

Steering Committee on Media and Information Society

The answers of the Republic of Moldova to the list of questions for CDMSI members on the implementation of Council of Europe standards related to safety of journalists and other media actors

1. Which are the existing mechanisms to ensure investigation and prosecution of attacks against journalists and other media actors?

Moldovan domestic law does not contain special provisions on the mechanism of ensuring investigation and prosecution of attacks against journalists and other media actors. Therefore, it is a subject of examination under the common provisions of the Criminal Procedure Code.

The freedom of expression is guaranteed by the Article 32 of the Constitution of the Republic of Moldova and the Article 4 of the Law No.64 of 23.04.2010 on freedom of expression (hereinafter *the Law No.64*), which provides that nobody can prohibit or hinder journalists and other media actors from disseminating information of public interest, except in cases provided by law. Furthermore, the Article 180/1 of the Criminal Code of the Republic of Moldova incriminates the intentional restraint of journalists' activity or the media intimidation for criticism.

Article 5 of the Law No.64 guarantees the editorial independence of the public or private media and prohibits the censorship. The editorial independence refers to the process of researching and communication of facts or ideas, namely the control of information.

According to the Article 20 of the Law No.243-XIII of 26.10.1994 on press, the government guarantees the protection of the journalists' honor and dignity, and protects their health, life and property.

Moreover, Article 15 of the Broadcasting Code explicitly stipulates the obligation of the competent authorities to ensure the protection of journalists when they are subject of pressures or threats that could effectively hinder or restrict the free exercise of their profession, as well as the protection of the broadcasters' offices in cases of threats that can deter or affect the free exercise of their activity.

2. Are there any non-judicial mechanisms, such as parliamentary or other public inquiries, ombudspersons, independent commissions, as useful complementary procedures to the domestic judicial remedies guaranteed under the ECHR, specifically dealing with threats and crimes targeting journalists and other media actors?

There are no special non-judicial institutional mechanisms directly dealing with threats and crimes against journalists and other media actors. However, in the Republic of Moldova an independent Press Council was founded on October 1, 2009 by 6 civil associations (institutions)¹ that aims to raise accountability of Moldovan press to its readers by promoting the observance of professional standards and journalism ethics; settle disputes arising between the readers and print press with regard to the published press materials; nurture the culture of a dialogue and mutual respect between the press and the media consumers; promote quality journalism and enhance credibility of the media.

Moldovan Press Council is an entity independent from the public administration, politics, business, and other stakeholders. This contributes to holding the media accountable to its consumers by amicably settling disputes arising between print media and the readers, promoting quality journalism and observance of ethical journalism principles by publications, news agencies and informational portals.

¹ <http://consiliuldepresa.md/en/home.html>

The basic function of the Press Council is to review complaints related to the editorial activity of the newspapers and magazines published in Moldova that have a national, regional and local coverage; the news agencies, their websites, and the informational portals. The Press Council also develops recommendations on strengthening professional standards in Moldovan press, draft proposals of public policies for the media and carries out campaigns to promote accountability of journalism.

Moreover, journalists can contact the Moldovan Broadcasting Coordinating Council (BCC) and the Ombudsman's Office to ask for control of public administration and protection against interference or injustice from the state authorities.

3. Is the confidentiality of journalists' sources of information protected in both law and practice?

Yes. The confidentiality of journalist's sources of information is safeguarded by the Criminal Procedure Code. Thereby, Article 90 (para 3) provides that the journalist may not be summoned and examined as a witness in a criminal process, in order to identify the person who provided the information that is subject to non-disclosure of her name unless that person testifies voluntarily.

Also, the confidentiality of journalists' sources is governed by Article 14 (para 1) of the Broadcasting Code ("The confidential nature of information sources used in conceiving or issuing news, broadcasts or other elements of program services is guaranteed by law"), Article 23 of the Broadcasters Code of Conduct ("Broadcasters have the right and obligation to preserve the confidentiality of sources requesting to remain anonymous or of those sources whose disclosure may endanger the personal life, physical and mental integrity, work or other legitimate interests") and Article 3.1 of the Code of Ethics for Journalists ("The journalist shall protect the identity of sources in the court, police institutions and other law enforcement bodies. The protection of confidentiality is equally a right and an obligation of the journalist").

The Moldovan Broadcasting Coordinating Council has not so far received any complaints regarding the violation of the right to confidentiality of journalists' sources of information.

4. Does the domestic legislation in your country regarding defamation/libel include criminal law provisions?

Defamation lawsuits are examined in civil proceedings in accordance with the requirements of the chapter 2 of the Law No.64 and the Moldovan Civil Procedure Code. Referring to libel, the Moldovan legal framework uses a broader term as "protection of private life", which also regulates the protection against libel. Suits regarding protection of private life are examined according to the Law No.64 and have a similar procedure as the defamation ones.

The legal framework of the Republic of Moldova does not contain criminal regulations regarding the defamation/libel. Article 170 of the Criminal Code of the Republic of Moldova regarding the penalization of defamation was abolished by the Law No.111 of 22.04.2004.

Currently, the defamation is penalized only by the Article 70 of the Contravention Code of the Republic of Moldova, which provides the legal liability in the form of fine or contravention arrest.

5. What are the procedural guarantees (the right to defence, the periods of limitation applicable to defamation suits, *exceptio veritatis* (defence of truth) and the burden of proof, presumption of good faith etc.) included in the civil and/or criminal legislation related to defamation?

According to the Law No.64, claimant should prove that: the defendant spread the information, information is defamatory and it concerns the claimant, information is related to facts and it's

essentially false, value judgment is not based on documentary evidence and the existence/quantum of the caused damage.

On the opposite, the defendant should prove that: the information is not defamatory, information constitutes a value judgment based on documentary evidence, information is of a public interest and that at the moment of the spreading the information, though defendant has taken all the diligence measures, he could not know that his actions will contribute to spreading false information regarding facts or value judgments without documentary evidence.

In respect to presumptions, there are six situations:

- Any reasonable doubt regarding obtaining the statute of a private/public person should be interpreted in favor of obtaining the statute of a public person.
- Any reasonable doubt regarding obtaining the statute of a public interest or of a curiosity should be interpreted in favor of obtaining the statute of a public interest.
- Any reasonable doubt regarding obtaining the statute of a value judgment or a factual report should be interpreted in favor of a value judgment.
- Any reasonable doubt regarding existing/quantum of the damage caused should be interpreted in favor of granting compensation in the amount of 1 leu (Moldovan currency).
- Any reasonable doubt regarding the good faith of a person who made a journalist investigation should be interpreted in favor of the good faith.
- Any other reasonable doubt that is not proven in conformity with the rules provided by law should be interpreted against the restriction of the freedom of expression.

There is no limitation period applicable to defamation suits. According to the Article 7 of the Law No.64, everyone has the right to defend his or her honor, dignity and professional reputation that was infringed by spreading of false reports about facts, value judgments without documentary evidence or by insult.

The Law No.64 regulates the pretrial procedure of settlement of cases regarding the defamation. Thus, the person who considers him/herself defamed may ask the author or the person who spread the information to take the following actions: 1) correction or disclaiming of information; 2) granting the right of reply and 3) moral and material compensation for damage caused.

The establishment of this procedure has the purpose of extrajudicial settlement of these disputes by the parties involved.

The Law also regulates the judicial procedure for settling defamation cases, clarifies the burden of proof and presumptions of good faith to be applied in such cases, explains how to publish a retraction and the reply, how to measure moral damages caused to individuals and legal entities and determine the circumstances which exclude liability for defamation. The law provides equally the procedure of examination of cases concerning the protection of privacy in the case of freedom of expression.

According to the Article 9 of the Law No.64, the government and public authorities, as legal entities are not entitled to initiate civil actions for defamation. It is considered that the government or public authorities may not have, in legal terms, professional reputation.

6. In the domestic legal framework, are state officials protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty?

No. Moldovan legal framework does not contain penal laws that carry a higher penalty for criticism and insulting a state official. Consequently, state officials do not enjoy a higher level of protection against criticism and insult.

However, according to the Law No.64, any person or entity, regardless of citizenship, nationality and domicile, who is affected in its legitimate rights and, in particular, its reputation by presenting

inaccurate facts, has the right of reply and rectification or the right to require similar remedies under the Civil Code of the Republic of Moldova.

7. Do laws on the protection of public order, national security or anti-terrorism have safeguards for the right to freedom of expression? What are these safeguards?

Pursuant to the Law No.64, any person has the right to freedom of expression which consists of freedom to seek, receive and communicate facts and ideas. Freedom of expression is protected both on the content and format of the expressed information, including information that offend, shock or disturb. Limitations to freedom of expression are admitted only with the aim of protection of a legitimate interest provided by law and only if the limitation is proportional to the situation that caused it, being guaranteed a fair balance between protected interest and freedom of expression as well as society's right to be informed. Therefore, the state guarantees the media's right to freedom of expression.

In accordance with the Moldovan Criminal Code, the intentional obstruction of the media or journalist's activity as well as the intimidation for criticism is prohibited. Also, the unjustified distortion of the journalistic material or unjustified ban to disseminate certain information required by the administration of the public media or indication of a person that held a public dignity function/civil servant regarding editorial policy and any other form of blocking the dissemination of information is prohibited.

8. Are the following instruments translated into the national language and disseminated widely, in particular brought to the attention of judicial authorities and police services? Are these made available to representative organisations of lawyers and media professionals?

Most of the listed documents have been disseminated and discussed through the training programmes and seminars organized by the Moldovan Broadcasting Coordinating Council. Likewise, BCC published on its official website all Council of Europe recommendations, guidelines and resolutions regarding the protection of journalists and called on the relevant institutions, state and non-state, to respect and protect the rights of journalists and other media actors.

- Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media, 21 September 2011.
- Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations (2011)
- Recommendation 1876 (2009) of the Parliamentary Assembly on the state of human rights in Europe: the need to eradicate impunity
- Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis, adopted on 26 September 2007
- Recommendation CM/Rec(2004)16 of the Committee of Ministers to member States on the right to reply in the new media environment
- Recommendation CM/Rec(2000)7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information.
- Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns
- Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content
- Recommendation No. R (2003) 13 on the provision of information through the media in relation to criminal proceedings
- Belgrade Conference of Ministers Resolution n° 3 Safety of Journalists