

[UA] Court hearing on Russian broadcasts ends

IRIS 2018-8:1/39

*Andrei Richter
Comenius University (Bratislava)*

At a hearing on 29 May 2018, the Kyiv District Administrative Court finally considered the merits of the case and provided its decision in relation to the legality of Russian rebroadcasts via cable systems in Ukraine. The case started in 2014 (see IRIS 2015-5/38 and IRIS 2017-1/33) and in the meantime, the retransmission of all Russian channels concerned was suspended as an interim restrictive measure.

The case was brought by the national media regulator to acknowledge the illegal nature of the content of unspecified Russian TV programmes and to ban the distribution of certain Russian TV channels in cable systems in Ukraine. The lawsuit was filed against "Torsat", the local distributor of several Russian channels, as well as the Ukrainian cable TV distributor "Vertikal-TV", and Russian TV companies First Channel, "TV-Tsentr", VGTRK, NTV and "RBK-TV".

The plaintiff, the National Council on Television and Radio Broadcasting (see IRIS 1998-4/14), claimed that the programmes blatantly violated Ukrainian broadcasting law and the European Convention on Transfrontier Television. The main topic and particularity of the Russian programmes in question were claimed to be the propaganda of exclusiveness, the superiority or inferiority of persons based on the criteria of their ideology, belonging to one nation or another, propaganda advocating a change in the constitutional order in Ukraine and its territorial integrity through violence and the use of Russian Federation military forces, the dissemination of interethnic and national enmity, etc.

The defendants raised the objections that, in particular, the regulator's demands amounted to censorship, which is forbidden by the Constitution of Ukraine, and prevented citizens from obtaining "pluralistic information". They asked the court to dismiss the lawsuit.

Earlier, in 2014 and 2015, the same court had assigned two expert opinions on the Russian programmes concerned from the Kyiv State Research Institute of Court Expertise. In the experts' opinion "some of the remarks made in the programmes contain calls for a violent change in the constitutional order in Ukraine, calls for war, aggression; their propaganda, propaganda of exclusiveness, the superiority or inferiority of persons based on the criteria of their religious beliefs, ideology, belonging to one or other nation or race, physical

or property status, social origin; statements aimed at the territorial integrity of Ukraine; calls to violate public order and for mass disturbances", as well as the use of instruments of psychological pressure and propaganda. The court agreed with this opinion.

The court found that the dissemination of the programmes in Ukraine presented a threat to the "informational security" of the state and therefore required action by the regulator to protect the state's "informational environment". As the Constitution, while indeed banning censorship, allows for limitations to the right to free expression in the interests of national security, territorial integrity or public order, a decision to uphold the considered demands of the national regulator does not denote censorship.

At the same time, the regulator's demand that the court ban the distribution of particular Russian TV channels in cable systems in Ukraine was found to be ungrounded and inappropriate as the law did not envision such action. The court noted that the regulator could have appealed to the court with a request to annul the relevant licenses issued earlier by the regulator permitting their distribution in Ukraine.

Therefore, the court only decided that the programmes of specific Russian TV channels did not correspond to the provisions of the statutes "On Information" and "On Television and Radio Broadcasting", as well as to Article 7 of the European Convention on Transfrontier Television. The demand to ban further distribution of the channels was dismissed.

On 24 June, the same court reviewed a request by one of the defendants in the case, Torsat, to provide an explanation of the decision of 29 May. The particular grounds for the request were not stated in the court decision, but the court found the earlier decision logical and clear and dismissed the request.

Decisions of the District Administrative Court of Kyiv, case No. 826/3456/14, 29 May 2018, 24 June 2018

