

OPINION
OF THE INDEPENDENT JOURNALISM CENTER
Regarding the draft Law on the National Center for Information Defense and Combating
Propaganda – Patriot

June 22, 2023

The Republic of Moldova is confronting multiple risks and threats to its information security – threats both old and new, internal and external – exacerbated by the unresolved conflict in the Transnistrian region, by the aggression of the Russian Federation against Ukraine, and by specific elements of hybrid warfare.

Unfortunately, factors specific to a weakly consolidated institutional system – the lack of a strategic vision for assuring national security; limited inter-institutional cooperation; the absence of national or interdepartmental plans, programs, and communication strategies; citizens’ perceptions and the impact of messages; lack of interest in and skepticism among the population and media representatives regarding security and defense issues; and the absence of a monitoring and evaluation mechanism for security and defense reforms – keep the Republic of Moldova vulnerable to organized and coordinated information warfare conducted by the Russian Federation.

In light of these circumstances, **the Independent Journalism Center (IJC) supports the initiative to make strategic communication an integral part of the national security of the Republic of Moldova.** At the same time, however, we advocate that strategic communication be included within the boundaries of a legal framework that is devoid of any potential for restricting the freedom of opinion and expression guaranteed by the constitution.

After our analysis of the concept for the draft of the Law on the National Center for Information Defense and Combating Propaganda – Patriot published on May 30, 2023 by the Office of the President of the Republic of Moldova, IJC believes that the draft needs to be revised and improved to ensure the functionality and effectiveness of strategic communication. The current approach focuses on simplistic solutions to complex, systemic issues and is incompatible with the desired outcome.

The arguments supporting this thesis are presented below.

LEGAL STATUS OF THE CENTER

According to Article 1(1) of the concept, "The National Center for Information Defense and Combating Propaganda—Patriot (hereinafter referred to as the Center) is to be an independent public authority, distinct from other legal entities of public or private law and from individuals, functioning at the national level as a unified structure."

In accordance with constitutional norms, the responsibility for ensuring the **implementation of the state's domestic and foreign policies** and for exercising general leadership in public administration **falls upon the Government**.¹ The policies, decisions, and provisions of the Government are put into practice by ministries that are the central specialized bodies of the state.² Additionally, constitutional norms allow for the establishment of other **administrative authorities** when there is a need to govern or exercise control in areas that do not fall directly within the responsibilities of ministries.³

From our interpretation of the provisions of state supreme law, it follows that the task to be assigned to the Center (information security policy) is an integral part of the role attributed to the Government by the Constitution; constitutional norms do not provide for any exceptions in this regard. Therefore, the organic, natural place for the Center can only be within the organizational structure of the government administrative system to which the principle of the unity of the central public administration applies.⁴ Furthermore, given that the specific mission of the Center can be achieved only through the joint efforts of all state institutions at every level of formulating national policy and strategy, inter-institutional coordination can be effectively accomplished only if the Center is integrated into the government administrative system. Strategic communication needs to be embraced, designed, and coordinated at the highest level of Government, the level that formulates national security strategy in synchrony with it and translates its ideas and messages into proactive strategies.

In conclusion, IJC considers it judicious to revise the legal organizational form of the Center by incorporating it into the administrative structure of the Government.

¹ Article 96(1) of the [Constitution of the Republic of Moldova](#): "The Government ensures the implementation of the state's domestic and foreign policies and exercises general leadership of public administration";

² Article 107(1) of the [Constitution of the Republic of Moldova](#): "The central specialized bodies of the state are ministries. They translate into practice, based on the law, the policy of the Government, its decisions, and provisions, manage the entrusted domains, and are responsible for their activities";

³ Article 107(2) of the [Constitution of the Republic of Moldova](#): "For the purpose of leadership, coordination, and control in the field of economic organization and other areas that do not fall directly within the responsibilities of ministries, other administrative authorities may be established in accordance with the law";

⁴ Article 3 of the [Law on Central Specialized Public Administration](#): "The central specialized public administration is organized within a unified system, and no ministry or other central administrative authority or organizational structure within their sphere of competence can be outside of this system".

GUARANTEES OF INDEPENDENCE

The quality of the mechanisms for selecting, appointing, and dismissing leaders of public institutions is one of the main indicators of the independence of those institutions.

According to Article 10 in the concept, the leader of the Center will be a director proposed by the President of the Republic of Moldova and appointed by Parliament for a term of 5 years, with the possibility of reappointment for another term. Selecting the director will take place through a **public competition**, organized in accordance with **regulations to be approved** by presidential decree.

According to Article 6(3)–(4) of the Law on the Status of Persons Holding Public Office, "In the case of appointment to a public office, the legal basis for the establishment of the employment relationship is the appointment act. For the appointment to certain public offices, a competition is organized, unless special legislation provides otherwise." According to Article 11(1) of the Integrity Law, "Recruitment and promotion of agents within the public entity shall be carried out through a public competition, based on transparent and objective criteria for selection on the basis of merit, professional qualifications, capacity, competence, and professional integrity, without favoring private interests and any forms of discrimination based on sex, race, language, religion, political opinions, or any other opinion, national or social origin, or other forms of discrimination, in accordance with the provisions of special legislation regulating the activities of different categories of entities and public agents."

In order to ensure compliance and fairness in the regulatory framework for organizing and conducting the public competition and the administrative procedure to be implemented, we believe that the draft concept should contain, at the very least, minimal legal provisions regarding the method for selecting the director.

The concept establishes several grounds for the dismissal of the director of the Center by Parliament upon the proposal of the President of the Republic of Moldova. Among these, particular attention is drawn to the following three:

- [Art. 10. para. (3) letter b)]; circumstances that no longer correspond to the **requirements of Article 13**, including the **loss of an impeccable professional reputation**;
- [Art. 10. para. (3) letter c)]; a **negative evaluation of the director's performance**;
- [Art. 10. para. (3) letter d)]; a **vote of no confidence by Parliament**.

Revoking the mandate of public office holders [i.e., the director and deputy director of the Center] is a prerogative of the legislature based on the legal framework that regulates the appointment to public office and the grounds for dismissal/removal.

It should be noted, however, that Article 23, paragraph (3) of the Law on the Status of Persons Holding Public Office expressly and exhaustively states that the non-performance or improper performance of the obligations, prerogatives, and competences of a holder of a public office, regardless of fault, may result in revocation or removal from office.

Thus, early termination of the mandate of a person holding public office according to Article 22 paragraph (3) of the aforementioned law, "...takes place through revocation or, where applicable, removal from office of the official based on the administrative act of the authority that appointed the official to the position." At the same time, paragraph (4) of Article 22 in the same source specifies that "...the provisions of paragraph (3) do not apply to officials for whom the special law regulating their activity provides for another procedure for early termination of the mandate."

Therefore, it is imperative that the criteria for dismissal, namely **"loss of an impeccable professional reputation, negative evaluation of the director's performance, vote of no confidence"** be clearly and comprehensively defined in order to clarify the actions and obligations performed or not performed that could lead to invoking these three grounds for removal from office, otherwise the stability and predictability of legal norms as provided for in Article 3, paragraph (1), letter d) of the Law on the Status of Persons Holding Public Office will not be ensured.

Regarding the procedure for revoking the mandate of public servants, we observe that the Constitutional Court has ruled that, "In order to guarantee the independence of a person holding a public office, constitutional and legal norms require respect for the term of office. Generally, removal implies a more complicated procedure than appointment to office or, at least, an equivalent one. (...) This rigidity arises from the rationale for ensuring the independence of the person for whom those who voted for their election or appointment." (Decision⁵ no. 27/2013, point 65 and point 67).

IJC also notes the logical inconsistency of the provisions of Article 10 paragraph (3) letter d) ["The dismissal of the director by Parliament upon the proposal of the President of the Republic of Moldova in cases where (...) d) a vote of no confidence is expressed"]. Specifically, since a vote of no confidence is exclusively the prerogative of Parliament, it cannot be subject to a proposal from the President of the Republic of Moldova.

In conclusion, the IJC considers it necessary to improve the mechanisms for selecting and dismissing the director of the Center by establishing clear and predictable criteria for evaluating performance and grounds for dismissal. Furthermore, we believe it is appropriate for the law to include minimal criteria for the selection of the director.

⁵ https://www.legis.md/cautare/getResults?doc_id=14135&lang=ro

THE PRIMARY OBJECTIVE OF THE CENTER

In the past, the primary objective of national structures similar to the Center has been to coordinate all government instruments in strategic communication, i.e., so strategic messages from all authorities (political, economic, defense, etc.) are coherent and are efficiently communicated by those authorities to the public. Actions aimed at achieving this objective include increasing public awareness of disinformation, streamlining communication between authorities and the public, increasing trust in state institutions and authorities, and neutralizing hostile information sources. This model is based on three main pillars of activity: developing situational awareness, improving resilience to hostile information affecting national security, and ensuring the effectiveness and efficiency of government communication during crises.

The current concept of the draft law deviates from the initial purpose of the initiative which is to assist public authorities to promote national interests and support the implementation of national policies and objectives. The **IJC believes** that the functions, responsibilities, and mission of the Center need to be aligned with the primary objective of coordinating and assisting all government instruments in strategic communication.

POTENTIAL RISKS TO FREEDOM OF EXPRESSION

The draft law concept [Art. 3] includes definitions of *disinformation*, *fake news*, *misinformation*, *malinformation*, *fact checking*, and *propaganda*.

The notion of disinformation ["intentional dissemination of false information created to harm an individual, a social group, an organization, or state security"] introduced in the Audiovisual Media Services Code in June 2022 is generally not recommended for use in legal documents and has already demonstrated its ineffectiveness in the administrative practices of the Audiovisual Council. Furthermore, we note that since the information security of the state is recognized in the draft as part of national security, the current definition of disinformation does not align with the stated objective. The intentional dissemination of false information created to harm an individual, a social group, or an organization does not always endanger state security. The same argument applies to the notion of propaganda ["intentional and systematic action to influence public opinion through manipulation and falsification of information, in order to promote specific ideas, beliefs, interests, or agendas"]. If the promotion of these specific ideas, beliefs, interests, or agendas does not jeopardize state security, this type of "propaganda" should not be a concern of the Center.

Given that these notions have broad interpretations and their inappropriate application could lead to restrictions of the constitutional right to freedom of expression, **IJC considers** that in their current versions these definitions are unsuitable for a legislative act. The legal framework should provide coherent and objective mechanisms for addressing the impact of disinformation on national security.

INTERACTION WITH OTHER STATE STRUCTURES

Regulating legal relationships between public authorities and other state structures in congruent fields of activity is one of the factors that influences the proper exercise of functional responsibilities.

According to the draft, the mission of the Center is to strengthen inter-institutional efforts in the fight against disinformation and the dissemination of messages, narratives, and communications—regardless of their origin—that represent a danger to or may jeopardize national interests. In fulfilling this mission, the Center is entrusted with a series of tasks including identifying, preventing, and combating disinformation; assessing the national information space; verifying the accuracy of information; and transmitting accurate information to the general public.

Our analysis finds that some of these tasks overlap with those of authorities that perform similar functions, e.g., the Audiovisual Council and the Information and Security Service, and that the current concept does not sufficiently regulate the legal relationships between the Center and such bodies. Therefore, **IJC recommends** specifying the mode of interaction with public authorities with overlapping responsibilities to avoid conflicts of competence and to streamline their activities.

In accordance with the provisions of Article 4, paragraph 1), letter b) of the Law on Central Public Administration, "Central specialized public administration carries out its activity while respecting the following principles: 1) organizational: (...) b) separation of functions of policy development and promotion from the functions of their implementation." Since the Center is given responsibilities for both policy development and implementation, **IJC considers** it useful to separate these competences by assigning policy development to a central specialized body within the Government.

NAME OF THE LAW

According to Article 42, paragraphs (1)-(2) of the Law on Normative Acts, "The name of the normative act represents the generic designation of the act based on its category, issuing authority, and the subject of regulation expressed succinctly. The name of the normative act must be concise and clearly express the subject of regulation." We believe that the name of the potential draft law ["National Center for Information Defense and Counter-Propaganda—Patriot"] does not meet these requirements as the name, which refers only to the Center, corresponds to an act that would regulate only its organization and functioning. The draft law concept, however, also includes substantive legal provisions.

Similarly, countering the disruptive effects of disinformation and/or propaganda is just one goal of strategic communication and not a primary objective that should be reflected in the title of the act. We believe that the name of the Center should be aligned with the essence of the authority's activities: strategic communication. **IJC recommends** maintaining the original version of the name, i.e., Center for Strategic Communication.

FUNDING OF THE CENTER

According to Article 18, paragraph (2) of the draft law concept, "The funding of the Center's activities is carried out from: a) allocations from the state budget; b) **financial resources allocated by donors, including through external financial assistance programs**; c) other legal sources."

Ensuring funding from the state budget is a guarantee of independence for public authorities. Currently, all external financial resources allocated by donors are transferred to the State Treasury account ensuring their traceability and the transparency of financial resources intended for assisting and enabling public authorities. Establishing either a majority or a minority of a public authority's budget from external sources can undermine its independence and may serve as evidence of external governance. Therefore, **IJC recommends** aligning the funding mechanism of the Center with current functional examples in the Republic of Moldova.

SUMMARY OF RECOMMENDATIONS

The Independent Journalism Center considers that the draft law concept needs to be revised and improved. In this regard, we recommend:

- Revising the legal organizational form of the Center by incorporating it into the administrative structure of the Government;
- Improving the mechanisms for selecting and removing the Center's leadership to ensure its independence;
- Aligning the Center's competencies with the original intent of the legislative initiative: coordinating and assisting all government agencies in strategic communication;
- Excluding terms that have broad potential for interpretation as their inappropriate application could restrict constitutional and conventional rights to freedom of expression;
- Clarifying the mode of interaction with other public authorities that have overlapping responsibilities with the Center in order to avoid conflicts of competence and to enhance efficiency;
- Separating policy development and promotion from implementation;
- Reviewing the name of the act as well as the name of the Center.