[LU] Regulator Imposes Warning on RTL for Breach of Rules on Protection of Minors over Syrian War Coverage

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On 5 November 2014, the Independent Audiovisual Authority of Luxembourg (Autorité luxembourgeoise indépendante de l'audiovisuel - ALIA) issued its second decision which falls in the category of "decisions to be published" since it has been established by the law of August 2013 (see IRIS 2013-10/32). In its first published decision of February 2014, ALIA rejected an application for a new radio station (see IRIS 2014-7/27). This new decision concerns a programme transmitted on television in Belgium. The complaint, which was originally brought before the Belgian regulatory authority of the French Community, the Audiovisual Regulatory Authority (Conseil Supérieur de l'Audiovisuel), was transferred to the Luxembourgish regulator which is competent to hear the case. According to the Audiovisual Media Services Directive (Art. 2 AVMSD), the country where the broadcaster is established has jurisdiction. The programme in question was disseminated on RTL TVi, the license holder of which is RTL Belux, established in Luxembourg.

The complaint specifically concerned the programme "Indices" ("Evidence") broadcast on 30 April 2014 at 20:30. The programme showed young Belgian Islamists leaving their home country to fight in the war in Syria. To this end, it contained images of an exceedingly violent character, including scenes of mass executions, decapitations, crucified persons, torture and other degrading acts. The images were in part blurred by technical means. The programme was categorised as "12", meaning that it was considered suitable for minors aged 12 and above. The complainant, however, argued that these depictions were harmful to minors (including those older than 12 years) and that the broadcaster had violated the rules on protection of minors.

ALIA examined whether the transmission of the broadcast in the evening hours violated Art. 27ter (2) of the Luxembourgish Law on Electronic Media (hereinafter LEM), which sets out that programmes which are "likely to impair the physical, mental or moral development of minors are prohibited except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such services" and closely resembles Art. 27 AVMSD. After hearing the defendant on September 2014, ALIA determined that the content of the programme exceeded the limits of what is authorised by virtue of Art. 27ter LEM. It made clear that the age category "12"

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was inappropriate for a programme which repeatedly presented exceedingly violent images. ALIA opined that the programme was unsuitable even for minors aged above 12. Additionally, ALIA pointed out that these depictions were not justified from an editorial perspective, thereby disagreeing with the broadcaster that had considered them indispensable for reporting on this issue.

In its decision, ALIA found that RTL Belux had breached the provision on protection of minors by scheduling the programme at that particular time and applying an age category of “12”. It thus imposed a sanction in the form of a warning to the broadcaster, the first of a catalogue of possible sanctions (which includes a warning, the publication of a notice, fines, temporary suspensions and withdrawal of licences) prescribed by Art. 35sexies LEM.

This dispute can be seen in the context of previous discussions about the regulatory approach to broadcasters established in Luxembourg primarily targeting audiences in other Member States, mainly of the Benelux. In that respect the Luxembourgish government is also preparing a new Grand-Ducal Regulation on the labelling of programmes which will affect both linear and non-linear audiovisual media services.

Décision n° 12/2014 du 5 novembre 2014 du Conseil d’administration de l’Autorité luxembourgeoise indépendante de l’audiovisuel concernant une plainte déposée par XXX à l’encontre du service de télévision RTL TVi

http://www.alia.lu/holding/2014-11-05-decision-n12-2014-plainte-N206_EC_fournisseur.pdf

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