

## COVID-19 PANDEMIC: LESSONS FOR MEDIA FREEDOM IN MOLDOVA

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### Introduction

Moldova has struggled for many years to provide its citizens with adequate safeguards for media freedoms. Concentration of media ownership, control of media by political and business interests, fragility of independent media, limitations on access to public interest information, and intimidation of journalists are among the country's most outstanding issues.<sup>1</sup> The rapid spread of COVID-19 in Europe, including in Moldova, has only exacerbated these longstanding and deeply-rooted problems.

This brief examines the direct and indirect impacts of restrictions on media freedoms related to the pandemic and the 60-day state of emergency that was enacted on March 16, 2020 by the Government of Moldova. In particular, this analysis explores new limitations to access to information, controls over the free flow of information, and financial burdens that negatively impact the work of independent media and hinder free expression in the country.

### Balancing National Security with International Protections for Free Expression

COVID-19 rapidly developed into a global emergency. Many governments responded to the pandemic as a matter of national security; for instance, several members of the Council of Europe imposed restrictions, temporarily derogating from their obligations under human rights treaties, such as the European Convention on Human Rights.<sup>2</sup> Moldova was not an exception, becoming one of the first ten countries that reported possible non-compliance with the Convention due to national security concerns.<sup>3</sup> According to Article 15 of the Convention, derogation is permitted "in time of war or other public emergency threatening the life of the

nation ... to the extent strictly required by the exigencies of the situation."<sup>4</sup> The provision allows states to exercise domestic emergency powers, which may result in deviation from the protection of fundamental rights, including the freedom of opinion and expression.<sup>5 6</sup>

However, the necessity to defend the nation in a time of crisis is weighed against the similarly-vital need to protect fundamental rights. According to a joint statement by experts of the UN Office of the High Commissioner (OHCHR), the Organization for Security and Cooperation in Europe (OSCE) and Inter-American Commission on Human Rights (IACHR): "the right to freedom of expression, which includes the right to seek, receive and impart information and ideas of all

kinds ... may only be subject to narrow restrictions” during the health crisis.<sup>7</sup> In order to preserve these freedoms, the statement urges governments to ensure accurate, accessible and transparent information-sharing with citizens and journalists regarding the pandemic, as well as to address legitimate threats posed by disinformation according to strict standards of proportionality and necessity.<sup>8</sup> The OHCHR also warns that “emergency powers must be used for legitimate public health goals, not as a basis to quash dissent or silence the work of human rights defenders or journalists.”<sup>9</sup>

Moreover, the European Court of Human Rights (ECtHR) imposes strict requirements for governments that invoke Article 15 of the European Human Rights Convention, including that national authorities must transparently justify that the government’s interference with protected fundamental human rights was “relevant and sufficient” and “proportionate to the legitimate aims pursued.”<sup>10</sup> More specifically, to meet the standards of proportionality and necessity, the state must: (i) demonstrate that a restriction is appropriate and narrowly tailored to achieve its protective function; (ii) demonstrate that this measure is the least intrusive instrument among those that might achieve the same protective function; and (iii) ensure restrictions imposed do not remain in effect once the threat has diminished or passed.<sup>11</sup>

Moldova took a decisive first step navigating the fine balance between national security and human rights on March 16, 2020 when the government declared a 60-day state of emergency. Under the emergency regime, a Commission for Emergency Situations, composed of government Cabinet members and convened by the Prime Minister, was empowered to enact extra-legal measures in response to the public health threat, including “coordination of media work concerning the emergency” and other broad restrictions.<sup>12 13</sup> These actions were taken in accordance with Moldovan Law No. 212 “On emergency, siege and military regimes provisions,” which gives the government the right to implement temporary measures of a political, economic, and social nature to support the public order during emergencies.<sup>14</sup>

## Direct Impacts of the State of Emergency on Freedom of Expression

Across the post-Soviet region, governments have adopted emergency measures against the spread of the pandemic that directly impact media freedoms. Belarus and Russia

have demonstrated some of the most severe measures; both governments have been accused of imposing serious restrictions to access to information by using heavy police force to limit media coverage of the virus that diverges from government messaging.<sup>15 16 17 18</sup> While restrictions under Moldova’s state of emergency were less extreme by comparison, they still carry important consequences for media freedoms in the country.

## Limiting Access to Public Information

Access to information of public interest was an early target of Moldova’s pandemic-related restrictions. On March 18, 2020, the Commission on Emergency Situations extended the length of time journalists must wait for state institutions to respond to information requests from 15 days to 45 days. No official explanation was provided for the rationale behind this change, beyond invoking Law 212’s mandate to “support the public order.” Unofficially, government spokespersons told reporters that their staff were too busy responding to the pandemic to answer information requests.<sup>19</sup>

The Commission’s decision was widely condemned by the local media community and civil society as contradictory to rights to free expression and access to information, causing Moldova’s Ombudsman Mihail Cotorobai to demand the reinstatement of the original 15-day term.<sup>20</sup> Problematic restrictions to the right of access to information have existed in Moldova since independence, and the new emergency provisions further exacerbate existing issues. In a recent *Media Forward* brief, authors Victor Gotisan and Natalia Ionel argued that access to information in Moldova was already hindered by outdated legislation and bureaucratic systems that create artificial processing delays, reluctance by the authorities to provide information, and high fees for journalists to obtain information from state institutions, among other issues.<sup>21</sup> Taken together with these new delays, the ability of Moldovan journalists to provide vital, up-to-date information to the public is severely compromised.

Moreover, the decision to triple the processing time for information requests is a violation of the standards of proportionality and necessity, which Moldova is obligated to observe under international law. The ability of the Moldovan public to remain informed during a global health emergency is of paramount importance and should be a clear priority of the government under the emergency regime. By refusing to offer a transparent national security justification for the measure, the Commission’s decision is both unnecessary and causes disproportionate harm to Moldovan citizens.



Source: <https://ava.md/2020/04/07/rasporzazhenie-14-ot-6-aprelya-2020-goda/>

## War on Fake News or Effort to Control Information Flow?

From the early days of the COVID-19 crisis in Moldova, the government declared a war against the dissemination of so-called fake news. However, the real impact of this war was to establish the state's direct control over the flow of information to the public.

On the first day of the state of emergency on March 18, President Igor Dodon indicated that criminal penalties could be brought against those who spread false information on the pandemic, warning journalists "If you want big ratings or likes on social networks and spread fakes and panic, you will be punished."<sup>22</sup> Dodon's statement set the tone for the government's hostile and suspicious treatment of the media during the crisis, and was consistently reflected in later statements by Moldovan Prime Minister Ion Chicu and other prominent politicians.<sup>23 24</sup>

Despite the government's strong approach to combating fake news, Moldovan authorities did not provide an official definition for fake news or disinformation that would be subject to state penalties. Without a framework to distinguish legitimate media work from malicious disinformation, state officials had wide authority to make these determinations based on their whim, and overall hostility toward the media increased.

The war against fake news became real on March 20, when direct action was taken to restrict information flow. Under the authority of the Commission for Emergency Situations, the Information and Security Service (ISS) blocked the access to 52 allegedly "fake news" websites, which were not officially registered with the government.<sup>25 26 27</sup> As justification, the ISS referred only to the Emergency Provisions Law (No. 212) and another Law (No. 54-XV) on countering extremist activity.<sup>28</sup> Interestingly, while this measure was taken in a non-transparent and unilateral manner, the blocked websites closely resembled those flagged by the Moldovan civil society initiative *Stop Fals*, which tracks the spread of manipulative and propagandistic information online.<sup>29 30</sup> However, neither *Stop Fals* nor the ISS released any information regarding collaboration in this effort, and any positive motive by the state to draw from civil society resources must be weighed against the lack of any apparent check-and-balance with standard judiciary and human rights mechanisms.

Another radical action to establish control over information flows was made through the Moldovan Audiovisual Council (AC). On March 24, Head of the AC Dragoș Vicol issued an order requiring Moldovan media outlets to convey only the official position of authorities in coverage of the pandemic during the state of emergency.<sup>31</sup> Journalists were also prohibited from expressing their personal opinions while reporting on the subject. The decision received immediate

harsh criticism from civil society and media workers, including from API Executive Director Petru Macovei, who warned that the provisions “limit the right of journalists to issue value judgments related to the authorities’ efficiency.”<sup>32</sup>

The overwhelming and immediate public backlash following the decision caused a sudden reversal by the authorities. On March 25, Vicol rescinded his decision and President Dodon acknowledged that the decision was premature and could result in over-restriction of the media.<sup>33 34</sup> However, if not for the firm and loud rebuke from the civil society and media community, it is highly likely that this restriction would have remained in force.

It is plausible that, like in other countries in the region, the Moldovan government was testing the waters by placing restrictions on the most easy-to-target media outlets and online resources. While the first wave of ISS website-blocking targeted platforms already under suspicion by civil society, future blocking efforts could carry tremendous negative impact on Moldova’s online information landscape. Authorities have failed to provide clear justifications for the first-round blockings; thus, there is no guarantee that future blockages would be transparently discussed or implemented. Similarly, the AC decision can be seen as an experimental move by the government, testing how far they could push restrictions without triggering substantial backlash.

Moreover, it is possible that non-transparent measures against so-called fake news will continue to be used abusively by authorities even after the imminent COVID-19 threat is gone and the state of emergency is lifted. Evidence of authorities’ arbitrary use of anti-fake news measures beyond the emergency regime is already being observed. On May 18 – just three days after the state of emergency was lifted – journalist Natalia Cebotrari was fined by police for alleged defamation based on her coverage of inappropriate working conditions at a local business in the southern town of Ceadir-Lunga, which violated COVID-19 safety guidelines.<sup>35</sup> The Moldovan media community immediately condemned the move as interference with media freedoms that amounts to censorship.<sup>36</sup> Although the sanction appeared to be a local initiative by the town’s police force, the hostile environment against independent media promoted by top government officials certainly contributed to normalizing this local “police activism.”

It is important to note that the Moldovan government has a history of manipulating the legal framework to suppress unfavorable and independent media outlets – for

example, in 2012 the broadcasting license of opposition TV broadcaster NIT was withdrawn on questionable grounds.<sup>37</sup> Moreover, as has already been described, independent journalists have faced increasing obstacles to accessing information from public interest due to state restrictions since 2013. Restrictions began with seemingly minor steps, such as ceasing online streaming for government meetings<sup>38</sup> and blocking individual journalists from attending public events,<sup>39</sup> progressing towards covert surveillance<sup>40</sup> and even physical attacks.<sup>41</sup> The Commission – composed of political appointees of the Socialist Party loyal to President Dodon – is the latest tool of media repression at the government’s disposal.

The upcoming election cycle provides the government with further motivation to suppress independent media and critical voices. The Socialist Party and its *de facto* leader President Dodon face high stakes in the autumn presidential elections, as failure could both unseat Dodon from power and trigger early parliamentary elections that could push the Socialists into the opposition. For this reason, it is likely that the government will take all available opportunities to silence critical media that could cause reputational damage both now and in the pre-election period.

Overall, government actions under the state of emergency have limited media freedoms primarily by restricting access to information of public interest. At the same time, new mechanisms – such as bans on so-called “fake” online resources by the ISS – have been put in place, and can be abused to target independent media institutions at any time. A combination of wide emergency powers granted to governmental institutions, combined with the lack of an official definition for “fake news” and “disinformation,” creates a permissive environment for authorities to implement targeted restrictive measures against critical media and online resources. Countering these restrictive measures will be very difficult, due to severe limitations on public gatherings or any other collective action during the health crisis.

## Indirect Impacts of COVID-19 on Freedom of Expression

In addition to the direct effects of government-imposed restrictions on media freedoms in Moldova, the pandemic has also carried several negative indirect effects for the functioning of independent media.

In the first place, the pandemic caused increased financial burdens for Moldovan media, while decreasing revenue



Source: <https://newsmaker.md/rus/novosti/v-moldove-sib-budet-sledit-za-novostyami-o-koronaviruse/>

streams. For example, several media outlets reported a reduction in revenues from advertising ranging from 30 to 90 percent, with online media most affected. Print media also reported problems with delivery of newspapers to customers, due to COVID-related breakdowns in the functioning of the national postal delivery service.<sup>42</sup>

Many media institutions reported extra costs related to remote work. Journalists require computers, high-speed internet packages and other expensive equipment and software to produce multimedia materials; these resources are typically shared by reporters in a single office, which is impossible during the remote work regime. Due to inefficiencies of remote work, the average time required to produce media materials also increased, raising costs of labor and overtime. During the pandemic, frontline media teams also need to be equipped with costly protective equipment – masks, gloves and sanitizers.<sup>43</sup> Taken together, media institutions faced and continue to face extra costs substantially over their usual budget.

Disproportionate burdens have been felt by female journalists, who form the majority of the frontline media force in Moldova.<sup>44</sup> Due to historical and yet-unaddressed stereotypes in Moldovan society, most childcare and household responsibilities in the Moldovan families also fall onto women. The majority of the female Moldovan media

workers surveyed by authors of this brief reported hardships in performing their work from home due to childcare and household work.<sup>45</sup> This was the case even among senior members of editorial teams.

The government's COVID-related economic relief measures seem to omit independent Moldovan media, leaving their new financial constraints largely unaddressed. While media affiliated with the ruling party appears to be continuously well-funded,<sup>46</sup> non-political and independent media must rely on self-generated funds or unsustainable donor grants.<sup>47 48</sup> Although the government announced the launch of new "business-supportive" measures, aiming at preventing massive layoffs and helping business "to survive,"<sup>49</sup> none of these measures address the specific needs of the media industry.

Moldova's lackluster response is even more apparent in comparison with that of governments of neighboring countries, which face similar challenges. For instance, Latvia recently announced a 1.6 million euro state support program for TV broadcasters, aiming to stabilize a media sector that is "on the brink of collapse, considering the rapid drop of revenue from advertisements."<sup>50</sup>

## Conclusions and Recommendations

The ongoing COVID-19 crisis has produced several negative impacts for Moldovan media. Some impacts – such as limitations on access to information and restrictions on information flows – are direct results of government actions to manage the crisis. Other negative impacts, such as financial shortages and additional burdens on female media workers, are indirect effects that severely limit the work of independent media and journalists.

Moreover, by manipulating the Commission for Emergency Situations as a tool to serve political interests and failing to provide transparent justifications for new media restrictions, the government failed to establish the necessary preconditions of necessity and proportionality. This undermines the government's attempt to justify the media crackdown on the basis of national security arguments.

In order to address the negative effects of government actions and provide critical support to Moldovan media during the ongoing crisis, the government should adopt the following actions:

- Strictly follow international norms and principles which Moldova is obligated to observe under international law, including transparent justification of absolute necessity and proportionality for each restrictive measure. Transparent justification for restrictions should include

participatory consultations with civil society. Civil society groups responding to the crisis have already begun to form and organize, including the Journalist Crisis Cell, organized by the Independent Journalism Center, and the OHCHR's NGO Task Force on COVID-19 and Human Rights.<sup>51 52</sup>

- Immediate reversal of all state restrictions on media freedoms imposed under the state of emergency that ended on May 15, 2020, including the extended term for state responses to access to information requests. In cases where restrictions must continue, clear justifications should be provided for each restriction, including the governing legal framework and the aforementioned evidence of necessity and proportionality. Where possible, state agencies should work proactively to share and publish information on the ongoing crisis with the public and journalists.<sup>53</sup>
- Ongoing efforts to combat so-called "fake news" should be bolstered with clear state guidance on what qualifies under this category and what punitive measures may be used by authorities. All actions taken against disinformation should be in full compliance with international human rights standards on freedom of expression.<sup>54</sup> The government should work closely with experts of the Office of the OHCHR to develop strategies to effectively combat disinformation in accordance with these standards.
- Consider adopting financial relief measures that take into account the challenges facing the media industry during the current crisis, and independent media in particular.

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