

THE LEGAL FRAMEWORK - A DETERMINING FACTOR IN THE IMPLEMENTATION AND PROMOTION OF AUDIOVISUAL

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Abstract

This article represents a new and self-contained study in Romania and the Republic of Moldova regarding the countries' history in the audiovisual field, audiovisual policy and media services. Currently, in the context of the new regulation of Audiovisual Media services, I took into account the manner in which they are implemented in the sphere of the current social realities.

Keywords: *Audiovisual, television, Media Services, European audiovisual policy, the cross-border Television convention, information, security, security environment, audiovisual Council, audiovisual Media Services Code, European Union, implementation, infringements.*

The improvement and implementation of the legal framework for regulating the audiovisual field has the main purpose of both the revision and especially the evaluation of the key laws and policies related to the audiovisual field, in accordance with the standards of the Council of Europe and the European Union. In conjunction with the international legislation, but especially the one enshrined in the *European Union*, the legislation assessing and reviewing the needs of the relevant national authorities must meet and promote access to information both in Romania and especially in the Republic of Moldova, given that the harmonization of the latter's legislation represents one of the sine qua non conditions for its accession to the European Union.

We remember that incipient attempts of regulating the audiovisual field in Romania have been carried out since the '90s, along with the so-called "academic structuring" because in that period, new institutional forms appeared within the Romanian Academy. This phenomenon happened taking into account the need to separate the media from the political area: "*a de facto separation of power and authority from the state, as well as in order to create a climate of total transparency in the media area*" (Raveica, 1993).

One should also not forget the *economic perspective* as an integral part and in full correlation with the media area, but especially from the perspective of broadcasting. So, for example, at all levels of the media, including the audiovisual one, it is necessary to speak about the transformation of the property system and its consequences, both in terms of the appearance of media products as market products and in the plan of correlation or lack of institutional correlation in the context of new realities.

If we refer to *the legal character*, audiovisual communication means offering the public, by any means of electronic communication, signal, signals, texts, sounds, information or messages, regardless of their nature, that do not have the character of a private correspondence. This is how political and social pluralism, cultural, linguistic and religious diversity, information, education and entertainment of the public with respect for fundamental human rights and freedoms are achieved and ensured.

Currently, in the field of audiovisual legislation in Romania, there have been new amendments, enshrined in *Law no. 190/2022, which provides for the amendment and completion of the Audiovisual Law no. 504/2002*, (Legeaz, 1999) for amending and supplementing Government Ordinance no. 39/2005 on cinematography, (Monitorul Juridic, 2022) as well as for the amendment of Law no. 41/1994 on the organization and functioning of the Romanian Radio Broadcasting Company and the Romanian Television Society (Legeaz, 2005).

According to the new regulations, the National Audiovisual Council has the role of drawing up and administering the updated list of audiovisual media service providers, located in Romania's jurisdiction, including the criteria on the basis of

which jurisdiction was established for each provider, ensuring its periodic communication, including its updates, to the European Commission and to the public, by displaying it on the Council's website.

In the field of audiovisual media services, the National Audiovisual Council under the current regulation may impose, by means of regulatory decisions, the audiovisual media service providers under the jurisdiction of Romania more detailed or stricter measures of general public interest, in compliance with the applicable European law.

The main role of the new amendment is aimed at transposing the provisions of Directive 89/552/EEC of the European Parliament and of the Council of October 3, 1989 on the coordination of certain provisions laid down by law, regulation or administrative action within the Member States concerning the provision of audiovisual media services, as amended by Directive 97/36/EEC and Directive 2007/65/EC and subsequently adopted in the version codified by Directive 2010/13/EU of a European Directive on the provision of audiovisual media services (Eur-lex.europa.eu, 1989).

Thus, the aim is to transpose *Directive No 1808 of November 14, 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action within the Member States concerning the provision of audiovisual media services* (Eur-lex.europa.eu, 2018). What is noteworthy is that this legislative initiative tries as much as possible to introduce and implement at the same time certain rules that have as their main purpose the strict regulation of some legal aspects that come from the multitude of changes in the field of audiovisual media services, which is largely due to the good technical progress made in this area. This allows for new types of services and experiences for users, both for legal, public entities, and for individuals.

At the same time, a redefinition of some notions and terms is especially envisaged, such as: audiovisual media service, program, retransmission, commercial communication, sponsorship, product placement, audiovisual license and coding, while also introducing some new definitions for the notions of sharing platform service, video material generated by the user,

editorial decision, sharing platform provider and authorization of audiovisual media services on demand.

But, what is most important is the fact that this legislative project has the role of protecting especially the young generation, from the harmful and degrading content that is nothing but the negative consequence of the new tendencies of the young generation as it is known as "*Generation Z*" which includes the young people born between 1997 and 2012, a generation that is fragile and receptive to the social phenomenology expressed directly through the audiovisual sphere, so the protection of this generation must be done unbiasedly.

We mention that the COVID-19 pandemic has shown us how disinformation works both from the political and medical spheres. Being "*devourers*" of audiovisual, people in the current Romanian society must be correctly informed about an essential aspect, namely: who is the provider of audio-visual materials and what means it uses to broadcast information.

However, it should be noted that on November 12, 2021, information on the package of infringement procedures – the *infringement procedure* – was published on the European Commission's website, according to which four Member States are invited to fully comply with the European Union legislation in the field of digital and media. The Commission decided to send reasoned opinions to request Romania and France to complete the transposition of the Audiovisual Media Services Directive, and Belgium and the Czech Republic to fully transpose the European Electronic Communications Code into their national laws (Ec.europa.eu, 2021).

According to the information on the Commission's website, it decided to send a reasoned opinion to request Romania to complete the transposition and implementation of the rules of the Audiovisual Media Services Directive, which was due for transposition on September 19, 2020. The reasoned opinion sent on November 12, 2021 follows the letter of formal notice sent by the Commission in November 2020 for failing to adopt measures transposing the Audiovisual Media Services Directive.

In the light of the above, the novelty introduced by the new Law adopted in 2022 mentioned

above, is that new competences are introduced to the National Audiovisual Council, especially in the relationship of this national forum with the structures of the European Commission, in terms of communication, information and the periodic reporting with the determined purpose of promoting the European values. At the same time, those competences related to international communication and cooperation are also taken into account, as well as the exchange of experience with the other bodies with similar tasks in the Member States of the European Union.

Therefore, the new audiovisual legal framework in Romania, established by the new current trends and regulations, makes it possible to promote and especially to implement new regulations in the field of the business environment represented, on the one hand, by suppliers with low turnovers or with a low level of audience, these being exempted from the contribution introduced by completing GO no. 39/2005, and on the other hand, indirectly, taking into account the directing of the respective contribution to the National Cultural Fund, film producers and the film production industry will therefore be supported.

At the same time, the impact of the new regulations on the society is also taken into account, manifested by the strengthening and efficiency of the existing legal framework regarding the protection of minors from the audiovisual content considered harmful. Also, the draft legislation that was presented earlier, contains provisions aimed at ensuring a greater degree of access for people with disabilities to audiovisual programmes.

A regulation, as necessary as it is useful in the audiovisual field, is also represented by *Decision No 220/2011 on the Code for regulating audiovisual content*, with subsequent amendments and additions, which implements four new regulations, namely: the obligation of the broadcaster to contact the person spoken about during a broadcast and against whom accusations were brought by guests; the protection of the minor, the one with the acts of violence, which are no longer just repeated, can also be serious or of high intensity; the prohibition on the use of vulgar and trivial language and behaviour and the legal provision on defamation. At the same

time, a new regulation has been introduced regarding the prohibition on the use of minors aged 3-15 in food advertisements, a fact that we consider to be appreciated in the social context of recent years.

It should also be mentioned that, in the Decision no. 220/2011 on the Code for regulating audiovisual content, there are amendments made, among which we mention: amendment to art. 65, amendment to the first paragraph of art.93, the reformulation of the second paragraph of art. 93 to the proposal of PRO TV and ARCA, the amendment of paragraph 3 of art. 93, the amendment of art. 117, paragraph 1(a), the adoption of an amendment to Rule 120 and other amendments, which we will not dwell upon.

Thus, if we make a roundup of these new provisions of a normative nature, all of them implicitly but especially explicitly refer to information in matters of public interest, of a political, economic, social or cultural nature, in which two main segments such as impartiality and balance have the essential role, both of which have the role of favouring the free formation of opinions.

If we make a foray into *the legislation in the audiovisual field in the Republic of Moldova* at the current stage, as well as on the way in which the regulations in this field are implemented, we shall discover that there is a desire to improve and implement, in the most efficient way possible, the legal regulation framework in the audiovisual field, with the aim of revising and evaluating the key laws and policies related to the audiovisual field, in accordance with the standards of the Council of Europe and the European Union; assessing and reviewing the needs of the relevant national authorities and promoting the field of access to information in the Republic of Moldova.

A new stage in the legislative and practical accreditation of public broadcasting in the Republic of Moldova started in 2006, with the adoption of the Audiovisual Code. Chapter VII of this legislative act is entirely devoted to public broadcasters. According to art. 50, The National Public Broadcasting Institution The company "Teleradio-Moldova" represents "an independent and institutionally autonomous editorial public broadcasting and television service, established on the basis of the public financial capital, which,

under the terms of this Code, provides program services to the entire society of the Republic of Moldova, covering the entire territory of the Republic of Moldova.”

In the Republic of Moldova, the audiovisual media is regulated by the Constitution of the Republic of Moldova, the *Audiovisual Media Services Code of the Republic of Moldova no. 174 of November 8, 2018* published in the Official Gazette no.462-466/766 of December 12, 2018, the international treaties to which the Republic of Moldova is part of, other legislative acts, as well as the decisions of the Audiovisual Council.

This Code marks a premiere in the Republic of Moldova, because the European legislation with the latest directive of the European Union is transposed into the legislation of this country. Thus, the non-guerrilla organizations, the so-called NGOs, which had and continue to have as their objective the monitoring of Mass-media, carried out in time various pressures for the adoption of a new Audiovisual Code, which would ensure the implementation and promotion of transparency regarding the owners of media institutions. However, it is necessary to specify an essential aspect, namely: the current Audiovisual Code of the Republic of Moldova contains only general provisions, only at a declarative level regarding the ownership of the Media and audiovisual pluralism, but these regulations remained ineffective until recently, because they did not contain and did not provide for those mechanisms and levers essential to verifying the compliance with this obligation.

At present, confirming the adherence of the Republic of Moldova to the European Union standards on expression and access to the freedom of audiovisual media services, based on art. 66 lit. d), art. 72 para. (3) point (r), Art. 126 para. (2) points (a) and (b) and Art. 132 para. (1) of the Constitution of the Republic of Moldova, the Parliament of the Republic of Moldova has adopted the Audiovisual Media Services Code, which transposes Directive 2010/13/EU of the European Parliament and of the Council of March 10, 2010 on the coordination of certain stability provisions by means of laws, regulations or administrative acts, within the Member States, on the provision of audiovisual media services (Ec. europa.eu, 2022). This legislative act establishes

that the *Audiovisual Council* is in fact the rightful successor of the Audiovisual Coordinating Council and is considered to be an attestor of the public interest in the audiovisual field.

The mission of the Audiovisual Council is to contribute to the development of audiovisual media services in accordance with the principles of audiovisual communication, the insurance of the Audiovisual Media Services Code, international norms, standards and best practices in the field. Referring to the public interest in the audiovisual field, a sector of maximum interest in ensuring a pluralistic and objective information of the population, it also relates to political, economic, commercial, ideological or other interests.

The Code introduced the notion of information security, which represents a set of measures in order to ensure the protection of people, society and the state from possible attempts of disinformation and / or manipulative information from outside and the non-admission of media challenges directed against the Republic of Moldova. This provides for a series of new regulations on the principles of audiovisual communication, under which all media service providers must activate, including: the freedom of expression, editorial independence, ensuring correct information, protection of minors and people with disabilities, gender balance, protection of the national audiovisual space, transparency of property, access to major important events, protection of journalists, the right to reply, etc.

The latest events in the region, the sensitivity of information can have a particularly negative impact on respect for human rights, state security, strengthening the status of sovereign, independent and upright state, have generated the need to amend and supplement the 2006 Audiovisual Code.

Ensuring the information security of the State by imposing certain limitations for the transmission or broadcasting of foreign intelligence-analytical and political broadcasts, the production of which does not take into account international standards and rigors, provided for, in particular, in the European Convention on Cross-border Television. Protecting the information security of the state is as important as ensuring the national security,

sovereignty, independence and territorial integrity of the Republic of Moldova - supreme values guaranteed by the Constitution (Legis.md, 2018).

Despite the multiple measures, at national and international level, the media continued to be recorded in the bilateral or multilateral confrontations, produced in the post-war decades as tools of information warfare. Information warfare represent the actions adopted to achieve informational superiority in support of the national military strategy by compromising the information of the enemy and its information systems at the same time as securing and defending its own information and systems (Bunduchi, 2016).

Reality showed that the development of the media market, the introduction and wide use of modern technologies and the permanent evolution of European jurisprudence in the field of audiovisual media services dictated the need to draw up and adopt a new Audiovisual Code that would take account of these essential changes.

On December 10, the Council of Europe project "Promoting European standards in audiovisual regulation in the Republic of Moldova" organized a round table on the topic of "Ensuring access to information for journalists from the Republic of Moldova - challenges and new opportunities." During the event, journalists, the civil society, as well as the representatives of public authorities discussed the current challenges of obtaining information of public interest, as well as the new opportunities brought by the entry into force of the Council of Europe Convention on the Access to Public Documents or the Tromsø Convention.

On this occasion, the head of the Council of Europe Office in Chisinau noted that "the freedom of the press and the freedom of expression and the access to information are directly correlated, and these are granted to journalists and the public alike in a democratic society" (TRM, 2020).

In this respect, the Convention of the Council of Europe on the Access to Public Documents or the Tromsø Convention provides a framework of legal principles with regard to all these democratic objectives and it establishes a number of basic guarantees regarding the right of access to public documents.

Conclusions and proposals of lege-ferenda

Lately, as far as the *Romanian* audiovisual is concerned, due to the *infringement procedure* initiated by the E.U. following Romania's failure to fulfil its obligations in this field, there is a real improvement in the way in which the monitoring of the audiovisual space is regulated and implemented by virtue of the fundamental right of the public to correct information, practically leading a fight against the media's means of disinformation: audio, video, etc.

Thus, by adopting the new Law no. 190/2022 which provides for the amendment and completion of the Law on audiovisual. no 504/2002, we consider that the Romanian audiovisual press has taken concrete steps in this area, in line with the Directives adopted by the European Parliament.

As for the legal norms that serve to implement and promote broadcasting in the Republic of Moldova, at present, a period of transition from a dictatorial regime to a democratic one is currently underway. Although there is a growing trend towards a decentralization, certain political interferences are observed, which often determine the editorial activity of the broadcasters. There are tendencies to modernize this field through the emergence of new, competing TV stations, which try to promote European ideas and values.

However, we consider that there is still a long way to go before the independence and efficiency of audiovisual in the Republic of Moldova is to be consolidated.

Last but not least, regarding the *lege ferenda*, we consider that the improvement and proper implementation of the regulatory framework on the audiovisual in Romania and the Republic of Moldova can be achieved only by meeting certain criteria and objectives, such as:

- the development, evaluation and review of the relevant existing legal framework to the freedom of expression and media pluralism, in close consultation with international advisers;
- supporting audiovisual regulators and increasing the capacity to work in an independent and transparent manner;
- facilitate the correct implementation of the Audiovisual Media Services Code by the

Audiovisual Council of the Republic of Moldova, including the efficient monitoring of mass media, prevention of excessive concentration of media ownership, etc.;

- improving and diversifying the editorial policies of the Romanian and Moldovan audiovisual, especially in the production of documentary films and political/electoral programs in accordance with the best international practices in the field;
- initiating a so-called process of newsroom convergence in Romania and the Republic of Moldova on the production and supply of news content through radio, traditional television and new online platforms.

The audiovisual sector in Romania and the Republic of Moldova is in the fever of essential changes under the empire of digital technology, which will allow the transition from mass communication through the classical systems of radio and television programs, to individualized communication, upon request, through decentralized systems for the provision of radio and television programs, film productions and access to content on websites, intended for specific audiences.

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