[GB] The High Court upholds Ofcom’s GBP 200 000 fine against RT for breach of impartiality rules

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London’s High Court rejected RT’s judicial review application to overturn Ofcom’s record GBP 200 000 fine against the broadcaster for breaching impartiality rules relating to several programmes about events in the Ukraine, the war in Syria and the Salisbury poisoning. RT is the Autonomous Non-Profit Organisation TV-Novosti, a Russian corporation which holds a licence to broadcast the RT television service in the United Kingdom.

Ofcom had opened its investigation after receiving viewer complaints about RT’s coverage of the March 2018 poisoning of Serge Skripal and his daughter, Yulia, both living in Salisbury, and the UK Government’s allegations surrounding Russia’s potential involvement in the attack (see IRIS 2019-3:1/17 and IRIS 2019-8:1/2).

Eventually, Ofcom investigated ten of RT’s programmes broadcast between April and May 2018 and determined that seven of them breached the Code of Conduct requirements for impartiality, including failings in a broadcast questioning the role of the United States in Syria and a news report criticising Ukraine’s position towards Nazism and the treatment of Roma gypsies.

Ofcom imposed the GBP 200 000 fine on 26 July 2019 but stopped short of rescinding RT’s licence to broadcast in the United Kingdom. The broadcaster had been ordered to broadcast a summary of Ofcom’s findings, which included their determination that RT had taken a pro-Russian viewpoint without fairly presenting other standpoints nor challenging interviewees on controversial political topics. RT appealed the decision by way of a High Court judicial review.

High Court Judge James Dingemans rejected RT’s arguments that Ofcom’s decision breached the broadcaster’s right to freedom of expression under Article 10 of the European Convention of Human Rights, and that the regulator had not taken account of the dominant media narrative whereby viewers could watch other news channels for a different perspective on reported events. The judge commented: “.. the requirement of due impartiality does not prevent the broadcast of any views, so long as alternative views and opinions are accurately and adequately reflected within the broadcast or a series of programmes.”

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RT contended as part of its judicial review application that Ofcom had misinterpreted the legislative impartiality requirements and had not taken account of other RT news programmes that they had broadcast on the same story. RT argued that viewers watched their channel to acquire a Russian perspective on current affairs that differed from the mainstream viewpoint.

Furthermore, RT criticised Ofcom's decision to list the broadcaster's compliance history, which included 14 breaches of the Code of Conduct since 2012, of which eight were related to impartiality issues.

Judge Dingemans determined that it was within Ofcom's discretion to assess the weight they placed on previous decisions and that the regulator's conduct was reasonable and lawful, especially as Ofcom had acknowledged that RT's compliance record was not "materially out of line" with that of other broadcasters and that it had not been subject to a statutory sanction before. Moreover, Ofcom had considered issues of freedom of expression when determining their decision. Judge Dingemans considered: ".. there is nothing in Ofcom's decision to suggest that it did not make a fair appreciation of all relevant factors."

The last time Ofcom had fined a broadcaster for breaching impartiality rules was in 2013 when DM Digital had been fined for its coverage of a conference hosted by the Pakistan Overseas Alliance Forum held in the United Kingdom. Regarding RT's conduct, the High Court considered the GBP 200 000 fine to be proportionate. Judge Dingemans stated: "It was for Ofcom to assess what weight to place on previous decisions, and its judgment in this case was reasonable and lawful."

RT are reported to be considering lodging an appeal with the Court of Appeal.

TV-Novosti v The Office of Communication [2020] EWHC689 (Admin)

https://www.judiciary.uk/wp-content/uploads/2020/03/RT-v-Ofcom-approved-judgment-27.3.20.pdf

Issue of Ofcom's Broadcast and On Demand Bulletin 26th July 2019

https://www.ofcom.org.uk/_data/assets/pdf_file/0027/158571/sanction-decisionIssue-rt.pdf

ssue 369 of Ofcom's Broadcast and On Demand Bulletin 20 December 2018

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/131159/Issue-369-Broadcast-and- On- Demand-Bulletin.pdf

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