

## LOCAL PRACTICES AND STATE POLICIES IN THE APPLICATION OF THE MEDIA STANDARDS OF THE COUNCIL OF EUROPE (2001-2009)

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### Abstract

Moldova Republic during 2001-2009, made staple efforts in aligning national legislation with the Council of Europe standards. The state policies in applying the media standards of the Council of Europe were often criticized by international organizations, the civil society and the media. The intervention of the Council of Europe and other international organizations and the active involvement of the civil society in the media have prevented or mitigated the antidemocratic slippage.

**Keywords:** *Council of Europe, broadcasting, civil standards in media, society.*

The clear victory of the Communist Party in the anticipated parliamentary elections of February 25, 2001, the foreign policy “pleasing Moscow” promoted by President Vladimir Voronin at the beginning of the term and antidemocratic reforms initiated after 2001 drew the attention of the Council of Europe. During 2001-2009, the Parliamentary Assembly has closely monitored how the Moldova Republic respects the obligations and commitments assumed at adhering to the Council of Europe. For eight years, PACE has adopted six resolutions concerning Moldova Republic, analyzing in detail the causes and effects of stagnating the reforms in key areas, implicitly the media.

On the other hand, the Moldova Republic authorities in dialogue with the Council of Europe in 2001-2003 mimed the opening for the implementation of democratic reforms. After the anticipated parliamentary elections of February 25, 2001, clearly won by the Party of Communists of the Republic of Moldova, the government formed by Prime Minister Vasile Tarlev proposed to achieve the activity Government Programme 2001-2005 “Economic Rebirth – Country Rebirth”. If social and economic field cabinet described in detail its priorities, then in relationship with the

Council of Europe was limited to paraphrasing the objective included in the activity program of the Braghiș Government - “a more active participation of the Republic of Moldova in the activity of the United Nations, OSCE, the Council of Europe” (Parliament of the Republic of Moldova, 2011).

On 27 to 31 January 2002, PACE co-rapporteurs visited Moldova Republic for the first time, being alarmed by the straining of the political situation in the country given the heightened anti-government protests organized by the Popular Christian Democratic Party. A few days before, on the 23<sup>rd</sup> of January 2002, the Government adopted the Decision no. 52 on effective cooperation between the Government of the Republic of Moldova and the Council of Europe (Decision no. 52, 2002), which was used as evidence to demonstrate the co-rapporteurs the opening of the authorities for the observance of the obligations and commitments assumed by the Republic of Moldova to join the Council of Europe.

The Government through Decision no. 52, warned the ministries and departments on the necessity of increasing the cooperation with the Council of Europe and the compulsory coordination with the Foreign Affairs Ministry of all activities related to cooperation. In addition, the Cabinet of Ministers ordered the Ministry of Justice to prepare and hand over within 15 days, the Ministry of Foreign Affairs, the contributions of the Republic of Moldova in the monitoring process initiated by the Committee of Ministers of the Council of Europe in the chapters the effectiveness of ways to judicial appeal and fighting discrimination, in particular, the fight against intolerance and racism.

In 2004 the relations between Moldova and the Russian Federation have become tense after refusing to sign the Kozak Memorandum. President Vladimir Voronin changed the course of foreign policy, focusing, at least formally, to the European Union. In addition, the ruling party was concerned with providing the necessary conditions, both domestic and foreign, in order to gain the parliamentary elections in March 2005 and the re-election of Vladimir Voronin as President of Moldova. The authorities presented to the Council of Europe the Moldovan society as “the waiting room” of the European Union (SAROV & OJOG, 2009). In the new geopolitical context in relation to the Council of Europe Moldova Republic openly assumed the adjusting of the national legislation to Council of Europe standards, including in the media.

On the 29<sup>th</sup> of June 2004 the Government Decision no. 733, approved the Activity Plan of the Government on the third semester of 2004. According to the document, the Ministry of Justice was to develop a bill that would establish the procedure for submission of draft normative acts to the expertise of the Council of Europe and the procedure of implementation of the expertise of the Council of Europe (Decision no. 733, 2004).

The mechanism in question was established by the Parliament Decision no. 377 of the 18<sup>th</sup> of November 2004 on the way of remission of draft laws for expertise to the Council of Europe and the implementation of its recommendations. The Parliament enabled the Ministry of Justice with the function of coordinator of the process of examination and implementation into the national law under expertise and guidelines given by the Council of Europe experts (Parliament Decision no. 377, 2004). In addition, the MPs approved the Regulation on the ways of remission of draft laws for expertise to the Council of Europe and the implementation of its recommendations.

The regulation provides that after examining the recommendations of the experts, the authorities responsible for examining and implementing the recommendations shall, within 20 days from the date of receipt of recommendations translated, formulate substantiated conclusions, which must contain: valid acceptance or non-acceptance of experts advice; the opportunity to

modify the respective draft laws. In case of substantial differences of opinions or inacceptance of the recommendations of experts in other necessary cases, organize bilateral meetings involving national experts and experts of the Council of Europe.

On the 22<sup>nd</sup> of February 2005, entered into force European Union - Republic of Moldova Action Plan (Plan no. 2005) - a political document setting out the strategic objectives of cooperation between Moldova Republic and the European Union (Plan no. 2005, 2006). Subchapter “Ensuring the respect for the freedom of expression” there are included two objectives, both referring to the Council of Europe recommendations:

- to ensure transparent relationship between the authorities and media institutions in line with the Council of Europe recommendations; state financial assistance for media granted under strict criteria and objectives equally applicable to all media;
- to develop and implement an adequate legal framework guaranteeing the freedom of expression and of mass-media in line with the European standards and the recommendations of the Council of Europe.

The objectives outlined in the document are general and do not refer to specific actions. In the next two years the Government and Parliament adopted a number of decisions and laws which, according to state authorities, contributed to achieving the objectives stipulated in the European Union - Republic of Moldova Action Plan.

In the context of the first goal, in June 2005 the Government decided to liquidate state enterprises “Nezavisimoya Moldova” and “Sovereign Moldova”. The goal – the fulfillment of obligations of the state to prevent and limit the monopolist activity in the field of mass media of the state. After the publication of these decisions by the Government in the “Official Gazette”, the subtitle “Founder: Government of Moldova” on the front pages of privatized publications there has been replaced by “Daily I National Independent “. However, the editorial policies of the independent newspapers “Sovereign Moldova” and “Nezavisimaya Moldova” has not undergone any major change, both focusing on further reflection of the government activity of Moldova

Republic, firstly that of President Vladimir Voronin. Note that the privatization was done without transparency, without announcing an auction for the sale of the publications.

Referring to the second goal, in July 2006 the Parliament adopted a new Broadcasting Code and, in addition, it completed Article 16 of the Civil Code, setting more transparent criteria in determining the amount of compensation for moral damages in disputes on protection of honor, dignity and professional reputation. We refer to these documents below.

Tarlev Government Two in office on 19 April 2005, in the Activity Program for 2005-2009 "Country Modernization - Welfare of Population", proposed a more specific target compared to 2001 in relation with the Council of Europe. Literally: the expertise of projects and normative acts developed jointly with the Council of Europe bodies and their adjustment according to the recommendations of the experts.

In November 2005, the Parliament for the first time reacted rapidly to criticism and recommendations of the Parliamentary Assembly outlined in the Resolution 1465 (2005) on the functioning of democratic institutions in Moldova adopted on the 4<sup>th</sup> of October 2005. The Parliament passed the Resolution no. 284 on the approval of the schedule of legislative actions in accordance with the Resolution and Recommendations of the Committee on honoring of the obligations and commitments by the member states of the Council of Europe.

In the media field, the Parliamentary Assembly, by resolution 1465 (2005), called on the Republic of Moldova authorities to strengthen the necessary guarantees and practical action for respecting the freedom of expression as defined in Article 10 of the European Convention on Human Rights and fundamental freedoms in agreement with the jurisprudence of the European Court of Human Rights, in particular:

- To amend the legislation on public service broadcasting (national and local) and the audiovisual sector in general;
- To continue the transformation of Teleradio Moldova into a genuine public broadcaster, as defined in the Parliamentary Assembly Recommendation 1641 (2004) on the public broadcaster;

- To amend the defamation laws aimed to ensure that the fines imposed are reasonable in amount.

In response in the schedule adopted by Parliament on the 11<sup>th</sup> of November 2005, there were stipulated two priority actions:

- Finalizing the laws projects amending and completing the Law on Broadcasting and the Law on National Public Broadcasting Company "Teleradio-Moldova". The Parliament proposed to take these actions until July 2006.
- Creating the work group for the examination of the opportunity of revising the legislation on defamation to ensure a reasonable amount of the fines. The Parliament proposed to create a work group to draft a law to this effect by July 2006.

To demonstrate to the Council of Europe its good intentions in honoring their commitments regarding the media, under the terms of calendar plan on the 27<sup>th</sup> of July 2006, the Parliament adopted a new Broadcasting Code. Code came into force on the 18<sup>th</sup> of August 2006, abrogating the Broadcasting Law no.603-XIII of the 3<sup>rd</sup> of October 1995 and Law no. 1320-XIV of the 26<sup>th</sup> of July 2002 on the National Public Broadcasting Company "Teleradio-Moldova".

Olivia Pîrțac believes that the Broadcasting Code is the result of a long process of political struggle, debates, in the last ones actively involved the Moldovian civil society and international organizations. "We have to note that at present, given the huge accumulation of information (expertise, experience, studies), the Broadcasting Code is a weakish law, with many confusing provisions that do not meet the best practices in the field. The saddest thing is that this code looks like this not because that we deserve it, that is, because we lack qualified experts able to write a good law, but because it was drafted and adopted as a political act, but out of the best intentions for the people of this country". (PÎRȚAC, 2006)

In the next six months, media NGOs and the human rights ones, under the aegis of the Electronic Press Association, monitored how the new audiovisual legislation is implemented in practice. Experts have concluded that formally

letter of the law was respected, but not its spirit and the Council of Europe recommendations. However, the first six months of implementation of the Broadcasting Code shows that the new provisions are applied with serious violations affecting the development of the field. For example, the ACC was established lacking transparency, in the absence of clear, credible and transparent criteria, exceeding the deadline set in the Broadcasting Code; the selection and appointment procedure of CO members - in the absence of clear and credible criteria. The manner in which the reorganization of the municipal broadcasters Antena C and Euro TV was accomplished prejudiced the rights of the public to information (PÎRȚAC et al, 2008).

On the 26<sup>th</sup> of July 2006 the Parliament, by the Law no. 262, supplemented Article 16 of the Civil Code with the following text: "The amount of compensation for moral damages should be reasonable and should be determined taking into account: a) the character of the information spread; b) the area of dissemination of information; c) the social impact on the person; d) the seriousness and extent of mental or physical suffering caused to the injured party; e) the proportionality between the award of damages and the extent to which the reputation has been harmed; f) the degree of guilt of the perpetrator of the damage; g) the extent to which such compensation may bring satisfaction to the injured party; h) the publication of corrections, reply or retraction until the pronouncement of the judgment of the court; i) other circumstances relevant to the case " (Law. 262, 2006).

Three months later, the Plenum of the Supreme Court adopted a decision on the application of the legislation on protection of honor, dignity and professional reputation of individuals and businesses. The Plenum explains the judges that in each individual case, the amount of compensation for moral damage caused to a person is determined depending on the nature and content of the publication, the information displayed (if it contained vehement attacks to the citizen), the area and extent of its spread (in district edition, a republican one or in a restricted circle of persons (Decision no. 8, 2007).

Vladislav Gribincea believes that apparently the compensations in cases of defamation

plaintiffs are granted arbitrarily, without proper justification. CEDO examines whether a penalty or compensation is proportionate, especially based on the reasoning of the Act which by which the sanction was imposed or ordered to pay compensation. In the absence of such reasoning, or if the justification it is inadequate, the Court finds the violation of the Convention.

Two years later, on the 30<sup>th</sup> of March 2007, the Government adopted the Order no. 41 which contains several actions meant to contribute to respecting the assumed commitments and implementation into the national legislation of the recommendations of the experts of the Council of Europe. The document states that the legislative initiatives of the Government, examined by the Council of Europe, will mandatory be submitted to Parliament, together with expertise translated into Moldovian language and table with divergences on the proposals of the European Council experts (Decision no. 41, 2007). The ministries and other central administrative authorities and responsible institutions, jointly with the Ministry of Justice, will ensure submission of draft laws to the Government accompanied by the respective expertise, translated in the Moldovian language, and table of divergence.

On the 4<sup>th</sup> of February 2008, the Government approved by the Resolution no. 89 the Activity Report of the Ministry of Justice in 2007. The document revealed that "special attention was given to adjusting the national legislation to European standards, including in the context of proper achievement of the schedule of legislative actions in accordance with the Resolution and Recommendations of the Committee honoring the obligations and commitments of member states of the Council of Europe, adopted by the Parliament Decision no. 284-XVI of the 11<sup>th</sup> of November 2005 and consistent implementation of the Moldova Republic - European Union Action Plan" (Decision no. 89, 2008). In this context, there continued the coordination of the process of transmission of the law projects to the expertise of the Council of Europe and the implementation of the recommendations of its experts. In addition, by the Government Decision no. 190 of the 21<sup>st</sup> of February 2007 there was created the Centre of Law Harmonization.

The document also says that despite the fruitful cooperation with the Council of Europe, the Ministry of Justice is facing the problem of presentation by the responsible authorities for the implementation of the recommendations of the Council of Europe, of incomplete information or the exceeding of the deadline, which creates difficulties in honoring the obligation to inform the Council of Europe.

However, the Government asked the Ministry of Justice to examine and ensure consistent implementation and optimal deadlines of the recommendations of the experts of the Council of Europe with reference to the legislation project acts in its field of activity.

In March 2008, the Government Tarlev Two was sacked and was replaced by the government led by Prime Minister Zinaida Grecianii. The Activity Program of the Government of Moldova Republic for 2008-2009 "Progress and Integrity" contains more precise provisions, specifying that media freedom is a priority for the Government. "In order to achieve the medium-term objectives, the Government will focus its immediate activity on three main directions: 1. freedom of the media; 2. active dialogue with the civil society; 3. the independence of the judiciary. In these directions there will continue the consistent implementation of the National Development Strategy and the Council of Europe standards".

Nevertheless, the Grecianii Government has taken no decision directly aimed at the freedom of expression. The truth is that the cabinet had a short-term (one year and two months) and a busy political agenda before the parliamentary elections of the 5th of April 2009.

## CONCLUSIONS

The year 2009 was a turning point in the political life in Moldova Republic, marked by the end of the hegemony of the Communist Party, which governed the country for eight years.

After early elections in July 2009, the country's government was taken over by the Alliance for European Integration, a coalition of pro-European and democratic parties.

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