General Court judgment T-125/22 dismissing RT France's action for annulment of the Council's (EU) decision and regulation prohibiting broadcasting activities

IRIS 2022-8:1/31

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The broadcaster, “Russia Today France” (RT France), asked the General Court to annul the Decision 2022/351 and Regulation 2022/350 of the Council of European Union (see IRIS 2022-3/6). The Decision and Regulation followed the Russian invasion of Ukraine and prohibited “operators to broadcast or to enable, facilitate or otherwise contribute to broadcast, any content by the legal persons, entities or bodies listed in Annex XV”, including RT France.

Further to the hearing of 10 June 2022, the General Court gave its judgment on 27 July 2022 and dismissed RT France’s action based on the non-respect of fundamental freedoms and the disregard of the principle of non-discrimination. This judgment mainly recalls the criteria to be taken into account when balancing fundamental rights and freedoms against protective and democratic interests. A brief presentation of the judgment is inserted below.

Firstly, the Council is competent to adopt restrictive measures against a TV broadcaster following the EU’s competences rules governed by the principle of conferral: it is the EU’s mission to promote peace and is thus competent to adopt measures safeguarding the common foreign and security policy (CFSP). Besides, the Council is better placed to ensure a uniform implementation of a temporary prohibition of a broadcaster within the European Union.

Next, it is settled case law that the right of defense can be restricted as long as the transgression is proportionate and limited to the objectives the measure pursues. In the case at hand, the Council had to act quickly due to the outbreak of war on the EU’s borders and was not obliged to hear RT France prior to its Decision and Regulation.

Furthermore, while it is true that the freedom of expression and information is an essential freedom, it may also be restricted - as long as it is necessary and proportionate to the legitimate aim pursued, as in the present case - in order to protect democracy, preventing all forms of expression “which propagate, incite, promote or justify hatred based on intolerance, the use and glorification of violence”.

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In addition, the exercise of the freedom to conduct a business may be subject to restrictions as long as they are justified by the EU's objectives of general interest, provided that such restrictions effectively meet those objectives and do not constitute, in the light of the aim pursued, a disproportionate interference with the substance of the right guaranteed. The Council’s measures meet these criteria.

Lastly, as established by numerous caselaws, a discrimination on grouds of nationality has to be proved throuhgout a comparison between the citizen/company of one Member State with nationals of another Member State experiencing the same situation. When failing to identify a group in a similar situation that has been treated more favorably, the alleged infringement cannot be sustained - as in the present case.

Arrêt du Tribunal dans l'affaire T-125/22 « RT France c. Conseil »

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Judgment of the General Court in Case T-125/22 “RT France v Council

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