

**The observance of the Broadcasting Code by the Broadcasting Coordinating Council during the electoral period of the parliamentary elections of 29 July 2009 (16 June – 29 July 2009)**

*Case Study*

**Introduction**

This case study has as an object the consideration of the legality, timeliness and plenitude of work in the public sittings of the Broadcasting Coordinating Council (*henceforth – the BCC*) during the electoral race for the 18<sup>th</sup> legislature of the Republic of Moldova.

Under art.1 of the Moldovan Election Code (*henceforth – the Election Code*), *the electoral period* comprises “*the period of time comprised between the day of publicly announcing the election day and the day when the final results of the elections are confirmed by entitled bodies.*” Under art.78 para.(5) of the Moldovan Constitution and art.76 para.(3) of the Election Code, the date of the elections for the Parliament was publicly announced on June 16, 2009 (*The Decree of the President of the Republic of Moldova no.2243-IV of 15.06.2009 on dissolving the Parliament*, published in Monitorul Oficial al Republicii Moldova no.103 of 16.06.2009.)

Taking into consideration the impact of the broadcasters’ work upon the election results, on the one hand, and the legal obligations and duties of the BCC during the election period, on the other hand, the authors of this study focused their attention only on the period comprised between the day of publicly announcing the election day and the election day: 16 June – 29 July 2009.

During the electoral period, the BCC is obliged to respect and enforce a series of provisions from the Moldovan Broadcasting Code (*henceforth – The Broadcasting Code,*) the main of which are the following<sup>1</sup>:

*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;*

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<sup>1</sup> Underlined by the author.

*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 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 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;

g) the transparency of its own activity.

### Findings

During the election period, between 16 June and the election day -- 29 July 2009 --, the BCC held three public sittings: on 16 June, 3 July, 23 July. Thus, during those 44 days, on average, the BCC held by a public sitting in 15 days.

At those 3 public sittings, 15 issues were raised for consideration, according to the information from the BCC's site ([www.cca.md](http://www.cca.md)) as 14 decisions were adopted<sup>2</sup>. In considering the contents of those decisions, we can find that only 3 of those 14 refer to the exercise of the BCC's duties specific to the election period, the other decisions being related to the permanent duties of the work of the broadcasting regulating authority, what is about 21.4% of the total number of the decisions adopted during the electoral period comprised between 16 June and the election day – 29 July 2009:

	<b>The BCC Decision</b>	<b>Short description of decision</b>	<b>Relevance of the content of the decision in the context of the BCC's exerting its attributions, as provided during electoral races</b>
1.	Decision no.61 of 16 June 2009 <i>On the Concept of covering the electoral campaign for the early parliamentary elections of 29 July 2009 by Moldovan broadcasters</i>	- Adopting <i>the Concept of covering the electoral campaign for the early parliamentary elections of 29 July 2009 by Moldovan broadcasters.</i>	The object of the decision is <b>relevant</b> in the context of exerting the BCC's duties, as provided for electoral races.
2.	Decision no.62 of 3 July 2009 <i>on examining internal regulations of covering the electoral campaign for the early parliamentary elections of 29 July 2009 by Moldovan broadcasters Moldova</i>	- Approving internal regulations (concepts) of broadcasters.	The object of the decision is <b>relevant</b> in the context of exerting the BCC's duties, as provided for electoral races.
3.	Decision no.63 of 3 July 2009 <i>On preliminary application of "ALAI MEDIA" S.R.L.</i>	- Examining the request to prolong the broadcasting license; - The broadcaster allowed to work until issued a new broadcasting license.	<b>Irrelevant.</b>
4.	Decision no.64 of 3 July 2009 <i>On the way of enforcing the legal provisions, conditions of broadcasting licenses and relay authorizations</i>	- Withdrawing relay authorizations of some services distributors.	<b>Irrelevant.</b>
5.	Decision no.65 of 3 July 2009 <i>On approving the list of relayed TV channels and modifying conditions on broadcasting license</i>	- Approving new offers of channels of services distributors; - Removing localities from coverage areas of some services distributors.	<b>Irrelevant.</b>
6.	Decision no.66 of 3 July 2009 <i>on Examining "Tele-Crio" SRL's request to issue a re-transmission</i>	- Issuing the re-transmission authorization to a services distributor.	<b>Irrelevant.</b>

<sup>2</sup> 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 in 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 posted on its web site, [www.cca.md](http://www.cca.md) dated March 24, 2009.

	<i>authorization, the way of enforcing legal provisions</i>		
7.	Decision no.67 of 3 July 2009 on Examining the request of “Jurnal de Chişinău Plus” SRL to be issued satellite broadcasting license for the station “Jurnal TV”	- Issuing the broadcasting license to a broadcaster (by satellite.)	<b>Irrelevant.</b>
8.	Decision no.68 of 3 July 2009 <i>On including Moldovan broadcasters’ program services into the cable operators’ offers</i>	- Obliging services distributors to insert, into their offers, free program services of Moldovan broadcasters.	<b>Irrelevant.</b>
9.	Decision no.69 of 3 July 2009 <i>On renewing broadcasting licenses of “PRIME” SRL</i>	- Issuing a new type of broadcasting license after changing the statute of the founding company.	<b>Irrelevant.</b>
10	Decision no.70 of 3 July 2009 on <i>Withdrawing re-transmission authorizations, issued to “Adan TV”, “STV”, “RETAN TV”</i>	- Withdrawing re-transmission authorizations.	<b>Irrelevant.</b>
11	Decision no.71 of 3 July 2009 <i>On the BCC’s activity in quarter II of 2009</i>	- Approving the Report on the BCC’s activity in quarter II of 2009.	<b>Irrelevant.</b>
12	Decision no.72 of 23 July 2009 <i>In insuring opinion pluralism in TV program services</i>	- Examining the results of monitoring “the main info bulletins” from the program services of <b>Moldova 1, NIT, Euro-TV Chişinău, N4, Pro TV Chişinău and TV 7</b> . According to the decision, the monitoring took place <i>from 30 June through 12 July</i> ; - <b>Warning</b> the monitored broadcasters and the ones which were not monitored by the BCC to observe the legal provisions, including the legal provisions which were not the object of the BCC’s monitoring.	The object of the decision is <b>relevant</b> in the context of exerting the BCC’s duties, as provided for electoral races.
13	Decision no.73 of 23 July 2009 <i>On the way of enforcing the law, conditions of re-transmission authorization</i>	- Penalizing a services distributor for violating copyrights, and for not re-transmitting programs included into its program offer, approved by the BCC for that cable operator.	<b>Irrelevant.</b>
14	Decision no.74 of 23 July 2009 <i>On renewing broadcasting licenses for “Maestro FM”, “Autoradio/Avtoradio”</i>	- Issuing a new broadcasting license blank after modifying the statute of the company, which founded the broadcaster; - Modifying the license conditions after changing some technical parameters.	<b>Irrelevant.</b>

During that period, the BCC issued 3 press communiqués:

- The press communiqué of 3 July on the BCC’s adoption of the internal regulations (concepts) on covering the race for July 29 parliamentary elections by the Moldovan broadcasters (BCC Decision no.62 of 3 July 2009) and on the broadcasters, which had informed the broadcasting regulator of not participating in the coverage of the electoral campaign;

- The press communiqué of 13 July, through which **the BCC announces about the need to observe the law by the Moldovan broadcasters**: “*The Broadcasting Coordinating Council reiterates the need that the Moldovan broadcasters should respect the provisions of the Regulation on covering the electoral race for the 29 July 2009 early parliamentary elections, their internal Regulations approved at the BCC’s public sitting of 3 July 2009, in order to inform the electorate, correctly and objectively, about the political platforms and programs of the electoral contestants, so that the voters may freely exert their constitutional right*”;

- The communiqué of 16 July, through which *the BCC informed on the existence of multiple categories of violations of the electoral law by broadcasters, repeatedly announcing about the need to observe the law by the Moldovan broadcasters*: “*In this context, the Broadcasting Coordinating Council reiterates the need that the broadcasters and the services distributors under the Moldovan jurisdiction should observe the provisions of the Election Code, the conditions from their broadcasting licenses and re-transmission authorizations, the program schedules and the lists of channels as approved by the BCC.*”

## Conclusions, recommendations and suggestions

### Conclusions:

- during the electoral period (16 June – 29 July 2009), to which this case study refers, the BCC neglected its activity of supervision and control, its duties and obligations specific to the electoral races. During that period, the BCC held only 3 public sittings, adopting 14 decisions, of which only 3 refer to the coverage of the elections by broadcasters and presented the public the results of a single monitoring session, comprising only the period from 30 June to 12 July;

- during the electoral race, the BCC did not honor, as corresponds to its mission of a guarantor of the defense of the public interest in the sector of audiovisual communication on democratic principles, one of its basic duties – supervising the respect for the law by permanently monitoring the contents of the program services offered by the broadcasters and which entailed reactions in due time, adequate and public, to the found breaches;

- the BCC stated its duty provided by art.37 of the Broadcasting Code regarding its control *ex officio*, but when it did exert its supervisory and controlling functions, it did not honor its obligation to supervise the broadcasters’ entrance into legality;

- the BCC failed to publicly react to grave and repeated violations found in the monitoring sessions carried out by the civil society and which it regularly got, as it should have done in accordance with art.40 para.(1) let.d) from the Broadcasting Code;

- ignoring the legal provisions, the BCC did not have a permanent concern for the observance, by broadcasters, of the internal regulations on covering the elections. Approving the internal concepts (regulations) on covering the elections by the broadcasters, in the observers’ view, was but a formal act;

- the BCC did not supervise the respect of the Broadcasters Conduct Code, as its importance is special especially during electoral races;

- the monitors find that, during the electoral race, the BCC did not exert its functions responsibly and fully as an autonomous and independent public authority with the mission to supervise the observance of the national laws and of the professional ethics by broadcasters, and in the cases when it did, it displayed no exigency, often proving incompetence and shallowness in mastering the law and the peculiarity of the broadcasting media’s work.

### Recommendations:

- the BCC should monitor the broadcasters during the entire electoral period;

- the BCC should make public the results of monitoring broadcasters during the entire electoral period, on a regular (weekly) basis, and, if it is the case, it should contribute to bring broadcasters back to legality;

- the BCC should duly react and quickly consider the notifications about broadcasters’ breaching the law during electoral races;

### Suggestions:

- the broadcasting regulating frame must be improved in order to enhance the responsibility of the authority regulating the sector, including of the BCC members for failing to honor their duties and obligations provided under the law;

- improving the provisions of the Electoral Code is imperative regarding the work of the broadcasters in electoral races, including the ones referring to the mechanism of interactivity between the Central Election Commission and the BCC, taking into account the European experience and standards.