[LU] Luxembourg regulator rules on Nazi symbols in TV advertising

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On 14 March 2022, the *Autorité luxembourgeoise indépendante de l'audiovisuel* (Independent Audiovisual Authority of Luxembourg – ALIA) ruled on a complaint filed on 21 January 2021 against the Serbian version of the SportKlub 1 TV channel and issued a EUR 1 500 fine to the owner of the channel's broadcasting licence. The case concerned the broadcast of an advertising spot for an online sports betting service in which an actor wearing an SS uniform and speaking with a German accent encouraged viewers to bet on the German football Bundesliga. Although the advertisers intended the spot to be humorous, the ALIA ruled that it clearly breached moral standards and therefore contravened the conditions of the broadcaster's licence.

SportKlub1 is a subscription-based sports channel with different versions in Hungary, Romania, Poland, Serbia, Slovenia and Croatia. The Luxembourg government issued a broadcasting licence for the Serbian version to the Luxembourg-based broadcasting group United Media s.à r.l. in December 2020, which is why the case fell under the ALIA's remit. The ALIA became involved when a complaint was lodged – in accordance with Luxembourg law – by the Serbian regulator, which claimed that the spot infringed Serbian advertising law because it used Nazi insignia and linked the German Bundesliga with the Nazis. The advert showed an actor who, in the scene in question, initially wore an SS officer's uniform and cap with Nazi symbols, and then a military helmet similar to an SS steel helmet. In the script, the actor said he "has never played a German before" and then, speaking Serbian with a German accent, encouraged viewers to bet on German Bundesliga matches.

In the ALIA's opinion, United Media s.à r.l., as the licence-holder responsible for the broadcast of the advert, clearly committed a serious breach of its obligation to maintain moral standards, which was set out in its licence conditions. The regulator stressed the fundamental importance of freedom of expression, which was extensively protected, in particular where humorous content, including stylistic devices such as caricature and satire, was concerned. However, in the present context, particular attention should be paid to the fact that, under Luxembourg criminal law, it was forbidden to communicate inflammatory words to the public via the media or publicly display or wear signs or symbols that could disturb the public peace. Inciting the public to discrimination, hate or violence, especially by using such emblems, was also prohibited. According to the ALIA, the

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aforementioned provisions clearly demonstrated the legislator's intention to clamp down on any use of Nazi symbols, apart from in areas such as research or education. In the case at hand, their use in commercial communication was likely to bring back extremely painful memories and, even decades after the end of the war, cause anxiety to sections of the population who had been witnesses or victims of the persecution and annihilation of millions of people, as well as other atrocities carried out under the Nazi regime. It would deeply hurt the feelings of these people and the public in general, and could even disturb the public peace. In the ALIA's opinion, de-demonising Nazi ideology by joking about such a serious subject showed a reprehensible lack of sensitivity on the part of the advert's producers. Such a depiction of the darkest moments in human history could, in particular, trivialise the Nazi symbols that had been used or even associate them with a positive image. It also conveyed a deeply offensive image of the German people. In summary, the broadcaster had failed in its duty to respect public intellectual and moral sensitivities and to maintain moral standards, which applied both in Luxembourg and in Serbia, where the channel was broadcast.

Décision de l'ALIA (DEC004/2022-P006/2021)

https://www.alia.lu/assets/upload/files/Decisions/D004-2022_P006-2021_-SK-1_BetOle_ECsite.pdf

ALIA decision (DEC004/2022-P006/2021)

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