# COMPARATIVE STUDY

# ON

# BLOCKING, FILTERING AND TAKE-DOWN OF ILLEGAL INTERNET CONTENT

*Excerpt, pages 452-471*

*This document is part of the Comparative Study on blocking, filtering and take-down of illegal Internet content in the 47 member States of the Council of Europe, which was prepared by the Swiss Institute of Comparative Law upon an invitation by the Secretary General. The opinions expressed in this document do not engage the responsibility of the Council of Europe. They should not be regarded as placing upon the legal instruments mentioned in it any official interpretation capable of binding the governments of Council of Europe member States, the Council of Europe's statutory organs or the European Court of Human Rights.*

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National reports current at the date indicated at the end of each report.

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# I. INTRODUCTION

On 24th November 2014, the Council of Europe formally mandated the Swiss Institute of Comparative Law ("SICL") to provide a comparative study on the laws and practice in respect of filtering, blocking and takedown of illegal content on the internet in the 47 Council of Europe member States.

As agreed between the SICL and the Council of Europe, the study presents the laws and, in so far as information is easily available, the practices concerning the filtering, blocking and takedown of illegal content on the internet in several contexts. It considers the possibility of such action in cases where public order or internal security concerns are at stake as well as in cases of violation of personality rights and intellectual property rights. In each case, the study will examine the legal framework underpinning decisions to filter, block and takedown illegal content on the internet, the competent authority to take such decisions and the conditions of their enforcement. The scope of the study also includes consideration of the potential for existing extra-judicial scrutiny of online content as well as a brief description of relevant and important case law.

The study consists, essentially, of two main parts. The first part represents a compilation of country reports for each of the Council of Europe Member States. It presents a more detailed analysis of the laws and practices in respect of filtering, blocking and takedown of illegal content on the internet in each Member State. For ease of reading and comparison, each country report follows a similar structure (see below, questions). The second part contains comparative considerations on the laws and practices in the member States in respect of filtering, blocking and takedown of illegal online content. The purpose is to identify and to attempt to explain possible convergences and divergences between the Member States' approaches to the issues included in the scope of the study.

# II. METHODOLOGY AND QUESTIONS

## 1. Methodology

The present study was developed in three main stages. In the first, preliminary phase, the SICL formulated a detailed questionnaire, in cooperation with the Council of Europe. After approval by the Council of Europe, this questionnaire (see below, 2.) represented the basis for the country reports.

The second phase consisted of the production of country reports for each Member State of the Council of Europe. Country reports were drafted by staff members of SICL, or external correspondents for those member States that could not be covered internally. The principal sources underpinning the country reports are the relevant legislation as well as, where available, academic writing on the relevant issues. In addition, in some cases, depending on the situation, interviews were conducted with stakeholders in order to get a clearer picture of the situation. However, the reports are not based on empirical and statistical data, as their main aim consists of an analysis of the legal framework in place.

In a subsequent phase, the SICL and the Council of Europe reviewed all country reports and provided feedback to the different authors of the country reports. In conjunction with this, SICL drafted the comparative reflections on the basis of the different country reports as well as on the basis of academic writing and other available material, especially within the Council of Europe. This phase was finalized in December 2015.

The Council of Europe subsequently sent the finalised national reports to the representatives of the respective Member States for comment. Comments on some of the national reports were received back from some Member States and submitted to the respective national reporters. The national reports were amended as a result only where the national reporters deemed it appropriate to make amendments. Furthermore, no attempt was made to generally incorporate new developments occurring after the effective date of the study.

All through the process, SICL coordinated its activities closely with the Council of Europe. However, the contents of the study are the exclusive responsibility of the authors and SICL. SICL can however not assume responsibility for the completeness, correctness and exhaustiveness of the information submitted in all country reports.

## 2. Questions

In agreement with the Council of Europe, all country reports are as far as possible structured around the following lines:

### 1. What are the legal sources for measures of blocking, filtering and take-down of illegal internet content?

Indicative list of what this section should address:

- Is the area regulated?
- Have international standards, notably conventions related to illegal internet content (such as child protection, cybercrime and fight against terrorism) been transposed into the domestic regulatory framework?

- Is such regulation fragmented over various areas of law, or, rather, governed by specific legislation on the internet?
- Provide a short overview of the legal sources in which the activities of blocking, filtering and take-down of illegal internet content are regulated (more detailed analysis will be included under question 2).

## 2. What is the legal framework regulating:

### 2.1. Blocking and/or filtering of illegal internet content?

Indicative list of what this section should address:

- On which grounds is internet content blocked or filtered? This part should cover all the following grounds, wherever applicable:
  - the protection of national security, territorial integrity or public safety (e.g. terrorism),
  - the prevention of disorder or crime (e.g. child pornography),
  - the protection of health or morals,
  - the protection of the reputation or rights of others (e.g. defamation, invasion of privacy, intellectual property rights),
  - preventing the disclosure of information received in confidence.
- What requirements and safeguards does the legal framework set for such blocking or filtering?
- What is the role of Internet **Access** Providers to implement these blocking and filtering measures?
- Are there soft law instruments (best practices, codes of conduct, guidelines, etc.) in this field?
- A brief description of relevant case-law.

### 2.2. Take-down/removal of illegal internet content?

Indicative list of what this section should address:

- On which grounds is internet content taken-down/ removed? This part should cover all the following grounds, wherever applicable:
  - the protection of national security, territorial integrity or public safety (e.g. terrorism),
  - the prevention of disorder or crime (e.g. child pornography),
  - the protection of health or morals,
  - the protection of the reputation or rights of others (e.g. defamation, invasion of privacy, intellectual property rights),
  - preventing the disclosure of information received in confidence.
- What is the role of Internet Host Providers and Social Media and other Platforms (social networks, search engines, forums, blogs, etc.) to implement these content take down/removal measures?
- What requirements and safeguards does the legal framework set for such removal?
- Are there soft law instruments (best practices, code of conduct, guidelines, etc.) in this field?
- A brief description of relevant case-law.

## 3. Procedural Aspects: What bodies are competent to decide to block, filter and take down internet content? How is the implementation of such decisions organized? Are there possibilities for review?

Indicative list of what this section should address:

- What are the competent bodies for deciding on blocking, filtering and take-down of illegal internet content (judiciary or administrative)?
- How is such decision implemented? Describe the procedural steps up to the actual blocking, filtering or take-down of internet content.
- What are the notification requirements of the decision to concerned individuals or parties?
- Which possibilities do the concerned parties have to request and obtain a review of such a decision by an independent body?

## 4. General monitoring of internet: Does your country have an entity in charge of monitoring internet content? If yes, on what basis is this monitoring activity exercised?

Indicative list of what this section should address:

- The entities referred to are entities in charge of reviewing internet content and assessing the compliance with legal requirements, including human rights – they can be specific entities in charge of such review as well as Internet Service Providers. Do such entities exist?
- What are the criteria of their assessment of internet content?
- What are their competencies to tackle illegal internet content?

## 5. Assessment as to the case law of the European Court of Human Rights

Indicative list of what this section should address:

- Does the law (or laws) to block, filter and take down content of the internet meet the requirements of quality (foreseeability, accessibility, clarity and precision) as developed by the European Court of Human Rights? Are there any safeguards for the protection of human rights (notably freedom of expression)?
- Does the law provide for the necessary safeguards to prevent abuse of power and arbitrariness in line with the principles established in the case-law of the European Court of Human Rights (for example in respect of ensuring that a blocking or filtering decision is as targeted as possible and is not used as a means of wholesale blocking)?
- Are the legal requirements implemented in practice, notably with regard to the assessment of necessity and proportionality of the interference with Freedom of Expression?
- In the case of the existence of self-regulatory frameworks in the field, are there any safeguards for the protection of freedom of expression in place?
- Is the relevant case-law in line with the pertinent case-law of the European Court of Human Rights?

For some country reports, this section mainly reflects national or international academic writing on these issues in a given State. In other reports, authors carry out a more independent assessment.

## REPUBLIC OF MOLDOVA

Moldova is a country with **no specific regulation** on issues of blocking, filtering and take-down of Internet content.

## 1. Legal Sources

The area of blocking, filtering and take-down of illegal Internet content is basically **unregulated** in Moldova. There were a series of initiatives from authorities to regulate the field, but these encountered the opposition of the civil society, as were considered susceptible to abuse against legitimate freedom of expression. Two drafts were retired in 2013 from the Government agenda after civil society activists revealed dangerous provisions and the lack of consulting with public.[1] One draft[2] reappeared in the Government in spring 2015, being proposed for consultations with the public, but was not approved by Government at that time. However, on 30 March 2016, the Government of the Republic of Moldova came back to the issue and adopted the Decision on approval of the draft law amending and completing some legislative and normative acts[3]. The draft document contains new provisions, including procedural, facilitating cybercrime investigation and sanctioning. As in previous cases, the civil society reacted negatively to this draft law: the first statement calling for exclusion of particular articles came from a series of media outlets and NGOs,[4] then other 25 NGOs followed with a public statement.[5] The Ombudsman too shares the concerns of

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1 P. Macovei, Reforms in the Field of Media in 2009-2013: from Promises to Actions, Chisinau 2014, p. 65-67, available at http://api.md/upload/files/studiu-REFORMELE-en-WEB.pdf (12.09.2015).

2 Draft-law on modifying and completing some legislative acts and the Informative Note available at (in Romanian) http://particip.gov.md/proiectview.php?l=ro&idd=2189 (12.09.2015). This draft contains a series of new provisions, including procedural, facilitating cybercrime investigation and sanctioning. The article 7 of the Law on prevention and fighting cyber-crime is completed with new **obligations of service-providers**, which have: "*i)* ***to cease****, using necessary methods and technical means,* ***the access*** *from its own information system to all IP addresses on which are placed web pages containing child pornography, promoting sexual abuse or sexual exploitation of children, containing information with war or terrorism propaganda, calling to hatred or national, racial or religious discrimination, to hostility or violence, containing or disseminating instructions on how to commit crimes* ***and are included in the special lists, compiled and periodically renewed according to the procedure established by the Government****.*" The disrespect of this and other obligations will be sanctioned according to a new article to be introduced in the Administrative offences code. The cited provision is unclear, it includes high obligations and responsibility, but do not refer to the procedure and guarantees for freedom of expression to be applied. It stipulates that "special lists" and "procedure" will be established by Government. As it is written, we may also understand that service-providers have the obligation to monitor the Internet for executing this provision and avoiding administrative or criminal sanctions. The provision do not respect ECtHR standard on clarity and predictability of the law.

3 Draft-law on modifying and completing some legislative acts and the Informative Note available at (in Romanian) http://www.gov.md/sites/default/files/document/attachments/intr02_72.pdf (09.04.2016).

4 Apel comun: Se cere excluderea mai multor articole din legea "Big Brother" (Joint call: Asking for the exclusion of several articles of the "Big Brother" law), published on 1 April 2016, available at (in Romanian) http://www.zdg.md/stiri/stiri-politice/apel-comun-se-cere-excluderea-mai-multor-articole-din-legea-big-brother (09.04.2016).

5 Public call regarding the draft-law proposed by Ministry of Internal Affairs and adopted by the Government, which extends and tightens control of law enforcement bodies over the information space, published on 8 April 2015, available at (in Romanian) http://crjm.org/wp-content/uploads/2016/04/2016-04-08-Apel-Control-Informatic.pdf (09.04.2016). This call pointed out that the draft-law "grants very broad rights to law enforcement bodies in case of a long list of crimes, disrespecting the

civil society on the risks posed by the adoption of the current version of the draft-law for the rights to privacy and freedom of expression and published a press-release in this respect.[6] For becoming a law the draft needs to be adopted by the Parliament, whose speaker promised to open large debates on it.

There is no a special law governing Internet content in Moldova. Internet is subject to regulation only when it comes to **general provisions that apply to all types of content delivery.** The legislation which protects the person reputation, private life or other values (security, property, equality, etc.) is, as a rule (but not in all cases), sufficiently general to enclose violations of these rights through Internet, offering the possibility to remedy violations of law. Thus, the Constitution[7] and such Moldovan laws as the Criminal code,[8] the Civil code,[9] the Administrative offences code,[10] the Law on freedom of expression,[11] the Law on the protection of personal data,[12] the Law on the protection of children against the negative impact of information[13] and the Law on counteracting extremist activity[14] contain a series of provisions which may be applied to all means of distribution of information, including Internet. As regards to the guarantees for freedom of expression, these are provided by the Constitution and the Law on freedom of expression. The last states the rules of freedom of expression, which are applicable to all means of communication, be it print or electronic. It is an advanced law, harmonized with the European Court of Human Rights (ECtHR) jurisprudence, and aiming to facilitate the application of the highest standards of freedom of expression in Moldova. In particular, it refers to defamation and protection of private life.

As for the Criminal code and the Administrative offences code, the largest part of criminal offences which may refer to media in general are also applicable to the digital means of communication.

Generally, the international instruments are **ratified** by the Republic of Moldova: Convention on Cybercrime, Budapest, ratified in 2009,[15] Convention on Prevention of Terrorism, Warsaw, ratified in

principle of privacy and freedom of expression, and the entire burden of implementing the law is passed on to service providers, without a preliminary analysis of the costs and effectiveness of measures, thing which will lead to a substantial increase in cost for access to internet services".

6 Press release, published on 8 April 2015, available at (in Romanian) http://ombudsman.md/ro/content/comunicat-de-presa-31 (09.04.2016).

7 Constitution of the Republic of Moldova from 29.07.1994, available in English at http://www.presedinte.md/eng/constitution (12.09.2015).

8 Criminal Code No 985 as of 18.04.2002, republished in the *Official Journal* (Monitorul Oficial) No 72-74/195 as of 14.04.2009

9 Civil Code No 1107 as of 06.06.2002, published in the *Official Journal* (Monitorul Oficial) No 82-86/661 as of 22.06.

10 Administrative offences Code No 218 of 24.10.2008, published in the *Official Journal* (Monitorul Oficial) No 3-6 as of 16.01.2009.

11 Law on freedom of expression No 64 as of 23.04.2010, published in the *Official Journal* (Monitorul Oficial) No 117-118/355 as of 09.07.2010.

12 Law on protection of personal data No 133 as 08.07.2011, published in the *Official Journal* (Monitorul Oficial) No 170-175/492 as of 14.10.2011.

13 The Law on the protection of children against the negative impact of information No 30 as of 07.03.2013, published in the *Official Journal* (Monitorul Oficial) No 69-74/21 as of 05.07.2013.

14 Law on counteracting extremist activity No 54 as of 21.02.2003, published in the *Official Journal* (Monitorul Oficial) No 56-58/245 as of 28.03.2003.

15 Ratified by Law No 6 as of 02.02.2009, published in the *Official Journal* (Monitorul Oficial) No 37-40 as of 20.02.2009.

2008,[16] Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) ratified in 2011,[17] Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, in force from 2008.[18] These are partially transposed into the domestic regulatory framework, but a series of draft laws were elaborated with the goal to complete the relevant legislative framework.

## 2. Legal Framework

### 2.1. Blocking and/or filtering of illegal Internet content

**Copyright**

Moldova's legislation has very few specific provisions regarding blocking, filtering and take-down of illegal internet content. An exception is registered in the article 66 of the **Law on copyright and associated rights,**[19] which refers to the liability of Internet service providers when these do not implement the copyright holder request to block/restrict access to/delete the Internet content:

*"(1) The natural or legal person providing hosting services and/or data transmission (internet/intranet), including the internet-provider, is considered* ***party to the crime*** *when directly contributing to copyright and/or associated rights infringement, and bears responsibility for violations of these rights in the following cases:*

> a) if, **having technical possibility to block, restrict access and/or timely delete objects** published and/or used with violation of copyright and being informed by the holder of those rights or his/her representatives about the violation in question, has not executed the requirements of the copyright owner regarding blocking, limiting access and/or deleting the indicated objects;
>
> b) if, being informed about the illegal activities in the field of copyright and/or associated rights, they promote, finance and contribute to illegal actions of another person;
>
> c) if they publish incorrect information, amend or delete information on the copyright owner and/or the owner of associated rights, including distribution of copies of works where this information has been changed or deleted;
>
> d) if intentionally make available to third parties any information (links, web addresses) that creates the possibility of having illegal access to objects of copyright and/or associated rights.

*(2) The natural or legal person providing hosting services and/or transmission of data (internet/intranet), including Internet-provider,* ***is not liable*** *for the illegal actions of other people who use its services to infringe copyright and/or related rights* ***if it had no information*** *about the actions of these people or if not able to restrict access or delete items published or used in breach of copyright and/or related rights."*

This article was criticized by people from ICT field for the reason that provisions of the article let place for interpretation and allow abuses, which can result in the non-motivated closing of more

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[16] Ratified by Law No 51 as of 07.03.2008, published in the *Official Journal* (Monitorul Oficial) No 63-65 as of 28.03.2008.

[17] Ratified by Law No 263 as of 19.12.2011, published in the *Official Journal* (Monitorul Oficial) No 21-24 as of 27.01.2012.

[18] Ratified by Parliament Decision No 483-XIV as of 02.07.1999, published in the *Official Journal* (Monitorul Oficial) No 80-82 as of 29.07.1999, in force from 01.06.2008.

[19] The Law on copyright and associated rights No 139 as of 02.07.2010, published in the *Official Journal* (Monitorul Oficial) No 191-193/630 as of 01.10.2010.

sites or the seizure of servers of companies which offer hosting services. They proposed an alternative edition of the article.[20]

This article has the potential to have a chilling effect on freedom of expression on Internet, as the Law does not provide for any safeguards against arbitrary interference. Internet service providers are put in the situation to choose between not taking any action related to a certain contested Internet content, but risking to be accused as accomplice to a crime, or somehow blocking/restricting access to/deleting it and avoiding criminal liability. The possibility to contest copyright owner request in court and avoid criminal responsibility, without satisfying this request, is not expressly stipulated in law, nor exist other safeguards which would insure the proportionality of the restriction applied to freedom of expression. The Law on freedom of expression is not applicable to reports related to copyright protection (article 1, para. 2) and only article 10 of the European Convention on Human Rights and article 54 of the Constitution could be invocated for questioning the pressing need and proportionality for such a restriction, in case it is applied.

A widely reported event which produced a **temporary suspension** of a Moldovan site because of alleged copyright violations happened in October 2010, when the extremely popular website Torrentsmd.com (a BitTorrent protocol-type site used for sharing information) was temporary unavailable. The main reason was a criminal investigation initiated by the Prosecutor Office for copyright infringement, which allegedly occurred through this site. On 13 October 2010, the prosecutors, based on a judicial authorization, seized the servers of the site (fact which created a temporary physical impossibility of functioning). The media campaign related to this event was very intense, and both the prime minister and the president ad-interim made public statements asking for an immediate investigation of the case: “the chief of the executive wants a transparent investigation, without damaging the rights of Internet users on access to information”.[21]

On 29 October 2010, the site was reopened for public access.[22] This incident focused public attention on several important issues related to Internet regulation and practice. One of the main general concerns, shared by some of the most active new media opinion leaders, was reflected in the president’s public statement: “A website is not a crime of rape or murder when we should “confine” the person. Some warnings were necessary and those who caused a copyright infringement should be punished, but to deny the access to the site to everyone [is unacceptable].”[23] The case with the copyright infringement was closed because the Criminal code article 185/1 was modified in 2011 and the “large scale” of damages condition was added for considering the copyright infringement as a crime under the Criminal code.

**Protection of children against the negative impact of information**

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20 Table of proposals of National Association of Private Companies from ICT field (ATIC) and Patronal Association “American Commerce Chamber from Moldova” (AmCham Moldova) for modifying and completing the Law on copyright and associated rights No 139 as of 02.07.2010, p. 12-14, available at (in Romanian) http://agepi.gov.md/pdf/public_consultation/da/proposals/atic.pdf (03.10.2015).

21 Unimedia, Premierul țării, Vlad Filat, cere o investigație de urgență în cazul suspendării TorrentsMD din on-line-ul moldovenesc (PM Vlad Filat asks for urgent investigation in TorrentsMD suspension case), published on 13 October 2010, available (in Romanian) at http://unimedia.info/stiri/-24819.html (12.09.2015).

22 Unimedia, Ultimă oră! TorrentsMD.com a revenit on-line! (Latest news! TorrentsMD.com came back online!), published on October 29, 2010, available (in Romanian) at http://unimedia.info/stiri/-25450.html (12.09.2015).

23 Unimedia, (video) Ghimpu despre închiderea Torrentsmd: Trebuiau preîntîmpinări. Legea în acest sens ar putea suferi modificări ((video) Ghimpu on TorrentsMD closedown: Warnings were needed. The Law may suffer modifications in this respect), published on 18 October 2010, available at (in Romanian) http://unimedia.info/stiri/-24959.html (12.09.2015).

A provision which includes obligations both to public authorities and private entities as regards **filtering** the information is the para. (8) of article 5 of the **Law on the protection of children against the negative impact of information**, stipulating that

> "Entities granting access services to public computer networks (Internet) will ensure the implementation and smooth operation of the **means of filtering the Internet information** with negative impact on children, means approved by the Ministry of Information Technology and Communications. At the proposal of the Ministry of Information Technology and Communications, the Government approves the conditions of use of the mandatory means of filtering in places of public access to computer networks (Internet)."

In article 6 the Law stipulates two exceptions to the restrictions applied for the information with negative impact on children: *a) the information has scientific or artistic value, or is necessary for studies, training or education; b) its publication is made in public interest*. However, taking into account the longue and large list of information which, according to article 3, is considered with negative impact on children (for example, information: *a) about violence, encouraging aggression and the contempt for life; b)which approves damaging or destroying property*; etc.), it is hard to imagine how to introduce means of filtering, which would not restrict excessively the legitimate freedom of expression. The Ministry is given total discretion on how to implement these provisions and there are no proportionality requirements regarding their implementation, or other safeguards for freedom of expression, except for the general provisions from article 10 ECHR, article 54 Constitution and the Law on freedom of expression.

Such means of filtering were not approved yet, and there is no information about any on-going process. The obligations are already effective, but the Ministry does not have the intention to implement them, but rather to modify them. In an answer to an official request of information, the Ministry of Information Technology and Communications informed about the elaboration of a new draft-law which "*stipulates a new edition of para. 8 article 5, obliging providers of networks and/or electronic communications services to offer on contractual basis, at the request of users, the service of filtering the digital content with negative impact on children from Internet*".[24] The letter mentions also that the draft was sent in August 2014, to the Ministry of culture, which shall integrate it in the draft-law for modifying and completing the Law on the protection of children against the negative impact of information.

**The right to freedom of expression**

Moldovan legislation contains **guarantees against abuses related to freedom of expression**, including the possibility to apply directly the European Convention on Human Rights and the European Court of Human Rights (ECtHR) case law. The general rules applicable for the right to freedom of expression are enclosed in the articles 32 (*Freedom of opinion and expression*) and 54 (*Restriction on the exercise of certain rights or freedoms)* of the Constitution of the Republic of Moldova, and, more detailed, in the Law on the freedom of expression.

Article 54 of the Constitution stipulates that „(*2) The pursuit of the rights and freedoms may not be subdued to other restrictions unless for those* ***provided for by the law****, which are in compliance with the unanimously recognized* ***norms of the international law*** *and are requested in such cases as: the defense of national security, territorial integrity, economic welfare of the State, public order, with the view to prevent the mass revolt and felonies, protect other persons' rights, liberties and dignity, impede the disclosure of confidential information or guarantee the power and impartiality of justice.(…) (4) The restriction enforced must be* ***proportional*** *to the situation that caused it and may not affect the existence of that right or liberty*."

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[24] Letter No 01/P-155/15 as of 15.09.2015 in response to Official request for information No P-155/15 as of 07.09.2015.

The Law no. 64 of April 23, 2010 on the freedom of expression transposes into the Moldovan legislation the main rules instituted by ECtHR case law in the field of freedom of expression. The law includes such provisions as:

> "(2) The freedom of expression protects equally the substance of the information expressed, and the form in which it is expressed, **including offending, shocking or disturbing information**.
>
> (3) The exercise of the freedom of expression may be subject to **legal restrictions**, which are **necessary in a democratic society** in order to protect national security, territorial integrity or public safety, to protect order and prevent crime, to protect health or morals, the reputation or rights of others, to prevent the disclosure of confidential information or guarantee the authority and impartiality of judicial power.
>
> (4) The freedom of expression may not be limited unless this is **necessary to protect a legitimate interest** as per para. 3 and only when such limitation is **proportional** to the situation requiring it, the **just balance** between the protected interest and the freedom of expression, as well as the public's right to know, should be observed" (article 3).

The mass media's freedom of expression is higher protected:

> "… the freedom of expression of the mass media also includes a certain degree of exaggeration, or even provocation, provided that the exaggeration or provocation do not distort the core of the basic message" (article 4).

Article 6 develops the right of the public to be informed:

> "(1) Any person has the right to receive information of public interest via mass-media.
>
> (2) The protection of honour, dignity or professional reputation **shall not prevail** over the right of a person to receive information of public interest.
>
> (3) The seizure of the print run or liquidation of a mass media outlet can take place only and if it is necessary in a democratic society for the protection of national security, territorial integrity or public safety, or in order to prevent the disclosure of secret information, done by an irrevocable decision of the court of law."

Article 9 of the Law stipulates:

> "(1) Any person shall have the **right to criticize the state and public authorities**.
>
> (2) The state and public authorities may not file law suits on matters of defamation.
>
> (3) The state and the executive or legislative authorities shall not be protected by either criminal or administrative law against defamatory statements.
>
> (4) The persons exercising public functions may be subject to criticism and verification from media concerning the way in which they exercise or have exercised their functions, if this is necessary in order to ensure the transparency and responsible discharge of their functions."

**Public figures and persons occupying public functions** have the right to privacy and family life, but

> "(2) The information about the private life of public figures and persons occupying public functions may be disclosed if it represents an issue of public interest. The dissemination of such information should not cause unnecessary harm to third persons.
>
> (3) When public figures and persons occupying public functions draw attention to elements of their private and family life by their actions, mass media shall have the right to look into such elements." (article 11).

As we see from the para. (3) of the article 6 cited above, and generally from the Law text, it is not adapted to the Internet era and content, however it had not the goal to exclude it from its action, as the purpose of the law is stipulated in article 1:

> "to stand **guarantee to the right to free expression and information** as well as to provide a **just balance** between the right to free expression and information and the protection of honour, dignity, professional reputation and the right to privacy and family life".

So, where the letter of the law is not adapted to Internet, the judge should apply an analogy of legal provisions – for instance, in our opinion, article 6 para (3) cited above should be interpreted also in relation to the conditions which have to be respected for blocking or closing a site with news and information of public interest.

The lack of regulation in the field may be temporary, since more tentatives of introducing new laws were registered in the last years[25] and the adoption of a new draft-law by the Government on 30 March 2016. In general, the draft-laws are introduced with the argumentation of the necessity to transpose international standards in the field of fight against cybercrime, infantile pornography and extremism. At the same time, civil society manifested against the respective draft-laws, and succeeded to stop the promotion of previous initiatives, considering them able to suppress freedom of expression because of questionable mechanisms to be introduced.[26]

Moldova has not ratified yet the *Additional Protocol to the Convention on Cybercrime*, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, but "adhering" to this Protocol was included as a goal into an *Inter-ministerial common Plan of actions in the field of prevention and fighting cybercrime*[27] adopted by 12 authorities in 2013. This Plan reflects authorities' concrete engagement to transpose international standards and strengthen the system fighting cybercrime. However, the point 3.7 of the Plan referring to "*Elaboration and signing of* ***voluntary agreements*** *and conventions at local level between public authorities and private operators, especially Internet service providers,* ***regarding the procedure of blocking and closing illegal Internet sites***" was widely criticized and considered as an excessive step.[28] Apparently, such agreements were not signed yet with private entities.

A policy document, which adoption has, inter alia, the goal to harmonize the Moldovan legislation to international standards, is the National Programme on cyber security of the Republic of Moldova 2016-2020, which was approved through the Government Decision No. 811 on 29 October 2015:[29]

This document is intended to implement the provisions of the Association Agreement Republic of Moldova–European Union, Council of Europe Convention on Cybercrime, Cyber Security Strategy of the EU and

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25 T. Darie, Revine proiectul de lege, care cenzurează Internetul. Vor fi verificate email-urile și blocate site-uri de știri (The draft law censuring Internet comes back. E-mails will be verified and news-sites will be blocked), published on 8 April 2015, available at (in Romanian) http://agora.md/stiri/7526/revine-proiectul-de-lege--care-cenzureaza-internetul--vor-fi-verificate-email-urile-si-blocate-site-uri-de-stiri (12.09.2015).

26 Unimedia, Dovada! Proiectul de lege privind cenzura Internetului contravine mai multor standarde europene (Proof! The draft-law censuring Internet contradicts to many international standards), published on 17 October 2013, available at (in Romanian) http://unimedia.info/stiri/dovada-proiectul-de-lege-privind-cenzura-internetului-contravine-mai-multor-standarde-europene-67004.html (12.09.2015).

27 Plan of actions in the field of prevention and fighting cybercrime, Order No 60 from 11.09.2013, published on 18.10.2013 in *Official Journal* (Monitorul Oficial) No. 228-232, available at (in Romanian) http://lex.justice.md/viewdoc.php?action=view&view=doc&id=349905 (12.09.2015).

28 V. Vasiliu, Ce are în comun Snowden şi Procuratura Generală (What has in common Snowden and General Prosecutor Office), published on 11 October 2013, available at (in Romanian) http://apropomagazin.md/2013/10/11/ce-are-in-comun-snowden-si-procuratura-generala/(12.09.2015)

29 National Programme on cyber security of the Republic of Moldova 2016-2020 available at (in Romanian) http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=361818 (09.04.2016).

International Telecommunication Union Recommendations concerning the cyber security of the electronic communication networks. The National Programme on cyber security inter alia includes such points as "Preparation and approval of the draft law on ratification of Additional Protocol to the Council of Europe Convention on Cybercrime" (p. 4.4 for implementation in 2016) and "Adjusting national legislation provisions to the Council of Europe Convention on Protection of children against sexual exploitation and abuse and Convention Additional Protocol" (p. 4.5 for implementation in 2016-2017).

## 2.2. Take-down/removal of illegal Internet content

In the Moldovan practice the most frequent provision which was applied and is used as an instrument to regulate and insure the legal content of sites is a provision from the **Regulation Regarding the Administration of Names in the Domain of Superior Level .md,**[30] adopted in 2000 by the National Regulatory Agency for Electronic Communications and Information Technology of the Republic of Moldova, providing for a domain name seizure policy:

> "5.5. It is prohibited to maintain or manage the sub-domain names, including links to other sites, containing information and pictures of obscene or offensive character, those which defame the Republic of Moldova or other states, call for violence or may damage the image of the Republic of Moldova internationally, as well as being used for activities prohibited by the Moldovan legislation and international conventions."

Article 5.6 and 3.8 of the same Regulation provides that, if provisions of article 5.5 are violated, the sub-domain name is excluded from the database without any rights to recover it subsequently.

In view of the above mentioned Regulation and of the contract with *MoldData* (a state-owned company which administrates the .md domain), for offering a certain sub-domain name to a certain beneficiary, the beneficiary (a user of the sub-domain name) is responsible for all the content present on the site. If the content violates the legislation of the Republic of Moldova or is obscene, *MoldData* may close the site without offering a right to recover it. The existent provisions fail to specify explicitly whether *MoldData* should close or suspend a site on the basis of a court decision or may proceed at its own discretion, it generally does not refer to procedural aspects.

These provisions are contrary to international standards of freedom of expression and make all sites registered in Moldova vulnerable, because they allow the closure of sites, including very popular, only because of one or a few lawbreaking users or some illegal content. Theoretically, reading literally the provision, because of a post *"damaging the image of the Republic of Moldova internationally"* a site could lose its .md domain. This approach is disproportionate. The restriction also does not comply with the first condition of the triple test: it is not prescribed by law, as the sanction of losing the sub-domain appears for the first time and only in this Regulation, which is an act subordinated to law.

Apparently, in the current practice, *MoldData* reacts only based on complaints and only if it has a court or another competent body decision in this sense. It does not appreciate the content independently and it does not make an assessment of the proportionality of its potential restricted action. The representative of *MoldData* affirmed that "since 2014, only one complaint came to the company: a person asked to close a site with rather obscene character content. Since *MoldData* is not competent to appreciate the content legality, it addressed to the State Agency for Protection of Morality.[31] Receiving from the last a more or less confusing answer, *MoldData* have not undertaken

[30] Regulation regarding the administration of names in the domain of superior level .md as of 28.08.2000, published in the *Official Journal* (Monitorul Oficial) No 25-26/75 as of 01.03.2001.

[31] The State Agency for Protection of Morality near the Ministry of culture is a public authority functioning on the base of Government Decision No 1400 as of 17.12.2001, published in the *Official Journal* (Monitorul Oficial) No 158 as of 27.12.2001. Its objective is the *"protection of culture and*

any further action".[32] In 2013 there was a case on the initiation of proceedings by *MoldData* as superior administrator of the national domain, through which the General Inspectorate of the Police, on the basis of the action of the State Agency for the Protection of Morality, has requested the examination of the legality of the web site www.cam4.md, which housed porn video-chat services. Therefore, it was decided to eliminate the respective sub-domain and the deprivation of the right to restore it in accordance with the provision of the art. 5.5 from the Regulation regarding the administration of names in the domain of superior level .md.

However, in the *Rules for registering domain names in the zone .md,*[33] it is stipulated that MoldData may initiate domain name liquidation proceedings:

> "b) following a court ruling or a decision from some government organizations; c) in the case of illegal use of the domain name, for example domain name or website content (links) obscene or pornographic, immoral domain name, domain name that might offend someone, domain name that would be contrary to the public order and other cases stipulated by the legislation in force" (p. 6.3), which conduct us to the conclusion that the cases under p. 6.3 c) may be assessed by MoldData independently.

Despite the fact that the Rules refer to *"disputes and litigation*", which should be solved "*preferably through mediation, and then through other legal means, including court*", these provisions seem to refer to disputes between persons which pretend to a certain domain name and not to the above mentioned case of domain name liquidation. In any case, the possibility to contest a presumably illegal decision in court is insured according to article 20 of the Constitution (*Free access to justice*)**:**

> "(1) Any person shall be entitled to obtain effective reparation from the part of competent courts of law against actions infringing upon his/her legitimate rights, freedoms and interests.
> (2) No law may restrict the access to justice."

In the last years there was no publicly disseminated information about abuses in this field. However, there are a few older cases when *MoldData* temporarily suspended websites on the grounds of violation of article 5.5 of the above-mentioned Regulation. The most well-known case refers to the social network www.faces.md, which was blocked, the first time, because of an erotic picture found on the site (on 30 June 2009) and, the second time, because of a short erotic movie (in January 2010).[34] The news portal *Unimedia* in 2009 risked losing the domain name because the Prosecutor General declared that the site had been publishing comments against the sovereignty of the Republic of Moldova.[35] *Unimedia* was also summoned to the Prosecutor's Office for questioning regarding comments posted by forum visitors. These older cases overall may be considered mainly incidents, as finally they did not have negative consequences.

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*morality by counteracting tendencies of spreading pornography, sadism and the culture of violence in works of art, literature and media"*. One of its main activities is the expertise of the content, but it is not entitled to apply sanctions. Based on this expertise, competent authorities counteract illegal activities. Its Regulation does not mention anything about Internet, but this is not excluded.

32 Interview with Alexandru Adam, lawyer of MoldData, 9 September 2015.

33 Rules for registering domain names in the zone .md, available (in Romanian) at http://www.nic.md/RO/reguli.php (04.10.15).

34 Unimedia, Faces.md va fi deblocat la ora 14:00, declară directorul MoldData (Faces.md will be released at 14:00 o'clock, declares MoldData director), published on 18 January 2010, available (in Romanian) at http://unimedia.info/stiri/-15978.html (12.09.2015).

35 Unimedia, TRAGEM ALARMA: Procuratura cere lichidarea adresei www.UNIMEDIA.md (WE RING THE ALARM: the Prosecutor Office asks for the liquidation of the address www.UNIMEDIA.md), published on 27 June 2009, available (in Romanian) at http://unimedia.info/stiri/-11635.html (12.09.2015).

In the spirit of law, the Internet content has to be removed in all cases in which a crime or an administrative offence is committed through it. Thus, the **Criminal code** includes the following crimes which may be perpetrated through Internet: article 140 (*Propagation of war*), article 177 (*Violation of the inviolability of private life*), article 178 (*Violation of the right to secret of correspondence*), article 185/1 (*Violation of copyright and associated rights*), article 185/2 (*Violation of the right on industrial property objects*), article 208 (*Infantile pornography*), article 279/2 (*Instigation with a terrorist meaning or public justification of terrorism*), article 341 (*Calls to overthrow or change through violence the constitutional order of the Republic of Moldova*), and article 346 (*Intentional actions aiming at inciting to national, racial or religious hate or split*). There is a proposal to complete the list of crimes committed on Internet with the following articles in the Criminal code: art. 175 (Perverted actions), art. 175/1 (Berthing children for sexual purposes), art. 190 (Fraud), art. 237 (Production for the purpose of putting into circulation or putting into circulation of false cards or other pay checks), art. 259-261/1 (Computer crimes and crimes in the telecommunications sphere) and, additionally, to change the article on the incrimination of the infantile pornography from 208 to 208/1.

As for the **Administrative offences code**, examples of contravention offences which may be perpetrated through distribution of Internet content are: article 69 (*Insult*), article 70 (*Calumny*), article 74/1 (*Processing of personal data with the violation of the legislation on protection of personal data*), article 90 (*Producing, selling, disseminating or storing pornographic products*), article 90/1 (*Public activities with negative impact on minors*), and article 96 (*Violations of copyright and related rights*).

Neither the Criminal code, nor the Administrative offences code, nor other laws include express provisions on blocking or removal of the illegal Internet content. Nevertheless, since there is an express interdiction of the activity enclosed under the mentioned articles, there is a natural conclusion that such content cannot be kept on the Internet, after the crime or the offence was established accordingly by the competent body. Some of the articles which regulate procedural aspects may be applied with the purpose of obtaining the removal of the Internet content which was recognized as illegal.

The representative of the General Prosecutor Office affirmed that any blocking or closing of a site/information is done **exclusively through and based on a court decision**.[36] Questioned in an interview regarding the cases which finalised in court with a decision of blocking/closing a site or a part of it, the chief of Section on informational technologies and investigations of cybercrimes of the General Prosecutor Office affirmed that there are no such criminal cases in the current practice of Moldova. He affirmed the fact of the lack of regulation and that the last would be necessary. He agreed that presently in the field more the spirit of the law is applied, than the concrete letter of the law.[37]

## 3. Procedural Aspects

The special legislation lacking in this field, and also jurisprudence for orientation, we may only analyse how the current legislative framework is to be applied in criminal and civil cases when there is a necessity to take-down illegal content from Internet.

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[36] Unimedia, Veaceslav Soltan and Vitalie Esanu in Unimedia studio, Debate on the Internet regulation in Moldova, available at (in Romanian) http://unimedia.info/stiri/video-veaceslav-soltan-si-vitalie-esanu--in-studioul-unimedia-66649.html (12.09.2015).

[37] Interview with Veaceslav Soltan, prosecutor, chief of Section on informational technologies and investigations of cybercrimes of the General Prosecutor Office, 13 August 2015.

**Criminal procedure**

Criminal cases are resolved according to the Criminal procedural code.[38] In the process of the criminal investigation, with the authorization of the instruction judge, investigators can do **search and/or seizure of objects** (art. 125-128 Criminal procedural code). If in this case servers are seized, then affected sites cannot objectively function for a certain period, this being an indirect way of blocking a site, without the existence of a decision of blocking.

Criminal procedural code includes a chapter with "*Measures to address circumstances which contributed to the commission of crimes and other violations of law*". Article 217 stipulates that

> "(1) If criminal prosecution body established the causes and conditions that contributed to the commission of the crime, it **must notify** the respective body or responsible person for **taking action to remove these causes and conditions**.
>
> (2) If during the criminal investigation, the criminal prosecution body reveals violations of laws in force or of human rights and freedoms, it notifies the respective state authorities about these violations.
>
> (3) Within one month, based on the notification, necessary measures will be taken and the results will be communicated to the prosecutor leading the prosecution in the case and to the body that sent the notification".

This is an instrument through which, already at the beginning of a criminal investigation, a prosecutor may ask for blocking/deleting of a site or post with illegal content. However, this has the power of a notification and not of a decision and it is up to the person having the technical possibilities to delete/block to do this.

At the end of the criminal case, also the court can do this, but in the case of the court, it is called "***interlocutory order***" and has the power of a decision, which can be contested in the superior court:

> "(1) The court, finding in the trial violations of law and human rights, together with the adoption decision, issue an interlocutory order through which these facts are presented to the respective authorities, responsible persons and prosecutor.
>
> (2) Within one month, the court will be informed about the results of the facts set out in the interlocutory order."

This may be a useful instrument for obtaining the blocking/deleting of sites/posts with illegal content, because those criminally liable and those which technically can delete/block will usually be different persons. Relevant articles from the Criminal Code include as sanctions traditional prison, fine, etc. and these articles cannot be used literally for obtaining the disappearance of an illegal post from Internet. For the last, either the spirit of the law has to be applied, either general provisions which allow to stop an illegal activity, as the mentioned ones. For instance, the site/illegal content should be examined as ***corpus delicti*** (according art. 158 Criminal procedural code). According to art. 162 Criminal procedural code, when solving the criminal case, the court should decide on the destiny of *corpus delicti*, which may be "destroyed".

From investigation of crimes perspective, relevant framework laws are also the Law on prevention and fighting cybercrime[39] (art. 7) and the Law on electronic communications[40](art. 20 para. (3)).

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[38] Criminal procedural code No 122 as of 14.03.2003, published in the *Official Journal* (Monitorul Oficial) No 248-251/699 as of 05.11.2013.

[39] Law on prevention and fighting cybercrime No 20 as of 03.02.2009, published in the *Official Journal* (Monitorul Oficial) No 11-12/10 as of 26.01.2010.

[40] Law on Electronic Communications No 241 as of 15.11.2007, published in the *Official Journal* (Monitorul Oficial) No 51-54/155 as of 14.03.2008.

These refer to obligations of service providers, facilitating cybercrime investigation, to keep data for large periods and respond to requests of investigation authorities. According to the article 4 of the Law on prevention and fighting cybercrime, competent bodies in investigating cybercrimes are the Ministry of Internal Affairs and, in case of threats to national security, the Information and Security Service. The General Prosecutor Office coordinates, conducts, and exercises criminal prosecution, as provided by law; decides and obliges, at the request of investigation body or ex officio, according to criminal procedure legislation, to immediate preservation of computer data or data related to information traffic, to which there is a danger of destruction or alteration; and represents the prosecution on behalf of the State in court.

**Civil procedure**

If a person considers him/herself **defamed** by an Internet post, or his/her private life is affected, then the Law on freedom of expression is the relevant legislation to be applied.

This Law makes compulsory for the affected person to write a **prior request** to the disseminator:

> "(1) A person who considers him/herself defamed may ask, by prior request to the author and/or the legal entity that has spread the information, a correction or retraction of the defamatory information, granting the right of reply or apologize and the compensation of the damage" (art. 15).

The law does not mention "blocking" or "deletion", but these could be asked in the spirit of the law. It is true that the terms for the prior request are very short – "*20 days from the date when the person learned or should have learned about the defamatory information*" (art. 15 (2)), under the risk to lose the term of prescription, but, in our opinion, by difference of TV and print, in the case of Internet it is possible to argue with more success about a "continuous violation". In any case, if the person is not satisfied by the resolution of its prior request, or if it does not happen in the due time, it has 30 days for suing in court (art. 17 (1)). It is for the court, based on the request of the person, to decide on the deletion/blocking of a defamatory post (or a post violating the private life). However, this will be done exclusively in the spirit of the law, if the judge will consider adequate to do it, as neither the Law on freedom of expression, nor article 16 of the Civil Code (which also regulate *the right to honor, dignity and professional reputation*) provide for such forms of restauration of rights. The laws speak only about retraction or correction, publication of a reply, apologies and compensation of moral and material damages.

The Law on freedom of expression, in the article 22, provides for possibilities of "***ensuring the action***":

> "(1) Along with the prior request to the media, in order to prevent an imminent damage, the applicant may request the court to apply measures for ensuring the action. (…)
>
> (3) At the request of the plaintiff, the court may apply the following measures to ensure the action: a) **prohibition to disseminate the challenged information**".

The article includes also guarantees against abuse:

> "(4) The court may apply the insurance measures stipulated in paragraph (3) a) and b) if the applicant demonstrates that it may suffer harm which could not be compensated by subsequent damages to be offered and that the insurance measure is more important than the public interest in knowing this information."

In the case of **copyright violations**, the posts will be blocked or deleted either by the hosting service at the request of the entitled person (according to art. 66 Law on copyright and associated rights) or already based on the court decision, according to the article 63:

> "(6) For the violation of moral rights, the author or related right holder has the right to ask the court, from the person who violated them: (...) b) prohibition to publish the work or injunction to cease its distribution..."

Strangely, this remedy is related only to the "violation of moral rights", but not also economical ones. This law also has special rules regarding "***preliminary ensuring measures***" (article 59) which include the decision of the court obliging to "***stop continuation of alleged violation of rights***" (para. (1)). In para. (5), (6) and (7) of article 59 are stipulated various guarantees for ensuring that the application of "preliminary ensuring measures" is not abusive. The mentioned are special rules for ensuring the action, the general rules being stipulated in the procedural codes. For instance Civil procedural code,[41] in chapter XIII, offers a certain flexibility to identify necessary measures, but only if "*not applying measures to ensure the action would make it impossible to enforce the judgment*" (article 174 (1)).

**Independent authorities examining human rights violations**

Special laws offer thematic competences to various public authorities as is the Council for Preventing and Eliminating Discrimination and Ensuring Equality for cases related to discrimination and National Center for Personal Data Protection for the personal data protection field, these authorities being able to adopt decisions, recommendations and identify and sanction for particular Administrative code offences.

For instance the **National Center for Personal Data Protection** (NCPDP), according to article 20 of the Law on protection of personal data[42]

> "e) decides suspension or termination of the processing of personal data carried out in violation of this law; (...)
>
> g) issues orders concerning the protection of personal data (...)
>
> m) notifies law enforcement bodies in case of data suggesting committing crimes related to violation of personal rights of data subjects;
>
> n) finds administrative offences and prepare documentation under the Administrative offences code of the Republic of Moldova".

The Center has the right to:

> "d) require to the operator to correct, **block or destroy** invalid personal data or those illegally obtained". So, in the limit of its thematic competence, the Center may decide on blocking/deleting data/posts. Its decisions may be contested in court.

For instance, on 9 October 2013 NCPDP decided that the Supreme Court of Justice had *to suspend immediately the processing of personal data through publication of personalized decisions on its official Internet page www.csj.md.* In its arguments NCPDP referred, inter alia, to the provisions of art. 47 (3) e) from the Law regarding the judicial organisation No. 514-XIII of 6 July 1995, according to which the judicial assistant assures the depersonalisation of the court judgements and their publishing on the web page of the court. This obligation has to be executed in corroboration with art. 5 of the Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data (ETS No. 108) and art. 4 and 31 of the Law on protection of personal data. The Supreme Court of Justice first contested this decision and asked for its cancelling to the NCPDP itself. After NCPDP declined the preliminary request of the Supreme Court of Justice, the last

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[41] Civil procedural code No 225 as of 30.05.2003, published in the *Official Journal* (Monitorul Oficial) No 130-134/415 as of 21.06.2013.

[42] Law on protection of personal data No 133 as 08.07.2011, published in the *Official Journal* (Monitorul Oficial) No 170-175/492 as of 14.10.2011.

sued NCPDP in court. The Supreme Court of Justice request for summons included such arguments as the public character of the court debates and the fact that even the European Court of Human Rights publishes integrally the names of applicants in its decisions, including in those of criminal law nature.[43] The case was won by the Supreme Court in first court and in appeal and the further contestation of the decision was declared inadmissible.

As to the **Council for Preventing and Eliminating Discrimination and Ensuring Equality**, which acts in the base of the Law on ensuring equality,[44] according to the article 15 of the Law:

> "(4) (…) Council decision includes recommendations to ensure restoring the rights of the victim and prevent similar acts in the future.
>
> (5) The decision is communicated, within 5 days, to the person who committed the discriminatory act and to the person who filed the complaint. Council is to be informed within 10 days about the taken measures.
>
> (6) If it disagrees with the measures taken by the person who committed the discriminatory act, the Council has the right to address to a body with superior powers to take appropriate measures and/or to inform the public."

So, the Council decision includes the establishment of the act of discrimination, and recommendations referring to measures to be taken by the accused party for restoring violated rights and for preventing similar acts in the future. The measures proposed by the Council may include blocking, filtering, deleting posts. A Council decision may be contested in court. In the case of the Council these measures have more a recommendation character, but a person may obtain a compulsory decision for blocking/deleting a discriminatory post through the court, as according to the article 18 of the Law any person may ask the court "*b) to prohibit further infringement of his/her rights; c) to restore the situation anterior to violation of his/her rights*".

**Administrative offenses code procedure**

The Administrative offenses code procedure does not allow a decision on blocking, filtering and take down of Internet content, as the Administrative offenses code articles, equally as those from the Criminal code, do not provide for such sanctions. At the same time, equally as in the criminal cases, in the case of administrative offenses the illegal content on Internet may be examined as *corpus delicti* and the court has to decide its destiny (art. 431 Administrative offenses code).

In conclusion, the body **competent to decide to block, filter and take down Internet content is the court.** In particular cases, if the Internet content represents a violation of a right which protection is insured by an independent authority, these authorities may oblige through decision to block, filter and take down problematic Internet content. These decisions may be contested in court. During civil proceedings, the court may also take such decisions from the beginning of the trial as measures "to ensure the action" for avoiding imminent damages to be caused.

## 4. General Monitoring of Internet

In Moldova there is **no entity** with competence to generally monitor Internet content.

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43 Supreme Court of Justice request for summons, documentation of National Center for Personal Data Protection, available at (in Romanian) http://www.datepersonale.md/file/decizia%20csj/aici.pdf (04.08.15)

44 Law on ensuring equality No 121 as 25.05.2012, published in the *Official Journal* (Monitorul Oficial) No 103 /355 as of 29.05.2012-

At the same time, a certain confusion may be induced by provisions of the *Regulation Regarding the Administration of Names in the Domain of Superior Level .md*, by which *MoldData State Company*[45] was entitled to be national registrator in the domain .md and was offered "*exclusive right to register/prolong, modify and cancel names from the sub-domain .md*." (p. 2.3.1). In view of the p. 3.8, 5.5 and 5.6 of the mentioned Regulation and of the contract with *MoldData*, the user of the sub-domain name is responsible for all the content present on the site and if the content violates the legislation of the Republic of Moldova or is obscene, then *MoldData* may close the site without offering a right to recover it. These provisions may conduct to the conclusion that *MoldData* exercise monitoring of Internet.

However, in the current practice, *MoldData* does not act as a monitoring or controlling agency and does not have staff for this purpose. In relation to p. 5.5 and 5.6 of the mentioned Regulation, it only reacts to court and other competent body decisions and, if receives individual complaints, apply for expertise to other competent bodies.

Cybercrimes are investigated in Moldova by a special department of the National Inspectorate for Investigations of the General Inspectorate of Police, which started its activities in March 2013. If the national security is threatened, then the investigation is done by the Information and Security Service and if it relates to money laundering and financing of terrorism, then the investigation is done by the National Anticorruption Center. According to the general provisions from the Criminal procedural code, authorities may be informed about a crime or may find themselves a reasonable suspicion about a crime (article 262). Theoretically, authorities are entitled to look for illegal content themselves. However, there is not publicly disseminated information which would confirm that authorities monitor Internet content in Moldova.

## 5. Assessment as to the case law of the European Court of Human Rights

Basically, lacking a legislation regulating blocking, filtering or take-down of internet content, Moldova has the problem of legally motivating and issuing a decision for blocking, filtering or take-down of Internet content, when this is necessary and crimes or civil and administrative offences are committed. Since there is not an express legal provision providing for blocking or deleting illegal Internet content, indirect provisions have to be applied. For instance, in the case of an insult examined in civil proceedings, the plaintiff will be able, according to the Law on freedom of expression, to obtain apologies to be published on the site. However, it will have to be very creative in arguments to obtain the deletion of the insult from Internet, as such a remedy is not included in the law. Equally, it will be easy to legally motivate the punishment of a person disseminating infantile pornography, applying the respective article from the Criminal code, but it will be difficult to find an article obliging the deletion of the respective illegal content from Internet. For this, various general provisions and interpretations will have to be raised: the fact that the infantile pornography is forbidden implicitly means that such a content has to be deleted; such a content should be looked as *corpus delicti* and the court has to decide what to do with this.

From the other side, for excluding eventual abusive application of provisions 5.5 and 5.6 from the Regulation Regarding the Administration of Names in the Domain of Superior Level .md, which contravenes European standards on freedom of expression, Moldova has to modify this Regulation and harmonize it to the standards.

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[45] The website of MoldData State Company available at http://www.molddata.md/?pag=page&id=90 (12.09.2015)

Generally, in the last years, courts implement ECtHR standards in the field of freedom of expression and media have not made public cases reflecting serious abuses in the field. This fact is due to the adoption of the Law on freedom of expression, which basically translated the European standards into the letter of law. Also the law included additional safeguards to the freedom of expression, as very short terms of prescription, specific procedural rules and a tax fee in case of moral damages request, representing 3% of the sum which is asked for compensation. The progress is also due to the series of cases on article 10 lost by Moldova at the European Court of Human Rights.

As regards the newly developed case-law of ECtHR, which refers specifically to Internet, especially relevant in Moldova is the application of the case of DELFI AS v. Estonia[46] concerning responsibility for offending comments on the Internet, a case which became known already after its first judgement from 10.10.2013 and applied accordingly to offending comments from Moldova. The first case to be noticed in this respect is anterior to the *DELFI AS* decision, but the application was accordingly to its principles: the case *Oleg Brega vs. Privesc.eu,* with final judgement[47] in 2012*,* where the portal lost the case after it was accused for hate speech against homosexuals and for insulting the plaintiff by failure to moderate the chat on its site *http://privesc.eu.* The portal was forced to post on its first page public excuses to the plaintiff, as well as the main part of the court judgement. The plaintiff also obtained moral damage in a moderate sum.

Similarly, in a more recent case related to aggressive comments against gay people under a news posted by a site, the first level Court in Chisinau decided in February 2015 that the company owning the site is "*responsible for incitement to hatred, violence and discrimination against persons suspected or known to be gay by failure to moderate the comments on its site http://protv.md*".[48] Also the site was obliged to publish apologies on its site. This court decision was appealed. The Court of appeal cancelled the first court decision considering that the legislation in force of the Republic of Moldova does not contain provisions providing for the responsibility of web-platforms for the comments of users. The fact that the contested comments were deleted by the site owner was also remarked in the court decision.[49] The Court of appeal decision was contested at the Supreme Court of Justice.

There are a series of decisions of the Council for Preventing and Eliminating Discrimination and Ensuring Equality ("Equality Council"), which refer extensively to the legal framework and international standards on freedom of expression and hate speech. Particularly relevant is the *Decision of 16.10.2014 issued by the Council for Preventing and Eliminating Discrimination and Ensuring Equality vs. General Media TV (Publika TV) and Hristofor Ciubotaru*[50]*,* where the contested article is a blogger one published by *http://vox.publika.md* platform. This platform was open for bloggers to publish their articles, provided they respected the Regulation available on the site.

In its Decision the Council used such arguments:

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46 Case of DELFI AS v. Estonia*,* Application no. 64569/09, Grand Chamber decision as of 16.06.2015, Chamber decision as of 10.10.2013.

47 Supreme Court of Justice Decision from 09.08.2012, available at (in Romanian) http://jurisprudenta.csj.md/search_hot_old.php?id=35093 (12.09.2015).

48 Court of Riscani sector (Chisinau) Decision from 23.02.2015, available at (in Romanian) http://gdm.md/files/dispozitiv_fond_protv.pdf (12.09.2015).

49 Court of Appeal Decision from 22.09.2015, available at (in Romanian) http://gdm.md/files/new-308_pro_digital_decizia_curtei_de_apel_2.pdf (10.04.2016).

50 Council for Preventing and Eliminating Discrimination and Ensuring Equality, Decision from 16.10.2014, available at (in Romanian) http://egalitate.md/media/files/files/decizia_cauza_nr_118_vox_publika-r_2328921.pdf (12.09.2015).

> “6.4 The web administrator is obliged to take measures of care by which to ensure that no person will abuse its virtual platform and will not use it as a tool for incitement to discrimination (…) under cover of anonymity or pseudonym. The level of web administrator responsibility differs from one to another web page. Some require the user to read and undersign rules and only then place the article. Other moderate and delete expressions after they have already been placed and viewed for a few days by visitors. Consequently, there is no single approach on the means to be taken to prevent placement of discriminatory expressions in cyberspace and accountability of owners/managers of the cyberspace. In this respect, it is relevant the case examined by the European Court of Human Rights Delfi SA v. Estonia (no. 64569/09, judgment of 10.10.2013), which explains why moderation and automatic blocking of certain words and comments is not sufficient to exhaustion of the duty of care. 6.5 With the advent and development of cyberspace known as the Internet, information exchange, exposure of ideas and freedom of expression have taken new dimensions (…). Yet Internet is used also as a source of spreading hate speech, defamation, pornography, insults, incitement to violence (…) The defendant cannot claim for an absolute freedom of expression on the Internet without assuming the responsibility for harming the rights of others.”

The Council Decision, after establishing the instigation to discrimination, stipulated also that the defendant will complement the regulation of its platform with the necessary provisions, according to Law. 121 on ensuring equality and will take steps to avoid future placement of articles which instigates to discrimination and of other items with discriminatory nuances. It will review all items already placed on the public platform and will exclude those that instigates to discrimination, containing racist, xenophobic, homophobic, anti-Semitic and others expressions.

From the other side, the activity of the National Center for Personal Data Protection (NCPDP) is widely criticized by media[51] and some public authorities, which consider that the Center restricts excessively the publicity of some data**.** The case, in which the Supreme Court of Justice contested NCPDP decision which obliged the Supreme Court to stop make public on its webpage decisions including personal data of parties of the trial, was won by the Supreme Court. Despite such a victory was to be expected, we consider relevant to cite some arguments:

> “even from the start participants of the trial know that all decisions have to be published, and that publication by replacing of personal data is possible only if decisions are given in closed sittings.
>
> At her turn, the European Court of Human Rights publishes the full names of applicants in its judgments even in cases of criminal nature. In HUDOC database of European Court are reflected such cases as Dan vs Moldova, Becciev vs Moldova, Boicenco vs Moldova, Popovici vs. Moldova, Sarban vs Moldova.
>
> (…) in all these decisions are given full names of applicants and other information such as date of birth and place of residence. In a very limited number of cases, the European Court hides identity of the complainants (IG vs Moldova, case of rape which concerned the applicant).
>
> (…) it is at the court's discretion to determine when a particular serious case can harm the privacy of the parties and, consequently, to decide if to judge it in closed sittings, in other cases, the principle of publicity should be applied.
>
> The court of appeal considered groundless the argument that publication of the names constitutes an interference with the right to privacy. Such interference is required by law and

[51] Ziarul National, Declarație // Mass-media din R. Moldova solicită ajutorul Delegației UE, OSCE și CE: „Instituţiile publice limitează accesul la informații!” ( Declaration // Media in Moldova seek the help of the EU Delegation, OSCE and CE: "Public institutions limit access to information!"), published on 1 June 2015, available at (in Romanian) http://ziarulnational.md/declaratie-mass-media-din-r-moldova-solicita-ajutorul-delegatiei-ue-si-al-consiliului-europei/ (10.08.15).

> the general interest to have a public and transparent justice weighs higher than the individual interests of the persons whose names appear published in judicial decisions."[52]

In May 2015 two institutions that provide data to the public were required by the National Center for Personal Data Protection to no longer provide these data because they contained personal data. Namely, this refers to the State Registration Chamber, which used to provide data about the founders of companies, for a fee, and the Central Election Commission. The last announced in a press release from May 30, 2015 that it suspended the operation of its websites (*www.cec.md, www.voteaza.md, www.alegator.md*) after it had been made subject to an unannounced control by the NCPDP, which had taken action on the basis of an alleged fact of illegal processing of personal data.[53] In the same day, however, NCPDP and Central Election Commission have reached an agreement and things have not degenerated too much on the eve of local elections.[54]

In the case of State Registration Chamber, the NCPDP took action after the Government's initiative to provide free access to information about the founders of the companies (first name and last name), which had to be loaded on government data portal. At first there was just a negative opinion from the NCPDP, which was concerned, inter alia, about deletion and correction of data on the Internet, when such data will no longer be reliable and will refer to a past situation.[55] Until that moment, the same data were provided to the public, but for a fee, not free of charge. Later, NCPDP adopted a decision penalising the State Registration Chamber and forcing it not to disclose data even for money.[56] NCPDP made reference inter alia to the argument that according to the provisions of art. 34 (1) of the Law on the registration of legal entities and individuals No. 220-XVI of 9 October 2007, the data from the State Register and from the constitutive acts of the enterprises are public and accessible to everyone in the limits provided by the legislation on access to information, state secret, commercial secret, personal data protection, registers, as well as by the relevant international treaties to which the Republic of Moldova has adhered to. The information which should be made public is stipulated in the art.11 (4) of the same law, i.e. the legal entity name, form of legal organization, date of registration, state identification number, registered office and administrator name. Authorities, interested in transparency of data, decided to confront NCPDP and names of founders of companies began to be available on-line, without any fee.[57] At his turn, NCPDP asked the General Prosecutor Office to investigate this case and punish responsible persons, investigation which is on-going.[58]

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52 Case of Supreme Court of Justice National v. Center for Personal Data Protection, decision from 1 October 2015, available at (in Romanian) http://jurisprudenta.csj.md/search_col_civil.php?id=13125 (10.08.15).

53 Ziarul de Garda, Comisia Electorală Centrală şi-a suspendat activitatea site-ului oficial (Central Election Commission has suspended the activity of its official website), published on 30 May 2015, available at (in Romanian) http://www.zdg.md/stiri/stiri-politice/comisia-electorala-centrala-si-a-suspendat-activitatea-site-ului-oficial (10.08.15).

54 Ziarul de Garda, Divergenţele dintre CEC şi CNPDCP au fost depăşite (Divergences between CEC and NCPDP were overcome), published on 30 May 2015, available at (in Romanian) http://www.zdg.md/stiri/stiri-politice/divergentele-dintre-cec-si-cnpdcp-au-fost-depasite (10.08.15)

55 Opinion of the National Center for Personal Data Protection available at (in Romanian) http://datepersonale.md/file/acte/04-09-558.pdf (10.08.15).

56 National Center for Personal Data Protection decision from 28.05.15, available at (in Romanian) http://www.datepersonale.md/file/decizii%20centrus/deciacis.pdf (09.04.2016).

57 Economic Counsel of Prime-minister, Numele și prenumele fondatorilor întreprinderilor din Republica Moldova – deja publice și gratuite (Name and surname of Moldovan companies founders - already public and free), published on 18 August 2015, available at (in Romanian) http://consecon.gov.md/libview.php?l=ro&idc=82&id=285&t=%2FActivitati%2FRezultate%2FNumele-i-prenumele-fondatorilor-intreprinderilor-din-Republica-Moldova-deja-publice-i-gratuite (10.08.15).

58 Ziarul National, război între două instituții publice. Miza este informația despre fondatorii de firme (War between two public institutions. The stake is information about the founders of companies),

While NCPDP pretends to apply the standards instituted by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, various representatives of civil society, media and even authorities consider that the Center implements an excessive protection of personal data, it does not apply the right balance between the individual interests and the public interest, and its activity encourages corruption.

Internet media have not a common self-regulatory mechanism in Moldova, but may join the Ethical code of the journalist.[59] A series of sites developed regulations to be respected by contributors with comments, opinions, etc.

A recent report[60] reflecting monitoring of 15 news-portals in Moldova revealed that journalists have complied with ethical norms regarding language, tone of discourse and addressing vulnerable persons to discrimination or hate speech; they did not use stereotyping, stigmatizing labels or phrases. The most serious cases of hate speech could be seen in comments to news about sexual and ethnic minorities, to which readers have responded with disapproval and hostile attitudes. This report showed also that news-portals moderate comments, using various means for this purpose.

In conclusion, in the last years, Moldovan courts and other implementing authorities registered progress in implementing ECtHR standards in the field of freedom of expression and media have not made public cases reflecting serious abuses, except for the decisions of the National Center for Personal Data Protection. The progress is supported by the provisions of the Law on the freedom of expression, which transposed into the Moldovan legislation the main rules instituted by ECtHR case law in the field.

Olivia Pirtac, 10.04.2016

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published on 19 September 2015, available at (in Romanian) http://www.ziarulnational.md/razboi-intre-doua-institutii-de-stat-miza-este-informatia-despre-fondatorii-de-firme/ (10.08.15).

59 Ethical code of the journalist from Republic of Moldova, available at (in Romanian) http://consiliuldepresa.md/fileadmin/fisiere/documente/cod_d_rom.pdf (12.09.2015). List of signatories available at http://consiliuldepresa.md/ro/stiri/detalii-stire/articol/88-de-institutii-si-asociatii-mass-media-au-semnat-codul-deontologic-al-jurnalistului-din-republi.html(12.09.2015).

60 Center for Independent Journalism, Evaluation of Hate Speech in On-line Media, Monitoring Report, available at (in Romanian) http://www.media-azi.md/ro/publicatii/raport-de-monitorizare-%E2%80%9Eevaluarea-discursului-instigator-la-ur%C4%83-%C3%AEn-media-online%E2%80%9D (12.09.2015).