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3269 Strengthening the respect for Human rights in the Implementation of the Republic of Moldova's Digital Agenda

REPORT ON HUMAN RIGHTS PROTECTION ON THE INTERNET

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INTRODUCTION

The Council of Europe (CoE) is implementing the joint EU/CoE project “Strengthening the respect for human rights in the implementation of the Republic of Moldova’s Digital Agenda” aiming at strengthening capacities of national authorities on human rights standards, awareness raising among the private sector, civil society and general public on those standards.

One purpose of human rights reporting is to identify shortcomings and problems which ought to be addressed in the context of Internet governance by all actors, including the public and private sectors and the NGOs, which should recognise and uphold human rights and fundamental freedoms not only in their operations and activities, but also in the design of new technologies, services and applications. This stems from the legally binding instruments of the CoE, notably the Budapest Convention (hereinafter the “Budapest Convention”), the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, hereinafter the “Lanzarote Convention”), the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (ETS No.108, hereinafter “Convention 108”), the Convention on Information and Legal Co-operation concerning “Information Society Services” (CETS No.180, hereinafter “Information Society Services Convention”) and the European Convention on Human Rights (ETS No. 5, hereinafter “ECHR”) - conventions ratified by the Republic of Moldova. Other non-binding standards adopted by the CoE Committee of Ministers provide guidance to member States on Internet related matters. They are summarised, for example, in the Recommendation CM/Rec(2014)6 of the Committee of Ministers to member States on a Guide to human rights for Internet users, which has been a particular focus in the process of elaboration of this report.

The aim of the report is to assess the observance of the protection of several rights, namely the right to freedom of expression and access to information, the right to freedom of assembly and association, protection from cybercrime, the right to private life and to the protection of personal data, the right to education, the right to an effective remedy, including children and youth. It also discusses challenges and best practices in the light of recent developments in the field of Internet governance and includes recommendations to be taken into consideration by the beneficiary in the context of Internet governance arrangements or other specific platforms on Internet human rights based on the country specific at the national level.

The Republic of Moldova defined its priorities regarding the information society development in a number of policy papers adopted both by the Parliament or the Government, in particular, in the “CoE Action Plan to support democratic reforms in the Republic of Moldova for the period 2013 – 2016” and the National Action Plan adopted to implement the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part. Protection of all fundamental rights and freedoms must be ensured in the Internet governance actions and their universality, indivisibility, interdependence and

interrelation in accordance with international human rights law must be affirmed.

For this purpose, the relevant national legal framework, policy papers and other documents have been consulted and meetings with project's stakeholders have been organised. Since the project is based on multi-stakeholders approach, the consultant has interviewed representatives of a number of actors. In the public sector, meetings have been held with representatives of the Ministry of Education, the Ministry of Internal Affairs, the Ministry of Information Technology and Communications, the Ministry of Labor, Social Protection and Family, the E-Government Center, the National Police Inspectorate, the National Center for Personal Data Protection, the General Prosecutor's Office, the Ombudsman Office, the Child Ombudsman Office, the Anti-Discrimination Council, the National Regulatory Agency for Electronic Communications and Information Technology, the MoldData, the Intellectual Property Rights Agency. The expert has also met representatives of the NGOs, namely the Media Press Council, the Association of Independent Press, the Promo-Lex Association, the International Center "La Strada", the Moldovan Association of Private ICT Companies. Representatives of four Internet service providers, namely the "Sun Communications", "Modcell", "Orange", "StarNet", have also participated. The Consultant has met with representatives of the "Democracy Programme", including the Electoral Component of the UNDP and the CoE and EU Project on Support to the Coordination of Justice Sector Reform in Moldova.

The views expressed in the Report reflect only the opinion and position of the author. They cannot be interpreted in any way as reflecting the position and opinion of the CoE and other parties.

I. ACCESS AND NON-DISCRIMINATION

This chapter concerns the access to the Internet and the principle of non-discrimination, which are linked and generally applicable to all the human rights and fundamental freedoms.

Despite the fact that access to the Internet is not yet formally recognized as a human right¹, it is considered as a condition and an enabler to exercise other human rights and fundamental freedoms.

The disconnection of a user from the Internet could negatively affect the exercise of other human rights and fundamental freedoms and could even amount to restriction of freedoms and rights. As a general rule, users should not be disconnected from the Internet against their will except when it is decided by a Court.

In the framework of the ECHR, the ECtHR has developed case-law on human rights on the Internet. It has, for example, concluded that access to the Internet is a democratic tool for enhancing and exercising human rights and fundamental freedoms enshrined in the ECHR².

Users should have affordable and non-discriminatory access to the Internet. The principle of non-discrimination, which is enshrined in Article 14 of the ECHR and Article 1 of Protocol 12 of ECHR³, should apply to user interactions with public authorities, Internet service providers, content access providers and other companies, users, or other groups of users⁴. The CoE standards also promote access to the Internet for individuals “bearing in mind the importance of design and application, affordability, the need to raise awareness among these persons and groups, the appropriateness and attractiveness of Internet access and services as well as their adaptability and compatibility”⁵.

In this regard, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression stated that “[e]ach State should... develop a concrete and effective policy... to make Internet widely available, accessible and affordable to all segments of population”⁶.

Every Internet user “should have the greatest possible access to Internet-based content, applications and services of his/her choice, whether or not they are

¹ The Recommendation CM/Rec(2014)6 refers to the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/a.hrc.17.27_en.pdf

² See the factsheet of the ECtHR (2015) http://www.echr.coe.int/Documents/FS_New_technologies_ENG.pdf

³ <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/177>

⁴ Recommendation CM/Rec(2014)6

⁵ CoE, CM/Rec(2007) of the Committee of Ministers to member states on measures to promote the public service value of the Internet

<https://wcd.coe.int/ViewDoc.jsp?id=1207291&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

⁶ http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/a.hrc.17.27_en.pdf.

offered free of charge, using suitable devices of his/her choice”⁷. This is a general principle commonly referred to as ‘network neutrality’⁸, which should apply regardless of the infrastructure or the network used for Internet connectivity.

Public authorities should take positive measures to facilitate access to the Internet for specific categories of individuals such as, for example, those living in remote areas and people with disabilities. This is based on the principle of universal community service, which is derived from the legal instruments adopted by CoE⁹.

Full participation of Internet users, including those with disabilities, can also be achieved through universal design of ICT. Examples of good practices in the CoE member States on how the design and provision of ICT have helped to improve the quality of life of people with disabilities are included in the CoE Report “Achieving full participation through Universal Design”¹⁰. They have been linked to several key action lines in the CoE Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015 (Recommendation Rec(2006)5). The impact of this policy paper was further examined in the Report by EASPD “Enjoyment of rights in practice: towards the new CoE disability Action Plan 2016-2020”, which is recommended to be consulted with actors from both the public and the private sectors at the national level.

Considering that the Internet has become an essential tool for exercising a range of human rights, access to, the capacity and ability to use the Internet are indispensable for the full exercise and enjoyment of human rights and fundamental freedoms in the information society and member States should, thus, “promote the public service value of the Internet”¹¹.

Recently, the CoE called on European states to safeguard the principle of network neutrality in the development of national legal frameworks in order to ensure the protection of the right to freedom of expression and to access to information, and the right to privacy. In the Recommendation CM/Rec(2016)1, the Committee of Ministers, included a set of network neutrality guidelines pointing out that Internet traffic should be treated equally, without discrimination, restriction or interference irrespective of the sender, receiver, content, application, service or device. Whilst acknowledging that Internet traffic management can sometimes pursue legitimate purposes, it has also stressed that it can also result in blocking, discrimination or prioritization of specific types of content, applications or services.

⁷ Recommendation CM/Rec(2014)6

⁸ Please see, for example, the “Declaration of the Committee of Ministers on network neutrality” <https://wcd.coe.int/ViewDoc.jsp?id=1678287>

⁹ On universal community service concerning new communication and information services [http://www.coe.int/t/dghl/standardsetting/media/Doc/CM/Rec\(1999\)014&ExpMem_en.asp#TopOfPage](http://www.coe.int/t/dghl/standardsetting/media/Doc/CM/Rec(1999)014&ExpMem_en.asp#TopOfPage)

¹⁰ http://www.coe.int/t/dg3/disability/source/Universal_design.pdf

¹¹ Recommendation CM/Rec(2007)16 of the Committee of Ministers to member states on measures to promote the public service value of the Internet.

A. Access to the Internet and legitimate disconnection measures

At the national level, the Constitution of the Republic of Moldova¹² guarantees the protection of fundamental rights and freedoms (Chapter II) without making any difference between the online or the offline environment.

The legal instruments of the CoE adopted with a view to enhancing human rights protection on the Internet, namely the Budapest Convention¹³, Convention 108¹⁴, ECHR¹⁵, the Lanzarote Convention¹⁶ and the Information Society Services Convention¹⁷ have been ratified by the Republic of Moldova¹⁸. Public authorities should continue to build on these standards with a view to enhancing human rights protection not only offline, but also online.

At present, there is no national policy paper in force with a view to enhancing human rights on the Internet. A draft for an intermediary action plan in the area of human rights has been elaborated. This draft policy paper, however, does not include actions to address human rights protection on the Internet.

The Government Decision no.808 of 7.10.2014 provides that sectorial plans on human rights protection shall be developed in 2016 based on the Government Decision no.90 of 12.05.2011 “On adoption of the Action Plan in the area of human rights for 2011-2014”¹⁹ and the international recommendations. This action should be revised and a new policy paper should include actions in regard to human rights protection in general, including in the digital world.

There is no specific policy paper in this area in the Transnistria region. Development, in consultation with civil society and other relevant organisations, of a comprehensive human rights action plan is a recommendation, which results from the Report “On Human Rights in the Transnistria Region of the Republic of Moldova”.²⁰

In the national legal framework, access to the Internet is not formally recognised as a human right. Nor is access to Internet formally mentioned as a condition or an enabler for other rights and freedoms in the legal framework. It is considered as a condition and an enabler for other rights and freedoms in several policy papers adopted by the Government, including the “e-Transformation” Program²¹, the “Digital Moldova 2020” Program²², the “Open Government”²³ initiative, “Education 2020” Strategy²⁴.

¹² http://lex.justice.md/document_rom.php?id=44B9F30E:7AC17731

¹³ <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185>

¹⁴ <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/108>

¹⁵ <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005>

¹⁶ <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/201>

¹⁷ <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/180>

¹⁸ Article 8(1) the Constitution of the Republic of Moldova adopted on 29 July 1994

¹⁹ <http://lex.justice.md/md/339395/>

²⁰ http://www.md.undp.org/content/dam/moldova/docs/Publications/UN_MD_Senior_Expert_Hammarberg_Report_TN_Human_Rights.pdf

²¹ <http://lex.justice.md/index.php?action=view&view=doc&id=340301>

²² <http://lex.justice.md/md/350246/>

There is no specific national policy to make the Internet widely available, accessible and affordable to all segments of population. Nor is there a specific policy paper promoting high-speed broadband infrastructure investment adopted. The MICT has been mandated to elaborate the 2014-2020 program on development of fixed broadband networks (with the aim to ensuring access to Internet to all citizens to a minimum of 30 Mbps speed).²⁵ The draft Program, according to the MITC for Development of Broadband Networks has been elaborated.

Furthermore, representatives of MITC noted that since the implementation of several actions, which result from the draft Program will only be possible after the adoption by the Parliament of the draft law on access to properties and shared use of associated infrastructure of public electronic communications networks, the Government by its Decision no. 680 of 30 September 2015 transferred the term for the government approval of the draft Programme to the fourth quarter of 2016. The above mentioned draft law was approved by the Government Decision no. 692 of 08 October 2015 and adopted by the Parliament in first reading on 29 December 2015. After the adoption of this law, the existing draft Program will be updated and presented for the public consultations in due order.

In Moldova there are 219 Internet service providers according to the information provided by ANRCETI on 13 November 2015. There is no public information available to understand to what extend these Internet service providers ensure human rights protection.

The contractual agreements between the end-users and certain Internet service providers, pursuant to several interviewed parties, should be improved. Transfer of the CoE/International best practices on the minimum clauses of terms of conduct and labelling the terms of service in respect for human rights for the national ISPs, is recommended, in particular, following the adoption of the new legislative act "On Electronic Communications".

Cases and grounds for discontinuation of Internet services have not been reported and observed by the interviewed parties.

Any user who was disconnected against his/her may appeal against the decision to disconnect. After the user requests the issuing party to revoke or change the

²³ Moldova joined the Open Government Partnership (OGP) in 2011 and with this, committed to the principles and aspirations of an Open Government, by signing up the Open Government Declaration. <http://opengov.si.md/116-moldovas-second-action-plan-for-open-government-for-2014/>

²⁴ Government Decision no.944 of 14.11.2014 on adoption of the Education Development Strategy for 2014-2020 "Education 2020"
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=355494>

²⁵ The Strategy "Digital Moldova 2020" and the Strategy "On approving the ICT Sector Competitiveness Strategy for 2015-2021" adopted by the Government Decision no.254 of 14.05.2015 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=358621>

decision and does not obtain a favourable answer, there is a three-step appeal system.

When it is not decided by the court, in theory, the available redress mechanism to the Internet users are hotlines, ombudsperson, personal data protection authority, the authority for protection of consumers, etc. However, taking into consideration reforms in these areas, an audit of the existing redress mechanisms for the Internet users should help to concentrate efforts on particular gaps. The relevant information in a user-friendly inventory of redress mechanisms should also be up-dated and, where necessary, compiled and published on these portals. Development, coordination and cooperation between these and other relevant authorities and legal entities, which provide redress mechanisms, should be enhanced.

In Moldova, according to certain interviewed parties, the cost of Internet services is considered to be affordable. Nonetheless, analyses concerning prices of Internet services and of the necessary hard-ware to ensure access to Internet services have not been identified. Information about packages for various categories of citizens based prices of all national ISPs are published on websites of the ISPs and advertised nationwide.

Development of the enabling legal and regulatory framework and elaboration and implementation of the technical infrastructure to ensure implementation the single emergency call number "112" project is planned for 2015-2016²⁶. The MITC has also performed together with external partners a feasibility study for the single emergency call number "112" creation and analysed the current status of the public electronic communications network, elaborated the technical concept, and analysed the costs, etc. The funding mechanism was also defined. In 2014, the legislator has adopted the legal framework on the single emergency call number "112"²⁷. The secondary legal framework, according to the information provided by the MITC, has been elaborated and should be adopted.

The relevant public authorities conduct their decision-making activities in a transparent manner and publish for consultation any draft regulation. ANRCETI and MITC consult all draft decisions of public interest. The term of public consultation cannot be shorter than 14 days and the results of the consultation must be published. Usually, the authorities publish a synthesis of recommendations, including the reasoning for accepting or rejecting them.

However, decisions to accept or reject recommendations are not always well substantiated. Draft legal acts, which are not initiated by the authorities assigned with obligations in the area of telecommunications, but have a bearing on the telecom sector, are occasionally not consulted. Policies of major impact, in

²⁶ See also the Government Decision no.808 of 7.10.2014 on adoption of the Action Plan to Implement the Association Agreement RM-EU in the period 2014-2016
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=354939>

²⁷ Law no.174 of 25.07.2014

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=354310>

particular those that require major investments, should to be announced well in advance to allow companies to plan.²⁸

In regard to the legal framework which regulates the top level domain .md, the Law no.241 of 15.11.2007 provides that the ANRCETI “shall regulate electronic communications sector by: i) regulating the management of the top-level domain .md”²⁹. The secondary legal instruments in this area should be revised. In particular, according to them, there is a need to elaborate specific rules regarding the rights and obligations of users and legal entities and to regulate their activity. Representatives of the “MoldData” S.E. have also expressed concerns in regard to the implementation of the legal framework in regard to Internet Governance. . An assessment in this regard will be useful.

B. Affordable and non-discriminatory access to Internet

In the Republic of Moldova, infrastructural limitations and financial barriers are two factors, which presumably negatively impact the availability, accessibility and affordability of Internet, in particular, for certain groups, including those with low income, disabled persons and those from the rural areas.

The broadband connectivity, which is required to meet the present and future needs of the country, “isn’t available throughout the entire territory of the country”³⁰. In 2013, the Government stated that “about 30% of rural areas still do not have fixed broadband access”³¹. Pursuant to the MITC, at present, 99% of the population has access to 3G mobile Internet and about 40% of the population has access to 4G mobile Internet, the fact which contributed to a considerable reduction of the number of localities that do not have access to broadband Internet.

The Global IT Report (2015) states that in terms of readiness index Moldova ranked 68 out of 143 possible (value 4.0 out of 7). In regard to readiness sub index, it ranked 53 out of 143 (value 5.1 out of 7). What concerns infrastructure, it ranked 69 out of 134 (4.2 out of 7). In regard to affordability, it ranked 37 out of 143 possible (value 6.0 out of 7).

Pursuant to the National Survey for 2015 "Citizens' perception, uptake and support for the e-Transformation of Governance in the Republic of Moldova" the level of households' access to computers defined by the share of households that own at least one computer is of 68%, and it has recorded a rising trend over the years. It further provides that the average number of computers per household is 1.1 units. However, the same report provides that some of the households surveyed proved to have 3-4 computers. A positive dynamic is also witnessed

²⁸ Study report “Harmonization of Digital Markets in the Eastern Partnership” <http://capacity4dev.ec.europa.eu/hiqstep/document/harmonisation-digital-markets-eastern-partnership-study-report>

²⁹ Law no.241 of 15.11.2007 “On electronic communications” <http://lex.justice.md/md/327198/>

³⁰ Government Decision no.857 of 31.10.2013 <http://lex.justice.md/md/350246/>

³¹ National Strategy for the development of information society „Digital Moldova 2020” <http://lex.justice.md/md/350246/>

with reference to the share of households connected to Internet, which in 2015 constituted 68% compared to 66% in 2014, 62% in 2013 and 53% in 2012. 43% of households have ADSL, 23% - optical fiber, 12% - Wi Fi connection, 13% - 3G networks.³²

According to the information provided by MITC, approximately 71 out of 848 localities with Mayor's Offices do not have optical fiber network point. Distances to the nearest point of access to broadband Internet, low number of inhabitants in certain villages, extensive period of investment return have been mentioned as reasons, which cause the lack of an optical fiber network point. About 120 localities are included in the priority list for connecting to broadband infrastructure. About 50 localities without Mayor Office have been included in a priority list for connecting to broadband infrastructure. This gap should be filled by coordinated investments involving the private sector and government. Private-public partnership in this regard has been considered and discussed by the MITC.

Cooperation with "Novateca" project³³ in this regard is also considered by the MITC. Development and implementation of a centre to facilitate access to Internet and services for people with disabilities is considered.

With regard to tariffs, the Law "On electronic communications"³⁴ stipulate that they shall be "non-discriminatory, reasonable and cost-based, giving all the residents of the country the possibility to benefit from electronic communications services" (Article 21). A draft legislative Act "On electronic communications" has been drafted and these matters shall be addressed in the new framework.

Five ISPs have mentioned specific projects, which facilitate access to their services by groups or individuals³⁵, namely elderly people and have positively responded to various requests from individuals in regard to access to Internet.

Article 3(1) of the Law no.241 of 15.11.2007³⁶ provides that access of any natural and legal person to public electronic communications services "shall be guaranteed on the entire territory of Moldova, under conditions of non-discrimination".

The Law "On Inclusion of People with Disabilities"³⁷ stipulates that public sector, private sector and non-governmental organisations should "assess the situation

³² <http://egov.md/en/resources/polls/national-annual-survey-citizens-perception-uptake-and-support-e-transformation-2>

³³ Novateca is helping population of the Republic of Moldova to attain a higher quality of life by increasing economic and social opportunities through access to relevant information and modern services in public libraries. <http://www.novateca.md/en/about-novateca/program-overview>

³⁴ Law no.241 of 15.11.2007 "On electronic communications" <http://lex.justice.md/md/327198/>

³⁵ Starnet <http://v.starnet.md/>; Moldcell has implemented Marathon of mobile internet, a program for citizens who are 50 years old and more <http://www.moldcell.md/>; Moldtelecom <http://www.moldtelecom.md/>; Orange <http://www.fondationorange.com/+Moldova-+>

³⁶ Law no.241 of 15.11.2007 "On electronic communication" <http://lex.justice.md/md/327198/>

³⁷ Article 17(1) of the Law no.60 of 30.03.2012 <http://lex.justice.md/md/344149/>

in the field and take concrete measures to facilitate access of disabled persons on an equal basis with others... to information and means of communication, including information technology and electronic communications to other utilities and services open or provided to the public, both in urban areas and in rural areas, according to the regulations in force". Yet, an effective mechanism for enforcing these rules needs to be developed and implemented.

Providers of mobile telephone services are obliged, pursuant to Article 4(1) of the Law no.827 of 18.02.2000³⁸, to pay 2,5% monthly from their income from these kind of services for supporting groups of people identified as vulnerable. Article 5 of this legislative act regulates distribution of these funds and identifies categories of people who are entitled to receive financial support. In particular, these financial resources shall be used for "food and industrial goods of prime necessity, medicine and orthopaedic items, for payment of medical expenses to compensate for various emergencies... expenses related to provision of services". During the interview, both, the representative of the several Ministries and the ISPs have agreed that there is a need to revise this legal provision by either excluding or decreasing the amount and introducing a transparent mechanism with regard to allocation of these funds or collection of this taxes in purpose of ICT development for the citizens' use. Additionally, it was recommended to redirect and invest these funds for the purpose of development of ICT tools for people with special needs, including people with disability.

The Government portals include the AAA logo defined in the Web Content Accessibility Guidelines, which explain how to make content accessible to users with certain disabilities. An assessment of these portals and consultation with representatives of associations of people with disabilities should be considered.

The Government has planned to undertake actions to ensure that online content "is available, accessible, used and valued"³⁹. Development of the program „On creation, development and use of the digital content of the Republic of Moldova" has been planned.

The National Anti-Discrimination Council yet has received no complaints which suggest that customers have been discriminated against on any grounds such as gender, race colour, language, religious beliefs, political or other opinion, national or social origin, association with a national minority, property, birth or other status, including ethnicity, age or sexual orientation, in their interaction with public authorities, internet service providers and providers of online content. A public awareness campaign to enhance the protection of human rights on the Internet should be developed and promoted nationwide.

C. Capacity and ability to use the Internet and other ICT tools

Development various digital literacy programs is planned by a number of public policies, including the Program "Digital Moldova 2020" and the Strategy

³⁸ Law no.827 of 18.02.2000

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311732>

³⁹ The Government Decision no.857 of 31.10.2013

“Education 2020”⁴⁰. These matters shall be analysed in more details in the V chapter of this report.

Although ANRCETI has consulted the recommendations, which result from the CoE standards and the EU legal framework in the area of Internet Governance, including the CoE strategy in the field and other related matters, the need for the CoE expert assistance in regard to implementation of the ‘Internet neutrality’ concept in the Republic of Moldova has been addressed.

The foregoing information shows that, although work undertaken so far in the framework of specific Governmental policy papers is based on the CoE and EU standards, more needs to be done to reach the targets suggested by the CoE and to address emerging issues at the national level in the area of access, non-discrimination and network neutrality. Furthermore, considering that Internet is no longer a simple service and is regarded as a public commons, affordable access should be ensured to all segments of population, irrespective of their age, gender, ethnic or social origin, including the following persons and groups of persons such as those on low incomes, those in rural and geographically remote areas and those with special needs.

⁴⁰ Government Decision no.944 of 14.11.2014
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=355494>

II. FREEDOM OF EXPRESSION AND INFORMATION

This chapter concerns the right to freedom of expression as enshrined in Article 10 of the ECHR. The ECtHR has affirmed in its jurisprudence⁴¹ that Article 10 is fully applicable to the Internet.

In the information society, pursuant to the Committee of Ministers, the exercise and enjoyment of the right to freedom of expression by individuals, including the right to receive and impart information and ideas, as well as their participation in democratic life, "are increasingly reliant upon the accessibility and quality of an Internet connection".⁴²

Freedom of expression is not an absolute right. The ECtHR held, for example, that this right should be balanced with Article 8 of the ECHR and concluded that the rights guaranteed under Articles 8 and 10 deserve equal respect.⁴³

The ECtHR has also stressed that intellectual property benefits from the protection provided by Article 1 of Protocol to the ECHR and as in regard to Article 8, it stated that, both are protected by the ECHR and it is a question of balancing two competing interests.⁴⁴

Freedom of information, according to Article 10 of the ECHR, protects the right not only to communicate, but also to receive and impart information. There is a growing understanding of the importance of transparency in the public sector for the functioning of a democratic society. Under the legal instruments of the CoE, reference can be made to the principles enshrined in the Recommendation on access to official documents, which inspired the drafters of the Convention on Access to Official Documents (Convention 205).⁴⁵

Certain forms of expression, which amount to hate speech⁴⁶ or which negate the fundamental values of the ECHR are excluded from the protections afforded by Article 10 of the ECtHR.

⁴¹ ECtHR, Factsheets - New Technologies (December 2015)

http://www.echr.coe.int/Documents/FS_New_technologies_ENG.pdf

⁴² Recommendation CM/Rec(2016)1

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec\(2016\)1&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec(2016)1&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383)

⁴³ ECtHR Factsheet – Personal Data Protection (December 2015)

http://www.echr.coe.int/Documents/FS_Data_ENG.pdf

⁴⁴ CoE CM/Rec(2014)6

⁴⁵ Recommendation Rec(2002)2 to member States on access to official documents, 21 February 2002; CoE, Convention on Access to Official Documents, CETS No. 205, 18 June 2009

⁴⁶ Although there is no universally acceptable definition of hate speech, the CoE's Committee of Ministers has stated that the term "hate speech" shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin."

[http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/dh-lgbt_docs/CM_Rec\(97\)20_en.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/dh-lgbt_docs/CM_Rec(97)20_en.pdf)

The CoE Committee of Ministers⁴⁷ stated that measures might be taken by the public authorities only if the filtering concerns specific and clearly identifiable content, based on a decision on its illegality by a competent national authority which can be reviewed by an independent and impartial tribunal or regulatory body in accordance with Article 6 of the ECHR. Public authorities should guarantee that all filters are assessed both before and during their implementation to ensure that their effects are proportionate to the purpose of the restriction and, thus, necessary in a democratic society, in order to avoid unjustified blocking of any content. Measures taken to block specific Internet content must not be arbitrarily used as a means of general blocking of information on the Internet. They must not have a collateral effect in rendering large quantities of information inaccessible, thereby substantially restricting the rights of Internet users. They should be prescribed by law. There should be strict control of the scope of blocking and effective judicial review to prevent any abuse of power. Judicial review of such a measure should weigh-up the competing interests at stake, strike a balance between them and determine whether there a less far-reaching measure could be taken to block access to specific Internet content. The requirements and principles mentioned above do not prevent the installation of filters for the protection of minors in specific places where minors access the Internet such as schools or libraries.⁴⁸

In regard to the principles of anonymity, they have been reaffirmed in the Declaration on Freedom of Communication on the Internet of the Committee of Ministers. In order to ensure protection against online surveillance and to enhance freedom of expression, the CoE member States should respect the will of Internet users not to disclose their identity. Yet, respect for anonymity does not prevent member States from taking measures in order to trace those responsible for criminal acts, in accordance with national law, the ECHR and other international agreements in the fields of justice and the police.⁴⁹

The Budapest Convention does not criminalize the use of computer technology for purposes of anonymous communication. However, "Parties [to the Budapest Convention] may wish to criminalize certain abuses related to anonymous communications, such as where the packet header information is altered in order to conceal the identity of the perpetrator in committing a crime."⁵⁰

This and other matters important for protecting online freedom of expression are detailed in the CoE Committee of Ministers and Parliamentary Assembly

⁴⁷ Recommendation CM/Rec(2008)6 of the Committee of Ministers to member states on measures to promote the respect for freedom of expression and information with regard to Internet filters <https://wcd.coe.int/ViewDoc.jsp?id=1266285>. See also *Ahmet Yildirim v Turkey*, App.3111" <http://hudoc.echr.coe.int/fre?i=001-115705>

⁴⁸ Recommendation CM/Rec(2014)6

⁴⁹ Ibid

⁵⁰ Explanatory Report to the Convention on Cybercrime <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800cce5b>

resolutions, recommendations and declarations⁵¹ and further explained by the ECtHR.

A. The right to freedom of expression online, to access information, the opinions and expressions of others

At the national level, the Constitution of the Republic of Moldova guarantees the freedom of opinion, thought and expression to every citizen (Article 32) without making any difference between the online or offline environment.

The Law “On freedom of expression”⁵² had been adopted before the Law “On personal data protection” entered into force. It was amended by the Law no.208 of 21.10.2011⁵³. Challenges, however, lie in the implementation of these provisions considering cases reported by the National Center for Personal Data Protection (NCPDP).

A proposal to amend the Law “On access to information”⁵⁴ and the “Contravention Code”⁵⁵ has been developed by experts employed by the non-governmental sector.⁵⁶ The current version includes amendments to Articles 15-16 in regard to the amount of days and the registration procedure of the request for information. With regard to the second act, it is proposed to amend Article 71, namely to increase the fine for violating the legal framework “On access to information” and “On petitioning”.

The online media, according to the Report “The situation of cinema and the audiovisual industries in the Eastern partnership countries”⁵⁷, “is not regulated”. The same report further provides that “print media are regulated by the Press Law while electronic media fall under the Audio-visual Code”. Challenges,

⁵¹ Declaration CM(2005)56 (p.1); Declaration of 28 May 2003 (preamble, principles 1, 3); CM/Rec(2007)16; In 2007 the Committee of Ministers adopted Recommendation CM/Rec(2007)16 on measures to promote the public service value of the Internet. The second and third chapters, entitled “Access” and “Openness” respectively, deal implicitly with the issues of accessibility of the Internet and the restrictions that may be permitted; Also in 2007, the Committee of Ministers adopted CM/Rec(2007)11 on promoting freedom of expression and information in the new information and communications environment; In 2008 the Committee of Ministers adopted CM/Rec(2008)6. The appendix to this Recommendation sets out guidelines on using and controlling Internet filters in order to fully exercise and enjoy the right to freedom of expression and information; On 4 April 2012 the Committee of Ministers adopted Recommendation CM/Rec(2012)3 on the protection of human rights with regard to search engines. Paragraph 1 of the Recommendation stresses, *inter alia*, that “[s]earch engines enable a worldwide public to seek, receive and impart information and ideas and other content in particular to acquire knowledge, engage in debate and participate in democratic processes”.

⁵² Law no.64 of 23.4.2010

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=335145>

⁵³ The legislative act is available here:

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=341360>

⁵⁴ Law no.982-XIV of 11 May 2000

⁵⁵ Code no.218 of 24.10.2008 <http://lex.justice.md/md/330333/>

⁵⁶ The draft is available online, including on the portal: <http://www.media-azi.md/ro/legislatie>

⁵⁷ Regional Report “The situation of Cinema and the Audiovisual Industries in the Eastern Partnership Countries” <http://capacity4dev.ec.europa.eu/hiqstep/>

according to authors of this paper, “lie in the implementation of this normative act”.

The draft Audiovisual Code has yet to be adopted by the Moldovan Parliament. Proposed amendments included improving ownership transparency, editorial freedom, media plurality and independence of the Audiovisual Coordination Council.⁵⁸

During interviews, representatives of the civil society recommended to perform a separate analysis on the issue of digital media and of the Audiovisual Coordination Council related powers.

B. Restrictions to the right to freedom of expression

Restrictions to the right to freedom of expression are regulation in Article 32(3) and Article 55 of the Constitution of the Republic of Moldova. No difference between the online or the offline environment is made.

The Moldovan legislator has defined “hate speech” in the Law “On freedom of expression”⁵⁹ as “any form of expression which provokes, spreads, promotes or justifies racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance”. In Article 3(5) of the same legislative act expressly stipulates that the guarantees of freedom of expression “do not extend to hate speech and instigation to violence”.

Article 346 of the Criminal Code of the Republic of Moldova provide that “...intentional acts or public incitement including through mass media written or electronic aimed at incensing enmity, racial or religious differentiation or splitting to degrade national honor and dignity as well as directly or indirectly limiting rights or setting direct or indirect advantages for citizens depending on their national, ethnic, racial or religious affiliation” is punishable by a fine of up to 250 conventional units or non-remunerated labor to the benefit of the community from 180 to 240 hours or imprisonment of up to three years.

The Code of Journalism of the Republic of Moldova provides in Chapter 4, p.4.15: “Journalists shall treat all people with whom they communicate as part of their jobs in an equal manner and shall not discriminate based on gender, age, ethnicity, religion, social status or sexual orientation.”

The Independent Journalism Centre, in regard to hate speech in online media, concluded in its Report “On evaluation of hate speech in online media”⁶⁰ that “hate speech was present in the readers’ comments on several of the portals monitored” and “one of the most serious instances of hate speech were registered in the news items about sexual and ethnic minorities”.

⁵⁸ ENP Country Progress Report 2014 – Republic of Moldova Brussels, 25 March 2015
http://eeas.europa.eu/enp/pdf/2015/republic-of-moldova-enp-report-2015_en.pdf

⁵⁹ Law no.64 of 23.4.2010

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=335145>

⁶⁰ <http://media-azi.md/en/monitoring-report-evaluation-hate-speech-online-media>

Considering that problems to be prevented or minimized in this regard are complex, the regulatory action against hate speech should be complemented by educational, cultural and informational measures according to the CoE standards, in particular the Committee of Ministers' Recommendations (97)20⁶¹ and 21⁶².

Concerns in regard to blocking and filtering practices have been expressed by some of the interviewed parties, in particular, by representatives of the ISPs. Lack of comprehensive legal measures in this area has also been reported. They consider that the relevant legal framework should be revised and further detailed considering that at present the burden is on the ISPs in this regard. The guideline set out in the CM/Rec(2008)6⁶³ should be considered and brought to the attention of all relevant private and public sector stakeholders, in particular those who design, use (install, activate, deactivate and implement) and monitor Internet filters, and to civil society, so that they may contribute to their implementation.

In regard to children and young people, Article 5(8) of the Law "On protection of children against the negative impact of information"⁶⁴ provides that "person which accords access to ... (Internet) will ensure implementation and good functioning of information filtering means with a negative impact on children means approved by [MITC]. Government approves conditions of use of mandatory filtering means in places of access to ... (Internet)". The secondary acts to implement these provisions have not been adopted, yet. In practice, ISPs have to analyse and take decisions independently. Concerns in this regard have been raised and the need to further address this matter has been confirmed.

In the context of the special investigation activity, Article 134⁴ of the Criminal Procedure Code⁶⁵ provides what information can be collected from the ISPs. No exceptions or restrictions in this regard are regulated. Representatives of some ISPs have expressed concerns and have requested an assessment and harmonisation of these and other relevant provisions with the relevant legal instruments of the CoE.

Aspects related to privacy and personal data protection in this regard shall be detailed in the Chapter "On Privacy and Data Protection" of this document.

⁶¹ CoE Recommendation(97)20

[http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/dh-lgbt_docs/CM_Rec\(97\)20_en.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/dh-lgbt_docs/CM_Rec(97)20_en.pdf)

⁶² CoE Recommendations(97)21

[http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec\(1997\)021&expmem_EN.asp](http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec(1997)021&expmem_EN.asp)

⁶³ See, for example, Recommendation CM/Rec(2008) on measures to promote the respect for freedom of expression and information with regard to Internet filters

<https://wcd.coe.int/ViewDoc.jsp?id=1266285>

⁶⁴ Law no.30 of 7.3.2013

<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=347276&lang=1>

⁶⁵ Criminal Procedure Code no.122 of 14.03.2003 <http://lex.justice.md/md/326970/>

C. Creation, re-use and distribution of content vs. the right to protection of intellectual property

Article 33 of the Constitution of the Republic of Moldova⁶⁶ guarantees the freedom to create scientific and artistic works.

Principles of state policy in the area of innovation, in general, and in the area of intellectual property, in particular, are reflected in several documents. For example, they are detailed in documents, as follow:

- “National Strategy on Intellectual Property until 2020”⁶⁷;
- Strategy of the Republic of Moldova for 2013-2020 “Innovation for Competitiveness”⁶⁸;
- “Strategy of research-development of the Republic of Moldova until 2020”⁶⁹;
- Strategy “Digital Moldova 2020”⁷⁰.

According to the AGIP Study⁷¹, “encouraging innovation activity in Moldova is rather fragmented than systemic nature”.

In July 2014, the legislative act that regulates the activity of the State Agency on Intellectual Property was adopted. Legislative amendments were also made on trademarks, on patents and industrial designs to ensure compliance with the Association Agreement/DCFTA. The legislative act on national symbols protecting geographical indications, protected appellations of origin and traditional specialties, was adopted.⁷²

In 2014, the 'Horizon 2020' Programme was launched. During the preparatory phase, the Academy of Sciences drew up the necessary institutional framework so that Moldovan institutions can participate effectively in Horizon 2020 calls for tender. The Republic of Moldova and the EU have signed an agreement on Moldova’s participation in the 'Horizon 2020' Programme.⁷³

The Moldovan legislator adopted the Science and Innovation Code⁷⁴. One of the main objectives was to stimulate innovation by fostering applied research and by encouraging closer cooperation between the academic and the research sectors.

⁶⁶ Adopted on 29.07.1994 http://lex.justice.md/document_rom.php?id=44B9F30E:7AC17731

⁶⁷ Government Decision no. 880 of 22.11.2012

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=345660>

⁶⁸ Government Decision no.952 of 27.11.2013

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=350541>

⁶⁹ Government Decision no.920 of 7.11.2014

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=356042>

⁷⁰ Government Decision no.857 of 31.10.2013 <http://lex.justice.md/md/350246/>

⁷¹ Study “On improving the national legal and regulatory framework in the area of intellectual property to encourage innovation activities” (page 104)

http://agepi.gov.md/sites/default/files/2015/11/Studiu_inovare.pdf

⁷² http://eeas.europa.eu/enp/pdf/2015/republic-of-moldova-enp-report-2015_en.pdf

⁷³ http://eeas.europa.eu/enp/pdf/2015/republic-of-moldova-enp-report-2015_en.pdf

⁷⁴ Code no.259 of 15.7.2004 <http://lex.justice.md/md/286236/>

In 2011, under the order of Director General of the AGPI, the Observatory on Enforcement of Intellectual Property Rights was created. Its duties were laid down in Functioning Regulation approved on 5.9.2012, which was revised in June 2013 setting 4 priority trends. Besides employees of AGEPI, members of the Observatory are representatives of the Ministry of Internal Affairs, General Prosecutor's Office and Customs Service. In 2014, according to the AGPI, the mechanism of destruction of counterfeit goods, including in on-line environments, was addressed, restrictions were identified and the opportunity of amending the provisions of the legal framework, including the Law no.38-XIV/2008 of the Protection of Trademarks, were examined.

Actions to promote enforcement of intellectual property rights were conducted in 2014 (e.g. Pupil Awareness Campaign on Counterfeiting and Piracy Phenomena in the Republic of Moldova was organized by AGEPI in cooperation with the Ministry of Education of the Republic of Moldova (MEd) and the Directorate General for Education, Youth and Sports (DGETS) in the period 3 March – 24 October 2014). Further information is presented in the Study "Pupils' Attitude towards Counterfeiting and Piracy Phenomena in the Republic of Moldova"⁷⁵.

The role of the key actors (e.g. Ministry of Internal Affairs, General Prosecutors Office, Customs Service, and Consumer protection Agency) and their activities concerning the enforcement of intellectual property rights is described in the National Report on the Enforcement of Intellectual Property Rights in Moldova for 2014⁷⁶. One of conclusions, which result from this paper, is that although impediments or gaps in the current legislation in the field of Intellectual property were not detected, continuously monitoring is necessary⁷⁷.

The legislative measures on intellectual property, according to the State Agency on Intellectual Property, shall be effective in the situation when sufficient legal instruments will be established so all actors, namely the authorities and when the consumers will use them to protect their rights.⁷⁸

Measure against the criminal offence of counterfeiting should be addressed by a multitude of tools, including political, legal economic, administrative.⁷⁹

Despite every effort made by the relevant authorities to align and implement the legal framework to the regional and international legal instruments on intellectual property protection, additional work and expertise is needed, in particular, with regard to the protection of this right in the digital environment.

⁷⁵ The study "Pupils' Attitude towards Counterfeiting and Piracy Phenomena in the Republic of Moldova" can be accessed in full on [http://agepi.gov.md/pdf/Prezentare%20chestionar%20\(2.10.2014\)%202.pdf](http://agepi.gov.md/pdf/Prezentare%20chestionar%20(2.10.2014)%202.pdf)

⁷⁶ National Report on the Enforcement of Intellectual Property Rights in the Republic of Moldova http://agepi.gov.md/sites/default/files/sedinte_cnpi/18-06-2015/2-1.pdf

⁷⁷ See the IGEPI Study http://agepi.gov.md/sites/default/files/2015/11/Studiu_inovare.pdf

⁷⁸ National Report on the Enforcement of intellectual property rights in the Republic of Moldova

⁷⁹ National Report on the Enforcement of Intellectual Property Rights the Republic of Moldova http://agepi.gov.md/sites/default/files/sedinte_cnpi/18-06-2015/2-1.pdf

D. Duty of public authorities to respect and protect freedom of expression and freedom of information of individuals

Additionally to the adoption of the relevant legal framework mentioned in this chapter, the Republic of Moldova adhered to the Open Governance partnership in 2011. In 2015, Moldova has ranked 22nd in the Global Open Data Index 2015 out of 122 countries examined⁸⁰.

In 2012, Moldova legislator adopted the Law “On Reuse of public sector information”. In 2013, the Government Decision "On methodological norms regarding the application of Law no.305 of 26.12.2012 on the reuse of public sector information" was approved.⁸¹ In 2014, the Government adopted the concept “On principles of the open data of the Government”⁸². Implementation of these provisions, however, requires further attention.

The Government launched the Open Data portal (date.gov.md) in April 2011. Data sets have been opened, including, on public expenditure, health, economy, cadastre, public servants’ income declarations, etc. On 6 December 2015, there were 879 data sets and 4470 resources published on this portal. The number of downloads from the open data portal has increased to 1 million in November 2015.

Despite modernization of the legal framework and a series of initiatives designed to expand access to information, gaps still remain in the access to information area. These gaps, which are social, geographic, and demographic in nature, are proposed to be filled by the broadly dispersed and freely accessible public library system⁸³.

Aspects concerning publication of certain categories of data in the framework of the Law “On transparency in the decision making process” are addressed in the Chapter “Assembly, association and participation” of this paper.

A variety of events to encourage publication and use of open data for public servants, journalists and developers have been organised by the public institutions in partnership with other international organisations.

A single courts portal (<http://instante.justice.md>) was introduced in April 2014 to increase the transparency of the judiciary. In its Annual Progress Reports for the past 3 years the NCPDP has addressed the issue of infringement of personal data protection principles while publishing personalised judgements in the filing

⁸⁰ <http://date.gov.md/ro/comunicate/republica-moldova-%E2%80%93-locul-22-%C3%AEn-clasamentul-global-open-data-index-2015>

⁸¹ Government Decision no.886 of 11.08.2013
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=350277>

⁸² Government Decision no.700 of 25.08.2014
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=354533>

⁸³ This report is the result of an assessment conducted by the International Research & Exchanges Board (IREX) at the request of the Bill & Melinda Gates Foundation.
https://www.irex.org/sites/default/files/Access%20to%20Information%20Through%20Public%20Libraries%20in%20the%20Republic%20of%20Moldova_eng.pdf

systems established on the official portal ww.csj.md. Further aspects of this matter are detailed in the Chapter “Privacy and personal data protection” of this document.

The Government should continue to consolidate its efforts on making public data open. Challenges in regard to publication of data sets on the open data portal remain publication of open data by default and pro-actively, publication of personal data, opening primary data, timely publishing, machine readable formats, description of data, re-using data, quality of data sets, etc.

E. Corporate responsibilities to respect human rights and provide mechanisms to respond to individuals claims of Internet service providers and providers of online content and services

Information provided by the interviewed ISPs suggests that social corporate responsibility exists and ISPs respond to the claims including the petitions in respect to services of the ISP to the users.

With regard to the user’s right to request a review of the content removal and/or account de-activation within a reasonable time and subject to the possibility to complain against the decision to a competent administrative and/or judicial authority, further research is needed.

Concerning social responsibility, although there have been attempts made by some ISPs in this regard, there is no forum to ensure the full participation of governments, the private sector, civil society, the technical community, academia and users, taking into account their specific roles and responsibilities.

In respecting the human rights on the Internet, the development of international Internet-related public policies and Internet governance arrangements should enable full and equal participation of all stakeholders from all countries (Principle 2, Multi-stakeholder Governance, and Declaration of the Committee of Ministers on Internet governance principles⁸⁴).

The Republic of Moldova has participated at the Internet Governance and EURO-DIG forums, which are promoted by de CoE through its Strategy the CoE's Internet Governance Strategy 2012-2015⁸⁵ and through the Declaration of the Committee of Ministers on enhanced participation of member states in Internet governance matters – Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) (p. 3).

The Internet Governance concept has not been transposed into the national context. The Tunis Agenda for the Information Society² defines Internet governance as “the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms,

⁸⁴ Declaration of the Committee of Ministers on Internet governance principles
<https://wcd.coe.int/ViewDoc.jsp?id=1835773&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

⁸⁵ It is available here: <https://wcd.coe.int/ViewDoc.jsp?id=1919461>

rules, decision-making procedures, and programmes that shape the evolution and use of the Internet”. Further, it reaffirms that “the management of the Internet encompasses both technical and public policy issues and should involve all stakeholders and relevant intergovernmental and international organizations”. It recognizes that “Policy authority for Internet-related public policy issues is the sovereign right of states” and that States “have rights and responsibilities for international Internet-related public policy issues”. It also underlines that “Intergovernmental organizations have had and should continue to have a facilitating role in the co-ordination of Internet-related public policy issues”. A variety of events to address these matters have been organized in the Republic of Moldova. It is encouraged to organize these events permanently and to address the current human rights issues on the Internet.

F. Disclosure of identity online

The Republic of Moldova has signed the Additional Protocol to the Budapest Convention, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems. The draft law has been elaborated to ratify this Protocol.

Moldovan legislator adopted the Law “On the prevention and combating of cybercrime”⁸⁶, which establishes the duties of public authorities and institutions in charge of preventing and combating cybercrime, as well as ensuring information security. A proposal to amend this and other relevant legislative acts has been developed⁸⁷.

There is a need for further analyses and revision of the national legal framework to ensure implementation of principles in the field of communication on the Internet, including the principle of anonymity. The balance should be found between respecting the will of users of the Internet not to disclose their identity and the need for law enforcement authorities to trace those responsible for criminal acts.

⁸⁶ Law no.20 from 3 February 2009

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=333508>

⁸⁷ Government Decision no.808 of 7.10.2014 “On adoption of the National Action Plan for the implementation of the Association Agreement the Republic of Moldova - European Union”
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=354939>

III. ASSEMBLY, PARTICIPATION, ASSOCIATION

This chapter addresses the right to freedom of assembly and association, which is enshrined in Article 11 of the ECHR. It also relates to the principles established by the ECtHR regarding the protection of political speech, that there is little scope under Article 10§2 of the ECHR for restrictions of political speech or debates of questions of public interest.⁸⁸

The user has the right to peacefully assemble and associate with others using the Internet. This includes forming, joining, mobilising and participating in societal groups and assemblies as well as in trade unions using Internet-based tools. This also includes the signing of a petition to participate in a campaign or other forms of civic action. The user should have the freedom to choose the tools for the exercise of the rights such as websites, applications or other services.⁸⁹ The exercise of this right is not conditional upon any formal recognition of social groups and assemblies by public authorities.

The right to protest applies equally online and offline. Protests, which have consequences for the general public, such as disruption or blocking of access to premises, fall within the limits of the exercise of freedom of assembly in accordance with Article 11 of the ECHR. This may, nevertheless, not always be the situation when such action result in the disruption of online services, such as unauthorised access to a particular website or a restricted online space, or the handling of digital content without authorisation. The user should be informed when the freedom and consequences of online protest, engendering disruption, may not be as freely accepted.⁹⁰

Considering that the Internet has become a tool for citizens to actively participate in building and strengthening democratic societies, “States should develop and implement strategies for e-democracy, e-participation and e-government that make effective use of ICTs in democratic process and debate, in relationships between public authorities and civil society and in the provision of public services”⁹¹.

When introducing and implementing the e-democracy principles, the focus “should be on democracy and its stakeholders - not on technology”⁹². This term, according to the Recommendation CM/Rec(2009)1, “encompasses, in particular, e-parliament, e-legislation, e-justice, e-mediation, e-environment, e-election, e-referendum, e-initiative, e-voting, e-consultation, e-petitioning, e-campaigning, e-polling and e-surveying; it makes use of e-participation, e-deliberation and e-forums”.⁹³

⁸⁸ *Wingrove v. the U.K.*, 25.11.1996, §58, reports 1996-V

⁸⁹ CoE Recommendation CM/Rec(2012)6

⁹⁰ *Ibid*

⁹¹ Rec(2007)16 on measures to promote the public service value of the Internet

⁹² *Ibid*

⁹³ CoE CM/Rec(2009)1 on electronic democracy <https://wcd.coe.int/ViewDoc.jsp?id=1410627>

These and other relevant matters are further addressed in the CoE Committee of Ministers recommendations and declarations⁹⁴.

A. Freedom to choose any website, application or other service in order to form, join, mobilize and participate in social groups and assemblies

At the national level, Article 40 of the Constitution of the Republic of Moldova, provides that all meetings, demonstrations, rallies, processions or any other assemblies are free, and they may be organized and take place only peacefully and without the use of weapons. No difference between the online or the offline environment is made.

Although the provisions of the Law “On assemblies”⁹⁵ have been amended, certain gaps remain, in particular, in regard to the freedom to choose any website, application or other service in order to form, join, mobilise and participate in social groups and assemblies. This is neither restricted nor formally regulated.

Legislative measures, which regulate freedom of association, also require harmonisation with the CoE standards to ensure freedom to choose any website, application or service in order to form, join, mobilise and participate in social groups and assemblies. Legal acts, which should be considered in this regard, are:

- Civil Code of the Republic of Moldova of 06.06.2002⁹⁶;
- Law on Public Associations no. 837 of 17.05.1996⁹⁷;
- Law on Political Parties no.294 of 21.12.2007⁹⁸;
- Law on Employers Unions no.976 of 11.05.2000⁹⁹;
- Law on Trade Unions no.1129 of 07.07.2000¹⁰⁰;
- Law on Philanthropy and Sponsorship no.1420 of 31.10.2002¹⁰¹;
- Law on Foundations no.581 of 30.07.1999¹⁰²;
- Law on Press no.243 of 26.10.1994¹⁰³;
- Law on Religious Cults and their Component Parts no.125 of 11.05.2007¹⁰⁴.

⁹⁴ E.g. Recommendation CM/Rec(2007)11 on promoting freedom of expression and information in the new information and communications environment; Recommendation Rec (2002)12 on education for democratic citizenship; Declaration by the Committee of Ministers on the protection of freedom of expression and information and freedom of assembly and association with regard to Internet domain names and name strings (Adopted on 21 September 2011; Recommendation Rec(2004)16 on the right of reply in the new media environment (Adopted on 15 December 2004); Declaration on freedom of communication on the Internet (Adopted on 28 May 2003)

⁹⁵ Law no. 26-XVI of 22 February 2008 <http://lex.justice.md/md/327693/>

⁹⁶ <http://lex.justice.md/md/325085/>

⁹⁷ <http://lex.justice.md/index.php?action=view&view=doc&id=325424>

⁹⁸ <http://lex.justice.md/md/327053%2520/>

⁹⁹ <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=311756&lang=1>

¹⁰⁰ <http://lex.justice.md/md/311541/>

¹⁰¹ <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=312770&lang=1>

¹⁰² <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=311692&lang=1>

¹⁰³ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311633>

¹⁰⁴ <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=324889&lang=1>

The national legal frameworks should be adapted to guarantee freedom of ICT-assisted assembly and take the steps necessary to ensure that monitoring and surveillance of assembly and association in a digital environment does not take place, and that any exceptions to this must comply with those provided by ECHR¹⁰⁵.

According to the Report “On Human Rights in Moldova” (2014) developed by Promo-LEX the portal <http://intruniri.chisinau.md/> which is managed by the Chisinau municipality to help simplify the procedures for organizing public events, remains the most efficient tool to coordinate the activities of the organizers and participants at the rallies.¹⁰⁶

In Transnistria the situation is different. NGOs and their members face obstacles in performing their duties in these areas. There are no legal mechanisms in this region to protect civil society interests nor can they receive effective support.¹⁰⁷

In practice, social networking platforms have been used for these purposes both by adults and children (examples have been mentioned by the representatives of the Ministry of Education). However, actions should be developed and implemented to protect and promote respect for human rights with regard to social networking services, in line with ECHR (in particular, Article 8, Article 10, Article 11) and Convention 108.

Similarly, it is necessary to implement the legal provisions of the conventions and instruments of the CoE in the context of portals, in particular, those public authorities.

The Official Alert (officialalert.md) application has been launched in December 2015. It permits users to receive notifications when official web portals of the central public administrations are updated. The aim of this portal is to facilitate access to official information by citizens, journalists, etc. However, several technical matters need to be addressed in relation to 12 official portals identified by the authors of this app¹⁰⁸.

Activities aiming at building capacities to use ICT tools in this regard have not been mentioned by the interviewed parties.

B. The right to protest peacefully online

The right to protest peacefully is enshrined in Article 40 of the Constitution of the Republic of Moldova without making any difference between the online or the offline environment. It stipulates that “[m]eetings, demonstrations,

¹⁰⁵ Recommendation CM(2005)56

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM\(2005\)56&Ver=final&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM(2005)56&Ver=final&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

¹⁰⁶ http://www.promolex.md/upload/publications/en/doc_1444027212.pdf

¹⁰⁷ <https://www.civilrightsdefenders.org/country-reports/human-rights-in-moldova/>

¹⁰⁸ <http://www.ecopresa.md/index.php/ro/>

manifestations, processions... are free and may be organised and conducted only peacefully and without the use of any kind of weapon”.

The relevant national legal framework, which regulates the right to protests, should be harmonized with CoE standards, specifically to regulate the limits of the exercise of freedom of assembly in accordance with Article 11 of the ECHR.

While enforcing the provisions of the legal framework, the Internet users are regularly informed when they may face legal consequences (when comes to the disruption of services). However, cases regarding the disruption of the online protest that leads to blockages and/or damage to the property of others have not been reported by the interviewed parties. Nor the interviewed parties provided any information about wider awareness campaign to inform the users on these restrictions.

Terms of use of websites should be developed to detail, specifically, the condition of use of portals. These aspects should also be regulated.

The platform alerte.md has been developed by the Media Point and has been promoted with the support of the public sector. Individuals have the opportunity to report online a problem in Chisinau. Cooperation with the local public authorities should be further developed to address concerns received through this and other ICT tools.

C. The freedom to use available online tools to participate in local, national and global public policy debates, legislative initiatives and public scrutiny

At the national level, the freedom to participate in legislative initiative as well as in policy making¹⁰⁹ is regulated in a variety of primary and secondary legal acts¹¹⁰ adopted both by the Parliament and the Government.

¹⁰⁹ See for e.g. the Government Decision no.33 of 11.1.2007 “On the rules of development and unified requirements for policy documents”

<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=319904&lang=1>

¹¹⁰ See for e.g. Chapter V of the Law no.780 of 27.12.2001 “On legislative acts”

<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=313239&lang=1>; Article 25 of the Law no.64 of 31.05.1990 “On the Government”

<http://lex.justice.md/index.php?action=view&view=doc&id=312895>; Law no.317 of 18.07.2003 “On the normative acts of the Government and of other central and local public authorities”

<http://lex.justice.md/index.php?action=view&view=doc&id=312810>; Law no.436 of 28.12.2006 “On the local public authorities”

http://lex.justice.md/document_rom.php?id=C8E304A4:037190E8; Law no.797 of 2.04.1996 “On adoption of the Regulation of the Parliament” <http://lex.justice.md/md/322831/>;

Parliament Decision no.373 of 29.12.2005 “On approval of the Concept regarding cooperation between the Parliament and the civil society”

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=314906>; Government Decision no.188 of 3.4.2012 “on official pages of the authorities of the public administration in the Internet network” <http://lex.justice.md/md/342699/>; Government Decision no.11 of 19.01.2010 “On creation of the National Council for Participation”

<http://lex.justice.md/md/333477/>.

The Law.780 of 27.12.2001 “On legislative acts” and the Law no.317 of 18.07.2003 “On normative acts of the Government” prescribe the process of drafting and adoption of laws and subordinated normative acts and, thus, unavoidably contain a considerable number of similar and repetitive provisions. In order to further improve the legislative process, these acts shall be substituted by one legislative act – the Law “On normative acts”. By replacing these two laws with one new law, the current draft shall unify, streamlines and consolidate the provisions regulating the legislative process in Moldova. The draft has already been elaborated by the Ministry of Justice and will be submitted to the Government and further to the Parliament for adoption.

The Law “On transparency of the decision-making”¹¹¹ regulates principles and procedures to be followed by the public authorities stated in Article 3(2)¹¹². To implement the legal provisions of this legislative act, the Governemnt adopted the Decision no.96 of 16.02.2010¹¹³. Both actsrequire revision in the context of implementation of inovative ICT tools.

An efficient mechanism to implement the Law “On local public administration”¹¹⁴, in particular the legal provisions included in Article 8, which regulates the obligation to consult the population, is another matter which requires further development and implementation.

In 2011, while acknowledging that more effort still needs to be made to reach greater openness, the Government of Moldova joined the Open Governments Partnership ¹¹⁵ aiming at complementing the ongoing governance e-transformation¹¹⁶ on specific issues such as transparency, access to public sector information, citizen engagement and provision of the high quality public services¹¹⁷.

The portal date.gov.md has been developed by the Government in 2011 and has become the single point of access to a growing range of data from the central public administration. Issues, which need to be further addressed in this context, concern the quality of data sets, promotion of their innovative use, publication by default of datasets that are needed, exchange of data inside and between public administrations, etc.

¹¹¹ <http://lex.justice.md/md/329849/>

¹¹² (a) The Parliament, (b) the Government, (c) the President of the Republic of Moldova, (d) autonomous public authorities, (e) specialized central public authorities, (f) authorities of the autonomous special territorial units (g) local public authorities, (h) legal entities under public law and private law that administrate and use public funds

¹¹³ <http://lex.justice.md/md/333789/>

¹¹⁴ Law no.436 of 28.12.2006 http://lex.justice.md/document_rom.php?id=C8E304A4:037190E8

¹¹⁵ <http://www.opengovpartnership.org/>

¹¹⁶ Since 2011, the Government has developed and implemented the program “On technological modernization of the Government (e-Transformation)”, which is designed to increase efficiency and quality a selected range of public services to citizens and businesses and improve the management of ICT in the public sector.

¹¹⁷ Achievements and results are included in the activity report for 2013-2014

<http://egov.md/en/transparency/reports/governance-e-transformation-project-moldova-achiements-rezults-2013-2014>

In the context of the e-Transformation Program of the Government, the portal of public services (servicii.gov.md) has been elaborated and implemented (it includes information about 509 public services and 130 e-services). The latest information about the e-government products launched under the e-Transformation Program and the uptake of these products is available in the paper issued on 31.10.2015.¹¹⁸

The particip.gov.md has been implemented by the Government to consult the public on draft legal acts. Nevertheless, participation is passive. For example, in 2015 approximately 54 comments have been written on this portal and approximately 719 proposals have been uploaded. In November 2015, the State Chancellery and the e-Government Center, in cooperation with the e-Governance Academy of Estonia, organized an event to discuss potential ways for better use of this resource developed for open participation.

The same actors and their partners have developed the “Citizen Engagement Guide”¹¹⁹ which includes methodological gaps and instruments for conducting public information and consultation throughout all stages of decision-making set in the existing legislation¹²⁰.

Access to electronic version of all legislative acts shall be possible through the “e-Legislation” I.S., which has been developed in the context of the action no.7.2.3.3 of the Action Plan¹²¹ of Justice Sector Reform Strategy 2011-2016¹²². The aim of the system, pursuant to the information provided during interviews, is to implement a communication platform for all stakeholders involved in the legislative drafting. One of the advantages is the online legal drafting process monitoring. The “e-Legislation” will be piloted from 6 to 12 months following the adoption of the new Law “On normative acts”. The concept of this project, as required by the Order no.78 of 1.06.2006 of MITC¹²³, has not been adopted. An assessment to explain, for example, actions, which will be taken to encourage engagement of individuals from the moment of initiation of elaboration of a legal act and through the entire drafting process, has not been provided.

The Petition Information Management System of the Parliament of Moldova “e-Petition” has been developed in the context of the “Plan for the Strategic Development of the Integrated Information Space of the Parliament of the Republic of Moldova (2011-2015)”¹²⁴. The main goal of this information system

¹¹⁸ <http://egov.md/en/resources/infographics/uptake-e-government-products-launched-under-e-transformation-agenda-situati-3>

¹¹⁹ <https://sites.google.com/site/citizenengagementguide/home>

¹²⁰ “The given platform is an active, live platform/document, aimed at providing support to Central Public Authorities representatives in Moldova on ways to implement citizen-engagement practices in Moldova, through following the legal provisions adopted by the Government of Moldova during the past years, in regards to Transparency in decision making, Access to information, Open data, Open government, etc. ”

¹²¹ Law no.231 of 25.11.2011 on adoption of the Justice Sector Reform Strategy 2011-2016

¹²² <http://lex.justice.md/md/341748/>

¹²³ <http://lex.justice.md/md/316454/>

¹²⁴ Approved by Decision of the Standing Bureau of the Parliament of Moldova no.12 of 27.07.2011

is the automation of management, monitoring and tracking processes of petitions submitted to the Parliament of Moldova¹²⁵. The “e-Petition” I.S. has been developed on the basis of legislative acts in force. However, the NCPDP considers that an evaluation and modernisation of these acts should be considered, specifically, building on the relevant CoE legal standards ratified by the Republic of Moldova. For example, the Law no.190-XII of 19.07.1994 “On petitioning”, the Law no.71-XVI on “On registries”, the Law no.467-XV of 21.11.2003 “On informatization and the state information resources”, the Law no.1069-XIV of 22.06.2000 “On informatics” and other legal acts, which are mentioned in the Terms of reference for development of this I.S., require revision taking into consideration a series of legal initiatives adopted, including the Law “On personal data protection”, technological changes and the legal instruments of the CoE ratified by the Republic of Moldova. Elaboration of a concept paper on development and implementation of this information system, which would detail all technical, organizational and legal aspects, should be considered.

Petitions can be submitted online through the official portals of many public administration authorities. In practice, however, not all authorities accept petitions, which are not signed electronically. Article 5(2) of the Law “On petitioning” provides that “the petition in electronic form should correspond to the requirements on electronic document and the application of a digital signature, in accordance with the legal framework on force”¹²⁶. The existing obstacles, including in the area of e-signature, personal data protection and the non-affordable cost to be borne by users, should be assessed and addressed. Moreover, the secondary acts should be considered for revision.

There are several tools used by Moldovans to sign petitions online (e.g. <http://www.media-azi.md/>, The National Health Insurance Company (CNAM) has launched an online petition service). Furthermore, in the context of the Open government partnership, a petition portal www.petitii.gov.md has been planned to be developed and launched to allow electronic submission of petitions to public authorities, and to offer the petitioners the possibility to view: itinerary, stage of the screening process. The existing regulatory framework should be adjusted to ensure the mechanisms and procedures for electronic submission, receiving, examining and solving petitions by the central public administration authorities.¹²⁷ This portal has not been developed, yet.

The official portal of the Parliament (parlament.md) has been developed in accordance with Priority Direction No. 6 – The Internet Portal of the Parliament included in The Strategic Plan for the Development of the Integrated Information Space of the Parliament of the Republic of Moldova approved by Decision no.13

¹²⁵ Terms of Reference for the development of the Petition Information Management System of the Parliament of the Republic of Moldova (e-Petition)

http://www.undp.md/media/tender_supportdoc/2013/703/Annex%201%20TOR%20e-Petition%20EN.pdf

¹²⁶ <http://lex.justice.md/index.php?action=view&view=doc&id=313313>

¹²⁷ See more at: <http://www.opengovpartnership.org/country/commitment/creating-online-petition-platform-wwwpetitii.gov.md#sthash.pY9n3VCL.dpuf>

of 27.07.2011 of the Permanent Bureau of the Parliament. It has been developed taking into account a number of legal initiatives, technological changes, etc.

Portals of the central public administration authorities have been developed according to one template. Administration of these portals is regulated by the Government Decision no.188 of 3.4.2012¹²⁸. Terms and conditions of use of these portals are neither regulated nor published on these portals.

Although, the majority of local public administrations have their own official pages developed, there are no legal instruments to regulate development of the portals of local public authorities. Rules, which regulate publication of the content on these portals, should be revised.

In 2014, a citizen guide, which includes reference to platforms recognised and promoted on transparency in the decision-making in local public administrations (e.g. descentralizare.gov.md, servicii.gov.md, actelocale.md, particip.gov.md), was published. Publication of the content on these portals needs to be addressed and terms of conditions for use of this content should be developed.

In 2015, a number of mayors participated at various events both in Moldova and abroad to learn about e-Government solutions and have agreed to cooperate in these areas. Thematic events should continue to be organised to encourage use of the available ICT tools at the local level.

No information has been recorded to suggest that the freedom to participate in global public policy debates is limited. Nevertheless, an assessment should be considered to identify the needs and measures to encourage online participation of individuals, including children.

The freedom to participate in the scrutiny of decision-making processes by children is another matter, which requires specific attention. Although it is reflected in the Strategy "Education 2020", it requires further analyses, development and promotion thereof at the national level.

In the context of the project "Milab", the Social Innovation Hub has been established - a multilateral platform to engage actors from different sectors (public, private, non-profit, etc.) to seek and experiment with innovative approaches to the society's problems. Ultimately, the Hub will develop solutions that have been tested on the ground and co-developed with strong involvement of beneficiaries and are ready to be scaled-up in extended environments¹²⁹.

In December 2015, an event to address matters of decentralization as a way to modernize the Republic of Moldova has been organized both by the central and local public administration aiming at encouraging the wide use of public e-services at local level.

¹²⁸ <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=342699&lang=1>

¹²⁹ Information about this project is available here:

http://www.md.undp.org/content/moldova/en/home/operations/projects/democratic_governance/moldova-social-innovation-hub/

The “State Automated Information System (Elections)”, pursuant to the Strategic Plan of the Central Electoral Commission for 2016-2019¹³⁰, has been elaborated on the basis of the Concept of this information system adopted by Law no.101 of 15.8.2008¹³¹. This concept paper lists several legislative acts, which serve as a basis for the implementation and administration of this information system. A number of these legal acts have already been abrogated (e.g. the Law “On protection of personal data”, the Law “On electronic signature and electronic document”). A number of legislative acts should be approximated with the CoE standards (e.g. the Law “On registries” and the Law “On the informatisation and the State information resources”). The Central Electoral Commission continues to work on the regulatory framework to ensure implementation of the modules of this information system following emendation of the Law no.101 of 15.8.2008.

In 2015, young voters - high school students from all districts - received training with the support of United Nations Development Program within the project “Improving the Quality of Moldovan Democracy through Parliamentary and Electoral Support”. Within the first round of seminars called “Democracy Umbrella” students learned about elections and electoral processes, about e-learning platform and about employment and volunteering opportunities at the CICDE.

Measures to ensure that the e-voting system is secured, reliable, efficient, technically robust, open to independent verification and easily accessible to voters, as Internet users, should be taken in line with the CoE standards, including the Recommendation Rec(2004)11¹³² of the Committee of Ministers to member States “On legal, operational and technical standards for e-voting”.

In regard to the reform on public services, although a policy paper¹³³ was adopted by the Government in 2012, fragmentary implementation can be observed and the policy paper has been annulled. The Program for reforming the public services for 2014-2016¹³⁴ has been adopted. A matter, which has not been sufficiently addressed in these policy papers, is access to electronic public services by people with disabilities.

Electronic public services have been developed mainly in the context of the e-Transformation¹³⁵ program and a number of thematic strategies adopted by the Government. The Parliament shall implement a set of projects in the context of e-

¹³⁰[http://www.cec.md/files/files/Planuri%20si%20Rapoarte/PLANUL%20STRATEGIC%20al%20Comisiei%20Electorale%20Centrale%20pentru%20anii%202016-2019aprobatsedinta_9890726%20\(1\).pdf](http://www.cec.md/files/files/Planuri%20si%20Rapoarte/PLANUL%20STRATEGIC%20al%20Comisiei%20Electorale%20Centrale%20pentru%20anii%202016-2019aprobatsedinta_9890726%20(1).pdf)

¹³¹ Law no.101 of 5.5.2008 <http://lex.justice.md/md/328369/>

¹³² Recommendation CM/Rec(2007)16 of the Committee of Ministers to member states on measures to promote the public service value of the Internet <https://wcd.coe.int/ViewDoc.jsp?id=1207291&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

¹³³ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=345215>

¹³⁴ Government Decision no.122 of 18.02.2014 <http://lex.justice.md/md/351705/>

¹³⁵ Adopted by Government Decision no.710 of 20.09.2011 <http://lex.justice.md/index.php?action=view&view=doc&id=340301>

Parliament. Harmonization of the relevant legislative acts with the legal instruments of the CoE, in particular, Convention 108, ECHR, Budapest Convention and other recommendations adopted by the Committee of Ministers¹³⁶ should be considered.

¹³⁶ <http://www.coe.int/t/information/society/>

IV. PRIVACY AND DATA PROTECTION

This chapter concerns the right to personal data protection and the right to respect for family and private life, which is enshrined in Article 8 of the ECHR. The right to personal data protection forms part of the right to respect for private and family life, home and correspondence (Article 8 of ECHR).

Another legal binding international instrument, which has complemented and reinforced the right to personal data protection, is Convention 108. New provisions to Convention 108 were introduced by the Additional Protocol¹³⁷, which regulates trans-border data flows to non-parties, so-called third countries, and the mandatory establishment of national data protection supervisory authorities. Convention 108 covers all operations carried out in the Internet, such as collection, storage, alteration, erasure and retrieval or dissemination or personal data¹³⁸.

In order to further develop the general principles and rules laid down in Convention 108, the CoE Committee of Ministers adopted recommendations¹³⁹, which are not legally binding.

Through its jurisprudence the ECtHR has examined many situations in which the issue of data protection arose, not least those concerning interceptions of communication¹⁴⁰, various forms of surveillance¹⁴¹ and protection against storage of personal data by public authorities¹⁴².

There are principles and rules that should be respected by public authorities and private companies which are engaged in the processing of personal data. It is necessary that a user is aware of and understands what and how her/his data is processed and whether action can be taken in this regard, for example to request correction or erasure of data. According to Convention 108, personal data must be obtained and processed fairly and lawfully, and stored for specified and legitimate purposes. It must be adequate, relevant and not excessive in relation to the purposes for which they are stored, accurate and, where necessary, kept up to date, preserved in a way which permits identification of the person whose personal data are processed and for no longer than is required for the purpose for which those data are stored.

The ECtHR has stated that a balancing exercise with other rights is required when applying and interpreting Article 8 of ECHR. One of the rights likely to come into conflict with the right to data protection is the right to freedom of expression.

¹³⁷ CoE, Additional Protocol to the Convention for the protection of individuals with regard to automatic processing of personal data, regarding supervisory authorities and trans-border data flows, CETS no.181, 2001

¹³⁸ Recommendation Rec(2014)6

¹³⁹ https://www.coe.int/t/dghl/standardsetting/dataprotection/dataprotcompil_en.pdf

¹⁴⁰ ECtHR, Copland v. United Kingdom, No.62617/00, 3 April 2007

¹⁴¹ ECtHR, Uzun v Germany, No.35623/05, 2 September 2010

¹⁴² ECtHR, S. and Marper v. the United Kingdom, Nos. 30562/04 and 30566/04, 4 December 2008

Another right to balance against the right to respect for private life and to data protection is the freedom of the arts and sciences. The ECtHR considers that freedom of the arts is protected under Article 10 of the ECHR.¹⁴³

In relation to science, European data protection law is aware of the special value of science to society. Therefore, the general restrictions for the use of personal data are diminished. Convention 108 permits the retention of data for scientific research once they are no longer needed for the initial purpose of their collection. Furthermore, the subsequent use of personal data for scientific research shall not be considered an incompatible purpose. National law is charged with the task of developing more detailed provisions, including the necessary safeguards, to reconcile the interest in scientific research with the right to data protection.¹⁴⁴

The protection of the fundamental right to property must be balanced against the protection of other fundamental rights, in particular, against the right to data protection.¹⁴⁵ There have been cases where copyright protection institutions demanded that Internet providers disclose the identity of users of Internet file-sharing platforms. Such platforms often make it possible for Internet users to download music titles for free even though these titles are protected by copyright.¹⁴⁶

The interception of correspondence and telecommunications are interferences with the right to private life and subject to the conditions of Article 8 paragraph 2 of the ECHR. The very existence of legislation permitting surveillance of telecommunications may be considered as an interference with the right to private life.¹⁴⁷

The ECtHR has accepted that an individual may, under certain conditions; claim to be the victim of a violation occasioned by the mere existence of secret measures or of legislation permitting them, without having to allege that such measures were in fact applied to him or her. Furthermore, interception must have a basis in law and be necessary in a democratic society in the interest of the national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others, as foreseen in Article 8 of the ECHR.

The ECtHR has developed general principles with particular reference to the requirements that the law, providing for covert measures of surveillance of correspondence and communications by public authorities, should meet:

¹⁴³ ECtHR, *Müller and Others v. Switzerland*, No. 10737/84, 24 May 1988.

¹⁴⁴ Handbook on European Data Protection Law https://fra.europa.eu/sites/default/files/fra-2014-handbook-data-protection-law-2nd-ed_en.pdf

¹⁴⁵ ECtHR, *Ashby Donald and others v. France*, No. 36769/08, 10 January 2013

¹⁴⁶ https://fra.europa.eu/sites/default/files/fra-2014-handbook-data-protection-law-2nd-ed_en.pdf

¹⁴⁷ Recommendation CM/Rec(2014)

- foreseeability;
- minimum safeguards for the exercise of discretion by public authorities;
- supervision and review by competent authorities.¹⁴⁸

With regard to the system of secret interception of mobile telephone communications, it is relevant to recall the conclusion made by the ECtHR in the *Roman Zakharov v Russia* case. It stated that the Russian legal provisions governing interception of communications did not provide for adequate and effective guarantees against arbitrariness and found shortcomings in the legal framework in the following areas: (i) the circumstances in which public authorities are empowered to resort to secret surveillance measures, (ii) the duration of secret surveillance measures, (iii) the procedures for destroying and storing intercepted data, (iv) the procedures for authorizing interception, (v) the supervision of interception, (vi) notification of interception of communications and (vii) remedies available.¹⁴⁹

The Recommendation CM/Rec(2010)¹⁵⁰ provides further guidance on the right of Internet users to consent to the use of personal data for the purposes of profiling and the right to withdraw such consent.

The Recommendation CM/Rec(2014)6 also stipulates that users should be informed that in using the Internet their personal data is regularly processed. Furthermore, users should not be subject to general surveillance or interception measures. Their privacy should also be respected in the workplace. The data protection authority should assist them.

According to the ECtHR's case-law¹⁵¹ on privacy in the workplace, telephone calls made by an employee in the premises of the enterprise are covered by the

¹⁴⁸ CoE CM Rec(2014)6

¹⁴⁹ Application no. 47143/06 <http://hudoc.echr.coe.int/eng-press?i=003-5246347-6510358>
 More on this case: <http://www.humanrightseurope.org/.../russia-court-declares-h.../> Report: Mass surveillance is counter-productive and “endangers human rights” - <http://www.humanrightseurope.org/.../report-mass-surveillance.../> Podcast: How state surveillance compromised the internet -<http://www.humanrightseurope.org/.../podcast-how-state-surve.../>

¹⁵⁰ “This is understood as automatic data processing techniques that consist of applying a profile to an individual in order to take decisions concerning him or her or for purposes of analyzing or predicting his or her personal preferences, behaviors and attitudes. For example, personal data of an Internet user may be collected and processed in the context of his/her interaction with a website or an application or in the context of Internet browsing activity over time and across different websites (e.g. by collecting information on pages and content visited, times of visits, what was searched for, what was clicked)”. ‘Cookies’ are between of the means used to track users’ browsing activities; this is done by storing information in a user’s equipment retrieving it later on. See also the Recommendation CM/Rec(2010)13 on the protection of individuals with regard to automatic processing of personal data in the context of profiling (adopted on 23.11.2010)

¹⁵¹ In *Copland v UK*, the issue of monitoring of telephone, e-mail, and Internet usage, the Court found that it was irrelevant that the data held by the college where the applicant worked was not disclosed or used against her in disciplinary or other proceedings. The Court would not exclude that the monitoring of an employee’s use of a telephone, e-mail or Internet at the place of work might be considered “necessary in a democratic society, in certain situations in pursuit of a legitimate aim”.

notions of private life and correspondence. E-mails sent from work as well as information derived from the monitoring of personal Internet usage should be protected under Article 8 of the ECHR. In the absence of a warning that these would be liable to monitoring, the employee has a reasonable expectation that her/his privacy is respected with regard to phone calls, email and Internet usage in the workplace.

A. Obligation to respect specific rules and procedures by public authorities and private companies when they process personal data

The republic of Moldova has committed to enforce ECHR, Convention 108, the Additional Protocol¹⁵² to Convention 108 and the Budapest Convention¹⁵³.

The right to data protection is not formally recognised as a human right in the Constitution of Moldova. Nevertheless, it forms part of the right to respect for family and private life enshrined in Article 28 of the Constitution¹⁵⁴, which guarantees the right to respect for intimate, family and private life and in Article 30, which guarantees privacy of correspondence.

The legislative act on personal data protection¹⁵⁵, pursuant to its preamble, establishes the legal framework necessary for the enforcement of Directive 95/46/EC¹⁵⁶, which was designed to give substance to the principles of the right to privacy already contained in Convention 108 and to expand them¹⁵⁷.

A draft law to amend several legislative acts, which regulate personal data protection, including the Law no.133 of 8.7.2011, has been drafted to better respond to the actual challenges, both in the public and the private sectors¹⁵⁸. Provisions, which will be amended, concern the scope of the legislative act, the data subject' rights, the data subject's consent, competences of the NCPDP, obligations of controllers, including the personal data breach notifications, trans-border data flow, etc.

General personal data protection principles, which result both from the current EU and CoE legal framework, are reflected in the national Law "On personal data protection" (Art 4). New principles, which shall be addressed in the modernised

¹⁵² CoE, Additional Protocol to the Convention for the protection of individuals with regard to automatic processing of personal data, regarding supervisory authorities and trans-border data flows, CETS no.181, 2001

¹⁵³ Convention on Cybercrime, Budapest, 23.XI.2001

http://www.europarl.europa.eu/meetdocs/2014_2019/documents/libe/dv/7_conv_budapest_/7_conv_budapest_en.pdf

¹⁵⁴ Constitution of Moldova adopted on 29.07.1994

http://lex.justice.md/document_rom.php?id=44B9F30E:7AC17731

¹⁵⁵ Law no.133 of 8.7.2011 on Personal Data Protection

¹⁵⁶ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data

¹⁵⁷ Handbook on European Data Protection Law (2014)

http://www.echr.coe.int/Documents/Handbook_data_protection_ENG.pdf

¹⁵⁸ A proposal to a legislative act to amend several legislative acts, including the Law no.133 of 8.7.2011 <http://datepersonale.md/file/proiecte/ModificareLegea.pdf>

Convention 108 and the General Regulation “On personal data protection” of the EU, namely the principle of privacy by design, is not formally regulated in the current national legal framework.

The Action Plan for the implementation of the National Development Strategy of the Personal Data Protection domain for the years 2013-2018 provides that a proposal for a legislative act to regulate specific rules of the European acquis for the telecommunication sector referring to the processing of personal data and protection of confidentiality in the electronic communication sector shall be elaborated. This legislative act has not been adopted, yet.

During interviews, representative of the NCPDP raised concerns in regard to interceptions of electronic communications stating that the national legal framework, namely the Law no.59 of 29.03.2012 “On special investigation activity” and the Criminal Procedural Code, are not aligned to the CoE standards.

Pursuant to the Study “Harmonisation of the Digital Markets in the Eastern Partnership”, “the right to privacy and confidentiality of electronic communications is not well protected”. Authors further concluded that “[t]he EU e-Commerce, e-Privacy and Data Retention Directives have not been (fully) transposed” and “the Moldovan legislation is generally aligned with the 2003 EU regulatory framework, except for e-privacy directive, and partially with the 2009 telecom package.”¹⁵⁹

In regard to e-commerce, the Action Plan for the implementation of the Association Agreement between the European Union and the Republic of Moldova¹⁶⁰ provides that the best EU practices in the area of e-commerce¹⁶¹ will be transposed in the national legislation by the end of 2015. The draft legislative act has not been published for consultations, yet.

Modernization of public services by 2020 through digitization and business process reengineering, optimization of government operations through interoperability, IT asset consolidation and data reuse, are two objectives, which result from the e-Transformation Program of the Government.¹⁶² A high level of data protection to ensure to enhance trust in online services is a priority of the Government. Nevertheless, lack of confidence is a reason, which makes consumers hesitant to accept new public services and to buy online. The

¹⁵⁹ Study report “Harmonization of Digital Markets in the Eastern Partnership”

<http://capacity4dev.ec.europa.eu/hiqstep/document/harmonisation-digital-markets-eastern-partnership-study-report>

¹⁶⁰ Adopted by Government Decision no.808 of 7.10.14

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=354939>

¹⁶¹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32000L0031>

¹⁶² The Strategic Program for Governance Technological Modernization (e-Transformation) <http://lex.justice.md/index.php?action=view&view=doc&id=340301>

Program for reforming the public services for 2014-2016¹⁶³ includes actions in this regard¹⁶⁴.

The level of confidence in that the quality of online services accessed via computers or mobile phones, according to the to the National Survey for 2015 "Citizens' perception, uptake and support for the e-Transformation of Governance in the Republic of Moldova"¹⁶⁵, will correspond to their expectations were rated by an average mark of 3.8 on a scale from 1 (don't believe) to 6 (fully believe). Furthermore, it provides that 43% of respondents would recommend use of the online public services indicating an average of 4.1 points, on a scale from 1 to 6, where 1 means "I would not recommend" and 6 "I would definitely recommend" whereas 28% of respondents are confident that they would certainly obtain (grades of 5 and 6 were awarded on a scale from 1 to 6, where 1 stands for „lack of confidence" and 6 – for „full confidence") the public service they have requested online (via computer or mobile phone). Overall, authors concluded that the level of confidence equals to 3.7 points.

The Interoperability Platform (M-Connect) has been developed according to the Program on Interoperability¹⁶⁶ and has been piloted¹⁶⁷ pursuant to the Government Decision no.404 of 2.6.2014¹⁶⁸. Regulations and procedures on connection and use of the M-Connect are planned to be developed by December 2015. The Law on emendation and of certain legislative acts to implement the Interoperability has been drafted¹⁶⁹. Although these proposals address some of the minimum requirements, the regulatory framework for the implementation of the interoperability platform (M-Connect) should be elaborated and adopted building on the CoE standards.

The Government has put into operation the common technology platform (MCloud) for all the central public administration entities, in order to improve IT service consumption expenditure. This platform is designed to "capitalize on government spending and consolidates data centres in a joint management form"¹⁷⁰. Nevertheless, pursuant to the Moldovan legislator, "the insufficient information about the processing operations used by a cloud-computing provider represents a challenge for the personal data controllers, as well as for the personal data subjects, whenever they might be not aware of the possible

¹⁶³ Government Decision no.122 of 18.02.2014 <http://lex.justice.md/md/351705/>

¹⁶⁴ Annex no.2 of the Government Decision no.122 of 18.2.2014 <http://lex.justice.md/md/351705/>

¹⁶⁵ <http://egov.md/en/resources/polls/national-annual-survey-citizens-perception-uptake-and-support-e-transformation-2>

¹⁶⁶ Adopted by Government Decision no.656 of 5.9.2012

<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=344700&lang=1>

¹⁶⁷ Government Decision no.122 of 18.02.2014 <http://lex.justice.md/md/351705/>, Government Decision no.710 of 20.09.2011

<http://lex.justice.md/index.php?action=view&view=doc&id=340301>, Government Decision 656 of 5.9.2012 <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=344700&lang=1>

Government Decision No.404 of 2.06.2014 on piloting of the Governmental Platform on Interoperability <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=353238> Government Program 20150-2018

¹⁶⁸ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=353238>

¹⁶⁹ Government Decision on adoption of the Action Plan of the Government for 2016

¹⁷⁰ <http://egov.md/en/projects/m-cloud>

threats and risks, and thus might be unable to adopt adequate measures to protect personal data”¹⁷¹. The relevant legislative framework to ensure effective and efficient operation and administration of this platform has not been revised or adopted.

ICT tools have been or shall be implemented in the health sector¹⁷² and in the social protection area. Elaboration and implementation of the legal framework on personal data protection in these areas is another challenge, which needs to be addressed.

Although the Action Plan for the implementation of the Justice Sector Reform Strategy for the years 2011-2016¹⁷³ provides actions in regard to protection of personal data in the context of the Integrated Case Management System, further analyses is necessary to be conducted before elaboration of a new concept of this information system.

ICT tools have been developed and implemented in the central public administration on the basis of several legislative acts, including the Law “On Informatization and the state information resources”¹⁷⁴, the Law “On registries”¹⁷⁵, the Law “On informatics”¹⁷⁶, the Law “On archive fund of the Republic of Moldova”¹⁷⁷, etc. These acts should be amended taking into consideration the legal instruments ratified by the Republic of Moldova, including Convention 108.

Unauthorised access to the State Population Register (although in decline) is one of the illegalities recorded and examined by the NCPDP in its annual reports¹⁷⁸.

Pursuant to the Study “Harmonisation of the Digital Markets in the Eastern Partnership”, “free movement of electronic communications equipment and services across national boundaries is ensured to some extent.” It further concluded that “the sharing of billing platforms installed abroad is prohibited; transfer of personal data abroad is restricted and subject to approval from the data protection authority”.¹⁷⁹

The operations of processed personal data disclosure by the authorities from the administrative districts on the left bank of the Dniester River, will be performed

¹⁷¹ Law no.229 of 10.10.2013 on adoption of the National Development Strategy of the Personal Data Protection domain for the years 2013-2018

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=350516>

¹⁷² http://www.ms.gov.md/?q=legislatie&field_legtip_tid=53

¹⁷³ Adopted by Government Decision no.6 of 16.2.2012

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=343439>

¹⁷⁴ Law no.467 of 21.11.2003 “On Informatization and the state information resources”

<http://lex.justice.md/md/313189/>

¹⁷⁵ Law no.71 of 22.3.2007 “On registries” <http://lex.justice.md/md/325732/>

¹⁷⁶ Law no.1069 of 22.06.2000 “On informatics”

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=312902>

¹⁷⁷ Law no.880 of 22.01.1992 <http://lex.justice.md/md/312887/>

¹⁷⁸ www.datepersonale.md

¹⁷⁹ Study report “Harmonization of Digital Markets in the Eastern Partnership” <http://capacity4dev.ec.europa.eu/hiqstep/>

only when the NCPDP will have the possibility to carry out an effective control over the conformity of such data processing, in line with the provisions set in the Law “On Personal Data Protection”¹⁸⁰ and the Government Decision No.1123 of 4.12.2010¹⁸¹ considering that the situation related to protection of individuals’ fundamental rights and freedoms related to personal data processing has a direct impact on the State’s credibility and capacity to implement an efficient internal and external policy in human rights’ area.

Official portals of public authorities in the Internet, according to the Government Decision no.188 of 03.04.2012, shall be elaborated and administrated in line with the legal framework on personal data protection and on information security. In practice, however, this legal framework has not fully been implemented, including, the principles of fair and transparent processing.

The Government Decision no.1123 of 14.12.2010 has not been annulled although it has as the grounds the legislative act on personal data protection what has been annulled.

Furthermore, the Order no.78 of 1.6.2006 of the MITC¹⁸², Order no.106 of 20.12.2010 of the MITC¹⁸³ shall be revised building on the best international practices in the relevant areas.

The use of cryptography should be addressed at the national level and regulated. Measures should be considered to minimise the negative effects of the use of cryptography, in particular, on the investigation of criminal offences, without affecting its legitimate use more than is strictly necessary.

Summaries of cases of unlawful processing of personal data principles have been included in the annual progress report of the NCPDP for 2014¹⁸⁴. Examples are provided, as follow:

i. Security incident occurrence on the processing of personal data stored in filing systems managed by an Internet service provider

Taking into account the media coverage of the leaking of information with limited accessibility that represents “StarNet Soluții” LLC customers/employees data, on 27 of February 2015, the NCPDP initiated the ex-officio control over the personal data processing legality and carried out an unannounced control to the mentioned personal data controller¹⁸⁵. As the result of the on the spot inspection performed, it was found the security incident occurrence on the processing of personal data stored in filing systems managed by the above-mentioned company. Initially, the controller announced that 53000 personal data subjects

¹⁸⁰ Law No.133 dated 8 July 2011 on Personal Data Protection

¹⁸¹ Requirements for ensuring personal data security when being processed in the personal data information systems, approved via the Government Decision No. 1123 dated December 14, 2010 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=350516>

¹⁸² <http://lex.justice.md/md/316454/>

¹⁸³ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=337977>

¹⁸⁴ <http://datepersonale.md/md/rapoarte/>

¹⁸⁵ <http://datepersonale.md/file/dec1/decizias.pdf>

were affected. Following the investigation, the NCPDP announced and provide 153000 were affected. The NCPDP has issued the decision on termination of the processing of personal data on unrestricted public access to the information placed in the Internet space. The Buiucani District Court has issued a Resolution for the application of the sanction on this case.¹⁸⁶

ii. Publication of personalised judgements on official web-sites

The issue of infringement of personal data protection principles while publishing personalised judgments in the filing system established on the official web-page www.csj.md is described in the progress Report of the NCPDP for 2013 (pp. 21-22) and for 2014¹⁸⁷ (p.64). Despite the efforts of the NCPDP, the Supreme Court of Justice has not complied with the requirements of suspension of activities carried out contrary to the principles of personal data protection and, after contesting the NCPDP's decision in administrative contentious procedure at Buiucani court, based on the judgement of 24 January 2014, it won the case in the first instance. The NCPDP challenged the judgement of the first instance, considering it illegal, but, on 17 of April 2014, the civil and administrative contentious College of the Chisinau Court of Appeal rejected the appeal, and upheld the judgment of first instance. Considering the findings of the Court of Appeal as erroneous, the NCPDP filed an appeal, which was rejected by the civil, commercial and administrative contentious College of the Supreme Court of Justice, qualifying it as inadmissible one. The court did not take into account the position of the NCPDP regarding the unfounded interference in the private lives of litigants following the publication of personalised judgments.¹⁸⁸ Moreover, personalised decisions of courts, courts of appeal are published on <http://instante.justice.md/cms/> - designed for becoming the unique official portal of all courts. The legal framework, which serves as grounds for publication of court judgments, is the Law on the Organization of the Judiciary¹⁸⁹. Pursuant to this legislative act, judgments of courts, courts of appeal and the Supreme Court of Justice, shall be "published on a web page in the Internet" and the Superior Council of Magistracy is mandated to regulate the procedure in this regard (Article 10(5)). At present, the Decision no.472/21 of 18.12.2008 on Publication of Court Decision on the Internet website applies, but amendments have been published for consultations.

It is important to address these matters considering that the right to personal data protection and the right to public access to documents are two fundamental democratic principles and in those cases in which the underlying interests of

¹⁸⁶ Copies of these documents are available here:

<http://www.datepersonale.md/en/newsst/1211/1/4766/>

<http://www.datepersonale.md/en/newsst/1211/1/4759/>

<http://datepersonale.md/md/newsst/1211/1/4769/>,

<http://datepersonale.md/md/newsst/1211/1/4802/>.

¹⁸⁷ <http://www.datepersonale.md/file/Raport/raport2014en.pdf>

¹⁸⁸ The Opinion of the NCPDP and further information about this matter is available on the official portal of the NCPDP: <http://www.datepersonale.md/ru/newsst/1211/1/4586/>

<http://www.datepersonale.md/file/decizia%20csj/aici.pdf>.

¹⁸⁹ Law no.514 06 July 1995 on the Organization of the Judiciary

<http://lex.justice.md/index.php?action=view&view=doc&id=312839>

these principles collide, a reasonable assessment should be made departing from the fact that both are of equal importance.

iii. Information disclosure regarding the names and surnames of the Moldovan companies' founders

On 25 November 2015, the District Court of Buiucani found the S.E. "State Registration Chamber" guilty of committing the offenses stipulated in Article 74 paragraph (1), paragraph (2) and paragraph (4) of the Contravention Code.

The NCPDP incriminated the S.E. "State Registration Chamber" of the wrongful act stated in paragraph (4) of this Article for disclosure/commercialization of personal data of entrepreneurs to unauthorized third parties, infringing the articles 4, 5, 11, 12, 29 and 30 of the Law on personal data protection, article 34 paragraph (1) of the Law on state registration of legal persons and individual entrepreneurs and article 7 paragraph (2) letter c) of the Law on access to information.

In this respect, even if the legal proceeding was ceased as a result of the expiration of the 3 months term - circumstances that are not imputable to the Center on the grounds that the protocol on this offense was performed on the 8th of June 2015 and was sent to the court on the same date, the court decided that disclosure of personal data of entrepreneurs has been unlawful in this case.¹⁹⁰

B. General surveillance or interception measures

The national legal framework¹⁹¹ in this area needs to be revised and harmonized with conventions and instruments of CoE.

Some of the interviewed ISPs signaled the need to abrogate the common Order of the Intelligence Service, the Ministry of Internal Affairs, the CCCEC (currently NAC) no.44, 249, 91 of 14.07.2008 considering that the Law no.45-XIII of 12.04.1994, which serves as the grounds for adoption of this legal act, has been abrogated.

In 2014, according to the Report "On Human Rights in Moldova" of the Promolex, "the use of video surveillance technologies by private individuals, public authorities, and in particular the Ministry of Internal Affairs began monitoring road traffic". In this regard, they noted "a lack of a control mechanism and an

¹⁹⁰ Further information about this case can be consulted here:

<http://www.datepersonale.md/en/newslst/1211/1/4917/>
<http://datepersonale.md/file/acte/04-09-558.pdf>,
<http://datepersonale.md/md/newslst/1211/1/4793/>,
<http://datepersonale.md/md/newslst/1211/1/4810/>,
<http://datepersonale.md/md/newslst/1211/1/4830/>,
<http://datepersonale.md/md/newslst/1211/1/4851/>.

¹⁹¹ Section 5 of the Criminal Procedure Code no.122 of 14.03.2003, the Law nr.59 of 29.03.2012 "On special investigative activity" <http://lex.justice.md/md/343452/>

appropriate legal framework to allow this interference in private life”¹⁹². An audit of these tools should be considered taking into consideration the legal framework on personal data protection.

Individuals have addressed the NCPDP invoking the alleged case of infringement the right to privacy through illegal interception of telephone calls in a long period. According to the information provided by the NCPDP, their personal data have been processed by the representatives of law enforcement bodies through illegal interception of telephone calls and collecting information from the providers of electronic communications services „Orange” S.A. and „Moldcell” S.A. Given the fact that the national supervisory authority of the protection of personal data is not vested with powers to exercise control on the lawfulness of the processing of personal data collected in the course of special investigations, considering that only authorities specifically indicated the legislative act no.59 of 29.3.2012 on special activity of investigation and investigating judge pursuant to the Code of Criminal Procedure have obligations in this regard, the NCPDP has been unsuccessful although investigation process, involving the Ministry of Justice, the Office of the Prosecutor General, the Security and Information Service, the Ministry of Internal Affairs, including the mobile operators „Orange” S.A. and „Moldcell” S.A. has been initiated. The NCPDP stated that the mobile operators have refused to submit the relevant materials and information by making unjustifiable reference to the provisions of Article 212 of the Criminal Procedure Code, but also that in accordance with the provisions of the nominated Instruction they do not control and do not record the operations of interception done by the representatives of Information and Security Service, the Ministry of Justice, from whom it was requested the necessary information to be collected with the involvement of magistrates, they have delivered the application of the Center to the Office of the General Prosecutor without providing any additional data. Moreover, the Information and Security Service has refused to provide the information on the ground that it has part of the secret data category and the Office of the Prosecutor General categorically stated that as a result of the control carried out by this authority, it wasn't found certain interception operations of phone calls of complaints carried out thereof.¹⁹³ Thus, the NCPDP has identified the need to revise the legal framework in this area.

Agreements between the Internet service providers and clients shall be revised as provided in the chapter I of this paper.

Distance learning courses are being developed with the following topics: “How to use Performance Measuring Module of the Integrated Case Management System?”, “Protection of personal data”, “Integrated Case Management System”.¹⁹⁴

¹⁹² http://www.promolex.md/upload/publications/en/doc_1444027212.pdf

¹⁹³ <http://www.datepersonale.md/en/newsst/1211/1/4006/>

¹⁹⁴ Annual report on the implementation of the Justice Sector reform strategy for the years 2014-2016 (reporting period 2014)
http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/rapoarte/2015/RAPORT_ANUAL_SRSJ_2014_ENGL.pdf

C. Respect of privacy at the workplace

Chapter VI of the Employment Code regulates protection of personal data. Nevertheless, an effective mechanism for enforcing the legal framework on protection of personal data in this area needs to be developed and implemented. A prior assessment of the current practices and the legal framework should be considered.

Section 2 of the National Development Strategy of the Personal Data Protection domain for the years 2013-2018¹⁹⁵ provides that “during the Center’s activities were identified, a number of breaches of personal data processing principles, such as... g) failure to include in the work contracts the obligation for employers to not disclose personal data to controllers and processors, including after the termination of the contractual relations”. By 2018, actions to elaborate provision of assistance to personal data controllers to develop the confidentiality statements, as a contractual clause or being inserted in the job description, mentioning about the civil, contravention, or criminal liability for violation of such statement for the persons who participate in the personal data processing process are planned (p.1.7).

Non-compliance with the provisions of the Law “On personal data protection” and the Government Decision no.1123 of 14.10.2010 by economic entities and the States Labor Inspectorate has been found by the NCPDP¹⁹⁶. In those cases, control has been initiated by the NCPDP on the basis of a complaint from a citizen and a notification on the alleged fact of unlawful personal data processing concerning employees.

The Action Plan for the implementation of the Association Agreement between the European Union and the Republic of Moldova¹⁹⁷ provides that the best EU practices in the area of personal data protection shall be transposed according to the Action Plan for the implementation of the National Development Strategy of the Personal Data Protection domain for the years 2013-2018¹⁹⁸.

D. Assistance provided by the data protection authority

Data protection authorities play an important role in investigating, intervening, raising awareness or otherwise remedying interferences in the processing of personal data. This is notwithstanding the primary role of the State to assure the protection of personal data within the wider scope of their obligation to safeguard the right to private and family life.¹⁹⁹

¹⁹⁵ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=350516>

¹⁹⁶ Annual progress report for the year 2014, page 69
<http://datepersonale.md/file/Raport/raport2014en.pdf>

¹⁹⁷ Adopted by Government Decision no.808 of 7.10.14
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=354939>

¹⁹⁸ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=350516>

¹⁹⁹ CoE CM Rec(2014)6

The legislative act “On personal data protection” stipulates that “[c]ontrol over compliance of personal data processing with the requirements of this law is performed by the National Centre for Personal Data Protection that carries out its activity under the conditions of impartiality and independence.” (Article 19)

A proposal to amend the Law no.133 of 8.7.2011²⁰⁰ shall include provisions in regard to the competences of the NCPDP, including in the area of special investigation activities.

Instructions and decisions with normative character are published on the portal datepersonale.md.²⁰¹

On a number of occasions, the national data protection authority has advised individuals to file a complaint to the court considered the limited resources it has to examine specific complaints.

E. Network and information security

The Strategy “Digital Moldova 2020”²⁰² includes actions in regard to information security. However, the deadline for implementation of several actions has not been respected, which means that the legal framework in this regard has not been adopted, the critical infrastructure has not been defined, the national CERT has not been established, capacity building events have not been implemented, etc.

On 29.10.2015 the Government adopted the National Program on Cyber security of Moldova for 2016-2020 by Decision no.811²⁰³.

It provides that the concept of cyber security is based on several principles including “protection of human rights and fundamental freedom”. The representatives of MITC admitted that this program should be transformed into a national strategy and a specific action plan to adopt this document should be adopted.

In 2016, international expertise shall be necessary to implement this policy paper, in particular, in the area of drafting of the legal framework, classification of information, regulation of competences of the key actors, implementation of the international minimum requirements, which result from the international standards, education of individuals, elaboration and implementation of standards in this area, etc.

²⁰⁰ A proposal to a legislative act to amend several legislative acts, including the Law no.133 of 8.7.2011 <http://datepersonale.md/file/proiecte/ModificareLegea.pdf>

²⁰¹ <http://datepersonale.md/md/interne/>

²⁰² Government Decision no.857 of 31.10.2013 <http://lex.justice.md/md/350246/>

²⁰³ Government Decision no.811 of 29.10.2015

<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=361818&lang=1>

V. EDUCATION AND LITERACY

This chapter concerns the right to education, which is enshrined in Article 2 of Protocol 1 to the ECHR.

The CoE Committee of Ministers²⁰⁴ encourages the creation and processing of and access to educational, cultural and scientific content in digital form, so as to ensure that all cultures can express themselves and have access to the Internet in all languages, including indigenous ones. Internet users should be able to freely access publicly funded research and cultural works on the Internet. Access to digital heritage materials, which are in the public domain, should also be freely accessible within reasonable restrictions. Conditions on access to knowledge are permitted in specific cases in order to remunerate right holders for their work, within the limits of permissible exceptions to intellectual property protection.

Internet users should have the ability to acquire basic information, education, knowledge and skills in order to exercise their human rights and fundamental freedoms on the Internet. This is in line with the CoE's Committee of Ministers standard²⁰⁵ which promote computer literacy as a fundamental prerequisite for access to information, the exercise of cultural rights and the right to education through ICTs.

Internet literacy programmes and initiatives enable Internet users to critically analyze the accuracy and trustworthiness of Internet content. States should take measures to facilitate access to ICT devices and promote education to allow all persons, in particular children, to acquire the skills needed to work with a broad range of ICTs and assess critically the quality of information, in particular, that which could be harmful to them²⁰⁶.

A. Online access to education and to cultural, scientific, scholarly and other content in official languages

The Republic of Moldova acceded and ratified the Protocol no.1 to the ECHR²⁰⁷, which added new fundamental rights to those protected under the Convention, including the right to education.

Article 35 of the Constitution of the Republic of Moldova stipulates that the right to education “shall be ensured by way of compulsory comprehensive school system, by secondary education and vocational education, higher education

²⁰⁴ CoE CM Rec(2007)16

<https://wcd.coe.int/ViewDoc.jsp?id=1207291&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

²⁰⁵ CoE CM (2005)56 final 13 May 2005

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM\(2005\)56&Ver=final&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM(2005)56&Ver=final&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

²⁰⁶ CoE CM Rec(2014)6

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec\(2014\)6&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec(2014)6&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

²⁰⁷ <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/009>

system, as well as by other forms of education and continuous training”²⁰⁸. No difference is made between the online and the offline environment.

The Government and the Parliament have adopted several strategic policy papers²⁰⁹, which include specific actions to ensure the right to education, including access to knowledge. Funding for implementation of these measures may make achievement of objectives more difficult.

The Government adopted the National Strategy for the Development of Culture of Moldova “Culture 2020”²¹⁰. The mission of the Strategy is to provide the cultural sphere with a coherent, efficient and pragmatic policy framework, based on the priorities defined in this document. According to the strategy vision, by 2020, Moldova will have a consolidated, independent and creative cultural sector, and a protected cultural heritage, which is integrated into national and regional policies, including sustainable development activities: educational, social, economic, tourism and the environment. Nevertheless, inadequate funding and inefficient use of resources allocated to culture may make achievement of the objectives more difficult.

Moldova shall promote cooperation with the EU in all areas of civil scientific research and technological development and demonstration on the basis of mutual benefit and subject to appropriate and effective protection of intellectual property rights.²¹¹ Actions to implement this objective have been planned and approved by the Government²¹².

B. Access to digital education and knowledge in order to exercise human rights and freedoms on the Internet

There is a clear understanding of the recognition that a strong digital economy is vital for innovation, growth, jobs and competitiveness in Moldova.

Digital competences, skills in mathematics, science and technology are included between educational outcomes in the “Education Code”²¹³. The same legislative act stipulates that the state shall guarantee the training of basic digital competences for adults according to the conditions set by the Ministry of Education²¹⁴. The secondary legal acts to implement provisions stipulated in the Education Code shall be developed by the end of 2016²¹⁵. Out of 104 secondary legal acts, which have been planned to be adopted to implement the “Education

²⁰⁸ http://lex.justice.md/document_rom.php?id=44B9F30E:7AC17731

²⁰⁹ Policy papers can be consulted here: <http://edu.gov.md/ro/content/politici-educationale-nationale-0>

²¹⁰ Government Decision no.271 of 9 April 2014

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=352588>

²¹¹ http://eeas.europa.eu/moldova/pdf/eu-md_aa-dcfta_en.pdf

²¹² Government Decision no.808 of 7.10.2014, chapter 24

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=354939>

²¹³ Article 11(2)(d), Education Code no.152 of 17.7.2017 <http://lex.justice.md/md/355156/>

²¹⁴ Article 126(2), Education Code no.152 of 17.7.2017 <http://lex.justice.md/md/355156/>

²¹⁵ Government Decision no.808 of 7.10.2014, p. 123

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=354939>

Code”, pursuant to the information provided by the Ministry of Education, 42 have been adopted in 2015.

The Government has also adopted the Education Development Strategy for 2014-2020 „Education 2020”²¹⁶ and Education Development Strategy for vocational/technical education for 2013-2020²¹⁷. As in other cases, funding for implementation of these measures may make achievement of objectives more difficult.

Vocational education and training institutions were mapped as part of preparatory work to build up centers of excellence and reorganize the vocational education and training network. New occupational standards were developed and a pilot project on dual professional training was launched. The new law on professions is still pending approval by Parliament.²¹⁸

Increasing digital literacy, developing digital skills and digital inclusion is one of the general objectives of the Strategy “Digital Moldova 2020”. The Government has planned to develop (i) the program on digital literacy in general compulsory education, (ii) the program on continuous training and digital inclusion “digital skills for all” and (iii) the program on access to equipment and software for the educational process.²¹⁹ These policy papers have not been adopted, yet.

The Strategy for the IT industry competitiveness enhancement (2015-2021)²²⁰, which is based on several priorities including excellence in IT education, aims at increasing the number of employees in the IT industry (18000) by 2021.

Equipping public servants with necessary technological skills is a prerequisite for improving delivery of public services and productivity in government operations in the process of e-Transformation²²¹. New skills and knowledge is needed as part of a new institutional culture for a connected, accessible, IT-enabled government²²².

The Government has developed and implemented various programs for the public servants, including those who work in the e-Transformation division of the central public authorities. Representatives of the local public authorities have also participated at events organised in the context of the e-Transformation Program. These programs are not mandatory in the public sector.

²¹⁶ Adopted by Government Decision no.944 of 14.11.2014

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=355494>

²¹⁷ Adopted by Government Decision no.97 of 1.2.2013

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=346695>

²¹⁸ http://eeas.europa.eu/enp/pdf/2015/repulic-of-moldova-enp-report-2015_en.pdf

²¹⁹ Government Decision on the National Strategy for the development of information society „Digital Moldova 2020”

²²⁰ Government Decision no.254 of 14 Mai 2015

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=358621>

²²¹ Government Decision no.710 of 20 September 2011

²²² Government Decision no.808 of 7.10.2014, chapter 24

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=354939>

As mentioned above, according to The Global IT Report (2015), in terms of skills, Moldova ranked 71 out of 143 possible (value 5.0 out of 7)²²³.

Pursuant to the Report “Harmonization of the Digital Market in the Eastern Partnership”²²⁴, there is no complete study of the overview of the situation on Digital Skills in Moldova. Furthermore, authors of this paper consider that “the Ministry of Labor, who is responsible of job needs analysis, doesn’t have an overall approach to determine the needs and skills to match the jobs with education”. As a first step, therefore, the author considers that “a “Digital Skills gap” survey is required to bring an understanding of the problem that responsible authorities are faced with” and “there needs to be a coordinated focus on digital skills development and ICT market simulation within an open international IT skills market”.

Projects related to introducing STEM education and developing entrepreneurship skills have been implemented, but they are mainly in pilot phases or supported by donors (for e.g. 1 to 1 Computing pilot program, piloting of new curricula for Informatics, Robotics). All the initiatives have a budgetary constraint in being rolled out in education.

Despite great progress in Internet uptake, the growth potential of Internet services and the planning in this areas, a large portion of the Moldovan population still has no access to the Internet and their ICT skills are insufficient for them to take full advantage of the opportunities the Internet can provide. Governments should consider how to support specific groups so that they become part of the Internet society and benefit from these initiatives. Coordinated actions can help to include the still unconnected among the beneficiaries of future ICT growth and bridge the digital divide.

It is necessary to continue the reform of education, including vocational and education training, to bring it into line with the needs of the labor market²²⁵.

Computer literacy programs, which are considered to be a fundamental prerequisite for access to information, the exercise of cultural rights and the right to education through ICTs²²⁶, should be designed and implemented at the national level.

²²³ http://www3.weforum.org/docs/WEF_GITR2015.pdf

²²⁴ Study report “Harmonization of Digital Markets in the Eastern Partnership”
<http://capacity4dev.ec.europa.eu/hiqstep/document/harmonisation-digital-markets-eastern-partnership-study-report>

²²⁵ http://europa.eu/rapid/press-release_MEMO-14-229_en.htm

²²⁶ This is in line with the Declaration of the Committee of Minister on human rights and the rule of law in the Information Society CM (2005)56
[https://wcd.coe.int/ViewDoc.jsp?Ref=CM\(2005\)56&Ver=final&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM(2005)56&Ver=final&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

VI. CHILDREN AND YOUNG PEOPLE

Children and young people are entitled to special protection and guidance when using the Internet. If content they have published compromises their dignity, security or privacy, or can be detrimental to them in the future it should, upon their request, be deleted within a short period of time. They should also be protected from interference with their physical, mental and moral welfare, in particular regarding sexual exploitation and abuse.²²⁷

The CoE legal standards with a view to enhancing human rights protection on the Internet include the protection of children's rights on the Internet. These legal instruments are binding on the member States and set common minimum standards for their joint effort to protect human rights online.

The Budapest Convention establishes a common approach to the criminalization of offences related to computer systems and aims to make criminal investigations concerning such offences more effective. According to this legal instrument all conduct relating to child pornography must be established as a criminal offence in the State parties to this Convention.

The Lanzarote Convention responds to potential risks faced by children when using the Internet by imposing criminal penalties for online child pornography and grooming, that is, the solicitation of children for sexual purposes.

Convention 108 ensures respect for fundamental human rights with regard to processing of personal data. Children are holders of data protection rights under the convention and special attention must be paid to empowering children to exercise their right to data protection.

The Recommendation CM/Rec(2014)6²²⁸ calls on member States to actively promote the Guide to human rights for Internet users. The guide promotes respect for existing human rights and fundamental freedoms in the context of Internet use. It serves as a tool for Internet users to learn about their human rights online and the available remedies for any limitations. It also specifically states that children and young people are entitled to special protection and guidance when using the Internet.

The Recommendation CM/Rec(2012)4²²⁹ calls for better protection against harmful content and behavior, stressing the need for a balanced approach and shared best practices, considering that social networks play an increasingly important role in the life of children and young people.

²²⁷ CoE Recommendation CM/Rec(2014)6

²²⁸ Ibid

²²⁹ Recommendation CM/Rec(2012)4 of the Committee of Ministers to member States "On the protection of human rights with regard to social networking services"

The Recommendation CM/Rec(2009)5²³⁰ highlights the need to provide children with the knowledge, skills, understanding, attitudes, human rights values and behavior necessary to participate actively in social and public life, and to act responsible while respecting the rights of others.

The Recommendation CM/Rec(2008)6²³¹ reinforces the need for appropriate filtering for children and young people regarding content carrying a risk of harm, while specifying that member States shall refrain from Internet filtering for reasons other than laid down in Article 10(2) of the ECHR.

The Recommendation Rec(2006)12²³² calls on member States for a coherent information literacy and training strategy which is conducive to empowering children and their educators to make the best possible use of information and communication services and technology.

The Declaration of the Committee of Ministers of 20 February 2008²³³ affirms that there should be no permanently accessible record of content created by children on the Internet which challenges their dignity, security and privacy or otherwise renders them vulnerable now or at a later stage in their lives.

In 2015, on the occasion of Universal Children's Day, the CoE and the EU Agency for Fundamental Rights launched their Handbook on European law relating to the rights of the child. It is the first comprehensive guide to European law in the area of children's rights, taking into account both the case law of the ECtHR and the Court of Justice of the European Union. It contains references to the European Social Charter and the decisions of the European Committee of Social Rights, as well as other CoE instruments.

A. The right of the child and young people to freely express their views and participate in society

Despite the ratification of the above-mentioned legal instruments by Moldova and efforts to give effect to the right of children at the national level, many barriers to exercising of children rights, including their right to freedom of expression, remain unsettled. Before taking actions to implement the international legal instruments, including the Lanzarote Convention, an assessment, according to the interviewed parties, is necessary to be conducted.

The Constitution of the Republic of Moldova (Article 32) and the Law "On freedom of expression" (Article 3) establish the right to freedom of opinion and

²³⁰ Recommendation CM/Rec(2009)5 "On measures to protect children against harmful content and behavior and to promote their active participation in the new information and communications environment"

²³¹ The Recommendation CM/Rec(2008)6 "On measures to promote the respect for freedom of expression and information with regard to Internet filters"

²³² Recommendation Rec(2006)12 "On empowering children in the new information and communications environment"

²³³ Declaration of the Committee of Ministers "On protecting the dignity, security and privacy of children on the Internet" (20 February 2008)

expression. These legal acts do not stipulate that this right is enjoyed exclusively by adults.

In the Law “On children’s’ rights”²³⁴ children’s right to freedom of expression is not formally included as a human right. However, general reference to other legislative acts is made.

The Strategy “On development of the education sector - Education 2020” notes that although there are examples when the opinion of children was consulted at schools, this practice is not systematic, permanent and uniform²³⁵. A specific objective and actions, “to increase participation of pupils in the process of decision making, inclusive elaboration, implementation and evaluation of education policies” were included in this policy paper (p.7.2). Budgetary constrains and lack of experience in this field are two of the factors, which may negatively impact implementation of this policy paper.

Acknowledging children as full subjects of rights requires not only an amendment of laws and policies, but also change in attitude. Capacity building aiming at sharing the best practices in this regard should be considered.

Respecting, protecting and promoting the right of children to freedom of expression should be at the heart of any reform in the area, which concerns them. Children, including those with disabilities, should also be consulted in the relevant processes.

The National Child Protection Strategy 2014-2020²³⁶ should be supplemented with objectives to address matters of actual concern, including risks posed by the online environment and advantaged created by the ICT tools. Further a detailed action plan should be developed and adopted to implement objectives set in the strategy.

B. Access to information in a language appropriate for their age and training from their teachers, educators and parents or guardians about safe use of the Internet, including about how to preserve their privacy

The Constitution of the Republic of Moldova (Article 34) and the Law “On access to information” (Article 5) regulate the right to access to information. These legislative acts do not stipulate that the right to information is enjoyed exclusively by adults.

Breaches of personal data processing principles “through disclosure of children’s personal data by media outlets, medical workers, and teaching staff during personalized interviews taken within medical or educational institutions” have been recorded²³⁷.

²³⁴ Law no.338 of 12.12.1994 <http://lex.justice.md/viewdoc.php?id=311654&lang=1>

²³⁵ Government Decision no.944 of 14.11.2014

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=355494>

²³⁶ Adopted by Government Decision no.434 of 10.6.2014 <http://lex.justice.md/md/353459/>

²³⁷ <http://datepersonale.md/file/acte/Strategia%20Personal%20Data%20ENG.pdf>

National Child Protection Strategy 2014-2020²³⁸ does not include actions in regard to access to information in a language appropriate for child's age and training from their teachers, educators and parents or guardians about safe use of the Internet, including about how to preserve their privacy.

The "Education 2020" Strategy provides that development and institutionalization of consultation mechanisms of an opinion of all children, without discrimination, at all levels of education, should be done in accordance with the international standards on children participation. It also states that curriculum shall be revised and teachers shall be trained to help them to understand the concept of an opinion of a child (special objective 7.2). Additionally, it is planned to develop and institutionalize a consultation mechanism of all children without any discrimination, at all levels of education, according to the international standards on participation.

With regard to access to Internet by children, available data suggests that over 68% of children between 12-16 years old, access the Internet between 14.00-22.00 hours. More than ¼ of children access the Internet in the morning hours, which is a time designated for studies (during the school year). Boys access the Internet more often in the morning (32%), while girls – during night hours (15.6%). Children from urban areas access the Internet during night hours (16.7%) more than children from rural areas (13.3%)²³⁹. These concerns should be further addressed.

Media institutions, according to the Promolex, "continued to publish materials that crease the vulnerability of juveniles". This would be done "through the disclosing of personal data and information that allows for simple identification of the persons concerns, without any consideration of the psychological and social effects".²⁴⁰

C. Access to information about online content and behavior that is illegal (for example online harassment) as well as the possibility to report alleged content

Representatives of non-governmental organisations, including the "La Strada" have declared that there is an informational vacuum on the online safety of children and risks of uninformed and unprotected use of the informational technologies.²⁴¹

The General Police Inspectorate has made available data and information in regard to sexual offences committed against children. This information and data, however, is not always accurate and conclusive.

²³⁸ Adopted by Government Decision no.434 of 10.6.2014 <http://lex.justice.md/md/353459/>

²³⁹ http://lastrada.md/publicatii/ebook/Studiu_siguranta_online_en.pdf

²⁴⁰ Report "on Human Rights in Moldova" (2014) http://www.promolex.md/upload/publications/en/doc_1444027212.pdf

²⁴¹ Please see the integral version of the Call <http://sigurantacopii.lastrada.md/en/call-for-the-mobilization-of-the-authorities-for-a-priority-approach-of-sexual-exploitation-and-abuse-of-children-in-the-online-environment/>

Pursuant to the information provided by ANRCETI, in 2014, the Child Helpline 116111 was launched in Moldova. This service was designed to help children in need of care and protection. It gives them the opportunity to connect to various organisations and resources, to express their concerns, to talk about issues affecting them directly and contact someone in case of emergency. Calls to this number are free for all telephone users from any fixed and/or mobile network and the access to this number is not subject to a prior appointment. The service is provided 7 days a week (24/24). It shall be provided 7/24. This number was allocated to JSC “Moldtelecom”, on the basis of a license to be used in the timeframe 1 June 2014 - 31 December 2016. This party offered the technical solution for the implementation of the 116111 service to the Ministry of Labour, Social protection and family, which organised the service and contracted the “La Strada” as service provider. To ensure the proper functioning of the service, the Ministry of Labour, Social Protection and family approved the Regulation and minimum quality standards for this service “On organisation and operation of free child helpline”.²⁴²

In its Decision no.808 of 7.10.2014²⁴³, the Government planned to develop and promote this service.

Delays in the implementation of actions included in a number of policy papers, including the one on child protection for 2014-2020²⁴⁴ and on inclusive education in Moldova for 2011-2020²⁴⁵ have been recorded²⁴⁶.

In order to prevent risky behaviour online and provide prompt solutions for children who need the support in difficult situations, the “La Strada” noted that it is beneficial to promote the national information and advice service hotline, accompanied by the possibility of a chat. This service can provide children, parents and teachers telephone counselling on the online risks, which sites are suitable for certain age groups, and which are to be avoided, psychological counselling, referral to specialists or authorities for solving complex problems, etc.²⁴⁷

Pursuant to the information provided by “La Strada”, children and adults can report through the informational portal www.siguronline.md illegal and harmful content found on the Internet (for example, suspicions that children send or post nude pictures with them or their classmates online, Internet sites containing nude images with children, sites containing pornographic images of adults that are easily accessible for children, chat conversations between an adult and a child, in which the adult asks the child to send or post nude pictures, to meet

²⁴² http://en.anrceti.md/116111_asistenta_telefon_copii

²⁴³ Government approved the Decision no. 808 on the approval of the National Action Plan for the implementation of the Moldova - European Union Association Agreement (NPAA) for the years 2014-2016 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=354939>

²⁴⁴ Adopted by Law no.434 of 10.6.2014 <http://lex.justice.md/md/353459/>

²⁴⁵ Adopted by the Government Decision no.523 of 11.7.2011

<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=339343&lang=1>

²⁴⁶ <http://www.e-democracy.md/files/euromonitor-07-2014-07-2015en.pdf>

²⁴⁷ http://lastrada.md/publicatii/ebook/Studiu_siguranta_online_en.pdf

offline or to engage in sexual acts, etc.). Guidance and advice about the safe usage of the Internet have been provided by the specialists at the International Center “La Strada”:

- E-mail: helpline@siguronline.md
- Skype: [sigur.online](https://www.skype.com/en/contacts/siguronline)
- Hotline 0 800 77777 (toll free, anonymous and confidential).

Additionally, parents have been encouraged by “La Strada” to access specialised information support (e.g. the guide of the responsible parent (in Romanian only, link) or other existing online sources). In order to prevent illegal activities (child pornography, drug trafficking, theft of computer data, etc.) in which children appear as witnesses or victims, parents/children have been encouraged to reach out to the Centre for Combating Cybercrimes at the General Inspectorate of Police (tel: 022 577 177, e-mail: ccci@mai.gov.md).²⁴⁸

According to the interviewed parties, an assessment of the current situation, further planning and implementation of programs to ensure access to information about online content and behaviour that is illegal (for example online harassment) as well as the possibility to report alleged content need to be considered.

D. Children should be afforded special protection from interference with their physical, mental and moral welfare

The problem of the protection of children against sexual exploitation and abuse on-line is actual and alarming for Moldova. A national study developed by “La Strada” shows that 13, 3% of the interviewed children were exposed to viewing of pornographic images, other 12% are harassed online and don’t know how to react, while 11% of the interviewed (among which 29% children with the age of 12 y.o.) did face indecent proposals made by persons whom they did meet through the Internet²⁴⁹. Another study, realized by the National Centre for the Prevention of Child Abuse, shows that 53% of the population of the country considers that there are in Moldova groups of children and youth with a high risk to engage into sexual activities, in exchange of a payment or other benefits.²⁵⁰ According to a number of the interviewed parties, “there are 4 years for the ratification by the Republic of Moldova of the Lanzarote Convention including other, but until today there is no any official document adopted by the legislator in this regard”. They also added that “the authorities of Moldova did resume only to the creation of the Centre for Combating Cyber Crimes within the General Police Inspectorate, but a sole police entity can’t substitute the complex and holistic answer of the state to offenses with a sexual character against children, including in the online environment”.²⁵¹ Moldova is currently implementing the

²⁴⁸ http://lastrada.md/publicatii/ebook/Studiu_siguranta_online_en.pdf

²⁴⁹ <http://sigurantacopii.lastrada.md/rapoarte/>

²⁵⁰ http://cnpac.org.md/uploaded/Amicel/Studii/Comparative%20report-attitudes%20towards%20comercial%20sexual%20exploitation_2015.pdf

²⁵¹ <http://sigurantacopii.lastrada.md/en/call-for-the-mobilization-of-the-authorities-for-a-priority-approach-of-sexual-exploitation-and-abuse-of-children-in-the-online-environment/>

“Strategy on child protection for 2014-2020”²⁵² to reduce the number of children in residential care, to prevent and combat violence against children and prevent exploitation, and to assist families in balancing work and family life. It also notes that “children-victims of violence, negligence and exploitation continue to be victimised through justice system, mass-media, the Internet”²⁵³. The Action Plan for development of the National Child Protection Strategy 2014-2020 has not been adopted, yet. The Government planned to approve this document by the end of 2016²⁵⁴.

On the fight against trafficking in human beings, standard operating procedures were developed in line with EU standards and good practices. Instructions on joint investigation teams were approved in July 2014 by an interdepartmental working group consisting of officials from Moldova’s General Prosecutor’s Office, Ministry of Internal Affairs, Customs Service and National Anti-Corruption Centre. On the implementation of the CoE Convention on Action against Trafficking in Human Beings, a new action plan on preventing and combating trafficking in human beings (covering 2014-16) was approved. Despite every effort by the authorities, Moldova continued to be a source country for the trafficking of human beings, including children.²⁵⁵

The Government Decision no.808 of 7.10.2014 includes a number of actions in the area of children rights, including aligning the legal framework to the Lanzarote Convention and its Additional Protocol, to be implemented by 2016.

Although protective politics for the child can be found in the public policies strategies and documents related to the area of social protection, the topic of prevention of the sexual abuse and exploitation of children, especially in the online environment, is addressed occasionally and fragmented.

The Centre for Combating Cyber Crimes has been created within the General Police Inspectorate, but a sole police entity cannot substitute the complex and holistic answer of the state to offenses with a sexual character against children, including in the online environment.²⁵⁶ The interviewed parties have mentioned the need for further training of the employees of this center.

The Republic of Moldova faces with an emerging issue related to the suicides, widespread among youth. According to a national news channel, “when the child has a bad mood and those close neglects his problems, he seeks refuge in cyberspace. However, the Internet usually does not provide answers, but feed problems”²⁵⁷.

²⁵² Government Decision no.434 of 10.06.2014 <http://lex.justice.md/md/353459/>

²⁵³ http://eeas.europa.eu/enp/pdf/2015/repulic-of-moldova-enp-report-2015_en.pdf

²⁵⁴ Chapter 27, Government Decision no.808 of 7.10.2014 “On adoption of the National Action Plan for the implementation of the Association Agreement Moldova - European Union” <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=354939>

²⁵⁵ http://eeas.europa.eu/enp/pdf/2015/repulic-of-moldova-enp-report-2015_en.pdf

²⁵⁶ <http://sigurantacopii.lastrada.md/en/call-for-the-mobilization-of-the-authorities-for-a-priority-approach-of-sexual-exploitation-and-abuse-of-children-in-the-online-environment/>

²⁵⁷ <http://www.canal3.md/ro/news/suicidul-tinerilor-o-problema-reala>

Moreover, it was reported that the computer games have been observed as to change young minds and their behaviors, due to the gamer's scenarios to commit suicide, in order to earn points²⁵⁸. The same source emphasizes that "experts warn that suicides in cyberspace can generate radical actions of young people". For this reason, "sites that promote such games should be blocked". In this respect, it is recommended to observe and research the video games addiction of children and the impact on their health.

On 4 December 2015, the Lanzarote Committee stated that some data referring to children as victims of sexual abuse are available in Parties such as Moldova. It published recommendations as to steps to be taken to improve the effective implementation of the Lanzarote Convention in its 1st implementation report "On protection of children against sexual abuse in the circle of trust"²⁵⁹. For example, it "considers that the Moldovan legislation should clearly state that the offence of sexual abuse in the circle of trust is constituted even when the perpetrator does not use coercion, force or threats".

There is a need to create an environment in which information and communications technologies, including the Internet, are regulated and monitored from the perspective of empowering children to use these technologies in a way that promotes children's rights and development while also promoting safety.

²⁵⁸ Ibid

²⁵⁹<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168058cdfd>

VII. EFFECTIVE REMEDIES

This chapter concerns the right to an effective remedy, which is enshrined in Article 13 of the ECHR. Effective remedies should be available, known, accessible, affordable and capable of providing appropriate redress²⁶⁰.

Individuals have the right to an effective remedy when their human rights are restricted or violated. The ways to obtain a remedy – not necessarily a legal action straight away – should be acceptable and affordable.

Effective remedies can be obtained directly from the ISPs, public authorities and/or national human rights institutions.

National authorities have an obligation to protect users from criminal activity, which is committed by using the Internet.²⁶¹

A. The Internet service provider, providers of access to online content and services or other company and/or public authority should inform users about their rights, freedoms and possible remedies and how to obtain them

The legislative act “On electronic communication”, which establish the minimum requirements for the agreements between the Internet user and the ICPs, shall be amended – a new proposal has been elaborated.

No analysis was identified in regard to all ISPs registered and their agreements with their clients.

In practice, providers of access to online content and services rarely include information about protection of human rights in the online environment in the Terms of User of the information on portals.

An assessment of practices in this regard should be considered and the legal framework should be revised.

B. Information and guidance on effective remedies should be made available from public authorities, national human rights institutions (such as ombudspersons), data protection authorities, citizens' advice offices, human rights or digital rights associations or consumer organizations

A new law “On the Ombudsman” (the Law on the Public Advocate) was adopted in 2014²⁶². An efficient mechanism to implement this legislative act still needs to be adopted.

Actions in regard to the reform of the Ombudsmen’s Office are planned in the Government Decision no.808 of 7.10.2014.

²⁶⁰ Recommendation CM Rec(2014)6

²⁶¹ <http://www.coe.int/en/web/internet-users-rights/effective-remedies>

²⁶² Law no.52 of 3.4.2014 <http://lex.justice.md/md/352794/>

Pursuant to the progress report commissioned by the European Commission, “reform of the Ombudsman’s office to bring it in line with the Paris Principles on national human rights institutions proceeded slowly”.²⁶³

The representatives of the Ombudsmen’s Office recorded no cases in regard to human right violation online.

The staff of the Ombudsmen’s Office has been involved in training activities and have organised events to raise awareness about human rights violations of people with disabilities, in particular.

Due to the limited resources (human and financial) the period of time for examination of complaints before the NCPDP is longer.

Petitions submitted to this authority are examined only if they are signed.

The Agency for Protection of Consumer functions in accordance with the legal framework, including the Law “On consumer protection”²⁶⁴.

The Council for Prevention and Elimination of Discrimination and Insurance of Equality functions in accordance with the legal framework, including the law “On equality”²⁶⁵. To date, it has received no complaints in regard to violation of human rights online.

All public authorities and other actors mentioned above should upload on their website information about effective measures in cases of violation of human rights in the online environment.

C. Obligation of the national authorities to protect individuals from criminal activity or criminal offences committed on or using the Internet

The Republic of Moldova has ratified the Budapest Convention. It has also ratified the Convention on Information Society Services, which aims “to set up a legal information and co-operation system in the area of new communication services”²⁶⁶.

On 11 September 2013, by Order no.60 of the General Prosecutor’s Office, the common Action Plan “On prevention and combating cybercrime for 2013-2015” was approved.²⁶⁷ This policy paper has not been fully implemented for various reasons, but the interviewed parties have not provided any official report, which analyze the reasons.

²⁶³ European Commission, “Implementation of the European Neighborhood Policy in the Republic of Moldova Progress in 2014 and recommendations for actions”, Brussels, 25.3.2015
http://eeas.europa.eu/enp/pdf/2015/repulic-of-moldova-enp-report-2015_en.pdf

²⁶⁴ Law no.105 of 13.3.2003
http://lex.justice.md/document_rom.php?id=546986A0%3A88685EC5

²⁶⁵ Law no.121 of 25.4.2012 <http://lex.justice.md/md/343361/>

²⁶⁶ <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/180>

²⁶⁷ <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=349905>

During interviews, representatives of the General Prosecutor's Office recommended to elaborate and to monitor the implementation of a new common Action Plan "On prevention and combating cybercrime" in cooperation with law-enforcement, NGOs, ISPs, etc.

They also consider that it is necessary to create a department with the General Prosecutor's Office, which will have responsibilities to investigate cybercrimes or a specialized prosecutor's office responsible for investigation of crimes in the same areas.

Recommendation to create a national CERT has been recorded as well. This recommendation also results from the "Digital Moldova 2020", which was adopted in 2013 and the National Program on Cyber security of the Republic of Moldova for 2016-2020²⁶⁸, which was adopted in 2015.

Further, it was expressed the need for creation at the national level of a Committee in the area of prevention and combating cybercrime. This committee, according to representatives of the General Prosecutor's Office, shall have functions to allow "reaction and reporting functions to the Parliament and the Presidential levels".

The need to train the law enforcement employees and the relevant certified specialists in the area of cyber security has been mentioned. Training needs include detection and investigation of crime and the link between various types of crimes, including organized and economic crimes, especially in the digital environment.

Cooperation with various specialized international and national institutions is another priority of the General Prosecutor's Office.

Major issues on pending cases in relation to the breach of user's rights related to the one of the social network service located, for example, in the Russian Federation have been reported. Because of this, during the last years migration of the account users to the Facebook social network service has been observed, the cooperation with which is much efficient in terms of solving user's complaints. However, even in this situation, there is room for improving cooperation with the latest in terms of timeframe in solving and responding to complaints, etc.

The issue of the cloned web-pages hosted abroad is another matter mentioned by the Moldovan law enforcement. According to the interviewed parties, holders of these types of portals are possible to identify only by mutual cooperation with other countries.

²⁶⁸ Adopted by Government Decision no.811 of 29.10.2015
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=361818>

The Government Decision no.808 of 7.10.2014 includes actions in regard to emendation of the legal framework in the area of cybercrime. Specifically, the Law “On preventing and combating cybercrime”²⁶⁹ shall be amended (Chapter 8 information Society). Moreover, it is provided that by the end of 2015 the Comon Action Plan for prevention and combating cybercrime for the period 2013-2015 shall be implemented.

Additionally, specific actions are included in the Action Plan to implement the Cybercrime Program for 2016-2020 (p.4)²⁷⁰, namely emendation of the criminal and contraventional legal framework, elaboration of the legislative act for ratification of the Additional protocol to the Budapest Convention, organisations of trainings for law-enforcement, aproximation of the legal framework to the Lanzarote Convention, etc.

As stated above, at the national level there is no policy paper aimed at fighting and preventing cybercrime. These matters are addressed in a number of policy papers, including the Strategy on Justice Reform²⁷¹ and the Action Plan²⁷² to implement this policy paper and the Government Decision no.808 of 7.10.2014 (Title III).

The relevant national legal framework should be harmonised with the CoE standards ratified by the Republic of Moldova.

Capacity building initiatives for law-enforcement and other legal professions in the relevant areas should be planned and implemented.

D. The right to a fair trial within a reasonable time by an independent and impartial court and the right to an individual application to the European Court of Human Rights after exhausting all available domestic remedies

Article 19(1) of the Criminal Procedure Code²⁷³ provides that “any person has the right for his/her case to be examined and settled in an equitable manner within a reasonable time by an independent, impartial, legally constituted court”.

In 2015, pursuant to the Report of the ECtHR for 2015, the ECtHR concluded that Article 13 of the ECHR was infringed in two cases submitted against the Republic of Moldova. Further efforts are needed to ensure respect for the right to a fair trial within a reasonable time by an independent and impartial court.

²⁶⁹ Law nr.20-XVI of 03.02.2009

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=333508>

²⁷⁰ Government Decision no.811 of 29.10.2015

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=361818>

²⁷¹ Law no.231 of 25.11.2011 <http://lex.justice.md/md/341748/>

²⁷² Parliament Decision no.16.2.2012

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=343439>

²⁷³ Criminal Procedure Code no.122 adopted by 14.03.2003 <http://lex.justice.md/md/326970/>

The Action Plan²⁷⁴ of Justice Sector Reform Strategy 2011-2016²⁷⁵ has been implemented and aspects regarding the right to a fair trial shall be addressed.

²⁷⁴ Law no.231 of 25.11.2011 on adoption of the Justice Sector Reform Strategy 2011-2016

²⁷⁵ <http://lex.justice.md/md/341748/>

VII. CONCLUSIONS AND RECOMMENDATIONS

The CoE member States have a duty to respect, protect and fulfill the rights and freedoms contained in the instruments ratified by them. The Republic of Moldova has ratified the main set of conventions²⁷⁶ of the CoE on Internet-related issues. The Convention that deals directly with Internet-related issues is the Budapest Convention. Many other non-binding legal instruments address broader aspects of Internet governance, including human rights. For example, the CoE's Committee of Ministers Declaration on Internet Governance Principles, stipulates that "fundamental rights and freedoms apply equally to the online and offline environments". This statement has also been reaffirmed by the United Nations Human Rights Council in its Resolution of 2012 on "The Promotion, Protection and Enjoyment of Human Rights on the Internet".

The central public authorities of the Republic of Moldova have demonstrated strong political will to develop and promote the Information Society to benefit citizens and businesses, in particular, through the widespread availability of ICT and through better quality of services at affordable prices while ensuring respect for human rights and fundamental freedoms. Adoption of a variety of policy papers both by the Parliament and the Government reaffirms these commitments. It has also committed to carry out the approximation of its legislation to the CoE, EU and international instruments and to address the constantly evolving challenges and gaps. To date, some of the priority areas for legislative regulations have been privacy, data protection in general, including in the electronic communication area, intellectual property, cybercrime, information security, non-discrimination, certain rights of children and youth, etc.

However, implementation of both the legal framework and policy initiatives has been an issue of concern considering, for example, the budgetary constraints, lack of expertise in certain areas. Shaping the legal framework to mold the rapid development of the Internet is also in its early stages and certain legal instruments would have to be adapted. For implementation of some innovative projects, new rules must be developed. Appropriate steps to prevent, investigate, punish and redress violations through effective legislation and measures should be taken, considering, in particular, that Moldova has positive obligations to protect the fundamental rights and freedoms of individuals on the Internet.

Additionally, efforts shall be made by the public authorities in promoting the Internet as a national public value - an essential and modern instrument of the country's development.

The Government shall consider the establishment of a well-functioning Platform on Internet Human Rights, aiming at the setting up of the permanent dialogues among public authorities, in particular law-enforcement, the private sector and civil society.

²⁷⁶ Please see the list of the relevant legal instruments here:
<http://www.coe.int/en/web/conventions/full-list/>
[/conventions/treaty/country/MOL?p_auth=GntlLJMc](http://www.coe.int/en/web/conventions/treaty/country/MOL?p_auth=GntlLJMc)

Taking into considerations the findings and conclusions of this document, building upon the existing legal instruments ratified by the Republic of Moldova, namely Convention 108, Budapest Convention, Lanzarote Convention, ECHR, other CoE recommendations adopted in the field of Internet Governance, considering the existing body of CoE human rights and democracy support policies, in which it underlined its vision of a people-centred and human rights based approach to the Internet, which empowered Internet users to exercise their rights and freedoms on the Internet, considering the ECtHR case-law, Moldova should enhance its efforts to guarantee protection of human rights and fundamental freedoms on the Internet. The following recommendations could be considered:

7.1 Access and Non-Discrimination

7.1.1 A national policy paper should be adopted with a view to enhancing human rights protection both online and on the Internet building on the CoE standards ratified by Moldova, including ECHR, Convention 108, Budapest Convention, Lanzarote Convention and other CoE recommendations adopted in the field of Internet Governance.

7.1.2 The Government Decision no.808 of 7.10.2014, which provides that thematic policy papers should be adopted based on the Government Decision no.90 of 12.05.2011 “On adoption of the National Action Plan in the area of human rights for 2011-2014”, should be revised.

7.1.3 Programs to promote public value of the Internet should be designed and implemented.

7.1.4 Proactive measures should be taken to facilitate access to the Internet (where necessary, facilitate access to adequate hard-ware) to make it continuously available, accessible, affordable as well as secure and reliable to all segments of population, including those on low incomes, those from rural areas and those with special needs, including disabled users.

7.1.5 The legal framework should be harmonised with the CoE standards to ensure effective remedies against measures of disconnection from the Internet when this is/is not decided by a court.

7.1.6 Contractual clauses (219 ICPs), in particular those which lead to illegal discontinuation of service, should be considered for revision.

7.1.7 The principle of non-discrimination should be implemented to ensure user interactions with public authorities, Internet service providers, content access providers and other companies, users, or other groups of users.

7.1.8 The Additional Protocol no.12 of ECHR should be ratified.

7.1.9 Considering that mobile technology is increasingly being used, and is more accessible, policies and programmes to facilitate connection to the Internet through the use of mobile phones could be supported.

7.1.10 Obligations of private actors developing and supplying surveillance technologies should be set in accordance with the legal framework and these technologies should be tested in accordance with the national legislation before they are implemented.

7.1.11 The Law no.827 of 18.02.2000 should be amended by either excluding those legal provisions, which oblige providers of mobile telephone services to

pay 2,5% monthly from their income or by decreasing the amount and introducing a transparent mechanism with regard to allocation of these funds or by re-allocating these funds for development of the ICT tools especially for disabled people.

7.1.12 Co-operation should be further considered with the **de facto** public authorities from the Transnistria region to promote the protection of Internet human rights and to ensure protection of these rights.

7.2 Freedom of Expression and Information

7.2.1 The legal framework should be harmonised to comply with the criteria of restrictions to the right to freedom of expression, which result from the CoE standards in this area, such as prescription by unambiguous law, pursuance of a legitimate purpose and respect for the principles of necessity and proportionality. The legal provisions should be accessible, clear and sufficiently precise to enable individuals to shape their behaviour. The general rule should be to uphold openness and the free flow of information over the Internet, with limitations, which should correspond to the criteria recognized under international human rights law, and network neutrality concept, as the exception as provided in the international best practices.

7.2.2 Respect for freedom of opinion and expression should be integrated in the development of policies and programmes relating to counter terrorism, cyber security, the fight against cybercrime, access to information and other policies in this regard.

7.2.3 The national legal framework should be harmonised with the CoE standards and measures should be taken to fight (a) child pornography, (b) direct and public incitement to violence, (c) advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and (d) incitement to terrorism.

7.2.4 The legal framework on Internet blocking, filtering and takedown of content should be regulated in line with the legal instruments of the CoE and considering the case-law of the ECtHR.

7.2.5 In collaboration with the civil society, actions should be developed to protect and promote respect for human rights with regard to social networking services building on ECHR (especially Article 8, Article 10 and Article 11) and Convention 108 and by engaging the social networking providers as recommended, for example, in the Recommendation CM/Rec(2012)4.

7.2.6 The relevant CoE standards should be translated into the national legal framework and strategies to ensure that public information (central and local levels), is available and accessible in the language of all those concerned, including to persons with disabilities.

7.2.7 Implementation of the principle of anonymity should be assessed and regulated.

7.2.8 Measures aimed at ensuring that Internet users have due regard to the reputation of others in the online environment, should be taken.

7.2.9 The rights of children to freedom of expression and access to information online, should be actively promoted and measures should be taken to enforce them.

7.2.10 Programs on computer literacy as a fundamental prerequisite for access to information, the exercise of cultural rights and the right to education through ICTs should be designed, implemented and continuously promoted.

7.2.11 Programs on education and development of, skills and attitudes of media specialists should be designed and implemented.

7.2.12 The existing policy actions and the legal framework in the area of intellectual property should be implemented continuously.

7.2.13 Programs on combating hate speech and programs with greater emphasis on education for human rights and digital citizenship should be designed and implemented.

7.2.14 Capacity and knowledge on the implementation of Business and Human Rights guidelines, in particular as regards the UN Guiding Principles on Business and Human Rights (UNGPs) and other tools/initiatives that contribute to the implementation of the UNGPs should be build. An action plan on the implementation of the UNGPs should be considered for development at the national level. Awareness should be raised on the UNGPs. Proactively engagement with business, civil society, human rights institutions, on issues related to business and human rights should be considered and promoted.

7.3 Association, Assembly, Participation

7.3.1 The existing policy papers should be supplemented with objectives to ensure association, assembly and participation of Internet users.

7.3.2 National policy papers on e-democracy should be developed and implement building on the CoE standards in this area.

7.3.3 The ICT tools, which have been developed and implemented in the context of the policy papers on e-Transformation, should be implemented by the local public administration.

7.3.4 The Universal Design principles should be detailed in the existing policy papers, including that on e-Transformation and on modernisation of the public services and other relevant documents in the area of information society development.

7.3.5 The legislative acts, which regulate association, assembly and participation of individuals, including children should be harmonised with the CoE standards.

7.3.6 The national legal and regulatory framework, which regulates access to e-services and digital content, should be aligned to legal instruments of the CoE.

7.3.7 Legislative proposals, which regulate access to the Internet and respect for human rights and fundamental freedoms online, should be subject to public debate and adopted according to regular, public, informed and transparent legislative process.

7.3.8 Platforms (at the local and national levels) should be designed and promoted to encourage association, assembly and participation on the Internet of Internet users, including children and disabled persons.

7.3.9 The current situation should be assessed and programs developed to promote and stimulate Internet-based participation of individuals, including children.

7.3.10 Legal, operational and technical measures for implementation of the e-voting should be developed. Guidelines on the adoption of e-voting system

should be developed and implemented. Awareness raising and voter education events should be designed and implemented. Work with domestic observers to monitor e-enabled elections should be considered.

7.3.11 Formalized literature and informal literature (blogs and websites) should be analysed to examine the concept of digital citizenship.

7.3.12 Proactive measures should be taken to increase civil society's access to power and participation in high-level decision-making processes, including during the consideration of new legislation and treaties, and particularly for social movements and grass-roots associations.

7.3.13 Positive measures should be taken to protect and facilitate the right to freedom of peaceful assembly online.

7.3.14 Positive measures should be taken to protect and facilitate the right to freedom of association, including by reducing oversight burdens for smaller associations, offering incentives for associations, creating "one-stop shops" and offering diplomatic assistance abroad for those in the civil society sector.

7.3.15 Development of ICT tools should be supported and promoted to ensure individuals' assembly and association, including those with special needs such as people with disabilities.

7.4 Privacy and Data Protection

7.4.1 Implementation of Convention 108 and the Additional Protocol to Convention 108 at the national level should be ensured.

7.4.2 Legislation to create a framework for the implementation of Convention 108 and the CoE recommendations to ensure protection of fundamental rights and freedoms, in particular the right to privacy, with respect to the processing of personal data in the electronic communication sector and ensuring the free movement of such data and of electronic communication equipment and services should be adopted.

7.4.3 The Constitution of the Republic of Moldova should be supplemented with new provisions to ensure that the right to the protection of personal data is elevated to the status of a separate fundamental right.

7.4.4 Measures to ensure that internet users are informed of what personal data are processed or transferred to others parties, when, by whom, for what purpose, and possible means to exercise control over them should be designed and implemented.

7.4.5 Privacy by Design principle should be regulated and enforced.

7.4.6 The existing rules relating to consent, profiling, anonymity and foreign law-enforcement access to personal data should be revised and brought into line with the international human rights obligations.

7.4.7 The Law no.59 of 29.03.2012 "On special investigation activity" and the Criminal Procedural Code should be aligned to the CoE standards, to regulate interception of electronic communications.

7.4.8 Provisions with regard to duties and competences of the National Authority for Protection of Personal Data should be aligned to the legal framework of the CoE, including Convention 108 and the Additional Protocol to this Convention.

7.4.9 A legislative act to ensure network and information security should be developed and implemented.

7.4.10 A legislative act to ensure interoperability in the electronic exchange of information should be developed and implemented in line with the CoE standards, including Convention 108.

7.4.11 The regulatory framework for the implementation of the interoperability platform (M-Connect) during 2015-2020 should be adopted building on the CoE Standards, including Convention 108.

7.4.12 The Law “On Informatization and the state information resources”, the Law “On registries”, the Law “On informatics”, the Law “On archive fund of the Republic of Moldova”, the Law “On petitioning” and other relevant legislative acts should be aligned to the CoE standards, including Convention 108 and the Budapest Convention.

7.4.13 An assessment of the legal framework and practices for implementation of the e-voting initiative at all stages of the lifecycle is necessary to be conducted before amending the available concept in this area.

7.4.14 Measures to ensure that users are not subject to general surveillance or interception measures, apart from exceptional circumstances prescribed by law, should be considered. The legal framework in this regard should be harmonised with the CoE standards.

7.4.15 The Government Decision no.1123 of 14.12.2010 should be revised to ensure effective and efficient implementation of the legal framework on personal data protection, in particular the Law no.133 of 8.7.2011.

7.4.16 Practices on the use of encryption and anonymity should be considered for revision and the use of encryption should be regulated.

7.4.17 An audit of the main state registries and the existing information systems should be conducted in accordance with the general personal data protection principles.

7.4.18 Legal certainty should be improved and overall regulation level in network and information security should be continued.

7.4.19 Enforcement effectiveness of legal and regulatory frameworks in NIS should be improved.

7.5 Education and Literacy

7.5.1 Crosscutting contemporary educational and legal issues that school authorities face today, such as cyber bullying (including cyber misogyny, cyber bullying of teachers), privacy, sexting, digital addiction, students’ and teachers’ relationships through social media, digital safe schools, freedom of expression on-line, and human rights of students in digital settings should be addressed building on the Strategy “Education 2020”, the “Education Code” and the CoE standards.

7.5.2 Programs should be developed on Internet literacy skills in school curricula and support of similar learning modules outside of schools should be considered.

7.5.3 Programs to develop skills of individuals with special needs, including those with certain disabilities, aimed at creating and facilitating access to jobs and opportunities for this people from distance should be designed and implemented.

7.5.4 Training materials should also be designed to help individuals, including children and those with special needs, to learn how to protect themselves against

harmful content, such as the potential consequences of revealing private information on the Internet.

7.5.5 Access to educational, cultural and scientific content in digital form, in all languages should be promoted and supported.

7.5.6 Access to ICT tools should be facilitated and education promoted to allow all persons, in particular children, to acquire the skills needed to work with a broad range of ICTs.

7.5.7 The quality of information, in particular that which could be harmful to children should be critically assessed and programs to educate children in this regard should be considered.

7.5.8 Ensure that conditions on access to knowledge are permitted in specific cases in order to remunerate right holders for their work, within the limits of permissible exceptions to intellectual property protection.

7.5.9 Multi stakeholder consultations/debates on policy issues regarding the place and better use of online resources and contemporary information technologies in school settings (curricula and schools organisations) should be organised and the administrative and legal responsibilities for school leaders, teachers, students and parents should be mapped and explained.

7.5.10 Training programs for educators, teachers, lecturers and professors should be designed and implemented considering the needs of particular groups.

7.6 Children and Young People

7.6.1 The existing policy papers on children's rights should be updated to ensure implementation of the international and regional legal instruments ratified by Moldova, including Convention 108, Lanzarote Convention, Budapest Convention, recommendations adopted by the Committee of Ministers and the case-law of the ECtHR. Children and youth should be consulted in these processes.

7.6.2 National legal framework should be harmonised with international and regional human rights standards, including Convention 108, Lanzarote Convention, Budapest Convention taking into consideration recommendations adopted by the Committee of Ministers and the case-law of the ECtHR.

7.6.3 The legal framework concerning the protection of children in broadcasting activities, the Internet and any other media should be aligned to the CoE standards.

7.6.4 Creation and dissemination of tools to empower children, parents and educators in making full use of the potential of ICT and digital media should be supported.

7.6.5 Development of guidance on rights-based parenting in the digital age should be supported and promoted.

7.6.6 Opportunities for activism led by children rather than adopt traditional attitudes towards children in all spheres, including the home, school and society in general should be supported.

7.6.7 The use of diverse forms of communication should be encouraged by children in schools, including oral, written and all forms of art.

7.6.8 Schools curricula should impart knowledge on social communications, media and journalism.

7.6.9 Training with educational and recreational content should be promoted for children of different ages and with content elaborated by children.

7.6.10 Proactive measures to foster children's access to the Internet in all settings should be considered.

7.6.11 The Internet's central role in the promotion of all the rights of children, in particular the right to freedom of expression, to participation in public life and to education, should be taken into consideration and addressed within education system.

7.6.12 Internet as a positive resource should be framed and promoted, especially within combatting the clinic behaviour disorder in respect to Internet.

7.6.13 Addressed through holistic policy papers that include the enhancement of users' capacities to protect themselves from online harm the risks presented by the Internet to the safety of children.

7.6.14 Capacity building events for parents and professionals who work with children should be considered.

7.6.15 Children should be actively engaged in the design and implementation of initiatives aimed at fostering online safety.

7.6.16 Further research on the impact of the Internet on children's lives should be conducted.

7.6.17 Education measures to address learning issues as well as the needs of students, and to help students working in open, collaborative, online environments, should be developed.

7.6.18 The best practices on effective interactive programmes for the acquisition of digital citizenship competence for students through the curriculum, and for teachers through initial and in-service education should be implemented and promoted.

7.7 Effective Remedies

7.7.1 An audit of existing redress mechanisms should be conducted and the relevant information in a user-friendly inventory of redress mechanisms should be compiled.

7.7.2 Practices with regard to criminal justice access to data (including data on cloud servers) should be assessed and proposals to amend the legal framework in this area should be developed.

7.7.3 The legal framework should be harmonised with conventions and other legal instruments of the CoE, in particular those ratified by Moldova.

7.7.4 A policy paper to prevent and combat effectively crimes committed by use of computer systems should be elaborated and the existing papers should continue to be implemented.

7.7.5 A platform to encourage public, private and civil society cooperation on Internet Human Rights, based on a multi-stakeholder approach should be designed, implemented and promoted.

7.7.6 Measures to address mass address surveillance should be designed and implemented and the legal framework, which regulates these aspects, should be revised.

7.7.7 The CoE Guide on human rights for Internet users should be promoted and disseminated at the national level.

7.7.8 Capacity building activities should be designed and implemented considering the needs of the law-enforcement (e.g. intellectual property, counter extremism and radicalisation on the Internet).