country.

Summary: It is recommended to reinterpret the legal essence of the right to reply, to refute and to replicate in the national law in line with the legal traditions of the European Community rather than the post-Soviet Russian model. The public authorities are recommended to use the right of reply to refute harmful

⁴⁰⁶ Codul Electoral (Election Code), Nr. 325 of 8 December 2022, https://www.legis.md/cautare/getResults?doc_id=134589&lang=ro.

⁴⁰⁷ Lege Nr. 62 din 17-03-2022 cu privire la publicitate, Art. 3, https://www.legis.md/cautare/getResults?doc_id=134924&lang=ro.

⁴⁰⁸ See more in: Richter, Andrei, Right of Reply: International Standards and Slovak Press Law. *Otázky žurnalistiky*, 1-2/2019. P. 4-14.

⁴⁰⁹ See: European Convention on Transfrontier Television. Strasbourg, 5.V.1989 <https://tinyurl.com/ya3gky2f>; Council of Europe Committee of Ministers. Resolution (74) 26 on the Right of Reply—Position of the Individual in Relation to the Press (Adopted by the Committee of Ministers on 2 July 1974, at the 233rd meeting of the Ministers’ Deputies). <https://rm.coe.int/16805048e1>; Recommendation Rec(2004)161 of the Committee of Ministers to member states on the right of reply in the new media environment (Adopted by the Committee of Ministers on 15 December 2004 at the 909th meeting of the Ministers’ Deputies). <https://tinyurl.com/ycq7jz7a>.

⁴¹⁰ United Nations, Convention on the International Right of Correction, in Treaty Series 191 (New York, Vol. 435, 1953) (entered into force on August 24, 1962), https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVII-1&chapter=17&clang=_en#:~:text=The%20Convention%20was%20adopted%20by,session%20of%20the%20General%20Assembly.&text=Official%20Records%20of%20the%20General,A%2F2361%2C%20p.

disinformation in the national media, as well as use this right as provided in the Deontological Code of Journalists and self-regulation mechanisms.

Moldova is recommended to accede the UN Convention on the International Right of Correction as it fits its current necessities.

Why self-regulation mechanisms are important in judicial countering propaganda and disinformation?

As can be seen from a number of judgments of the ECtHR, the protection of Article 10 of the ECHR to journalists and the mass media actors often depends on whether they act in line with their professional standards as defined by the domestic codes of practice and assessments of the domestic self-regulation bodies.⁴¹¹

It should be noted that since recently the ECtHR is very sensitive to the evaluations made by journalists' self-regulation mechanisms in cases related to freedom of expression. In a number of its judgments, when deciding whether the applicant mass media entity or journalist has additional privileges under Article 10 of the ECHR or not, it reasoned that violations of professional codes or citations by self-regulatory bodies were sufficient signs for depriving the applicants of the additional rights to freedom of expression.

The European Court of Justice, when adjudicating on the applicability of sanctions against Mr Kiselev (see above) referred in its decision also to the resolution made by the Russian self-regulation body wherein it considered that Kiselev's programme contained propaganda which presented the events in Ukraine contrary to the journalistic principles in order to manipulate Russian public opinion through disinformation techniques. Moreover, it found that Mr. Kiselyov then refused to stand before the self-regulation body.

While the courts, generally, do not assess implementation of professional or ethical norms by the media and media professionals, including their involvement in the propaganda and disinformation campaigns, such peer assessment may play a role in the court judgment as to the intent, approach, (systematic) practice of media actors in disseminating lies and manipulating the audiences.

Decisions of self-regulation bodies can also lay grounds for the courts in Moldova, as well as for the CA, to distinguish *bona fide* journalists from propagandists who perform under the alias of media actors. It should be reminded that, as a member of SOMS, the Press Council of Moldova approved, in 2016, specific and practical criteria to distinguish propaganda and hate speech in the mass media.⁴¹²

⁴¹¹ See *Goodwin v. the United Kingdom*, judgment of 27 March 1996, *Reports* 1996-II, § 39, and *Fressoz and Roire v. France* [GC], no. 29183/95, § 54, ECHR 1999-I.

⁴¹² Рекомендации Сети организаций медийного саморегулирования относительно распространения пропаганды в СМИ, Tbilisi, 17 June 2016, https://www.mediacouncils.org/wp-content/uploads/2017/12/Recommendations_rus.pdf.

Summary: Decisions of national self-regulation bodies that evaluate the journalistic practice from the perspective of professional and ethical standards are essential for the courts and the national media regulator in adjudicating conflicts related to objectivity, duties and responsibilities, as well as fairness of reporting of the media actors. They are also essential to distinguish journalists and other media professionals from propagandists who should not be protected by media privileges.

Is conformity with the ECTT a viable instrument to restrict foreign programming?

In the most recent opinion of the executive structures of the Council of Europe, the practice existing in Ukraine, whereas registration of foreign linear media is refused by the national media regulator for violations of the ECTT, was found “not inconsistent with the ECTT, according to which States are to guarantee freedom of reception and should not restrict the retransmission on their territories of any programmes originating from parties to the Convention which comply with the terms of the Convention.”⁴¹³

The opinion was provided in relation to the provisions of the Ukrainian regulation of the audiovisual sector, but apparently also applies to Moldova which introduced restrictions for rebroadcasting of TV programmes originating in a country which is neither a member state, nor a party to the ECTT (such as Russia or Belarus).

The European Union also noted, in its recent report on Ukraine, that Ukraine’s Law “On the Media” includes mechanisms to ensure the transparency of media ownership and freedom of reception and retransmission for both TV and radio broadcasting if their content meets the requirements of the European Convention on Transfrontier Television and of Ukrainian Law – and made no objections to the condition of conformity with the ECTT.⁴¹⁴

Also, the Constitutional Court of Moldova found such a criteria constitutional (see above).⁴¹⁵

Summary. In the view of the European Institutions, such restrictions do not violate the ECTT. Whether they violate other CoE instruments, first of all the ECHR remains to be determined (see also next question/answer). We recommend that the authorities replace the factor of non-accession to the ECTT with a more reliable and permanent criteria.

⁴¹³ Council of Europe, Opinion of the Directorate General Human Rights and Rule of Law, Information Society and Action against Crime Directorate, Information Society Department, prepared on the basis of the expertise by Council of Europe experts: Eve Salomon and Tanja Kerševan on the Law “On Media” of Ukraine. DGI (2023)03, Strasbourg, 24 February 2023. <https://rm.coe.int/dgi-2023-03-ukraine-tp-law-on-media-2751-9297-4855-1-2753-6081-2551-1/1680aa72df>

⁴¹⁴ Commission Staff Working Document. “Analytical Report following the Communication from the Commission to the European Parliament, the European Council and the Council Commission Opinion on Ukraine’s application for membership of the European Union”, Brussels, 1.2.2023 SWD(2023) 30 final. P.32, https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-02/SWD_2023_30_Ukraine.pdf.

⁴¹⁵ Hotărâre privind controlul constituționalității Legii nr. 257 din 22 decembrie 2017 cu privire la completarea Codului audiovizualului al Republicii Moldova (Decision on the constitutionality of Law No. 257 of 22 December 2017 on additions to the Audiovisual Code of the Republic of Moldova), Application No. 2a/2018, 4 June 2018, paragraph 49, <https://constcourt.md/ccdocview.php?tip=hotariri&docid=663&l=ro>.

Is the origin of the programme a legitimate reason for a ban of political and news programmes from the country (-ies)?

The Venice Commission recognised that a prohibition of programmes from countries which threaten the national security of the Republic of Moldova, can be justified. However, the broad prohibition which applies to the broadcasting of any informative, informative-analytical, military and political content coming from outside the EU, the states that have ratified the ECTT and some other countries (with the exception of films and entertainment programmes that have no militaristic content), might affect a part of the world TV or radio production that does not in any way threaten information security of the Republic of Moldova (e.g., a Korean film on WWII or a Brazilian version of Star Wars would probably fall under the prohibition).⁴¹⁶

If the restriction should be based on the origin, then it needs to be much better justified, noted the Venice Commission, adding that there is no link between not being a state party to the ECTT and having production that constitutes a threat to the Republic of Moldova.⁴¹⁷

After 24 February 2022, the Russian Federation has become recognized an aggressor state not just by Ukraine (which did it in 2015⁴¹⁸), but also by the UN, the EU, and the CoE.⁴¹⁹

Therefore, with a reference to the international law, the domestic law of Moldova, including the mentioned provisions of the AVMS Code, could be amended accordingly.

Summary: In the view of the intergovernmental organizations, Russia conducts an aggression against Ukraine. Therefore, Ukraine called upon all parliaments to recognize Russia an aggressor state. Intergovernmental human right expert bodies point to the possibility of restricting propaganda of the aggressors, or aggressive propaganda and disinformation. This seems to be a more applicable to the human right framework type of restriction based on the country origin of AV programmes than a non-accession to the ECTT or not being a member state of the EU.

⁴¹⁶ CDL-AD(2022)02624, Republic of Moldova, Opinion on Amendments to the Audiovisual Media Services Code and to some normative acts including the ban on symbols associated with and used in military aggression actions, adopted by the Venice Commission on 24 October 2022, §102, <https://venice.coe.int/webforms/documents/?pdf=CDL-AD%282022%29026-e>.

⁴¹⁷ Ibid.

⁴¹⁸ *Про Звернення Верховної Ради України до Організації Об'єднаних Націй, Європейського Парламенту, Парламентської Асамблеї Ради Європи, Парламентської Асамблеї НАТО, Парламентської Асамблеї ОБСЄ, Парламентської Асамблеї ГУАМ, парламентів держав світу про визнання Російської Федерації державою-агресором.* (On the Appeal of the Supreme Rada of Ukraine to the United Nations, the European Parliament, the Parliamentary Assembly of the Council of Europe, the NATO Parliamentary Assembly, the OSCE Parliamentary Assembly, the GUAM Parliamentary Assembly and national parliaments on recognising the Russian Federation as an Aggressor State). Resolution of the Supreme Rada of Ukraine, 27 January 2015, No. 129-VIII, <https://zakon.rada.gov.ua/laws/show/129-19#Text>.

⁴¹⁹ See, e.g. UNGA resolution, Aggression against Ukraine, A/ES-11/L.1, 2 March 2022, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FES-11%2FL.1&Language=E&DeviceType=Desktop&LangRequested=False>.

Are there legal ways to raise public trust in governmental information?

Transparency of the public authorities, free and easy access to governmental information is a prerequisite to gaining trust in the activities and statements of these authorities, in particular when they challenge disinformation originating from other sources.

Conceptually, “public access to information” refers to the presence of an effective system to meet citizens’ rights to seek and receive information particularly that held by or on behalf of public authorities.

Further, in 2015, the 2030 UN Agenda for Sustainable Development ⁴²⁰ acknowledged access to information as a necessary enabling mechanism for transparent, accountable and participatory governance, rule of law and peaceful societies.

The UN Human Rights Council (UN HRC) in its 2020 resolution on freedom of opinion and expression recognizes that “public authorities should strive to make information available, whether the information is proactively published electronically or provided upon request...”.
421

On 10 January 2022 during the 49th session of the UN HRC, the first ever report on access to information held by public bodies was presented by the Office of the United Nations High Commissioner for Human Rights.⁴²² It constitutes an authoritative guidance to state actors on the developments of laws and policies on matters affecting this right. The text of the report focuses on good practices including the elements in the design of access to information laws, capacity building and other measures to ensure their effective implementation.

In particular, it notes that “Independent oversight provides an important safeguard against abuse. The guidelines for States on the effective implementation of the right to participate in public affairs recommend that States establish independent and impartial oversight mechanisms with a mandate to monitor and report on the implementation of the right of access to information. The reports of such a mechanism should be made public... Oversight bodies must be granted the competencies and powers necessary to monitor compliance with access to information regulations and must receive sufficient budgetary allocations to be able to conduct such monitoring effectively.”⁴²³

Despite the ongoing reform of the legislation on public access to information in Moldova, the legal provisions on an independent oversight and annual reports on the state of affairs with the transparency of the public authorities are missing. That adds to the bleak situation with

⁴²⁰ Adopted in 2015 by all 193 UN member states, the 2030 Agenda for Sustainable Development (<https://sustainabledevelopment.un.org/post2015/transformingourworld/publication>) is a 15-year plan of action “to end poverty, protect the planet and ensure prosperity for all, while strengthening universal peace in larger freedom”.

⁴²¹ Resolution on freedom of opinion and expression, A/HRC/RES/44/12, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FRES%2F44%2F12&Language=E&DeviceType=Desktop&LangRequested=False>

⁴²² See: <https://digitallibrary.un.org/record/3956409>

⁴²³ Op.cit., Para 34.

the practice of implementation of the norms on proactive online publication of information and provision of information upon requests of citizens (see above).

Summary. To gain and sustain public trust, the government is recommended to be transparent to the public and quickly provide trustworthy socially important information. The just adopted Law on Public Information of Public Interest does not envision the key instrument that will make it effective – the independent oversight mechanism. We recommend to have the Law amended in this regard.

What are the limits on the use of totalitarian symbols in a democracy?

Symbols play an important role in political life. People use them to signal their adherence to certain political ideas. The use of symbols also falls under the right to freedom of expression.

In 2015, the Venice Commission and OSCE/ODIHR recognised the right of Ukraine to ban or even criminalise the use of certain symbols of and propaganda for totalitarian regimes. “While States are free to enact legislation that bans or even criminalises the use of symbols and propaganda of certain totalitarian regimes, such laws must comply with the requirements set by the ECHR and other regional or international human rights instruments, as well as with their national constitutions.”⁴²⁴

In a number of cases upon complaints from Hungary, the ECtHR provided that “when the right to freedom of expression is exercised in the context of political speech through the use of symbols, utmost care must be observed in applying any restrictions, especially if the case involves symbols which have multiple meanings”.⁴²⁵ It also emphasised the need to make a careful examination of the concrete legal, political, social and cultural context in each case of symbol restrictions. This context includes both the specific national “historical role and experience”⁴²⁶ as well as the current situation and the “real and present danger”⁴²⁷ that the use of a certain symbol may actually cause. The restrictions imposed on a certain symbol may therefore be found acceptable in one place/time but unacceptable in another place/time.

In these cases, the ECtHR concluded that introduction of the ban of a communist symbol (the red star) must take into account the particular circumstances of its use (who uses it, and for what purposes). The ECtHR also noted that in those cases there were no indications that the public use of the relevant symbol would trigger an actual or even remote danger of disorder, that can be seen as a “pressing social need” (a condition to consider a restriction of the freedom of expression “necessary in a democratic society”).⁴²⁸

⁴²⁴ Venice Commission and OSCE/ODIHR, CDL-AD(2015)041, Joint Interim Opinion on the Law of Ukraine on the Condemnation of the Communist and National Socialist (Nazi) Regimes and Prohibition of Propaganda of their Symbols, para 116, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)041-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)041-e).

⁴²⁵ See ECtHR, *Fáber v. Hungary*, no. 40721/08, 24 July 2012, paragraph 36; ECtHR, *Vajnai v. Hungary*, no. 33629/06, 8 July 2008, paragraph 51.

⁴²⁶ ECtHR, *Nix v. Germany*, no. 35285/16, 5 April 2018, paragraph 47.

⁴²⁷ ECtHR, *Vajnai v. Hungary*, no. 33629/06, 8 July 2008, paragraph 49.

⁴²⁸ Op.cit., para 55. See more in: CDL-AD(2022)02624, Republic of Moldova, Opinion on Amendments to the Audiovisual Media Services Code and to some normative acts including the ban on symbols associated with and

A similar situation developed in Moldova. In 2012, amendments to the Law on Freedom of Expression (Art. 4-1) and some other laws of the Republic of Moldova banned propaganda of “totalitarian ideologies” and use of “totalitarian communist symbols”.⁴²⁹ They were found unconstitutional by the Constitutional Court of Moldova in 2013 and further annulled by the Parliament. One of the key reasons of the well-grounded decision of the Constitutional Court was vagueness of the terms and unproportionality of the sanctions introduced.⁴³⁰

Then, in 2021, the ban on “fascist, racist” ideology and symbols has been reintroduced into the Law on Freedom of Expression (Art. 4-2). Since 2022, the 2003 Law of Moldova On Counteracting Extremist Activity contains, in addition to the ban on Nazi propaganda and public display of symbols, a ban on certain specific symbols of the Russian militancy and aggression in Ukraine (Art. 1 para b).⁴³¹ With some limited interpretations the norms and restrictions were found constitutional by the Constitutional Court of Moldova in 2023.⁴³²

Taken the changed context of the bans on totalitarian symbols in 2012-2013 and in 2023, meaning the war in Ukraine, the threats to the national security of Moldova and the emergency situation, it seems that the conclusions on constitutionality of a ban on public display of the communist symbols would be different today. If the bans are precisely defined and put in the contexts of the current state of emergency, or imminent threats of acts of military aggression against Moldova, in the context of the symbols being “generally known” as condoning the war crimes in Ukraine and crimes against humanity (such as display of an old woman greeting the Russian aggressors with the Soviet flag), we do not see legal obstacles of their second (after 2012) introduction in Moldova.

Summary. Public display of communist symbols in today’s Moldova poses threats to national security and public order. It is recommended to reintroduce a ban on such activity in line with the earlier decisions of the Constitutional Court of Moldova and the relevant case law of the ECtHR.

used in military aggression actions, adopted by the Venice Commission on 24 October 2022 §92, <https://venice.coe.int/webforms/documents/?pdf=CDL-AD%282022%29026-e>.

⁴²⁹ Lege Nr. 192 din 12-07-2012 pentru completarea unor acte legislative, https://www.legis.md/cautare/getResults?doc_id=4794&lang=ro.

⁴³⁰ Curtea Constituțională, Hotărâre Nr. 12 din 04-06-2013 pentru controlul constituționalității unor prevederi referitoare la interzicerea simbolurilor comuniste și a promovării ideologiilor totalitare (Sesizarea nr. 33a/2012), https://www.legis.md/cautare/getResults?doc_id=15895&lang=ro.

⁴³¹ Lege Nr. 54 din 21-02-2003 privind contracararea activității extremiste, https://www.legis.md/cautare/getResults?doc_id=136849&lang=ro.

⁴³² Curtea Constituțională Hotărâre Nr. 9 din 11-04-2023 pentru controlul constituționalității articolului 365⁵ din Codul contravențional și a articolului 1 din Legea privind contracararea activității extremiste, redactarea Legii nr. 102 din 14 aprilie 2022 (*interzicerea simbolurilor general cunoscute utilizate în contextul unor acțiuni de agresiune militară, crime de război sau crime împotriva umanității*) (sesizările nr. 54a/2022, nr. 68a/2022 și nr. 111g/2022), https://www.legis.md/cautare/getResults?doc_id=136763&lang=ro.

Annexes

Annex 1. In this annex to this Study, we present the detailed action plan to efficiently protect freedom of expression against manipulation and propaganda with a focus on policies and legal framework and corresponding means of implementation. It proposes measures for national stakeholders including the legislators, government, law-enforcement bodies, as well as the Audiovisual Council. It may serve as the basis for the national policies to efficiently protect against falsities and propaganda.

The experts do not overestimate the legal component of a counteraction to propaganda and disinformation. There are also other avenues to enforce public resilience. They include economic initiatives, like developing a pluralist market, promoting and providing financial benefits to the national media products, educational programmes in media and digital literacy, training of public officials and law-enforcement staff, etc.

Annex 2 provides the list of organizations and institutions that the experts had the privilege to discuss relevant issues when in Moldova.

Annex no. 1 to

**„LEGAL NEEDS AND A ROADMAP FOR THE REPUBLIC OF MOLDOVA TO EFFECTIVELY
PROTECT ITS PEOPLE AGAINST PROPAGANDA, MANIPULATION,
DISINFORMATION: A STUDY”**

ACTION PLAN - DEFINED MEASURES

No.	Actions	Performance indicators	Responsible authorities	Deadline
1. Aligning with existing international instruments and mechanisms				
1.1	Accede the Convention on the International Right of Correction	-Government informs the UN SG of the intention, -Parliament ratifies the accession. -Ministry of Foreign Affairs and European Integration obtains practical expertise on the use of the Convention.	Ministry of Foreign Affairs and European Integration, Audiovisual Council, Ministry of Justice, Parliament	
1.2	Accede the International Convention concerning the Use of Broadcasting in the Cause of Peace	-Government informs the UN SG of the intention, -Parliament ratifies the accession. -Ministry of Foreign Affairs and European Integration and the Audiovisual Council obtain practical expertise on the use of the Convention.	Ministry of Foreign Affairs and European Integration, Audiovisual Council, Ministry of Justice, Parliament	
1.3	Respond to the call of the Ukrainian Parliament, resolution of the UNGA “Aggression against Ukraine” and European Council	-Parliament adopts a relevant resolution.	Parliament, Ministry of Foreign Affairs	

	decisions concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine by recognizing – through a resolution of the Parliament – the Russian Federation as “aggressor state”.	-The Resolution and the notion of an “aggressor state” are used in the law-making process.	and European Integration	
1.4	Align itself with the restrictive economic measures (sanctions) imposed by the European Council in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.	-Government informs the European Commission of the intention. -Together with the EU institutions and missions in Moldova, the Government amends existing regulations to implement the sanctions in practice, including those in relation to the propaganda TV channels and websites, as well as individuals who work in the media.	Ministry of Foreign Affairs and European Integration	
1.5	Obtain for the CA an observer status at the European Regulators Group for Audiovisual Media Services (ERGA) (https://digital-strategy.ec.europa.eu/en/policies/erga ; https://erga-online.eu/) for the Audiovisual Council by soliciting a direct invitation from the European Commission.	-Government requests the European Commission to accede. -The Audiovisual Council takes part in the meetings and practical work of ERGA as an observer.	Audiovisual Council, Ministry, Ministry of Foreign Affairs and European Integration	
1.6	Join the European Audiovisual Observatory through notification of the CoE Secretary General of Moldova’s request to accede (https://www.obs.coe.int/en/web/observatoire/organisation)	-Ministry of Foreign Affairs requests the Council of Europe to accede. -Moldova joins 40 European countries and the EU in the EAO bodies. -The Audiovisual Council and/or Ministry of Culture take role in the executive structures of the EAO and participate in information exchange on legal and market issues of audiovisual media (incl. film).	Audiovisual Council, Ministry of Foreign Affairs and European Integration, Ministry of Culture, National Film Centre of the Republic of Moldova	

2. Adoption and implementation of new laws and of amendments to the current laws of the Republic of Moldova			
2.1	The law on the Center for Strategic Communication and Countering Disinformation is adopted and implemented in line with the international commitments of Moldova	<ul style="list-style-type: none"> -The draft law is submitted to the Venice Commission for its evaluation. -Amendments foresee an independent from political influence and trustworthy institution in line with the best practices in the EU. -The need to protect freedom of expression is highlighted prominently and relevant safeguards are provided in law and practice. 	Parliament, Center for Strategic Communication and Countering Disinformation
2.2	Amendments to the Law on Freedom of Expression and some other laws of the Republic of Moldova are introduced that would ban propaganda of “totalitarian ideologies” and use of “totalitarian communist symbols”.	<ul style="list-style-type: none"> -Amendments to the Law on Freedom of Expression and some other laws of the Republic of Moldova are introduced to ban propaganda of “totalitarian ideologies” and use of “totalitarian communist symbols”, including in the mass media (similar to Art. 4-1 of the Law on Freedom of Expression, adopted in 2012). -The draft amendments are submitted to the Venice Commission for its evaluation. -Constitutional Court is consulted on constitutionality of such draft amendments taken the current situation in and around Moldova. 	Parliament, Ministry of Foreign Affairs and European Integration, Ministry of Justice, Constitutional Court
2.3	An effective mechanism is established that would enhance the ability of law-enforcement agencies to subpoena and bring to justice suspects in crimes related to harmful propaganda who hide in the state that does not hand it over to Moldova, and enable national courts to conduct trials of such persons <i>in absentia</i> .	<ul style="list-style-type: none"> -Relevant amendments are made in the Criminal Procedure Code of Moldova that take into account the current military conflict in Europe. -Report about investigations carried out, and court verdicts pronounced. 	Ministry of Justice, Prosecution Office for Combating Organized Crime and Special Cases (PCCOCS)

		-Staff of the competent authorities have an increased capacity and skills to implement its mandate and improve its visibility.		
2.4	The new Law on Access to Information of Public Interest is amended to establish therein an effective oversight mechanism.	-Amendments foresee such an independent and trustworthy institution in line with the best practices in the EU. -Such an institution is allocated sufficient resources for sustainable and effective activity.	Parliament	
2.5	Parliament adopts a draft law that would establish a mechanism for the State to subsidize the news media through establishing a special fund.	-The adopted law provides for a transparent register of the media to be conducted by the Ministry of Culture of Moldova. -It will provide that the subsidies are received only by the media that observe the professional standards (Deontological Code) It will recognize the role of the self-regulation body, the Press Council.	Parliament	
2.6	Parliament adopts amendments to the Code of Conduct of the Civil Servant and adopts similar regulation for the deputies of all levels.	-The amendment and the new regulation recognize unprofessional and unethical provision by civil servants and deputies of misleading and false information to the public and the media. -The amendment and the new regulation recognize unprofessional and unethical provision by civil servants and deputies of hate speech, incitement to violence and war propaganda to the public and the media.	Parliament, Government, Ministry of Justice	

		<ul style="list-style-type: none"> -The amendment and the new regulation require a public correction of the errors and falsities, -The amendment and the new regulation will foresee resignations offered by those who misled the public on socially important issues. 		
2.7	<p>Harmonize the current definitions of “disinformation”, “misinformation”, “propaganda”, “propaganda for war”, “journalist/journalism”, “national security”, “hate speech”, “public harm”, “national interest”, “information war” in the Moldovan law with that in the EU legislation and international standards, as they are generally uniformly addressed in the European Community. Provide harmonized and conceptually clear-cut definition of “freedom of the media” in the domestic law.</p>	<ul style="list-style-type: none"> -Relevant EU resolutions and directives are used to amend the existing definitions in the national laws, incl. Criminal Code, AV Code, On Freedom of Expression, On the Press, the Law on the Center for Strategic Communication and Countering Disinformation, draft law on media subsidies, relevant national strategies adopted by law. -The need to protect freedom of expression is highlighted prominently in the definitions and relevant safeguards. 	<p>Ministry of Justice, Parliament,</p>	
2.8	<p>Reinterpret the legal essence of the “right to reply”, “to refute” and “to replicate” in the national law in line with the legal traditions of the European Community.</p>	<ul style="list-style-type: none"> -Relevant provisions of the Law on Freedom of Expression, the Law on Advertising, the AV Code, and the Election Code are amended in line with the CoE documents on the right of reply. -Right of reply in Moldovan Journalist’s Code of Ethics (paras 2.3.1-2.3.5) is respected by the journalist community. -Right of reply is used by the public authorities to refute disinformation. 		

2.9	The modern notion of the media is entered in the national law, based on the CoE Recommendation CM/Rec(2011)7 on a new notion of media.	-Relevant notion is entered in the forthcoming law on subsidies to the media and current Law on Freedom of Expression.	Ministry of Justice, Parliament, Ministry of Foreign Affairs and European Integration	
3. Adoption and implementation of new by-laws and regulations by the public authorities of the Republic of Moldova				
3.1	Adoption and effective implementation of the Regulation on Election Campaign Conduct and Coverage in the Media.	<p>-Central Election Commission adopts new regulation that provides an effective mechanism to refute and counter disinformation, hate speech, and alien propaganda in all media.</p> <p>-The need to protect freedom of expression is highlighted prominently and relevant safeguards are provided.</p> <p>-This Regulation is effectively used by the CA, its staff have an increased capacity and skills to effectively implement the Regulation.</p> <p>-CEC reports about actions carried out, including application of sanctions.</p>	Central Election Commission, Audiovisual Council.	
3.2	Adoption of the Guide for providers on what is considered non-linear AV programmes, so as to facilitate their oversight in line with the AV Code.	<p>-Audiovisual Council adopts the Guide in line with the AVMSD and best practices in the EU.</p> <p>-The Guide covers video-sharing platforms and video-on-demand services.</p>	Audiovisual Council	
3.3	Methodology on monitoring disinformation is adopted by the CA.	<p>-Audiovisual Council adopts a practically applicable Methodology on monitoring disinformation.</p> <p>-Its definitions are harmonized with the national and EU law.</p>	Audiovisual Council	

		<ul style="list-style-type: none"> -The Methodology takes into account best practices in the EU countries. -The need to protect freedom of expression is highlighted prominently and relevant safeguards are provided in the document. -Staff of the CA have an increased capacity and skills to follow the methodology and improve visibility of the CA's work. 		
4. Policy adjustment to enable effectiveness				
4.1	Alternative to Moscow's TV programmes in Russian are registered and freely provided to the audience in the country.	<ul style="list-style-type: none"> -Media pluralism is taken into account when enabling access to international/foreign channels of Moldovan audience. -Russian-language broadcasters from U.S., Estonia, Germany, Israel, Ukraine, are registered by the CA in the "List of audiovisual media services free to retransmission of media service providers located in the jurisdiction of the Republic of Moldova" (Lista serviciilor media audiovizuale libere la retransmisiune ale furnizorilor de servicii media aflați în jurisdicția Republicii Moldova). 	Audiovisual Council, Ministry of Foreign Affairs	
4.2	A public authority is assigned the competence over online media, including social media. Such a body (preferably Ministry of Culture) coordinates monitoring and analysis of the harmful content. It communicates with the international social media companies (Meta, etc.), relevant competent national authorities, and the public. Its competence includes, but is not limited to the oversight of the content of political advertising	<ul style="list-style-type: none"> -The Government and Parliament determine the existing body which will be assigned the competence. -The need to protect freedom of expression is highlighted prominently and relevant safeguards are provided in the work of the body. 	Government, Ministry of Culture, Audiovisual Council, law-enforcement bodies (SIS, the Ministry of Internal	

	(Law on Advertising), extremism (Law on Counteraction to Extremism) in the online media.	-A co-regulation body is established by the civil society, national online media, bloggers, and public offices to review extremist cases in the digital world that make harm to Moldova and its population. -Staff of the competent institution have an increased capacity and skills to implement its new mandate and improve its visibility.	Affairs, the General Prosecutor's Office)	
4.3	Legal and practical trainings provided on the obligations on proactive transparency and on providing information upon requests for the public officials tasked to this specific function taking into considerations both the norms of the Law on Access to Information of Public and best practices in the EU states.	-Number of relevant civil servants from target ministries and institutions have substantial knowledge of the obligations on the Law and implement comprehensive changes to their work frameworks in line with European standards. -Number of public authorities with the relevant obligations provided by the Law on Access to Information of Public covered by this activity. -Staff from the relevant institutions are well informed about the Law, understand its implications and contribute to the process of transparency. -The need to protect freedom of information is highlighted prominently in the training.	Ministry of Justice. State Chancellery (Gov.)	
4.4	The new Strategy on National Security incorporates a vision on propaganda and disinformation in line with the European Parliament and Council assessment with the issues, provided in their political documents since 2015.	- Strategy on National Security incorporates a vision on propaganda and disinformation in line with the European Parliament and Council assessment with the issues.	Parliament, law-enforcement bodies	

		<ul style="list-style-type: none"> -Parliament ensures clarity and consistency of future measures to implement the Strategy. -The need to protect freedom of expression is highlighted prominently and relevant safeguards are provided. -Media and digital literacy activity is foreseen and actively implemented as part of the national security agenda. -Staff of the relevant institutions have an increased capacity and skills to implement the Strategy. 		
4.5	The [Action] Plan of measures to limit the excessive influence of private interests on economic, political and public life (deoligarization) is revised in line with the recommendations of the Venice Commission.	<ul style="list-style-type: none"> -The Action Plan strengthens media pluralism, including by the enforcement of competition law and merger control procedures. -The Action Plan ensures transparency of media ownership, in line with the Recommendation of the Committee of Ministers of the Council of Europe on media pluralism and transparency of media ownership. - The Action Plan covers all media actors, offline and online. 	Parliament, Audiovisual Council, Ministry of Culture	
4.6	The National Programme of the Development of Mass Media in 2023-2026 and Action Plan are adopted by the Resolution of the Parliament.	<ul style="list-style-type: none"> -The Programme and Plan support specific measures to counter “toxic” information. -The Programme and Plan foresee measures to improve the professional standards in PSM TRM. -The Program and Plan foresee establishment of community media in 	Parliament	

		<p>Moldova in line with the best practice in Europe.</p> <ul style="list-style-type: none"> -The Programme and Plan support quality journalism in line with the relevant recommendations of the CoE. -The Programme and Plan support strengthening self-regulation and co-regulation of the mass media, including on the issue of disinformation through specific measures. 		
4.6	The Press Council becomes a legal entity.	<ul style="list-style-type: none"> -The Press Council is registered as a legal entity and obtains administrative support. -The national law and policy recognize its existence through involvement in consultancy and participatory functions. 	Ministry of Culture, Ministry of Justice	

Annex no. 2 to

„LEGAL NEEDS AND A ROADMAP FOR THE REPUBLIC OF MOLDOVA TO EFFECTIVELY PROTECT ITS PEOPLE AGAINST PROPAGANDA, MANIPULATION, DISINFORMATION: A STUDY”

List of organizations and institutions that communicated with the expert during his mission to Moldova (June 26, 2023 – June 30, 2023)

1. EU Delegation in Moldova
2. Parliament of the Republic of Moldova
3. Ministry of Justice
4. Prosecution Office for Combating Organized Crime and Special Cases
5. Audiovisual Council of Moldova
6. Central Election Commission
7. Association of Electronic Press
8. Press Council
9. Association of Independent Press
10. Center of Independent Journalism
11. Freedom House Moldova
12. Watchdog Community