This statement outlines some of the concerns of ARTICLE 19, the Global Campaign for Free Expression, in relation to the legal provisions for the coverage of the 6 March 2005 Moldovan Parliamentary elections.

These consist in:

- The Election Code (Article 47, on Election Campaigning);
- The Concept on the Coverage of the Electoral Campaign of the Parliamentary Elections by Television and Radio of the Republic of Moldova (the Concept); and
- The Regulations on the Coverage by the Mass Media of the Republic of Moldova of the Election Campaign for the Parliamentary Elections (the Regulations).\(^1\)

ARTICLE 19 acknowledges that the relevant regulations have several positive aspects. These include the principle of non-discrimination vis-à-vis candidates, including in their access to the media, and a general right of “open discussions on all aspects of electoral programmes”. They also include a prohibition of interference in the work of the media by

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\(^1\) Despite what its name suggests, the application of the Concept, as for the Regulations, is compulsory. The Concept was submitted by the CCA to the Central Election Commission (CEC), which later adopted it. The CEC then developed the Regulations, which mostly repeat the provisions contained in the Concept. The Statement is based on unofficial translations of these documents.
public authorities and the requirement on the authorities to adopt appropriate measures to protect media outlets and journalists during the election period. In relation to free airtime provided to candidates, ARTICLE 19 welcomes the apparently equitable system for providing direct access to the media set up by the Coordinating Council of the Audiovisual (CCA). ARTICLE 19 was also informed that, in preparing the Concept, the CCA had some consultations with civil society and incorporated some of their recommendations into the final text.

However, ARTICLE 19 believes that the relevant documents could be further improved. We wish to aid the discussion and clarify a number of issues concerning certain aspects of the legal provisions that have been the subject of some debate in Moldova. The recommendations provided in this Statement can also be taken into account in the development of guidelines for future elections.

The ARTICLE 19 concerns relate to the following areas:

**a) Coverage of Candidates in Television News**

A number of provisions in the Election Code, as well as in the Concept and the Regulations, attempt to prevent incumbents from benefiting unduly from their positions.

In particular, an amendment to Article 46 of the Concept was adopted on 10 February 2005, and stipulates that State officials who are also candidates can appear in television news only in “extreme cases of great social significance”. In all other cases, events relating to these candidates are to be covered in the news exclusively through the information provided by their press services.

Moreover, Article 47(4) of the Election Code states that:

> In the period of electoral debates, beside the free of charge broadcasting time, it is not allowed to broadcast any promotional material about the activity of electoral competitors.

Article 46 of the Concept adds that:

> In the bulletins of public and private electronic media outlets pre-election events are presented as ‘press news’. The officials of the public administration, participating in the pre-election campaign, can inform the people of their area of activity through interviews and statements without using these occasions as opportunities for pre-election campaigning.

The rationale for the inclusion of these provisions in the regulations was clearly to promote more impartial coverage of events and to ensure that incumbent candidates do not abuse their privileged position during the elections. This intention is clearly to be applauded.

However, ARTICLE 19 believes that these provisions may prove to be unduly stringent in nature and that they may actually prevent adequate coverage of the elections. First, Article 46 of the Concept fails to define ‘press news’. Second, in Article 47(4) of the Election Code it is unclear whether ‘election debates’ are referred to only as special
election programmes, or as the electoral campaign period in general. The lack of clarity is problematic, as it may impair the correct application of the regulations. The exact meaning of ‘promotional materials’ is also unclear, and ARTICLE 19 was informed that some interactive programmes were taken off the air, reportedly because contributors were judged to be providing positive information for a candidate or another, just by voicing their opinions. In the case of the amendments to Article 46 of the Concept, information coming from press services is unlikely to be sufficient to fully inform the public. Instead, in order to ensure that the public can make an informed choice on elections day, it is essential that all actors in the campaign are fully covered in the news.

It may be noted that incumbents’ privileged position during elections is a reality in all countries, and to a certain extent it has simply to be accepted. It is the task of the media to ensure that opposition parties, including smaller ones, also have sufficient access to the media effectively to present their political platforms to the electorate, subject to rules on balance and fairness and ideally implemented through self-regulatory means.

b) Debates

Article 47(3) of the Election Code states that private broadcasters can organise debates but “respecting equitable conditions for all electoral competitors” and “inviting representatives of all electoral competitors”.

Individual media outlets can allocate no more than 120 minutes a week to debates, with the exception of Sundays (Article 23 of the Concept and Article 32 of the Regulations). It was established that debates could be held only after the end of the period of registration for candidates, set for 6 February, which meant that a maximum of 480 minutes per channel for the broadcasting of debates throughout the election period was permitted. In addition, if a candidate renounces his/her right to participate in a debate, the time allocated for him/her is not re-allocated to other candidates. A number of popular channels such as ORT and PRO TV have opted out of the campaign,² so debates can be organised only by TeleRadio Moldova (TRM), EURO TV, Antena C³ and non-State NIT, in addition to some local stations. The only nation-wide channels that broadcast debates are TRM and NIT.

According to information provided to ARTICLE 19, the new regulations have improved the general situation with regard to electoral debates, when compared to previous elections. However, it is not clear why a ceiling should be placed on the time allocated for electoral debates. In addition to limiting the rights of broadcasters, which should be free to make independent choices regarding their schedules, it severely restricts the possibility to broadcast debates, whose proliferation can assist the electorate in

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² Article 32 of the Concept and Article 39 of the Regulations state that private broadcasters can, if they so wish, refrain from playing a role in the election campaign. This effectively means that they commit to refraining from broadcasting campaign clips, debates and special election programmes. The media outlets, some of which with high rating, which have decided not to participate in the campaign include Pervii Kanal ORT, PRO TV, MUZ-TV, TV Dixi and some radio channels.

³ EURO TV and Antena C are, respectively, public television and public radio for the Chisinau municipality.
developing a better understanding of candidates. It is also not clear why debates should be banned on Sundays, when workers have more opportunities to watch television programmes than on working days.

c) Restrictions on Freedom of Expression during the Campaign

Article 47(1) of the Electoral Code states that people have the right to open discussion on all aspects of the election processes, yet there are some important exceptions to this. Article 30 of the Concept and Article 37 of the Regulations provide that, when making public statements, candidates cannot use expressions that contain:

• instigation to the destabilization of social order, encroachment of the inviolability of personality and material goods;
• the use of expressions, harming personal honour and dignity;
• the divulging of secrets, guarded by law;
• the use of any methods of expressions, bringing shame on other candidates or their representatives;
• the combining of colours and/or sounds, resembling the national symbols of the republic of Moldova or another State;
• use by video or audio documents, in which there are historical personalities of Moldova or foreign states.

It is not clear why these provisions have been included in the regulations for election coverage. Provisions on defamation and public order should be included in laws of general application, such as the civil code, and there is no need to repeat them here. In addition, practically all of these prohibitions are problematical, some seriously so and few would pass the test for such restrictions under international law. Some are too vague to be considered to be provided by law. Some do not serve legitimate aims. Others cannot be justified as necessary. Defamation law, which deals with such concepts, is a complex area of law requiring subtle balancing between the need to protect reputations and the right to freedom of expression. To note just one concern, these provisions fail to recognise the established principle that public officials must tolerate greater criticism than ordinary citizens.

d) Liability for the Content of Election Materials

Article 21 of the Concept and Article 16 of the Regulations state that “the responsibility for the content of the election materials rests with the candidates”. This is a positive regulation and it is in line with international standards in this area, since the media should not bear responsibility for the content of election materials. Otherwise, the media would effectively be required to censor the election materials provided by candidates, to the detriment of the public’s right to know.

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4 An example of this is the prohibition on “instigation to the destabilization of social order”
5 Examples of this are the prohibition on disseminating expressions containing colours/sounds “resembling the national symbols of the republic of Moldova or another State” and the use of materials involving historical figures.
6 An example of this are the prohibitions on harming honour or shaming candidates.
However, this positive regulation is virtually nullified by Article 49 of the Concept, establishing that “broadcast media outlets do not allow the dissemination of candidates’ materials, when these contain insulting statements and offend the honour and dignity of a person”. There are three problems with this. First, as noted above, responsibility for the content of election broadcasts should be born by the candidate rather than the media outlet. Second, specific content rules of this sort should be left to laws of general application, rather than included in election-specific legislation. Finally, also as noted above, defamation is a complex area of law and these provisions simply do not reflect the difficult balance between freedom of expression and the protection of reputations.

CONCLUSIONS

ARTICLE 19 notes the importance of free media during election periods. Recommendation No. R(99)15 of the Committee of Ministers of the Council of Europe on Measures Concerning Media Coverage of Election Campaigns – of particular relevance as it encapsulates international standards in this area – states that “… the fundamental principle of editorial independence of the mass media gains special significance during elections”.

ARTICLE 19 also notes that numerous biases were found to be present in news coverage during the 2003 local elections. In addition, monitoring by NGOs of public broadcaster TRM, following the promulgation of a law for the creation of public service broadcasting in 2002, showed that TRM was failing to provide the public with a variety of views and opinions, and remained partisan in favour of the ruling Communist party. ARTICLE 19 therefore urges the Moldovan authorities to provide the conditions for the fair and balanced coverage of the campaign for the 6 March elections.

In light of the above comments, we urge the Moldovan authorities to implement the following recommendations:

Coverage of Candidates in Television News

- The concept of ‘press news’ in Article 46 of the Concept should be defined.
- The concept of ‘period of electoral debates’ and ‘promotional materials’ at Article 47(4) of the Electoral Code should be clarified.
- The rules relating to election coverage should not restrict legitimate, balanced news and current affairs programmes relating to the elections.

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8 Ibid, Principle III.
9 According to the media monitoring conducted by Moldovan civil society, including the Independent Journalism Center.
10 Law No.1320-XV of 26 July 2002 on ‘the National Public Broadcasting Institution Teleradio Moldova’.
11 The monitoring was coordinated by the Independent Journalism Center.
• Instead of attempting to micro-regulate the issue of incumbent advantage, the electoral rules should ideally focus on establishing general rules on balance and should try to promote as much access to the media as possible.

Debates
• The ceiling of 120 minutes for the electoral debates should be reconsidered, along with the prohibition of debates on Sundays.
• The regulatory bodies should encourage the proliferation of debates and other special election programmes.

Restrictions on Freedom of Expression and Liability for Content
• Article 30 of the Concept and Article 37 of the Regulations should be repealed.
• Article 49 of the Concept should be repealed.