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Meeting: 1419<sup>th</sup> meeting (December 2021) (DH)

Communication from an NGO (Independent Justice Center) (26/10/2021) in the case of MANOLE AND OTHERS v. Republic of Moldova (Application No. 13936/02).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1419<sup>e</sup> réunion (décembre 2021) (DH)

Communication d'une ONG (Independent Justice Center) (26/10/2021) relative à l'affaire MANOLE ET AUTRES c. République de Moldova (requête n° 13936/02) **[anglais uniquement]**.

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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October 26, 2021

## COMMUNICATION

In accordance with Rule 9.2. of the Rules of the Committee of Ministers  
regarding the supervision of the execution of judgments and of terms of friendly settlements  
by the Independent Journalism Center

### CASE OF MANOLE AND OTHERS v. MOLDOVA (Application no. 13936/02)<sup>1</sup>

This submission responds to the Government's Revised Action Report<sup>2</sup> on the execution of the European Court for Human Rights (ECtHR) judgment in the case of *Manole and others v. the Republic of Moldova* (no. 13936/02) judgment of 17 September 2009 (merits), final as of 17 December 2009 judgment of 13 July 2010 (just satisfaction), final as of 13 October 2010, which invites the Committee of Ministers to end supervision in the case as the general measures taken can prevent similar violations.

The Independent Journalism Center (IJC) has prepared this submission to inform the Committee of Ministers that full and effective implementation of general measures has not yet been achieved and that the closure of supervision of general measures would be premature.

IJC is a media rights watchdog and advocacy organization founded in 1994 that formulates its mission in terms of democratic values contributing to protecting and promoting the rights and freedoms of independent media through research, monitoring, public advocacy, and education. Over the years, IJC has launched and implemented a number of projects to improve the legal framework for journalists and was

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<sup>1</sup> <http://hudoc.echr.coe.int/fre?i=001-94075>

<sup>2</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680a42866](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a42866)

one of the observers that contributed to the reports concerning alleged undue political influence at the state television company Teleradio-Moldova (TRM) in the case of *Manole and others v. Moldova*<sup>3</sup>.

## Background

In the case of *Manole and others v. Moldova*, the European Court of Human Rights found that there had been a violation of Article 10 of the Convention because of the censorship and political control exercised by governing parties over TRM where the applicants worked as journalists. The Court found that the national authorities had failed to comply with their positive obligation to ensure the observance of the principle of pluralism because of a flawed legislative framework that lacked sufficient safeguards against the control of TRM's senior management, and thus its editorial policy, by the governing political parties.

The following paragraphs address the relevant sections of general measures of the government's Revised Action Report and reveal that the issues raised by the ECtHR in the case of *Manole and others v. Moldova* have not been properly addressed. IJC will devote its attention in this submission to the general picture of the national legal framework relevant for the case, including the most recent legislative shortcomings, demonstrating the state's failure to comply with its obligations under Article 46 § 1 of the Convention and the strong necessity to prevent the premature closing of the case.

## General Measures

IJC confirms that following the events in the case of *Manole and others v. Moldova*, the relevant regulatory framework has undergone substantial legislative amendments. Although it took too long for the national authorities to take positive steps to correct the situation, IJC appreciates the state's efforts in adopting several important laws<sup>4</sup> that enshrine remedies against censorship and interference from public authorities with the media's right to freedom of expression.

As referenced in the government's Revised Action Report, the Code of Audiovisual Media Services of the Republic of Moldova of November 8, 2018 is one of the laws designed in accordance with relevant European standards<sup>5</sup> that guarantees the editorial independence of public media service providers prohibiting interference from public authorities, political parties or any other interest groups.

As the vulnerability of TRM's senior management to governing party control was one of the central issues raised in the case of *Manole and others v. Moldova*, the Code of Audiovisual Media Services came with

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<sup>3</sup> See paragraph 76 <http://hudoc.echr.coe.int/fre?i=001-94075>

<sup>4</sup> Law no. 64 of 23 April 2010 on the freedom of expression [https://www.legis.md/cautare/getResults?doc\\_id=126675&lang=ro](https://www.legis.md/cautare/getResults?doc_id=126675&lang=ro)  
Criminal Code of the Republic of Moldova

Law no. 91 for amending the Criminal Code of the Republic of Moldova  
<http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/1414/Default.aspx>

<sup>5</sup> The Code of audiovisual media services transposes at national level the provisions of the Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

new legal mechanisms for selecting and appointing the management and supervisory bodies of the public media service provider with an aim to distancing the governing political forces from these processes.

In contrast to the provisions applicable at the time of the infringement which gave Parliament, the President and Government the right to appoint directly the members of TRM's Supervisory Council, the new Code of Audiovisual Media Services delegated this prerogative to the Audiovisual Council (AC) which regulates the entire audiovisual media sector. The AC appoints the members with the vote of the majority, following a selection process based on the principle of open competition. Subsequently, the Supervisory Council is in charge of appointing TRM's general director also through a public competition.

Despite new and sound legislation, the editorial policy of TRM continued to lack adherence to principles of impartiality and pluralism due to indirect political interference in the appointments of TRM's management<sup>6</sup> and of Supervisory Council members elected by the AC, a regulator that is also politically influenced.<sup>7</sup> The funding model for the public broadcaster (approximately 90% of its income comes from the state budget) represents an additional factor that fosters the vulnerability of TRM to influence from governing political parties.

Monitoring reports of media NGOs<sup>8</sup> and of other institutions and monitoring missions<sup>9</sup> have evidenced that public media have had a consistent tendency to favor the governing political forces and to make coverage of the central authorities' activities mostly positive.<sup>10</sup>

IJC recognizes that the situation in public broadcasting is no longer comparable to that existing at the time of the violation; nevertheless, the legislative amendments bearing the arguments set out in the government's Revised Action Report have proved ineffective in insuring the full editorial independence of public media service providers.

Therefore, national legislation still lacks effective safeguards against interference with the media's right to freedom of expression from public authorities, political parties and any other interest groups.

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<sup>6</sup> Freedom House, Nations in Transit 2020: Moldova, April 2020 - <https://freedomhouse.org/country/moldova/nations-transit/2020>;  
IREX (2018) Media Sustainability Index 2018, Europe & Eurasia - <https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2018-full.pdf>;

<sup>7</sup> Audiovisual Council, version 2020: (another) pandemic year of (in) activity?, 13 November 2020 [http://media-azi.md/ro/stiri/consiliul-audiovizualului-versiunea-2020-%C3%AEnc%C4%83-un-pandemic-de-inactivitate?fbclid=IwAR1UiYlu6v4cX6lhQ5cH-mPiu5rY42T7-ojTB3eiX1dzBEBARHbiY\\_uKM](http://media-azi.md/ro/stiri/consiliul-audiovizualului-versiunea-2020-%C3%AEnc%C4%83-un-pandemic-de-inactivitate?fbclid=IwAR1UiYlu6v4cX6lhQ5cH-mPiu5rY42T7-ojTB3eiX1dzBEBARHbiY_uKM);

<sup>8</sup> Monitoring Report March 9-15, 2021, (2020) Independent Journalism Center, [http://media-azi.md/sites/default/files/2020\\_04\\_16\\_Raport\\_Monitorizare\\_M1.pdf](http://media-azi.md/sites/default/files/2020_04_16_Raport_Monitorizare_M1.pdf);  
Monitoring Report MOLDOVA 1, April-September 2020, available at <http://media-azi.md/en/monitoring-report-moldova-1-period-august-31-%E2%80%93-september-6-2020>;

<sup>9</sup> The reports of OSCE/OHDIHR confirmed that TV Moldova 1 (TRM) gave Dodon (former president of the Republic of Moldova) positive media coverage, while his opponent had neutral coverage.

Election, Second Round, 15 November 2020, Statement of Preliminary Findings and Conclusions  
<https://www.osce.org/files/f/documents/7/3/470424.pdf>.

<sup>10</sup> A Pillar of Democracy on Shaky Ground, Konrad-Adenauer-Stiftung Media Programme South East Europe  
[https://www.kas.de/documents/281902/281951/A\\_Pillar\\_of\\_Democracy\\_ebook.pdf/df97d28c-370d-fb7c-fd37-044c5d960389?version=1.0&t=1572511473069](https://www.kas.de/documents/281902/281951/A_Pillar_of_Democracy_ebook.pdf/df97d28c-370d-fb7c-fd37-044c5d960389?version=1.0&t=1572511473069)

Assessment of Public Media Performance in the Presidential Election in Moldova November 2020, Baltic Centre for Media Excellence  
[https://bcme.eu/upload/products/470/BCME\\_Assessment\\_of\\_Public\\_Media\\_Performance.pdf](https://bcme.eu/upload/products/470/BCME_Assessment_of_Public_Media_Performance.pdf)

## Recent legislative shortcomings

In its Revised Action Report, the Government referenced the competence of the AC to examine cases concerning threats to, pressure on and intimidation of media service providers and to notify competent authorities as a safeguard against similar violations. Although the Government refers to the AC as an autonomous authority that is organizationally independent from any other institution, recent legislative shortcomings have substantially reversed the situation by placing the AC under high risk of political influence and thus totally annulling the efficiency of authority's reporting competence.

On September 30, 2021, Parliament adopted a law<sup>11</sup> amending the Code of Audiovisual Media Services. The legislative changes involved establishing parliamentary control over the activity of the AC through a flawed legal mechanism empowering any parliamentary majority to remove board members on the grounds of “improper execution or non-execution of their duties” or of “defective activity.”<sup>12</sup>

As evidenced in opinions on the bill<sup>13</sup> submitted by the General Legal Directorate of Parliament and the National Anticorruption Centre of the Republic of Moldova, these legal grounds providing for the dismissal of AC members lack clarity, predictability and accuracy and thus admit the risk of arbitrary revocations.

The legislative shortcomings that created solid conditions for establishing obvious subordination of the Audiovisual Council to a parliamentary majority also raised civil society's concern. National media NGOs<sup>14</sup> reported that the new amendments make the Audiovisual Council susceptible to political influence and can require it to make decisions to please the party in power.

The Revised Action Report also refers to the legal mechanism for appointing the AC board as an achievement in ensuring fair political balance. Unlike the previous legislation<sup>15</sup> that provided Parliament the right to appoint all nine AC members, the current rule delegates the prerogative to propose one member each to the President and the Government; the right to propose two candidates to Parliament and the privilege to propose five persons selected following a public competition to civil society organizations . The nine persons proposed then go through the filter of parliamentary committees that in an absence of exhaustive criteria may at their discretion accept or reject those candidates. Those selected are later appointed by a simple parliamentary majority.

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<sup>11</sup> <https://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5606/language/ro-RO/Default.aspx>

<sup>12</sup> Dangers of BC members being dismissed by the Parliament <http://www.media-azi.md/en/stiri/dangers-bc-members-being-dismissed-parliament>

<sup>13</sup> Cristina Durnea (IJC). Legal analysis „Dangers of BC members being dismissed by the Parliament” <https://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5606/language/ro-RO/Default.aspx>

<sup>14</sup> <https://cji.md/en/media-ngos-are-concerned-about-legal-amendments-made-to-the-audiovisual-media-services-code/>

<sup>15</sup> repealed Code of the audiovisual no. 260 of 27 July 2006

On October 21, 2021, Parliament approved in the first reading a series of amendments<sup>16</sup> the Code of Audiovisual Media Services that may intensify the political subordination of the members of the AC. The draft law provides Parliament the right to dismiss *in corpore* AC members while rejecting the annual activity report without specifying any criteria for rejection. Therefore, this clause allows Parliament to change the composition of the AC Board regardless of the content of the report.

However, the most worrying provisions of this draft law refer to reinforcing past legal mechanisms of control over the public broadcaster that will result in the vicious practice of governing political forces interfering with TRM work. The bill spurred fierce criticism from national media NGOs that warned that the amendments would result in the subordination of TRM management and control bodies to the governing political power.<sup>17</sup>

The bill provides for many forms of direct political interference into the organization's activities as it gives Parliament limitless discretionary powers to appoint and to dismiss TRM senior management (Supervisory Council and General Director).<sup>18</sup>

IJC highlights that the amendments approved by Parliament in the first reading reflect the same legal mechanisms as those inserted in previously repealed audiovisual legislation. These provisions were criticized by Karol Jakubowicz in an analysis carried out following PA Recommendation No. 1554(2002) on the functioning of democratic institutions in Moldova.

The expert concluded that the provisions (which are similar to those enshrined in the bill currently approved by Parliament) can hardly be accepted as being in line with Recommendation No. R (96)10 of the CoE Committee of Ministers on the Guarantee of the Independence of Public Service Broadcasting or with Article 10 of the European Convention on Human Rights.<sup>19</sup>

The provisions listed above cannot be reconciled with these obligations because they concentrate on creating excuses for political authorities to intervene in the operation of the public service broadcaster in ways that create a real possibility for limiting its freedom.

## Conclusions and Recommendations

Bearing in mind that the general measures referenced in the government's Revised Action Report have proven to be ineffective in fully remedying the problematic issues raised in the case of *Manole and others v. the Republic of Moldova* as well as the very recent legislative amendments that replicate the mechanisms

<sup>16</sup> <https://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5672/language/ro-RO/Default.aspx>

<sup>17</sup> Media NGOs express their concern about the draft Law amending the Code of Audiovisual Media Services <https://cji.md/en/media-ngos-express-their-concern-about-the-draft-law-amending-the-code-of-audiovisual-media-services/>

<sup>18</sup> Cristina Durnea (IJC). Legal analysis „Draft law on public broadcasting – new proposals, old problems” <http://media-azi.md/en/stiri/draft-law-public-broadcasting-%E2%80%93-new-proposals-old-problems?fbclid=IwAR0bxLTts4naK248IQndUwNeDadczZDUoljryglzeNfrK7YN2baeEiNjrU>

<sup>19</sup> See paragraph 63 <http://hudoc.echr.coe.int/fre?i=001-94075>

similar to those functioning at time the violation occurred, the Independent Journalism Center considers the closure of supervision to be premature.

Considering the new legislative changes that increased the importance of the full and effective implementation of the judgment in the case of *Manole and others v. the Republic of Moldova*, the IJC kindly asks the Committee of Ministers to continue monitoring its implementation and recommends additional general measures, inviting the Committee of Ministers to request the Government of the Republic of Moldova to adopt them.

When further specifying measures aimed at providing safeguards against the control exercised by the governing political parties over the public broadcaster's senior management, and thus its editorial policy, particular attention should be placed on the following:

- Recommendation CM/Rec(2016) 4 to ensure the independence of the media and to safeguard media pluralism, including the independence and sustainability of public-service media and community media that are crucial elements of a favorable environment for freedom of expression;
- Amending the Code of Audiovisual Media Services in line with Recommendation CM/Rec. (96) 10 in order to ensure that the status and membership of the Audiovisual Council, the Supervisory Council and the senior management of the public service broadcasting organization are drafted so as to avoid placing those bodies at risk of political or other interference;
- Amending the Code of Audiovisual Media Services in order to ensure that the funding model for the public broadcaster will reduce the vulnerability of TRM to influence from governing political parties.

Sincerely,

Nadine GOGU, Executive Director



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**Independent Journalism Center**

