**Comments**

**to the Law of the Republic of Moldova**

**on the Freedom of Expression**

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**General issues**

The need to develop and adopt the Law on freedom of expression (hereinafter the "Law") was dictated, in particular by too general and, sometimes, obsolete legislation on defamation and respect for private and family life and legal complexity of these legal relationships. Until the entry into force of the law, these relations were governed by the Constitution (art. art. 28, 32, 34 etc.) Civil Code (art. art. 16, 1422 to 1424), Code of Administrative Offences (Article 47 / 2 and 47 / 3), the Broadcasting Code (art. art. 14, 16, 52 etc.) Law on press (art. art. 4 and 27) and other laws. The general regulation of defamation and respect for private and family life have led to a legal practice granting, in particular, priority to honor, dignity, professional reputation and privacy, whereas freedom of expression was interpreted excessively formalistic and limited. As a result, by 2010, the European Court of Human Rights (hereinafter "ECtHR") found in more than 10 resolutions that defamation cases have been settled by Moldovan courts with violation of freedom of expression guaranteed by Art. 10 of the European Convention on Human Rights (hereinafter "ECHR"). According to the informative note to the draft law, adoption of the law "will significantly reduce the possibility of infringement of free speech in cases of defamation and violation of private life."

The law contains, on the one hand, provisions that relate to the scope of freedom of speech (content and principles of freedom of expression under the Council of Europe standards (which are not clearly defined in the legislation of the Republic of Moldova) (Article 3), specific aspects of mass media freedom of expression (art. 4), prohibition of censorship (Article 5), freedom to criticize the state and public authorities (Article 9), the right to privacy, including privacy of public persons (art. Article , 10 and 11), the effects of the presumption of innocence in relation to freedom of expression (Article 12), protection of sources (Article 13) etc..), and on the other hand, contains specific provisions of procedure, which requires to be observed in considering cases on defamation and respect for private and family life.

The law introduced the pre–trial settlement of defamation cases. Establishing this procedure aims to contribute to pre trial settlement of these disputes and ordering the parties involved. The Law also introduced additional requirements in relation to the form of the law suit, which will facilitate the examination of requests on defamation. The law explains the procedure of succession of the claimant in the defamation proceedings, limits action guarantee measures that can be applied in cases related to defamation, clarifies the burden of proof and presumptions to be applied in such cases, explains the procedure of publication of retraction and reply, the assessment of moral damage caused by natural and legal persons and circumstances which exclude liability for defamation. The law provides the procedure for examination of cases concerning the protection of private life while exercising freedom of expression.

Law on freedom of expression is an organic law. By means of this law, some provisions of the Law on Press, such as the provisions of art. 27, fell into disuse. Since the law was approved after adoption of the Civil Code, the contents of art.16 of the Civil Code should be interpreted in through the provisions of this law.

The law does not refer to the licensing of broadcasters.

This law will be interpreted in terms of the ECHR and ECtHR jurisprudence.

### Art. 1 The purpose and scope of the law

1. **This law has the purpose to guarantee the right to free expression as well as to provide an appropriate balance between the right to free expression and protection of honour, dignity, professional reputation and the right to respect for private and family life.**
2. **This law does not regulate the legal rapport referring to access to information, granting reply to electoral competitors in electoral campaigns and protection of copyrights and neighbouring rights.**

1. Freedom of expression and respect for private and family life are rights guaranteed by the Constitution (Article 32 and, respectively, art. 28) and the ECHR (Art. 10 and Art. 8 respectively). According to ECHR case law, individual reputation is part of the right to respect for private life (*Petrenco v. Moldova*, 30 March 2010).

Freedom of expression constitutes one of the essential foundations of a democratic society, one of the primary conditions of its progress. However, neither freedom of expression nor honor, dignity and professional reputation and private and family life are absolute and have no priority before the other.

When disseminating information aimed at a person, there is a risk that the person concerned will claim that his/her privacy was affected. Such a reaction should not lead automatically to limiting freedom of expression, which also applies to information that frustrates, shocks or disturbs (*Lingens v. Austria*, 8 July 1986, § 41). The correct solution in this case is a balanced decision taken thorough the analysis of all relevant elements on freedom of expression and privacy. This law tries to ease that decision.

2. The law does not regulate some similar categories of relations. Thus, in general, freedom of expression does not entail the obligation of authorities to grant access to information held. For this reason, the Law does not apply to the process of forced collection of information from public authorities, a procedure which is regulated by the Law on Access to Information.

Given the peculiarity of the electoral campaign, it was decided that the procedure for granting the right to reply to the candidates in the campaign will be regulated by the Electoral Code (Art. 64 para. 6). However, the Law will apply where the right of reply was requested after the completion of the campaign.

In case of an alleged violation of copyright, Law provisions are inapplicable. These disputes will be resolved under the laws on copyright and neighboring rights.

Although the regulations of the law are applicable to disseminating information through the Internet, the law provides no specific rules in this regard, largely because there are not yet well codified rules in this area.

In art.8 the law provides three situations where the safeguards against defamation cases are not applicable, and persons who disseminated the information enjoy immunity. These immunities have been introduced to ensure proper functioning of state mechanisms. However, the immunity from letter a) is a privilege of the function and not of the person holding the function. For this reason, immunity will not cover the statements made by the President and Members of Parliament outside their job.

### Art. 2 Terms and expressions

**The terms and expressions used in this law shall have the following meanings:**

***defamation* – dissemination of false and harming information about a person;**

***dissemination* – the process whereby information passes from a person to third parties (at least to one person, except the defamed one);**

***information* – any expression of facts, opinions or ideas in the form of text, sound and/or picture;**

***fact* – an event, process, phenomenon which took place in the past or takes place in the present in a specific place and time, whose truthfulness can be proved;**

***value judgement* – an opinion, comment, theory, idea which reflects an attitude towards a fact, whose truthfulness cannot be proved;**

***value judgement without sufficient factual basis* – a value judgement based on facts that didn’t take place or facts that took place but were distorted to falsehood;**

***insult* – a verbal or non-verbal expression which intentionally offences a person and is not in line with the generally-accepted moral norms in a democratic society;**

***censorship* – the unjustified distortion of journalistic material by the management of a media outlet; the unjustified ban on disseminating certain information, imposed by the management of a media outlet; orders given to the media outlet or its staff as to their editorial activity, or any form of barring the printing or dissemination of information, effected by the public authorities or persons occupying public functions.**

***information concerning private and family life* – any information, including pictures, concerning the family life, life at home, correspondence and its content, health and physiological deficiencies, sexual orientation and sexual life, as well as the behaviour of a person in circumstances when such a person has reasonable expectations of privacy;**

***public concern* – the interest of society (and not the sheer curiosity of individuals) in events related to the exercise of public power in a democratic state, or in other matters which normally arouse the interest of society or parts of it;**

***public authority* – an institution, agency or other legal person which is the exponent of the public power or provides services of public utility;**

***person exercising public functions* – a person exercising the functions of public power (executive, legislative or judicial), or administering the legal person which provides services of public utility;**

***public figure* – a person exercising public functions or functions of public concern, or any other person, the information about whom arouses the public concern due to his/her status or position in society or due to other circumstances;**

***document of a public authority* – a document issued by a public authority or by a person exercising the functions of public power;**

***communication by a public authority* – a statement made in public by a public authority or by a person exercising the functions of public power on behalf of a public authority;**

***mass media* – the means of mass communication, whether printed or electronic, and the journalist;**

***journalistic investigation* – a reasonable study of facts, conducted by the mass media, in order to produce a journalistic story;**

***retraction* – the refutation of defamatory statements about facts which are not true;**

***correction* – the volunteer presentation, of oneself or on demand, of the correct version of the facts which earlier have been presented erroneously;**

***reply* – the opinion of the person injured presented as a reply to the opinions included in a story disseminated by the mass media;**

***apology* – a statement by which a person expresses his/her regret for having disseminated an insult or information about a person’s private life;**

***hate speech* – any kind of expression that propagate, incite, promote or justify racial hate, xenophobia, anti-Semitism or other kind of hate based on intolerance;**

Terms used in this Law have an autonomous sense and in art. 2 the Parliament has defined some terms of the law.

1. It is *defamation* when false information harmful to the honor, dignity and / or professional reputation of the person is disseminated. There are three forms of defamation, disseminating reports about the facts, disseminating value judgments and insults. Elements of these three forms are listed in art. 7 of the Law.

The goal of establishing defamation is to allow protection of the "good name" of the person. The law does not protect the negative aspect of the honor or dignity. For this reason, in case of protecting a person's reputation in the criminal world it is not defamation.

There can be no defamation where third parties could not create a false impression about the person, such as when the information disseminated by third parties does not identify the person concerned. Article 7 of the Law expressly mentions this.

State and public authorities cannot start an investigation in a case of defamation (see art. 9 para. 2 of the Law).

2. *Dissemination of information* is the process of information transmitted to at least another person than the person affected by the dissemination. The way of disseminating information is less relevant, as long as the third party understands the information transmitted to him. Dissemination is not the transmission of information only to the injured person.

3. *Information* is any statement of fact, opinion or idea in a form that allows its understanding by other people. At the moment, information is transmitted as text, sound and / or image. The word "text form" means any written message, regardless of the message carrier.

4. A *fact* is an event, process or phenomenon that had or is taking place in concrete conditions of place and time and whose veracity can be proven. This term and the term *value judgments* were defined to distinguish forms of defamation and therefore the object of probation in a possible litigation (see art. 7 of the Law). One has to make a clear distinction between facts and value judgments. The existence of facts can be demonstrated, whereas the truth of value judgments is not likely to be found. The requirement to prove the truth of value judgments is impossible to fulfill and is a violation of freedom of expression (*Lingens v. Austria*, 8 July 1986, § 46). However, in case of opinions, the defendant may be required to demonstrate that his opinions are based on a sufficient factual basis, ie on certain facts. Sometimes it is difficult to determine whether a passage is an account of facts or opinions. The decision in this regard will be taken in the context of the passage used. Thus, the term "idiot" can mean in a certain context, a medical diagnosis of the person. In another context this word can be used against a person who, although is mentally healthy, proves lack of intelligence. In the first case it is actually an account of facts, and in the second case is the assessment of individual skills, i.e. an opinion. Article 25 para. 3 of the Act provide that any reasonable doubt in this regard is to be interpreted in favor of assigning the status of value judgments.

5. *Value judgment* is any opinion, comment, theory or idea that reflects the attitude towards a fact, whose veracity is impossible to prove. For more details on this see previous paragraph.

6. He who has disseminated his views may be held materially accountable if the *value judgement is without sufficient factual basis* ie if the value judgment is based on facts which did not occur or facts that have occurred, but whose exposure is distorted to falsehood.

7. *Insult* is the verbal, written or nonverbal expression that offends a person intentionally and is contrary to generally accepted standards of conduct in a democratic society. Insult refers to indecent language. It can only be committed with the intent to offend. In case of insult, it is contrary to "generally accepted norms of conduct in a democratic society". Once finding that the expression is contrary to these rules of conduct, the decision will be detrimental to the one who disseminated the information, because such language cannot be justified in a democratic society under any circumstances. The phrase "generally accepted rules of conduct in a democratic society" will be interpreted restrictively.

The term *insult* is used in the same sense as in art. 69 of the Contraventions Code. However, art. 69 does not explicitly define the concept. For this reason, Art. 69 of the Contraventions Code will be interpreted in terms defined in the Law.

8. Although the Constitution, in art. article 34. para. 5, prohibits censorship in mass media, the definition of "censorship" was given only in the law, after more than 16 years after the adoption of the Constitution. In the Law, *censorship* is "– the unjustified distortion of journalistic material by the management of a media outlet; the unjustified ban on disseminating certain information, imposed by the management of a media outlet; orders given to the media outlet or its staff as to their editorial activity, or any form of barring the printing or dissemination of information, effected by the public authorities or persons occupying public posts Censorship can take two forms: a) the prohibition of disseminating or distortion of information by the management of the media institution, and b) interference with the editorial work of the media institution or its employees or preventing the distribution or disseminating information by public authorities or persons exercising public functions.

In case of the first form, one does not mean any interference in journalistic work, but only those which cannot be justified in terms of journalistic ethics or technique. The phrase "mass media management" refers both to the administrator of the media institution and other people in the media institution who can intervene, by virtue of their duties in the contents of journalistic material or prohibit the dissemination of this material.

Interference by public authorities or persons exercising public functions cannot be justified under any circumstances. Public authority is any organizational structure or body established by law or by a legislative act, acting as a public power in order to achieve public concern. The term "person holding public office" has an autonomous meaning and is defined below.

The law contains a special article on the prohibition of censorship (Article 5). For more comments on censorship see comments on this article.

9. Disseminating information about an individual can affect his private life or family. Legal entities cannot have "private" or "family" life. Neither the Civil Code nor any other legislation define what should we mean by *'information on private and family life"*. The law defines the information about private and family life as any information, including images, on family life, home life, correspondence and its contents, health and physical defects, sexual orientation and life of the person, while the person counts reasonably, on privacy.

The law defines comprehensively information items falling under the term 'information about private and family life ".A state employee may not invoke privacy in the sense of this law to prohibit being filmed while in a public place.

Private and family life does not end at the door of the home. The person is entitled to the right to privacy when being in public places when one takes measures to protect privacy. If the person intentionally isolated in an area with limited visibility in a public place this will be interference in his private life. However, the fact that there has been an interference with private or family life it should not automatically mean that the interference is unjustified. In each concrete case it should be determined whether the public concern in knowing this information outweighs the interest of the person concerned not to disseminate information (see art. 33 para. 1 of the Law).

Application of legal sanctions or dismissal on dishonorable grounds is not included in the category of private information whose dissemination is sanctioned. Although it's unpleasant information, knowing it may be important in defending the interests of other individuals.

The right to respect private and family life does not extend to information about private and family life disseminated with the consent or acquiescence of the person or obtained in public places when one cannot rely reasonably on privacy (see art. Article 10. 2 of the Law). Thus, this right shall not extend to information in the CV of the person placed with its consent or acquiescence on a web page with unrestricted access.

10. Freedom of expression aims to inform the public about matters of public concern. *Public concern* in the sense of the present law, is the concern of the society (and not mere curiosity of individuals) into the events related to exercising public power in a democratic state or to other matters that normally arise the interest of society or a part of it. The exercise of public power is always a matter of public concern. On the other hand, certain situations, which usually do not raise any public concern could due to certain events become public. Thus, certain data about private life, such as, for example revenues of the individual, could become public after the person decides to run for public office, even if until then there was no public concern in knowing this information. The greater the public concern the more justified is the interference with the right to respect private and family life.

The phrase "public concern" should be interpreted broadly. This interest can come from the whole society or a part thereof. However, public concern is not a mere curiosity of individuals. According to art. 25 para. 2 of the Law, any reasonable doubt about the status of public concern or curiosity shall be construed in favor of granting the status of public concern.

11. As reflected in art. 11 of the Law, persons exercising public functions should show greater tolerance towards the press in the interest of their work, and sometimes even private life. On the other hand, according to art. 28 of the Law, the press will not be held responsible for reporting statements made by persons exercising public functions at meetings of public authorities. *A person exercising public function* is the natural person who exercises public functions (executive, legislative or judicial) or natural person who administers the legal person that provides public services or to its subdivisions.

12. In addition to the phrase "person who performs public functions", the Law uses the phrase "*public person"*. Public person is the person exercising public functions or another person who by virtue of status, social position or other circumstances raises public concern. Public bodies must show greater tolerance towards the media in terms of interest about their work and their private life. However, this does not mean that public persons have no right to respect their private and family life (for more details on this see *Von Hannover v. Germany,* 24 June 2004).

The element that raises public concern may be the status of the person (position held), social position (belonging to a notorious family or the notoriety of the person itself) or any other circumstances. Depending on the item that raises public concern, public figures can be "perfect", ie the public concern always remains on them, and "imperfect", to which the public concern vanishes with the change of status or social position of the person. An example of "perfect" public persons could be the royal family. Public officials or celebrities fashionable figures are examples of "imperfect" public figures.

Unlike the "person holding public office", which can be only one person, "other persons who because of status, social position or other circumstances arouse public concern" can be both individuals and businesses. In the case of *Timpul and* *Anghel v. Moldova*, ECtHR has applied the concept of public figure as well to a private company that decided to participate in transactions involving significant public funds (*Timpul and Anghel v. Moldova*, 27 November 2007, § § 33 and 34).

13. Society must have confidence in public administration. For this reason, it can assume as true any information received from the public authorities. Public authorities can disseminate this information through documents or communications. The press will not be liable for simply taking over the information from this document or communication, even if it is found later that false information was disseminated (see art. 28 para. 1 letter. a) of the Law).

*A public authority document* is the document issued by a public authority or a person exercising functions of public power. *Communication of the public authority* is a statement made by a public authority or on its behalf by a person exercising public functions. While the document is written, the communication is made orally.

The fact that subsequently it was found that the document was issued by another person from the public authority than the one who had the right to issue does not remove the immunity of the press. The guarantee of art. 28 para. 1 letter. a) of the Law extends only to the communications made on behalf of public authority. It does not apply to communications made by the person exercising public functions of its own, a situation which falls under Art. 28 para. 2 letter. a) of the Law.

14. *Mass media* as defined under the law is the means of mass information, printed or electronic, as well as the journalist. To this end, the legal form or the accreditation of the person is irrelevant, as long as it proves that he/she is performing journalism.

15. According to journalistic ethics, mass media must reasonably investigate the information prior to dissemination, ie to carry out an investigation (see art. 4. 2 of the Law). *Journalistic* *investigation* is a reasonable investigation of the facts by the media institution to prepare a journalistic material. The journalist should not become a second prosecutor and clarify all the facts. Before dissemination, in order to investigate the information to be disseminated, he must only take measures considered reasonable. Reasonable does not mean all possible measures, but only those that can be dictated by technical and journalistic ethics, given the limited possibilities and limited time available to journalists. In each concrete case, one will examine whether the measures were reasonable. If the measures were not reasonable, it shall be deemed that the journalist has not honored its professional obligations and is not entitled to the guarantees provided by Art. 29 para. 5 of the Law.

16. After finding that a person has been defamed or his privacy was violated, the affected person can be compensated by monetary compensation and non-proprietary remedies. Thus, if the media institution sees before the judge identifies that that the facts have been presented previously in wrong light; it can make a *correction*, voluntarily, on its own initiative or upon request. Opinions cannot be corrected.

The person who is considered adversely affected by dissemination of reports about the facts may request retraction of facts. Unlike correction, which requires clarification of inaccuracies, retraction is infirming of false facts prior disseminated. Retraction can be ordered in case of disseminating value judgments, when the value judgment was not based on a sufficient factual basis (see art. 7 para. 5 of the Law). In this case, the facts on which the value judgments was based will be retracted, and not the value judgment. The text of the retraction will be indicated in the law suit (see art. 18 para. 3 of the Law). The retraction procedure is provided for by art. 26 of the Law.

In case of disseminating value judgments without a sufficient factual basis by the media, the person may request the right to reply. The *reply* is the answer of the affected to the views expressed in a disseminated material. The right of reply shall not be granted in case of reports regarding the facts, and if the judgment value was not disseminated by the media. The procedure of making a reply is provided by art.27 of the Law.

In case of an insult or dissemination of information about private and family life, the person affected may request apologies. *Apology* is a statement by the person who expresses regret for the insult or disseminating information about private and family life. The procedure of expressing apologies is not provided by the law.

17. *Hate speech* is any form of expression that causes, propagates, promotes or justifies racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance. This phrase will be interpreted through the recommendation of the Committee of Ministers of the Council of Europe (97) 20 Member States on "hate speech". Guarantees of freedom of expression do not extend to this speech (see art. 3. 5 of the Act). This speech is prohibited by the Broadcasting Code as well (art. 6 para. 1).

Art. 3 Freedom of expression

**(1) Any person has the right to freedom of expression. This right shall include freedom to seek, receive and impart facts and ideas.**

**(2) Freedom of expression protects the content of the information expressed, as well as the form in which it is expressed, including the information that offends shocks or disturbs.**

**(3) The exercise of freedom of expression may be subject to restrictions as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.**

**(4) Freedom of expression may not be limited unless this is necessary to protect a legitimate interest as per para. 3 and only when such limitation is proportional to the situation requiring it, with observance of the just balance between the protected interest and freedom of expression, as well as the public’s right to know.**

**(5) The guarantees regarding freedom of expression do not cover the hate speech or that inciting to violence.**

1. Freedom of expression is one of the foundations of a democratic society, ensuring its development and self-realization of each person (*Handyside v. United Kingdom*, 7 December 1976, § 49). A special role in this respect is that of the press, which is “a public watchdog" of democracy. For this reason, freedom of expression of the media enjoys additional guarantees (see art. 11 Para. 3, art. 13 Para. 1 or art. 28 Para. 2 of the Law). Not only does the press have the task to communicate information of public concern but the public is entitled to receive it (see art. 6 of the Law, *Observer and Guardian v. the United Kingdom*, 26 November 1991, § 59). The term "person" in Para. 1 refers to both individuals and the legal entities.

Freedom of speech includes freedom to seek, receive and communicate information. Since it is a "freedom", it does not oblige the state to provide information. However, if the State creates public broadcasting institutions, it is obliged to enact legislation to ensure its editorial independence (*Manole and others v. Moldova*, 17 September 2009).

When a person disseminates the information, freedom of expression is applicable even if the disseminated statements belong to a third party. Freedom of expression is even applied when the person is punished for having submitted limited access information to an unauthorized person *(Guja v. Moldova*, 12 February 2008, § § 50-53). It covers the artistic or commercial expression. Freedom of expression is applicable in case of obliging journalists to disclose their sources (Goodwin v. the United Kingdom, March 27, 1996) or searching the journalist's home for that purpose (*Roemer and C. Schmidt Luxembourg,* 25 February 2003).

Not only preventing the dissemination of information, but subsequent punishment for dissemination of information or jeopardizing future journalistic work is an interference with freedom of expression. In this respect, it is not relevant to what extent the person was discouraged to disseminate information or severity of sanctions. Thus, in the case of *Thoma v. Luxembourg* (decision of 29 March 2001) ECtHR found that there has been an interference with freedom of expression, when the defendant was obliged to pay compensation for defamation in the amount of one Luxembourg franc. In extreme cases, freedom of expression may require the state's obligation to protect journalists from violent acts or threats of violence.  
It is not freedom of expression when the person seeks or receives information without the aim to disseminate it further.

2. Freedom of expression does not refer only to a certain category of information or forms of expression (*Hadjianastassiou v. Greece*, 16 December 1992, § 39). It refers not only to reports of facts and opinions that are favorably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb the State or any part of the community (*De Haes and Gijsels v. Belgium*, 24 February 1997, § 47). When a person wants to disseminate information, the State cannot dictate or criticize the form in which this information is disseminated.

3. The state should not intervene in the process of searching and receiving information for the purpose of disseminating, or the communication of information such as provided in par. 3 and 4 of this article. Par. 3 provides three conditions to restrict freedom of expression: the restriction should be "*prescribed by law*", pursue one or more of the purposes specified in this paragraph and be "*necessary in a democratic society*". The phrase "prescribed by law" has the meaning of that phrase in Art. Article 10. 2 ECHR, ie to be interpreted broadly, refers to both legislation and other normative acts. Legitimate aims listed in par. 3 are the same as those of art. Article 10. Para. 2 ECHR and have the same meaning.

4. Para. 4 depicts the phrase "necessary in a democratic society". This is to be interpreted in the light of ECtHR case law.

5. Guarantees of freedom of expression do not extend to hate speech or hatred or violence. The term "hate speech" is defined in art. 2 of the Law. The phrase "speech that incites to violence" defines the speech that calls for violence, followed by actions of the person aimed to generate violence. The call to change through nonviolent methods of governance is not "speech that incites violence".

**Art. 4 Mass media freedom of expression**

**(1) The state shall guarantee the freedom of expression of mass media. None can prohibit or prevent mass media from disseminating information on matters of public concern, unless so prescribed by law.**

**(2) Mass media has the task to inform the public on matters of public concern and carry out, in a manner corresponding to its responsibilities, journalistic investigations on matters of public concern.**

**(3) In addition to the guarantees provided in para.3, mass media freedom of expression also covers possible recourse to a degree of exaggeration, or even provocation, provided that the exaggeration or provocation do not distort the substance of facts.**

1. Freedom of expression is guaranteed both in art. 4 of the Act, as well as in art. 32 of the Constitution. Mass media may be prohibited to disseminate information only in the manner provided by law. The law, in art. 22, provides as an action guarantee measures the ban on dissemination of disputed information. Even after the journalistic material has been prepared, the law allows, as an action guarantee measures, the seizure of the print run that contains the disputed information. Article 6 Para. 3 of the Law also allows for the confiscation and liquidation of the media in question. All these prohibitions are necessary in the process of execution of justice. Executive power alone cannot prevent the dissemination of information, this represents censorship.

2. The task of mass media is to inform the public about public information. In the process of accumulation and dissemination of information, it must comply with professional obligations. These are set out in the Code of Ethics for Journalists in Moldova, signed in the new version on 7 June 2011 (the "Code of Conduct"). This refers to the accuracy and verification of the facts, separating facts from opinions and commercial communication, the obligation to correct errors and granting the right of reply, denouncing censorship, protection of journalistic sources and journalists’ relationship with sources of information, privacy, the presumption of innocence and rights of minors, vulnerable persons and discrimination. In the process of gathering information to ensure its accuracy, journalists make use of journalistic investigation. The phrases "investigative journalism" and "public concern" are defined in art. 2 of the Law.

3. The media is the "watchdog of democracy". This task cannot be performed effectively without some degree of flexibility granted to the freedom of expression of the media. Information disseminated by the media may contain exaggerations and even challenges, but must be sufficiently precise so as not to misinform. The inaccuracy that does not misinform and if it does not change the essence of facts (e.g. journalist reported a theft. The person concerned in the article does not dispute that theft, but claimed that the alleged theft size was shown incorrectly).

##### **Art. 5 Prohibition of censorship in mass media**

**(1) The editorial independence of mass media is provided and guaranteed by law. Censorship is prohibited.**

**(2) Any interference in the editorial operation of mass media is prohibited unless so prescribed by law. Where such a prohibition is provided by law it shall be interpreted restrictively.**

**(3) It is prohibited to establish bodies of public authority with the purpose of exercising prior control over the information to be disseminated by the mass media.**

**(4) Shall not be considered censorship the obligation imposed by a court final decision to disseminate or withhold dissemination of certain information, as well as the obligation imposed by law to disseminate certain information.**

**(5) Censorship or any other way of constraining mass media to disseminate, to not to disseminate or partly disseminate certain information shall incur administrative liability.**

**(6) Intentional hindrance of the mass media activity, intimidation or illegal prosecution of mass media shall incur criminal liability.**

1. According to Article 34, Para 4 of the Constitution, public and private mass media is obliged to provide correct information to the public. The term "correct" refers to ethics compliance. Article 5. Para. 1 of the Law guarantees the editorial independence of public and private media and prohibits censorship within those. Editorial independence refers to the process of search and communication of facts or ideas, i.e preliminary control of information. It does not exclude consequent sanctioning of the media for dissemination of information. The term "censorship" was defined in art. 2 of the Law. Censorship can be applied to both public and private media. However, Para. 5 refers to criminal liability only in the public media censorship.

2. Para. 2 limit the interference in media activities only to situations provided by law. The term "law" in this sense, is synonymous with the term "legislation". However, this legislation must be sufficiently clear to exclude arbitrary. Para. 2 allows only narrow interpretation of these provisions.

3. Para. 3 prohibits the creation of public authorities for prior control of information to be disseminated by the media. But it does not prohibit the creation in the media of units responsible for compliance with journalistic ethics and technique.

4. The obligation to disseminate information imposed by court order shall not constitute censorship (e.g. publication of retractions) or not to disseminate information (e.g. prohibition under art. 22 para. 3 letter. a) of the Law).

The obligation imposed by law requiring disseminating certain information shall not be considered censorship (e.g. broadcasting announcements provided by art. 17 of the Broadcasting Code). However, the law should provide for such an obligation only for emergency situations and for general interest.

5. Para. 5 suggests that censorship in the public media and illegal deliberate hindrance of media activity should constitute a crime. The draft law was accompanied by a draft to supplement the Criminal Code. However, that draft was submitted in a separate legislative initiative, which has not yet been considered by Parliament.

# Art. 6 Public` s freedom to be informed

**(1) Any person has the freedom to receive information of public concern via mass-media.**

**(2) Protection of honour, dignity or professional reputation shall not prevail over the freedom of the public to receive information of public concern.**

**(3) Seizure of the print run or liquidation of mass media may only be ordered by court in a final decision if it is necessary in a democratic society in the interests of national security, territorial integrity or public safety, for preventing the disclosure of state secret information.**

1. Para.1 establishes a person's right to receive information disseminated by the media. However, this right cannot be interpreted as an obligation of the media to transmit information to the public or a specific person or a certain type of information requested by the person.

2. Honor, dignity and reputation of the person are values ​​protected by law. However, this does not mean that they prevail over freedom of the public to receive information of public concern. Although Art. 32 Para. 2 of the Constitution is not very explicit in this respect, this norm must be interpreted in terms of international treaties to which Moldova is party, including art. 10 of ECHR. In each case, the solution is to be taken as prescribed by art. 3. 4 of the Law.

3. Seizure of the print run or liquidation of the media in question can be as extreme measures, ordered by a court. However, these measures should be dictated by national security, territorial integrity or public safety or to prevent disclosure of information constituting state secret. Approval of these measures to protect other legitimate aims listed in Art. 3. Para 3 of the law are not allowed. The fact that national security is affected does not mean that confiscation of the print run or liquidation of the media can be ordered automatically. The measure must be strictly "necessary in a democratic society", i.e. convincing justification that the danger could not be removed reasonably, by other measures. In the case of *Kommersant Moldova vs. Moldova* (Decision 9 January 2007), the ECtHR found that while articles published in the newspaper were not liked by the Executive, the liquidation of the newspaper was contrary to art. 10 of ECHR on the grounds that "the courts did not specify which elements from the articles of the claimant were problematic and how they endangered national security and territorial integrity of the state or defamed the President and the State. In fact, courts have avoided any discussion of the need for interference. "

### Art. 7 The right of an individual to protection of honour, dignity and professional reputation

1. **Any person is entitled to the protection of his/her honour, dignity and professional reputation injured by the dissemination of information based on false facts or value judgements without sufficient factual basis, or by slander.**
2. **Any person injured by dissemination of factual information may have his/her rights re-established if the following conditions are met cumulatively:**
3. **the information is false;**
4. **the information is defamatory;**
5. **the person to whom the information refers can be generally identified.**

**(3) The person injured by the dissemination of information concerning false facts may require the retraction or correction of the information disseminated and the compensation of moral and material damages caused.**

**(4) Any person injured by the dissemination of value judgements may have their rights re-established if the following conditions are met cumulatively:**

1. **the value judgements are not based on sufficient factual basis;**
2. **the value judgements are defamatory;**
3. **the person to whom the information refers can be generally identified.**

**(5) In the case of value judgements lacking sufficient factual basis, the person injured may require the retraction or correction of the information, or the publication of a reply, and the compensation of moral and material damages thus caused.**

**(6) An insult is when the following conditions are met cumulatively:**

1. **the verbal, written or non-verbal expression does not correspond to generally accepted norms of civilised behaviour in society;**
2. **the expression concerns a generally identifiable person.**

**(7) In the case of insult, the person thus injured may require apologies and the compensation of moral and material damages caused.**

**(8) Nobody shall be held liable for the use of humour and satire unless such styles mislead the public as to the facts.**

Article 7 of the Law on freedom of expression has a name similar to that of art. 16 of the Civil Code and seeks to crystallize and detail its provisions. The name of the article can be considered as excessive in relation to the limited scope, but was preserved by the authors under the existing legal traditions of Moldova.

1. Para. (1) clarifies the scope of the article. Thus, the article distinguishes three types of injury to the honor, dignity or professional reputation it covers: a) disseminating false reports about the facts, b) distribution of value judgments without sufficient factual basis, and c) insult. Each type has different rules for the defense of the person harmed by this information. Even if these conditions are met, the state and public authorities can not start defamation actions (see art. 9 Para. 2 of the Law).

2. The first category of information is referred to in Para. (2) and (3). The meaning of "fact" was given in art. 2 of the Law. The account of the facts, i.e. communication about an event, process, phenomenon that occurred in the past or currently occurs in concrete circumstances of place and time can be both true and false. If that does not correspond to reality and violates the honor, dignity and professional reputation of any person, the person disseminating the information is liable legally.

Restoring the rights of a person will only be done if it was found that the information was false. Verification must be made in relation to the time of dissemination and not in relation to when the court decision was issued. If public information is disseminated by the media in good faith and respect for other professional obligations, material liability will not be ordered (see art. 29 Para. 5 of the Law).

Defamatory nature of the information is not presumed. This must be proved by the claimant (see art. 24 Para. 1 letter. B) of the Law). Usually information that tells about violations of the laws and rules of coexistence (morality), and thus makes a person be condemned morally by public opinion or some individuals in particular is considered defamatory. The legislator did not specify which the defamatory information is. Such a list would not be welcome, because it would unduly restrict the protection of honor, dignity and professional reputation of the person. On the other hand, determining the nature of the defamatory information is, in many cases, a difficult task to judge. Some information can be described both as defamatory and deprived of this feature, according to the perception, the subjective assessment of the actual situation, the context, and people among whom the information is disseminated. And since "defamation" is a relative phenomenon, setting it requires a thorough examination, detailed analysis of the parties' arguments. In case of reasonable doubt as to whether the information is defamatory, the situation will play against restricting freedom of expression (see art. 25 para. 6 of the Law).

The request of the person to defend his right will be rejected if the information disseminated does not allow reasonably identifying it by an objective and well informed observer. To talk about a "specific person" does not require naming him/her; it is enough that it can be identified without fail in the context of communication. However, one cannot start a legal action to defend honor, dignity or professional reputation of a general number of people, such as people, the population of the administrative unit, or a social group.

If the source or author of information dissemination is not known, there will be filed a request under the procedure on finding facts that have a legal value (see art. 14 par. 2 of the Law). In this case, neither compensation will be sought, nor retraction will be claimed. A court decision will ascertain that information disseminated is false or value judgments are not based on a sufficient factual basis.

3. Legal liability for false reports about the facts may be exercised by two means: 1) correction or retraction with regard to the information, 2) moral and material damage caused. Legal liability will be imposed only if all three conditions listed in Para. 2 have been met.

Both correction and retraction are defined in art. 2 of the Law. Since the correction can be done only voluntarily and only until the admission of the action, it cannot be ordered by the judge through a decision the decision will only order the retraction of information.

In determining the material damage, the provisions of the Civil Code will be applied. In case of moral damage compensation art. 29 of the Law will be applied. If, after completing the examination of the case by the first instance, there will still be a reasonable doubt about the existence and volume of moral damages, the court will award compensation in the amount of 1 leu (see art. 25 Para. 4 of Law).

Injured person can seek compensation for moral damage without seeking a retraction or correction. However, even in this case in the law suit one should indicate the injuring information, and the court must determine if it meets all three conditions listed in Para. 2.

4. Par. (4) and (5) refers to the dissemination of "value judgments without sufficient factual basis". This phrase is defined in art. 2. The ECtHR case law calls them «excessive opinions". Value judgments can be precious or worthless, negative, founded or unfounded, compelling or questionable, progressive or reactionary, etc. They cannot be retracted by the decision of the court. They can be discussed by controversy, i.e. answer (reply, comment).

According to ECtHR case law, where a value judgment is based on facts, it should not be considered defamatory as long as the facts are reasonably accurate and provided in good faith and as long as the value judgment is not intended to lead to a false conclusion, even if this is possible. Legal liability will be employed only if all three conditions are met as listed in par. (4). For more details see this comment in Para. 2.

5. The legal regime for the restoration of rights injured in case of excessive opinion is similar in case of reports of false facts (see comments in Para. (3), except that in this case one adds the option of publishing a reply option, for the case when the injured person will consider that it is not the correction, retraction, but rather a reply will restore the proper rights violated. If the right to reply is granted the retraction will not be granted. The rules on the performance of a reply are set out in art. 27 of Law.

6. Par (6) provides conditions that can held liable for any personal insult. The term "insult" was defined in art. 2 of the Law. Before adopting the law, the liability for insult was not expressly provided for in the civil law, but was mentioned by the Code on contraventions.

7. Insults cannot be "repaired" by retraction, correction or reply, as this would be either immoral (in case of reply) or absurd (in case of retraction). Therefore the only way to restore the right violated is expressing an apology. The term "apology" is defined in art. 2 of the Law par. (7) and art. 33 Para. (2) are the only cases where an apology may be required under a legal standard, or, in other cases of defamation - the false information or excessive opinions - the legally required and apologies cannot be granted. Sure, they can be made voluntarily, but this relates to the moral dimension of the person.

8. Par. (8) provides that "no one shall be held liable for humorous and satirical style if its usage does not mislead the public about the facts". Humorous and satirical genre allows a higher degree of exaggeration and even provocation. Moreover, to provoke and cause agitation is the very essence of satire. Thus the authors and disseminators of the parody and caricature are protected. However protection exists as long as it does not misled the public about the facts. In other words, in context, from the notes clearly visible from the newspaper or Internet sites one should make it clear that the facts presented is a satire, a parody, not a scenario that actually took place. There are cartoons, satire that are not acceptable in a democratic state not because they are defamatory or misleading, but because their message is destructive and reprehensible and is found in other legal actions. For example, in *Leroy v. France* (decision of 2 October 2008), the ECtHR examined a drawing that refers to the events of September 11, 2001 in the United States of America, when there were terrorist attacks directed against the WTC. Thus, two days after the attack, drawings were published symbolizing the attack (four high-rise buildings which collapsed in a cloud of dust after being pierced by two planes). The drawing was accompanied by a text that was a paraphrase an advertising slogan of a famous trademark, "We have all dreamed of this ... Hamas has done it" In France, the cartoonist has been punished for complicity in condoning terrorism, and the ECtHR found the penalty were relevant because the intentions of the claimant were alien to persecution and terms used show that the claimant judged favorably of violence directed against thousands of simple people.

**Article** **8.** **Immunity in defamation cases**

**A defamation law suit cannot be started for statements made by:**

**a) the President of the Republic and Members of Parliament in exercise of their mandate;**

**b) by participants in the trial, including witnesses, criminal investigation body or the court in a criminal investigation or a trial;**

**c) in requests, letters or complaints regarding the violation of rights and legitimate interests, filed with public authorities for examination.**

There is a category of relationships that have immunity against defamation processes. This is explained by the need that in certain circumstances, some people mast have an absolute free speech. Similar immunities are provided by art. 71 and 82 of the Constitution. Article 8 lists exhaustively these types of relationships.

a. The President and MPs of the Parliament of Moldova are granted immunity in cases of defamation. However, immunity refers only to statements pertaining to the mandate. "Exercising the mandate" should be understood as a functional exercise, and not the term of office for which they were elected. This was emphasized in the Constitutional Court decision no. 8, 16 February 1999. Although it is sometimes difficult to distinguish when the defamation is made during the mandate, the context, content, purpose and time of the declaration will ease this task. Thus, a statement made in a Parliament session or in a formal speech will be one in the exercise of the mandate. But if it's a celebration or a private interview relating to matters that are not related to job descriptions, we cannot speak of "mandate". Such immunity does not contravene the right of access to justice guaranteed by art. 6 ECHR (see for more details dec. *Kart v. Turkey*, December 3, 2009).

Sure that the President, and members, as political actors, are in a constant struggle for power, and during the mandate may commit abuses by their statements. If they occur, they are regrettable. In a democratic society they can be controlled by other means, usually through the media. Sanctions that will follow can only be political.

b. Let. b) refers to statements made in legal proceedings. This immunity was established to facilitate the examination of criminal, civil or administrative cases. Immunity extends to statements made by persons involved in the prosecution or court proceedings. That does not mean that the parties or witnesses have the right to mislead the authorities without being punished. Crimes against justice (Chapter XIV of the Criminal Code of 18.04.2002) such as false denouncing, false declaration, etc.., remain applicable to exclude causing excessive damage in this highly sensitive area. But offense is only that action which is intended to mislead the criminal prosecution body or court. If this intention does not exist, the person will not be liable to any civil liability for defamation or criminal liability for committing crimes against justice. In the case *Mariapori v. Finland* (decision of 6 July 2010), the ECtHR ruled on the sanctions for alleged defamation made by a witness in court. The Court hinted that limiting freedom of expression of a representative of one party (the defendant in this case) may be considered necessary in a democratic society only in exceptional cases. Although the parties' freedom of expression should not be unlimited, from considerations of finding the "equal footing" and the like, you can opt for the free exchange of views between the parties. Moreover, contradictory nature of procedures gives the other party the opportunity to discredit the accusations coming from a party.

Let. b) reflects on the alleged defamation by the information contained in judicial decisions in the minutes of the hearing, the ordinances of the prosecution and those empowered to resolve cases of administrative offenses. For their challenge one may exercised remedies against the act in question.

Immunity conferred by letter. b) is a privilege of procedures, not of the people who appear in these proceedings. For this reason, it extends only to the defamation made in legal proceedings. Any statements made outside the court or criminal measures will not benefit from this immunity.

C. Let. c) refers to all types of addresses (calls, letters, complaints, etc.). the authority to examine and solve various issues related to the violation of rights and legitimate interests. To this end, it is irrelevant whether the letter was satisfied or not. It is important that a letter be addressed to public authorities, even if it is not competent to solve it.

These letters may refer to individual aspects (complaints against authority / person who have violated petitioner's right) or more general (e.g., notification that someone was bribed in a particular institution or someone committed a crime). In the case *Siryk v. Ukraine* (decision of 31 March 2011), ECtHR examined the situation in which the claimant sent to the State Tax Administration of Ukraine a letter complaining about the management of the State Tax Service Academy, in the subordination of State Tax Administration in which her son was a student before being expelled, accusing the management that it would be involved in illegal activities and corruption. The claimant filed the complaint with superiors through private correspondence and did not make public her displeasure. A lady, who at that time was senior vice president of the Academy, initiated defamation against the claimant and won. ECtHR reiterated that a citizen can notify the competent state authorities officials whose conduct they find to be illegal and irregular conditions is one of elements of a state of law. A slightly different situation was examined by the ECtHR in the case *Şofranchi v. Moldova* (21 December 2010).

Publication in the press of such letters, at the petitioner's initiative, together with addressing them to authorities changes the situation radically. In this case, it is clear that petitioner's purpose is not to simply ask the competent authorities to do their duty however one wishes the coverage of one’s own position. Thus, immunity does not apply and the case will be examined in general, like any other disseminated statements.

When receiving a law suit from which it is clear that the statements were made in the circumstances mentioned in art. 8, the law suit will be refused under Art. 169 par. 1) of the Civil Procedure Code. If the judge is not sure whether defamation has been made "in the mandate" or during "legal proceedings", the judge will start the case, will clarify this further and if it finds that the immunities will be applied, will stop by closing the process under art. 265 a) of the of the Civil Procedure Code.

**Art. 9 The freedom to criticise the state and the public authorities and persons holding public positions**

**(1) Any person shall have the right to criticise the state and the public authorities.**

**(2) The state and the executive, legislative and judicial authorities may not file law suits on matters of defamation.**

**(3) The state and the executive or legislative authorities shall not be protected by either criminal or administrative law against defamatory statements.**

**(4) The persons exercising public functions may be subject to criticism, and their actions verified by the mass media concerning the way in which they exercise or have exercised their functions, if this is necessary in order to ensure the transparency and responsible discharge of their functions.**

1. Article 9 clearly underlines the general right to criticize the state, public authorities and persons exercising public functions. This article must be viewed in the context of art. 4 and 6, which refer to the role of the media in a democratic society and the public's right to be informed on all matters of public concern - both positive and negative. It is assumed that any criticism that aims at the state and public authorities is of public concern, that prevails in all circumstances, motivating a general prohibition of civil actions for defamation and partial protection in criminal and minor offense (the exception is the body of justice, which may be protected by criminal law and contravention).

2. Par. 2 provides that the State as a legal entity, and public authorities as legal entities, cannot start civil defamation actions. It is considered that the State or public authorities may not have the legal sense, professional reputation. This does not refer to persons exercising public functions (see Para. 4).

3. Par. 3 refers to the kind of defamation of public authority which may result in contravention or criminal liability. It is assumed that only the judicial authorities could be protected by criminal law against defamatory or minor offense, not the executive, legislative or the state as a legal entity. Therefore, damage to the image of the state cannot be considered as a circumstance that would affect qualification or punishment by public law.

4. Par. 4 deals with the criticism of persons exercising public functions. The term "person holding public office" is defined in art. 2 of the Law. They are protected against defamation. However they have to bear criticism, as long as it is about exercising their powers responsibly. Where criticism is directed against the government, politicians and public authorities there is a likelihood of enunciation of violent expressions of harsh criticism that will be tolerated by the ECtHR to a greater extent. Even if people holding public positions are not politicians, their level of tolerance is not as high, in terms of their professional activity, the media has a right to comment at large, including in a very critical manner.

For example, the decision *Thorgeirson v. Ireland* (25 June 1992), , it was ascertained that, although the article contained very violent terms - police officers were characterized as "beasts in uniform", "individuals reduced to a mental age of a newborn as a result of immobilization methods learned and used by police brutality spontaneous and those employed to guard restaurants "and police references to" intimidation, forgery, unlawful actions, superstitions, arrogance and stupidity "-the language used could not be considered excessive, considering the fact that the articles in question related to police reform.

There are people who, while exercising "private" functions shall be treated as persons exercising public functions, if the institutional dimension and the importance of functions performed is high. Thus, for example, the European Court in *Chalabi v. France* (decision from 18 September 2008) recognized that the statutory manager of the Grand Mosque in Lyons was such a person and therefore falls under the standards applicable to public figures.

Although the limits of acceptable criticism against political figures and public officials holding public functions are wider than for individuals, the level of tolerance is lower in relation to judges (see dec. ECHR *Nikula v. Finland*, 21 March 2002). They can be criticized, but free criticism is not tolerable due to the special role that justice holds in society and the confidence it must enjoy in the public eyes in order to successfully carry out their obligations. That is why, in order to protect this confidence against destructive attacks that would be unfounded, art. 9 provides the possibility of applying criminal sanctions for defamation of judges. That does not mean that journalists should be afraid to criticize judges, as long as they are intended to inform the public about topics of general concern, are in good faith and properly investigate the facts. Excessive terms enjoy greater protection in cases when they come in response to the provocation launched by related subjects.

### Art. 10 The right to privacy and family life

**(1) Any person shall have the right to privacy and family life.**

**(2) The right to privacy and family life shall not concern the information, including pictures, regarding the private and family life of a person, disseminated upon the approval of the person concerned, as well as the information gathered with the awareness of the person concerned or in public places where the person concerned did not have a reasonable expectation of privacy.**

**(3) Nobody shall be held liable for making public the information about the private and family life of a person if the public concern to know prevails over the interest of the person concerned not to have such information disseminated.**

**(4) If information on the private and family life of a person has been disseminated unjustifiably, in breach of Para. 3 the person concerned may claim apologies and compensation for the moral and material damages caused**

1. Article 28 of the Constitution is extremely general. Article 10 of Law aims to detail the right to respect for private and family life, stating clearly its limits in relation to the right to freedom of expression. The phrase "information about private and family life" is defined in art. 2 of the Law. Unlike the rules on defamation, in case of information about privacy and family, they are true, may not be defamatory, but their confidentiality may be dictated by the interests of the person concerned.

2. Although it is information about private or family life, the person may not claim their protection if they were disseminate with consent. Consent of the person may be express as well as tacit. If the information appears in a public place and the person ought to reasonably know this, but did not react, its consent is presumed.

The right to respect private and family life does not extend to information about private and family life achieved in public places when a person can not rely reasonably on privacy. For more details in this regard, see ECHR judgment in the case of *Von Hannover v. Germany* (June 24, 2004).

Privacy goes beyond the home and covers situations where the person can reasonably count on privacy. A restaurant, a hotel, a pension, even a public discreet park are places where person may reasonably rely on privacy, if the desire for intimacy can emerge reasonably to third parties. If the park is intensely circulated or there is a concert or any other place where there is a massive agglomeration of people, the person cannot reasonably count on privacy and it is reasonable to expect that one can be captured by cameras.

3. When examining a case about the dissemination of information, the court will consider if the information falls under the concept 'information about private and family life", if the situation described in Para. 2 is not presented, which was the public concern to disseminate the information and whether the public concern in knowing the information outweighs the interest of not disseminating the information. For more details about the procedure of judging these requests see Section 2 of the Act.

Any private information may be disclosed if in a certain context it is of public concern and the public knows it is clearly more important than private interest of confidentiality of that information. For example, even if AIDS is dangerous, information about the owners of this syndrome will be confidential. However, if the owner of this syndrome will perform active and deliberate action to contaminate others, such information may be made public to prevent the population of a persistent danger.

4. If it is noted that the person's interest not to disseminate information prevails, the person sharing the information may be forced to apologize and compensate material and moral damage. Because the information is true, one cannot request its retraction, even if in some cases one might like this. Provisions of art. 7 of the Act are not applicable to this situation.

Disclosure of private facts about sex life, health, family behavior, etc. constitutes a violation of the right to privacy, family and intimate life, provided that it is true information. Dissemination of information which is the kind that is related to private and family life, but that does not correspond to reality, is examined in the articles governing defamation.

**Art. 11 The right to privacy and family life of public figures and persons occupying public functions**

**(1) Public figures and persons occupying public functions shall have the right to privacy and family life.**

**(2) The information about the private life of public figures and persons occupying public functions may be disclosed if it represents an issue of public concern. The dissemination of such information should not cause unnecessary harm to third persons.**

**(3) When public figures and persons occupying public functions draw attention to elements of their private and family life by their sheer actions, the mass media shall have the right to look into such elements.**

1. As with defamation, there is a different standard of protecting private and family life of public figures in relation to private individuals. Privacy will not be how the person exercising public functions fulfills his duties. The phrases "public person" and "person exercising public functions" is defined in art. 2 of the Law.

2. People have high expectations with regard to persons holding elective office functions not only in terms of their professional conduct, but also with regard to their behavior outside the office. Thus, a head of state should be a standard of integrity both in professional life and in private. Public figures must accept interference in their private life to a greater extent than ordinary people and accessible level of scrutiny should be higher, as the person concerned and publish information that is revealed is more important. Lack of consent of the person to publish information relating to privacy does not automatically lead to finding illegal behavior. The provisions of the law are in line with EU recommendations. P. VII of the Declaration on freedom of political debate in the media, adopted by the Committee of Ministers of the Council of Europe on 12 December 2004, states: "private and family life of political figures and officials should be protected against media reporting under Article 8 of the Convention. However, it may disclose information about their private lives if they are a matter of public concern directly related to how they have exercised or exercise their duties, taking into account the need to avoid unnecessary harm to third parties. When political figures and public officials draw attention to parts of their private life, the media is entitled to exercise the right to explore these elements. «The key factor in this case is the public concern”.

Usually, stories about private and family life of public persons refer to persons who are private: for example, a politician is a public figure, but his relatives may be private individuals. In principle, the notion of "third party" used in para.2 refers to individuals who appear in any story about family privacy and public persons. These people will be protected in all forms possible. Only an overriding public concern can justify identifying these people, and certainly not mere curiosity, which is a source of increased audience for tabloids.

3. Para. (3) of Art. 11 stipulates that if public figures and individuals exercising public functions themselves draw the attention to aspects from their private and family life, the media has the right to investigate these issues. That is the media has the right to check what a politician says, even if the subject is related to his private life and therefore has the right to provide further details on the issues investigated.

ECHR has sanctioned several times the press that has gone too far in revealing the private lives of celebrities. Thus, in *MGN Limited v. the United Kingdom (UK*) (decision of January 18, 2011) the issue was the newspaper "*The Daily Mirror*" which published on its front page an article entitled "Naomi: I am a drug addict" and in the newspaper there was an article detailing Ms. Campbell treatment against drug addiction. The articles were accompanied by photographs taken in secret near the center of Narcotics Anonymous a center that Mrs. Campbell was visiting at that time. Despite the fact that the publisher was asked specifically to cease publishing information of a private nature, "The Daily Mirror" responded by publishing two other stories about Ms. Campbell: Articles containing additional details about her participation in the meetings of Narcotics Anonymous, as well as new photos captured when she went to a subsequent meeting. ECtHR noted that should there be a balance between public concern in publishing articles and photos with Mrs. Campbell and the need to protect her private life. Bearing in mind that the publication of photos and articles was only to satisfy the curiosity of a category of readers about the privacy of public figures, published materials have not contributed to the debate over a matters of general interest in the society.

**Article 12. The right to the presumption of innocence**

**(1) Any person accused of committing a crime or administrative contravention shall be presumed innocent until his/her guilt shall be proved by legal means by an irrevocable court decision.**

**(2) The public authorities and the persons representing them are under the obligation to observe the right to the presumption of innocence and abstain in all circumstances from any comments that could suggest the contrary.**

**(3) Criminal investigation bodies shall not make public statements concerning the guilt of a person under investigation, unless such guilt is pleaded in a court of law.**

**(4) Persons who do not represent public authorities and cannot influence in any way the trial started against a person, including media outlets, have the right to express their opinion concerning the guilt of a person, provided that:**

* 1. **such statements should indicate clearly that to that point no final court sentence has been issued regarding the person in question;**
  2. **such statements should indicate clearly that they express an opinion rather than confirmed facts;**
  3. **the facts supporting the comments concerning the guilt of a person and his/her role in the trial shall be stated with accuracy.**

This article was introduced to guide individuals. Breach of the presumption of innocence is not something that would lead to defamation, as long as the indictment of the person or the offense occurred.

1. Presumption of innocence is a right guaranteed by art. 21 of the Constitution. Presumption of innocence, mainly requires the prosecution to prove the guilt of the accused. However, it also requires public authorities to refrain, until the conviction becomes final from statements that would suggest that the person is guilty of the crime. Article 12 nuanced the way this right is exercised in relation to various subjects who approach through various statements alleged crimes committed by holders of the right to presumption of innocence.

2. The article differentiates between the way the representatives of public power and all other persons, including the media should behave. Thus, the presumption of innocence works primarily in relation to state bodies According to para. 2, no state body may imply through statements that the person is guilty of crime or offense, as long as his guilt was not proven by an irrevocable court decision. For other categories, paragraph 4 shall apply.

Para. 2 does not prohibit reporting on allegations of a person. However, in this case there should not be suggestions that the person is already guilty, but that it was only accused.

Para. 2 imposes certain obligations on judges as well. Thus, while authorizing preventive measures, they will not rule even in the procedural act about the guilt of the person (see. ECtHR decision in the case *Garicki v. Poland*, February 6, 2007).

3. Para. 3 provides an exception to the rule laid down in para. 2. The criminal investigation body, including the prosecutor and the identification body, can make statements about the guilt of the person when they sustain the accusation in court, that is during the court hearings. This warranty does not apply to statements made outside the court hearing.

Alleged acts of defamation by the criminal investigation or identification body shall not be reviewed under paragraph 3 according to criminal, and administrative procedure, by challenging those acts.

4. Unlike public authorities and persons representing them, other people, including the media, have the right to express an opinion about the guilt and the person until the guilt is confirmed by a final decision. However, in this case, three conditions must be observed, that is from the context of the expression it should be clear that: a) there is no irrevocable court decision condemning the person, b) it is about opinions, not facts confirmed, and c) the facts on which comments on the guilt of a person are based and its standing are clearly detailed.

If the media disseminates truthful facts about a felony or offenses until the person is proven guilty by a final decision, it will not serve as grounds for admission of a defamation action because the condition of art. Article 7 para. 2 letter. a) of the Act is not met (see also. ECHR decision in cases *Flux no. 6 v. Moldova*, 29 July 2008, § 31, and *Şofranschii v. Moldova*, December 21, 2010 § 30).

Presumption of innocence does not prevent journalistic investigation and the journalist's right to express an opinion on identified illegal actions. If the journalist has documents that allow him, while using his legal conscience, to conclude that there are obvious signs of crime, and these documents were presented in a court of law, then even in the absence of a sentence, in case of an action of defamation, the court should dismiss the action and recognize that, in this case, disseminated information is real (see dec. ECHR in the case *Dyundin v. Russia*, dec. of 14 October 2008). Subsequently, it is a matter for the law enforcement bodies to perform the necessary research based on published facts. On the other hand, when the person appears to be only suspected or accused, there should not be any inaccuracies in his procedural qualities.

**Article 13. Protection of information sources**

**(1) The mass media and any person carrying out journalistic activities of collecting, receiving and disseminating information to the public, or collaborating with the media, and who has obtained information from a source shall have the right not to disclose the identity of the source or any information that could lead to the identification of the source.**

**(2) The person who has disseminated to the public information obtained from confidential sources shall not be compelled to disclose the identity of the sources in a civil or administrative law suit.**

**(3) The refusal of a person to disclose the information source shall not deprive him/her of all the other guarantees to which a defendant is entitled in judicial proceedings.**

**(4) In a criminal trial the investigative body or the court may order the disclosure of the source, within the limits of the law, if:**

**a) the disclosure of the source is essential to the conduct or review of the criminal prosecution; and**

**b) all the possibilities to identify the source by other means have been exhausted**.

1. The media should be effective. The right to protection of sources is a very important right for the media to be effective. If the media would be obliged to disclose, then it might not have or forever lose these sources, which would make it unable to exercise its duties of watchdog of democracy until the end.

This protection extends not only to the media but also to the person who is not a journalist in daily life, but performing journalistic activity and the person collaborating with the media or persons performing journalistic activity (such as, for example, those involved in collecting information for writing an investigative article). Journalistic activity is any periodic activity of data collection and processing public information, the purpose of this activity is to disseminate information to the public.

People who enjoy such protection may refuse to disclose sources. Thus, art. 133 let. d) of the Civil Procedure Code provides that the persons listed in par. 1 can not be heard as witnesses on the information received in connection with their work. Article 90 para. 1 p. 5 of the Criminal Procedure Code contains a similar guarantee. This is an obligation of the journalist (see p. 3.1 of the Code of Conduct). Protection of sources is given to the journalist only in those cases when disclosure of their identity endangers the life, safety or work (p. 3.2 of the Code of Conduct). However, in this case, the one who disseminates information assumes responsibility for the accuracy of information received from the source of information.

Persons listed in par. 1 cannot be compelled to give statements as witnesses only with regard to the information that could lead to identifying the source. They can be heard on other issues, however, can refuse to answer certain questions if they think the answer could lead to identifying the source.

2. Protection afforded by paragraph. 1 applies in all civil, administrative and criminal cases on the minor, less serious and serious offenses. Therefore, the person will not be forced to disclose sources in any civil or administrative case.

3. As stated in para. 3 of art. 13, a person refusing to disclose source of information does not deprive the defendant of other guarantees it can receive in a judicial proceeding, that is the person will prove its position by other evidence available, and this evidence must be taken into account.

4. The only exception where a person may be required to disclose the source of information is provided by paragraph. 4 and can be held in criminal proceedings if the following conditions are met: a) the criminal offenses relates very serious or extremely serious crimes (see also art. 90 para. 1 p. 5 of the Code of Criminal Procedure); b) disclosure of the source is absolutely necessary for the prosecution, c) have been exhausted all possibilities to identify the source of information by other means. Therefore, the prosecuting authority should check whether these conditions were met to start the interrogation and inform on it. After gathering information about conditions, the individual will be obliged to give witness statements, if no other exceptions occur provided for in art. 90 of the Criminal Procedure Code. If the interrogation took place in violation of art. 13 para. 4 of the Act, it will lead to the nullity of the procedural act.

### Article 14. The review procedure for defamation cases

**(1) Defamation cases shall be reviewed by a process applied to litigations as per procedures set forth in this chapter and the Civil Procedure Code.**

**(2) Defamation cases, when the source that has disseminated the defamatory information or the author of the statement are not known, or if the legal entity which has disseminated the information has been dissolved and the author of the article or of the defamatory statement are not known or have died, shall be reviewed in accordance with the procedure of finding the facts carrying legal value.**

Chapter 2 of the Law only refers only to civil defamation.

1. Civil procedural legislation of the Republic of Moldova distinguishes five kinds of civil procedures: administrative litigation, administrative litigation procedure, ordinance procedure, the special procedure and the procedure for declaration of insolvency. According to para. 1, defamation cases are examined in an administrative litigation. In cases of defamation, civil action is brought by the injured person or other interested person vested with that right under the law and is about starting a court action against the person guilty of disseminating false information. Accordingly, the person about whom information was disseminated that denigrate the honor, dignity and professional reputation is called the claimant and the person allegedly guilty of defamation is called the defendant.

While considering cases on defamation the court is guided by the Civil Procedure Code, to the extent that the Law on defamation does not provide for special procedural rules.

When referring to the form and content of the law suit on defamation, the Law provides, in addition to general conditions imposed by the Civil Procedure legislation (Articles 166 and 167 of the Procedure Code) some additional requirements (Article 18 of Law on freedom of expression).

The Law under comment establishes other special rules on state tax, the category of participants in the trial, the court vested with material jurisdiction, peculiarities of guaranteeing the action, the procedure for succession of rights, etc. distributing the probation load.

2. When the source of defamatory information dissemination or the author of the information is not known, or when the legal person disseminating the information has been liquidated and the author of the article or of the defamatory information died, the cases on defamation shall be examined according to the procedure on finding the facts that have legal value.

Publication of information without giving the author in the mass media does not require anonymous dissemination of information, because in these cases the disseminator is known. Therefore the means of mass information are responsible for disseminating information that violates honor, dignity or professional reputation.

According to this paragraph, where the author or person responsible for disseminating the defamation information can not be identified (eg, information was disseminated through the Internet or anonymous letters were sent the same way, it is impossible to identify the source) or it does not exist because of liquidation or death, the reason of defamation is to be considered in a special procedure.

Special procedure differs from procedure of administrative litigation in that there is no legal dispute between two parties, since the defendant cannot be identified. For this reason, defamation cases will be examined by the court with the participation of the petitioner and interested parties (third parties).

Under this paragraph, the person injured in his rights, called the petitioner, will call upon the court with a request ascertaining the fact on the damage of honor, dignity and professional reputation, having the right to invoke only the finding of insult, not invoking claims of certain material or moral damage.

Since the author is not known or there is no disseminator or author of information, in this case the preliminary procedure provided for in art. 15 of the Law will not be followed. In this case, although not expressly provided, the request is submitted directly to the court in the deadline set in Art. 17 para. 1 of Law.

Another aspect of examination of reason of defamation in the special procedure relates to determining the jurisdiction. Thus, under Art. 283 of the Civil Procedure Code, the request on identifying defamation in the special procedure will be filed with the court from the domicile or premises of the petitioner.

In the same vein, the content of the request of identifying the defamation will be governed by the requirements set out in art. 284 of the the Civil Procedure Code. Thus, the request will indicate the elements described in Article 18 para. 2 of the Law, except for data on the defendant and the prior proceedings.

a) the fact requiring finding and goal of request;

b) the reason for the impossibility to reconstruct the fact;

c) evidence that confirms the fact and the impossibility of achieving fact finding.

The task of identifying the person who disseminated the information that harms the honor, dignity and professional reputation lays with the defamed person, who, if necessary, may request the involvement of the court. Thus, if the application was filed in a special procedure but during the examination of the cause the person responsible was identified, pursuant to art. 280 par. 3 of the Civil Procedure Code the court will remove the pending request by a final decision which cannot be appealed, explaining also the right of the petitioner and interested parties to resolve the dispute in litigation by submitting a law suit to court at the defendant premises.

In the event of such a procedural situation, one will take into account the provisions of art. 280 par. 4 of the Civil Procedure Code according to which the tax have already been paid by the petitioner in the special procedure and one shall take into account at the collection of the state tax and distribution of the expenditures to resolve the dispute in a litigation procedure.

### Article 15. Preliminary request

* 1. **The person who considers that he/she has been defamed shall require the author of the information and/or the legal entity which has disseminated the information to correct or retract the defamatory information, grant to the person concerned the right to reply or apologise and compensate the damages caused.**
  2. **A preliminary request shall be submitted within 20 days from the day when the person concerned learned or should have learned about the defamatory statement. This shall be the term of limitation. After the expiry of one year from the day of defamation no request shall be made to reactivate the preliminary-request period.**
  3. **The person who believes that he/she has been defamed shall indicate in the request the information he/she considers to be defamatory and describe the circumstances showing that the information is essentially false or lacks sufficient factual grounds.**

The procedure in actions related to defamation where the defendant is known comprises two phases: preliminary non litigation procedure and litigation procedure before a competent court.

1. According to para. 1 the person who is considered defamed may, by preliminary request, demand the author and / or legal person who disseminated the defamatory information, to correct or retract it, to grant the right to reply or express an apology and compensation for damage caused. Preliminary phase is mandatory. If that was not respected, the court will return the law suit under Art. 170 par. (1).let a) of the Civil Procedure Code. The word "may" in par. (1) refers to the remedies which the claimant may request, and not at the discretion to use the preliminary procedure.

To file a court action, the claimant must prove that he followed the preliminary procedure, ie, by non-litigation procedure, requested the author of information and / or legal person who disseminated it remedies against defamation. If the information was disseminated by several persons, the preliminary procedure will be used on each of them. If the author of information produces for media and information was disseminated by the latter, preliminary request to the mass media institution concerned will remove the need for a separate preliminary request on the author's name.

Retraction, apology and expressing the right of reply will be requested subject to the form of defamation (see art. 7 of the Law). Correction may be requested but cannot be ordered by court, because it is made voluntarily by the mass media. Injured person can seek compensation for moral damage without requiring publication of a retraction or correction. However, even in this case, the preliminary request must indicate the injuring information and it must be verified if all the conditions listed in Art. 7 are met.

Requesting moral compensation through a request is not mandatory. If the application which required only publication of the retraction, granting the right to a reply or expressing apology was rejected, moral damages may be claimed for the first time by law suit. However, if the preliminary request was accepted, the person may not claim moral damages in court, because the demand was satisfied prior and the full satisfaction of prior request is an impediment to filing the lawsuit.  
The rule contained in para. 1 also provides that in case of death of the defamed person before the preliminary request, preliminary request may be submitted by the person concerned. 'Interested party' means any person who could prove a particularly close connection with the deceased. Although their relationship is important in this respect, it is not critical. It can be, for example, the deceased concubine. Interested person may request correction or retraction of defamatory information, expressing apologies and compensation for material damage, but not the moral one. Inadmissibility of compensation for moral damage results from art. 20 para. 1 letter. a) and Art. 23 para. 1 of the Law.

2. According to para. 2, preliminary request shall be filed within 20 days from the date on which the person making the request has learned or should have learnt about the defamatory information. This is the period of limitations, and the person is entitled within one year to apply for reinstatement. If the person defamed within one year from the date of defamation has not requested reactivation, that it is deprived of its right to request reactivation.

3. Through para. 3, the legislator imposes certain conditions for the preliminary request. Although this is not expressly mentioned, para. 3 shows that the request must be made in writing. Article 18 para. 4 of the Law requires that the law suit should have attached the copy of the preliminary request as well as the proof of dispatch or delivery. Therefore, the Law does not preclude the preliminary request to be sent by e-mail, provided that the fact of delivery and address where the shipment is sent belongs to the author or legal person who disseminated the information.

The request must necessarily indicate the person, the information it considers defamatory. Additionally, there should be given the circumstances that demonstrate that the defamatory information is essentially false or, as appropriate, the circumstances showing that they are not based on a sufficient factual basis.

The circumstances that prove that defamatory information is essentially false should be indicated in the preliminary request when they were disseminated reports on the facts.

It will also indicate the circumstances that prove that the defamatory information is not based on a sufficient factual basis. This can be done both by attaching the documents, and without it, but the detailed description of the facts that refute the alleged defamatory reports.

**Art. 16 Procedure for preliminary request review**

* + 1. **The preliminary request shall be reviewed by the author of the information or, as the case may be, also by the legal entity which has disseminated it, within 5 days from the day when the preliminary request was received.**
    2. **If it is found that the information complained of in the preliminary request is false or is not supported by sufficient facts, the legal entity which has disseminated the information or its author shall admit the preliminary request and shall be compelled, as the case may be, either to correct or retract the defamatory information, grant a reply or apologise and decide upon the request to establish damages to be paid to the injured person.**
    3. **The correction or retraction of the information, the reply or apology shall be made within 15 days from the day when the preliminary request was reviewed, but if the information was disseminated by the mass media and the issue (program) in which it was disseminated appear less frequently than every 15 days, then the correction, retraction, reply, or apology shall be made in the next issue or program.**
    4. **The damages requested in the preliminary request shall be paid within 15 days from the day when the preliminary request was reviewed or within a different period of time, as agreed by the parties.**
    5. **In case of integral or partial rejecting of the preliminary request, the injured person may file a law suit.**
    6. **In case of rejecting the preliminary request due to the non-observance of the time limits, the injured person, concomitantly with the law suit, may request the reactivation of the preliminary-request period.**

The law establishes the procedure for examining the preliminary request by the author of the information and, where appropriate, the legal person who disseminated this information. The purpose of the preliminary procedure in litigation on defamation results from the wish that the person who disseminated the defamatory information or the author of information can be wrong. The mandatory nature of observing the preliminary procedure provides the opportunity to correct this error in an out of court procedure

1. According to para. 1, the preliminary request is examined by the author of the information and, where appropriate, by the legal person who disseminated this information within five days after filing. The running of the five days referred to in this paragraph, will be calculated according to art. 111 and art. 112 of the Civil Procedure Code. The term starts to flow from the day following the day prior to receipt of preliminary request, but if the closing date will be non-working, the term will expire in the next day.

We consider necessary to specify what the legislature had in mind by the phrase "where appropriate". When the author of the information is its disseminator, the preliminary request will be examined individually by the author, but when the information was not disseminated by the author but by a legal person, the preliminary request will be submitted to both people.

2. If it is found that the information referred in the preliminary request is false or is not based on a sufficient factual basis, the legal person who disseminated the information or author of information satisfies the preliminary request, carrying out, where appropriate, correction or retraction of defamatory information, extending the right to reply or apology and compensation upon request of the damage caused.

If at the examination of the application, we will see that it is founded, it will be satisfied both in terms of intangible redress and compensation on damages. Under art. 24 para. 1 letter. e) the claimant must prove the existence and amount of damage caused. The decision to accept the preliminary request will be confirmed in writing.

3. According to para. 3, in case of admission of preliminary request and requesting this fact, correction or retraction of information, granting the right to reply or expressing an apology is made within 15 days from the date of examining the preliminary request and if the information was disseminated by the media and the publication or the broadcast that disseminated this information appears less often than once in 15 days in the next issue or broadcast.

Thus, in the context of meeting the requirements of preliminary requests the law establishes a general term of 15 days within which the information would be adjusted or retracted, and granting the right of reply or expressing an apology, and a special term that comes to establish an exception to the general rule.

4. Para. 4 provides the same term within 15 days from the satisfaction of the preliminary request for payment of compensation. However, through an agreement of parties one may set another deadline, even longer.

5. If the author of information or the legal person who disseminated the information refuses to satisfy the requirements from the preliminary request, the injured person may file a law suit with the competent court within the period provided for in Article 17 para. 1. Refusal may refer to all the claims raised in the preliminary request (full rejection), or only to some claims, others being recognized (partial refusal). Action may be brought in the case of full acceptance of the claims from the preliminary request if the immaterial recovery or payout of compensations was not made on time.

Regardless of whether some claims have been recognized and some not, the person defamed, if he insists in unrecognized claims may apply to the court asking for the satisfaction of remaining claims. In this case, the law suit will not be referring to the information not mentioned in the preliminary request.

6. Under par. 6, if the defamed person was returned the preliminary request because the status of limitations provided for in Article 15. 2 was omitted, the injured person may request reactivation within the timeframe of filing the preliminary request along with the law suit, indicating this requirement in the content of the application. Reactivation within 15 days does not lead to a repeat preliminary request but it is a mere acknowledgment of the justified omission of the period of limitations made by the court.

**Art. 17 The time period prescribed for filing a law suit**

**(1) The law suit on matters of defamation can be filed within 30 days. This time period starts:**

* + 1. **on the date when the answer to the preliminary request has been received;**
    2. **on the date when the rejection of the preliminary request has been received;**
    3. **on the date when the time period for preliminary request review expires.**

**(2) The time periods defined in para. 1 shall be the terms of limitation.**

**(3) A person’s term of limitation can be reactivated when the person concerned has missed the term of limitation for valid reasons and filed a law suit within 30 days from the day when the reasons justifying the reactivation of the term of limitation have disappeared.**

**(4) When no claims are made regarding damages concomitantly with filing the law suit, the court of law shall reject any request for damages submitted at a later time.**

According to this article, the natural or legal person who believes that his honor, dignity was injured and / or professional reputation through defamation by another known person may submit law suit to the competent court in a litigation procedure on defaimation after the exhaustion of preliminary procedure. When no author or person disseminating the information is known, the request is filed in the court within 30 days.

1. Para.1 specifically provides that the law suit on defamation may be filed within 30 days and that period runs from the date of receipt of the request to the preliminary request or from the expiry date for the examination of this preliminary request (5 days).

In calculating this period one must take into account the provisions of this paragraph and art. 111-112 of the Civil Procedure Code, according to which the period of 30 days shall begin on the day following the day of communicating the answer to the preliminary request. As for setting the date of expiry of the period of 30 days, one will consider whether the last day of the term is a working day or not. Thus, if the closing date is the weekend, it will expire the next working day, respectively, the action will be filed in court until this day inclusively. And if the closing date is a working day, the action in court will be filed not later than the next working day.

2. Para. 2 states that the period of 30 days is one of limitation, and not of lapse. In other words, this period may be reactivated by the court while presenting convincing and sufficient grounds that the request could not be physically tabled in the last days of the term.

The 30-day deadline applies to every request. Thus, after the expiry of this period the law suit will not be filled with complaints about other information.

3. According to para. 3, the person may be reactivated into the term of limitations if he omitted this term for justified reasons and submitted the law suit within 30 days after the disappearance of the reasons justifying reactivation. Reactivation is done by a competent court, one analyzes the case based on a application for reactivation accompanied by evidence proving the impossibility of fulfilling the law. Law suit on defamation must be as a separate request or one can request reactivation through a law suit.

The question of whether the reasons are justified is settled by the courts subject to circumstances invoked and the evidence submitted by the claimant by issuing a decision on reactivation or rejecting the request on reactivation. The conclusion of the court rejecting the request for reactivation may be appealed, and the conclusion by means of which the reactivation was done may not be appealed.

Reactivation will not take place if the law suit were filed 30 days after the disappearance of reasons justifying reactivation.

4. Para. 4 sets the obligation of the claimant to make all its claims on payment of losses in the request to the court. After filing the request new claims will not be formulated for material or moral damage compensation. Thus, if the claimant requested through the compensation only moral damage he could not claim compensation for material damage after request. However, if these claims were formulated in the law suit they can be reduced or increased. The rule does not apply to expenses related to trial, which oftentimes is not fully known at the time of filing the law suit.

If, while submitting the main request there were not submitted claims on damages, the court shall reject the request for damages referring to it as being late art. Article 14. Para4.

This rule was introduced to exclude the media harassment.

**Art. 18 The form and content of the law suit**

* + 1. **The law suit shall be drafted in accordance with the requirements stipulated under art.art. 166 and 167 of the Civil Procedure Code.**
    2. **The claimant shall indicate the following, when describing the factual and legal circumstances supporting his/her case:**
  1. **whether the information concerns him/her;**
  2. **whether the information has been disseminated by the defendant;**
  3. **whether the information is of a defamatory nature;**
  4. **whether the information is based on essentially false facts;**
  5. **whether the claimant is a public figure under this law and whether the information concerns his/her capacity of a public figure;**
  6. **whether the information concerns a matter of public concern;**

1. **whether the preliminary procedure has been observed;**
2. **whether the defamatory information has caused material and moral damages and what is the real scope of such damages;**
3. **other circumstances relevant for the case review.**

**(3) The claimant must indicate in the law suit the exact stories containing the facts to be retracted and the text of the retraction, or the value judgements which do not have a sufficient factual foundation.**

**(4) The law suit shall be accompanied by:**

**a) the publication carrying the information complained of, and when the information has been disseminated by broadcast media — a recording of the relevant program or, if this is not possible, an indication of the station, program, date and time of the broadcast;**

**b) a copy of the preliminary request with proof showing that it has been sent or handed to the defendant;**

**c) the answer to the preliminary request.**

The law suit on defamation is the main procedural act of the claimant by means of which he brings a civil action. Compliance with the requirements related to the law suit form and content in defamation cases presents essential practical importance. If the claimant does not meet these requirements, the judge will not follow the action, but will give the claimant an opportunity to remove deficiencies, according to art. 171 of the Civil Procedure Code. If the claimant removes the deficiencies within the time allowed by the court, the request is considered filed on the date of initial presentation and the judge will issue a ruling for the preparation of judicial debates and prepare appropriate procedure acts for this dispute, provided by art. 185 of the Civil Procedure Code.

1. According to para.1 law suit is prepared in compliance with the conditions specified in art. 166 and 167 of the Civil Procedure Code. A prerequisite for the law suit is that is has to be signed by the claimant or his authorized representative as provided.

2. In addition to procedural requirements imposed by general civil legislation, the law requires the claimant to mention the following in the law suit:

a) if the information aims at him;

b) if the information was disseminated by the defendant;

c) if the information involves defamatory nature;

d) if the information is based on facts which are essentially false;

e) whether or not he is a public person under this Law and if the information aims at him as a public person;

f) if the information relates to a matter of public concern;

g) if the preliminary procedure was followed;

h) if the defamatory information caused moral and material damage and which is the real cost of such damage;

i) other circumstances relevant to the case.

While indicating this information, the claimant must submit appropriate evidence, using in this sense art. 24 of the law which differentiate between the circumstances that the claimant must prove and the information whose proof will remain on the defendant.

3. In the law suit the claimant must indicate the exact reports about the facts for which retraction is required or value judgments without sufficient factual basis and the text of retraction. Thus, in addition to presenting the source of defamatory information, eg copy of the newspaper article, picture displayed in public places in the Internet, etc.., The claimants hall demonstrate the exact passage or image that is defaming him. Simultaneously, the claimant shall indicate in his application the solution or concrete proposal clearly formulated that would retract the information, and the way it will be done having regard to art.26 of the Law. Where one will require the right of reply or apology, their text will also be attached. Retraction, the right of reply or apology are complainant’s rights. Although the items mentioned in the article. 7 of the Law are met, the claimant may not ask them. In this case, the text of retraction, the right of reply and an apology will not be annexed to the law suit.

Given art. Article 17. Para 4 of the Law, the law suit will also contain material and moral damage claimed. One can not request these through a further law suit or by filling in this law suit. The claimant may request compensation for the damage even if he did not actually requested it in the preliminary request.

4. According to para. 4, the law suit shall be accompanied by:

a) the publication carrying the information complained of, and when the information has been disseminated by broadcast media — a recording of the relevant program or, if this is not possible, an indication of the station, program, date and time of the broadcast;

b) a copy of the preliminary request with proof showing that it has been sent or handed to the defendant;

c) the answer to the preliminary request if such exist

If the claimant does not have the records of the broadcast this will be indicated in the law suit and the court will be required to compel the defendant to present it. In order to guarantee the action, the claimant may request the court to prohibit the defendant, pursuant to art. 22 par. 3 letter. c) of the law, to destroy this material.

To the law suit on defamation one also attaches other documents referred to in art.167 of the Civil Procedure Code, among which are:

- Copies of law suit and of documents, certified appropriately in a number equal to the number of defendants and interveners, if they do not have these documents, plus a row of copies for the court. If documents are made in a foreign language, the court may order the their translation as provided by law;

- Proof of payment of state tax;

- Documents certifying the circumstances on which the claimant bases his claims and copies of these documents for the defendants and interveners, if they do not have them;

- Power of attorney or other document that certify the credentials of the representative;

- Other documents and actions.

##### **Art. 19 State tax**

1. **For the law suit where retraction, apology or the right to reply are requested following the defamation shall be paid a state tax in the amount of 5 conventional units.**
2. **A state tax in the amount stipulated in art.3 para.1 letter (a) of the Law on the State Tax shall be paid for the claims concerning the compensation of the material and moral damages caused by the defamation**.

In property cases state tax is determined subject to the nature and value of the action, and in non-property cases and other cases provided by law, in fixed proportions according to state tax Law. When submitting a law suit containing property and non property claims, state taxes are charged in the amount specified by law, both for property claims and for non-property, calculated separately.

State tax for the requests to the court is charged before submission. As proof of payment of state tax is receipt of tax statement or a statement from transfer from the payer to the bank, which is presented in the original. Failure to comply with the payment obligation of the state tax means first of all not following the request through (see art. 171 of the Civil Procedure Code), then if in time allowed the claimant does not pay the tax, comes the return of law suit.

1. The civil action requesting the retraction, granting the right of reply or an apology is a non property action. According to state tax law for such actions there shall be paid a state tax in the amount of 5 conventional units. According to art. 3. Para.1 letter. b) of the state tax Law, a conventional unit is equal to 20 lei. Therefore, to lodge a request with regard to an action on retraction, granting the right to reply or expressing apology there shall be paid a state tax in the amount of 100 lei, regardless of the number of disputed passages.

2. According to para. 2, for claims on moral and material damage caused by defamation a state tax is payable in the amount provided for in Article 3 para. 1. letter. a) of the state tax law. According to art. 3. Para. 1 letter. a) of the state tax law for such a law suit the state tax is calculated at a rate of 3% of the action or from the amount received, but not less than 150 lei and no more than 25,000 lei from the individuals and not less than 270 lei and no more than 50,000 lei from legal persons. In this context, while paying the state tax one shall calculate the tax for the main proceedings in the amount of 100 lei, and tax for the accessory action in the amount of 3% of the claims submitted.

According to art. 85 para.4 and article 86 para. 1 of the Civil Procedure Code, the court has the right, at the request of the claimant, taking account the material situation and evidence presented, to partially or totally exempt from paying state tax and postpone or reschedule the payment of the state tax.

Exemption, postponement or rescheduling the payment of taxes will take place only upon a written request and only if the request was acted upon. In the absence of a written application, one can not comply with the request because the conditions related to the form of the law suit are not met.

One should also take into account the fact that the period of deferment or rescheduling the payment of state tax may not exceed the time of retirement for deliberation of the court decision. If the claimant has not paid taxes within the deadline set by the court, the request will be struck out and returned under art.267 letter. k) of the Civil Procedure Code.

**Art. 20 The parties and participants in the suit**

**(1) Any person whose honour, dignity and professional reputation have been damaged by the dissemination of information can be a claimant in a defamation law suit.**

**(2) The person who has disseminated the information, the author of the information and, when appropriate, the person from whom the information has been obtained can be a defendant in a defamation law suit.**

**(3) When the law suit is filed against a person who took the information from a third party whose identity is known, the latter can become involved in the suit as per the provisions of the Code of Civil Procedure.**

Civil defamation action, is usually examined in the litigation procedure, except as provided by art. Article 14. Para.2 of the Law when the application shall be examined according to the procedure on finding of facts with legal value. In civil defamation case examined in litigation, the parties are called claimant and defendant, and in the special procedure - petitioner and interested person.

1. In para. 1 the legislator makes a categorization of people who may be claimants in defamation cases. These are natural or legal persons or the interested person on behalf of the deceased. It is not allowed to institute defamation proceedings in the name of a liquidated legal person or institution on behalf of the state or the state (see art. 9 para. 2 of the Law).

According to the letter. a), the application may be filed by any person whose honor, dignity or professional reputation has been damaged by the dissemination of an information. For the purposes of these legal provisions, natural persons are deemed any person alive, irrespective of race, nationality, ethnic origin, language, religion, sex, political affiliation, wealth or social origin and of age. Any child, which is the person from the moment of birth until the age of 18, is entitled to protection of honor and dignity and if he has a professional reputation before coming of age, he is entitled to defend his professional reputation.

In accordance with art. 79 of the Civil Procedure Code, in case of dissemination of defamatory information that does not correspond to reality, with regard to children (minors) or incapable persons, actions on protection of honor and dignity may be submitted by parents, adoptive parents, guardians. Law on the Rights of the Child through art. Article 8.para. 3 gives the child the opportunity to be heard during the judicial proceedings, either directly, if the child is able to formulate opinions, or through a representative or appropriate body.

In case of minors aged between 14 and 18, the court is obliged to introduce in such causes minors with regard to whom honor and dignity must be protected and minors alleged to have violated the honor and dignity of others (Article . 58 para. 4 of the Civil Procedure Code).

According to the letter. b), the request may be filed on behalf of the deceased, if it has not filed a defamation action, by the interested person, but without the right to demand compensation for moral damage. By 'interested party' we mean any person who may be in a particularly close connection with the deceased. Although their relationship is important in this respect, it is not critical. It can be, for example, the deceased concubine. The law excludes in such a case moral damage compensation. The purpose of the moral damage is to compensate in cash the physical and psychological suffering of the person, this legal provision has its logical argument. Sufferings of the deceased can not be succeeded to request such compensation.

If the person died during the examination of the case on defamation, the succession occurs in the procedural rights referred to in art. 23 of the Law. Law maintains the ban on requesting compensation of moral damages. This prohibition does not apply only if the person died after delivery of the first court decision that ordered the collection of moral compensation.

According to the letter. c) the request may be filed by any person whose professional reputation was harmed by the dissemination of information. The legal person is entitled to ask in the court for retraction of information, publication of reply, expressing apologies and compensation for material and moral damage. The method of compensation for moral damage to the legal entity is explained in the commentary to art. 29 para. 3 of the Law.

2. According to para. 2, the defendant in defamation cases can be the person who disseminate the information, author of information and, where applicable, the person from whom information was taken.

Supreme Court of Justice Plenum, through its decision on the application of legislation on protection of honor, dignity and professional reputation of individuals and legal entities no. 8 of 9 October 2006 (p. 17) distinguishes the following categories of defendants:

"1. Natural or legal person who disseminated information that denigrate the claimant is considered defendant in disputes over honor, dignity and professional reputation.

2. Author and media body (editor, publisher, agency, another body, which carries the limitation of information) appears as a defendant in an action containing claims for retraction of information disseminated in the mass media.

3. The employer will appear as a defendant if the information was disseminated by an employee in connection with the performance of service obligations on behalf of the employer where he works (eg in the work assessment), and the individual will be drawn into the process as an accessory intervener.

4. The mass media, as a legal person under art. 2 in the Press Law acts as a defendant after publication of false information without signing them, without giving the name of the author (eg in the editorial). For reproduction of information denigrating the honor, dignity or professional reputation of the defendant by mass media, at the requirement of the applicant, they may be attracted to participate in question as co-defendants"

In considering requests filed against mass media, formed as legal entities under the law, as single or jointly with the authors of articles that injured the honor, dignity and professional reputation, it will consider whether the mass media where the information has been published stopped its activity during the examination of the case, the court will force the other defendant to retract the information in a different mass media body with a similar range or distribution (see art. 26 para. 3 of the Law).

3. If the action is brought against a person who took the information from a third party whose identity is revealed, the latter can interfere with the process under Civil Procedure Code. However, in this case guarantees may arise established by art. 28 of the Law.

By the third party one envisages both the author of the information, and any other person who held this information, even if the information leakage occurred without his will. Intervention under this paragraph shall be interpreted as the introduction into the process with the defendant of the people mentioned above as co-defendants if this is requested by the applicant, or as an accessory intervener for the defendant at his request, of a party or ex officio by the court (see art. 67 para. 2 and 3 of the Civil Procedure Code).

**Art. 21 Jurisdiction**

**Defamation litigations shall be reviewed at first instance by the law courts, as common law courts.**

When adopting the law, there existed specialized economic and military courts. The practice of economic courts was to examine the defamation actions involving protecting professional reputation brought by a legal entity to another legal entity, although the action was an alleged crime, not an economic activity. Through art. 21 it is provided that the common law courts are courts that will examine all defamation actions, ie the honor, dignity and professional reputation.

In terms of territorial jurisdiction according to Art. 38 of the Civil Procedure Code, the action will be brought to the court from home or location of the individual defendant or the court in whose jurisdiction is the registered person or defendant ot its administration body. However, art. 39 of the Civil Procedure Code gives the claimant the right to choose in which court to sue in the following cases:

"(1) The case against the defendant whose residence is unknown or has no domicile in the Republic of Moldova can be brought into court at the location of its assets or to the court where his last residence was in Moldova.

(2) An appeal against a legal person or other organizations may be brought in court at the location of their property.

(3) Action stemming from the activities of branches or representative offices of legal persons or other organization may be brought to the court at the place where the branch or representative office is located."

When no information is known the author and disseminator of information according to Art. 283 of the Civil Procedure Code, the request will be submitted to the court at the residence or headquarters of the petitioner.

The claimant bears the burden of determining the proper court which shall have jurisdiction to judge the civil case that will be put before it and if the claimant is addressing to a court that has no jurisdiction to judge the case under Art. 170 par. 1 b) of the Civil Procedure Code, the judge returns the application with a decision that may be subject to appeal. However, if the court received the law suit for review in breach of rules on jurisdiction, the judge, pursuant to art. Article 45. 2 letter. b) of the Civil Procedure Code, through a decision likely to be appealed will request the case to be tried in a different court.

**Art. 22 Guaranteeing the action**

1. **When a claimant files the preliminary request with the media outlet, in order to prevent an imminent damage, he/she may request concomitantly the court to guarantee the action.**
2. **The action guarantee request provided for in para. (1) shall be reviewed when confirmation is made available of the fact that the preliminary request has been sent or handed.**
3. **Upon the claimant’s request the court of law may undertake the following action guarantee measures:**
4. **impose a ban on the dissemination of the information complained of;**
5. **seize the print run whereby the information complained of is being disseminated.**
6. **ban to destroy audio and video recordings**
7. **The court of law may apply the action guarantee measures provided in para. (3), if the claimant is able to prove that irreparable damages may ensue to him/her, which could not be compensated by subsequent damages awarded by the court, and that there is no public concern in knowing the information.**
8. **The defendant’s assets, including his/her bank account, shall not be seized for the purpose of guaranteeing the payment of moral damages.**
9. **If the person din not submit a law suit within the deadline provided under art. 17 para.(1), action guarantee measure shall lose its effects.**

The general rules on action guarantee are provided in art.art. 174-182 of the Civil Procedure Code. Guaranteeing the action is an effective means of protection of subjective rights of the claimant which are the subject of the civil defamation action, which is decided by the court where there are grounds to believe that there may be difficulties in solving the case or enforcement of the decision would become impossible. Guaranteeing the action will only be requested at the request of the trial participants and only if the one requesting the action guarantee proves that there is a risk of being difficult to settle the case or impossibility to settle the case. According to art. 1, this risk must be imminent. Par. 4 suggests that the action guarantee measures referred to in paragraph 3 letter. a) and b) will be requested only if the possible insult caused will not be compensated by subsequent remedies and the action guarantee measure exceeds the public concern to know the information

1. According to para. 1, in order to prevent risks described in the previous paragraph, only the claimant may request the court to apply action guarantee measures provided for in par. 3.

Action guarantee request may be formulated immediately after submitting the law suit or any time thereafter.

2. Action guarantee request filed prior to the submission of the law suit shall precede the preliminary request. According to para. 2, the action guarantee request shall be accompanied by the proof of handing in or sending the preliminary request. Para. 2 implicitly provide that a preliminary request copy must be attached to action guarantee request. Moreover, without the text of the preliminary request, the judge shall not be able to determine the subject of dispute and request the action guarantee. Action guarantee measure filed based on the preliminary request will lose its effect after the period prescribed by art. Article 17. para. 1 of the Law (see art. 22 para. 6 of the Law).

If, upon filing the action guarantee request the court will deem that there is no evidence found to institute the preliminary procedure, it will issue a decision to return the action guarantee request explaining the right to file a preliminary request. After removing the legal impediment the claimant may appeal again with an action guarantee request.

According to art. 177 of the Civil Procedure Code, the court will examine the guarantee request on the day of its submission, without notice to the defendant, by issuing a conclusion of applying the action guarantee or if I is unfounded, to issue a ruling rejecting the request.

3. If the court considers that there are sufficient and justified grounds to guarantee the action at the request of the applicant the court of law may undertake the following action guarantee measures:

a) impose a ban on the dissemination of the information complained of;

b) seize the print run whereby the information complained of is being disseminated.

c) ban to destroy audio and video recordings

The first action guarantee measure aims to protect information that has not been disseminated yet. Therefore, it will not be ordered if the disputed information was already disseminated before and one just wants to stop the dissemination. This action guarantee measure can be ordered both for the author of information and to the disseminator of information.

The seizure of the print run follows the same purpose, but after the information has already been printed by a third party. There should be a distinction between printing only the disputed information and where the disputed information is part of a newspaper, which also contains other information. In the latter case, the courts will not seize the print run, but they apply the action guarantee from paragraph. 3 letter. a). In this situation, the disseminator could make it impossible to read the disputed information, but could disseminate other information from the print run.

The ban to destroy records aims to prevent difficulties in examining the case, which is impossible for him to prove the exact content of the audio or video broadcast. This action guarantee measure will not be ordered if the claimant already has audio or video recording.

The list of action guarantee measures from par. 3 is not exhaustive. In defamation litigation one applies other action guarantee measures provided for in art. 175 of the Civil Procedure Code. This conclusion results from the provision contained in para. 5 of this Article, according to which action guarantee measure can be the seizure of the defendant's assets, including bank account, but they may not have the intention to provide compensation for material damage claims.

4. Action guarantee measure by means of establishing the ban to disseminate disputed information and the seizure of the print run circulation that contains the disputed information can be applied by the court only if the claimant demonstrates that he could incur damages which could be offset by future compensation and that the action guarantee measure exceeds the public concern to know this information. Although the judge must consider the public concern to know the information he will not harm the case. He will only rule on appearances existing at the time of submitting the action guarantee request which stems from the action guarantee request.

5. According to para. 5, one shall not allow the seizure of the defendant's assets, including bank, account to guarantee the claims for compensation for moral damage. This rule was introduced on the basis that the amount requested by the complainant for moral damages is rarely met in full by the courts and seizure will be applied to the amount requested. On the other hand, the existing practice by 2010 confirms that such seizures were requested, rather, to put the defendant in a difficult situation than to ensure the execution of a likely judgment.

6. Par. 6 establishes rule according to which the measure to guarantee the action loses its effect if a person has not filed a law suit within 30 days of receipt or response to a preliminary request or from the date of deadline expiry for examining the preliminary request. In these cases, the judge or court that ordered the guarantee measure will order, ex officio or at the request of the defendant the cancellation of the action guarantee measure.

According to art. 108 par. 2 of the Civil Procedure Code, the court shall order cancellation of the action guarantee measure during the trial communicating about it to people involved, but their failure to be present does not hamper the cancellation of the measure. This procedure, in cases of defamation, may be considered a way of verifying the applicant's intention with regard to the litigation because in this proceedings, he may submit the law suit, request the reactivation and seek for the maintenance of the action guarantee measure if he provided ungrounded reasons that it was unable to file the lawsuit.

**Art. 23 Succession of rights**

**(1) If the claimant dies after the law suit has been filed, but before the court ruling has been issued, the individuals entitled to succession may request, within three months from the death of the claimant, that the suit continue on behalf of the deceased. In this case there shall be no succession of rights concerning the claims on moral damages.**

**(2) If the claimant dies after the court of first instance has issued its ruling, and the ruling awards moral damages, the succession of rights to the moral damages awarded by the first-instance court shall be recognised.**

Succession in procedural rights is an institution of right that allows continuation of the rights of the injured deceased by its successor. Article 23 does not restrict succession rights in respect of pecuniary damage caused by defamation and non material recovery (retraction publication, granting the right to reply, expressing apologies), but limits the right to succeed claims with regard to moral damages.

The law distinguishes the effects of succession depending on the time of death in relation to the court decision on the merits of the law suit. If the claimant died pending the decision, the successor to the deceased cannot succeed the suffering caused by defamation and therefore may not request moral damage. If the death of the claimant occurs after the decision the succession of rights is carried out only with regard to the moral damage compensation claims accepted in the first instance, even though the claims about moral damages were only allowed in part

The moment when judgment is made by the judge, is the moment when judgment is made regardless whether the full written decision is available or not at that time. Therefore, the moment of pronouncing the decision, regardless whether the deceased claimant managed or not to get acquainted with the written decision.

The analysis of this article is to be performed in conjunction with Art. 20 para. 1 letter. b) according to which the defamation action may be filed on behalf of the deceased by the person concerned, but without the right to demand compensation for moral damage.

### Art. 24 Burden of proof

**(1) The claimant must prove that:**

1. **the defendant has disseminated the information;**
2. **the information concerns the claimant and is defamatory;**
3. **the information reports a fact;**
4. **damage has been done and the amount of such damage.**

**(2) The defendant must prove that:**

* 1. **the information is not defamatory;**
  2. **the information is a value judgement;**
  3. **the facts reported are true;**
  4. **that at the moment when the information was disseminated the defendant did not have sufficient reasons to believe, in spite of all due diligence, that by his/her actions he/she disseminated reports containing untrue facts;**
  5. **the information disseminated is of public concern.**

**(3) The refusal of the defendant to disclose, in circumstances requiring limitations of the freedom of expression, a professional secret or the source of information shall not be regarded as sufficient grounds for admitting the case.**

When examining the action on the retraction of information that harms the honor, dignity or professional reputation, the burden of proof lies with both the claimant and defendant. A norm governing the burden of proof in defamation cases is provided in Article 16 para. 2 of the Civil Code. The norm of art.16. para. 2 of the Civil Code is a general one and sometimes contrary to Art. 24 of the Law. For example, art. 16 provides in absolute terms the veracity of information that should be proven by the defendant, and failure to do so leads to action admission. Article 24, in par. 1 and 2 provides a different burden of proof. The law is an organic one, as the Civil Code is. However, it is special and adopted after the entry into force of the Civil Code. For this reason, the burden of proof in defamation cases is governed by art. 24 of the Law and Article 16. Para. 2 of the Civil Code will be treated as an obsolete rule.

1. According to para. 1, the claimant must prove that the defendant disseminated information on which the action is based. The claimant must bring proofs that disseminated information aims at him and is defamatory. In other words, it is the responsibility of the claimant to prove defamatory nature of information on him (see art. 7 para. 2 letter. B) and Article 7.4 points. b) of the Law).

The claimant must demonstrate as well that the information is an account of facts, and not value judgments, and the defendant should do the contrary (see paragraph 24. 2 b) of the Law). In case when adopting the decision there is a reasonable doubt that the information is an account of fact or law or a value judgment, one will consider that it is about a value judgment (see art. 25 para. 3 of the Law).

Both the claimant and defendant must prove that the false nature of reporting on facts or as value judgments is not based on a sufficient factual basis. In other words, both claimant and defendant must provide evidence in this regard. In case when adopting the decision there is reasonable doubt in this respect, it will be interpreted against restricting freedom of expression (see art. 25 para. 6 of the Law), and the claim must be dismissed.

Existence of damages in defamation cases cannot be presumed. The claimant is to prove the existence and amount of material and moral damage caused. If there has not been proven damages, claims on compensation for damage will be rejected. If, however the existence of moral damage was proven, but its scope was not reasonably proven a compensation will be paid in the amount of 1leu (see art. 25 para. 4 of the Law).

2. The defendant must prove that the information disseminated is not defamatory and / or that it does not aim at the claimant. If the defendant claims that the information disseminated is a value judgment, he must prove this fact. If the defendant accepts that the reports refer to facts, he will not be required to prove this. The defendant also must provide evidence to confirm that its reports on facts are bases on reality, or the value judgments are based on a sufficient factual basis.

Once proven that what he disseminated is defamatory and false (in the case of reports on facts) and not based on a sufficient factual basis (in case of value judgments), the defendant must prove that when disseminating information, in spite of all measures of care he could not know that by its actions he contributes to the dissemination of false reports on facts or value judgments without sufficient factual basis. If he can prove this, he may demand guarantees provided for in art. 29 para. 2 and 5 of the Law. Also, the defendant must present evidence or reasons why the disseminated information is of public concern. The phrase "public concern" is defined in art. 2 of the Law.

3. According to para. 3, in cases aimed at restricting freedom of expression, the defendant's refusal to disclose a trade secret or the information source has no sufficient grounds for admission of action. This rule refers mainly to journalistic sources or anonymous author's article or pseudonym use. For more details on non disclosure of sources, see art. 13 of the Law. According to art. 18 of the Law on press, if information were published under the pseudonym of the author or without indicating the source of information, periodicals and news agencies are not entitled to disclose the source of information or pseudonym of the author without their consent. If such consent was not received, the liability for disseminating defamatory information lies with the mass media that published it.

Par. 3 shows that, if he refused to reveal sources or professional secrecy, the defendant is responsible for the information disseminated. Thus, he may present evidence to prove the truth of information disseminated as if it were his information.

# Art. 25 Presumptions in defamation law suits

**(1) Any reasonable doubt concerning the fact whether a person is a private individual or public figure shall be interpreted in favour of considering the person in question a public figure.**

**(2) Any reasonable doubt concerning the fact whether the information is of public concern or represents sheer curiosity shall be decided in favour of regarding it as of public concern.**

**(3) Any reasonable doubt concerning the fact whether the information is a value judgement or a rendition of facts shall be decided in favour of regarding it as a value judgement.**

**(4) Any reasonable doubt concerning the defamatory nature of the information shall be decided in favour of regarding the information as defamatory.**

**(5) Any reasonable doubt concerning the fact whether there have been damages and their amount shall be decided in favour of awarding a compensation of 1 leu.**

**(6) Any reasonable doubt concerning the good faith of the person who has conducted a journalistic investigation shall be decided in favour of good faith.**

**(7) Any other doubt which is not proven under the rules prescribed by law shall be decided against the restriction of the freedom of expression**.

Presumption is recognition of a fact as genuine from the legal point until proven otherwise. The introduction of assumptions is particularly important in practical terms, given the burden of proof in the art. 24 of the Law.

In civil proceedings the judge must determine with certainty the facts that will be later invoked in the decision. Sometimes it is difficult to ascertain a fact, when the parties version of the facts is contradictory. For this reason, the legislator introduced assumptions on which the judge should proceed when there is reasonable doubt about the important facts to solve a defamation case. Article 25 does not refer to any doubt, but only to the one that is reasonable when taking the decision. It is for the judge to decide, when adopting the decision, whether or not it was reasonable doubt. If it was not reasonable doubt, the judge will expose the facts and his arguments in favor of this version of facts. If the doubt was reasonable, the judge will note this fact in the decision and apply the presumption.

The texts from par. 1-5 are clear and require no additional comments. Alin. 6 covers any other doubt than those referred to in paragraph . 1-5. These could be doubts about the truth of the facts reported, defamatory character of the information, the possibility to identify the claimant . These doubts are construed against restricting freedom of expression.

### Art. 26 Retraction

**(1) Any individual or legal entity may request in a court of law that reports of untrue facts and reports which are defamatory of facts be retracted.**

**(2) If the court of law establishes that the dissemination of the facts was a legitimate action, and if the claimant requests a retraction, the court shall rule the retraction of the untrue reports and shall indicate in its ruling the text of the retraction.**

**(3) The court of law shall rule that the retraction be effected by the most appropriate method leading to the recovery of the claimant’s rights. If the false and defamatory information has been disseminated through the mass media, the court shall compel the outlet which has published the information to publish and/or disseminate the retraction within the same section, page, program, hour or series of programs. If the defamatory information has been disseminated by methods other than the mass media, the court shall rule the same method of retraction or, as appropriate, another method fitting the circumstances.**

**(4) If the mass media outlet or, as the case may be, the author of the information is unable to publish the retraction, the court of law shall compel the outlet or, as the case may be, the author of the information to publish the retraction in a different outlet with a similar disseminate or coverage area. If the latter refuses to publish the retraction, the person that is obliged to publish the retraction shall pay the claimant a compensation in the amount from 50 to 5,000 conventional units.**

**(5) When the ruling concerns the retraction of information disseminated in print media, the retraction shall be published under the heading “Retraction”. The text of the retraction shall be printed in the same typeface as the original information.**

**(6) The media outlet shall publish the retraction within the time period set by the court of law. If the publication or the program is issued or broadcast later than the deadline set by the court, the retraction shall be made in the first issue or program.**

1. Article 26 refers to "retraction" as to the traditional and most important way to restore the rights injured by defamation. This term was defined in art. 2 of the Law. One should distinguish between retraction, reply, correction and apology. See article 2 of the Law in this regard. Retraction is not positioned as a penalty, but as a form of restoration of violated rights.

As provided by art. Article 7 par. 3 of the Law, one can retract reports on false facts. Article 7 par. 5 provides that the retraction may be ordered in case of value judgments not based on a sufficient factual basis. In this case, the fact on which the value judgments were based and not value judgments themselves will be retracted. Retraction of some views is illogical and looks absurd.  
Even if the defendant has acted in good faith and with care, as long as there was disseminated false information, on request, the court will order their retraction. Exceptions are only the cases stipulated in art. 28 para. 1 of the Law.

2. Retraction can be ordered by the court only if the elements listed in Article 7 of the Law are met and the law suit is admitted. Only information that led to the action will be retracted, and no other information, but only insofar as it is established that they are not true.

Retraction cannot be ordered by the court on its own, but only if the claimant so requests. The text of the retraction will be annexed to the law suit (see art. 18 para. 3 of the Law). The text of the retraction will be indicated in the judgment. The text of the retraction will be indicated in the decision subject to the fact that the action is allowed in whole or in part, the text shown in the retraction could reproduce all or in part the retraction presented by the claimant. Judge could also adjust the text of the retraction presented by the claimant but not exceeding the limit of the action.

3. For proper rehabilitation of the applicant, it is necessary to reach to the circle of people who had access to defamatory information. The court will order the performance of retraction in the best way to restore the claimant’s rights. If false and defamatory information was disseminated by the media, the court will force the media institution that has disseminated this information to publish and / or disseminate retraction in the same column, page, the same program at the same time or in the same series of programs. If false and defamatory information was disseminated by means other than the media, the court will order retraction in the way information was disseminated. If this is impossible because of objective circumstances, the court will require the claimant to show how retraction is to be made.

If the defamatory information was disseminated in a narrower circle, not involving the media, there is great freedom to seek appropriate methods of retraction: for example, in an enterprise or in an apartment building the retraction method would be granted the floor at a collective meeting, shareholders or tenants meeting. If the means of dissemination have been sent letters or applications in organizations, it is logical to use the same means for retraction of defamatory organization.

If a document issued by an organization that provides information violates honor, dignity and professional reputation, the court obliges it to replace the document (Article 16. 5 of the Civil Code).

Although the mass media published the retraction, the person concerned in this information may claim that it was not made accordingly. Retraction will be made again if initially it was not proper in form and content.

4. Paragraph 4 deals with the situation when the institution that disseminated the media does not appear, regardless whether it is legal. In this case, the court will require the institution concerned or the media, as appropriate, to publish retraction in another mass media with a similar range or dissemination on behalf of defendants. In this case the provisions of paragraph 3 will be respected.

If the defendant cannot ensure the publication of the retraction in other media outlets, he will pay the claimant compensation in the amount of 50 to 5,000 conventional units. With such a compensatory amount on may presume that the injured person could buy the space to write, broadcast or publish the retraction. The cost of commercial space in the media (1 cm2 written press, 1 min. broadcast in the electronic media) should serve as an important criterion to judge when determining the exact amount of compensation.

Converting retraction can occur during the examination of the case or the execution phase. During the examination phase of the case, compensation may be granted only if the claimant agrees to do so. In the enforcement stage, this can occur by changing the execution of the decision under art. 252 of the Civil Procedure Code. The request to change the method of enforcement may be filed both by the claimant and by the defendant, and the bailiff (see art. 77 para. 1 of the Enforcement Code).

5. Par. 5 deals with how to make a retraction to the media. The defendant will insert the retraction under the title "Retraction". Text of retraction will be written with the same characters as information that led to the decision.

One should not allow the editing and commenting on the text of the retraction in the section where retraction is written. If this happens, and comments distort retraction, the court decision is considered none executed.

6. Article 16 par.4 of the Civil Code provides that retraction will be made within at most 15 days from the date of entry into force of the decision. Par. 6 shows that this term is not imperative for the judge, which may provide another term for carrying out retraction. However, if the term of retraction is not indicated in the court decision, it will be made within 15 days after the court decision becomes final. If the publication or broadcast exceeds the court deadline, or if a deadline was not set, exceeding the limit laid down in art. 16 paragraph 4 of the Civil Code, retraction will be made in the next issue or broadcast.

As reflected in art. 435 of the Civil Procedure Code, an appeal against such a court does not suspend the obligation to publish refutation. However, the defendant may ask the Supreme Court to suspended its performance.

**Art. 27 Right to reply**

**(1) Any individual or legal entity whose rights or interests have been damaged by the dissemination of value judgements without sufficient factual grounds shall be entitled to a reply.**

**(2) The reply shall refer only to the defamatory information which is being complained of, shall be expressed within the bounds of decency and shall not contain threats or marginal comments.**

**(3) The publication or broadcasting of the reply shall be made in accordance with the provisions for the publication or broadcasting of retractions.**

1. The right of reply is the possibility to offer its own opinion in response to views expressed in a material from a means of mass information. Unlike retraction, reply will be given only for the dissemination of value judgments without sufficient factual basis and only if the defamation occurred through the media.

The right of reply will be given only on request. It will not be granted with regard to the information for which retraction was ordered. However, this does not preclude the claimant to request in the same action retraction of some passages and the right of reply in the other passages of the same material or article.

2. Reply will only refer to defamatory disputed information. It will be displayed in decent terms and will not contain threats or marginal comments. The text of the reply will be annexed to the law suit and indicated in the court judgment. The goal of the reply is to come up with explanations to opinions, and not to offend or hurt the defendant. The judge will not allow that the reply indicated in the decision to be presented in indecent terms or contain threats, or marginal comments.

3. Publication or broadcast of reply is done in the manner and conditions for publication or broadcast of retraction, ie in terms of art. 26 of the Law. Any provision on retraction shall apply by analogy to reply, if it is objectively possible and not contrary to the nature of reply in comparison with the retraction.

4. The right of reply should be understood as two separate aspects: the right of reply as it is assured by the court and the right of reply as an aspect of professional self-regulation. Professional journalism requires information from at least two sources, presenting all sides of controversial positions. For views, the reply is the only way to restore the rights of victims. Public is offered an alternative source of information. But under the law on freedom of expression, the judge may order the publication of the reply in any case where it would be desirable in the idea that it would be useful or even necessary for an objective assessment of the situation, but only if it allowed an action to defend the honor, dignity and professional reputation since value judgments did not have a sufficient factual basis. Thus, where value judgments that are challenged in court have sufficient factual basis, but the article / broadcast is biased because of unilateralism, and of the fact that a different view is not presented, although it exists, based on the Law on freedom of expression the judge will dismiss the action and will not publish a reply. The claimant could still have a chance to have his reply published under other special laws regulating the activity of media outlets - especially, as a rule, stricter rules are imposed by the law on broadcasting, under the concept that radio frequencies resources are scarce, so all broadcasters must respect the pluralism of opinion. Thus, the claimant will check if there is a special law regulating the activity of the media outlet that injured him and if there is none (for example to date there is no law regulating the Internet media), he could turn to bodies of journalistic self-regulation (Press Council) as a way of extra-judicial pressure.

**Art. 27 Waiver of material liability**

**(1) There shall be no liability for republishing untrue facts and/or value judgements not based on sufficient facts when such information was disseminated:**

**a) in the documents or communications of public authorities;**

**b) in meetings of public authorities, by individuals in public positions or individuals invited to such meetings;**

**c) in a law suit, by the participants in the suit, including witnesses, by the prosecution or by the court of law;**

**d) in requests, letters or complaints regarding violations of rights and interests protected by law, which have been submitted to public authorities for their review.**

**(2) The mass media shall not be held materially liable for the republication in good faith of untrue facts and/or value judgements not based on sufficient facts, concerning matters of public concern, if such information:**

1. **has been disseminated before by other mass media outlets;**
2. **is contained in press releases of entities other than public authorities;**
3. **is contained in works representing genres of an author’s personal expression, which may not be edited, or in live programs;**
4. **is contained in written or verbal statements made by other individuals;**
5. **other circumstances as established by law.**

**(3) The media outlet’s responsibility shall not be waived under para. 2 if the outlet subscribes to the information in question.**

**(4) When an outlet’s responsibility is waived under para. 2, the outlet shall retract the reports of untrue facts or grant the right to reply.**

Article 28 refers to the waiver from liability of mass media when it disseminates false information taken from other people, this being the only situation where media responsibility may be removed by law. The term "mass media" is defined in art. 2 of the Law. Article 28 para. 1 refers to situations in which responsibility is removed and para. 2 refers only to situations where any material liability is removed. Par. 4 provides that the guarantees of par. 1 and par. 2 shall not apply if the mass media agrees to the information. By adopting this article, art.27 of the Law on press falls into disuse.

Given that information proved to be false, material liability will be borne only by primary disseminator of information. If the disseminator from par. 1 had sent the information to the press or should have known that it can be taken by the press and so disseminated, so when he will take the decision, the judge will consider these circumstances. In case of par. 1, the judge will require primary disseminator to retract and express apologies and create conditions for retraction or expression of apology to be taken by at least the same mass media. In case of par. 2, media institution will appear as co defendant and will be forced to disseminate the retraction, reply or apology (see para. 3).

To invoke art. 28, it is important to determine whether the information was taken from the media. To confirm the takeover acquisition one should know the author from whom information was taken. Therefore, art. 28 does not apply to non-disclosure of sources or author of information (where information was not disseminated by someone prior). Article 28 does not apply either where it cannot be confirmed if the information taken was, in fact, disseminated. This is the situation when the media mislead that the information was disseminated, where this did not take place or when this distorts the message until falsehood. It is for the defendant to prove that the information was previously disseminated by a third party.

1. According to para.1 the responsibility of the media to take over defamatory information does not occur if this information was disseminated: in the documents or communications from public authorities, in speeches at meetings of public authorities, by persons exercising public functions or persons invited to participate in these meetings, the testimony and speeches from the prosecution or a trial by trial participants, including witnesses, by the criminal investigation body or court, in the applications, letters and complaints on the infringement of rights and legitimate interests sent to public authorities for examination.

a. The phrases "document" and "communication" of public authority are defined in art. 2 of the Law.

b. By "speech" we mean any speeches made verbally and with agreement of the organizer of the event, regardless of the text of the speech was coordinated in advance with the management of public authorities. The phrase "meeting of public authorities" means any meeting of authorities that are part of the executive, legislative or judicial, including private legal entities that provide public services. The guarantee extends only to the speeches "persons exercising public functions" and persons "invited to participate in these meetings," if the latter are not "persons exercising public functions". The invitation can be any shape, but must be addressed to specific person or organization they represent. It is the task of the media to establish before publishing if the person was invited. This could be detached from the event agenda and list of speeches.

c. Let. c) was introduced as a result of the immunity provision in art. 8 b) of the Law For more details see the comment to that rule.

d. As with the letter. c), let. d) was introduced as a result of the immunity provision in art. 8 c) of the Law. For more details see the comment to this norm. If these complaints end up being broadcast in the media and the information is false, one must determine who is guilty of this information reaching the media. If this is the petitioner, he will be liable, the immunity from art. 8 letter. c) is not applicable in case of addressing the press. If the authorities were the ones that sent the media contents of the complaint, and petitioner did not have any role in this process, for the damages caused to the person because of the coverage of unverified facts or excessive opinions authorities who disseminated the complaint will be liable. If the information was not disseminated by the document author, but was obtained from public authorities unauthorized and subsequently disseminated by the media, art. 28 para 1 lit. d) will be inapplicable because the injured person would not have its right addressed, a fact which cannot be accepted in such a situation.

2. The principle at the basis of par. 2 is the same one underlying par. 1. The initial disseminator is responsible for the material damage. Although para. 1 refers to cases of total waiver from liability of the mass media, in case of par.2, the waiver from liability refers only to compensation for moral and material damage. However, the media institution will be obliged to disseminate the retraction, reply or apology, because the initial disseminator may not be able to disseminate the text of the court decision, as it was taken as defamatory information.

Par. 2 will apply only if the acquisition was made in good faith and if public information is disseminated. By good faith of the media one envisages that all professional obligations and impartiality in presentation of information is respected. One of these professional obligations is the detachment from third party statements. Good faith is presumed until proven otherwise (see art. 25 para. 5 of the Law), which the applicant must combat. Par.4 expressly states that if it is using the disseminated information the media institution will be materially liable on equal footing as the initial disseminator. The phrase "public concern" was defined in art. 2 of the Law.

Par. 2 refers to the statements contained in the press releases of persons other than public authorities, the author's creations, which cannot be written, or live broadcasts, in statements, written or oral of other persons, who were previously distributed to other media outlets, or is subject to other cases established by law.

a. Paragraph. 2 letter. a) shall apply to press releases other than those covered by paragraph. 1 letter. a).

b. Press will not be held responsible for the dissemination of statements from the creations of the author, that cannot be edited, or in live broadcasts. No declarations may be made edited which after editing lose its meaning or informative value. In case of life broadcast the moderator can not know what the interlocutor would say and therefore cannot be held accountable for his statements. If however the show was broadcast in replay, then let. b) becomes inapplicable in terms of the replay but the defendant could invoke the guarantee of par. 2 letter. c).

c. Mass media can take over and disseminate in good faith the statements of third parties on matters of public concern without fear of being obliged to pay compensation (see dec. ECHR *Jersild v. Denmark*, 23 September 1994). Let. c) enact this rule. For the letter. c) to become applicable, the way the declaration was made is irrelevant as long as it can be proved that the statement was made. If the press cannot prove that the statement was made, it will be held accountable as disseminator of information.

d. As with the letter. c) in let. d) respective media institution will not be held liable for the previous statements made by another media institution, provided that all conditions are met to take over the information. To invoke the letter. d) media institution must prove that the information was disseminated by another mass media and that the dissemination was done before and that it took over this information.

e. By letter. e) the legislature did not exclude that the legislation may permit other situations in which the media is waived of liability for defamation. An example is provided by art. 64 / 1 par. 6 of the Election Code, which states that "The electoral candidate is liable for the content of the electoral advertising, broadcast or publication.". By "law" we mean legislation and other regulations.

3. Art. 28 para. 3 shows that in case of situations covered by paragraph 2, media institution would be obliged to make the retraction or grant the right of reply. Although expression of apologies is not mentioned in paragraph 3, media institution may be required to disseminate according to general rules (in case of insult it is the dissemination of private information).

4. One must establish whether the media institution endorsed the information. The journalistic technique requires that from the context of journalistic material it is clear to the recipient that what is being reproduced is information that was taken over. Par. 4 shows that even if the information is taken over, but from the context of journalistic material one can conclude that the institution endorsed the statements of third party than the guarantees in par. 1 and par.2 shall not apply. Endorsement can take different forms. This is where the institution does not indicate in its material that it has taken over the information, even if it indicates this fact, his comments show that it agrees with the original disseminator (see for more details dec of. ECHR *in Radio France and others v France, March 30, 2004).*

### Art. 28 Moral damages

**(1) When setting the amount of moral damages awarded to an individual, the court of law shall take into account the nature and severity of physical and psychological suffering caused to the claimant, the nature of the information disseminated, scope of the information’s dissemination, personality of the claimant, reputation of the defendant, the defendant’s degree of guilt, consequences brought about by the dissemination of the defamatory information, wealth of defendant and claimant, publication of correction, whether the right to reply was granted or a retraction was published before the law suit was filed, as well as other relevant circumstances. The court shall award such damages as to bring satisfaction to the complainant.**

**(2) A person may be compelled to compensate moral damages caused by defaming a public figure only when the public figure has been defamed in bad faith.**

**(3) Moral damages shall be granted to legal entities only when the dissemination of the information in question disrupted its management.**

**(4) No moral damages shall be awarded to a legal entity which has been liquidated.**

**(5) A mass media outlet shall be held liable for the compensation of the material and moral damages caused by the dissemination of public information that turned out to be false or not based on sufficient facts only when the outlet has acted in bad faith or in disregard of its professional obligations.**

Moral damages in defamation cases is governed by Art. 29 of the Law and art. Article 16. 8, art. 1422 and art.1423 of the Civil Code. Civil Code, art. 1422, states that moral damages is the monetary equivalent of repair for "physical or mental suffering". Therefore, moral damages aim to repair, not to punish.

In the case of defamation, physical and mental suffering may represent negative emotions generated by any unpleasant aspect in terms of the psychological aspect, such as mental disorder, spiritual balance, humility, irritation, anger, shame, despair, discomfort, etc.. Granting moral damages is particularly important in case of injuring non-property rights, because there is really no other equivalent, similar to that we can achieve when a property right is violated.

In a defamation case the defendant should prove the existence and the amount of moral damages (see Art. 24 para. 1 letter. E) of the Law). However, we must consider that these sufferings and disorders occur in the human soul and it is difficult to document and quantify. It is reasonable to accept that, if the defamatory nature is proved, moral damage was caused. It seems impossible to quantify exactly the moral damage. However, the court based on specific characteristics of each action, based on criteria set by law, determines the amount of compensation. However, quantification is at the sole discretion of the judge. The amount of compensation shall be such as to bring satisfaction to the injured party, be rational and fair. In the case of *Avram and others v. Moldova* (Decision 5 July 2011) ECtHR found that the amount of moral damages awarded by national courts for defamation has been weak. If there was a reasonable doubt when the decision was spelled with regard to the amount of moral damages there should be paid a compensation in the amount of 1 leu (art. 25 para. 4 of the Law).

Moral compensation will only cover physical and mental suffering caused to the defendant and, not his family, though suffering may be intensified by the sufferings of his relatives.

1. Article 16. 8 of the Civil Code provides eight criteria under which the judge will determine the amount of moral compensation awarded. This list is not exhaustive. Article 29. 1 of the Law indicates three criteria and does not exclude that other criteria could be considered.

The nature and severity of physical and psychological suffering are essential to establish the size of moral compensation. Thus, the defendant has the burden to prove that the suffering endured and their intensity. Although this can not be quantified precisely, the judge will take into account other factors indicated in art. 29 para. 1 to determine precisely the nature and severity of physical and psychological suffering.

The court will consider the nature of disseminated information, ie how offensive can this be. Another element to be considered is the extent of dissemination of information. The same information disseminated about a person of good reputation could cause more damage than in relation to a person with a less good reputation, in this regard the reputation of the applicant is important. Defendant's reputation is a matter to be considered. Thus, defamation by means of mass information with a reputation for credible source could cause more damage than the same defamation of the boulevard press. On the other hand, defamation may be missing when the disseminator of false information occurs before a small audience, which knows very well the true state of affairs. Completely denying the journalistic ethics should be a criterion likely to increase non-pecuniary damage. If the defamation had noticeable consequences, such as illness of the person, they also could increase the amount of moral compensation. However, in this case, the defendant must prove the causal link between defamation and consequences. Claimant’s financial situation is also important. Thus, the suffering could be valued differently in relation to a wealthy and poor person. However, in quantifying the damage to be taken into account, one should take into account the welfare of the defendant. Claimant damage claims by means of intangible damage (retraction, reply) before addressing the court will be an element that could justify lowering the amount of damage initially identified. The court could take into account other criteria such as the refusal to publish the retraction citing art. 26 para. 4 of Law, delays by the defendant of the case review, repeat dissemination of defamatory information in order to discourage the claimant after the preliminary request.

2. According to para. 2, the defendant may be required to compensate a public non-pecuniary damage only if defamed in bad faith. Therefore, para. 2 applies only if: a) it is a public defamation, b) defamation is made in bad faith, the defendant knew at the time of broadcasting false information and disseminating that information intentionally. The fact that the defendant is not an institution or media is irrelevant in this respect.

3. Although businesses can not have "physical and mental suffering", they can claim damages, but, as required by para. 3, only if dissemination endangered the management. Unlike individual, damage the professional reputation of the legal person is felt in lower income, which is a damage. However, following the dissemination of false information, the management of a company might find itself in a state of uncertainty regarding the company's business decisions or planning, there may be problems in the company's management and anxiety among members of company management, repercussions that can not be measured accurately and reported as material damage. These aspects are to be offset by non-pecuniary damage. For more details about the moral damage caused to the legal person see ECHR Judgement in the case *Comingersoll SA c. Portugal* (6 April 2000).

4. Moral damage brought to the legal entity is closely related to his professional reputation. The key to identifying the professional reputation of the legal entity is its name. For this reason, par. 4 provides that "no compensation shall be granted for damage caused by defamation of the legal entity that does not have the same name at the time of defamation." Similarly, it is not possible to pay moral damages to the successor of the defamed person (see art. 20 para 1 lit. B) of the Act).

5. According to para. 5, moral damages caused by the media through public dissemination of information which proved to be false or without a sufficient factual basis shall be made only if the media acted in bad faith or in violation of other professional obligations. Unlike paragraph. 2, which refers to the claimant, para. 5 refers to the defendant. It is applicable only to the mass media, if common information is public and only if it is established that the defendant acted in bad faith or breach of other professional obligations. Professional obligations of journalists are established by the Code of Ethics for Journalists in Moldova, signed in the new version on 7 June 2011. Bad faith is manifested through the intention to defame, i.e the defendant knew that he was disseminating false information and intentionally did Both granting the compensation and the partial or total refusal to recover moral damages should be motivated in the decision.

ECtHR pointed out that excessive amount of moral compensation for defamation may be itself a problem, even if the defamation occurred. Courts should be extremely careful when examining the professional conduct of journalists, since excessive sanctions could prevent them from perform the function of informing the public. The courts must take into account the likely impact of their decisions not only on individual situations but also on the media in general. In determining the compensation one must take into account the minimum wage, and salary of the defendant. The decision Kasabova v. Bulgaria (April 19, 2011) a moral compensation, which amounted to 70 minimum monthly wages and 35 monthly salaries that the person would pay, was considered excessive and disproportionate compared to the harm caused, as well as had a deterrent effect on other journalists who would like to inform about issues of public concern (in this case, corruption).

***Section 2***

***Procedure for examining cases on protection of private and family life***

This section covers the examination of civil actions with regard to the interference with family life and the dissemination of personal information or collection of those for the purposes of dissemination. The phrase "information about private and family life" is defined in art. 2 of the Law.

Unlike defamation, when the defendant relies on falseness of disseminated information in case of information about private and family life these are true, but the claimant believes that respect for his private and family life exceeds the public concern to know this information. Therefore, the object of proof is different. For this reason, the examination procedure of civil cases on defending family privacy was placed in a separate section. Other legislation does not provide the way of defending family privacy and civil procedure.

This chapter does not refer to the procedure of reviewing the procedures aimed at criminal or violation of privacy and family life, such as those mentioned in art. 177 of the Criminal Code.

Given that legal persons cannot have "private and family life", they cannot be claimants in such cases.

###### **Art. 30 The procedure of case review on matters of privacy and family life**

**The cases concerning the protection of privacy and family life shall be reviewed as prescribed by Section 1, with the exceptions defined in this section.**

Civil case on protection of private and family life are examined according to the rules set out in Section 1 of Chapter2, including preliminary proceedings, state tax, guaranteeing the action waiver from liability of mass media etc. except as provided by this section. This section states what non material damage the claimant may request, what must a law suit contain and what is the object of probation.

Unlike defamation, cases concerning protection of privacy and family may no be brought in the circumstances mentioned in art. Article 14. 2, or examined in the procedure of finding the facts which have a legal value, because in cases concerning protection of privacy and family one does not want false official statements of untrue facts and neither bringing these issues for public scrutiny. As long as there is no defendant, these actions lose their meaning.

**Art. 31 Preliminary request**

**The preliminary request shall indicate the information damaging the right to privacy and family life, as well as the circumstances proving the violation of this right, and shall require an apology and, if appropriate, damages.**

The procedure of submitting and review a preliminary request on protection of privacy and family life is the one provided by art.art. 15 and 16 of the Law. However, the contents of the preliminary request will be different, to answer the questions to be examined in court (see art. 32 of the Law). Preliminary request shall be limited to the object of proof in such cases - lack of sufficient public concern to disseminate information.

The preliminary request is used for expressing an apology, but not retraction, the right of reply or correction. Retraction or correction may not be requested because it is true information. The right of reply also cannot be granted because it is illogical in the context of the intention of the person concerned - not to disclose this information. The reply only would increase attention to the information concerned.

Injured person may seek material and moral damage caused by dissemination of information about private and family life. In determining the amount of moral damage one will take account of most of the elements listed in art. 29 para. 1 of Law.

**Art.32 Form and contents of the Law suit**

**The claimant shall indicate the following in the law suit:**

* 1. **the information causing damage to his/her right to privacy and family life;**
  2. **whether the information concerns him/her;**
  3. **whether the information has been disseminated by the defendant;**
  4. **whether he/she is a public figure;**
  5. **whether the information concerns a matter of public concern;**
  6. **the circumstances proving the violation of the right to privacy and family life;**
  7. **the amount of the damage caused.**

**(2) The law suit on matters of privacy and family life is subject to payment of the state tax in the amount prescribed in art.19.**

1. Important issues to be examined by the judge are indicated in par. 1. As with preliminary request, the law suit must indicate exactly what information violates the right to protect private and family life. It is for the claimant to demonstrate that the information aims at him and that the defendant disseminated it. The law suit may also relate to information that has not been disseminated, but in respect of which there are data showing that it will soon be disseminated by the defendant. In this case, after filing the preliminary request, the claimant may request as a measure guarantee, specified in art. 22 sec. 3 letter. a) or b) of the law. Given the presumption of art. Article 25. Para. 1 of the Law, if he claims so, the claimant should provide evidence that he is not a public figure. Also, given the presumption of art. Article 25 para. 2, the claimant must provide arguments if there is public concern and that public concern is not enough to disseminate information. If one requires moral damages, the claimant must indicate the amount claimed. Given the presumption of art. Article 25 para. 4, a simple indication of the amount will be insufficient for full admission of the action. The amount requested will be justified in terms of elements of art 29 para. 1.

2. To consider the law suit the state tax should be paid. This is 5 conventional units to request apologies and for compensation of damage of 3% of the size of moral and material claims.

**Art. 33 Reviewing the complaint regarding the protection of privacy and family life**

1. **When the court reviews a law suit regarding the protection of privacy and family life, it shall determine whether the public concern in knowing the information exceeds the interest of the individual in preventing the information from becoming public.**

**(2) If it is found that the claims included in the law suit are grounded, the court may rule, if the claimant so requests, that the defendant apologise and compensate the damages caused, as appropriate.**

1. Para. 1 defines the object of proof in cases concerning protection of privacy and family. The phrase "public concern" is defined in art. 2 of the Law. Whether it is a public concern, the court shall consider the natural interest of society or a part thereof, having regard to the value system of a democratic society. If the public concern has not been established, interference may not be justified.

The existence of public concern does not automatically justify any interference with privacy or family. The court shall weigh all the pros and cons of restricting freedom of expression. Thus, the court will determine what is the public concern of disseminating this information, whether it could really be satisfied in another way, whether actions were taken not to disseminate personal data that were not strictly necessary to meet public concern Is the defendant a public figure whether the presumption of innocence was violated. If there is a reasonable doubt when taking the decision, one will apply the presumption of public concern (see art. 25 para. 2).

2. If the law suit is accepted and claimant so requests, the defendant will be forced to apologize. The text of apology will be submitted by the claimant. If it exceeds the information unduly disseminated or it is presented indecently or offensively, the court will edit the text and it will show in the judgment. Apologies cannot be ordered by the court ex officio.

If the claimant seeks moral damages and the court considers that it is justified, he will be granted. The size of moral damage in this case will compensate for the suffering caused by the gap established by the court between the right to respect of privacy and public concern to know the information.

**Chapter III**

**Final and transitory provisions**

**Art. 34**

1. **The present Law shall enter into force as after the expiration of 3 months period after its publication in the Official Monitor.**
2. **The cases which are reviewed by the courts of law at the date of entering into force of the present Law, shall be reviewed by the courts according to the rules established in this Law, excepting the provisions set forth in articles 14 (preliminary request) – 17 (the form and content of the law suit) and art. art. 30 (preliminary request) – 31 (law suit) from this Law.**
3. **If the person has not notified the court of law before entrance into force of the present Law, he/she may file a law suit as stipulated in the present Law. The terms of limitation start as from the date of entrance into force of the present Law.**
4. **The acting legislative and other normative deeds regulating the relationships directly linked to the relationships regulated by the provisions of the present Law shall be applied to the extent to which they do not contravene the present code.**
5. **The Government shall:**
6. **elaborate and present suggestions in order to render the provisions of acting legislation in conformity with the present Law stipulations;**
7. **shall amend its normative deeds as to be in line with the provisions of the present Law.**

1. The law was adopted on 23 April 2010. It was published in the Official Gazette on 9 July 2010, as required by para. 1, entered into force three months later, ie on 10 October 2010.

2. Para. 2 refers to the examination of cases pending on 10 October 2010. Although the law entered into force on that date, claimants who by then had filed a law suit could not be forced to follow the pre –court procedure. Par. 2 clarified this.

3. Through art. Article 15 para 2 it was provided a status of limitation for starting pre-court proceedings . Such a term did not exist previously. Par. 3 aimed to address the situation of people who consider themselves defamed by information disseminated prior to 10 October 2010. Par. 3 has given these people 20 days to institute pre-trial proceedings.

4. Para. 4 provides for the the rule according to which ) normative acts regulating relations and those in conflict with the Law will not be applicable (fall into disuse. It is about inter alia, art. 27 of the Law on Press, which is contrary to art. 28 of the Law, or art. Article 16. 2 of the Civil Code, which contradicts art.art. 24 and 25 of the Law.

5. Par. 5 tasks the Government to ensure compliance or propose to Parliament to ensure compliance with provisions of the law within six months of the existing legislation upon entry into force of the Law. Although the Law requires modification to several laws and even though the prescribed period has expired, legislation has not yet been complied with. For example, censorship and deliberate illegal activity of the mass media was not criminalized.