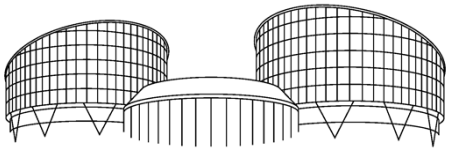

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF NIT S.R.L. v. THE REPUBLIC OF MOLDOVA

(Application no. 28470/12)

JUDGMENT

Art 10 • Freedom of expression • Justified revocation of broadcasting licence of a TV channel after repeated and serious breach of the statutory requirement to ensure political balance and pluralism in news bulletins • Development of general principles when striking a proper balance between political pluralism in the media and editorial freedom • Internal and external pluralism to be considered in combination with each other • Wide margin of appreciation afforded in principle as to choice of means for ensuring media pluralism • Fairness of proceedings and procedural safeguards particularly relevant to proportionality assessment in case of licence revocation, given sanction severity • Convention compliance of national framework including safeguards to ensure media regulator's independence and its protection against political pressures • Sanction devoid of political motivation and proportionate, given availability of other means of broadcasting, possibility to reapply for a licence in a year, judicial review and procedural safeguards
Art 1 P1 • Control of the use of property • Fair balance struck between general interest of the community and property rights of the applicant company in decision to revoke broadcasting licence

STRASBOURG

5 April 2022

This judgment is final but it may be subject to editorial revision.

In the case of NIT S.R.L. v. the Republic of Moldova,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Robert Spano, *President,*
Jon Fridrik Kjølbro,
Ksenija Turković,
Síofra O'Leary,
Yonko Grozev,
Paul Lemmens,
Valeriu Griţco,
Egidijus Kūris,
Branko Lubarda,
Stéphanie Mourou-Vikström,
Jolien Schukking,
María Elósegui,
Ivana Jelić,
Arnfinn Bårdsen,
Darian Pavli,
Erik Wennerström,
Saadet Yüksel, *judges,*

and Søren Prebensen, *Deputy Grand Chamber Registrar,*

Having deliberated in private on 14 October 2020 and 1 December 2021,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 28470/12) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a company incorporated in Moldova, ÎM "Noile Idei Televizate" S.R.L. - NIT S.R.L. ("the applicant company"), on 11 May 2012.

2. The applicant company was represented successively by Ms A. Răileanu and Ms Z. Curuci, its general managers, and Mr P. Bălan, a lawyer practising in Chişinău, and was granted leave to have its case presented in the oral hearing proceedings before the Court by Ms A. Nica, an adviser (Rule 36 of the Rules of Court). The Moldovan Government ("the Government") were represented by their Agent, Mr O. Rotari, of the Ministry of Justice.

3. The applicant company alleged that the revocation by the Audiovisual Coordinating Council ("the ACC") of the broadcasting licence of its television channel of the same name (NIT) on 5 April 2012 had amounted to a violation of Article 10 of the Convention and that, as a result, its right to the peaceful enjoyment of its possessions had been violated, contrary to Article 1

of Protocol No. 1 to the Convention. In addition, the applicant company alleged that the proceedings it had brought against the ACC's above-mentioned decision had been unfair, in breach of Article 6 § 1 of the Convention. The applicant company also alleged that it had not had access to an effective remedy for its complaints and had been discriminated against, in breach of, respectively, Articles 13 and 14 of the Convention, each taken in conjunction with Articles 6 and 10.

4. The application was initially allocated to the Third Section of the Court, and subsequently to its Second Section (Rule 52 § 1).

5. On 17 April 2018 the Government were given notice of the application.

6. On 3 March 2020 a Chamber of the Second Section, composed of Robert Spano, President, Valeriu Griţco, Egidijus Kūris, Ivana Jelić, Arnfinn Bårdsen, Darian Pavli and Saadet Yüksel, judges, together with Hasan Bakırcı, Deputy Section Registrar, relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected thereto (Article 30 of the Convention and Rule 72).

7. The composition of the Grand Chamber was determined in accordance with Article 26 §§ 4 and 5 of the Convention and Rule 24.

8. The applicant company and the Government each filed written observations.

9. A hearing took place in the Human Rights Building, Strasbourg, on 14 October 2020 (Rule 59 § 3); on account of the public-health crisis resulting from the COVID-19 pandemic, it was held via videoconference. The webcast of the hearing was made public on the Court's Internet site on the following day.

There appeared before the Court:

(a) *for the Government*
Mr O. ROTARI, Ministry of Justice, *Agent*,
Ms D. MAIMESCU, lawyer attached to the Government's Agent Department, Ministry of Justice *Adviser*.

(b) *for the applicant company*
Ms A. NICA, Alliance for Justice and Human Rights, *Adviser*.

The Court heard addresses by Mr Rotari and Ms Nica, followed by their answers to questions from judges.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

10. The applicant company is a limited liability company incorporated in Moldova. The identity of its owners is unknown to the Court. Its television

channel NIT operated in Moldova from 1997. From 2004 NIT began broadcasting nationally.

A. Historical background

11. Before Moldova gained independence in 1991, the ownership of mass media outlets was a privilege exclusively reserved for the State and the ruling party. In the 1990s and the early 2000s the National Television of Moldova (NTM) was the only Moldovan television channel with national coverage. It was fully State-controlled and had a virtual monopoly over audiovisual broadcasting in the country. There were two other television channels with national coverage at that time, the Russian State television channel and the Romanian State television channel, which rebroadcast programmes from their respective countries.

12. In the elections of 2001, the Party of the Communists of the Republic of Moldova (PCRM), which was created at the beginning of the 1990s and had declared itself to be the successor of the Communist Party of the Moldovan Soviet Socialist Republic, obtained seventy-one out of the total of 101 seats in Parliament. As a result, the PCRM became the only governing party. A detailed description of the media situation at that time can be found in the Court's judgment in *Manole and Others v. Moldova* (no. 13936/02, ECHR 2009 (extracts)). In that case, journalists from NTM alleged, *inter alia*, that they had to comply with a policy of devoting a disproportionate amount of airtime to reporting on the acts of members of the ruling political party, with little or no coverage of the acts and views of the opposition parties (ibid., § 105). In 2002 the journalists in question protested against this practice; they went on strike and barricaded themselves in the NTM building. Eventually, the building was stormed by special forces and the journalists were dismissed. The situation gave rise to large-scale demonstrations organised by the opposition to protest against the actions of the government and the practice of censorship on national television, a heated public debate, and strong international reactions, including from the Council of Europe (ibid., §§ 72-78). In its judgment the Court noted the following (ibid., § 108):

> "... during most of the period in question [2001-2004] [NTM] was the sole Moldovan broadcasting organisation producing television programmes which could be viewed throughout the country ... Moreover, approximately 60% of the population lived in rural areas, with no or limited access to cable or satellite television or, according to the Secretary General's Special Representative, newspapers ... In these circumstances, it was of vital importance to the functioning of democracy in Moldova that [NTM] transmitted accurate and balanced news and information and that its programming reflected the full range of political opinion and debate in the country and the State authorities were under a strong positive obligation to put in place the conditions to permit this to occur."

13. The Court found that the Moldovan State authorities had failed to comply with their positive obligations under Article 10 of the Convention as

the legislative framework was flawed (ibid., § 111) and held that there had been a violation of that Article.

B. Enactment of the Audiovisual Code of 2006

14. Against the background of the events described above and as a result of internal and external reactions to them, the government decided to draft new broadcasting legislation. The "Informative Note" appended to the draft Audiovisual Code of 2006 ("the Code") stated, *inter alia*, the following: "This bill aims at establishing the democratic principles of functioning of the audiovisual [sector] of the Republic of Moldova, ensuring protection of the rights of programme consumers ...". And: "The draft seeks to balance broadcasting freedom with 'more responsibility' on the part of broadcasters, especially with regard to observing 'the rights of the programme consumer', who will now have 'the possibility to address the competent authorities to ensure the appropriate conditions for free formation of opinion'."[1]

15. The Council of Europe's Media Division was involved in the legislative process. It requested two media experts to analyse and comment on the draft bill. These experts, in their report of May 2006, welcomed, *inter alia*, the fact that the draft bill specified procedures and criteria for licensing private broadcasters.

16. As regards Article 7 of the draft Code on political and social balance and pluralism (see paragraph 85 below), the experts expressed the view that the principle set out in the second paragraph was "commendable". No comment was made by the experts in respect of what became Article 7 § 4 of the final text of the draft Code.

17. As regards Article 27 on revocation of a broadcasting licence and Article 38 on sanctions, the experts suggested that the ACC should have discretion as to what, if any, sanction to apply rather than instituting an obligation for it to withdraw a licence. They also suggested that the initial list of three sanctions (public warning, fine and licence revocation) be extended to five sanctions (public warning, fine, deprivation of the right to broadcast advertisements, temporary suspension of licence and revocation of licence) and that revocation of a licence could happen only in cases of repeated serious violations of the Code. Those suggestions were incorporated in the final text of the Code (see paragraph 85 below).

18. The Council of Europe experts also identified a number of shortcomings in the draft Code, *inter alia* in relation to the structure of the ACC. In their view the proposed structure gave the government the ability to exert undue influence and control over the ACC and, through it, over all broadcasters. The experts made several proposals to improve the draft bill,

1. Council of Europe Report ATCM(2006)004, "Analysis and Comments on the Draft Audiovisual Code of the Republic of Moldova", p. 3.

which were all accepted by the Moldovan Parliament and were included in the final text of the Code (see paragraph 85 below). In particular, Parliament excluded from the draft bill the idea that the nomination of the ACC members should be done by "taking into account the number of mandates held by the legally established parliamentary factions". Parliament also accepted the suggestions to extend the class of potential nominators to include major sectors of civil society, to provide a detailed job description, to introduce staggered terms for ACC members and to remove their status as "public officials", and the suggestions concerning the ACC's funding.

19. The Code was adopted by Parliament on 27 July 2006 and was in force until 1 January 2019, on which date it was replaced by the Audiovisual Code of 2018.

C. Further political developments

20. On 5 April 2009 general elections took place in Moldova. According to the preliminary results, announced on 6 April, the ruling party narrowly won the elections. Accusations of electoral fraud, street protests and large-scale operations by police and special forces units followed (a description of the events in question can be found in the Court's judgment in *Iurcu v. the Republic of Moldova*, no. 33759/10, §§ 6-9, 9 April 2013). In July of the same year fresh elections took place. As a result of those elections, the PCRM lost its majority in Parliament and became the only opposition party, with forty-eight of the total of 101 parliamentary seats. An alliance of four smaller political parties, called the Alliance for European Integration (AEI), formed the new government.

D. Broadcasting situation in Moldova in 2012

21. According to information submitted by the parties, on 1 January 2012 there were sixty-four broadcasting licences issued in Moldova, five of which related to nationwide coverage.

22. According to a study conducted by the Moldovan Centre for Independent Journalism in March 2012, the three television channels with nationwide coverage which enjoyed the largest audience were Prime TV (a channel rebroadcasting the Russian State television channel and inserting some local content) with 47.9% of the audience, Moldova 1 (the former NTM) with 34.5% of the audience, and NIT (rebroadcasting a Russian television channel and inserting some local content) with 26.3% of the audience. The fourth and fifth television channels with nationwide coverage were 2Plus, which had taken over the frequency which used to belong to the Romanian State television channel and was rebroadcasting a Romanian channel and inserting some local content, with 6.9% of the audience, and EuroTV Chişinău with 2.7% of the audience.

23. All these five channels were broadcasting on analogue frequencies.

E. Composition of the ACC in 2012

24. From the publicly available parliamentary decision confirming their appointment, it appears that six out of the nine members who formed the ACC in 2012 were appointed before the change of government in 2009. Three of them were appointed in 2006 and remained in office until 2012; three were appointed in 2008 and remained in office until 2014; and three were appointed in 2011 and remained in office until 2017.

F. The case of NIT

1. Issuing of the new broadcasting licence

25. The television channel NIT operated in Moldova from 1997. From 2004 NIT had nationwide coverage. On 7 May 2008, a new broadcasting licence was issued by the ACC to the applicant company, on the basis of Article 23 of the Code, for a period of seven years.

26. The terms of the licence stated that the broadcaster was obliged to observe the provisions of the Code. The terms of the licence, under point 3.1 letter (e), further stipulated that the broadcaster should provide information completely, correctly and promptly, in the spirit of the constitutional provisions, and the pluralism of opinions.

2. Sanctions imposed prior to the revocation of the broadcasting licence

27. Information published on the website of the ACC, including the annual reports that it began to produce and publish in 2007, show that since the Code had entered into force the ACC had imposed sanctions on numerous companies holding broadcasting licences for radio and television channels, including the applicant company, for breaches of provisions of that Code. From the annual reports for 2007 and 2008 it appears that the ACC applied a total of forty-three sanctions in 2007 and more than twenty-five sanctions in 2008.

28. It appears from this information that on 15 and 23 May 2007, respectively, the ACC (i) fined the applicant company 2,000 Moldovan lei (MDL) (approximately 122 euros (EUR)) because NIT had broadcast deceptive advertisement during one of its shows and (ii) gave it a public warning because NIT's news bulletins had, among other things, breached Article 7 §§ 1 and 4(c) of the Code during an election campaign in May 2007. On the latter occasion the ACC gave the applicant company seven days to ensure that NIT's news bulletins complied with the relevant provisions of the Code. It does not appear from this information that the applicant company received any sanctions from the ACC in 2008.

29. From the materials submitted to the Court by the parties it appears that between 2009 and 2011, on the basis of monitoring carried out by the ACC either of its own motion or after complaints submitted to it, the ACC imposed eleven sanctions on the applicant company because NIT had breached Article 7 of the Code. In particular, NIT was found guilty of being one-sided and politically biased in favour of the PCRM in its news bulletins, contrary to the provisions of Article 7 § 2, and of failing to give an opportunity to other parties to comment on the accusations made against them, contrary to Article 7 § 4. The following sanctions were imposed:

(i) on 24 March 2009, a public warning for breaching Article 7 §§ 1, 2, 3 and 4(b) and (c); the applicant company did not challenge this sanction;

(ii) on 6 November 2009, a fine of MDL 5,400 (approximately EUR 330) for breaching Article 7 §§ 1, 2, 3 and 4(b) and (c); the applicant company unsuccessfully challenged the sanction in the courts and the court judgments became final;

(iii) on 30 March 2010, a public warning for breaching Article 16 §§ 2 and 3; the applicant company unsuccessfully challenged it in the courts and the court judgments became final;

(iv) on 15 September 2010, a fine of MDL 5,400 for breaching Article 7 § 4(b) and (c); the applicant company unsuccessfully challenged it in the courts and the court judgments became final;

(v) on 29 October 2010, deprivation of the right to broadcast advertisements for three days for breaching Article 7 §§ 1 and 4(b) and (c); the applicant company challenged the decision in the courts and had it quashed on procedural grounds;

(vi) on 10 November 2010, a fine of MDL 5,400 for breaching Article 7 §§ 1, 2, 3 and 4(c); the applicant company challenged the decision in the courts and had it quashed on procedural grounds;

(vii) on 19 November 2010, deprivation of the right to broadcast advertisements for five days for breaching Article 7 §§ 1, 2, 3 and 4(c); the applicant company challenged the decision in the courts and at the same time asked the courts to suspend the enforcement of the decision pending the outcome of the proceedings on the merits. Even though by an interlocutory judgment of 13 December 2010, amenable to an appeal together with the merits of the case, the courts dismissed the applicant company's application to have the enforcement of the decision suspended, they eventually quashed the aforementioned ACC decision on procedural grounds;

(viii) on 18 May 2011, a public warning for breaching Article 7 §§ 1, 2, 3 and 4(c); the applicant company did not challenge it. Along with NIT, six other television channels were warned about a breach of Article 7 of the Code in their news bulletins;

(ix) on 27 May 2011, a fine of MDL 5,400 for breaching Article 7 §§ 1, 2, 3 and 4(c); the applicant company did not challenge it in the courts and

paid the fine. Along with NIT, two other television channels were warned about a breach of Article 7 of the Code in their news bulletins;

(x) on 3 June 2011, deprivation of the right to broadcast advertisements for five days for breaching Article 7 §§ 1, 2, 3 and 4(b) and (c); the applicant company unsuccessfully challenged the decision in the courts and the court judgments became final after the revocation of its licence. Along with NIT, two other television channels, including the national channel, were warned about a breach of Article 7 of the Code in their news bulletins; and

(xi) on 24 June 2011, suspension of its broadcasting licence for five days for breaching Article 7 §§ 1, 2, 3 and 4(a), (b) and (c); the applicant company unsuccessfully challenged the decision in the courts and the court judgments became final after the revocation of its licence. Along with NIT, another television channel was fined for breaching Article 7 of the Code in its news bulletins.

30. In addition to the above-mentioned sanctions, NIT received sanctions on two other occasions between 2009 and 2011 for breaching other provisions of the Code. Furthermore, on two occasions in 2010 NIT was given deadlines to comply with the provisions of the Code without any sanctions being applied.

31. However, from information submitted to the Court by the parties it also appears that the ACC dismissed complaints directed against NIT. For instance, on 29 October 2010 the ACC dismissed a complaint of 22 October 2010 by the representative to the Central Electoral Commission of one of the PCRM's rival political parties alleging that one of NIT's shows had failed to comply with the principles of impartiality and pluralism of opinion and that the political party he was representing had been denied the right to respond. Also, on 7 January 2012 the ACC dismissed an application of 16 December 2011 by the State Inspectorate for the Supervision of Alcoholic Production to have NIT punished for breaching the relevant legislation on advertising. In addition, on 29 March 2012 the ACC dismissed an application of 15 March 2012 by a member of parliament to have NIT punished for broadcasting during its evening news an allegedly propagandistic report by a Russian news agency stating that incidents entailing mass disorder were to take place in Moldova on the occasion of the presidential election and that the Prime Minister and the President had prepared their escape from the country.

3. Revocation of the broadcasting licence

(a) The monitoring process

32. On 29 March 2012, during a public meeting, the ACC decided to carry out a thematic monitoring process for the news bulletins of all television channels with nationwide coverage and the Vocea Basarabiei radio station, regarding compliance with Article 7 of the Code.

33. In accordance with Article 37 § 1, Article 40 § 1(a), (b) and (d) and Article 41 § 1(a) of the Code, the main news bulletins of the Vocea Basarabiei private radio station *(Ştiri* – aired at 6 p.m.), of the public television channel Moldova 1 *(Mesager* – aired at 7 p.m.), and of the private television channels Prime *(Primele ştiri* – aired at 9 p.m.), EuroTV Chişinău *(Ştiri* – aired at 8.30 p.m.), NIT *(Curier* – aired at 10 p.m.) and 2 Plus *(Reporter* – aired at 7 p.m.) were subjected to monitoring. The monitoring was carried out over a period of five days.

34. The methodology of the monitoring, involving comparative and chronometric measurements of contents, had been devised by the ACC in collaboration with experts from the European Union (EU) and the Council of Europe. Two international experts participated as observers in the monitoring carried out in accordance with the above methodology between 2010 and 2011 and confirmed the monitoring results presented by the ACC in those years.

(b) The monitoring report

35. The monitoring report on compliance with Article 7 of the Code contained an overview per channel of data concerning screen time spent on issues relating to specific political parties or specific political figures, including the number of seconds during which those issues were presented in a positive, negative or neutral manner. For each channel this overview was accompanied by a number of comments. The report attested that the news bulletins of the Vocea Basarabiei radio station and of the television channels Moldova 1, Prime, EuroTV Chişinău and 2 Plus had presented news with a balanced structure and had complied with the principle of providing information from several sources in the event of conflicting issues. Nonetheless, the monitoring results for Moldova 1 indicated that it had given significantly more airtime to the ruling parties in its news bulletins.

36. As to NIT, the report indicated that the news items aired by it concerning the AEI had lasted for over one hour and thirty-two minutes, during which the AEI had been referred to in a neutral manner for only eight seconds and the rest of the time in a negative manner. At the same time, the news items concerning the PCRM had lasted for over forty-one minutes, of which thirty-four minutes were neutral, six minutes were positive and only forty-four seconds were negative. It was concluded that this imbalance was in breach of Article 7 § 2 of the Code. Furthermore, the news items referred only in a negative manner to representatives of the government, Parliament and the Chişinău Mayor's Office and the representatives of those bodies were never given an opportunity to react as required by Article 7 § 4(c) of the Code. The representatives of the PCRM and those involved in organising protests together with the PCRM against the government were always praised or referred to in a neutral manner.

37. The report also recorded that NIT's news bulletins had publicised the protest actions organised by the PCRM against the government, had included an anti-government propaganda video clip and had featured captions amounting to manipulation. In presenting a news item about an opinion poll conducted by NIT reporters on the streets of Chişinău, Hânceşti and Străşeni, NIT had, for example, presented exclusively the opinions of PCRM supporters who had expressed critical views about the government. This was found to be a breach of Article 7 § 4(c) of the Code.

38. It was further noted that in reporting about protests organised by the PCRM, NIT had used captions and cited official declarations from those protests without showing images of the actual documents referred to. Thus, it was concluded that NIT had breached Article 7 § 4(a) of the Code, which requires each news story to be accurate. Moreover, NIT was found to have acted in breach of Article 7 § 4(b) because the news anchor had introduced an item by saying: "Disturbed by the cynicism of the AEI, the Căuşeni local councillors demand the resignation of the incompetent government", before reading out a declaration by members of the aforementioned local council.

39. Lastly, it was found that NIT had promoted aggressive journalistic language, had often not complied with the requirements concerning the diversification of sources, and had also used images, editing tricks or comments in order to distort the real facts or to denigrate the image of other subjects.

(c) The ACC's decision

40. On 2 April 2012 the applicant company was provided with a copy of the monitoring report. In the accompanying letter it was informed that its news bulletins and those of the other national broadcasters had been monitored following the ACC's decision of 29 March (see paragraph 32 above), that the results of the monitoring would be examined at the ACC's public meeting of 5 April 2012, that this meeting would start at 10 a.m., and that its presence at the meeting was mandatory.

41. The minutes of the 5 April 2012 meeting reveal that eight of the ACC's nine members were present and that NIT's representative was also present and answered questions. According to the minutes, NIT's representative had stated that although this might sound paradoxical, NIT was pleased with the monitoring report because it mentioned NIT's predominantly neutral stance towards the PCRM and towards other political parties. From the minutes it further appears that during the discussions which ensued on the findings of the monitoring report on NIT, several ACC members had described the way in which NIT had presented its news bulletins as "manipulation" and "spreading fake news". It was stated, *inter alia*, that during one of the news bulletins one of the leaders of the AEI had been compared to Hitler and all leaders had been referred to as "criminals", "bandits" and "crooks". The terms used to describe the AEI

government had included "dictatorial regime", "unconstitutional regime", "usurpers of power", "traitors", "the group of the three usurpers", and "criminal gang". Some of the ACC members had believed that NIT's news bulletins incited to hatred, violence and xenophobia. For instance, in a news item about anti-government demonstrations, slogans such as "usurpers, get out of Moldova" or "enemies of the people" could be heard. In another news item concerning an anti-government demonstration, people had been heard saying: "we shall unleash a fight against the traitors in power to regain the sovereignty of Moldova" and "we do not need pseudo-Romanianised and Western stooges". One member of the ACC had expressed the view that the news bulletins had been presented in such a manner that no distinction could be made between the facts presented in them and the biased opinions of the journalists commenting on them. NIT had also been criticised for making public announcements concerning the time and place of the anti-government protests organised by the PCRM. One of the ACC members had stated that the problem had not resided in the fact that the government had been criticised, the television channel being free to criticise the government as much as it wished in its shows. However, it was obliged to respect the rules concerning pluralism in its news bulletins. One of the ACC members had stated that Article 7 § 2 of the Code concerned rather the period for election campaigns and that news bulletins could not remain neutral towards the government. He believed that the monitoring had been conducted with the sole purpose of imposing further sanctions on NIT and that if NIT's sanctioning by the ACC continued, this could be construed as an attack on freedom of expression. He expressed the opinion that the other ACC members were silently fulfilling political instructions and urged them to act responsibly even though they had the power to close down a television channel.

42. At the end of the discussions the ACC member tasked with presenting the findings of the monitoring report was given the floor and concluded by saying that he always took responsibility and that today he was taking responsibility in proposing that, in accordance with the gradual approach, a sanction be imposed on NIT in the form of the revocation of its broadcasting licence. The proposal was put to a vote and accepted by seven votes to one.

43. The ACC's decision delivered on the same date reiterated the findings set out in the monitoring report (see paragraphs 35-39 above). In addition, it stated:

> "At the same time, the breaches found fall under Article 10 § 5 of the ... Code...
>
> Under the conditions of the broadcasting licence ..., point 3.1. letter (a): 'The licence holder is obliged to carry out its activities in compliance with the ... Code', and letter (e), 'to carry out its activities on condition of observing: the right to complete, truthful and operative information within the meaning of the constitutional provisions, as well as the pluralism of opinions.'
>
> At the same time, we should mention that ... NIT was publicly warned, by the ACC's decision ... of 18 May 2011, for breaches of the provisions of Article 7 ... of the ... Code.

By the ACC's decision ... of 27 May 2011, a fine ... was imposed ... for repeated breaches of the provisions of Article 7 ... of the ... Code. By the ACC's decision ... of 3 June 2011, a sanction was applied ... in the form of suspension of the right to broadcast commercial advertising ..., for repeated breaches of the provisions of Article 7 ... of the ... Code, and by the ACC's decision ... of 24 June 2011, the ... [channel]'s broadcasting licence was suspended ... for repeated breaches of the provisions of Article 7 ... of the ... Code.

Taking into account the ACC's decisions ... of 6 November 2009, ... 15 September 2010, ... 18 May 2011, ... 27 May 2011, ... 3 June 2011 and ... 24 June 2011, as a result of the examination of the monitoring report ..., [and] the public debates, on the basis of the provisions of the ... Code..., the [ACC]

Decides:

... To approve the monitoring report ...

... To publicly warn ... the founder of the Moldova 1 television channel, for breaches of the provisions of Article 7 § 2 of the Audiovisual Code, in accordance with Article 38 § 3 ... (a) of the Audiovisual Code.

... To withdraw the broadcasting licence ... for the television channel NIT, in accordance with Article 27 § 1 ... (a) and (b) and § 2 and Article 38 § 1 ... (e), § 2 ... (b) and (f), § 3 of the ... Code, for repeated breaches of the provisions of Article 7 §§ 1, 2 and 4, ... (a), (b) and (c) and Article 10 § 5 of the ... Code and point 3.1, letters (a) and (e) of the terms of the broadcasting licence.

..."

44. The ACC's decision was published in the Official Gazette on 6 April 2012.

4. Proceedings against the revocation decision

(a) Preliminary challenge before the ACC

45. On 5 April 2012 the applicant company brought a preliminary challenge before the ACC against the revocation decision, relying on section 14 of Law no. 793-XIV/2000 on administrative court proceedings (see paragraph 87 below) and seeking to have the revocation of the broadcasting licence declared void. It argued, in essence, that the ACC's decision had been unlawful and unreasoned and had therefore interfered with NIT's editorial independence, in breach of the right to freedom of expression.

46. On 27 April 2012 the applicant company's preliminary challenge was dismissed by the ACC as being ill-founded. The ACC held, in short, that it had revoked the broadcasting licence only after it had gradually applied all the other sanctions provided for in Article 38 of the Code.

(b) Applications for interim measures

47. On 6 April 2012, at the same time as lodging an appeal against the ACC's decision of 5 April 2012 with the Chişinău Court of Appeal ("the Court of Appeal") (see paragraph 55 below), the applicant company also asked the same court to stay the enforcement of the decision pending a

judgment on the merits and to take protective measures. The applicant company relied on section 21 of Law no. 793-XIV/2000 on administrative court proceedings (see paragraph 87 below) and on Articles 174, 175 and 177 of the Code of Civil Procedure ("the CCP"). It argued that the absence of a protective measure would clearly cause difficulties when enforcing a judgment on the merits in its favour and would very likely make that judgment impossible to enforce. Also, it argued that the immediate enforcement of the decision would result in serious and imminent losses for the applicant company and would destroy its television channel.

48. The applicant company contended that, in accordance with the applicable rules, the owner of the broadcasting licence had to return the revoked licence to the ACC. Given the nature of the activity authorised by the broadcasting licence, its owner would therefore be forced to suspend broadcasting indefinitely or end it altogether. Thus, the psychological and financial well-being of NIT's employees would be affected and the television channel would lose any current or future commercial endorsements and would be forced to terminate other existing contracts, which could result in significant financial liabilities and penalties. The impugned measure would also breach the television channel's right to freedom of expression, including its right to impart information and the public's right to receive it. Lastly, the broadcasting frequencies covered by the licence would be made available to other broadcasters through a public competition, rendering the enforcement of a favourable judgment on the merits virtually impossible.

49. By an interlocutory judgment of 9 April 2012 the Court of Appeal dismissed the applicant company's application for a stay of enforcement. The Court of Appeal held:

> "Having reviewed the arguments raised [by the applicant company] in its application ..., [it] considers that the application is ill-founded and has to be dismissed ...
>
> Under section 21(1) of Law no. 793-XIV/2000, the applicant [company] could ask for a stay of enforcement of the administrative act at the same time as bringing proceedings before the court.
>
> The ... court [wishes] to mention that by the ACC decision ... of 5 April 2012 the activity of the NIT television channel had in fact been stopped ... By staying [the enforcement of] the contested administrative act, the court would expose itself [to the risk] of determining the merits of the case, [a step] which is inadmissible at this stage of the proceedings in accordance with the provisions of the CCP.
>
> [Given] ... that the reasons for the [applicant company's] application for a stay [of enforcement] of the administrative act were not justified by it, the court ... considers that it is necessary to dismiss the application ..."

50. On 10 April 2012 the applicant company repeated its application to the Court of Appeal for a stay of enforcement, relying on the same provisions of domestic law (see paragraph 47 above). It again argued that it might suffer imminent and partly permanent damage, pointing to the fact that the competent authorities had informed it on 6 April 2012 that its broadcasting

would be stopped and that one of the ACC members had confirmed in a press statement the company's concerns that the broadcasting frequencies covered by the revoked licence would be advertised by way of public competition.

51. By an interlocutory judgment of 11 April 2012 the Court of Appeal dismissed this application. It held:

> "Having reviewed the arguments raised [by the applicant company] in its repeated application ..., [it] considers that the application is ill-founded and has to be dismissed ...
>
> ... On 9 April 2012 the [court] dismissed a similar application by the applicant company ...
>
> ... the interlocutory judgment ... of 9 April 2012 ... was served on the applicant company's representative on the same date, [together] with an explanation that [the applicant company] could lodge an appeal on points of law [against the interlocutory judgment] within fifteen days ... if [it] disagreed with that ... judgment."

52. The applicant company appealed on points of law against both interlocutory judgments. It argued that on 9 April 2012 the Court of Appeal had dismissed its application of 6 April while ignoring its arguments about the damage it would suffer if the ACC decision was enforced and the need for protective measures in order to avoid making the enforcement of a favourable judgment impossible. In addition, the applicant company argued that the court's observation that by staying the enforcement it would risk prejudging the merits of the case was irrelevant. In the applicant company's submission, the court had ignored the fact that by dismissing the application it had expressed an opinion on the outcome of the case in favour of the ACC.

53. The applicant company further argued that on 11 April 2012 the court had dismissed its application of 10 April on the ground that that application had been similar to the one of 6 April even though the applicant company's arguments and evidence showed that the former application had relied on different circumstances from those referred to in the latter one, including the fact that the television channel's broadcasting activity had been stopped. No explanation had been provided as to why the circumstances indicated by the applicant company could not be characterised as being new.

54. By a judgment of 10 May 2012, not amenable to appeal, the Supreme Court of Justice ("the Supreme Court") dismissed the applicant company's appeal on points of law and upheld the lower court's interlocutory judgments. It held:

> "... the solutions adopted by the [lower] courts were correct and complied with the legal norms in force.
>
> [Under Article 174 of the CCP], the court or the judge may take protective measures in the case following a request by the parties to the proceedings. Protective measures may be granted at any stage of the proceedings in circumstances where not taking such measures would create judicial difficulties or would render impossible the enforcement of the court judgment.

The applicant [asking] for protective measures has not presented the first-instance court with evidence that could confirm a possible difficulty or impossibility in enforcing a future favourable court judgment. However, the provisions of the cited norm can be applied by the first-instance court which examines the application only in circumstances where the parties to the proceedings who have asked for the [measure to be granted] prove the possible existence of such consequences. Otherwise, an arbitrary application of the cited norm could affect the rights and interests of another party to the proceedings and breach one of the fundamental principles of civil proceedings as set out in Article 22 of the CCP.

Under section 21(1) of Law no. 793-XIV/2000, the applicant [company] may request the administrative court to stay the enforcement of the contested administrative act at the same time as lodging its application against that act.

Under subsection 2 of the [same] section [the court may also order a stay of enforcement] of its own motion, but in such a case the court must establish damage that is imminent and this finding must be well justified.

As transpires from ... section 21(2) of the Law ... [text], ... it falls within the court's discretion to assess how justified the need to order the stay ... is and [whether] this intervention is going to prevent ... imminent damage.

The documents of the case confirm that ... the damage the applicant [company] claims to have sustained ... [concerns] the losses it suffered ... [because of] the termination of its commercial activities, which in turn was the result of the ACC's decision whose lawfulness and well-founded [nature] is contested and forms the scope of the case.

In other words, the administrative court is [called upon to examine] the [proceedings] challenging the lawfulness of the administrative act, the results of which ... [are going to be decisive] for the continuation of the [applicant company's] activities.

Starting from the aforementioned considerations, the Court considers that the [first-instance] court has correctly concluded that by the ACC's decision ... of 5 April 2012 the activity of the NIT television channel had in fact been stopped and that by staying [the enforcement of] the contested administrative act the court would expose itself [to the risk] of determining the merits of the case, [a step] which is inadmissible at this stage of the proceedings in accordance with the provisions of the CCP.

Moreover, the manner of recovering a loss suffered because of an administrative act is provided for by Law [no. 793-XIV/2000] and was to be examined in the event that the [applicant company's action against the ACC] was allowed ...

For these reasons, the Court considers that the [applicant company's] arguments supporting its ... appeals on points of law cannot [be considered valid] grounds for quashing the interlocutory judgments of the [lower] court ...

The applicant [company's] allegation that the right to freedom of expression, including the public's right of access to information, might potentially be affected ... is also [considered] by the court [to be] declaratory and unproven because ... there is no evidence confirming such a situation.

The argument that the sale of the broadcasting frequencies could prevent the enforcement of a possible judgment cannot be accepted and was correctly dismissed by the [lower] court because it was grounded on mere suppositions.

Moreover, the legal provisions cited above give the court, where necessary, the possibility of reconsidering throughout the judicial debates the issues deemed important [in the case].

...”

(c) Proceedings on the merits before the Court of Appeal

(i) The applicant company's submissions

55. The applicant company argued that the ACC's decision of 5 April 2012 had been unlawful on substantive and procedural grounds. It stressed that, according to the findings of the monitoring report, it had also referred to the PCRM in a negative manner for forty-four seconds in its news bulletins. It admitted that its news bulletins had been critical or even defamatory towards the AEI. However, it pointed out that under the Convention it was acceptable to criticise the government and that the freedom of the media allowed journalists the right to exaggerate and act in a provocative manner. According to the applicant company, it had thus acted in conformity with Article 10 of the Convention. It expressed the view that the method chosen by the State to ensure pluralism – as enacted in Article 7 of the Code – was contrary to that Convention provision. It further submitted that the ACC's decision had not been lawful within the meaning of Article 10 as the law on the basis of which the licence had been revoked had not made it clear that such a serious sanction as the revocation of the licence could be imposed for criticising the government. Nor had the ACC's decision pursued a legitimate aim, since the only aim pursued by the authorities had been to eliminate it from the media market and get rid of a television channel critical of the government. It stressed that the criticism of the government related to matters of important public interest, such as foreign policy and domestic affairs. The sanction imposed had been disproportionately harsh and the ACC had not provided sufficient and pertinent reasons for that decision.

56. The applicant company also argued that the revocation of its licence had been contrary to its rights guaranteed by Article 1 of Protocol No. 1 to the Convention.

57. As regards the procedure, the applicant company submitted that pursuant to Article 40 § 3 of the Code, the ACC's decision of 29 March 2012 to carry out a monitoring process had entered into force on the date on which it had been published in the Official Gazette, namely on 31 March 2012. The monitoring report had been debated by the ACC at its meeting of 5 April 2012. The ACC had not observed the time-limits prescribed by sections 3(2)(a) and 9 of Law no. 239-XVI/2008 on transparency in decision-making (see paragraph 88 below). In addition, when adopting its decision of 5 April 2012, as well as its decision of 24 June 2011, the ACC had not acted in conformity with Article 27 § 2 of the Code in that it had omitted to observe procedural requirements laid down in other laws before suspending or revoking the licence. In particular, it had failed to apply to a court within three working days from adopting its decisions, including the one of 5 April 2012, as required by the CCP and section 17(3) of Law no. 235-XVI/2006 on the basic principles of regulating entrepreneurial

activity. Also, the ACC had not provided any recommendations for remedying the violations found following the monitoring and had not warned the applicant company of the possible suspension or revocation of the licence if the violations found were not remedied in due time, as required by section 16(6)(e) of Law no. 235-XVI/2006 and section 19 of Law no. 451-XV/2001 on regulating entrepreneurial activity through licensing. Furthermore, the Constitutional Court had confirmed in its ruling of 6 December 2012 (see paragraphs 89-92 below) that the immediate enforcement of the ACC's decision of 5 April 2012 without waiting for the outcome of the court proceedings examining the challenge against that decision had been contrary to national legal and constitutional principles and to the Convention.

58. The applicant company lastly contended that the ACC had been politically biased and that certain leading politicians had influenced the decision to revoke its licence.

(ii) The Court of Appeal's judgment

59. On 11 February 2013 the Court of Appeal gave judgment and dismissed the applicant company's appeal as ill-founded. In so far as relevant to the case before the Court, its reasoning included the following.

60. The court found that the ACC's findings concerning NIT's news bulletins had been supported by the available evidence and that the ACC had provided reasons for its decision to revoke the licence as also shown by the minutes of the meeting of 5 April 2012. In addition, the court viewed the recordings of the news bulletins and described in detail the contents of the news bulletin of 6 February 2012. It found that this bulletin had lasted for forty-one minutes of which thirty-nine minutes had been dedicated to criticism of the governing parties. Words such as "bandits", "criminals", "crooks", "group of criminals", "traitors", and "swindlers" had been used to describe the government and the parties forming it. Every minute contained two or three such words and none of the persons mentioned in the bulletin had been given a chance to react. The court considered the applicant company's allegations in this connection (see paragraph 55 above) to be unfounded because they were contradicted by the aforementioned evidence and grounded on an incorrect assessment of the applicable legal framework.

61. The court, addressing the applicant company's complaint concerning the method chosen by the State to ensure pluralism, found as follows:

> "... the State has a positive obligation to ensure that the public has access to impartial and trustworthy information through television and radio. It also has the obligation to ensure the diversity of the opinions expressed via the above-mentioned media and it is up to the State to choose the means by which the above objectives are to be reached. The Moldovan State has opted for the method of implementation of the principle of pluralism of opinions, by obliging television and radio stations, as the beneficiaries of public broadcasting networks, to offer airtime to holders of all [political] views and ideas. Moreover, when someone is criticised, the State has imposed on television and

radio stations an obligation to give that person the opportunity to react. The choice made by the State is compatible with the so-called margin of appreciation under Article 10 of the Convention ...

In this context, reference is made to ... the third sentence of paragraph 1 of Article 10 of the Convention, according to which: 'This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.'

... audiovisual broadcasting is regulated by the Code, which is in line with international standards and which received the approval of international bodies at the time of its adoption ...

The law on the basis of which the television channel's licence was revoked was accessible and foreseeable, and NIT could have foreseen the consequences of its behaviour."

62. The court took the view that a broadcaster's editorial independence had to comply with the lawful requirements in the field and with society's interests.

63. The court accepted that the sanction imposed on the applicant company had been very harsh. However, it considered it important that the revocation of the licence had not been a spontaneous act which could not have been foreseen by NIT. It noted that before imposing that sanction, the ACC had made unsuccessful efforts for three years, between 2009 and 2012, to make the television channel abide by the provisions of Article 7 of the Code. The television channel had received sanctions on thirteen occasions between 2009 and 2012 for similar breaches and all those sanctions had been ineffective:

"It is undisputed that the attempts undertaken by the ACC and the chances given to the NIT television channel to return to legality, in conjunction with the sanctions imposed, in the opinion of the court, were more than enough for NIT to draw the appropriate conclusions and start complying with the law.

However, the court notes that NIT presented obvious characteristics of a violator of the imperative norms in the field, ignoring all the attempts undertaken by society, in the person of the [ACC], to keep NIT on the market of broadcasters in the Republic of Moldova."

64. The court noted that although all the legal conditions for the revocation of the licence had been met much earlier (in 2010), the ACC had imposed milder sanctions on two occasions instead of revoking the licence, thus giving the applicant company additional chances to comply with the law and avoid having its licence revoked. The court further noted that in 2011 the television channel had contested only two of the five sanctions imposed on it: the two official warnings had not been contested, and the fine had been paid without being contested.

65. The Court of Appeal also took into account the fact that at the time of the revocation of the licence, six of the sanctions imposed by the ACC had been final, and that by the time of the adoption of its judgment, another four sanctions had become final by way of final court judgments. Moreover, on

two occasions, the ACC had given NIT deadlines to comply with the law without imposing any sanctions on it:

> "... the court concludes that, by the date of the ACC's decision no. 42 of 5 April 2012 regarding the revocation of NIT's licence, out of all the sanctions applied to the NIT television channel, six sanctions were in force and had legal effect, and subsequently, by the time of the adoption of the decision in the case under examination, the legality of four other sanctions imposed as a result of the ACC's decisions has been confirmed by irrevocable court decisions."

66. The court further noted that in spite of all the efforts by the ACC to make NIT stop violating the law and thus keep it on the market, the latter had obstinately continued to do so, thus leaving no other option to the ACC but to revoke the licence. It held:

> "Had the ACC not imposed the harshest sanction on the television channel, it would have sent the wrong signal to other broadcasters, which would have been led to believe that failure to observe the law could not have serious consequences. Thus, the imposition of the harshest sanction on the television channel corresponded to a strong necessity in a democratic society, a necessity dictated by the obligation to impose pluralism of opinions and the need to comply with the audiovisual legislation."

67. The court also dismissed the applicant company's allegations concerning the breach of its rights under Article 1 of Protocol No. 1 to the Convention. It noted that the licence had been revoked for repeated breaches of the law and that therefore, the revocation had been lawful, had pursued a legitimate aim and had been necessary in a democratic society. The court also considered unfounded the applicant company's argument that the interference had been disproportionate because of its exceptional and unjustifiably harsh nature, which had ruined the applicant company's entire professional activity, depriving it of all the possible income from audiovisual activities, on the grounds that during the years 2009 to 2012 NIT had not taken any measures recommended by the ACC but had continued to breach the Code, a fact which had eventually led to the revocation of the licence.

68. The court held, moreover, that the applicant company had not submitted conclusive and pertinent evidence before it that could confirm the damage alleged by it and that any losses suffered, including those from its inability to honour its contractual obligations, were attributable to NIT's unlawful actions and therefore it had to accept responsibility for them.

69. As regards the procedural complaints, the court held that the ACC had adopted the impugned decision in compliance with Articles 7, 10, 37, 38 and 40 of the Code and Articles 4, 5, 7, and 8 of the ACC's articles of association (see paragraphs 85-86 below) and by exercising its powers as set out in Articles 37 and 40 of the Code. On 29 March 2012 the ACC had lawfully ordered the monitoring of the news bulletins in accordance with the provisions of Article 38 §§ 2(f) and 7 and Article 40 § 1(d) of the Code. In line with the provisions of Article 38 § 7 of the Code, the applicant company had been given a copy of the report on 2 April 2012 and had been informed

with sufficient advance notice of the date, place and time of the ACC's meeting at which the report was to be discussed. Its representative had had sufficient time to become familiar with the contents of the report and to prepare a defence, had attended the meeting of 5 April 2012 and had been allowed to present the applicant company's position without any restrictions. The representative had not asked for an adjournment of the meeting in order to have more time to study the report or to prepare his submissions, even though he had had the right to do so. Therefore, the applicant company could no longer claim that its rights had been affected because it had had insufficient time for preparation.

70. The court further held in this connection that the applicant company's argument to the effect that the ACC's decision had breached section 9 of Law no. 239-XVI/2008 was ill-founded. The court observed that the applicant company had never challenged the lawfulness of the ACC's decision of 29 March 2012, so that it had not ceased to have effect. Moreover, the lawfulness of that decision had not been the subject of the instant case. The court also took the view that the Code was *lex specialis* and that therefore, the provisions of the Law on regulating entrepreneurial activity through licensing and the Law on the basic principles of regulating entrepreneurial activity were not applicable to the case:

> "The court considers unfounded the opinion of the representative of NIT according to which the ACC's decision no. 42 of 5 April 2012 is unlawful in that other decisions previously adopted by the [ACC] do not include provisions on requirements and recommendations for removing the violations found, which should be implemented pursuant to the Law on regulating entrepreneurial activity through licensing (no. 451-XV of 30 July 2001), because, in its activity, the [ACC] is governed by the provisions of the special law, namely the Code, which lays down the conditions and procedure for withdrawing the licence, and the provisions of the Code in this regard have been observed.
>
> At the same time, it is a well-known fact that, on the basis of the type of activity carried out by [NIT], in the light of the present dispute, the Law on regulating entrepreneurial activity through licensing (no. 451-XV of 30 July 2001) and the Law on the basic principles of regulating entrepreneurial activity (no. 235-XVI of 20 July 2006) are not applicable to the present case; thus, the references made to the provisions of those Laws are likewise unfounded."

71. As regards the applicant company's argument that the findings of the Constitutional Court in its ruling of 6 December 2012 (see paragraphs 89-92 below) on the constitutionality of the amendment to Article 38 of the Code enacted on 29 May 2012, were relevant and applicable to its case, the Court of Appeal found that those findings were not applicable and dismissed the applicant company's argument by making reference to the Law on the Constitutional Court, which stated that the rulings of the Constitutional Court did not have retroactive effect:

> "It should be mentioned that, in accordance with the provisions of section 26(7) of Law no. 317 of 13 December 1994 on the [Constitutional Court] of the Republic of Moldova, the decisions of the [Constitutional Court] take effect only for the future, and

> the court conducting the administrative proceedings reviews the lawfulness of an administrative act with reference to the date when that act was adopted."

72. The court lastly dismissed as unsubstantiated the applicant company's allegation that the ACC's decision had been influenced by leading politicians. It took the view that the argument that NIT had been discriminated against by the ACC could not be accepted, given that NIT had been monitored at the same time and under the same conditions as other broadcasters and that other broadcasters had also been punished where breaches of the Code had been found. It added that the monitoring methodology had been developed in cooperation with international experts and had been approved by members of civil society operating in the field after public deliberations.

(d) Proceedings before the Supreme Court

(i) The applicant company's submissions

73. The applicant company appealed on points of fact and law against the Court of Appeal's judgment and argued, in so far as relevant to the case before the Court, that it had misinterpreted and misapplied the relevant provisions concerning its right to freedom of expression. It repeated the arguments submitted to the Court of Appeal (see paragraph 55 above) and added that all the insults directed at the government had been shouted out by the protesters at meetings organised by the PCRM and that NIT had merely reported on the events in question. Therefore, the television channel was not responsible for the slogans shouted during those events. Moreover, the persons in respect of whom criticism had been expressed had not been offered an opportunity to react to that criticism because they had not asked for such an opportunity.

74. In addition, the applicant company submitted that the lower court had wrongly concluded that the ACC had not failed to observe the principle of gradual application of the sanctions when revoking its licence. It noted in particular that the harshest sanction had been applied at a time when the previous two sanctions were still being disputed in the courts. It was the applicant company's position that the ACC could only apply the next sanction after the courts had ruled on the previous ones. Otherwise, its right to an effective remedy within the meaning of Article 13 of the Convention would be breached. The applicant company also contended that through its judgment the Court of Appeal had breached Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention and had ignored the Court's relevant case-law in that regard.

75. Furthermore, the applicant company repeated its argument relating to the time-limit set out in section 9 of Law no. 239-XVI/2008 (see paragraph 57 above), adding that the ACC had not been exempted from observing it even though the applicant company had not asked for the meeting of 5 April 2012 to be adjourned.

76. The applicant company also submitted that the lower court had wrongly established that the licence revocation procedure provided for in Laws nos. 235-XVI/2006 and 451-XV/2001 had not been applicable to the case. The lower court's finding had ignored an explanation provided by the Plenary of the Supreme Court in a judgment of 28 May 2012 to the effect that all licensing bodies had to initiate court proceedings after they had issued decisions suspending or revoking an entrepreneurial licence. In addition, according to the Constitutional Court's judgment of 6 December 2012, the type of activity carried out by NIT could not exempt the licensing body from initiating the aforementioned court proceedings.

(ii) The Supreme Court's judgment

77. By a judgment of 2 May 2013 the Supreme Court dismissed the applicant company's appeal on points of fact and law. The court endorsed the reasoning given by the Court of Appeal, noting that that court had correctly interpreted and assessed the relevant laws and available evidence, including the fact that the lawful conditions and procedure for the revocation of the licence had been complied with and that Law no. 451-XV/2001 had not been applicable to the case.

78. The Supreme Court further emphasised that the measure of revocation of the applicant company's licence had been necessary in order to enforce the rules concerning the pluralism of opinions and in order to enforce the rule of law. It took the view that the ACC had applied the sanctions by complying with the principle of gradual application of sanctions and, as an exceptional measure, had given NIT more chances to redress its behaviour than it was obliged to give under the law in force, thus doing everything reasonably possible and more in order to convince NIT to start abiding by the law. Since NIT had refused to comply, the authorities had had no other solution but to apply the harshest measure. The applicant company's interpretation of the provisions of the Code concerning the manner of and the procedure for the application of sanctions had been ill-founded.

5. Reactions to the revocation of NIT's broadcasting licence

79. The revocation of NIT's licence gave rise to many reactions. For instance, on 11 April 2012 the Union of Journalists of Moldova issued a declaration in which it expressed the view that the ACC's decision to revoke the applicant company's licence to broadcast was justified in view of the fact that NIT had engaged in a practice of breaching the Code and acting in a manner incompatible with the professional ethics of journalists. According to the Union of Journalists, NIT had acted as a propaganda tool of one political party, contrary to all the standards of fair journalism.

80. In an interview of 11 April 2012, the Secretary General of the Council of Europe stated the following with regard to the revocation of the applicant company's licence:

> "The Council of Europe has always upheld the principle of media pluralism in its Member States. We firmly believe that free media are an important part of any functioning democratic society. We are aware that NIT is in [the] process of appealing the decision and that several cases are still pending in the courts with regard to last year's sanctions against NIT... We hope that the judicial process will be carried out in line with standards established by the ... Convention ... and its Article 10 in particular. We also note the reaction of other international organisations present in Chişinău. The Council of Europe will continue to closely follow this case."

81. The EU Mission to Moldova took note of the revocation of NIT's licence and called on the national authorities to apply the same legal provisions to all broadcasters. The Mission stressed the importance of pluralism in the mass media and the importance of reflecting the point of view of the opposition.

6. Subsequent developments

82. After the revocation of its broadcasting licence, NIT continued to share content such as news bulletins, reports and videos through its Internet homepage and its YouTube channel until the end of 2014.

83. The applicant company did not reapply for a broadcasting licence.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE

A. Domestic law

1. The Constitution

84. The relevant provisions of the Constitution of the Republic of Moldova, as in force at the material time, read as follows:

Article 32
Freedom of opinion and expression

> "1. Every citizen shall be guaranteed the freedom of thought and opinion, as well as the freedom of expression in public by way of word, image or other possible means.
>
> 2. Freedom of expression may not prejudice the honour, dignity or right of another person to his or her own vision.
>
> 3. It shall be prohibited and punished by law to challenge and defame the State and the people, to call for a war of aggression or national, racial or religious hatred, to incite discrimination, territorial separatism, or public violence, and to engage in other actions that threaten the constitutional regime."

Article 46
The right to private property and its protection

"1. The right to private property, as well as claims against the State, are guaranteed.

2. No one may be subjected to expropriation except in the public interest, established in accordance with the law, in return for just and prior compensation.

3. Lawfully acquired assets may not be confiscated. The lawful nature of the acquisition shall be presumed.

4. Goods intended for, used for or resulting from criminal or administrative offences may be seized only in accordance with the law.

5. The right to private property shall oblige the owner to comply with the duties relating to the protection of the environment and the provision of good neighbourliness, as well as to the other duties which, in accordance with the law, fall to the owner.

6. The right to inherit private property shall be guaranteed."

2. The Audiovisual Code of 2006

85. The relevant provisions of the Audiovisual Code of the Republic of Moldova, as in force at the material time, read as follows:

Article 7
Political and social balance and pluralism

"1. In keeping with respect for fundamental freedoms and human rights, political and social pluralism, cultural, linguistic and religious diversity, information, education and entertainment of the public shall be realised and ensured through the transmission and retransmission of programme services.

2. When giving airtime to a political party or movement for the propagation (*propagarea*) of its position, a broadcaster shall also give airtime to other political parties and movements within the same type of programme and in the same time slot, without any unjustified delay and without favouring a certain party, regardless of the percentage of its parliamentary representation.

...

4. In order to ensure the observance of the principles of social and political balance, fairness and objectivity within [their] news programmes, [broadcasters] shall ensure that:

(a) each news story is accurate;

(b) the sense of reality is not distorted by means of editing tricks, comments, wording or headlines;

(c) the principle of multi-source information is observed in cases of news stories covering conflict situations.

..."

Article 8
Independence and editorial freedom

"1. Broadcasters under the jurisdiction of the Republic of Moldova have the right to decide freely on the content of their broadcasts and programmes, respecting the principle of plurality of opinions in accordance with the legal framework and the conditions set out in the broadcasting licence.

..."

Article 10
Programme consumer rights

"...

5. Broadcasters shall ensure that information given to the public is presented objectively and shall favour the free formation of opinions.

..."

Article 23
Broadcasting licences

"1. Licences for broadcasting programme services by means of terrestrial radio-electric waves shall be issued by the Audiovisual Coordinating Council following a competitive process ...

...

3. The Audiovisual Coordinating Council shall issue a broadcasting licence subject to the following conditions:

(a) the issuing of a broadcasting licence shall be conditional on a subsequent observance of the objectives set out in the Strategy on covering the national territory with audiovisual programme services, in compliance with the National Plan of Radio Frequencies;

(b) the issuing of a broadcasting licence shall be deemed to meet the principles of ensuring pluralism in the audiovisual field, precluding the creation of any potential conditions for monopolistic ownership and media concentration in the audiovisual sector in particular and in the mass media in general, taking into consideration the degree of compliance with this requirement of the broadcasters already issued with a licence;

(c) a decision granting a licence shall be made taking into consideration the applicant's financial viability and the extent to which the applicant's proposals coincide with his or her real financial potential;

(d) applicants offering programmes of domestic production and European works shall take precedence in the competitive process for a broadcasting licence.

4. The licensing terms and the procedure shall be published in the Official Gazette of the Republic of Moldova and on the Audiovisual Coordinating Council's website.

5. A broadcasting licence for terrestrial radio and/or television programme services shall be granted for a seven-year period, whereas for cable radio or television programme services [it shall be granted] for a six-year period;

6. In accordance with the Strategy on covering national territory with audiovisual programme services, the Audiovisual Coordinating Council shall publish an

advertisement regarding the competition for available frequencies in the Official Gazette of the Republic of Moldova, on the Council's website and in other media, including local media. The advertisement shall comprise the following information:

(a) application terms and deadline;

(b) the type of media (television, radio, and so on);

(c) the type of programmes required;

(d) technical parameters of frequencies, maximum capacity of transmitters, and territorial coverage;

(e) the validity period of a broadcasting licence;

(f) the State fee for the broadcasting licence;

(g) an application form which shall provide at least the following obligatory information: organisational structure and capital of the applicant institution, the owner's identification data, contents and duration of the proposed programmes, programme orientation, potential audience, sources of financing the programme services, copies of agreements on purchasing or renting the necessary equipment, and any other data confirming the applicant's technical potential;

(h) a business plan covering the validity period of the acquired broadcasting licence, and information regarding other mass media activities.

7. The Audiovisual Coordinating Council shall publish the plans of the proposed programme services and information on the participants in the competitive process, on the basis of the applications submitted.

8. The Audiovisual Coordinating Council shall set the date for carrying out the competitive process within twenty days of the date on which the deadline expires.

9. After an objective and impartial review of all the applications, according to the criteria under paragraph 3, the Audiovisual Coordinating Council shall designate the winner of the competition.

10. The Audiovisual Coordinating Council shall adopt a decision regarding the results of the competition which shall be published in the Official Gazette of the Republic of Moldova within fifteen days from the date of its adoption; this decision may be contested in a court.

11. A broadcasting licence for public programme services shall comprise exhaustive requirements as set out in the Code.

12. Licence holders shall notify the Audiovisual Coordinating Council in writing of the starting date of their broadcasting at least seventy-two hours before the first broadcast."

Article 27
Revocation of a broadcasting licence

"1. The Audiovisual Coordinating Council may revoke a broadcasting licence if:

(a) the licensee continually fails to fulfil the conditions specified in the licence;

(b) the licensee violates the requirements of this Code;

...

2. The Audiovisual Coordinating Council shall withdraw the broadcasting licence, in accordance with the procedure and in the manner established by this Code and other legislation, only after exhausting the other sanctions provided for in Article 38 of this Code.

..."

Article 37
Supervision and monitoring

"1. The Audiovisual Coordinating Council shall supervise the implementation and observance of the provisions of this Code.

2. In exercising its duties, the Audiovisual Coordinating Council may request the necessary information from broadcasters or service providers, specifying the legal basis and the purpose of the request and shall set the deadlines within which this information should be delivered.

3. Monitoring activities shall be performed as follows: (a) [by the Council] of its own motion; (b) at the request of a public authority; (c) following a complaint filed by a natural or legal person claiming to have been directly affected by a violation of legislation in this field.

4. The Audiovisual Coordinating Council shall examine the submitted claims and requests within fifteen days from the date of receiving them. The results of the monitoring and, where appropriate, the decision to apply a sanction shall be published on the Council's website."

Article 38
Sanctions

"1. If a broadcaster violates the legal rules, one of the following sanctions shall be applied:

(a) a public warning;

(b) withdrawal of the right to broadcast advertisements for a certain period of time;

(c) a fine;

(d) suspension of the broadcasting licence for a certain period of time;

(e) revocation of the broadcasting licence;

2. Under this Code the following shall constitute breaches:

...

(b) transmission of programme services violating the conditions of the broadcasting licence;

...

(f) transmission of programme services which, as a consequence, lead to the violation of the provisions of Article 6, Article 7 §§ 2 to 4, Article 10 §§ 1 and 5, Article 11 §§ 2 to 8, Article 17 ...

3. The sanctions provided for in paragraph 1 shall be applied gradually as follows:

(a) the Audiovisual Coordinating Council shall issue a warning and publish it on its website if a broadcaster or service provider violates the provisions of this Code or the regulatory decisions of the Audiovisual Coordinating Council;

(b) if a broadcaster or service provider fails to [comply] within the deadlines and with the conditions specified in the warning or repeatedly violates the same provisions, a fine of 100 to 300 times the minimum wage shall be imposed;

(c) if a broadcaster or service provider fails to [comply after the imposition of a fine], the Audiovisual Coordinating Council shall gradually apply the other sanctions provided for in this Code.

4. The Audiovisual Coordinating Council may issue a decision regarding the administrative offence, apply an administrative sanction or bring the matter to court and criminal proceedings shall be instituted [against the broadcaster or service provider].

5. A broadcasting licence shall be withdrawn in accordance with Article 27 only if a recurrent and serious violation of the provisions of the Code [has] occurred.

6. During the period of rehabilitation, provided for in the warning, the Audiovisual Coordinating Council shall contribute fully to [ensuring that] the broadcaster concerned complies with the law.

7. The Audiovisual Coordinating Council shall inform the broadcaster or service distributor of any investigation concerning it and of any charges against it and shall give it the opportunity to present its case to the Council.

8. A decision of the Audiovisual Coordinating Council on the imposition of any sanction shall be reasoned and published on its website.

9. Any decision of the Audiovisual Coordinating Council to impose a sanction may be challenged in court by the broadcaster or service distributor against which the sanction was imposed.

10. A decision by the Audiovisual Coordinating Council imposing a sanction which is not contested within the time-limit set shall constitute a writ of enforcement."

Article 40
Duties of the Audiovisual Coordinating Council

"1. The Audiovisual Coordinating Council shall:

(a) supervise the performance of the obligations of public and private broadcasters specified in the broadcasting licence within the meaning of and in accordance with the legal provisions;

(b) supervise the accuracy of the content of programmes provided by broadcasters only after broadcast;

...

(d) monitor, in accordance with paragraph 1(b), the content of programmes provided by broadcasters and programme service packages guaranteed by service providers on a periodic basis and whenever the Council deems it necessary, and whenever a complaint is filed with regard to a broadcaster's failure to observe the legal provisions, regulation standards in the field or obligations specified in the broadcasting licence;

...

3. In the exercise of its powers, the Audiovisual Coordinating Council shall adopt binding decisions, which shall enter into force on the date of [their] publication in the Official Gazette of the Republic of Moldova.

4. All decisions of the Audiovisual Coordinating Council shall be reasoned. Decisions, including the reasons, shall be published in the Official Gazette of the Republic of Moldova and on the [Council's] website.

5. Decisions of the Audiovisual Coordinating Council may be challenged in administrative courts by any person who considers himself or herself prejudiced by them."

Article 41
Obligations of the Audiovisual Coordinating Council

"1. As a guarantor of the public interest in the field of audiovisual communication based on democratic principles and the protection of programme consumer rights, the Council shall:

(a) supervise the observance of the pluralist expression of ideas and opinions in the programmes aired by broadcasters under the jurisdiction of the Republic of Moldova;

..."

Article 42
Structure of the Audiovisual Coordinating Council

"1. The Council shall consist of nine members, appointed by the Parliament of the Republic of Moldova.

2. Candidates for the office of the member of the Council shall be selected by the corresponding parliamentary commission [on the media] and by the commission on law, nominations and immunities, which afterwards shall submit these candidates to Parliament for approval. The candidates may be proposed by public associations, foundations, trade unions, employers' associations and religious organisations. The candidacies shall be submitted to the [media] commission. When the list of candidates is submitted to Parliament, the commission [on the media] shall draw up a report, and the law commission shall draw up a co-report.

3. The members of the Audiovisual Coordinating Council shall be approved by a decision of Parliament. If a candidate for the office of ACC member does not receive the necessary number of votes, the commission [on the media] and the commission on law, nominations and immunities shall nominate another candidate within two weeks.

4. The position of member of the Council can be occupied by any person who meets the following requirements:

(a) has a university degree and at least five years' experience in one of the following fields: audiovisual, communication technologies, law, finance, accounting, management, or informational development in a creative team at any institution;

(b) is at least 25 years old and has not reached the legal age of retirement;

(c) speaks the official language of the Republic of Moldova;

(d) has no previous convictions;

..."

Article 43
Members of the Audiovisual Coordinating Council

"1. The members of the Council shall be guarantors of the public interest and shall not represent the authority that has nominated them.

2. The members' term of office shall be six years. Their appointment shall be made gradually: initially, three candidates shall be elected for a six-year term, three for a four-year term and three for a two-year term. When the initial terms of office expire, other candidates for the position of ACC member shall be appointed for a six-year term upon proposals made by the parliamentary [media] commission and the commission on law, nominations and immunities, after receiving a notification from the ACC.

3. During their term of office, the members of the Council may not be dismissed from office, except during the period defined by this Code for forfeiture of office on grounds of incompatibility.

4. No person shall serve two consecutive terms of office as a member of the Audiovisual Coordinating Council.

5. The position of member of the Council shall become vacant in the following cases:

(a) resignation;

(b) expiry of the term of office;

(c) conviction by a final court judgement ...;

(d) loss of citizenship of the Republic of Moldova;

(e) physical or mental incapacity;

(f) reaching the age of retirement;

6. The members of the Council shall hold public dignity functions.

7. After being approved by Parliament, the members of the Audiovisual Coordinating Council shall swear the following oath during a plenary meeting:

'I swear to observe the Constitution and the laws of the Republic of Moldova, to defend the rights and the fundamental freedoms of citizens, to accomplish the prerogatives that this position bears with honour, consciously and without bias, [and] not to make any political declarations during the validity of my mandate'."

Article 47
Funding of the Audiovisual Coordinating Council

"1. The funding of the Audiovisual Coordinating Council shall cover the estimated cost of all its activities, so that the Council may work effectively and efficiently, and completely fulfil its duties.

2. The Audiovisual Coordinating Council's budget shall be formed from the following sources:

(a) government subsidies;

(b) income from the fees for licensing;

(c) income from the annual fee paid by broadcasters to cover regulatory expenses amounting to 1% of their annual turnover;

(d) grants.

3. The share of the budget of the Audiovisual Coordinating Council that derives from sources other than government subsidies shall constitute the Broadcasters' Support Fund, which shall have separate regulations, drawn up and published by the Council. The Fund may not be used for remuneration of the Council's members and employees.

3^1. State budget subsidies offered to public broadcasters in accordance with the present Code shall not be taken into consideration when determining the tax covering regulatory expenses.

4. The Audiovisual Coordinating Council shall annually present before Parliament a budget proposal on the estimated costs of the activities planned by the Council to accomplish its duties and obligations.

5. The proposals submitted by the Audiovisual Coordinating Council on the budget and its organisational structure shall be considered and approved at a plenary meeting of the Parliament of the Republic of Moldova.

6. The Audiovisual Coordinating Council shall publish an annual report on its financial activity in the Official Gazette."

Article 66
Private broadcasters

"...

3. A natural or legal person may hold a maximum of five broadcasting licences in the same territorial administrative unit or zone, without the possibility of exclusivity.

4. A natural or legal person from Moldova or from abroad may be an investor or majority shareholder, directly or indirectly, in a maximum of two broadcasting outlets of different types.

..."

3. The Audiovisual Coordinating Council's articles of association and the Regulations on the procedure and conditions for issuing broadcasting licences and retransmission authorisations

86. The relevant provisions of Articles 4-9 of the Audiovisual Coordinating Council's articles of association and of Article 27 of the Regulations on the procedure and conditions for issuing broadcasting licences and retransmission authorisations – both of which instruments were approved by Parliament's Decision no. 433-XVI of 28 December 2006 – as in force at the material time, read as follows:

Article 4

"The members of the Council shall supervise:

(a) compliance by audiovisual institutions with the legislation and legal rules in force;

(b) external relations in the field;

(c) licensing of audiovisual programme genres;

(d) the activity of audiovisual institutions in the territory;

(e) the monitoring of audiovisual programmes;

(f) the prospects for the development of the domestic audiovisual [sector];

g) management of internal resources, and so on."

Article 5

"1. The Council shall meet at public meetings twice a month or whenever necessary.

2. The agenda of the meeting, accompanied by the relevant documentation, shall be forwarded to all members of the Council and, where appropriate, to the directorates concerned at least seventy-two hours before the start of the meeting.

3. At the start of a meeting, the agenda may be supplemented, on a proposal from the members of the Council, with the agreement of the majority.

4. The Council shall meet compulsorily when applications for broadcasting licences, retransmission authorisations, regulatory decisions and proposals for sanctions are submitted for approval and when monitoring and inspection reports are debated."

Article 6

"...

2. The debates of the Council and the manner in which decisions and other measures are taken shall be recorded in the minutes of the meeting, signed by the President of the Council."

Article 7

"The Council shall deliberate in the presence of at least six of its members and decisions shall be taken if they receive the votes of at least five members."

Article 8

"In the exercise of its powers, the Council shall adopt decisions, instructions or, where appropriate, recommendations."

Article 9

"Council decisions are administrative acts and shall be reasoned."

Article 27
Revocation of a licence

"1. A broadcasting licence shall be revoked:

(a) in the cases mentioned in Article 27 of the Audiovisual Code;

...

2. Within fifteen working days, starting from the day the grounds are established, the Council shall adopt a decision concerning the revocation of the licence and, within no more than five working days from the date of adoption of the decision, it shall notify the licence holder thereof, indicating the reasons for the revocation.

...

5. The owner of a licence that has been revoked may not apply for a new licence for the same type of activity until twelve months have expired from the date on which the revoked licence was returned to the Council."

4. Law on administrative court proceedings

87. The relevant provisions of Law no. 793-XIV of 10 February 2000 on administrative court proceedings, as in force at the material time, read as follows:

Section 3
Subject matter of administrative court proceedings

"(1) The subject matter of administrative court proceedings shall be administrative acts, of a normative and individual nature, by which a right of a person, including a third party, recognised by law has been violated, issued by:

(a) public authorities and authorities treated as equivalent for the purposes of this Law;

..."

Section 14
Preliminary challenge

"(1) A person who considers that his or her rights recognised by law have been violated by an administrative act shall, by means of a preliminary challenge, request the issuing public authority, within thirty days of the date of notification of the act, to revoke it, in whole or in part, unless otherwise provided for by law.

..."

Section 15
Procedure for examination of a preliminary challenge

"(1) A preliminary challenge shall be examined by the issuing body or the hierarchically superior body within thirty days of the date of its registration, the decision being communicated forthwith to the petitioner unless otherwise provided by law.

..."

Section 16
Submission of an application for appeal to the administrative court

"(1) A person who considers that his or her rights recognised by law have been violated by an administrative act and is not satisfied with the reply received to the preliminary challenge, or has not received any reply within the time-limit laid down by law, shall have the right to refer the matter to the administrative court competent to set aside that act, in whole or in part, and to award compensation for the damage caused.

(2) The action may be referred directly to the administrative court in cases expressly provided for by law and in cases where the person considers that his or her rights have been violated by the failure to decide on [the preliminary challenge] within the legal time-limit or by the dismissal of the preliminary challenge ...

...”

Section 21
Suspension of the execution of the contested administrative act

“(1) An applicant may request the court to suspend the execution of an administrative act at the same time as lodging his application against that act.

(2) In justified cases and with a view to preventing imminent damage, the court may order the suspension of an administrative act of its own motion.

(3) As a derogation from the provisions of subsections (1) and (2), the acts of the National Commission on Financial Markets and the Court of Accounts cannot be suspended before the examination of the case.

...”

5. Law on transparency in decision-making

88. The relevant provisions of Law no. 239-XVI of 13 November 2008 on transparency in decision-making read as follows:

Section 3
Scope of this Law

“(1) The scope of this Law shall be the totality of the legal relations established in the decision-making process between citizens, associations established in accordance with the law, or other interested parties, on the one hand, and public authorities, on the other.

(2) The following shall be covered by this Law:

(a) central public authorities: Parliament and the authorities created by it (... Audiovisual Coordinating Council, ...) ...

...”

Section 9
Announcement concerning the initiation of the decision-making process

“(1) Upon initiation of the decision-making process, the public authority shall, at least fifteen working days before the decision is examined, place a notice on the official website, send it by email to the interested parties, display it at its premises in a space accessible to the public and/or disseminate it in the national or local media, as appropriate.

(2) The notice of initiation of the decision-making process shall necessarily indicate:

(a) the need to adopt the decision;

(b) the deadline, the place and the manner in which citizens, associations established in accordance with the law and other interested parties may have access to the draft decision and submit or send recommendations;

(c) the contact details of the persons responsible for receiving and examining the recommendations.”

B. Subsequent developments in domestic law

1. Amendments to the Audiovisual Code of 2006 and the ruling of the Constitutional Court

89. On 13 April 2012 the Moldovan Parliament passed Law no. 84, which amended paragraphs 8 and 10 of Article 38 and paragraph 3 of Article 40 of the Audiovisual Code of 2006. The Law amended Article 38 § 8 of the Code to read:

> "The decision of the Audiovisual Coordinating Council on the application of any sanction shall be reasoned and shall become enforceable from the date of adoption and notification of the broadcasters and service distributors concerned by registered letter, with subsequent publication in the Official Gazette of the Republic of Moldova and on the website of the issuing body."

In addition, the Law repealed paragraph 10 of Article 38. Lastly, it supplemented Article 40 § 3 *in fine* to read "..., with the exception of the decisions referred to in Article 38 § 8". Law no. 84 entered into force on 29 May 2012 after it was published in the Official Gazette on the same date.

90. In July 2012 a member of parliament successfully challenged the amendment of Article 38 § 8 of the Code before the Constitutional Court. In a ruling of 6 December 2012 the Constitutional Court declared the amendment unconstitutional, by a majority, only in so far as it concerned two of the sanctions provided for by Article 38, namely the suspension of the broadcasting licence for a certain period of time and the revocation of the broadcasting licence, after finding that it contravened the provisions of the Constitution guaranteeing the right to property and the right to freedom of expression. By contrast the Constitutional Court found that the amendment of Article 38 § 8 of the Code was constitutional in so far as the remaining three sanctions provided for in Article 38 were concerned. One of the judges of the bench wrote a separate opinion.

91. Firstly, in respect of the allegations that the impugned amendment breached broadcasters' right to property, the Constitutional Court held, amongst other things:

> "...
>
> 56. As regards the legitimate purpose pursued by the interference, the Court cannot accept, in this particular case, Parliament's and the government's argument that the restrictions imposed on broadcasters serve the public interest ...
>
> 57. Respect for the right to property also implies compliance with procedural safeguards provided for by law against arbitrariness, so that the measure in question is correctly applied in relation to each case. In particular, there is not a sufficient legal guarantee to protect broadcasters against the Audiovisual Coordinating Council making use of its discretion.
>
> 58. Unlike the banking system ..., considered to be an area of major importance to society, in which the discretion enjoyed by the State presupposes its right to establish separate rules in relation to other similar areas subject to regulation, taking into account

the specificities of the audiovisual field and its importance for communicating information and ideas to the public, such severe measures as the suspension or revocation of a licence have to be reviewed concretely by the court prior to their enforcement.

59. In reviewing the 'fair balance' between the competing interests at stake – the general public interest, which, in the present case, would be that of preventing possible culpable actions by the broadcaster in bad faith, of such a kind as to create or amplify the situations which led to the interference, and the individual interests of the broadcaster – the authorities have not argued, and the Court does not find any other arguments [to this effect], that there is a risk of serious imminent damage to the public, which would justify the need to immediately enforce such decisions of the Audiovisual Coordinating Council, in the absence of a decision of a court or, at the very least, of the possibility of challenging [them] in court prior to enforcement.

60. The [Constitutional] Court, in this particular situation, considers that the immediate enforcement of the sanction ... of suspension or revocation of the licence is not justified ... [by] a major [public] interest ...

61. For these reasons ..., the Court considers that the provisions of Article 38 § 8 of the ... Code, ... in the part relating to the imposition of sanctions in the form of suspension or revocation of licences, does not strike a fair balance between the interests of the community and those of broadcasters, imposing an excessive individual burden on [the latter] ...

62. In the light of the above, the Court concludes that the provisions of paragraph 8 of Article 38 relating to the immediate enforcement, pending an appeal to a court, of the decisions of the Audiovisual Coordinating Council concerning the suspension and revocation of a licence contravene not only the basic principles concerning entrepreneurial activity, but also the constitutional guarantees regarding the right to property of the founders of audiovisual institutions and its protection, enshrined in Article 46 of the Constitution, and represent 'an interference with the right to enjoy property', taking into account the immediate effect of these decisions and, as a result, the prevention of the holder from continuing his or her [activity] ..."

92. Secondly, with regard to the allegations that the impugned amendment breached the right of broadcasters to freedom of expression, the Constitutional Court held, amongst other things:

"...

72. ... the [Constitutional] Court considers that the measure of suspension or revocation of the broadcaster's licence is liable to affect the substance of the procedural guarantees which broadcasters should enjoy under Article 10 of the Convention and is incompatible with the principle of the rule of law.

73. Consequently, the [Constitutional] Court considers that, under the specific circumstances ..., such interference with the broadcasters' right to freedom of expression does not satisfy the condition 'of being necessary in a democratic society' and is therefore contrary to Article 32 of the Constitution and Article 10 of the ... Convention.

...

75. Taking into account the fact that the Audiovisual Coordinating Council is a body susceptible to politicisation, its decision to suspend or revoke the licence of a

broadcaster may lead to the establishment of censorship or self-censorship, both equally dangerous for freedom of expression and the public's right to information.

76. In view of the particular importance of freedom of expression for a democratic society that is susceptible to political pressure and censorship, the only authority which is authorised, in accordance with the democratic and constitutional principle of the separation of powers ..., to find that a particular citizen has seriously violated the law, including through the abusive exercise of freedom of expression, is the judicial authority, which enjoys all the guarantees of independence.

77. ... the [Constitutional] Court has already found, pursuant to Article 46 of the Constitution, that the interference with the rights of the broadcaster is not attended by sufficient judicial guarantees within the meaning of its case-law. The above conclusion exempts the Court from examining any further the contested provisions under Article 32 of the Constitution, since it can only reach the same finding, and this is sufficient to conclude that there is a violation of that Article.

..."

93. The operative part of the Constitutional Court's ruling stated, among other things:

"...

1. The provisions of Article 38 § 8 of the Code ..., set out in Law ... no. 84 of 13 April 2012, are acknowledged as constitutional in the part concerning the enforceability of decisions of the Audiovisual Coordinating Council with regard to the imposition of the sanctions of a public warning, withdrawal of the right to broadcast advertisements for a certain period of time, and a fine from the date of adoption and notification of the broadcasters and service distributors concerned by registered letter.

2. The provisions of Article 38 § 8 of the Code ..., set out in Law ... no. 84 of 13 April 2012, are declared unconstitutional in the part concerning the enforceability of decisions of the Audiovisual Coordinating Council with regard to the imposition of the sanctions of suspension of a broadcasting licence for a certain period of time or of revocation of a broadcasting licence from the date of adoption and notification of the broadcasters and service distributors concerned by registered letter.

..."

94. Lastly, the member of the Constitutional Court's bench who wrote a separate opinion stated in his opinion, among other things:

"...

2. The ruling of the Court generates uncertainty with regard to the application of the sanctions of suspension of a broadcasting licence for a certain period of time or of revocation of a broadcasting licence by the Audiovisual Coordinating Council. Having regard to the fact that the types of activity supervised by the Audiovisual Coordinating Council have a major social impact, the ruling of the Court makes it impossible to stop the broadcasting of programmes that may seriously affect the public.

3. I consider that in paragraph 59 the Court has unjustly diminished the social impact of the services provided by broadcasters. This paragraph stands in contradiction with paragraph 66, in which the Constitutional Court has cited the assessment of the European Court [of Human Rights] concerning this impact. The European [Court] has held that radio and television have a very important role in this regard; because of their ability to convey messages by sounds and images they have a more immediate and

powerful effect than the written press. The Court has ignored the arguments of the authorities concerning possible calls for protests during election campaigns or political events – protests that can turn into violent actions and require the immediate application of the sanctions in question.

The major impact of broadcasting services on the public, in my opinion, justifies Parliament's interference with the exercise of the right to property in order not to allow 'culpable actions by the broadcaster in bad faith, of such a kind as to create or amplify the situations which led to the interference', as well as to avoid a 'risk of serious imminent damage to the public', in respect of which the Court has not found any arguments in paragraph 59 of the ruling.

4. In paragraph 57 the Court makes an incorrect deduction on the procedural guarantees afforded by the law against the Audiovisual Coordinating Council's arbitrary actions and for the protection of broadcasters against the power of assessment of this institution ...

5. I consider unfounded the Court's deduction set out in paragraph 61 according to which the immediate application of the sanctions of suspension or of revocation of a licence amounts to an 'excessive individual burden' for broadcasters. The Court has ignored the provisions of [paragraph] 3 of Article 38 of the Code ..., which states that 'the sanctions provided for in paragraph 1 shall be applied gradually'. In my view, this provision is 'the key' to a 'fair balance' between the competing interests of society and of broadcasters, convincingly proving the lawmaker's intention, an intention which falls within the limits of the constitutional provisions.

The Code, in [paragraph] 1 of Article 38, specifies the sanctions which may be applied to broadcasters, in the following order: ... According to the meaning of [paragraph] 3 of Article 38 ..., the Audiovisual Coordinating Council cannot ignore a less severe sanction in order to impose a more severe one. I must stress that, under [paragraph] 9 of Article 38 ..., any sanction can be challenged by the broadcaster before a court of law. Thus, in order for the sanctions of suspension and revocation of the licence to be imposed there [must have been] at least three previous sanctions, whose lawfulness has been acknowledged by a final judgment of a court of law.

In addition, an even more rigid procedure is provided for imposing the last sanction – revocation of the licence. Thus, in accordance with ... Article 38, 'the broadcasting licence shall be withdrawn in accordance with Article 27 only if a recurrent and serious violation of the provisions of the Code [has] occurred'...

Having regard to the manner in which the sanctions are applied, I consider that clear procedural guarantees are provided for by the law 'against arbitrariness' and for the protection of broadcasters against the power of assessment of the Audiovisual Coordinating Council. In addition, I consider that, by forcing the Audiovisual Coordinating Council to apply gradually the sanctions [taken] against broadcasters, the restrictions in the form of suspension and revocation of the licence are set out by the lawmaker 'in a convincing manner', in compliance with the Court's case-law as set out in the case ..., cited in paragraph 70 of the Constitutional Court's ruling.

6. I agree with the Court's remark that the financial field is of major importance to society, in respect of which 'the discretion enjoyed by the State presupposes its right to establish separate rules in relation to other similar areas subject to regulation', but when it states that 'such severe measures as the suspension or revocation of a licence have to be reviewed concretely by the court prior to their enforcement', the Court has failed to take account of the fact that in the banking field the law imposes rules which are much more stringent than in the audiovisual field. Thus, in the banking system, by contrast to

the audiovisual [system] [(*în raport cu cel al audiovizualului*)], there is no preventive sanction of suspension of a licence; regardless of the court's decision, the licence is irrevocably withdrawn; withdrawal of the licence necessarily entails the liquidation of the bank; in the event of the withdrawal of the licence, only a small group of shareholders of the bank has the right to go to court. The audiovisual field has as much social impact as the banking [field], so the value of a licence in this area cannot be reduced to the value of a licence in real estate, for example. Given that the procedure for withdrawing an audiovisual licence is not as rigid as in the banking field, I believe that the restriction applied by the legislature through the contested provisions is proportionate to the aim pursued and, on account of the major social impact of the audiovisual [field], is necessary in a democratic society.

7. At the same time, the Court did not take into account the fact that the broadcaster, on the basis of the contested rule, had a real opportunity to ask the administrative court to suspend the [ACC's] decision on the application of the suspension or withdrawal of the licence immediately after its adoption. In addition, in the event of an appeal against the decision, the court could of its own motion adopt an order to stay the enforcement of the [ACC's] decision ... However, with regard to banking institutions, the court is not entitled to take a decision to [stay the enforcement] ..., since the decision of the National Bank to withdraw the licence is irrevocable.

..."

95. On the date of its ruling the Constitutional Court also published an official press release about the ruling in response to media reports connecting the reasons provided by the Constitutional Court in its ruling to the ACC's decision to revoke NIT's licence. The press release stated that the legal provisions examined by the Constitutional Court in its ruling had not entered into force until May 2012 and had not been applicable at the time of the ACC's decision concerning the revocation of NIT's licence. Moreover, the constitutionality of the legal provisions relied on by the ACC in its decision of 5 April 2012 had not been examined by the Constitutional Court because they had been never challenged before the Constitutional Court. Therefore, there had been no connection between the case before the Constitutional Court and the one before the Court of Appeal and any allegations to the contrary had been pure fiction and amounted to disinformation.

2. The Audiovisual Code of 2018

96. The relevant provisions of the Audiovisual Code of the Republic of Moldova, in force as of 1 January 2019, read as follows:

Article 11
Respect for fundamental rights and freedoms

"...

2. The following audiovisual programmes shall be prohibited:

(a) those likely to propagate, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance or discrimination on grounds of sex, race, nationality, religion, disability or sexual orientation;

(b) those disseminating child pornography;

(c) those whose dissemination is prohibited by the Audiovisual Content Regulations, drawn up and approved by the Audiovisual [Coordinating] Council, after consultation with media service providers and media service distributors.

..."

Article 17
Protecting the national audiovisual space

"1. Radio frequencies intended for the provision of audiovisual media services in terrestrial digital or analogue systems shall constitute public assets and shall be used on the basis of broadcasting licences issued under the law.

2. The national audiovisual space shall be used under the terms of this Code, with a view to:

(a) favouring the free movement of information;

(b) contributing to ensuring freedom of expression;

(c) contributing to the coverage of social information needs;

(d) contributing to ensuring the professional and social integrity of media service providers.

3. In the national audiovisual space, the broadcasting of audiovisual programmes constituting hate speech shall be prohibited.

..."

Article 27
Revocation of a broadcasting licence

"1. A broadcasting licence shall be revoked in the following cases:

(a) the media service provider notifies the Audiovisual [Coordinating] Council of the abandonment of broadcasting of the audiovisual media service;

(b) the media service provider has not started broadcasting within six months from the [time] the broadcasting licence was issued in analogue format and three months in the terrestrial digital system;

(c) the media service provider has not paid the fee for the broadcasting licence, established in accordance with Law no. 160/2011 ..., after being warned twice, in writing, by the Audiovisual [Coordinating] Council;

(d) the media service provider has submitted false information to the Audiovisual [Coordinating] Council, which has led to a breach of the legal regime of ownership in the field of audiovisual media services;

(e) the media service provider has refused to submit or for any other reason has not submitted information on the legal regime of ownership in the field of audiovisual media services to the Audiovisual [Coordinating] Council;

(f) the media service provider has repeatedly infringed the provisions of Article 11 § 2 and Article 17 of this Code after the sanctions provided for in Article 84 § 9 of this Code have been gradually applied to it;

(g) the media service provider, following the suspension of its broadcasting licence in accordance with Article 84 § 10 of this Code, does not remedy the infringement in respect of which the sanction of suspension was imposed and/or it has received more than two sanctions within twelve months of the expiry of the sanction of suspension."

Article 84
Sanctions

"1. Media service providers, video-sharing platform service providers and media service distributors shall be liable for infringements of audiovisual legislation in accordance with this Article and the legislation in force.

2. For infringements of the provisions of this Code, the Audiovisual [Coordinating] Council shall apply individually determined sanctions, depending on the seriousness of the infringement, its effects and the frequency of infringements committed in the last twelve months.

...

9. A fine of between 40,000 lei and 70,000 lei shall be imposed on media service providers and media service distributors which have infringed the provisions of Article 11 § 2 and Article 17. For repeated violations of these provisions, the fine shall be between 70,000 lei and 100,000 lei. The revocation of the broadcasting licence for an infringement of the provisions of Article 11 § 2 and Article 17 shall be applied after the sanctions provided for in this paragraph have been gradually applied.

10. A media service provider or media service distributor who has repeatedly committed the infringements referred to in paragraph 8 within twelve months shall receive the sanction of suspension of the broadcasting licence ... The suspension of the broadcasting licence ... shall be applied after the sanctions referred to in paragraphs 4-8 have been gradually applied.

...

14. The broadcasting licence shall be revoked in accordance with Article 27 ...

15. The decision of the Audiovisual [Coordinating] Council on the application of the sanction shall be reasoned and shall become enforceable from the date of its publication. Decisions of the Audiovisual [Coordinating] Council on the application of the sanction may be appealed against to a court by the media service provider or distributor against which the sanction has been imposed.

16. In order to protect the national audiovisual space, the court shall examine disputes arising from infringements of Article 11 § 2 and Article 17 within thirty days. An appeal, or an appeal on points of law, shall be lodged within three days of the date of the decision and shall be examined within ten days.

17. If, within twelve months of the date of the last sanction, the media service provider or the media service distributor does not commit any other infringements of the provisions of this Code, the previous sanctions shall be deemed null and void."

II. STANDARDS AND DOCUMENTS ON RESPONSIBLE JOURNALISM, MEDIA PLURALISM AND INDEPENDENCE OF MEDIA REGULATORY AUTHORITIES

A. Council of Europe standards and documents

1. PACE Resolution on the ethics of journalism

97. On 1 July 1993 the Parliamentary Assembly of the Council of Europe ("PACE") adopted Resolution 1003 (1993) on the ethics of journalism, which stated, *inter alia*:

> "1. In addition to the legal rights and obligations set forth in the relevant legal norms, the media have an ethical responsibility towards citizens and society which must be underlined at the present time, when information and communication play a very important role in the formation of citizens' personal attitudes and the development of society and democratic life.
>
> 2. The journalist's profession comprises rights and obligations, freedoms and responsibilities.
>
> 3. The basic principle of any ethical consideration of journalism is that a clear distinction must be drawn between news and opinions, making it impossible to confuse them. News is information about facts and data, while opinions convey thoughts, ideas, beliefs or value judgments on the part of media companies, publishers or journalists.
>
> 4. News broadcasting should be based on truthfulness, ensured by the appropriate means of verification and proof, and impartiality in presentation, description and narration. Rumour must not be confused with news. News headlines and summaries must reflect as closely as possible the substance of the facts and data presented.
>
> 5. Expression of opinions may entail thoughts or comments on general ideas or remarks on news relating to actual events. Although opinions are necessarily subjective and therefore cannot and should not be made subject to the criterion of truthfulness, we must ensure that opinions are expressed honestly and ethically.
>
> 6. Opinions taking the form of comments on events or actions relating to individuals or institutions should not attempt to deny or conceal the reality of the facts or data.
>
> ...
>
> 17. Information and communication as conveyed by journalism through the media, with powerful support from the new technologies, has decisive importance for the development of the individual and society. It is indispensable for democratic life, since if democracy is to develop fully it must guarantee citizens participation in public affairs. Suffice it to say that such participation would be impossible if the citizens were not in receipt of the information on public affairs which they need, and which must be provided by the media.
>
> 18. The importance of information, especially radio and television news, for culture and education was highlighted in Assembly Recommendation 1067. Its effects on public opinion are obvious.
>
> 19. It would be wrong to infer from the importance of this role that the media actually represent public opinion or that they should replace the specific functions of the public authorities or institutions of an educational or cultural character such as schools.

20. This would amount to transforming the media and journalism into authorities or counter-authorities ('mediocracy'), even though they would not be representative of the citizens or subject to the same democratic controls as the public authorities, and would not possess the specialist knowledge of the corresponding cultural or educational institutions.

21. Therefore journalism should not alter truthful, impartial information or honest opinions, or exploit them for media purposes, in an attempt to create or shape public opinion, since its legitimacy rests on effective respect for the citizen's fundamental right to information as part of respect for democratic values. To that end, legitimate investigative journalism is limited by the veracity and honesty of information and opinions and is incompatible with journalistic campaigns conducted on the basis of previously adopted positions and special interests.

22. In journalism, information and opinions must respect the presumption of innocence, in particular in cases which are still sub judice, and must refrain from making judgments.

23. The right of individuals to privacy must be respected. Persons holding office in public life are entitled to protection for their privacy except in those cases where their private life may have an effect on their public life. The fact that a person holds a public post does not deprive him of the right to respect for his privacy.

24. The attempt to strike a balance between the right to respect for private life, enshrined in Article 8 of the European Convention on Human Rights, and the freedom of expression set forth in Article 10, is well documented in the recent case-law of the European Commission and Court of Human Rights.

25. In the journalist's profession the end does not justify the means; therefore, information must be obtained by legal and ethical means.

26. At the request of the persons concerned, the news media must correct, automatically and speedily, and with all relevant information provided, any news item or opinion conveyed by them which is false or erroneous. National legislation should provide for appropriate sanctions and, where applicable, compensation."

2. *Committee of Ministers' 1999 Recommendation on measures to promote media pluralism*

98. On 19 January 1999 the Committee of Ministers, emphasising, *inter alia*, that the political and cultural diversity of media types and contents was central to media pluralism, adopted Recommendation No. R (99) 1 on measures to promote media pluralism, which stated, *inter alia*:

"Member States should consider possible measures to ensure that a variety of media content reflecting different political and cultural views is made available to the public, bearing in mind the importance of guaranteeing the editorial independence of the media and the value which measures adopted on a voluntary basis by the media themselves may also have.

...

Member States should consider, where appropriate and practicable, introducing measures to promote the production and broadcasting of diverse content by broadcasting organisations. Such measures could for instance be to require in

broadcasting licences that a certain volume of original programmes, in particular as regards news and current affairs, is produced or commissioned by broadcasters.

Furthermore, under certain circumstances, such as the exercise of a dominant position by a broadcaster in a particular area, member States could foresee 'frequency sharing' arrangements so as to provide access to the airwaves for other broadcasters.

Member States should examine the introduction of rules aimed at preserving a pluralistic local radio and television landscape, ensuring in particular that networking, understood as the centralised provision of programmes and related services, does not endanger pluralism."

3. *Committee of Ministers' 2007 Recommendation on media pluralism and diversity of media content*

99. On 31 January 2007 the Committee of Ministers adopted Recommendation CM/Rec(2007)2 on media pluralism and diversity of media content, which, in so far as relevant, reads:

"1.1 Member States should seek to ensure that a sufficient variety of media outlets provided by a range of different owners, both private and public, is available to the public, taking into account the characteristics of the media market, notably the specific commercial and competition aspects.

1.2. Where the application of general competition rules in the media sector and access regulation are not sufficient to guarantee the observance of the demands concerning cultural diversity and the pluralistic expressions of ideas and opinions, member states should adopt specific measures.

1.3. Member States should in particular envisage adapting their regulatory framework to economic, technological and social developments taking into account, in particular, the convergence and the digital transition and therefore include in it all the elements of media production and distribution.

1.4. When adapting their regulatory framework, member States should pay particular attention to the need for effective and manifest separation between the exercise of political authority or influence and control of the media or decision making as regards media content.

...

Pluralism of information and diversity of media content will not be automatically guaranteed by the multiplication of the means of communication offered to the public. Therefore, member States should define and implement an active policy in this field, including monitoring procedures, and adopt any necessary measures in order to ensure that a sufficient variety of information, opinions and programmes is disseminated by the media and is available to the public.

...

2.1. Member States should, while respecting the principle of editorial independence, encourage the media to supply the public with a diversity of media content capable of promoting a critical debate and a wider democratic participation of persons belonging to all communities and generations.

...

3.1. Member States should consider introducing measures to promote and to monitor the production and provision of diverse content by media organisations. In respect of the broadcasting sector, such measures could be to require in broadcasting licences that a certain volume of original programmes, in particular as regards news and current affairs, is produced or commissioned by broadcasters.

3.2. Member States should consider the introduction of rules aimed at preserving a pluralistic local media landscape, ensuring in particular that syndication, understood as the centralised provision of programmes and related services, does not endanger pluralism."

4. "Media Pluralism and Human Rights", an Issue Discussion Paper commissioned and published by the Council of Europe's Commissioner for Human Rights

100. The Council of Europe's Commissioner for Human Rights commissioned and published in December 2011 an "Issue Discussion Paper on Media Pluralism and Human Rights", written by Mr Miklós Haraszti, an expert in this field who had served as the Organisation for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media. This document refers to several dimensions of media pluralism, *inter alia* to external and internal pluralism, describing those notions as follows.

101. External pluralism, that is, pluralism across multiple outlets may be generated through the existence of various media outlets, each expressing a different point of view, and is basically achieved by ensuring that the media are not concentrated in the hands of too few. Ownership control is the starting-point of such pluralism governance and it ensures that free speech is not diminished by the overbearing control of too few media entrepreneurs or too few actual media outlets. Internal pluralism, on the other hand, concerns pluralism within a single media outlet and is another method of ensuring pluralism in the media. It relates to how social and political diversity are reflected in media content, that is, the representation of different cultural groups in the media as well as divergent political or ideological opinions and viewpoints. Internal pluralism governance is a necessity in a media market marked by scarcity of frequencies and its purpose is to compensate for that scarcity by imposing rules concerning diversity and fair journalism on each media outlet.

102. The author of the discussion paper expressed the view that regulatory approaches must combine the two (external and internal pluralism), just as the standards of the Council of Europe do, since in a democracy both external and internal pluralisms have to be functional. Diversity is sometimes best achieved when people can freely enter the "marketplace of ideas" without any governmental constraints; at other times and in other places, the survival of various political views and cultural values necessitates State intervention.

103. In the paper it is further stated that both the formidable role of television in shaping public opinion, and the difficulties of achieving external pluralism in relatively small European markets, require every nation of

Europe to set up at least one strong, easily accessible audiovisual infrastructure for objective news and reliably inclusive public journalism. Scarcity of frequencies calls for stricter governance of internal pluralism.

104. On new democracies, the author of the paper notes:

> "In societies recovering from periods of dictatorship, pluralism has assumed a special strategic importance. In such places, the apparent end of 'big', governmental censorship has disappointingly only led to 'small', private mini-censorships, maintained this time by media-owning entrepreneurs and parties. Audiences who previously hated the monotony of a directed press have found the cacophony of freedom startling. They may have become irritated by the swift spread of commercialism and the slow increase in ethical journalism. In new democracies, it has been hard for audiences to acknowledge that press freedom may make quality journalism possible – but does not guarantee it."

5. *"The independence of media regulatory authorities in Europe: IRIS Special", a document published by the European Audiovisual Observatory (Council of Europe)*

105. The European Audiovisual Observatory (Council of Europe) published the paper "The independence of media regulatory authorities in Europe: IRIS Special" in September 2019. This document focuses on the independence of regulatory authorities and bodies in the broadcasting and audiovisual media sector in Europe and underlines, among other things:

> "These entities have proliferated according to the different legal traditions of the respective countries they belong to. They do not, therefore, conform [to] one, single model. Nonetheless, they reflect a common approach of sorts with regard to the institutional set-up of regulatory governance. The independence of these entities is particularly important because it contributes to the broader objective of media independence, which is in itself an essential component of democracy.
>
> ...
>
> ... Whereas demands of freedom of speech and freedom of the media on the one hand require states to refrain from interference with media production and to protect the independence of media organisations, it is widely accepted that states at the same time are required to set a normative framework in order to guarantee the existence of a diversified and pluralistic media landscape. The concept and institution of an independent regulatory authority is seen as the default choice for the regulatory governance of the audiovisual media sector, to ensure that interventions with the media are impartial and at arm's length from government and stakeholder interests.
>
> ...
>
> Independent regulatory authorities ... have virtually become the natural institutional form for regulatory governance in the broadcasting and audiovisual media sector. As an institutional set-up, they can contribute to two aspects that are specific to the audiovisual media sector:
>
> 1. the objective of regulation in the media sector to guarantee media freedoms; and
>
> 2. the specific and at times sensitive relationship between the media sector and elected as well as non-elected politicians ...

... this is however not to say that independence is the same concept as freedom, but that there are specific links between the two. ..."

B. European Union documents

1. *European Commission staff working paper on Media Pluralism in the Member States of the EU*

106. The European Commission on 16 July 2007 released a staff working paper on "Media pluralism in the Member States of the EU" (SEC(2007) 32), which, *inter alia*, contains the following statements:

"Media pluralism analysis is very often limited to the aspect of external pluralism and to aspects related to media ownership rules. External pluralism has to be seen together with internal pluralism. The latter can be essential for smaller markets.

In the audiovisual field, a regulated market, internal pluralism, diversity of output and/or content can be stimulated and monitored by imposing programme requirements and obligations in the law or licence. In addition, internal pluralism could also be reached by imposing structural obligations such as the composition of management bodies or bodies responsible for the programme/content selection.

..."

2. *Independent Study on Indicators for Media Pluralism in the Member States of the EU*

107. In a report called "Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach", prepared in 2009 for the European Commission by a consortium of academic institutions and a consultancy firm, five dimensions of media pluralism were distinguished:

"Cultural pluralism in the media refers to the fair and diverse representation of and expression by (i.e. passive and active access) the various cultural and social groups, including ethnic, linguistic, national and religious minorities, disabled people, women and sexual minorities, in the media.

...

Political pluralism in the media refers to the fair and diverse representation of and expression by (i.e. passive and active access) various political and ideological groups, including minority viewpoints and interests, in the media.

...

Geographical pluralism in the media refers to fair and diverse representation of and expression by (i.e. passive and active access) local and regional communities and interests in the media.

...

Pluralism of media ownership and control refers to the existence of media outlets and platforms owned, or controlled, by a plurality of independent and autonomous actors. It encompasses a plurality of actors at the level of media production, of media supply

and of media distribution (i.e. variety in media sources, outlets, suppliers and distribution platforms).

...

Pluralism of media types refers to the co-existence of media with different mandates and sources of financing, notably commercial media, community or alternative media, and public service media, within and across media sectors, like print, television, radio and internet. Pluralism of media genres refers to diversity in the media in relation to media functions, including providing information, education, and entertainment."

108. Referring to "political pluralism", the report stated:

"The legal indicators for the risk domain 'political pluralism' assess the existence and effectiveness of regulatory safeguards which, on the one hand, ensure access to the media by the various political actors and groups, and, on the other hand, safeguard the public's right to become informed in a correct and complete way on the wide variety of political viewpoints within society. In order to reach this goal, that of a politically pluralistic media landscape, a difficult balance between political interference and editorial independence needs to be struck in the different types of media. This balance may evolve over time with the rise of new means of distribution.

The risk of political bias can be mitigated through both structural and behavioural safeguards. Examples of the former include rules ensuring the fair representation of the various political groups in management or board functions of media companies or media councils, where these include political representatives. Behavioural rules can prescribe, for instance, fair, balanced and impartial political reporting. Council of Europe Recommendation (2007)2, on media pluralism and diversity of media content, recommends that member states encourage the media to supply the public with a diversity of media content capable of promoting critical debate and an increasingly broad democratic participation of persons belonging to all communities and generations. However, the Recommendation, by way of a disclaimer, states that they should do so while respecting the principle of editorial independence. A careful balance should be struck between stimulating political pluralism and respecting the editorial independence of media outlets. Privately owned media are entitled to follow an editorial line which might show a specific political preference. Therefore, impartiality as a quality for political reporting cannot be required of this type of media. Nonetheless, political coverage, even that by privately owned broadcasters and newspapers, should at least be fair and accurate. Editorial independence cannot be used as an excuse for incorrect reporting or defamation.

Political bias can also be tackled by providing tools for political actors and groups to actively access the media in order to 'personally' expose their ideas, or to correct misrepresentations of these ideas. The right to reply, or equivalent regulatory remedies play, an important role in this respect."

3. The European Commission Rule of Law Report of 20 July 2021

109. According to the 2021 Rule of Law Report of the European Commission (COM/2021/700 final):

"Media pluralism and media freedom are key enablers for the rule of law, democratic accountability and the fight against corruption. Member States have an obligation to guarantee an enabling environment for journalists, protect their safety and promote media freedom and media pluralism. ...

...

National media regulators play a key role in upholding and enforcing media pluralism. As the 2020 Rule of Law Report emphasised, when implementing media-specific regulation and taking media policy decisions, their independence from economic and political interests has a direct impact on market plurality and on the political independence of the media environment."

III. COMPARATIVE LAW

110. The Court's Research Division has examined practices concerning pluralism in the audiovisual media in thirty-four Council of Europe member States, namely Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Liechtenstein, Malta, Monaco, Montenegro, the Netherlands, North Macedonia, Poland, Portugal, Romania, Serbia, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, and the United Kingdom.

111. On the basis of the comparative law survey conducted by the Research Division, it would seem that out of the thirty-four Contracting States covered, all but one (Monaco) have a public broadcaster on which a duty of political pluralism is imposed. As for private broadcasters, they have such a duty in twenty States or local jurisdictions, whereas in fifteen States or jurisdictions there is no such duty. Nevertheless, even in the States where private broadcasters are not held to a duty of pluralism, there are some general requirements concerning the contents of their programmes: for example, news broadcasts must contain truthful information, and facts must be distinguished from comments and opinions.

112. In an absolute majority of these thirty-four Contracting States private broadcasting companies have either to obtain a broadcasting licence (in the broad sense of the term) from the State authorities or at least to make a unilateral declaration to them in order to be able to operate. Among the States having a requirement of pluralism for private channels, the State usually exercises prior control over the content of TV and radio programmes, when granting the licence. On the other hand, there is always *ex post facto* control through a system of penalties which, in most States, includes the possibility of revoking the broadcasting licence. However, sanctions for failing to observe political pluralism have been exceptional across Europe. In the United Kingdom, on 27 March 2020, the High Court of England and Wales (Administrative Court) delivered the *Autonomous Non-Profit Organisation TV-Novosti* judgment ([2020] EWHC 689), dismissing the challenge to a fine of 200,000 pounds imposed by Ofcom (the United Kingdom communications regulatory authority) on the Russia Today channel for breaches of "due impartiality". In Romania, a broadcaster had its licence withdrawn for carrying out political advertising outside the election campaign; however, this sanction was imposed after the broadcaster had failed to pay a fine.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

113. The applicant company complained that the revocation of its licence to broadcast had breached its right to freedom of expression under Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties 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."

A. Admissibility

114. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant company

115. While admitting that the third sentence of paragraph 1 of Article 10 was applicable in the present case, the applicant company argued that the revocation of its licence amounted to an interference with its right to freedom of expression that could not be justified under paragraph 2 of that Article. It distinguished the present case from *Demuth v. Switzerland* (no. 38743/97, § 33, ECHR 2002-IX), because the latter case had concerned a refusal to issue a licence and not the revocation of a valid licence. It also pointed out that whereas in *Demuth* the applicant's proposed television channel had planned to broadcast programmes about automobiles, NIT had focused on broadcasting informative and analytical programmes, the main purpose of which had been to impart information. Unlike in *Demuth*, where the Swiss authorities had pursued the aim of encouraging pluralism in broadcasting, the purpose of the measure imposed on NIT had been to punish the latter for providing pluralism of opinions, including the views of an opposition political party, and for presenting the governing parties in a negative light.

Lastly, the consequences of the measures were different in the two cases: whereas in the case of NIT the television channel had had to shut down the next day, in *Demuth* the applicant had merely been required to diversify his channel's programmes in order to obtain a licence.

116. The applicant company further submitted that the impugned measure had not been prescribed by law as required by Article 10 § 2 of the Convention. It followed from Article 38 § 10 of the Code that only an uncontested decision of the ACC imposing a sanction on a broadcaster could be enforced immediately. However, that had clearly not been the situation in the present case because the applicant company had challenged the ACC's decision in court. In spite of the above, the Court of Appeal and the Supreme Court had refused to order interim measures and to suspend the ACC's decision of 5 April 2012 pending the outcome of the proceedings, thus acting in an unlawful manner.

117. The applicant company also provided an alternative interpretation of the relevant domestic law, according to which the ACC's decision of 5 April 2012 could not have been enforced until thirty days after its adoption at the earliest. In this connection the applicant company relied on Article 40 § 5 of the Code, which provided that any interested party could challenge the ACC's decisions, together with sections 14 and 21(1) of the Law on administrative court proceedings, which provided that administrative acts could be challenged within thirty days and that a challenge and a request for suspension of an administrative act could be lodged at the same time.

118. The applicant company did not express a preference for any of the above interpretations but argued that under the applicable domestic law the decision of 5 April 2012 could not be enforced immediately and that, therefore, the Court of Appeal had been under a duty to grant the interim measures requested.

119. The applicant company submitted that the Constitutional Court's ruling of 6 December 2012 on the amendment to Article 38 of the Code which had been enacted on 29 May 2012 (see paragraphs 89-92 above) could only be interpreted in the sense that the immediate enforcement of the decision of 5 April 2012 on the basis of the legislation existing at that time had also been contrary to the applicant company's right to property and freedom of expression. Thus, it concluded that the interference with its rights in the form of the immediate enforcement of the ACC's decision of 5 April 2012 had not been prescribed by law.

120. The legal basis for the revocation of its licence was also problematic from the point of view of accessibility, clarity and foreseeability. In particular, the applicant company maintained that Article 7 § 2 of the Code was discriminatory in its essence and unforeseeable and its scope was uncertain. It did not regulate situations where politicians or political parties refused to present their position when asked by NIT journalists. As to Article 7 § 4, it was, in the applicant company's view, contrary to the main

principles of journalistic independence. In view of the poor quality of the law, NIT could not reasonably have expected that its activities would be terminated.

121. The applicant company also argued that the revocation of its licence had not pursued the aims of "protection of the reputation or rights of others", "the prevention of disorder or crime" or any of the other legitimate aims mentioned in paragraph 2 of Article 10. The aim of the impugned measure had been punitive in its essence. In reality, it was nothing but a measure of retaliation for criticising the AEI and for covering the protests organised by the PCRM. The applicant company also referred in that connection to the Constitutional Court's ruling of 6 December 2012, in which that court had found that the immediate enforcement of a sanction imposed by the ACC did not pursue a legitimate aim.

122. Referring to the necessity of the interference, the applicant company's main position was that Article 7 § 2 of the Code was not consistent with the Court's case-law under Article 10 of the Convention as it impaired the essence of a broadcaster's freedom of expression, interfered with the right to impart information and ideas, affected fundamental values of pluralism existing in a democratic society and impeded debate on matters of public interest.

123. By way of alternative submission, the applicant company argued that such a limitation as the one contained in Article 7 § 2 could be applied to public broadcasters but under no circumstances to private ones. The applicant company argued that that provision had placed an excessive burden on it, especially since the key political figures had had a hostile attitude towards NIT and refused to answer questions and give comments. In a situation where other political parties had ignored NIT or had even displayed an aggressive attitude towards its journalists, NIT could not but grant airtime to those political parties which cooperated with it. Otherwise, the television channel would have been left without content for its bulletins. In any event, NIT had reported on the governing parties' activity. Proof of that was to be found in the ACC's own monitoring report, according to which 46% of the content of its news bulletins had been dedicated to the governing alliance and only 20% concerned the PCRM.

124. The interference with the applicant company's freedom of expression had not been necessary in a democratic society. It had undermined the main foundations of democracy, the spirit of pluralism and the rule of law.

125. The applicant company argued that it had become the target of numerous attacks on the part of the ACC after the change of government in 2009. It had been evicted from premises which it used to rent in a government building; then State enterprises had stopped placing advertisements with NIT and it had been excluded from cable transmission. It had also been the target of numerous complaints on the part of politicians from the governing parties and had been boycotted by them. In addition, it had been defamed in the

media controlled by the government. NIT had received more than ten sanctions from the ACC and was the only broadcaster to have had its licence revoked. Many high-profile politicians had stated that the channel had to be shut down. The criticism expressed by the NIT journalists in respect of the government's policies and representatives could be considered neither a sufficient nor a relevant ground for the revocation of its licence.

126. The applicant company submitted that the domestic courts had considered that the violation of legal norms by NIT consisted in the fact that it had presented information about the demonstrations organised by the PCRM. It could not be concluded from watching the news bulletins in question that NIT had attempted to undermine the country's national security or its territorial integrity. The reporting about the protests had concerned peaceful assemblies during which the participants had demanded the resignation of the government and new elections. Thus, it was not the interests of the State which were at stake but those of the governing coalition.

127. The applicant company was also of the view that it had received sanctions from the ACC on the instructions of the government and stated that there was no evidence that the material presented in its news bulletins was propagandistic in nature or involved editing tricks.

128. The sanction imposed on NIT could not be reasonably regarded as answering a pressing social need and the reasons relied upon by the ACC had not been relevant and sufficient in circumstances in which the margin of appreciation enjoyed by the State was very narrow for restricting political speech and debate on matters of public interest.

129. The applicant company stated that the sanction imposed amounted to a form of censorship intended to discourage NIT and other media from criticising the government. Such a sanction was likely to deter journalists from contributing to public debate on issues affecting the life of the country. It also hampered the media in performing their task as a purveyor of information and public watchdog.

130. Lastly, the harshest measure of revocation of the licence of a broadcasting company could not in principle be regarded as corresponding to a pressing social need, as falling within the State's margin of appreciation and as necessary in a democratic society. Such a measure was likely to undermine pluralism of opinions and the principle of broad-mindedness and openness in a democratic society whose nationals should be free to choose the information they wished to receive. The situation was even more serious given the fact that NIT had reflected the views of an opposition party, had been important for a linguistic minority and had been critical of the government.

(b) The Government

131. The Government agreed that the revocation of the applicant company's licence had constituted an interference with its right to freedom of expression under Article 10 § 1 of the Convention.

132. They submitted, however, that the licensing system in place at the time in Moldova had been capable of contributing to the quality and balance of television programmes through the powers conferred on the national authorities and had been consistent with the third sentence of paragraph 1 of Article 10 of the Convention. The Code, as in force at the material time, had regulated broadcasters' rights and duties. In particular, it provided in Article 8 § 1 for the right of broadcasters to freely choose the content of their programmes. At the same time the Code had provided in Article 7 for an obligation on the part of broadcasters to observe the principle of pluralism. It had also authorised the ACC to monitor how broadcasters observed the principle of pluralism of ideas and opinions within their programmes. Further, the Code had provided for sanctions in the event of failure by broadcasters to comply with their obligations and also for the procedure by which such sanctions were to be imposed.

133. The Government stressed that it fell within the States' margin of appreciation to choose which approach to adopt with a view to achieving pluralism of opinions. The national authorities were better placed than an international court to choose which policy in the field of pluralism to be followed. They stressed that the Code had been drawn up in cooperation with the Council of Europe and the OSCE and that both organisations had welcomed its adoption and praised it for corresponding to European and international standards. The Government drew the Court's attention in particular to the Council of Europe's experts' comments concerning Article 7 § 2 of the Code, according to which the principles set forth in it were "commendable" (see paragraph 16 above).

134. They submitted that the interference in question had been prescribed by law. The ACC's decision of 5 April 2012, as well as the judgments of the Court of Appeal and of the Supreme Court of 11 February and 2 May 2013, respectively, had relied on Article 27 §§ 1 and 2, Article 38 §§ 1-3, Article 7 §§ 1, 2 and 4 and Article 10 § 5 of the Code and point 3.1 of the broadcasting licence. The law had been accessible, clear and foreseeable as to its effects and had complied with all the requirements of quality arising from the Court's case-law.

135. The aim of the interference in the present case had been legitimate under the third sentence of the first paragraph of Article 10 (see paragraph 132 above). Besides that, the revocation of NIT's licence had also pursued the legitimate aims provided for in Article 10 § 2 of the Convention of protecting national security and public safety and preventing disorder and crime. NIT had encouraged the audience to participate in protests which could turn violent as a result of the misinformation which it had disseminated and the feeling of anger which it had deliberately provoked among its audience.

136. The interference had also been necessary in a democratic society because there had been a pressing social need to protect the pluralism of opinions. The Government stressed the importance of pluralism in a

democratic society and submitted that the aim pursued by the Moldovan authorities was that the audience should be presented with multiple sources of information, and information covering different political views, without anyone being allowed to gain an undue advantage due to control over a television channel. The mechanism put in place by Article 7 of the Code was also aimed at preserving fairness and equality and maintaining a high quality of political debate. In the absence of such a mechanism, given the particular political circumstances that had existed at the time, there would have been a risk of political propaganda and indoctrination through television in favour of political parties which had access to a television broadcasting channel.

137. According to the Government, Article 7 § 2 of the Code – by obliging broadcasters to grant airtime to different political parties and movements in a balanced manner – was aimed, *inter alia*, at supporting the integrity of democratic processes, at obtaining a fair framework for political and public debate, and at ensuring that those political entities who could afford to have their positions promoted during television programmes did not obtain unfair advantages through the possibility of using the most potent and pervasive medium; this all helped to preserve the political impartiality of television broadcasting. This legal duty of the audiovisual media was also aimed at improving the quality of political debate in general, given that broadcasters which promoted the positions of certain political parties or movements could distort certain complex issues of general interest, taking into account the powerful impact of television. The applicant company's case served as a genuine example in that regard. Finally, yet importantly, Article 7 § 2 of the Code also allowed other minor political parties or movements the possibility of having their opinions on matters of public interest presented to the general public, a factor which improved the democratic processes even more, by offering such entities a certain level of attention in nationally televised coverage which they might not have been afforded in other conditions.

138. Moreover, there had been a need to protect the public from the negative impact of NIT's unfair journalistic practices. In particular, the public had to be protected from the misleading and false information broadcast by the television channel and from the calls for hatred and xenophobia. In this respect the Government pointed to the fact that it had been established by the domestic courts that in its news bulletins NIT had reflected on the protests organised by the PCRM during which calls for disobedience to the legal order had been made and statements amounting to calls for division, intolerance and even hatred towards Romania and the EU had been propagated, bordering on xenophobia. The Government expressed the opinion, that, as in *Sürek v. Turkey (no. 1)* ([GC], no. 26682/95, § 61, ECHR 1999-IV), NIT had incited the audience to violence and fostered hostility among different social and political groups, thus endangering democracy itself.

139. The Government argued that another important factor in determining the necessity of the interference was the means of expression employed by

the applicant company. They pointed out that the audiovisual media had a more immediate and powerful impact than the print media and mentioned that not only had NIT been an audiovisual media outlet, but it also used to broadcast on a frequency with national coverage, a fact that had significantly increased the impact of the content of its broadcasting.

140. Furthermore, some of the statements made in NIT's news bulletins amounted to nothing more than personal insults and none of the persons criticised had ever been given a right to reply. The Government provided copies of over twenty-five complaints submitted to the ACC by politicians, political parties, private individuals and non-governmental organisations in the media field in respect of NIT's alleged misinformation and failure to observe the rules concerning pluralism and fair journalism. The Government also referred to instances when some politicians had been insulted by being called "criminals", "dictators", "traitors", "usurpers" and other names.

141. The Government further submitted that the necessity of the interference in the present case was dictated by the recurrent nature of the breaches committed by the applicant company. Over a period of three years the applicant company had received sanctions on more than eleven occasions for similar breaches, namely for promoting the position of only one political party in its news bulletins and for refusing to reflect the opinions of other political parties, as required by the law. The applicant company had not even challenged all the sanctions imposed on it. It had preferred to pay the fines and to continue breaching the law. Since all the above-mentioned sanctions had been unable to convince the applicant company to comply with the law, the ACC had had no other alternative but to take a measure of last resort. Had the authorities not imposed the harshest sanction on the applicant company after all other sanctions had turned out to be ineffective, society and other broadcasters would have been given the wrong message that non-compliance with the law was tolerated.

142. The Government contended that it had been open to the applicant company to apply for a new licence twelve months after its licence had been revoked. However, it had not done so. Instead, the applicant company had preferred to continue broadcasting on the Internet. It had regularly posted news items and videos on its YouTube channel until the end of 2014.

143. They concluded that the authorities had struck a fair balance between the general interest in promoting pluralism of opinions and NIT's right to impart information.

2. The Court's assessment

(a) Preliminary remark

144. The Court notes at the outset that in its application lodged under the Convention the applicant company complained about the decision to revoke its broadcasting licence and about the proceedings leading to that decision. In

the course of the Convention proceedings, it complained in addition about the sanctions that had been imposed prior to the revocation.

145. The Court reiterates that it cannot base its decision on facts that are not covered by the complaint. To do so would be tantamount to deciding beyond the scope of a case; in other words, to deciding on matters that have not been "referred to" it, within the meaning of Article 32 of the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018).

146. The Court therefore considers that it cannot review the sanctions imposed on the applicant company prior to 5 April 2012. It will have regard, however, to those sanctions when examining whether the revocation of the broadcasting licence complied with the Convention requirements referred to by the applicant company in its complaints.

147. The Court further observes that the applicant company is not only contesting, among other things, the necessity of the revocation of the licence, but is also challenging the compatibility of certain provisions of the Code with Article 10 of the Convention.

148. The Court is therefore of the opinion that, in the present case, the negative obligation of the State not to interfere is linked to the question as to whether the State complied with its positive obligation to put in place a proper legal and administrative framework guaranteeing media pluralism (see paragraphs 184-186 and 198-209 below).

149. It is with this consideration in mind that the Court will examine the specific circumstances of the case.

(b) Whether there has been an interference

150. The parties agreed that the measure of revocation of the applicant company's broadcasting licence amounted to an interference with its right to freedom of expression under the first paragraph of Article 10 of the Convention (see paragraphs 115 and 131 above). The Court sees no reason to hold otherwise.

151. Such interference will constitute a breach of Article 10 unless it was "prescribed by law", pursued one or more legitimate aims set out by this article, and was "necessary in a democratic society" for the achievement of those aims.

(c) Relevance of the third sentence of Article 10 § 1

152. The parties agreed that the measure concerning the applicant company's broadcasting licence fell to be examined under the third sentence of paragraph 1 of Article 10 (see paragraphs 115 and 132 above). The Court sees no reason to hold otherwise.

153. In this regard, the Court reiterates that the object and purpose of the third sentence of Article 10 § 1 is to make it clear that States are permitted to

regulate by means of a licensing system the way in which broadcasting is organised in their territories, particularly in its technical aspects. The latter are undeniably important, but the grant or refusal of a licence may also be made conditional on other considerations, including such matters as the nature and objectives of a proposed station, its potential audience at national, regional or local level, the rights and needs of a specific audience and the obligations deriving from international legal instruments. This may lead to interferences whose aims will be legitimate under the third sentence of paragraph 1, even though they may not correspond to any of the aims set out in paragraph 2. The compatibility of such interferences with the Convention must nevertheless be assessed in the light of the other requirements of paragraph 2 (see *Informationsverein Lentia and Others v. Austria*, 24 November 1993, § 32, Series A no. 276; *Demuth*, cited above, § 33; and *Centro Europa 7 S.R.L. and Di Stefano v. Italy* [GC], no. 38433/09, § 139, ECHR 2012).

154. The Court can agree with the applicant company that the factual circumstances and context of the present case are somewhat different from those in the case of *Demuth* (cited above). However, it cannot see any reason why the above-mentioned principles set out in its case-law would not be applicable in this case. In this context, it notes that in Moldova, television broadcasting required a licence to be issued by the ACC in accordance with Article 23 of the Code. This provision also set out various instructions as to the purposes, functions and content of television programmes (see paragraph 85 above). Thus, the licensing system operating in Moldova was capable of contributing to the quality and balance of programmes through the powers conferred on the government. It was therefore consistent with the third sentence of paragraph 1 (see *Demuth*, cited above, § 34).

155. In so far as the applicant company disputed the justification for the revocation of its television broadcasting licence, it remains, however, to be determined whether the interference satisfied the other relevant conditions of paragraph 2 of Article 10 (see paragraph 151 above and *Demuth*, cited above, § 35).

(d) Whether the interference was prescribed by law

156. The applicant company and the Government differed as to whether the interference with the applicant company's freedom of expression was "prescribed by law" (see paragraphs 116-120 and 134 above).

(i) General principles

157. The Court reiterates that, as regards the words "in accordance with the law" and "prescribed by law" which appear in Articles 8 to 11 of the Convention, it has always understood the term "law" in its "substantive" sense, not its "formal" one. "Law" must be understood to include both

statutory law – encompassing also enactments of lower ranking statutes and regulatory measures taken by professional regulatory bodies under independent rule-making powers delegated to them by Parliament – and judge-made "law". In sum, the "law" is the provision in force as the competent courts have interpreted it (see, *mutatis mutandis*, *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 88, ECHR 2005-XI, with further references; *Sanoma Uitgevers B.V. v. the Netherlands* [GC], no. 38224/03, § 83, 14 September 2010; and *Unifaun Theatre Productions Limited and Others v. Malta*, no. 37326/13, § 79, 15 May 2018).

158. The Court reiterates further that the expression "prescribed by law" in the second paragraph of Article 10 not only requires that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects (see, among other authorities, *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I; *Delfi AS v. Estonia* [GC], no. 64569/09, § 120, ECHR 2015; and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 142, 27 June 2017).

159. As regards the requirement of foreseeability, the Court has repeatedly held that a norm cannot be regarded as a "law" within the meaning of Article 10 § 2 unless it is formulated with sufficient precision to enable a person to regulate his or her conduct. That person must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty. A law which confers a discretion is thus not in itself inconsistent with the requirement of foreseeability, provided that the scope of the discretion and the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference (see *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, § 94, 20 January 2020). Whilst certainty is desirable, it may bring in its train excessive rigidity, and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague, and whose interpretation and application are questions of practice (see *Centro Europa 7 S.R.L. and Di Stefano*, cited above, § 141; *Delfi AS*, cited above, § 121; and *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 143). At the same time, the Court is aware that there must come a day when a given legal norm is applied for the first time (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 115, ECHR 2015, and *Magyar Kétfarkú Kutya Párt*, cited above, § 97).

160. The role of adjudication vested in the national courts is precisely to dissipate such interpretational doubts as may remain. The Court's power to review compliance with domestic law is thus limited, as it is primarily for the national authorities, notably the courts, to interpret and apply domestic law

(see, among other authorities, *Kudrevičius and Others*, cited above, § 110, and *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 144). Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see *Radomilja and Others*, § 149, cited above, and *Centre for Democracy and the Rule of Law v. Ukraine*, no. 10090/16, § 108, 26 March 2020, with further references). Also, it is not for the Court to express a view on the appropriateness of methods chosen by the legislature of a respondent State to regulate a given field. Its task is confined to determining whether the methods adopted and the effects they entail are in conformity with the Convention (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 67, ECHR 2004-I, and *Delfi AS*, cited above, § 127). Moreover, the level of precision required of domestic legislation – which cannot provide for every eventuality – depends to a considerable degree on the content of the law in question, the field it is designed to cover and the number and status of those to whom it is addressed (see *Delfi AS*, cited above, § 122; *Kudrevičius and Others*, cited above, § 110; and *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, §144).

161. Persons carrying on a professional activity, who are used to having to proceed with a high degree of caution when pursuing their occupation, can on this account be expected to take special care in assessing the risks that such activity entails (see *Delfi AS*, cited above, § 122, and *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 145, with further references).

(ii) Application of these principles in the present case

162. As regards the existence of a legal basis for the impugned interference in the instant case, the Court finds no reason to call into question the national authorities' finding that the revocation of the applicant company's licence had a basis under domestic law, in particular Articles 7, 10, 27, and 38 of the Code, as reflected in point 3.1 of the terms of the broadcasting licence (see paragraphs 43 and 85 above).

163. As regards the applicant company's argument that the legal basis for the revocation of its licence, or part of that basis, was not accessible, the Court reiterates that the Convention does not contain any specific requirements as to the degree of publicity to be given to a particular legal provision (see *Špaček, s.r.o., v. the Czech Republic*, no. 26449/95, § 57, 9 November 1999). In this connection, the Court notes that the applicant company has never maintained that it did not have access to the actual text of the broadcasting licence it held or to the various points set out in the licence. Moreover, it has not contended as such, or presented any evidence, that the Code was not published and available in the country's main legislation database, a source of information easily accessible not only to a professional television operator, but also to any member of the general public.

164. In these circumstances the Court cannot agree with the applicant company that the legal basis relied on by the national authorities for the revocation of its licence was not accessible.

165. Turning to the foreseeability of the domestic legislation and its interpretation and application by the domestic courts, the Court notes that the language used by the Code was rather unambiguous: it provided (i) that broadcasters were under a duty to observe the principle of political pluralism in their programme services – by giving airtime to different political parties or movements in a balanced manner – together with the principles of objectivity and fairness within their news programmes by ensuring accuracy, avoiding distortion and adhering to the principles of multi-source information in cases of news stories covering conflict situations; (ii) that the ACC supervised the manner in which the private and public broadcasters complied with the obligations set out in their broadcasting licences, and the accuracy of their programmes, and monitored the content of their programmes; (iii) that in the event of breaches of the legal rules by broadcasters, the ACC was to apply one of the five sanctions provided for in the Code, revocation of the broadcasting licence being one of them; (iv) that the ACC had to apply the sanctions gradually in a particular initial order; (v) that the broadcasting licence was to be revoked only if a recurrent and serious violation of the provisions of the Code occurred and only after the other available sanctions had been exhausted; (vi) that the ACC's decisions entered into force on the date of their publication in the Official Gazette of the Republic of Moldova; and (vii) that the ACC's decision imposing a sanction constituted a writ of enforcement.

166. The Court is of the view that the Code did not lack the necessary precision to enable NIT to regulate its conduct. It does not find it unreasonable in circumstances where the national authorities have discretion on such matters that a professional broadcaster, such as NIT, could be expected to proceed with caution in carrying out its professional activity and to take additional care in assessing the risks that such activity entailed and to mitigate them following the imposition of a sanction.

167. In NIT's case, the latter's repeated breaches of Article 7 of the Code had prompted the ACC to apply successively each of the five types of sanctions provided for by Article 38 of the Code. These variously consisted of the issuing of a public warning, the withdrawal of the right to broadcast advertisements for a defined period and the imposition of a fine, then increasing gradually to the suspension of the right to broadcast for a certain period and ultimately to the revocation of the licence (see paragraphs 29 and 40-43 above). Therefore, the Court does not discern any element in the ACC's actions suggesting that the manner in which it exercised its discretion in the instant case could be regarded as unforeseeable under the Code.

168. Nor is the Court persuaded by the applicant company's allegations that the relevant national law prohibited the ACC from enforcing a sanction

immediately without awaiting the outcome of a challenge in court and from applying a new sanction before the national courts had adjudicated by a final judgment on the lawfulness of the previous sanction, or placed the national courts under a duty to grant interim measures pending the outcome of challenges against sanctions. In this connection the Court observes that it could not be said that either the Code or the Law on administrative court proceedings included any provisions expressly confirming the applicant company's allegations. It notes that, while Article 38 § 10 of the Code provided that a decision by the ACC imposing a sanction which is not contested within the time-limit set constitutes a writ of enforcement, Article 40 § 3 of the Code provided that decisions of the ACC enter into force on the date of their publication in the Official Gazette of the Republic of Moldova. The Court further observes that section 21 of the Law on administrative court proceedings provided for a remedy to request the suspension of the execution of an administrative act and gave the courts the competence to order such a suspension. In fact, this would seem to contradict the applicant company's argument that the ACC's decision could not have been enforced immediately or that the courts had been under a legal duty to grant interim measures.

169. In any event, the Court notes that it appears from the available evidence that the national authorities, including the courts, were consistent in interpreting and applying the relevant law in force on 5 April 2012 to the effect that the ACC's decisions were enforceable immediately after their publication in the Official Gazette. Bearing in mind its limited role *vis-à-vis* that of the national authorities and courts when it comes to the interpretation and application of domestic law (see paragraph 160 above), the Court sees no reason to call into doubt their rejection of the applicant company's argument based on the Law on regulating entrepreneurial activity (see paragraphs 70 and 77 above). Moreover, it appears that the ACC could apply an ensuing sanction before the national courts had adjudicated by a final judgment on the lawfulness of the previous sanction, and the courts had discretion in granting interim measures pending the outcome of challenges against sanctions (see paragraphs 29, 54, 65 and 66 above). In addition, it appears that since at least November 2010 the applicant company had been or ought to have been aware that the authorities interpreted the law and applied it in practice in a manner which supported the immediate enforcement of the ACC's decisions after publication and the discretion of the courts in granting interim measures in this regard (see paragraph 29 above).

170. In so far as the applicant company relied on the Constitutional Court's ruling of 6 December 2012 to substantiate its above allegations, the Court observes that that court had declared unconstitutional an amendment to Article 38 of the Code that entered into force in May 2012. As pointed out by the Court of Appeal in the present case, according to the relevant national statutory law, the Constitutional Court's decision did not have retroactive

effect; it had effect only for the future. Therefore, it could not have had any legal effects on the law and practice as applicable on 5 April 2012, when the ACC had decided to revoke the applicant company's licence, and on the subsequent judicial proceedings reviewing the lawfulness of that decision (see paragraph 71 above). This had also been confirmed in a press release issued by the Constitutional Court on the day of its ruling by stating that the provisions examined in its judgment had gained legal force only in May 2012 and had not been applicable at the time of the ACC's decision concerning the revocation of NIT's licence (see paragraph 95 above).

171. Having regard to the above, the Court is of the view that the relevant domestic law applicable in the applicant company's case was formulated sufficiently clearly in order to fulfil the requirements of precision and foreseeability under Article 10 § 2 of the Convention.

172. The Court therefore concludes that the impugned interference was "prescribed by law".

(e) Whether the interference pursued a legitimate aim

173. The parties were in disagreement as to whether the interference pursued one of the legitimate aims mentioned in paragraph 2 of Article 10 (see paragraphs 121 and 135 above).

174. The Court has accepted that the ability of a country's licensing system to contribute to the quality and balance of programmes constitutes a sufficient legitimate aim for an interference under the third sentence of Article 10 § 1, albeit not directly corresponding to any of the aims set out in Article 10 § 2 (see *Demuth*, cited above, § 37). The Court has also accepted that interferences seeking to preserve the impartiality of broadcasting on matters of public interest correspond to the legitimate aim of protecting the "rights of others" to which the second paragraph of Article 10 refers (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 78, ECHR 2013 (extracts)). It has further accepted that the latter aim is also pursued by measures intended to ensure the audience's right to a balanced and unbiased coverage of matters of public interest in news programmes (see *ATV Zrt v. Hungary*, no. 61178/14, § 39, 28 April 2020).

175. In the present case the Court has already found that Moldova's licensing system was capable of contributing to the quality and balance of programmes in the country (see paragraph 154 above). Moreover, the need to preserve the public's access to impartial, trustworthy and diverse political speech through television news programmes was at the heart of the national authorities' decision to uphold the sanction imposed on the applicant company on 5 April 2012 (see paragraph 61 above). The Court finds nothing to indicate that the aim of the impugned measure in the instant case was "punitive in its essence", as suggested by the applicant company. In these circumstances, despite the applicant company's arguments to the contrary, the Court is satisfied that the aim of the interference in the present case was

legitimate under the third sentence of Article 10 § 1. It is prepared to accept that the interference also corresponded to the legitimate aim of protecting the "rights of others" to which the second paragraph of Article 10 refers.

176. However, the Court is not persuaded by the Government's suggestion that the impugned measure had been imposed in the interests of "national security" or "public safety" or for the "prevention of disorder" (see paragraph 135 above).

(f) Whether the interference was necessary in a democratic society

(i) General principles regarding freedom of expression

(α) On the requirement that an interference be "necessary in a democratic society"

177. The general principles concerning the question whether an interference is "necessary in a democratic society" are well established in the Court's case-law and have been summarised as follows (see, among many authorities, *Animal Defenders International*, cited above, § 100; *Delfi AS*, cited above, § 131; and *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 132, 17 May 2016):

> "(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...
>
> (ii) The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10.
>
> (iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient'... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts ..."

(β) General principles concerning journalistic reporting on political issues and other matters of public concern, notably in the audiovisual media

178. The most careful scrutiny on the part of the Court is called for when the measures taken or sanctions imposed by the national authority are capable of discouraging the participation of the press in debates over matters of legitimate public concern (see *Jersild v. Denmark*, 23 September 1994, § 35, Series A no. 298; Bergens Tidende *and Others v. Norway*, no. 26132/95, § 52, ECHR 2000-IV; *Tønsbergs Blad A.S. and Haukom v. Norway*, no. 510/04, § 88, 1 March 2007; and *Björk Eiðsdóttir v. Iceland*, no. 46443/09, § 69, 10 July 2012; compare *MGN Limited v. the United Kingdom*, no. 39401/04, §§ 150 and 155, 18 January 2011; *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 106-07, ECHR 2012; and *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 87-88, 7 February 2012). There is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest (see *Sürek*, cited above, § 61).

179. Article 10 of the Convention does not, however, guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern (see Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 65, ECHR 1999-III).

180. The protection of the right of journalists to impart information on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism (see, for example, *Goodwin v. the United Kingdom*, 27 March 1996, § 39, *Reports of Judgments and Decisions* 1996-II; *Fressoz and Roire v. France* [GC], no. 29183/95, § 54, ECHR 1999-I; Bladet Tromsø *and Stensaas*, cited above, § 65; *McVicar v. the United Kingdom*, no. 46311/99, § 73, ECHR 2002-III; and *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 78, ECHR 2004-XI); or in other words, in accordance with the tenets of responsible journalism (see *Bédat v. Switzerland* [GC], no. 56925/08, § 50, 29 March 2016, with further references).

181. These considerations play a particularly important role nowadays, given the influence wielded by the media in contemporary society: not only do they inform, they can also suggest, by the way in which they present the information, how it is to be assessed. In a world in which the individual is confronted with vast quantities of information circulated via traditional and electronic media and involving an ever-growing number of players, monitoring compliance with journalistic ethics takes on added importance. (see *Stoll v. Switzerland* [GC], no. 69698/01, § 104, ECHR 2007-V).

182. Where the "duties and responsibilities" of journalists are concerned, the potential impact of the medium of expression involved is an important factor in assessing the proportionality of the interference. In this context, the Court has acknowledged that account must be taken of the fact that the

audiovisual media have a more immediate and powerful effect than the print media (see *Jersild*, cited above, § 31, and *Radio France and Others v. France*, no. 53984/00, § 39, ECHR 2004-II). The former have means of conveying through images meanings which the print media are not able to impart (see *Jersild*, cited above, § 31). The function of television and radio as familiar sources of entertainment in the intimacy of the listener's or viewer's home further reinforces their impact (see *Murphy v. Ireland*, no. 44179/98, § 74, ECHR 2003-IX (extracts)).

183. At the same time, the methods of objective and balanced reporting may vary considerably, depending among other things on the media in question. It is not for this Court, nor for the national courts for that matter, to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists. In this context the Court reiterates that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed (see *Jersild*, cited above, § 31; see also *Stoll*, cited above, § 146, and *Gaunt v. the United Kingdom* (dec.), no. 26448/12, § 47, 6 September 2016).

(γ) General principles concerning pluralism in the audiovisual media

184. The Court stresses that the particular role of the press in imparting information and ideas on political issues and on other subjects of public interest, which the public is moreover entitled to receive (see *Manole and Others*, cited above, § 96), cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the ultimate guarantor (see *Informationsverein Lentia and Others*, cited above, § 38). A public monopoly is the one which imposes the greatest restrictions on the freedom of expression, namely the total impossibility of broadcasting otherwise than through a national station and, in some cases, to a very limited extent through a local cable station. The far-reaching character of such restrictions means that they can only be justified where they correspond to a pressing need (ibid., § 39).

185. The Court reiterates that there can be no democracy without pluralism. Democracy thrives on freedom of expression. It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy. In order to ensure true pluralism in the audiovisual sector in a democratic society, it is not sufficient to provide for the existence of several channels or the theoretical possibility for potential operators to access the audiovisual market. It is necessary in addition to allow effective access to the market so as to guarantee diversity of overall programme content, reflecting as far as possible the variety of opinions encountered in the society at which the programmes are aimed (see *Centro Europa 7 S.R.L. and Di Stefano*, cited above, §§ 129-30).

186. Having regard to the powerful impact of the audiovisual media (see paragraph 182 above), the Court reiterates that a situation whereby a powerful economic or political group in society is permitted to obtain a position of dominance over the audiovisual media, and thereby exercise pressure on broadcasters and eventually curtail their editorial freedom, undermines the fundamental role of freedom of expression in a democratic society. In such a sensitive sector as the audiovisual media, in addition to its negative duty of non-interference the State has a positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism. This is especially relevant when the national audiovisual system is characterised by a duopoly. Member States should adapt the existing regulatory frameworks, particularly with regard to media ownership, and adopt any regulatory and financial measures called for in order to guarantee media transparency and structural pluralism as well as diversity of the content distributed (ibid., §§ 133-34).

(δ) On the need to develop the Court's case-law on media pluralism

187. The Court notes that from the case-law outlined above it emerges that the existing standards on media pluralism were developed chiefly or exclusively in the context of complaints of unjustified State interference with an applicant's Article 10 rights and where the Court relied, *inter alia*, on the principle of media pluralism in finding a violation. From this case-law it transpires that that principle is considered crucial for the effective protection of media freedom under the Convention.

188. In the case now under consideration, however, it is the other dimension of media pluralism which is at stake in that the applicant company complained of restrictions on its freedom of expression which were based on the grounds of ensuring political pluralism in the media with the aim of enabling diversity in the expression of political opinion and enhancing the protection of the free-speech interests of others in the audiovisual media. In other words, a question arises in the present case of striking a proper balance between competing free-speech interests, namely between those of the community in safeguarding political pluralism in the media on the one hand and those of respecting the principle of editorial freedom on the other hand.

189. A further specific feature is the emphasis laid in the relevant national legal framework on internal pluralism, namely the obligation on broadcasters under Article 7 § 2 of the Code to present different political views in a balanced manner without favouring a particular party or political movement. In contrast, the cases mentioned above have been more concerned with what can be described as issues of external pluralism (monopoly, duopoly and other positions of dominance) (see paragraph 101 above).

190. This offers an opportunity for the Court to clarify that neither aspect, internal or external, should be considered in isolation from each other. On the contrary, the two aspects should be considered in combination with each

other. Thus, in a national licensing system involving a certain number of broadcasters with national coverage, what may be regarded as a lack of internal pluralism in the programmes offered by one broadcaster may be compensated for by the existence of effective external pluralism. However, as the Court held in *Centro Europa 7 S.R.L. and Di Stefano* (cited above), it is not sufficient to provide for the existence of several channels. Or, as stated in the Committee of Ministers Recommendation CM/Rec (2007)2 on media pluralism and diversity of media content quoted at paragraph 99 above, "pluralism of information and diversity of media content will not be automatically guaranteed by the multiplication of the means of communication offered to the public". What is required is to guarantee diversity of overall programme content, reflecting as far as possible the variety of opinions encountered in the society at which the programmes are aimed (see paragraph 185 above). There may be different approaches to achieving overall programme diversity in the European space, as illustrated by the fact that in nearly all of the thirty-four Contracting States surveyed, public broadcasters are subject to a duty to observe political pluralism whereas in twenty of the States or local jurisdictions concerned, unlike in fifteen others, such a duty applies also to private broadcasters (see paragraphs 111-112 above). It thus appears that a number of national licensing systems tend to rely on the diversity of perspectives provided by the different licensed operators, coupled with structural safeguards and general obligations of fair coverage, while other national systems require stricter content-based duties of internal pluralism. Article 10 of the Convention does not impose a particular model in this respect.

191. This is also an opportunity to address the issue of whether the privileged position of the freedom of the press to report on political issues and other matters of public interest should mean that the strict scrutiny traditionally applicable to any restrictions imposed by the Contracting States ought to limit correspondingly the States' discretion in determining the means of ensuring political pluralism in the area of licensing audiovisual media.

192. In this connection the Court has already acknowledged that in such a sensitive sector as the audiovisual media the State has a positive obligation to put in place an appropriate legislative and administrative framework to guarantee true effective pluralism (see paragraph 186 above). It has further recognised that, when it comes to audiovisual broadcasting, States are under a duty to ensure, first, that the public are given access through television to impartial and accurate information and a range of opinions and comments, reflecting, *inter alia*, the diversity of political outlook within the country and, secondly, that journalists and other professionals working in the audiovisual media are not prevented from imparting such information and comment. As the choice of the means by which to achieve these aims will vary according to local conditions, it therefore falls within the State's margin of appreciation (see *Manole and Others*, cited above, § 100).

193. As regards the scope of the margin of appreciation, the Court reiterates that, given the multifaceted character and sheer complexity of issues concerning media pluralism (see paragraph 106-108 above), there are a variety of means that could be deployed by the Contracting States to regulate effective pluralism in the audiovisual broadcasting sector (see paragraphs 107-108 above). In such circumstances the margin to be accorded in this regard should be wider than that normally afforded to restrictions on expression on matters of public interest or political opinion. The Contracting States should therefore in principle enjoy a wide discretion in their choice of the means to be deployed in order to ensure pluralism in the media. However, their discretion in this respect will be narrower depending on the nature and seriousness of any restriction on editorial freedom that the means thus chosen may entail. In this connection, it should be reiterated that it is not for the national authorities, nor for the Court for that matter, to review the press's own appreciation of the news or information value of an item (see *Jersild*, cited above, § 33, and *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 139, ECHR 2015 (extracts)) or to substitute their views for those of the press on what methods of objective and balanced reporting should be adopted by journalists (see *Jersild*, cited above, § 31; Bladet Tromsø *and Stensaas*, cited above, § 63; and *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 127).

194. The Court will have to be satisfied that the contents of the relevant national legal norms and their application in the concrete circumstances of a given case seen as a whole produced effects that were compatible with the Article 10 guarantees and were attended by effective safeguards against arbitrariness and abuse.

195. In this connection, the fairness of proceedings and the procedural guarantees afforded are factors which in some circumstances may have to be taken into account when assessing the proportionality of an interference with freedom of expression (see *Karácsony and Others*, cited above, §§ 133-36, with further references and case summaries, notably *Association Ekin v. France*, no. 39288/98, § 61, ECHR 2001-VIII, where the practical effectiveness of a full review was found to have been undermined by the excessive length of the proceedings; and *Cumhuriyet Vakfi and Others v. Turkey*, no. 28255/07, §§ 62-74, 8 October 2013, where the safeguards were found to be insufficient having regard to (i) the exceptionally wide scope of an injunction; (ii) its excessive duration; (iii) the failure of the domestic court to give any reasoning for the measure; and (iv) the applicants' inability to contest it before it had been granted).

196. The existence of procedural safeguards is of particular relevance to the Court's examination of the proportionality of the impugned revocation of the applicant company's broadcasting licence; as was undisputed, this constituted the most severe sanction under the relevant provisions of national law, which specified that this sanction was to be imposed "only if a recurrent

and serious violation of the provisions of the Code [had] occurred" (see paragraph 218 below). In cases such as the one at hand, the severity of the sanction is a factor calling for closer scrutiny by the Court and for a narrower margin of appreciation to be accorded to the State.

(ii) Application of these principles in the present case

197. In examining the "necessity" of the interference in the light of the above-mentioned principles and considerations, the Court will first have regard to the regulatory framework on media pluralism put in place by the respondent State and then to the manner in which it was applied to the applicant company in the specific circumstances of the case.

(α) The regulatory framework in place

198. The Court notes that NIT received sanctions on account of its failure to grant airtime to political parties in a balanced manner as required by Article 7 § 2 of the Code and its failure to ensure – in order to observe the principles of social and political balance, fairness and objectivity – accuracy, non-distortion of the sense of reality and adherence to the principle of multi-source information, as required by Article 7 § 4(a), (b) and (c) of the Code. It further notes that the applicant company's main position is that those requirements are contrary to Article 10 of the Convention (see paragraphs 120 and 122 above).

199. In addressing this argument the Court firstly reiterates that all the provisions of the Code, including Articles 7 and 8, were fully accessible to the applicant company (see paragraph 163 above). Secondly, the requirements set out in paragraphs 2 and 4 of Article 7 of the Code largely embodied the preconditions deriving from the Court's case-law for affording enhanced protection of journalistic freedom under Article 10. Even the duty on a broadcaster, when giving airtime to one political party or movement propagating its position, to do likewise in respect of other political parties or movements, may be considered from this angle (see paragraphs 179-180, 183, 184-186, and 191 above).

200. The impugned provisions of the Code did not specify that a broadcaster was under a duty to give an equal amount of airtime to all political parties. As the heading of Article 7 of the Code indicates, broadcasters were under a duty to ensure political balance and pluralism. The manner in which the provisions in question were interpreted and applied in the instant case suggests that this requirement could have been satisfied by offering an opportunity to comment or reply (see paragraphs 36-38 and 60 above). The Court reiterates in this connection that the right of reply, as an important element of freedom of expression, falls within the scope of Article 10 of the Convention. This flows from the need not only to be able to contest untruthful information, but also to ensure a plurality of opinions, especially on matters

of general interest such as literary and political debate (see *Kaperzyński v. Poland*, no. 43206/07, § 66, 3 April 2012).

201. The Court also notes that the internal pluralism policy as embodied in the Code had received a positive assessment by the Council of Europe experts, who found Article 7 § 2 of the Code to be "commendable" (see paragraph 16 above). Moreover, nothing in those experts' comments seems to suggest that the requirements set out in Article 7 § 4 of the Code were viewed as being at odds with the principles of journalistic independence and editorial autonomy.

202. While the internal pluralism policy chosen by the national authorities might be seen as rather strict, the present case relates to a period before Moldova transitioned to terrestrial digital television (see the friendly-settlement agreement concluded between the parties in *Societatea Română de Televiziune v. Moldova* (dec.), no. 36398/08, 15 October 2013), when the number of national frequencies was very limited (see paragraphs 23 and 106 above) and when, following the 2001 events, the authorities were under a strong positive obligation to put in place broadcasting legislation ensuring the transmission of accurate and balanced news and information reflecting the full range of political opinions (see paragraphs 12-14 above).

203. Given the aforementioned context, the Court can accept that the legislative choices underlying the adoption of the provisions in question were carefully considered and that genuine efforts were made at parliamentary level to strike a fair balance between the competing interests at stake (see *Animal Defenders International*, cited above, § 108).

204. In the light of the above, the Court is of the view that the degree of external pluralism related to the existence of four other television broadcasters with nationwide coverage at the time is not a reason for calling into question the requirement to observe the internal pluralism rules set out in Article 7 §§ 2 and 4 of the Code. In fact, all broadcasters, whether they were private or public, were equally subject to the same rules, which, it appears from the evidence, were in practice applied not to the entire audiovisual content of licensed broadcasters but only to their respective news bulletins. Thus, all the sanctions that the ACC imposed on NIT and any other broadcasters with nationwide coverage on account of non-compliance with Article 7 of the Code in the period between 2007 and 2012 related to their news bulletins only, and not to other programmes (see paragraphs 28-29 above).

205. The Court observes further that the implementation of the above-mentioned requirements was monitored by the ACC, a specialist body which was established by law. The Court stresses the important role which regulatory authorities play in upholding and promoting media freedom and pluralism, and the need to ensure their independence given the delicate and complex nature of this role (see paragraphs 105 and 109 above). It notes in this connection that the concerns expressed by the Council of Europe experts

in relation to the ACC's structure and their proposals to improve the safeguards in the draft Code against undue government influence and control were in the main accepted by the Moldovan legislature and included in the final text of the Code (see paragraph 18 above). Also, the selection, appointment, funding and functions of its members were based on detailed rules laid down in the Code, designed to secure the ACC's independence and to protect its decision-making process against political pressures and interference (see paragraph 85 above).

206. The ACC's meetings, monitoring reports and decisions were accessible to the public. Its decisions to conduct monitoring, the resulting monitoring reports, and information on meetings devoted to discussing the reports were notified to the relevant broadcasters. The broadcasters' representatives were given an opportunity to attend these meetings and to submit comments on the findings of the monitoring reports.

207. In addition, the ACC was required to provide reasons for any decision to impose a sanction on a broadcaster (see Article 40 § 4 of the Code, cited in paragraph 85 above). Through a preliminary challenge, the ACC could be requested to reconsider its decision. Also, the ACC's decision could be challenged before the national courts with a concurrent application for an interim order to suspend its enforcement pending the outcome of the proceedings.

208. Lastly, the Court notes that the internal pluralism governance practice put in place by the Moldovan authorities does not seem to be markedly different from that of many Council of Europe member States (see paragraphs 110-111 above).

209. Having regard to all the above-mentioned considerations, the Court concludes that the respondent State acted well within its margin of appreciation in the manner in which it designed the national legal and administrative framework with a view to achieving pluralism in the audiovisual media.

(β) Application of the regulatory framework in NIT's case

– *Whether the restriction was supported by relevant and sufficient reasons*

210. As regards the manner of implementation of the above-mentioned framework to the case under review, the Court notes that the sanction imposed on the applicant company followed a five-day monitoring process carried out by the ACC with respect to NIT's main news bulletin, in line with the established practice of applying Article 7 of the Code to news bulletins only, and not to the entire audiovisual content of the licence holder's broadcast (see paragraph 204 above).

211. The monitoring methodology, which involved comparative and chronometric measurements of content and had been devised by the ACC in collaboration with international experts, had been confirmed as efficient and

had been approved by members of civil society operating in the field after public deliberations (see paragraph 72 above). The Court sees no reason to call into question the relevance or accuracy of the methodology used.

212. The monitoring report on which the ACC based its decision provided a detailed review of the news bulletins broadcast by NIT. The result of the comparative and chronometric measurements of the content of NIT's news bulletins was not disputed by NIT. The findings made by the ACC to the effect that NIT had failed to comply with its duty to obey the principle of political pluralism as reflected in the requirements under Article 7 § 2 of the Code involved conclusions that the time devoted to one party, namely the PCRM, had been positive or neutral whilst that devoted to its opponent, the AEI, had been mostly negative. Moreover, the persons, institutions or political parties referred to or mentioned in a negative light were not given a platform to present their own points of view in response to the criticism and attacks to which they had been subjected. In addition, the bulletins had contained information promoting a unilateral point of view, sometimes not supported by any evidence, and had made use of features capable of distorting reality. Furthermore, they had promoted aggressive journalistic language. Those findings were upheld by the national courts.

213. Whilst the applicant company contested some of the above findings, the Court, bearing in mind its subsidiary role, sees no reason to call into doubt the assessment of facts made in the monitoring report (see paragraphs 35-39 above), the findings made therein that NIT had breached its duties and responsibilities as set out in Article 7 §§ 2 and 4(a), (b) and (c) and Article 10 § 5 of the Code and the assessment of the domestic courts in this regard (see paragraphs 60 and 77 above). In this context the Court cannot but note that from the evidence, including recordings of the news bulletins relied on by the ACC in imposing sanctions on NIT, it appears that for most of their duration the news bulletins in question were devoted to political matters and that the reporting was clearly biased in favour of the activities of the PCRM and its members and supporters, without providing anyone else with an opportunity to respond to criticism and attacks as described in paragraph 212 above. Any suggestion to the contrary by the applicant company in the Convention proceedings appears to contradict its own submission before the Supreme Court to the effect that persons in respect of whom criticism had been expressed had not been offered an opportunity to respond because they had not asked for such an opportunity (see paragraph 73 above).

214. In finding against the applicant company, the national authorities held that the bulletins had used very strong language to describe the government, the parties forming it and their leaders. Among other things, they noted that one of the leaders of the AEI had been compared to "Hitler", while they had all been referred to as "criminals", "bandits", "crooks", "swindlers", "group of criminals", and so on. The domestic courts did not treat NIT's manner of reporting as a defamation case covered by Article 16 of the Civil

Code (contrast *Urechean and Pavlicenco v. the Republic of Moldova*, nos. 27756/05 and 41219/07, § 20, 2 December 2014), but as a case concerning a wider issue, namely that of pluralism and fair journalism, covered by Article 7 of the Code. Thus, no analysis was carried out by the ACC or the courts as to whether those statements referred to named individuals (see Bladet Tromsø *and Stensaas*, cited above, §§ 61 and 71; *Selistö v. Finland*, no. 56767/00, § 64, 16 November 2004; and *Dmitriyevskiy v. Russia*, no. 42168/06, § 105, 3 October 2017) and to what extent they were merely value judgments supported by factual elements. The impugned statements were viewed as an additional aggravating factor in finding that NIT had breached the rules concerning "political balance, fairness and objectivity" as set forth in Article 7 § 4 of the Code. As the national courts acknowledged, the above-mentioned issues went beyond a simple case of defamation and concerned rather the interaction between the principle of pluralism and, in substance, the requirements of accurate and reliable news coverage in accordance with the ethics of journalism (see paragraph 61 above).

215. It is true, as stated above (see paragraph 178), that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest, and that the necessity for any interference with political speech must be convincingly established (see, among other authorities, *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 167). Also, in a democratic system the actions or omissions of the government must be subject to close scrutiny not only by the legislative and judicial authorities but also by public opinion (see *Sürek*, cited above, § 61). Moreover, as shocking, offensive, or disturbing as the impugned statements singled out by the national authorities from NIT's news bulletins may appear, the Court has serious doubts that, given their context, they could be considered to amount to incitement to violence, hatred or xenophobia or that they could have affected the country's territorial integrity and national security as argued by the Government. Nevertheless, for the reasons stated above and taking into account the fact that the exercise of freedom of expression carries with it duties and responsibilities (see paragraphs 179-182 above), the news reporting at issue could hardly be said to have been of a kind calling for the enhanced protection afforded to press freedom under Article 10 of the Convention.

216. The Court is therefore not persuaded by the applicant company's submission that by conducting news reporting in the way it did in its news bulletins that were monitored, NIT had contributed to political pluralism in the media in any meaningful way (see paragraph 124 above).

217. Having regard to all the above considerations, the Court is satisfied that the impugned decision to impose a "restriction" on the applicant company's freedom of expression as protected by paragraph 1 of Article 10

was supported by reasons that were both relevant and sufficient for the purposes of the "necessity" test under paragraph 2 of this Article.

– *Whether the restriction was proportionate*

218. A further question to be examined under the latter test is whether there was a reasonable relationship of proportionality between the impugned sanction of revocation of the licence and the legitimate aims pursued. The national courts acknowledged that this was the most severe sanction that could be imposed (see paragraph 63 above). It entailed a shutdown of NIT's broadcasting activities and had other implications of the kind usually associated with such a measure. Under Article 38 § 3 of the Code, the sanctions provided for in the first paragraph of that Article were to be applied gradually, the withdrawal of the broadcasting licence being the most severe sanction envisaged. Paragraph 5 specified that this sanction was to be imposed "only if a recurrent and serious violation of the provisions of the Code [had] occurred".

219. The Court observes that, as regards the series of sanctions previously imposed on the applicant company, on ten occasions the sanction had been imposed on account of failure to offer airtime in a balanced manner, in breach of Article 7 § 2, and failure to give persons who had been criticised an opportunity to comment, in breach of Article 7 § 4(c). On six of these occasions the sanctions had been imposed on the additional grounds referred to in sub-paragraph (b) of Article 7 § 4 ("the sense of reality [had been] distorted by means of editing tricks, comments or headlines") and on one occasion because of a failure to comply with the requirement of accuracy in sub-paragraph (a).

220. NIT's news bulletins were broadcast nationwide and were therefore accessible to a large audience and, in view of the type of medium in question, capable of having a considerable impact, a factor which is important in assessing the "duties and responsibilities" of the media and the proportionality of the interference (see case references in paragraph 182 above).

221. The revocation of NIT's licence was thus part of a gradual and uninterrupted series of sanctions imposed by the ACC on the applicant company. These had variously consisted of the issuing of a public warning, the withdrawal of the right to broadcast advertisements for a defined period, the imposition of a fine and then the suspension of the right to broadcast for a certain period, ultimately concluding with the most severe sanction, the revocation of the licence on 5 April 2012 (see paragraphs 29 and 40-43 above).

222. In so far as the applicant company has contended that the revocation decision by the ACC was politically motivated, the Court has taken note of the emphasis placed by the applicant company on the fact that the majority of the sanctions imposed on NIT on the basis of the Code had taken place

between 2009 and 2011, thus after a change of the political parties in power (see paragraph 20 above). It observes that at that time NIT had become a platform for criticism of the governing forces and for promoting the opposition party. In the light of the foregoing, and given also the severity of the sanction imposed on the applicant company, the Court must scrutinise closely (see paragraph 196 above) whether the Code and its application in the concrete circumstances provided effective safeguards against arbitrariness and abuse (see paragraph 194 above). In this connection the Court first reiterates its findings above that the Code contained detailed rules pertaining to the ACC's structure and the selection, appointment and functioning of its members, designed to secure this media regulator's independence and to safeguard against undue governmental influence (see paragraphs 109 and 205 above). Also, as a result of the rule imposing staggered terms for ACC members, six out of the nine members who formed the ACC in 2012 had been appointed before the change of government in 2009 (see paragraphs 24 and 85 above). The Court further observes that the applicant company's allegations that in taking its revocation decision the ACC had been influenced by leading politicians, and had as a consequence treated the company in a discriminatory manner, were duly examined by the national courts. The Court of Appeal dismissed the allegation of political influence as being unsubstantiated and rejected NIT's argument that it had been discriminated against, holding that it had been monitored at the same time and under the same conditions as other broadcasters, and that other broadcasters had also been punished where breaches of the Code had been found (see paragraph 72 above). In this connection, the Court finds unpersuasive the applicant company's argument that some high-profile politicians had made public statements calling for the channel to be shut down. Although it cannot be ruled out that such statements may potentially have a certain impact, this cannot alone be regarded as a sufficiently concrete and strong indication that the ACC failed to act independently when taking the impugned measure in the instant case. In conclusion, the Court cannot but note that no concrete evidence has been adduced in the proceedings before the domestic courts and in turn before the Court to support the allegation that the ACC sought to hinder the applicant company's television channel from expressing critical views of the government or pursued any other ulterior purpose when revoking the licence.

223. In the context of the proportionality assessment, the Court further considers it of particular importance that the measure did not prevent NIT from using other means, such as the Internet, to broadcast its programmes, including news bulletins, and could not prevent the applicant company from pursuing other income-generating activities. Indeed, the applicant company confirmed in its submissions to the Court that it had continued to share content through its Internet homepage and its YouTube channel until 2014 (see paragraph 82 above). Moreover, the impugned measure did not have a

permanent effect as the applicant company could have reapplied for a broadcasting licence one year after its licence had been revoked (see paragraph 86 above).

224. The above considerations appear to support the Government's submission that before revoking the licence, the domestic authorities stayed within the limits of the existing legislation in order to compel NIT to comply with the relevant rules. Thus, the seriousness of the actions imputed to the applicant company's television channel appears to have resided not only in its persistence in refusing to comply with the requirements on internal pluralism but also in the nature and accumulation of the transgressions and their gravity when seen as a whole. The fact that after receiving eleven sanctions over a period of three years for the same or similar types of breaches, NIT was not persuaded to change its behaviour and comply with the Code entitled the authorities to consider that applying the most serious of sanctions was warranted by the applicant company's defiance.

225. As regards the fairness of the proceedings and the procedural safeguards afforded, which are also of particular relevance to the Court's examination of the proportionality of the impugned sanction (see paragraphs 195-196 above), the Court notes the following. The ACC took its decision to monitor NIT's news bulletins during a public meeting and the applicant company was informed both about the monitoring report and about the fact that its findings would be examined at a public meeting, in conformity with Article 38 § 7 of the Code (see paragraph 85 above). Furthermore, the applicant company's representative was not only invited to attend that meeting, which he did, but it appears that his presence at the meeting was perceived as mandatory (see paragraph 40 above). It is true that the relevant national law governing the revocation of the licence contained no requirement of prior warning of the licence holder that revocation was being contemplated, and that the ACC took its decision to revoke NIT's broadcasting licence within a rather short time frame. However, it should also be noted that the applicant company was acquainted with the applicable procedure as it appears that its representatives had attended meetings of the ACC on behalf of NIT on previous occasions (see paragraph 29 above). In addition, NIT's representative could have asked for an adjournment of the meeting if he had been of the view that the time afforded for the preparation of his submissions was insufficient, but he did not avail himself of that right (see paragraphs 69 and 77 above).

226. The Court further takes into account that under the relevant domestic law, the applicant company could challenge the ACC's decision before the competent courts and could also ask the latter to order a stay of execution of the challenged decision pending the outcome of the proceedings on the merits (see paragraphs 85 and 87 above). Indeed, it availed itself of these possibilities. The Court emphasises that such procedural safeguards play a particularly important role in situations where, as here, on the basis of

domestic law, a measure as intrusive as the revocation of a broadcasting licence has immediate effect upon its publication. In this connection the Court reiterates that the immediate effect of a measure interfering with the right to freedom of expression may weigh heavily when assessing the measure's compatibility with Article 10, in circumstances where such procedural guarantees are lacking (see *Cumhuriyet Vakfı and Others*, cited above, §§ 72-74).

227. It is further significant in this context that when dismissing the applicant company's request for a stay of execution of the ACC's decision, the competent courts provided reasons (see paragraphs 49-54 above). Although the reasons given were succinct, they in substance balanced the conflicting interests at stake, including the applicant company's free-speech arguments. The Supreme Court, in addition, indicated that the dismissal of the request did not prevent the applicant company from seeking the reconsideration of its request in the event of a change in circumstances deemed important for the case (compare *Tierbefreier E.V. v. Germany*, no. 45192/09, § 58, 16 January 2014).

228. The Court is mindful of the fact that the severity of the impugned measure might have adversely affected the applicant company's operations in a manner having a potentially "chilling effect" on the freedom of expression of other licensed broadcasters in Moldova (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 116-19, ECHR 2004-XI). However, against the background described above and taking into account the specific circumstances of the present case, the Court is satisfied that the domestic authorities acted within their margin of appreciation in achieving a reasonable relationship of proportionality between the competing interests at stake.

– *Conclusion*

229. Taking into account all the above circumstances, and having regard in particular to the national context of the case (see paragraph 202 above), the Court is satisfied that the decision to restrict the applicant company's freedom of expression was supported by reasons which were relevant and sufficient for the purposes of the test of "necessity" under Article 10 § 2 of the Convention and that the domestic authorities acted within their margin of appreciation in achieving a reasonable relationship of proportionality between the need to protect pluralism and the rights of others, on the one hand, and the need to protect the applicant company's right to freedom of expression on the other hand.

230. The interference was thus "necessary in a democratic society" within the meaning of Article 10 of the Convention. There has accordingly been no violation of that Article in the present case.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

231. The applicant company complained that the revocation of its broadcasting licence had not been in accordance with the law or necessary in a democratic society. In particular, it argued that the domestic courts had failed to follow the procedure for revocation of licences as set out in Law no. 451-XV/2001 and had unlawfully rejected its request for a stay of the enforcement of the ACC's decision of 5 April 2012 pending the outcome of the ongoing proceedings. It relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Applicability

1. The parties' submissions

(a) The Government

232. The Government submitted that the measure taken against the applicant company by the authorities had not amounted to an interference with its right to the peaceful enjoyment of its possessions. The Government were of the view that it was almost inconceivable that NIT could have continued to have a legitimate expectation of pursuing its activities until the applicant company's broadcasting licence expired on 7 May 2015, given NIT's repeated breaches of the Code and of the terms of the broadcasting licence.

(b) The applicant company

233. The applicant company argued that, according to the Court's well-established case-law, a licence to run a business constituted a possession and its revocation amounted to an interference with property rights. These considerations were also valid in respect of broadcasting licences, because the interests associated with exploiting such licences constituted property interests attracting the protection of Article 1 of Protocol No. 1 to the Convention, and its own legitimate expectation, which was linked to property interests such as the operation of a television channel by virtue of the licence, had a sufficient basis to constitute a substantive interest and hence a "possession".

2. The Court's assessment

234. The parties appear to disagree as to whether the ACC's decision of 5 April 2012, which was subsequently upheld by the appellate courts, to revoke the applicant company's television broadcasting licence amounted to an interference with its "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention.

235. In a number of previous cases the Court has found that the revocation of a licence to carry on business activities amounted to an interference with the right to peaceful enjoyment of possessions as enshrined in Article 1 of Protocol No. 1 (see *Tre Traktörer AB v. Sweden*, 7 July 1989, § 53, Series A no. 159; *Bimer S.A. v. Moldova*, no. 15084/03, § 49, 10 July 2007; and *Centro Europa 7 S.R.L. and Di Stefano*, cited above, § 177). It has also held that the interests associated with exploiting a broadcasting licence constituted property interests attracting the protection of this provision and that an applicant company's legitimate expectation, which was linked to property interests such as the operation of an analogue television network by virtue of the licence, had a sufficient basis to constitute a substantive interest and hence a "possession" (see *Centro Europa 7 S.R.L. and Di Stefano*, cited above, § 178).

236. The Court sees no reason to doubt that, at the time of the ACC's decision of 5 April 2012, the applicant company was operating an analogue television network by virtue of a valid broadcasting licence and thus held a "possession" within the meaning of Article 1 of Protocol No. 1. Although it retained its property assets and was able to continue broadcasting news bulletins and entertainment shows on the Internet, the revocation of its licence had the immediate and intended effect of terminating its operations on the analogue television network. Thus, the Court is of the view that there has been an interference with the applicant company's "possessions" attracting the application of this Article.

237. In these circumstances, and having regard also to its considerations under Article 10 § 2 above, the Court finds that the applicant company's complaint under Article 1 of Protocol No. 1 to the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further considers that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant company

238. The applicant company argued that while the measure in issue had amounted to control of the use of property, its aim had been to punish NIT and to stop criticism directed at the government; it had been motivated by

censorship and political revenge. It was difficult to believe that closing down a visible television channel that was generating income, paying taxes and employing numerous people would have served any public interest. According to the applicant company, that point of view had been confirmed by the Constitutional Court in its ruling of 6 December 2012 (see paragraphs 91-93 above).

239. The applicant company further submitted that the measure and its immediate enforcement had been unlawful because the provisions of the Code relied on by the ACC in imposing the sanction had not been clear, accessible, and foreseeable as to their effect. NIT could not have reasonably expected that its activities would be permanently stopped and that all its property interests associated with the licence would become illusory.

240. The applicant company maintained that the interference with its right of property had not been required in order to control the use of property and had been disproportionate. In that connection it pointed out that NIT had been the only broadcaster whose licence had been revoked, that soon after the revocation its entire activity connected to television broadcasting had stopped and that all contracts and agreements concluded in connection with that activity had had to be terminated, entailing serious financial losses and the redundancy of all NIT staff members. Even though the applicant company had tried for some time to use the opportunities provided by the Internet, its efforts had been in vain as it had been unable to reach the same level of audience coverage and financial viability as before and therefore its activities had had to be permanently terminated. The applicant company contended that in order to avoid bankruptcy and to be able to pay off its existing loans connected to NIT, it had been forced to continue operating in a sector that had no connection with television broadcasting and generated a very low income.

241. In the proceedings before the Court the applicant company submitted an expert report produced in November 2018 quantifying the damage sustained by it following NIT's closure. Referring to information concerning the applicant company's investments in fixed assets, or contained in its financial statements submitted to the relevant national authorities from 2009 to 2011 and in the employment, rental, and advertising contracts existing at that time, the report noted that the applicant company had not turned a profit from 2009 to 2011. Nevertheless, it found that the damage sustained by the company after NIT's closure had consisted in the costs of its fixed assets which remained unused and its other fixed costs and expenses.

242. According to the applicant company, the present case was similar to other cases examined by the Court against Moldova concerning the revocation of business licences. The authorities had not struck a fair balance between the competing interests at stake and the applicant company had been required to bear a disproportionate burden because of the harshness of the measure and its discriminatory nature.

(b) The Government

243. The Government submitted that, as had also been confirmed by the national courts, the applicant company should have foreseen and expected the measure against it. Furthermore, any financial and material loss suffered by the applicant company was a natural consequence of its own unlawful conduct and was not substantiated by the expert report submitted by it.

244. Relying on the same arguments made in respect of the applicant company's complaint under Article 10 of the Convention, the Government expressed the view that the revocation of the applicant company's licence had been lawful, had pursued a legitimate aim, and had been proportionate as it had protected a prevailing public interest.

2. The Court's assessment

245. Since it has been established above that the revocation of the licence entailed an interference with the applicant company's "possessions", the question arises which of the rules embodied in Article 1 of Protocol No. 1 applies. The provision, it may be reiterated, comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose. However, the rules are not "distinct" in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property. They must therefore be construed in the light of the general principle laid down in the first rule (see, among other authorities, *Centro Europa 7 S.R.L. and Di Stefano*, cited above, § 185).

246. Whilst the applicant company appears to have taken the view that the matter fell within the third rule, on control of the use of property, the Government did not offer any comment.

247. The Court is of the view that it is the rule on control of the use of property that applies in the present case, which falls to be examined under the second paragraph of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Tre Traktörer*, cited above, § 55; *Fredin v. Sweden (no. 1)*, 18 February 1991, § 47, Series A no. 192; and *Centro Europa 7 S.R.L. and Di Stefano*, cited above, § 186). It will accordingly examine whether the interference was lawful, was in the general interest and was proportionate.

(a) Lawfulness of the interference

248. In disputing that the revocation was "lawful" for the purposes of Article 1 of Protocol No. 1, the applicant company relied mostly on the same arguments with reference to the provisions of the Code as those referred to above in contesting that the measure was "prescribed by law" within the meaning of paragraph 2 of Article 10 of the Convention (see paragraphs 116-120 above). The Court takes the view that its findings with regard to the lawfulness of the interference with the applicant company's right to freedom of expression are equally valid as regards its complaint concerning the lawfulness of the interference with its right to the peaceful enjoyment of its "possessions". In this connection, regard must also be had to the fact that when speaking of "law", Article 1 of Protocol No. 1 alludes to the very same concept as that to which the Convention refers elsewhere when using that term (see *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 96, 25 October 2012).

249. In so far as its assessment under Article 10 does not cover the complaint that the domestic courts had failed to follow the procedure for revocation of licences as set out in Law no. 451-XV/2001, the Court notes that the applicant company raised this argument before the domestic courts, which dismissed it on the grounds set out in paragraph 70 above. NIT has not put forward any convincing arguments that could lead the Court to reach a different conclusion.

250. It follows that the impugned interference was "lawful" for the purposes of Article 1 of Protocol No. 1.

(b) Aim of the interference

251. As to the applicant company's arguments to the effect that the revocation of its broadcasting licence had not been in the public interest, the Court observes that, in the context of similar arguments raised by the applicant company in respect of its Article 10 complaint, it has already established that the measure served the purposes of contributing to the quality and balance of programmes in the country and preserving the public's access to impartial, trustworthy and diverse political speech through television news programmes (see paragraphs 154 and 175 above). As regards the regulatory framework in place, there is nothing to indicate that the legislature's judgment as to what was "in the public interest" was "manifestly without reasonable foundation" (see, *mutatis mutandis*, *James and Others v. the United Kingdom*, 21 February 1986, § 46, Series A no. 98, and *Beyeler v. Italy* [GC], no. 33202/96, § 112, ECHR 2000-I), nor is there anything to suggest that its application in the present case was not in accordance with the general interest.

(c) Proportionality of the interference

252. In addition, Article 1 of Protocol No. 1 requires that any interference be reasonably proportionate to the aim sought to be realised (see *Jahn and Others v. Germany* [GC], nos. 46720/99 and 2 others, §§ 81-94, ECHR 2005-VI, and *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 115, 13 December 2016). In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see *Fredin*, cited above, § 51). The requisite fair balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 69-74, Series A no. 52, and *Béláné Nagy*, cited above, § 115). In considering whether the interference imposed an excessive individual burden the Court will have regard to the particular context in which the issue arises (see *Béláné Nagy*, cited above, § 116).

253. In this connection, the Court refers to its above findings that the impugned decision of 5 April 2012 was not only "lawful" for the purposes of Article 1 of Protocol No. 1 and Article 10 § 2 of the Convention but was also supported by relevant and sufficient reasons showing that the restriction of the applicant company's freedom of expression was "necessary in a democratic society". Furthermore, in assessing in the latter context the proportionality of the sanction, namely the revocation of the applicant company's television broadcasting licence, the Court observed that the seriousness of the actions imputed to the applicant company's television channel appeared to have resided not only in its persistence in refusing to comply with the relevant licence requirements but also in the nature and accumulation of the transgressions and their gravity when seen as a whole. The fact that after receiving eleven sanctions over a period of three years for the same or similar types of breaches, NIT was not persuaded to change its behaviour and comply with the Code and the terms of the licence entitled the authorities to consider that applying the most serious of sanctions was warranted by the applicant company's defiance.

254. The Court also finds it noteworthy that from the very early stages of the court proceedings brought by the applicant company against the impugned measure, the national courts found that its allegations about the pecuniary and other proprietary losses it might suffer following the measure, and the potential impossibility of enforcing a possible favourable judgment on the merits, were mere suppositions and unsupported by evidence (see paragraph 54 above). Also, the possibility of obtaining judicial redress for all the proven pecuniary losses remained open to the applicant company in the event of a potential favourable judgment on the merits of the case (see paragraph 54 above). Likewise, at both levels during the main proceedings

the national courts found that the applicant company had failed to submit conclusive and pertinent evidence before them that could confirm the damage alleged by it, and that any losses sustained were attributable to its unlawful conduct. In the proceedings before the Court the applicant company adduced an expert report in which it was concluded that it had operated at a loss even before the revocation of its licence (see paragraph 241 above). Consequently, the Court does not find it established according to the general standard of "proof beyond reasonable doubt" (see, for instance, *Merabishvili v. Georgia* [GC], no. 72508/13, § 314, 28 November 2017) that the revocation of the licence affected the applicant company's proprietary interests to a degree causing it to suffer an excessive individual burden. In this connection, the Court notes, moreover, that even though the loss of the licence eventually led to NIT's demise as an analogue television network, it was not permanently irreversible as the applicant company could have reapplied for a broadcasting licence one year after its licence had been revoked (see paragraph 86 above). It thus appears that the applicant company's pecuniary and other proprietary interests were sufficiently taken into account in the relevant proceedings.

255. In these circumstances, the Court is satisfied that the respondent State, acting within its wide margin of appreciation in this area, struck a fair balance between the general interest of the community and the property rights of the applicant company, which was not made to bear a disproportionate burden.

(d) Conclusion

256. In the light of the above, the Court concludes that there has been no violation of Article 1 of Protocol No. 1 in the instant case.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

257. The applicant company also complained that the proceedings brought in respect of the revocation of its licence had not been fair. It relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. The parties' submissions

1. The Government

258. The Government submitted that the proceedings in which the applicant company had been involved after the revocation of its broadcasting licence on 5 April 2012 had complied with the requirements set out in Article 6 § 1 of the Convention.

259. The national courts had examined all the arguments raised by the applicant company and had dismissed them by providing relevant and sufficient reasons. In addition, the authorities, including the courts, had acted within the bounds of the applicable national legislation in force at the time the measure against the applicant company was taken.

2. The applicant company

260. The applicant company argued that the proceedings in which it had been involved after the revocation of its broadcasting licence on 5 April 2012 had been unfair. Repeating the grounds submitted to substantiate its complaints under Article 10 of the Convention and Article 1 of Protocol No. 1, it argued, in particular, that that decision and its immediate enforcement had been unlawful given the provisions of the Code in force at the relevant time (see paragraphs 116-119 above) and that the national courts had failed to establish this. In the applicant company's submission, the national courts at both levels had examined its complaints in a narrow and superficial manner, only providing a "blanket and formal analysis" of the case before them.

261. Lastly, the applicant company argued that the amendment of Article 38 § 8 of the Code shortly after its licence had been revoked (see paragraph 89 above), suggested "a tendentious approach" on the part of the authorities towards NIT, since it was the only broadcaster whose licence had been revoked on the basis of that provision.

B. The Court's assessment

262. The Court considers that most of the applicant company's grievances (see paragraph 260 above) cover largely the same grounds as the complaints under Article 10 of the Convention and Article 1 of Protocol No. 1. Given the reasons set out above in this regard and the fact that the national courts examined all the arguments raised by the applicant company and dismissed them by providing reasons which do not appear arbitrary or manifestly unreasonable, the Court cannot accept that these alleged shortcomings in the proceedings affected their fairness in any way.

263. As to the specific complaint concerning the allegedly unlawful amendment by the national authorities of Article 38 § 8 of the Code (see paragraph 261 above), the Court notes that the impugned amendment came into effect on 29 May 2012 – indeed, shortly after NIT's licence had been revoked. According to the available evidence, this amendment had no influence or impact on the proceedings brought by the applicant company before the national courts against the ACC's decision of 5 April 2012 (see paragraphs 89-95 above).

264. Therefore, the Court is not persuaded that the amendment in question rendered the proceedings in which the applicant company was involved unfair.

265. It follows that this complaint is manifestly ill-founded, within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

266. The applicant company complained that it had not had access to an effective remedy for its complaints because the Supreme Court had not remedied the breach of its rights committed by the ACC and the Court of Appeal. It relied on Article 13 of the Convention taken in conjunction with Article 6 § 1 and Article 10. Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

1. The Government

267. The Government contended that the applicant company had had access to effective remedies at national level to raise its complaints under the Convention. Therefore, they were of the opinion that no issues arose in this case with regard to Article 13 of the Convention.

2. The applicant company

268. The applicant company argued that the domestic authorities had breached its right to an effective remedy for its complaints. In particular, its application for a stay of execution of the measure in issue pending the outcome of the main proceedings had been dismissed by the courts on the sole ground that by granting the stay of execution they would run the risk of revealing their opinion on the merits of the case, without relying on a single legal provision supporting such a conclusion. In addition, the courts had unlawfully refused to take into account the Constitutional Court's findings of 6 December 2012 which had been directly relevant to the case.

269. The applicant company had therefore been left with no prospect of successfully redressing the immediate closure of NIT's broadcasting activities and its right of access to a court had thus been rendered illusory.

B. The Court's assessment

270. The applicant company's complaint under Article 13 does not concern any other issues than those which the Court has already examined under Articles 6 and 10 of the Convention. In the light of that examination, the Court does not consider it necessary to also examine the complaint under Article 13 (see, amongst other authorities, *Herczegfalvy v. Austria*, 24 September 1992, § 96, Series A no. 244, and *Kudła v. Poland* [GC], no. 30210/96, § 146, ECHR 2000-XI).

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

271. The applicant company complained that it had been subjected to discriminatory treatment by the authorities because the decision of the ACC of 5 April 2012 had been enforced immediately. It relied on Article 14 of the Convention taken in conjunction with Article 6 § 1 and Article 10. Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. The parties' submissions

1. The Government

272. The Government argued that the applicant company had failed to exhaust the available domestic remedies because it had not raised this complaint before the national courts.

273. In any event the applicant company had not been discriminated against. The sanctions imposed by the authorities following breaches of the Code were enforced in the same manner for all broadcasters in the country. In addition, the authorities had imposed sanctions on all broadcasters which were not complying with the requirements of the Code. The fact that the authorities had revoked the applicant company's broadcasting licence was due to its repeated and serious breaches of the Code – which was not the case for the other broadcasters – rather than to any discrimination.

2. The applicant company

274. The applicant company pointed out that it had raised its discrimination complaint before the national courts and had therefore exhausted the available domestic remedies in this regard.

275. In its opinion it had been treated differently from other broadcasters on which sanction had been imposed under the Code, without any objective justification for the difference in treatment. It was the first time in the history

of the country that a sanction imposed on a broadcaster had been enforced immediately, especially in circumstances where the measure had been challenged before the national courts.

276. Even though the national courts had been given an opportunity to remedy the breach of the applicant company's rights and to stay the enforcement of the measure, they had failed to do so and to provide reasons as to why the differential treatment applied to it had been justified.

B. The Court's assessment

277. The Court does not consider it necessary to examine the Government's objection concerning the failure of the applicant company to exhaust the available domestic remedies. Even assuming that the objection should be dismissed, the applicant company's complaint is inadmissible for the following reasons.

278. The essence of the applicant company's complaint alleging discrimination consisted in the fact that the authorities had enforced the ACC's decision of 5 April 2012 immediately, without awaiting the outcome of court proceedings brought by the applicant company against that decision.

279. The Court notes that it has already established that the national authorities, including the courts, were consistent in interpreting and applying the relevant law in force to the effect that the ACC's decisions were enforceable immediately after their publication (see paragraphs 168-171 above). Moreover, there is no evidence in the file to suggest that NIT was the first or the only broadcaster that had been faced with the enforcement of the ACC's decisions pending the outcome of judicial proceedings.

280. In this context, it cannot be said that the applicant company has shown that it was treated differently from other broadcasters placed in a relevantly similar situation.

281. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application by the applicant company admissible as regards the complaints under Article 10 of the Convention and Article 1 of Protocol No. 1 to the Convention and inadmissible as regards the complaints under Article 6 § 1 of the Convention and Article 14 of the Convention taken in conjunction with Article 6 § 1 and Article 10;

2. *Holds*, by fourteen votes to three, that there has been no violation of Article 10 of the Convention;

3. *Holds*, by fifteen votes to two, that there has been no violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds*, unanimously, that there is no need to examine separately the complaint under Article 13 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 5 April 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Prebensen	Robert Spano
Deputy to the Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint separate opinion of Judges Lemmens, Jelić and Pavli is annexed to this judgment.

R.S.O.
S.C.P.

JOINT DISSENTING OPINION OF JUDGES LEMMENS, JELIĆ AND PAVLI

1. The current case raises novel questions with fundamental implications for freedom and pluralism of broadcasting, as well as the openness of political discourse in our democracies. It touches on questions of the necessity and proportionality of severe sanctions imposed on a private broadcaster on grounds of internal pluralism, as well as the crucial procedural safeguards that must apply in such circumstances. While we agree with much of the majority analysis of the generally applicable principles and the possible grounds justifying the revocation of the applicant company's broadcasting licence, we disagree with the conclusion that the decisions of the national authorities were accompanied by sufficient procedural safeguards. It is on this basis that we have voted to find a violation of Article 10 of the Convention.

A. General principles

2. This appears to be the first case in which the Court has been called upon to review the revocation of the licence of a national broadcaster on grounds of so-called internal pluralism, namely failure to provide balanced political coverage. This made it necessary for the Court to clarify the relationship between external pluralism – the overall pluralism of a country's broadcasting sector, which has been at the centre of much of our broadcasting jurisprudence to date – and the requirements of internal pluralism, within individual operators, which is a relatively novel issue for our case-law. Today's judgment seeks to address these general questions under the heading of "the need to develop the Court's case-law on media pluralism" (see paragraphs 187-96 of the judgment). While we are generally in agreement with the elucidation of the principles in this part of the judgment, we wish that the Court had placed greater emphasis on the following key aspects.

3. First, any interferences with a broadcaster's freedom of expression in the name of internal pluralism should necessarily take into account their implications for the overall pluralism of the country's (or part of a country's) broadcasting offer. Internal pluralism is merely a tool for achieving the ultimate goal of external pluralism, not necessarily an end in itself. In the context of the current case, for example, it is highly relevant that the NIT channel appeared to be the only national operator that gave prominence to the views of the country's only opposition party at the time. With its disappearance from the broadcasting scene, it seems obvious that there was an adverse impact on overall pluralism. This argument cannot translate into a licence for minority voices to break the law with impunity, but it is nevertheless an important consideration.

4. It is also important to highlight, secondly, that there are different models of internal pluralism in the European legal space, as the judgment

rightly notes in paragraph 190. Depending on each country's tradition and political culture and the historical development of its broadcasting sector, softer or stricter versions of internal pluralism have been chosen, especially with respect to direct content-based requirements (see also the results of the comparative-law survey in paragraphs 110-12 of the judgment). A large part of the rationale behind these varying approaches – and this is what the judgment should have acknowledged more explicitly in our view – is the fact that stricter models of internal pluralism tend to be in significant tension with the principle of the editorial autonomy of each individual broadcaster, a cornerstone of media freedom (see the academic study commissioned by the European Commission on media pluralism indicators, cited in paragraph 108 of the judgment, which is much more explicit on this point).[1] Such models therefore need to be subjected to closer scrutiny than softer versions of internal pluralism, which rely on a combination of structural safeguards and less stringent duties on broadcasters to ensure overall balance in their public affairs programming.

5. Thirdly, we are in full agreement with the judgment's emphasis on "the important role which regulatory authorities play in upholding and promoting media freedom and pluralism, and the need to ensure their independence given the delicate and complex nature of this role" (see paragraph 205 of the judgment). It is hard to overstate nowadays the importance of independent broadcasting regulatory authorities, with their formidable powers of licensing and oversight over a core sector of our political discourse, coupled with the deference they tend to be accorded in view of their specialised expertise, including by the judicial branches (see paragraphs 105 and 109 of the judgment). We consider, however, that while a solid regulatory framework is necessary to provide the conditions for the regulators' independence and impartiality, it is not sufficient, by itself, to ensure that these cardinal principles are respected in practice. This is especially true for new democracies, though not only. As a result, it is essential that both this Court and domestic courts scrutinise quite carefully any interferences with media freedoms by such regulatory authorities, to ensure that their decision-making is not marred by any signs of bias or lack of fair treatment.

6. Fourthly, the judgment fails to provide in our view sufficient guidance as to the conditions for subjecting a national broadcaster to the ultimate sanction of delicensing – what can be referred to as the "nuclear option" – for supposed failures of internal pluralism, a consideration that will always retain

1. In relation to "political pluralism" standards, referencing the Council of Europe Recommendation CM/Rec(2007)2, the study notes: "A careful balance should be struck between stimulating political pluralism and respecting the editorial independence of media outlets. Privately owned media are entitled to follow an editorial line which might show a specific political preference. Therefore, impartiality as a quality for political reporting cannot be required of this type of media. Nonetheless, political coverage, even that by privately owned broadcasters and newspapers, should at least be fair and accurate" (ibid.).

a measure of subjective assessment by a regulator. In our view, delicensing on such grounds can be considered compatible with Article 10 only if the following minimum proportionality conditions are met: it should be based on findings of sustained bias in the broadcaster's political coverage over an extended period of time; it should be preceded by a gradually increasing scale of sanctions, as well as a final warning prior to revocation of the licence; and it should not be implemented, in the absence of a demonstrated serious and imminent threat to major State interests (such as national security), without giving the broadcaster an opportunity to seek prompt judicial review and a stay of enforcement. After all, revocation of the licence is a form of prior restraint and it should be subject to similar safeguards (see, *mutatis mutandis*, *RTBF v. Belgium*, no. 50084/06, §§ 114-15, ECHR 2011).

7. Finally, we wish that the Grand Chamber had paid greater attention to the changing role of broadcasting in the digital era, and its implications for both external and internal pluralism. In some ways, the judgment reads as if it were oblivious to the epochal changes that have occurred in the past twenty years. There is no discussion, for example, as to how the analogue-to-digital transition within broadcasting itself, coupled with the transformational changes in the diversity of information and opinion that can be found in the online environment, may (or may not) have affected the traditional rationales for stricter regulation of broadcasting, such as spectrum scarcity or audience behaviour. We happen to agree that, despite the blessings (and flaws) of the digital era, the audiovisual media in Europe continue to be, at least for the time being, "a sensitive sector" that requires careful regulation (see paragraph 192 of the judgment). However, such a conclusion is far from obvious, especially in the longer term, and the judgment would have made a greater contribution to the field by engaging more seriously with these questions.

B. The Moldovan framework of internal pluralism and regulatory independence

8. Turning to the applicable national framework in this case, we can only concur with the majority that the internal pluralism policy chosen by the Moldovan legislature at the relevant time was "rather strict" (see paragraph 202 of the judgment), but we cannot share the view that it was largely unproblematic or not "markedly different from that of many Council of Europe member States" (see paragraph 208 of the judgment). There are several aspects of the national legal framework, as in force at the relevant time, that we consider to be rather problematic.

9. The most significant concern is the requirement in Article 7 § 2 of the Audiovisual Code to "give airtime to other political parties and movements within the same type of programme and in the same time slot", whenever "giving airtime to a political party or movement for the propagation of its

position" (see paragraph 85 of the judgment). This requirement suffers from both vagueness and potential overbreadth, and it can be quite difficult to implement in practice without significantly undermining editorial independence. It appears to be based on the premise that the main function of a private television channel is to provide equal airtime to political movements that wish to "propagate their positions"; if taken too literally, it would turn private broadcasters into mere mouthpieces of political parties. While such requirements may not be uncommon within the short windows of electoral campaigns and as applicable to electoral programming alone, they would be very difficult to comply with in regular programming and especially within news editions. The latter need to be guided by the channel's independent editorial judgment about the newsworthiness of the events and topics of the day, not the needs of political parties to advance their agendas. It is important to recall, in this connection, that it was exclusively on the basis of its news editions that the applicant company in the present case lost its licence. Lastly, it is noteworthy that the current Audiovisual Code of Moldova, adopted in 2018, does not include any provisions along the lines of the previous Article 7 § 2, and is generally much closer to the European norm in its formulation of the duties of fair and balanced coverage (see paragraph 96 of the judgment).

10. Secondly, in terms of the applicable principles under Article 10 of the Convention, we do not consider the majority's references to "the right of reply" to be helpful in this context (see paragraph 200 of the judgment). To begin with, in those countries where a right of reply exists in some form, it typically offers persons targeted by media criticism an opportunity to respond to factually inaccurate and defamatory statements, subject to further qualifications (see, as a recent example, *Gülen v. Turkey* (dec.), nos. 38197/16 and 5 others, § 67, 8 September 2020). As such, it is not a suitable vehicle for ensuring overall political pluralism, especially in terms of diversity of opinion (it is simply impossible for a media outlet to grant a right of reply to everyone who disagrees with any and all opinions expressed in its pages or airtime). Conversely, a general duty to provide an "opportunity to comment" (see paragraph 200 of the judgment) to all the main sides to a particular debate or controversy seems a more reasonable basis. However, such a duty is still quite different from an obligation to "give airtime" to all political parties, whenever one of them is provided with an opportunity to comment. We note that the requirement in Article 7 § 4(c) of the Moldovan Audiovisual Code – to provide "multi-source information" in conflict situations and as applicable specifically to news editions – is better crafted than the sweeping obligations under Article 7 § 2.

11. Finally, we wish to underscore certain concerns related to the independence of the Audiovisual Coordinating Council (ACC), the regulatory authority that ordered the revocation of the applicant company's licence. The judgment notes that the concerns expressed by the Council of

Europe experts in relation to the structural safeguards for the ACC's independence "were in the main accepted by the Moldovan legislature and included in the final text of the Code" (see paragraph 205 of the judgment). This is only partially correct, however. One of the key elements that led to the positive assessment of the draft Audiovisual Code by the Council of Europe experts involved a provision that required that ACC members be appointed through a two-thirds supermajority in Parliament. The experts specifically noted in their final assessment that this provision "is to be welcome",[2] and it can be assumed that it was considered a significant safeguard in the overall institutional scheme in order to ensure the ACC's insulation from single-party dominance. However, that provision was changed in the final stages of the parliamentary adoption of the Code to provide for appointment by simple majority (see Article 42 of the Code, as cited in paragraph 85 of the judgment). Moreover, the concerns about the ACC's independence went beyond the legal framework: the European Commission's country progress report 2012 for Moldova urged the national authorities to "ensure the full and effective independence" of the ACC as its primary recommendation in the field of media freedom for that year.[3] The fact that a majority of ACC members had been appointed before the change of government in 2009 (see paragraph 222 of the judgment) is not sufficient, in our view, to dispel those concerns, which were reiterated by the European Commission and other actors as late as 2013, that is, in the aftermath of the controversy triggered by the events of the current case.

12. It is important to note at this juncture that we are not oblivious to the general national context of the period, which was a challenging time in Moldova's transition towards a modern European democracy (see paragraph 202 of the judgment). While such considerations might provide justification for a rather strict regulatory framework of internal pluralism (if not for its lack of clarity), any decisions taken pursuant to that framework still need to be defensible under the substantive and procedural criteria set by the Court in its Article 10 case-law.

C. The revocation of the applicant company's broadcasting licence

13. In the light of the general considerations outlined above, we consider that there were at least five factors in the present case that called for strict scrutiny by the Court: the presence of a strict national model of internal pluralism, based on legislative provisions that were liable to open-ended and

2. E Salomon and K. Jakubowicz, "Analysis and comments on the draft audiovisual Code of the Republic of Moldova," 15 May 2006, Doc. ATCM(2006)004, p. 29; available at: http://old.parlament.md/download/expertises/ATCM(2006)004_en%20Moldova.pdf

3. Available at: https://eeas.europa.eu/archives/docs/enp/pdf/docs/2013_enp_pack/2013_memo_moldova_en.pdf

subjective enforcement; the imposition of the ultimate sanction on the broadcaster with immediate effect; the fact that this particular operator represented the main opposition voice in the country's broadcasting scene; certain concerns about the ACC's independence; and the obvious chilling effects that a licence revocation in these circumstances would have on other broadcasters and the national political discourse generally. The majority do in fact recognise that the Court "must scrutinise closely" the proportionality of the interference in view of at least some of the cited factors (see paragraph 222 of the judgment). We are not persuaded, however, that they have in fact applied such close scrutiny, especially with respect to the procedural safeguards against arbitrariness and abuse. Instead, the majority have placed a rather impossible burden on the applicant company to adduce "concrete evidence" that the ACC's decision was motivated by political bias or pressure (ibid., *in fine*).

14. We start by noting that we do not disagree with the core assessment of the national authorities, largely endorsed by the Grand Chamber, that NIT's reporting was "clearly biased in favour of the activities" of a single party, without providing sufficient opportunities for other political players, especially the governing parties, to put across their viewpoints (see paragraph 213 of the judgment). This is notwithstanding the obvious point that it is unsurprising for the media in a democracy to be more critical of the government of the day than of opposition actors; yet even the government is entitled to fair treatment, broadly considered. We also agree that the applicant company showed a certain persistence in its biased coverage, despite the application of multiple sanctions over a number of years, which resulted in increasingly harsher sanctions, even if most of these were in the form of modest fines (see paragraph 224 of the judgment). That notwithstanding, we are unable to share the majority's view that the delicensing decision was accompanied by adequate procedural safeguards against arbitrariness and bias, for the following reasons.

15. Firstly, with respect to the methodology used by the ACC for its monitoring of pluralism compliance, we note that it was based exclusively on the news editions and covered a period of only five days. We do not consider such a short period adequate or in line with relevant best practices, which tend to require longer periods of monitoring that are randomly selected and spaced out over several months. There is a significant risk that a single week of monitoring may produce biased results, based on the political developments of that particular week or the political temperature in the country, for example. Furthermore, we have already noted the difficulties of applying the standards of Article 7 § 2 of the Code to news editions (see paragraph 9 above).

16. Secondly, the extremely hasty manner in which the final ACC decision was taken raises serious questions about its procedural fairness and the applicant company's ability to present an effective defence. The applicant

company's lawyer was presented with the findings of the monitoring exercise, without having prior knowledge of those findings, without a proper opportunity to prepare a defence or consult with the client, and without any warning that a revocation decision was being contemplated. The ACC decision was taken the very same day and the station was taken off the air within twenty-four hours. We simply cannot see how such a procedure can be considered a fair administrative process, especially in view of the gravity of its outcome.

17. Thirdly, the way the ACC organised this procedure and took its decision raises serious questions about its attitude towards the applicant company, and its own independence and impartiality in the process. As the Court has often noted, beyond the niceties of any legislative text or institutional arrangements, the independence of a decision-making body is, ultimately, "a state of mind" (see, with respect to judicial bodies, *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 234, 1 December 2020). As such, it may be extremely difficult for any applicant to provide "concrete evidence" of bias or lack of independence, and we consider that the approach adopted by the majority in this respect is not only inconsistent with the notion of "close scrutiny" of government interferences with media freedom, but also problematic for potential future applicants raising similar Article 10 claims (as well as general discrimination claims more broadly).

18. The Court should be able to rely on the totality of the evidence before it and draw inferences from the actions and justifications, or lack thereof, provided by the relevant authorities. The proof of impartiality, in other words, ought to be in the "decision-making pudding" – which is in fact the approach followed by the Court when assessing the objective impartiality of judicial decision-makers under Article 6 of the Convention. The relevant standard is whether there are "ascertainable facts which may raise doubts as to the impartiality of the body itself" in the eyes of an objective observer (see, among many other authorities, *Micallef v. Malta* [GC], no. 17056/06, § 96, ECHR 2009). The majority's approach in today's judgment also stands in contrast to the broad contextual review undertaken by the Court in other Article 10 cases involving prima facie claims of bias, "ulterior motives" or punitive government motives in sanctioning a speaker because of his or her views (see, for example, *Baka v. Hungary* [GC], no. 20261/12, §§ 145-49, 23 June 2016). In the current case, the respondent Government have not put forward any convincing explanations for the extreme haste of the ACC in taking and enforcing its revocation decision. That failure weighs heavily in our assessment of the overall fairness of the process.

19. Finally, it is important to consider the role of the national courts. We are prepared to concede that the concerns about the fairness of the administrative process before the ACC could have been alleviated had the national courts exercised robust judicial review in order to remedy those shortcomings, especially in relation to the applicant company's request for

urgent interim relief. As the judgment recognises, "the immediate effect of a measure interfering with the right to freedom of expression may weigh heavily ... in circumstances where [relevant] procedural guarantees are lacking" (see paragraph 226 of the judgment). Regrettably, that was the case here with the national judicial review and therein lies one of our strongest disagreements with the majority's conclusions on the merits of the case (see paragraph 227 of the judgment, finding that the national courts "in substance balanced the conflicting interests at stake").

20. The national courts, including the Supreme Court, rejected the applicant's request for a stay of enforcement on the grounds that granting the stay would expose the courts to the risk of "determining the merits of the case"; and that the applicant company's contention that its free-speech rights were at risk of irreparable harm was merely "declaratory and unproven" (see paragraph 54 of the judgment). We find such arguments to be wholly unpersuasive, in view of what was at stake for the ability of a national broadcaster to continue to stay on the air, and quite apart from the significant financial implications for a television station that faced the prospect of being off the air for many months before a final decision on the merits could be reached. The flawed administrative procedure before the ACC – involving the immediate shutdown of the main opposition voice in the national broadcasting scene – should have raised obvious red flags for the national courts, which were not properly addressed or even acknowledged in their decisions, at both the interim and the final resolution stages. Such casual disregard for core media freedom values cannot be considered to be in line with the exacting standards of Article 10 in the arena of political speech. It is also impossible to ignore the broader "chilling effect" for other domestic broadcasters which were surely following the proceedings with keen attention.

21. In conclusion, we concur that the national authorities might have had good reasons to consider revoking the applicant company's licence on grounds of sustained bias in its political coverage. We consider, however, that the actual revocation decision was marred by serious procedural shortcomings that not only undermined the applicant company's ability to properly defend its interests but also raised substantial questions about the ACC's impartiality in the process. As the national courts also failed in our view to promptly address and remedy these shortcomings, we conclude that there has been a violation of the applicant company's rights under Article 10 of the Convention.

22. With respect to the applicant company's claims under Article 1 of Protocol No. 1, Judges Lemmens and Pavli voted in favour of finding a violation of that provision on the basis that the serious procedural violations that marred the licence revocation decision are bound to have had a significant adverse impact on the licence-holder's property rights, rendering the interference with such rights disproportionate in the circumstances.