

**Adopting the Concept of covering the 2009 parliamentary elections in Moldova by the Moldovan
broadcasters by the Broadcasting Coordinating Council**

Case study

Introduction

In order to insure the political and social balance and pluralism in the program services of broadcasters, during the electoral campaign, the Broadcasting Coordinating Council (henceforth – the BCC) is bound to exert a series of duties, imposed on it through the Moldovan Broadcasting Code (henceforth – *the Broadcasting Code*), the main of which are:

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.*

Article 40. The powers of the Broadcasting Coordinating Council

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

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

Thus, under art.40 para.(1) let.a) of the Broadcasting Code, in drafting and adopting *the Concept of covering the 2009 parliamentary elections in Moldova by the Moldovan broadcasters*, the BCC was to take into account the provisions of the *Broadcasting Code* and the respective provisions from the Electoral Code (henceforth – *the Election/Electoral Code*.) The most important provisions from the Election Code envisaging the coverage of the elections by broadcasters are the following:

Article 47. Electioneering

(1) *The Moldovan citizens, political parties and other social-political organizations, candidates and their advocates are offered the right to subject, to free discussions and in every aspect, the electoral programs of the electoral contestants, their political, professional and personal qualities, as well as to electioneer in favor or against candidates at rallies, meetings, through mass-media and other communication means excluding the breach of the public order and ethical norms. Electioneering in favor of electoral competitors is allowed only after they have been registered by the election body.*

(2) *The public broadcasters shall freely offer electoral candidates airtime for public debates within the boundaries established by the Central Election Commission. Paid electoral advertising is allowed for every electoral contestant for not more than 2 hours during the entire electoral campaign, including not more than 2 minutes per day at every broadcaster.*

(3) The private broadcasters can organize, in fair conditions for all the electoral participants, debates at round tables, by inviting the representatives of all the electoral contestants, all together or in groups formed according to certain criteria announced beforehand by the Central Election Committee. The interventions of participants in programs are timed, but all of them are offered equal timing. The schedule of broadcasting the respective programs, approved by the Central Election Commission, shall be communicated to the electoral contestants 7 calendar days before airing the program. The airtime for paid electoral advertising shall not exceed 2 minutes per day per electoral contestant on each institution.

(4) During the period of holding the electoral debates, besides the free airtime, broadcasting advertising materials about the activities of electoral contestants or with their and their advocates' participation, televised or radio reports from the meetings of the electoral contestants with voters, about the work visits of the contestants from amongst top or district officials to companies is not allowed. No electoral contestants will enjoy priorities because of his/her office.

(5) The responsibility for the contents of the advertising electoral materials, aired or published, is borne by the electoral contestant. Every advertising material shall show the name of the electoral contestant, the date when it was published, the circulation of the material and the name of the printing house, which printed it.

(6) The public and private broadcasters shall create all the electoral contestants equal conditions for buying airtime, establishing equal prices. The conditions of booking airtime and the respective prices shall be communicated 7 calendar days before airing the respective programs. The payment for the airtime offered to electoral contestants may not be higher than the usual payments for commercials. The airtime for electoral advertising is granted at the same broadcasting hours.

(7) During the electoral periods, all the analytical, current affairs, entertainment programs or the programs touching, in some way, on the electoral participants are aired by observing the corresponding concept and regulation. The programs directly or indirectly envisaging the electoral participants shall be aired only with the signature tune/clip "Electoral", in order to count the airtime. If an electoral participant's image is damaged in other programs than the ones marked by "Electoral", it shall immediately have the right to reply in the same conditions.

(8) On the election day, the mass media, until the polling stations are closed, shall not air the results of interviewing voters about their options.

(9) The refusal to air or publish, under this law, the electoral advertising, either paid or free, can be sued.

(11) During the electoral campaign, and at referendums, the airtime granted to the press services of the Parliament, Presidency and Government cannot be used for electioneering in favor or against the proposal subjected to referendum.

(14) On the election day and on its eve, no electioneering is allowed.

Article 64. Covering elections by media

(1) During the electoral period, the mass media shall cover the elections in accordance with the regulation approved for this purpose by the Central Election Commission.

(2) Media representatives enjoy the same rights as the accredited observers.

(3) During the electoral period, any opinion polls regarding the political preferences of voters may be compiled only by notifying the Central Election Commission in advance. The results of those opinion polls can be announced at latest 5 days before the election day. On the election day, until the closure of the polling stations, it is forbidden to announce, in mass media, materials, including interviews with the voters, about the number of votes gained by electoral contestants during the day and about their chances, including results of exit polls. The organizations qualified to hold exit polls shall coordinate their activity with the Central Election Commission, which shall draft the general rules in this regard.

(4) The mass media shall air, if requested by the Central Election Commission, social, civic and electoral education clips, shall run raising voters' awareness campaigns about the voting procedures and peculiarities of voting.

(5) The public broadcasters are obliged, and the private broadcasters have the right, upon the request of the Central Election Commission, to hold, during the entire electoral campaign, public debates in fair conditions for all the electoral contestants. The latter ones shall be offered not less than 90 minutes a day, which may be used for one or several programs.

(6) *The broadcasters have the right to choose the format of the debates, on condition of generally observing the equality of the time granted for attending debates to all the electoral contestants.*

Findings

The draft *Concept of covering the 2009 parliamentary elections in Moldova by the Moldovan broadcasters* (henceforth – *the draft Concept*) was posted on the BCC's site (www.cca.md)¹ and became accessible for the public earlier in December 2008, being accompanied by an invitation addressed to the interested people to send opinions and suggestions to the BCC's e-mail address.

The Electronic Press Association APEL followed the invitation and forwarded the broadcasting regulating authority a series of proposals and objections to the document (*see the annex to this case study*), most of which were meant to adjust the provisions of the *draft Concept* to the provisions of the *Election Code* and of the *Broadcasting Code*, while an array of proposals were editorial. Those proposals and objections were submitted by the APEL Electronic Press Association at the BCC's sitting of 28 January 2009 when the *draft Concept* was subjected to public debate and was approved.

Of those 13 proposals regarding the improvement of the contents of the *draft Concept*, followed by APEL, 7 were accepted and 6 were rejected. The editorial proposals (4) were accepted. Of those three objections of general character, submitted by APEL, 2 were rejected, as only the objection about instituting a new structure of the *draft Concept* was accepted. The following were among the rejected:

- APEL's proposal to remove the interdiction from point 23 of the *draft Concept*: *“The public and private broadcasters, during the election campaign, shall not present the electoral contestants in newscasts.”*² APEL proposed to observe the broadcasters' right to cover the electoral events, suggesting the following wording of this point: *“The broadcasters shall cover the events from the electoral campaign, including campaign activities of the electoral contestants (statements, news conferences, campaign launches, rallies with voters, etc.) in their newscasts, observing the principles of balance, fairness and impartiality.”*;

- APEL's proposal to remove the provisions from point 59 from the *draft Concept*: *“The private broadcasters not willing to get involved in the electoral campaign in any way shall announce their intention not later than 5 days after publishing this Concept, notifying the Central Election Commission and the Broadcasting Coordinating Council in written form,”* signaling out that the provisions from p.59 from the *draft Concept* ran counter art.7 para.(3) of the *Broadcasting Code*³;

- APEL's proposal to insert an additional article providing for the public broadcasters offering free airtime, in the following wording: *„33¹ The public broadcasters shall grant for free up to 20 minutes to each electoral contestant to present its program. The electoral contestants may use this airtime time in stages.”*

APEL also submitted other proposals and suggestions rejected by the BCC (see the annex.)

On 28 January 2009, the BCC approved the *Concept of covering the 2009 parliamentary elections in Moldova by the Moldovan broadcasters*.⁴ The BCC's decision endorsing the *Concept of covering the 2009 parliamentary elections in Moldova by the Moldovan broadcasters* was not published in Monitorul Oficial al Republicii Moldova (Official Gazette.)

On February 2, 2009, the Central Election Commission (henceforth – *the CEC*) endorsed *The Regulation on covering the electoral campaign for the parliamentary elections of April 5, 2009, by the Moldovan broadcasters*.⁵ Certain provisions of the *Concept of covering the 2009 parliamentary elections*

¹ On the BCC's site, the *draft Concept* was posted under the title *Concepția reflectării campaniei electorale pentru alegerile parlamentare de către instituțiile audiovizualului din Republica Moldova*.

² In the *Concept* approved by the BCC, this interdiction is stipulated in p.22: *“During the electoral campaign, the broadcasters shall not present information about electoral contestants in newscasts.”*

³ In the *Concept* approved by the BCC, this provision is stipulated in p.54: *“On the basis of the Regulation on covering the electoral campaign by the media in the 2009 parliamentary elections, within 5 days after its endorsement by the Central Election Commission, the broadcasters shall draft and adopt internal Regulations of covering the electoral campaign for the parliamentary elections.”*

⁴ BCC Decision no.3 of 28.01.2009.

⁵ Decision of the Central Election Commission no.2043 of 02.02.2009.

in Moldova by the Moldovan broadcasters (approved by the BCC) run counter the provisions of the *Regulation on covering the electoral campaign by the media* (approved by the CEC). Most of the provisions from the *Regulation on covering the electoral campaign by the media*, which envisage the coverage of the election campaign by broadcasters, are identical with the provisions of the *Concept of covering the 2009 parliamentary elections in Moldova by the Moldovan broadcasters*.

However there are provisions contradicting one another. E.g.: the CEC included into its *Regulation*, in p.20, APEL's proposal in the following wording: "*In the broadcasters' newscasts and current affairs programs, the electoral campaign events shall be covered, but will not be accompanied by commentaries.*" Thus, there emerged contradictions between the provisions of point 20 of the CEC's *Regulation* and p p.22 of the BCC's *Concept*:

Regulation	Concept
20. <i>In the broadcasters' newscasts and current affairs programs, the electoral campaign events shall be covered, but will not be accompanied by commentaries.</i>	22. <i>During the electoral campaign, the broadcasters shall not present information about electoral contestants in newscasts.</i>

It's worth mentioning there are also other contradicting provisions. For example: p.7 from *the Regulation* and p.8 from *the Concept*, p.11 from *the Regulation* and p.12 from *the Concept*.

Conclusions

The BCC's Decision no.3 of 28.01.2009 on Concept of covering the 2009 parliamentary elections in Moldova by the Moldovan broadcasters was not published in Monitorul Oficial al Republicii Moldova. Under art.40 para.(3) from the *Broadcasting Code*: "*In exerting its duties, the Broadcasting Coordinating Council adopts compulsory decisions entering force on the date they are published in Monitorul Oficial al Republicii Moldova.*"

Not publishing *the BCC Decision no.3 of 28.01.2009 on the Concept of covering the 2009 parliamentary elections in Moldova by the Moldovan broadcasters* in Monitorul Oficial al Republicii Moldova cannot serve, however, as ground for the conclusion, according to which, during the election campaign for the 2009 parliamentary elections, the broadcasters are bound to observe only the *Regulation on covering the electoral campaign by the media* (approved by the CEC.) Such a conclusion would run counter the provisions of art.47 para.(7) from *the Election Code*: "*(7) During the electoral periods, all the analytical, current affairs, entertainment programs or the programs touching, in some way, on the electoral participants are aired by observing the corresponding concept and regulation. ...*"

The provisions of p.54 from *the Concept of covering the 2009 parliamentary elections in Moldova by the Moldovan broadcasters* (approved by the BCC) and the provisions of p.65 from *the Regulation on covering the electoral campaign of the April 5 parliamentary elections by the media* (approved by the CEC) contradict art.7 para.(3) of the *Broadcasting Code*, which provides: "*In order to encourage and ease the pluralist expression of opinions, the broadcasters are obliged to cover the elections...* " and it specifies how they shall cover the electoral campaign: "*...truthfully, fairly and impartially. ...*"

Regulation	Concept
65. <i>The private broadcasters not willing to participate in covering the electoral campaign shall make public their intention 5 days after the publication of this Regulation, notifying the Central Election Commission and the Broadcasting Coordinating Council in written form.</i>	54. <i>On the basis of the Regulation on covering the electoral campaign by the media in the 2009 parliamentary elections, within 5 days after its endorsement by the Central Election Commission, the broadcasters shall draft and adopt internal Regulations of covering the electoral campaign for the parliamentary elections.</i>

Suggestions

In order to improve the situation in such an important sector, as the broadcasters' coverage of the electoral campaigns is, we consider it timely to recommend:

- the Central Election Commission should adjust the provisions from p.65 with the provisions of art.7 para.(3) from *the Broadcasting Code*;

- the Broadcasting Coordinating Council should adjust the provisions of the *Concept of covering the 2009 parliamentary elections in Moldova by the Moldovan broadcasters* with the provisions of the *Regulation on covering the electoral campaign of the April 5 parliamentary elections by the media* (adopted by the CEC);
- the Broadcasting Coordinating Council should publish *the Concept of covering the 2009 parliamentary elections in Moldova by the Moldovan broadcasters* in Monitorul Oficial al Republicii Moldova, after adjusting it to the provisions of the *Regulation on covering the electoral campaign of the April 5 parliamentary elections by the media*;
- consecrating by law, in conformity with art.47 para.(1), the citizens' (electorate's) rights to electioneer in favor or disfavor of candidates through broadcasters;
- with regard to the future parliamentary campaigns, the BCC is to subject to public debates *the draft Concept of covering elections*, as all the parties interested in adopting this document shall get involved: broadcasters, political parties and the civil society;
- with regard to the future electoral campaigns, the BCC is to adopt *the draft Concept of covering elections* in conformity with the international and European standards in the electoral sector: 6 months before the election period (before announcing the date of holding the elections;)
- the BCC should monitor, ex officio, the broadcasters during election campaigns, from the prospect of the requirements stipulated by art.7 of the *Broadcasting Code*.