

**The observance of the Broadcasting Code by the Broadcasting Coordinating Council
during the period upcoming to the parliamentary elections of April 5, 2009
(2 February – 5 April, 2009)
Case study**

Introduction

This case study has an object to consider the legality, opportunity and integrity of the work in public sittings of the Broadcasting Coordinating Council (*henceforth* – **BCC**) during the period upcoming to the elections for the Moldovan parliament.

Under art.1 of the Election Code of the Republic of Moldova (*henceforth* – the **Election Code**), *the electoral period* comprises “*the time period between the date of publicly announcing the election date and the day on which the final results of the election are confirmed by the bodies in charge.*” In accordance with art.76 para.(2) of the Election Code, the date of the elections for the Moldovan Parliament was set and announced on 2 February 2009 (The Decision of the Parliament of the Republic of Moldova no.1-XVI of 02.02.2009 on setting the date for the election of the Parliament, published in Monitorul Oficial al Republicii Moldova no. 22 of 03.02.2009.)

Taking into account the impact of the work of the broadcasters upon the results of the elections, on the one hand, and the legal obligations and powers of the BCC provided for the election period, on the other hand, the authors of this case study focused only on the period between the day of announcing the election day and the election day: 2 February – 5 April 2009.

During the election period, the BCC is obliged to observe and to enforce a series of provisions from the Broadcasting Code of the Republic of Moldova (*henceforth* – the **Broadcasting Code**), the most relevant of which are the following¹:

Article 1. Goal and scope of application

(1) This Code pursues to insure the defense of the rights of the program consumer to receive correct and objective information, which would contribute to the free formation of the opinion, to insure the rights of the broadcasters to editorial freedom and to freedom of expression, to institute the democratic principles of the work of the broadcasting in the Republic of Moldova and establishes, in the spirit of the constitutional rights and freedoms, the legal bases regulating the processes of :

a) conceive, broadcast and/or relay, through the agency of television and radio means, program services of the broadcasters under the jurisdiction of the Republic of Moldova;

b) exert the control of society over the work of the Moldovan broadcasters.

Article 7. Political-social balance and pluralism

(1) In the spirit of the respect for the fundamental human rights and liberties, by broadcasting and relaying program services the political and social pluralism, the cultural, linguistic and religious diversity, informing, educating and entertaining the public are realized and insured.

(2) By granting airtime to a political party or movement to promote their positions, a broadcaster shall also offer, in the same program genre and at the same time, airtime to other political parties and movements without unjustified delay and without favoring a certain party, regardless of the percentage of its parliamentary representation.

(3) In order to encourage and ease the pluralist expression of opinions, the broadcasters are obliged to cover the elections truthfully, fairly and impartially. The broadcasters' concepts on covering the elections are approved by the Broadcasting Coordinating Council and are presented to the Central Election Commission, in strict concordance with the law.

(4) In order to insure the respect for the principles of social-political balance, equidistance and objectivity in the broadcasters' newscasts, they shall air every news story so that:

a) the information making the story shall be truthful;

b) not to distort the sense of the reality by tricks of montage, comments, way of wording or titles;

c) in the case of stories covering conflict situations, the principle of informing from several sources shall be respected.

(5) In order to protect political pluralism and social, cultural diversity, the concentration of property is restricted to dimensions allowing to insure the economic efficiency, but which shall not lead to the appearance of dominating positions in forming the public opinion.

¹ Underlined by the author.

Article 8. Editorial independence and freedom

(1) The broadcasters under Moldova's jurisdiction have the right to freely decide on the contents of their programs, respecting the principle of opinion pluralism in conformity with the legal framework and the conditions set out in the broadcasting license.

(2) Censorship of any kind over audiovisual communication is forbidden.

(3) The broadcasters' editorial independence is recognized and guaranteed under law.

(4) Any interference into the content, form or way of presenting elements of program services on the part of public authorities or of any other entities outside the broadcaster is forbidden.

(5) ***The regulatory norms issued by the Broadcasting Coordinating Council in enforcing this code, and the norms related to human rights, set out in the international treaties Moldova is part to shall not be viewed as interference.***

Article 10. The rights of program consumers

(1) In the Republic of Moldova, the right to full, objective and truthful information, the right to the free expression of opinions and the right to the free communication of information through the agency of radio and television means are guaranteed by the law.

(2) ***The protection of the rights of program consumers is insured by the Broadcasting Coordinating Council, the task of which is to coordinate the broadcasting activity, and by the courts.***

(3) The court shall act to defend the rights of a program consumer if notified by a holder of this right.

(4) ***The bodies invested with powers to coordinate within the area of broadcasting act to insure the rights set out in this article if notified by a holder of this right or by itself.***

(5) The broadcasters are obliged to insure the objectivity of informing the program consumers, favoring the free formation of opinions.

Article 12. Protecting the national informational space

The spectrum of radio frequencies or terrestrial radio-electric waves are the state's national assets which cannot be used otherwise than under law.

Article 25. Indices of the broadcasting license

(1) The broadcasting license comprises:

n) the provision that ***a broadcaster is obliged to observe the rights of a program consumer to full, objective and truthful information, to free expression, to the free formation of opinions, insuring the correctitude and impartiality of the news.***

Article 37. Supervisory and controlling activity

(1) ***The Broadcasting Coordinating Council supervises the enforcement and observance of this code.***

(3) ***The control is exercised:***

a) *ex officio*;

b) following a request of a public authority;

c) ***following a complaint submitted by natural or legal entity directly affected by infringing the legal norms.***

(4) The Broadcasting Coordinating Council shall investigate, within 15 days since notified, the submitted requests and complaints. ***The results of the verification and, if it is the case, the decision of applying penalties are posted on the web page of the Broadcasting Coordinating Council.***

Article 38. Penalties

(1) If broadcasters violate the legal norms, the following penalties are applied:

a) public warning;

b) withdrawing the right to air commercials during a certain amount of time;

c) fine;

d) suspending the broadcasting license for a certain period;

e) withdrawing the broadcasting license.

(3) The penalties provided for in para. (1) are applied gradually, as follows:

a) warning, issued by the BCC and posted on its web page, in case the broadcasters or the services distributors violate the provisions of this code or the decisions of the BCC;

b) fine from 100 to 300 minimum units in case a broadcaster or services distributor does not enter legality within the period and in the conditions established in the warning or repeatedly violates those provisions;

c) the other penalties provided for in this code, are gradually applied by the BCC in case when, after being fined, a broadcaster or services distributor does not enter legality.

(6) ***During the rehabilitation period, as provided in the warning, the BCC will fully contribute to the envisaged broadcaster's entering legality.***

(7) *The BCC shall inform the broadcaster or the services distributor about any investigation that may concern it, about the charges brought to it and will create the possibility to present its case before the BCC.*

(8) The BCC's decision on applying any penalty shall be reasoned and posted on its web page.

(9) *Any decision of the BCC on applying any penalty can be sued by the penalized broadcaster or services distributor.*

(10) *The decision of the BCC on applying penalties, which is not sued within the legally due term, shall be executed.*

Article 39. The statute of the Broadcasting Coordinating Council

(1) The Broadcasting Coordinating Council is an autonomous public authority.

(2) *The Broadcasting Coordinating Council is the representative and the guarantor of the public interest in the broadcasting sector, the authority responsible for the enforcement and observance of this code, of the international treaties on broadcasting Moldova is part to.*

Article 40. The powers of the Broadcasting Coordinating Council

(1) The Broadcasting Coordinating Council has the following powers:

a) *supervises the observance of the way in which the public and private broadcasters carry out the obligations they committed to in their broadcasting licenses, under law;*

b) *supervises the correctitude of the contents of the programs produced by broadcasters, only after those programs have been aired;*

c) *adopts the concept on covering parliamentary and local elections in accordance with the Election Code of the Republic of Moldova;*

d) *monitors, under para.(1) let.b), the content of the program services offered by broadcasters and the program services offer insured by the services distributors, on a regular basis and as often as the BCC deems necessary or it is notified about some broadcaster or services distributor not observing the regulatory norms in the sector or the obligations set out in the broadcasting license;*

(2) The instructions and *the recommendations issued by the BCC are made public* by posting them on the BCC's web page *and by publishing them in Monitorul Oficial al Republicii Moldova (Official Gazette.)*

(3) *In exerting its powers, the BCC adopts mandatory decisions, which enter force when published in Monitorul Oficial al Republicii Moldova.*

(4) *All the decisions of the BCC are reasoned. The decisions, including the arguments, are published in Monitorul Oficial al Republicii Moldova and on the web page.*

(5) The decisions of the Broadcasting Coordinating Council may be sued by any entity considering itself prejudiced by them.

Article 41. The obligations of the Broadcasting Coordinating Council

(1) *In its capacity of a guarantor of the protection of the public interest in the sector of audiovisual communication on democratic principles and of the program consumer's rights, the BCC is obliged to insure:*

a) *the supervision of the pluralist expression of ideas and opinions in the programs aired by the broadcasters under Moldova's jurisdiction;*

e) the protection of the information space, the linguistic and national-cultural heritage, including the culture and the languages of the national minorities;

f) the transparency of broadcasters;

g) *the transparency of its own activity.*

Findings

During the electoral period, from 2 February and the election day – 5 April, 2009, the BCC held 8 public sittings: on 10 February, 13 February, 21 February, 4 March, 13 March, 24 March, 1 April, 3 April. Thus, during those 63 days, on average the BCC held a sitting in every 8 days.

At those 8 public sittings, according to the information posted on the BCC’s site (www.cca.md), 35 decisions were adopted.² Only a quarter of those 35 decisions are related to exercising the BBC’s powers provided for the election periods, the other decisions relating to the permanent powers of the broadcasting regulating authority:

	BCC Decision	Short content of the decision	Permanent powers, powers provided for electoral campaigns
1.	Decision no.4 of 10 February 2009 <i>On issuing relay authorizations and broadcasting licenses</i>	<ul style="list-style-type: none"> - Issuing broadcasting licenses; - Rejecting the request to issue relay authorizations; - Considering request to issue broadcasting licenses; - Considering request to issue relay authorizations. 	Permanent powers.
2.	Decision no.5 of 10 February 2009 <i>On suspending the relay authorization of “URSCOM-TV” SRL from Soroca in connection with signing the rent contract</i>	<ul style="list-style-type: none"> - Suspending relay authorization; - Approving new lists of TV channels. 	Permanent powers.
3.	Decision no.6 of 10 February 2009 <i>On approving lists of channels and modifying conditions to the broadcasting license</i>	<ul style="list-style-type: none"> - Approving new lists of TV channels “modifying conditions to the broadcasting license” refers to the same object.) 	Permanent powers.
4.	Decision no.7 of 10 February 2009 <i>On cession of broadcasting license of S.C. “Grinad-TV” SRL to S.C. “Dolmar-Impex” SRL</i>	<ul style="list-style-type: none"> - Cession of broadcasting license (relay authorization.) 	Permanent powers.
5.	Decision no.8 of 10 February 2009 <i>On the way of executing the law, the conditions to broadcasting licenses and relay authorizations</i>	<ul style="list-style-type: none"> - Services distributing relaying program services not set in “the list of channels”; - Broadcasting without a technical license; - Starting broadcasting without notifying the BCC. 	Permanent powers.
6.	Decision no.9 of 10 February 2009 <i>On approving the general concepts of program services</i>	<ul style="list-style-type: none"> - Approving the general concepts of program services. 	Permanent powers.
7.	Decision no.10 of 10 February 2009 <i>On withdrawing broadcasting licenses and relay authorizations</i>	<ul style="list-style-type: none"> - Withdrawing, suspending broadcasting licenses and relay authorizations. 	Permanent powers.
8.	Decision no.11 of 13 February 2009 <i>On examining internal regulations on covering elections of Moldovan</i>	<ul style="list-style-type: none"> - Approving internal regulations on covering elections of Moldovan broadcasters. 	Powers, provided for electoral periods.

² When approving / rejecting, by voting procedure, the proposals concerning issues considered in public sittings, the BCC chairman does not explicitly announce the number of the decision. The number of voting procedures in the public sittings does not coincide with the number of the decisions adopted by the BCC. For instance on the sitting of 24 March, 2009, the BCC chairman submitted to vote for the decision on the BCC’s adopting a press communiqué to express its official attitude towards cases of aggressing journalists. The result of exercising this voting procedure was not found in any decision of the BCC, although, on March 26 2009, an appeal of the Broadcasting Council to political parties involved in the electoral race was post on its web site, www.cca.md dated March 24, 2009.

	<i>broadcasters</i>		
9.	Decision no.12 of 21 February 2009 <i>On examining internal regulations on covering elections of Moldovan broadcasters</i>	<ul style="list-style-type: none"> - Approving internal regulations on covering elections of Moldovan broadcasters. 	Powers, provided for electoral periods.
10.	Decision no.13 of 4 March 2009 <i>On the coverage of the electoral campaign by the TV station “Euro-TV Chişinău”</i>	<ul style="list-style-type: none"> - Considering the notifications of an electoral contestant (the political party “<i>Alianța Moldova Noastră</i>”); - Penalizing “Euro-TV Chişinău” for breaching p.11 of the <i>Regulation on covering the April 5 parliamentary elections by Moldovan broadcasters.</i> - The BCC “<i>recommends the broadcasters involved in covering the elections to strictly observe the provisions</i>” of the law in force. 	Powers, provided for electoral periods.
11.	Decision no.14 of 4 March 2009 <i>On executing the law, the conditions in the broadcasting licenses by the National Public Broadcasting Institution “Teleradio-Moldova”</i>	<ul style="list-style-type: none"> - Considering the refusal to present the video recordings of newscasts by “Teleradio-Moldova” (<i>Moldova 1 and Radio Moldova</i>), necessary to consider the complaint of an electoral contestant (<i>the Communists Party</i>); - Penalizing “Teleradio-Moldova” for breaching art.37 para.(2) of the Broadcasting Code and point 70 of the <i>Regulation on covering the April 5 parliamentary elections by Moldovan broadcasters;</i> - The complaint of the Communists Party has not been considered. 	Powers, provided for electoral periods.
12.	Decision no.15 of 4 March 2009 <i>On prolonging broadcasting licenses issued to S.C. “Bizim Aidiñic” SRL, Î.C.S. “SOCIAL MEDIA” SRL</i>	<ul style="list-style-type: none"> - Prolonging broadcasting licenses (new forms for broadcasting licenses.) 	Permanent powers.
13.	Decision no.16 of 4 March 2009 <i>On approving the general concepts of the program services of “SOR TV”, “PRO 100 RADIO”</i>	<ul style="list-style-type: none"> - Approving the general concepts of the program services. 	Permanent powers.
14.	Decision no.17 of 4 March 2009 <i>On withdrawing the broadcasting license issued to S.C. “Rețele și Cabluri” SRL</i>	<ul style="list-style-type: none"> - Withdrawing the broadcasting licenses. 	Permanent powers.
15.	Decision no.18 of 4 March 2009 <i>On allocating financial means from the Broadcasters Support Fund to pay for the membership fee to EPRA for 2009</i>	<ul style="list-style-type: none"> - Allocating financial means from the Broadcasters Support Fund to pay for the membership fee to EPRA for 2009. 	Permanent powers.
16.	Decision no.19 of 4 March 2009 <i>On allocating financial means from the Broadcasters Support Fund to participate in the EPRA reunion</i>	<ul style="list-style-type: none"> - Allocating financial means from the Broadcasters Support Fund to participate in the EPRA reunion. 	Permanent powers.

17.	Decision no.20 of 13 March 2009 <i>On the complaint of the PCRM's representative to the Central Election Commission</i>	<ul style="list-style-type: none"> - Considering the complaint of an electoral contestant (<i>The Communists Party</i>); - Rejecting the complaint of an electoral contestant (<i>The Communists Party</i>). 	Powers, provided for electoral periods.
18.	Decision no.21 of 13 March 2009 <i>On the way of executing the law, the conditions to broadcasting licenses and relay authorizations</i>	<ul style="list-style-type: none"> - Cable operators relay program services not shown in the "list of channels" and/or do not relay program services shown in the "list of channels"; - Penalizing services distributors. 	Permanent powers.
19.	Decision no.22 of 13 March 2009 <i>On approving the list of relayed TV channels</i>	<ul style="list-style-type: none"> - Approving list of relayed TV channels. 	Permanent powers.
20.	Decision no.23 of 13 March 2009 <i>On cession of broadcasting license of S.C.P. "RADIO POLIDISC" SRL to S.C. "EUROSHOW GRUP" SRL</i>	<ul style="list-style-type: none"> - Ceding broadcasting license. 	Permanent powers.
21.	Decision no.24 of 13 March 2009 <i>On approving the general concepts of the program service</i>	<ul style="list-style-type: none"> - Approving the general concepts of the program service. 	Permanent powers.
22.	Decision no.25 of 13 March 2009 <i>On the request of Î.P.C. "Interservicii" SRL</i>	<ul style="list-style-type: none"> - Examining and rejecting the preliminary request. 	Permanent powers.
23.	Decision no.26 din 13 March 2009 <i>On the preliminary request of "Sănătate" NGO</i>	<ul style="list-style-type: none"> - Examining and rejecting the preliminary request. 	Permanent powers.
24.	Decision no.27 of 13 March 2009 <i>On issuing broadcasting license</i>	<ul style="list-style-type: none"> - Issuing broadcasting license; - Approving general concept of program services. 	Permanent powers.
25.	Decision no.28 of 24 March 2009 <i>On broadcasters coverage of the parliamentary elections</i>	<ul style="list-style-type: none"> - Examining results of monitoring "the main info bulletins" of „<i>Moldova 1</i>”, „<i>N 4</i>”, „<i>NIT</i>”, „<i>Euro-TV Chişinău</i>”, „<i>Pro TV Chişinău</i>” and „<i>TV 7</i>”. The monitoring, according to the decision, was done in the period 24 February to 4 March. They also monitored “<i>the recordings of the newscasts from 18, 19, 20 February, additionally requested from “Moldova 1”, “N4”, “NIT”, “Euro TV”, “Pro TV Chişinău”, “TV 7” and “TVC 21”</i>”; - All the mentioned broadcasters were publicly warned. 	Powers, provided for electoral periods.
26.	Decision no.29 of 1 April 2009 <i>On the complaint of the PCRM's representative to the Central Election Commission</i>	<ul style="list-style-type: none"> - Examining and rejecting the complaint of an electoral contestant (<i>The Communists Party</i>). 	Powers, provided for electoral periods.
27.	Decision no.30 of 1 April 2009 <i>On the way of executing the law, the conditions to broadcasting licenses and relay authorizations</i>	<ul style="list-style-type: none"> - Cable operators relay program services not shown in the "list of channels" and/or do not relay program services shown in the "list of channels"; - Penalizing services distributors. 	Permanent powers.

28.	Decision no.31 of 1 April 2009 <i>On approving lists of relayed TV channels</i>	- Approving lists of relayed TV channels.	Permanent powers.
29.	Decision no.32 of 1 April 2009 <i>Examining requests of companies to issue relay authorizations and broadcasting licenses</i>	- Issuing relay authorization; - Approving lists of relayed TV channels; - Issuing broadcasting licenses.	Permanent powers.
30.	Decision no.33 of 1 April 2009 <i>On approving general concepts of program services</i>	- Approving general concepts of program services.	Permanent powers.
31.	Decision no.34 din 1 April 2009 <i>On the request of C.R. "PLOAIA DE ARGINT" S.R.L.</i>	- Examining and rejecting the request to prolong the broadcasting license.	Permanent powers.
32.	Decision no.35 of 1 April 2009 <i>On relaying program services of BBC, Europa Liberă, Radio France Internationale, TV-5</i>	- Re-transmitting the program services of BBC, radio Free Europe, Radio France Internationale, TV-5 in Moldova	Permanent powers.
33.	Decision no.36 of 1 April 2009 <i>On some modifications to the Regulation on managing the Broadcasters Support Fund</i>	- Modifying the Regulation on managing the Broadcasters Support Fund.	Permanent powers.
34.	Decision no.37 din 1 April 2009 <i>On the notification of the Nisporeni territorial branch leader of the PLDM</i>	- Examining and rejecting the request of an electoral contestant (<i>The Liberal Democratic Party</i>).	Powers, provided for electoral periods.
35.	Decision no.38 din 3 April 2009 <i>On complaints from "Alianța Moldova Noastră" to the Central Electoral Commission</i>	- Rejecting the complaint of an electoral contestant (" <i>Alianța Moldova Noastră</i> ").	Powers, provided for electoral periods.

Thus, only 9 of those 35 decisions are about the BCC exercising its powers specific for the electoral period, which is less than 25% of the total number of decisions adopted in the electoral period from February 2, to the election day, – April 5, 2009.

Two decisions of the BCC (*Decision no. 11 of February 13 and Decision no.12 of February 21, 2009*) were adopted in order to exercise the power provided for in article 7 para. (3) of the Broadcasting Code: “***In order to encourage and ease the pluralist expression of opinions, the broadcasters are obliged to cover the elections truthfully, fairly and impartially. The broadcasters' concepts on covering the elections are approved by the Broadcasting Coordinating Council and are presented to the Central Election Commission, in strict concordance with the law.***”

Under points 61-62 of the *Regulation on covering the election by media* (in force since – February 2, 2009³), broadcasters are obliged to adopt and submit *Internal Regulations on covering the electoral race*, till February 10, to the Central Election Commission and to the Broadcasting Coordinating Council: “**61.** *On the basis of this Regulation, within 5 days after its being approved by the Central Election Commission, broadcasters shall draft and adopt Internal Regulations on covering the parliamentary elections Campaign. 62. Broadcasters' Internal Regulations shall be presented to the Central Election Commission and to the BCC within two days after being adopted.*” At the same time, point 65 of the *Regulation on covering the electoral campaign by Moldovan broadcasters*, the provisions of which were questioned by the civil society provides: “**65.** *Private broadcasters not willing to cover the electoral campaign shall announce their intention within 5 days since publishing this Regulation, duly notifying the Central Election Commission and BCC in written form.*” Its worth reminding that on February 10, the first candidates lists of the political parties were registered, thus acquiring the capacity of electoral competitors and, implicitly, the right to electioneer (including through media.)

Since the broadcasters had been obliged to present *Internal Regulations on covering the electoral campaign* till February 9, the being considered and approved was established only for February 13. Later, a new round of considering and approving *Internal Regulations of Broadcasters* took place only on February 21. Its worth reminding in this context that, under the Broadcasting Code, the BCC members work on a permanent basis, getting a salary almost equal to a salary of a deputy minister: “*The BCC is chaired by a chairperson ranking as deputy minister...*” (art.45 para.(1)), “*The BCC members are remunerated during staying in office with a salary representing 90% of the salary of the BCC chairperson*” (art.46).

In its sitting of February 13, the BCC presented no information about private broadcasters informing it, in written form, till February 8, about their not participating in mirroring the electoral race.

BCC Decision no.11 of 13.02.2009 on considering Internal Regulations on covering the elections by Moldovan broadcasters was published in Monitorul Oficial al Republicii Moldova no.41-44 of 24.02.2009. *BCC Decision no.12 of 21.02.2009 on considering concepts on covering the elections by Moldovan broadcasters* was published in Monitorul Oficial al Republicii Moldova no.49-50 of 06.03.2009.

The notification of February 26 and 27, the BCC got from an electoral contestant (*the political party Our Moldova Alliance*) were considered by the BCC members only in a sitting on March 4. After considering those complaints, *BCC Decision no.13 of 04.03.2009 on Euro-TV Chisinau mirroring the electoral campaign* was adopted and was published in Monitorul Oficial al Republicii Moldova no.57-58 of 20.03.2009. Euro-TV Chişinău was punished by a public warning.

As for the legality, efficiency, opportunity and fullness of the BCC exerting its powers during the electoral campaign, much more relevant is *BCC Decision no.14 of 04.03.2009 on the way the public broadcaster, Teleradio-Moldova carried out the legal provisions, the conditions from the broadcasting licenses*, published in Monitorul Oficial al Republicii Moldova no.57-58 of 20.03.2009.

According to the first paragraph of that decision, the basis to adopt it was a notification, dated February 24, coming from an electoral competitor: “*On February 26, 2009, the BCC officially asked the Observers Council (Supervisory Board) of Teleradio-Moldova to present, within two days, recordings of newscasts of Moldova 1 TV and Radio Moldova, which were the object of the February 24 notification of Mr. Serghei Sirbu, the representative of the Communist Party from Moldova.*”

The content of this first paragraph of the decision begets some confusions of which we mentioned but two: a) why did the BCC ask **the Observers Council of the public broadcaster Teleradio-Moldova** and not **the public broadcaster Teleradio-Moldova**, the activity of which it regulates, “*to present, within two days,*

³ Art.2 of the Central Electoral Commission's Decision no.2043 of 02.02.2009 on approving the Regulation on Moldovan broadcasters' covering the elections of April 5, 2009 (Monitorul Oficial al Republicii Moldova no.30-33 of 13.02.2009): „*This decision enters force when adopted.*”

the recordings of the newscasts of Moldova 1 and Radio Moldova, which were the object of the notification?”
b) why did the BCC ask the Observers Council of Teleradio-Moldova to present “**within two days,**” and not “**within 24 hours,**” “*the recordings of the newscasts of Moldova 1 and Radio Moldova, which were the object of the notification?”*

Is it possible that the BCC members may not be aware of point 70 of the *Regulation on covering the electoral campaign for the parliamentary elections of April 5, 2009 by Moldovan broadcasters* (approved by the CEC): “*The recordings of the electoral programs (related to the electoral campaign, including of live programs) shall be kept at least 3 months since being broadcast. In case of considering litigations, the period of keeping those shall be prolonged if decided so by the Central Electoral Commission, the Broadcasting Coordinating Council or by any court, **if requested by the Central Election Commission and by the BCC, broadcasters are obliged to present, within 24 hours, the video and audio recordings together with the copies of related contracts and payment orders?***”

Through art.1 of the Decision no.14 of 04.03.2009, the BCC established: “*Within the boundaries of the BCC’s powers, for the violation of art.37 (2) of the Broadcasting Code, of point 70 of the Regulation on covering the April 5 elections campaign by broadcasters and given the conditions of the Broadcasting License, series AMMII no.014622 of 25.09.2007, point 3.1, let.k), the public company Teleradio-Moldova is publicly warned.*” It’s worth remarking, in this context, that the boundaries of the BCC’s powers are much bigger than the ones the BCC assumed in that decision.

Under art.37 para. (1), (3) and (4) of the Broadcasting Code, the BCC is bound to exert the supervision of enforcing and observing the provisions of the Broadcasting Code following notifications from natural or legal entities and, within 15 days, it shall investigate the submitted notification. In this case, the BCC did not investigate the notification submitted by the electoral contestant, but penalized the broadcaster for failing to produce the requested information.

This decision represents a proof that the BCC did not exert its obligation to monitor the work of broadcasters, as provided under art.40 para.(1) let.d): “(1) The Broadcasting Coordinating Council exerts the following powers: ... d) **monitors, under para.(1) let.b), the content of the program services offered by broadcasters** and the program services offer insured by the services distributors, **on a regular basis and as often as the BCC deems necessary or it is notified about some broadcaster or services distributor not observing the regulatory norms in the sector or the obligations set out in the broadcasting license.** Or, during the electoral race, under point 8 of the *Regulation on covering the elections by broadcasters*, this obligation has a permanent character: “**8. The Central Election Commission and the BCC, during the electoral campaign, supervise the observance of opinion pluralism and other aspects related to the enforcement of this Regulation.**”

It’s worth reminding that, in this case, the BCC was to consider the newscasts of the only national public broadcaster, the Company Teleradio-Moldova. It is not about considering the work of a local broadcaster, the monitoring of which would entail additional technical effort.

Moreover: by 24.03.09, a number of Moldovan NGOs working in this sector issued a number of monitoring reports. Two of them (belonging to the Independent Journalism Center and to APEL, which earlier signed cooperation agreements with the BCC) did have the recordings of the programs in question. The broadcasting regulating authority not only failed to take note after those reports were made public at news conferences and being published on the web sites of those NGOs, but it neither used its right provided in the cooperation agreements with those NGOs to ask them for additional information.

The notification of 24 February, submitted to the BCC by an electoral contestant (*the Communist Party*), was considered by the BCC members only at their sitting of March 13. After being considered, the notification was rejected through *BCC Decision no.20 of 13.03.2009 on the complaint of the PCRM representative to the Central Election Commission*, published in *Monitorul Oficial al Republicii Moldova no.67 of 03.04.2009*, being officially published only on 3 April, 2009 – the last day allowing the electioneering. The electoral competitor was thus practically deprived of the possibility to duly sue this decision.

During the campaign for the April 5 parliamentary elections, for the first time, the BCC announced the results of its own monitoring in its sitting of March 24, that is 11 days before the vote. The results of that monitoring session were considered by the BCC, without specifying if they observed art.28 para. (7) of the Broadcasting Code, reading that: “**The BCC shall inform broadcasters and services distributors about any investigation concerning them, about the accusations brought against them and shall offer them the opportunity to present their case before the BCC.**” In this context, we remark the following:

- during the period before the electoral race started, in any case of considering the legality of the work of any broadcaster, which may have resulted in penalties, the BCC members always asked the rapporteur (a BCC employee) if he/she notified the broadcaster in question about the results of the investigations concerning it, and

if it had the possibility to bring about its own arguments on the issue at a public sitting of the BCC. This time, however, no BCC member raised such a question;

- during the period before the electoral race started, considering issues about the behavior of broadcasters took place at the BCC sittings, and representatives of those broadcasters were invited to attend. This time, the number of representatives of the envisaged broadcasters, invited to the sitting, barely reached half of the number of the media, the legality of the work of which was considered.

The results of considering the monitoring data are found in *BCC Decision no.28 of 24.03.2009 on broadcasting covering the campaign of the parliamentary elections*. This decision was published in Monitorul Oficial al Republicii Moldova no.69-71 of 10.04.2009. The official publication of this decision after the vote day (April 5, 2009) deprived broadcasters of the right to sue this decision before the election day, as provided in art.38 para. (9) of the Broadcasting Code: “(9) *Any decision of the BCC on applying any penalty can be sued by the penalized broadcaster or services distributor*. The big delay in publishing this decision, in fact, gave it a mandatory character: “*The decision of the BCC on applying penalties, which is not sued within the legally due term, shall be executed.*” (art.38 para.(10) of the Broadcasting Code).

The BCC’s monitoring, on which BCC Decision no.28 is based, had as an object: **a) “the main info bulletins”** from 24 February to 4 March of six broadcasters: Moldova 1, N 4, NIT, Euro-TV Chişinău, ProTV Chişinău and TV 7; **b) “the recordings of newscasts aired on 18, 19, 20 February, additionally asked from Moldova 1, N4, NIT, Euro TV, Pro TV Chişinău, TV 7 and TVC 21.”**

In terms of aspect of the monitoring of “*the main info bulletins*” from 24 February to 4 March of the broadcasters mentioned above, it is not clear why a period of 8 days was selected, starting from Tuesday, 24 February and ending Wednesday, March 4. It would have been natural to select a period of 7 days or 14 days. As for “*the recordings of newscasts aired on 18, 19, 20 February*” selected to be monitored, it is not clear why these days were namely selected, and not a period of 7 days, for instance.

In the first paragraph of this decision, they state the goal of monitoring: “... *with the purpose to verify the correspondence to art.7 (1), (2), (3) and (4) let.b), c) of the Broadcasting Code, according to which **broadcasters are obliged to provide equal air time to political parties**, without favoring anyone. to cover the elections truthfully, fairly and impartially; to insure the respect for the principles of social-political balance, equidistance and objectivity in the broadcasters' newscasts, by airing every news story so that the information making the story shall be truthful, not distorting the sense of the reality by tricks of montage, comments, way of wording or titles; in the case of stories covering conflict situations, the principle of informing from several sources shall be respected. ...”* **In the context of the object of the monitoring session carried out by the broadcasting regulating authority – “the main info bulletins” and “the recordings of newscasts,” we expressly signal the wrong interpretation of the legal provisions by the BCC.**

Art.7 para.(2) of the Broadcasting Code DOES NOT consecrate the provision that a broadcaster is obliged to offer equal airtime to political parties. As a confirmation, we reiterate once again the provisions of art.7 para. (2):

Article 7. Political-social balance and pluralism

(2) *By granting airtime to a political party or movement to promote their positions, a broadcaster shall also offer, **in the same program genre and at the same time, airtime to other political parties** and movements without unjustified delay and **without favoring a certain party**, regardless of the percentage of its parliamentary representation.*

It is unexplainable, in the context of the BCC monitoring and in consecrating its results, nor the criteria of separating the messages of the candidate to a seat in the parliament, Vladimir Voronin, who is the leader of the PCRM and, a head of the state, from the messages of the PCRM as an electoral competitor. A similar situation is noticed in the case of the other two candidates on the Communists’ lists: the speaker of the parliament, Marian LUPU and Zinaida Greceanî.

In the context of art.40 para.(4) of the Broadcasting Code (“***All the decisions of the Broadcasting Coordinating Council shall be grounded. ...***”), some arguments from *BCC Decision no.28 of 24.03.2009 on broadcasters covering the electoral campaign*, adopted after considering the results of the BCC monitoring are not adequate, for instance:

- *some TV stations do not cover elections in a balanced way.*” However, the BCC does not set out the criteria to distinguish between “the balanced coverage” of the electoral campaign from the “unbalanced coverage”. At the same time, in the context of the mention “*some tv stations do not cover ... in a balanced way,*” it is not clear why all the monitored stations are penalized;

- “*the number of appearances of the electoral competitors in newscasts being different from station to station.*” In case the BCC considers it to be a violation that the number of appearances of the electoral

competitors in the info programs of different tv stations is not the same, one should find that this phrase represents a violation of art.8 para. (4), by the BCC: „***Any interference into the content, form or way of presenting elements of program services on the part of public authorities or of any other entities outside the broadcaster is forbidden.***”

Conclusions

- during the electoral period (2 February – 5 April, 2009), this case study refers to, the BCC paid insufficient attention to its powers specific for the electoral race: it convened in 8 public sittings, adopting 35 decisions, out of which only 9 envisage the way of broadcasters’ covering the elections and presented the public opinion the results of only one monitoring session;
- during the electoral period, the BCC failed to duly honor its mission as a guarantor of the defense of the public’s interest in broadcasting on democratic principles, one of its key powers – the supervision of enforcing the legislation (the Broadcasting Code, the Election Code and the *Regulation on the Moldovan broadcasters’ coverage of the campaign for the parliamentary elections of April 5, 2009*, adopted by the CEC) by permanently watching the contents of the program services produced by broadcasters and which implied prompt adequate and public responses to the found breaches;
- the BCC neglected its competence provide under art.37 of the Broadcasting Code on exerting its control, *ex officio*, in the cases when it exerted its supervisory and controlling functions, following notifications (complaints) submitted to it, did not honor its obligation to supervise if the penalized broadcasters entered legality (the Euro-TV Chişinău case);
- ignoring the provisions of *the Concept of the coverage of the electoral campaign for the 2009 parliamentary elections by Moldovan broadcasters*, adopted through BCC Decision no.3 of 28 January, 2009, the BCC did not display a permanent concern for the broadcasters’ observing their internal regulations on covering the electoral race. Approving the internal concepts (regulations) of broadcasters on covering the race, in the monitors’ opinion, was but a formal act;
- under the circumstances when the BCC carried out only a single monitoring session of the main newscasts of 6-7 tv stations, during the race, the conclusions of each were publicized with much delay, it is immediately dismaying why the BCC did not respond to the monitoring reports carried out by the civil society (the IJC, the IPA and APEL), which offered the BCC sufficient data in arguments certifying that certain broadcasters did break the law during the electoral campaign;
- the monitors find that, during the electoral race, the BCC did not responsibly and fully exert its powers as an autonomous and independent public authority, having the mission to watch the observance of the electoral law by broadcasters, and in the case in which the BCC members did get involved in exerting their powers, they did not show themselves demanding, often displaying incompetence and shallowness in being aware of the law regulating the broadcasting sector and the peculiarity of the broadcasters’ work.