

REGULATION AND SELF-REGULATION: TWO PIECES OF THE PUZZLE FOR A HEALTHY MEDIA LANDSCAPE IN MOLDOVA

Radu Mîrza

Introduction

Media regulation and self-regulation are two sides of the same coin. The former protects democracy by regulating content that is supposed to be free in a democracy, while the latter focuses on building democratic practices through regulation by the media sector itself. A fair and safe regulatory environment fosters self-regulation, which in turn reduces the government's regulatory responsibilities and makes media freer and more independent. Moldova's road towards this win-win situation, however, is hindered by a weak self-regulatory framework and the poor design and deficient implementation of the government's regulatory framework.

A solution to these problems could be the promotion of new forms of multi-stakeholder cooperation. Such an approach would strengthen the media's ability to self-regulate by aiding media organizations' development and advancing cooperation among them. More importantly, this approach would substantially improve the regulatory framework if it focused on the Audiovisual Council. By involving multiple stakeholders, this strategy could diminish biases and politicization in the nomination and appointment process of the Audiovisual Council's members, eliminate dysfunctions and boost efficiency via increased accountability, and improve the overall efficiency of the body.

I. Democracy, Media Regulation, and Self-Regulation

Media and free expression are cornerstones of democratic societies. Nevertheless, in order to preserve a healthy media landscape, democratic societies regularly impose restrictions on acceptable mechanisms of free expression and information distribution.¹ To this end, governments commonly restrict media by prohibiting certain activities that are harmful for democratic societies, including disinformation, libel, incitement to violence, and hate speech. Media regulation mechanisms are employed to enforce these restrictions.

Media regulation encompasses the holistic and complementary interplay of controls and guidance by established rules, procedures, and standards. Regulation can take two forms: internal, or self-regulation, occurs when standards and controls are applied within the media sector itself. External regulation occurs when governments or other outside authorities apply rules to media outlets and journalists.

State regulation of the media is considered the most powerful and formalized mode of external regulation. State-supported regulation is generally conducted by an independent regulatory body that has the authority to enforce the

relevant legislative framework regulating media and impose punishments, such as fines, for non-compliance.²

Although self-regulation of media is typically less powerful and formalized than external regulation, it is still a significant part of the regulation process. Media self-regulation is a voluntary joint endeavor by media operators to establish and abide by goals, guidelines, and/or ethical principles. By doing so, media operators accept their share of responsibility within society for the quality of public discourse.³ Within this system, compliance by individual media operators and journalists is usually monitored and enforced either within their own media organizations or by an intermediate body representing public and/or industry interests.⁴

If the external regulatory environment is intended to protect democracy from harmful influences and behaviors, the internal self-regulatory environment focuses on building democratic norms. Media self-regulation is an exercise in democratic culture, which emphasizes independence from external undue influences and greater participation by individual citizens and journalists as agents of democratic change.⁵ In this way, self-regulation can diminish the need for external regulation and foster a freer and more self-accountable media. That said, as a rule, a culture of self-regulation must first develop within a fair and safe regulatory environment, and can serve as an effective alternative to external regulation only if there is a “conscientious desire [by media] to fulfill the mission in good faith.”⁶ Thus, the interplay between external regulation and self-regulation is essential for establishing a healthy and independent media environment.

Unfortunately, a relatively weak self-regulatory mechanisms and a state-supported regulatory framework that is poorly designed and implemented have historically hindered Moldova’s path forward to develop such an environment. Since the country’s independence, dominant political parties have captured many media outlets, including the public broadcaster (TRM), into subordinate echo chambers that provide biased coverage in favor of the perspective of the government and other special interests.⁷ ⁸ The following sections of this brief review the current regulatory and self-regulatory mechanisms for Moldovan media, with attention to the breakdowns in regulation and self-regulation that have culminated in this unhappy outcome.

II. Regulation and Self-Regulation in Moldova

Regulation – The Audiovisual Council

In Moldova, the state regulatory function is primarily carried out by the Audiovisual Council (CA), which is overseen by Parliament and mandated to monitor and enforce the Audiovisual Code. If an outlet violates the Audiovisual Code, the CA may issue a warning or a fee to the offending organization or, in more extreme cases, revoke the license/authorization of the outlet.

The AC has long been criticized as dysfunctional, ineffective, and vulnerable to external influences and biases.⁹ The passage of the new Audiovisual Media Services Code in 2019 was an effort to address the shortcomings of this regulatory body.¹⁰ Among other things, the new Code seeks to enhance media independence by installing mechanisms that would establish a more favorable environment for cooperative, multi-stakeholder partnerships and greater civic oversight. For example, the new Code changed the composition of the CA to allow a majority of representation by civil society candidates; currently, five of nine CA members are appointed from a list of candidates proposed by civil society, while the remaining members are nominated by the Parliament, the President and the Government.¹¹

Unfortunately, these legal safeguards for civil society input are not effective in ensuring the Council’s independence. This is partially due to the flawed process of nominating and confirming new members, which is highly vulnerable to political influence. Once CA candidates are proposed, they must be officially nominated by the Parliamentary Committee on Culture, Education, Research, Youth, Sports, and Mass Media in cooperation with the Committee on Legal Affairs, Appointments, and Immunity. Given that the number of members in each committee proportionally reflects that of each party represented in the Parliament, the entire selection process is dominated by MPs from the majority. Such a construction naturally facilitates the promotion and nomination of candidates that are affiliated or otherwise loyal or desirable to the majority. Moreover, there is no mechanism or obligatory quota to nominate candidates from the opposition. Indeed, despite criticism from the opposition, in summer 2020 the Parliament only nominated candidates proposed by the ruling coalition led by the Socialist and Democratic Parties.¹²

After CA candidates are nominated in parliamentary committee, the parliamentary majority simply confirms the nominations of their compatriots without further deliberation. To finalize the appointment, the law only requires a majority vote by MPs present at the sitting, (i.e., the votes of the parliamentary majority). Given that the majority controls both the selection via committees and appointment by the Parliament, it is inevitable that the CA membership is compromised by political interests.

The recent history of appointments and resignations of Audiovisual Council presidents illustrates the extent to which the body is impacted by political influences. Dragos Vicol was forced to resign from the presidency as a precautionary measure in December 2020 due to political pressure from the submission of the so-called draft “lustration” law to Parliament,¹³ which threatened to terminate the mandate of the CA President and other CA members who were affiliated with the former government and oligarch Vladimir Plahotniuc.¹⁴ Following Mr. Vicol’s resignation, the Parliament elected CA member Ala Ursu-Antoci to the Council’s Presidency with a near-unanimous vote (eight out of nine members in favor),

despite her lack of experience in the audiovisual sector and close affiliation to the Socialist Party as a former active member.¹⁵ This strong vote for a former political figure points to the high degree of the politicization of the CA. It also greatly harmed the CA's legitimacy as an impartial and independent regulatory authority in the eyes of the public.¹⁶

The Council's compromised independence is also demonstrated by the unethical and at times illegal behavior of the body and its members. CA members elected Ms. Antoci to the presidency despite the fact that she made highly controversial public statements threatening to "discipline" the media in order to prevent them from raising accusations against state institutions or certain political parties – an explicit violation of existing laws on media and the Public Servant's Code of Ethics.¹⁷ In addition, although the Code of Ethics stipulates that the CA must cooperate with civil society, the body has regularly ignored civil society criticism and recommendations.¹⁸

Finally, the Council's lack of independence and impartiality manifest themselves in the CA's monitoring and enforcement activities. The CA has been criticized for applying sanctions on media in an overly legalistic but still highly unprofessional manner, evidenced by the fact that sanctions are applied at an excessively high rate and are often successfully contested and reversed in court.¹⁹ The high rate of sanctioning could be in part due to a failure on the part of the CA to accurately and precisely monitor and publish media violations. For example, during the two-week monitoring period for the first round of presidential elections in 2020, the CA sanctioned 14 TV stations.²⁰ Such a high rate of sanctions could point to the fact that the CA did not adequately inform television media of the legal expectations, and/or that the sanctions were too soft to compel compliance. If the former is true, the state must do more to effectively communicate its legal expectations to media outlets. If the latter is true, then sanctions do not achieve their desired impact and should be made more severe. Most of the sanctions consisted of fines of 10,000 lei (550 USD), which is roughly equivalent to the monthly average salary in Moldova.

Self-Regulation – The Press Council

The preservation of free and pluralistic media, independent from political and economic interests, is not exclusively the task of the Audiovisual Council – media representatives themselves also contribute to this shared goal via self-regulation. The Moldovan Press Council (PC) is among the most prominent and active self-regulatory bodies for Moldovan media.²¹ This entity's nine members are selected by a five-person committee consisting of two representatives from the PC, one from the Centre for Human Rights, one from the Parliamentary Committee on Culture, Education, Research, Youth, Sports, and Mass Media, and one from another NGO. Given that four of the PC's members are journalists (the other five represent the advertising and entertainment sectors), this self-regulatory body works

to advance the public interest by advocating for quality journalism, media freedom and accountability to the public.

The PC's Journalistic Code of Ethics represents the primary source of guidance on Moldova's self-regulatory framework, with 137 signatory organizations.²² When alleged ethical violations in media reporting occur, the PC's responsibility is to mediate between interested parties and adjudicate disputes. Upon violation, an interested party may submit a formal complaint to the PC, or the PC may itself self-initiate a complaint. Thereafter, the PC examines the alleged violation and issues a formal opinion on whether a violation occurred. However, the PC lacks a mechanism to sanction responsible parties – "naming and shaming" is the most powerful sanction that the PC can apply. The PC's lack of legal authority is also somewhat exacerbated by the fact that it is not an officially-registered entity, and thus sanctioned parties cannot challenge the PC's decisions in Court.

Unfortunately, the PC has also failed at times in its self-regulatory role, succumbing to the reality of economic influences in the media sector. Moldova's media market is highly vulnerable to economic and political interests due to the fact that a majority of media outlets are owned or otherwise closely affiliated with political and/or business elites.²³ This influence regularly causes media organizations to compromise their objectivity and editorial narrative in reporting, violating the Journalistic Code of Ethics. By leniently responding to violations of the Journalistic Code of Ethics, the PC fails to fulfill its mandate to safeguard the independence and integrity of the media.

Former President Dodon's practice of regularly offering small gifts (usually alcohol and foodstuffs) to journalists at his annual addresses in December 2019 and July 2020 is an illustration of the extent to which Moldovan media outlets are vulnerable to economic influences. Despite the fact that accepting gifts from politicians is clearly prohibited under the Journalistic Code of Ethics, it is widely known that several media representatives accepted the gifts from Dodon.²⁴ However, despite the media community's harsh condemnation of Dodon's actions and the journalists who accepted the gifts, the PC never publicly disclosed the names of those who accepted gifts. "Naming and shaming" – the only punitive mechanism available within the country's self-regulatory framework – was not applied towards the responsible individuals by the Press Council or their industry colleagues. In this case, the Press Council issued a public statement condemning the actions but did not release any names or investigate the case further, arguably failing to perform its mandate under the Code of Ethics.²⁵

This failed incident of applying the "naming and shaming" practice demonstrates that the current self-regulatory structure in Moldova is inconsistently implemented and may lack the important pre-requisite of "good faith" implementation among media outlets. It also brings to question the impartiality of the Press Council's decisions in determining when and how to self-initiate complaints.

III. Conclusions and Recommendations

Moldova's media landscape faces many problems, of which compromised independence and impartiality due to political and economic influence are among the most serious.

This brief proposes to address these issues by applying a **multi-stakeholder approach built on cooperation**. Such an approach could be a valuable step towards democratization through the growth of independent and accountable media.

To realize this goal, the Moldovan government, the Audiovisual Council, civil society and media should consider the following actions:

Depoliticize the appointment of Audiovisual Council members. The new Audiovisual Code's assignment of five of nine seats on the Audiovisual Council to civil society's representatives is an appreciable step towards the depoliticization of the CA. This measure is not sufficient, however, if there are no constraints on the political majority to select and appoint their allies to the Council. Although currently absent, a checks and balances mechanism is essential to ensure the fairness of this appointment procedure. Therefore, Moldova's lawmakers should consider amending the law to involve other stakeholders from the opposition or more civil society members. For example, the law could guarantee the selection of several members from those proposed by the opposition or eliminate the committee's monopoly on the selection process by involving civil society in all stages of the selection process.

Regulation must not only be independent and impartial but also appear as such. Members with strong political past affiliations should not be promoted as CA members or elected to the CA presidency. While electing the CA president, members should pay increased attention to the ethical implications of the candidate's previous affiliations and how these affiliations may impact the public perception of the position.

Improve the management, professional skills, and competencies of the Audiovisual Council. While the state auditor has repeatedly pointed out some of these shortcomings,²⁶ no significant outcomes have been registered. Therefore, the CA and all state institutions should consider the idea of an external professional audit, which would provide a different perspective that is not linked to the state or the government and could be more efficient in identifying problems and proposing feasible solutions.²⁷ The EU has also called for an external audit as a condition for an additional 30 million EUR in economic assistance to Moldova.²⁸

A possible solution for promoting better management and increasing professionalism could be to involve the participation of representatives of the judiciary or the Ombudsman Office in the CA as advisers to the CA. Given their background, they could assist CA members in creating a more accurate sanctioning process to avoid unjustified sanctions and their later reversion in court.

Address gaps in self-regulation of media. The fact that the PC and media organizations are unwilling to punish corruption suggests that the media may be more interested in protecting the profession's image than serving the public. Moldova's media sector should improve its professionalism by understanding that instead of protectionism, constructive criticism and mutual policing are healthier approaches for media growth and development. Moreover, consistent adherence to professional values instead of economic interests is fundamental for developing a vibrant media landscape.

Expanded mechanisms for civil society and independent media to monitor outlets' adherence to self-regulatory standards could be one feasible tactic to achieve these objectives. One such mechanism is PressCheck, a unique tool that rates the transparency and credibility of Moldovan news sites, helping citizens identify news websites that implement ethical journalistic practices. The platform is newly launched and still limited in its coverage, and should be expanded to include more diverse sources of media.²⁹

Finally, another innovative solution to improve self-regulation could involve the creation of media ombudsman positions that would take responsibility for internal audits of media outlets. In countries like the United States and France, media ombudsmen are independent of editors-in-chief and answerable only to managing directors who appoint them ombudsmen. They do not impose any sanctions, but periodically publish opinions which cannot be deleted or edited by others without their permission.³⁰ In Moldova's environment, the ombudsman figure could be a very useful mechanism if applied in a context of cooperation and co-regulation. For example, each media outlet could select a representative that would be added to a master ombudsman-list overseen by the Press Council; the Council would then select and randomly appoint one ombudsman to each media organization. This internal audit system based on mutual supervision would increase accountability and the overall media's professional culture. Therefore, co-self-regulation could be a worthy mechanism against politicized or economically dependent media.

Endnotes

- 1 Denis McQuail, Media Regulation, Module 2, Unit 11, Department of Media & Communication, University of Leicester, February 9, 2010.
- 2 Carles Llorens, The European Union and PSM in Troubled Democracies: A Bridge Too Far? in Eva Polonska and Charlie Beckett ed., Public Service Broadcasting and Media Systems in Troubled European Democracies, Palgrave Macmillan, 2019, <https://doi.org/10.1007/978-3-030-02710-0>
- 3 Miklós Haraszti, The merits of media self-regulation – Balancing rights and responsibilities, in Adeline Hulin and Jon Smith ed., The Media Self-Regulation Guidebook – All questions and answers, the OSCE Representative on Freedom of the Media, Vienna, 2008.
- 4 Denis McQuail, Media Regulation, Module 2, Unit 11, Department of Media & Communication, University of Leicester, February 9, 2010.
- 5 Miklós Haraszti, The merits of media self-regulation – Balancing rights and responsibilities, in Adeline Hulin and Jon Smith ed., The Media Self-Regulation Guidebook – All questions and answers, the OSCE Representative on Freedom of the Media, Vienna, 2008.
- 6 Tatiana Puiu and Olga Gututui, Evaluation of the Legal Framework for Regulating and Self-regulating Mass Media Activity in the Republic of Moldova, Chisinau, 2018.
- 7 IREX, Media Sustainability Index 2019, <https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2019-moldova.pdf>
- 8 Freedom House, Nations in Transit 2021, Moldova, <https://freedomhouse.org/country/moldova/nations-transit/2021>
- 9 This is consistent with larger trends in Eastern Europe, where it is common practice for political parties to capture the media, and often exert informal pressures on media institutions, including by embedding regulatory authorities' boards in the political power structure. See: Peter Bajomi-Lazar, Variations in media freedom: Why do some governments in Central and Eastern Europe respect media freedom more than others, Central European Journal of Communication, no. 1, 2015, Budapest, http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.desklight-49b03b87-9148-45ec-90af-2758f8e3f13a/c/02_lazar.pdf.
See also: Karol Jakubowicz, Post-communist political systems and media freedom and independence, in John Downey and Sabina Mihelj ed., Central and Eastern European media in comparative perspective: Politics, economy and culture, 2012, Ashgate Publishing, Surrey, UK.
- 10 Code of Audiovisual Media Services, no. 174 of November 8, 2018, https://www.legis.md/cautare/getResults?doc_id=125226&lang=ro#
- 11 Code of Audiovisual Media Services, Article 76, no. 174 of November 8, 2018, https://www.legis.md/cautare/getResults?doc_id=125226&lang=ro#
- 12 <https://agora.md/stiri/73944/cu-criticile-opozitiei-parlamentul-anumit-trei-noi-membri-ai-consiliului-audiovizualului-a-fost-un-vot-politic>
- 13 <http://www.parlament.md/ProcesulLegislativ/Proiectedeacteleislative/tabid/61/LegislativId/5340/language/ro-RO/Default.aspx>
- 14 http://media-azi.md/sites/default/files/486.2020.ro_PDF
see also: <http://media-azi.md/en/stiri/bc-president-dragos-icol-resigned-prematurely>
- 15 Victoria Borodin, O apropiată PSRM, noul șef al Consiliului Audiovizualului, December 4, 2020, <https://www.zdg.md/stiri/stiri-sociale/o-apropiata-psrm-noul-sef-al-consiliului-audiovizualului/>;
- TV8, Președintele Consiliului Audiovizualului Dragoș Vicol și-a dat demisia, December 4, 2020, <https://tv8.md/2020/12/04/presedintele-consiliului-audiovizualului-dragos-icol-si-a-dat-demisia/>.
- 16 Analogy of justice principle " Justice must not only be done, but must also be seen to be done", Lord Hewart, Lord Chief Justice of England in the case of Rex v. Sussex Justices, 1924, 1 KB 256.
- 17 PROTV Chisinau, Cine este Ala Ursu-Antoci, noua sefa a Consiliului Audiovizualului si ce legaturi are cu PSRM, December 4, 2020, <https://protv.md/actualitate/cine-este-ala-ursu-antoci-noua-sefa-a-consiliului-audiovizualului-si-ce-legaturi-are-cu-psrm-video---2549308.html>
- 18 <https://primelestiri.md/declaratii-scandaloase-consiliului-audiovizualului-noul-membru-ala-ursu-antoci-considera-ca-posturile-de-televiziune-nu-au-dreptul-sa-critice-institutiile-statului-si-partidele-politice---100900.html>
- 19 <http://media-azi.md/ro/stiri/%E2%80%8Btv8-pro-tv-chi%C8%99in%C4%83u-%C8%99i-btv-au-ob%C8%99inut-%C3%AEn-istan%C8%9B%C4%83-anularea-sanc%C8%99iunilor-aplicate-de-ca-dup%C4%83;>
PROTV Chișinău, <https://protv.md/actualitate/pro-tv-chisinau-castig-de-cauza-si-la-csj-impotriva-consiliului-audiovizualului-magistratii-au-mentinut-decizia-curtii-de-apel-prin-care-sanctiunea-aplicata-de-ca-este-declarata-ca-fiind-neintemeiata---2549858.html>;
- TV8, <https://tv8.md/2020/11/01/castig-de-cauza-pentru-tv8-csj-a-mentinut-decizia-curtii-de-apel-care-a-anulat-amenda-data-de-consiliul-audiovizualului/>
- 20 Milena Onisim, De la 5.000 la 10.000 de lei. Consiliul Audiovizualului a sancționat 14 posturi de televiziune din R. Moldova, November 10, 2020, <https://www.zdg.md/stiri/stiri-sociale/de-la-5-000-la-10-000-de-lei-consiliul-audiovizualului-a-sanctionat-14-posturi-de-televiziune-din-r-moldova/>
- 21 Press Council, Association of Independent Press, Union of Journalists of Moldova, Association of Russian-Language Journalists of Moldova, etc.
- 22 <https://consiliuldepresa.md/ro/page/lista-semnatarilor>
- 23 Ludmila Nofit, The More Things Change, The More They Stay the Same: Challenges Facing Moldovan Media in 2019 and Patterns from the 2016 Elections, Media Forward, No. 6, January 2019
- 24 Press Council of Moldova, Moldovan Journalist's Code of Ethics, <https://consiliuldepresa.md/en/page/moldovan-journalist-code-of-ethics>.
- 25 <https://www.zdg.md/stiri/stiri-sociale/foto-vinul-si-tusonca-de-la-presedintele-dodon-jignire-pentru-profesia-de-jurnalist/>
- 26 https://ccrm.md/ro/decision_details/96/hotararea-nr-21-din-23-iunie-2020-cu-privire-la; https://www.legis.md/cautare/getResults?doc_id=122235&lang=ro
- 27 Ziarul National, <https://www.ziarulnational.md/ultima-ora-membri-consiliului-audiovizualului-nu-accepta-un-audit-care-reprezinta-una-dintre-conditionalitatile-pentru-a-beneficia-de-ajutor-financiar-din-partea-ue/>

- 28 Media Azi, Audit extern de performanță la Consiliul Audiovizualului – ce ar presupune și de ce ar fi necesar, June 2, 2020, <http://media-azi.md/ro/stiri/audit-extern-de-performan%C8%9B%C4%83-la-consiliul-audiovizualului-ce-ar-presupune-%C8%99i-de-ce-ar-fi>
- 29 IPN Press Agency, Media-Guard launches module for assessing media portals – PressCheck, https://www.ipn.md/en/media-guard-launches-module-for-assessing-media-portals-presscheck-7967_1081427.html
- 30 Véronique Maurus, The Ombudsman – Media self-regulation within a news outlet, in Adeline Hulin and Jon Smith ed., The Media Self-Regulation Guidebook – All questions and answers, the OSCE Representative on Freedom of the Media, Vienna, 2008.



Radu Mîrza

Radu Mîrza is an expert in constitutional and human rights law. He holds a BA and LL.M. from the University of Bologna and a Ph.D. in European and International Law from the University of Verona. Radu worked as a justice and rule of law expert at Moldova's Center for Policy and Reforms, the EU High-Level Advisers' Mission to the Republic of Moldova, and OSCE PA. His fields of interest include democratic consolidation in Eastern Europe, media and freedom of expression, e-democracy and digital rights.

The Media Forward Policy Brief series is made possible by the generous support of the American and British people through the United States Agency for International Development (USAID) and the British Embassy in Chisinau. The contents are the responsibility of Freedom House and do not necessarily reflect the views of the UK, USAID or the United States Government.



Freedom House is a nonprofit, nonpartisan organization that supports democratic change, monitors freedom, and advocates for democracy and human rights.

1850 M Street NW,
11th Floor
Washington,
DC 20036

www.freedomhouse.org
[@FreedomHouse](https://www.facebook.com/FreedomHouseDC)
202.296.5101
info@freedomhouse.org