

[UA] Sanctions on Russian broadcasts

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In the past year, there has been an array of similar rulings in the Ukrainian courts in relation to the suspension of Russian broadcasts.

First, on 20 March 2014, the national regulator, the National Council for Television and Radio Broadcasting (NCTRB), filed a lawsuit before the District Administrative Court of Kyiv against “Torsat, TOV” the distributor of several Russian channels (First Channel, RTR-Planeta, Russia-24 and Russian Channel by VGTRK, NTV-Mir). Although the distributor claimed that it had no authority to control the distribution of broadcasts on cable networks, the court ruled on 25 March requiring Torsat to temporarily suspend the retransmissions until the merits of the lawsuit have been considered. With this decision in hand, the NCTRB started to annul the licenses of cable operators that continued to retransmit suspended Russian channels.

The court decision was appealed by each of the Russian broadcasters affected and separately by the “Association of Russian Channels, TOO” before the Kyiv Appellate Administrative Court. The court of appeals confirmed the interim restrictive measure sanctioned by the lower court. It explained the need to take the measure by “an imminent threat to violation of informational security of the state which is manifested in the dissemination of malicious misinformation that incites ethnic hatred, attempts against the rights and liberties of man, and may bring about irrevocable processes of the violation of the territorial integrity of Ukraine”.

On 6 May 2014, the lower court assigned an expert institution to provide “a psychological and linguistic expertise” of the programmes concerned and then immediately suspended proceedings until its completion.

This decision was again appealed by the First Channel and the Association of Russian Channels, which demanded that the court order be reversed and the lower court consider the merits of the case without further delay. The appellate court concluded that such an expertise was “an objective necessity and indeed prevents the proceedings in the administrative case”. It agreed with the suspension of deliberations in the case.

There have also been further appeals by VGTRK and NTV to the High Administrative Court of Ukraine, the highest court in the system of administrative courts, which on 1 September 2014 declared the complaints ungrounded.

On 14 November 2014, the expert opinion results were finally submitted to the lower court and, on 9 December, the District Administrative Court of Kyiv resumed the case.

In a second development, “Vertikal-TV, VAO”, the Donetsk-based Ukrainian distributor of Russian national broadcaster “TV-Tsentr, OAO”, was ordered by the NCTRB to suspend its retransmission until the consideration of the merits of the lawsuit. The same District Administrative Court of Kyiv affirmed the order to Vertikal and also those cable operators that had relevant contracts with it. The ruling on 17 July 2014 used similar arguments of informational security. Vertikal-TV also unsuccessfully appealed the decision. The High Administrative Court of Ukraine agreed to review the complaint, but a decision on the merits is still to be reached.

Thirdly, the regulator filed a lawsuit over the Russian 24-hour channel for business news “RBK-TV, ZAO” and its Ukrainian distributor “Agentstvo Klas, TOV”. The District Administrative Court of Kyiv in its ruling on 12 September 2014 agreed that a violation of the law of Ukraine in the re-broadcasts of RBK-TV was evident in “the dissemination of misinformation”. It ordered the suspension of the retransmission of RBK-TV until the consideration of the merits of the case.

In January and February of 2015 the District Administrative Court of Kyiv decided to combine the consideration of the merits of all three cases into one, thus once again extending the procedures.

Then, on 3 March 2015, it assigned an expert institution within the Ministry of Interior to provide another expertise of the programmes in the combined case and suspended deliberations in the case until its results are made available to the court. The questions put to the experts largely copied those raised in the court ruling of 6 May 2014.

The consideration of the merits has not yet taken place at the time of writing.

Decisions of the District Administrative Court of Kyiv, case No 826/3456/14, 25 March 2014, 6 May 2014, 9 December 2014, 3 March 2015; Decisions of the Kyiv Appellate Administrative Court, case No 826/3456/14, 23 April 2014, 14 May 2014, 15 May 2014, 23 June 2014, 30 January 2015, 9 February 2015; Decisions of the High Administrative Court of Ukraine, No. K/800/28963/14, 3 June 2014; No. K/800/30033/14, 10 June 2014, No. K/800/39307/14, 1 September 2014; Decision of the District Administrative Court of Kyiv, case No 826/9266/14, 17 July 2014; Decision of the Kyiv Appeals Administrative Court, case No 826/9266/14, 30 September 2014; Decision of the High Administrative Court of Ukraine, case K/800/53787/14, 24 October 2014; Decision of the District Administrative Court of Kyiv, case No 826/12758/14, 12 September 2014, 28 January 2015.

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