[LV] Revocation of TV Rain's broadcasting permit for threats to national security and public order

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Amélie Lacourt
European Audiovisual Observatory

On 6 December 2022, the National Electronic Mass Media Council of Latvia issued a decision cancelling the broadcast permit issued only a few months earlier, on 6 June 2022, to TV Rain - an independent Russian channel - for the production of the TV Rain programme. This final decision followed the initiation of several administrative procedures and decisions by the Council.

The Council's first decision from 10 November 2022 concerned mere compliance with the "Basic operation conditions" of the electronic media's broadcast permit. It pointed out that the programme was not complying with the third part of Section 24 or the fifth part of Section 32 of the Electronic Mass Media Law (the "EMML"), and did not contain Latvian subtitles, even though TV Rain was aware of these requirements. The Council also adopted a decision imposing a EUR 4 000 fine on TV Rain for not meeting the requirements of proper functioning and production of cross-border television programmes, as provided in Article 79 of the EMML. It considered this to be a fairly significant violation in that it constituted, inter alia, a threat to public safety by preventing Latvian speakers from being informed quickly in emergency cases, the content being broadcast in a foreign language only.

A second administrative infringement process, initiated by the Council on 13 October 2022, related to the broadcasting (and replays) of programmes between 1 October 2022 and 10 October 2022. During this period, the armed forces of the Russian Federation had been referred to as "our army", and maps had been shown of parts of Eurasia depicting the Crimean Peninsula as territory belonging to the Russian Federation. Such information thus conveyed inaccurate information to the audience, the Crimean Peninsula being the territory of Ukraine, having never been legally included in the Russian Federation. For that reason, the Council established that TV Rain had violated its obligation to disclose information with due accuracy set out in the fourth part of Section 24 of the EMML. Considering that TV Rain had repeatedly broadcast programmes and their replays with inaccurate information, giving the public a false impression of the reliability of the information, and considering that TV Rain's broadcasting had affected the State of Latvia and public safety, the Council adopted a decision on 1 December 2022 imposing an administrative penalty on TV Rain and a fine of EUR 10 000.

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The Council opened a new infringement procedure on 2 December 2022 following statements made on the programme the previous day which, according to the Council, could have be seen as an invitation to the audience to provide information about the material and security situation of people mobilised in the armed forces of the Russian Federation, whose activities were directed against the territorial integrity and political independence of Ukraine, and an indirect call to help them. In the Council's opinion, this would not only endanger the security of the State of Ukraine, but also create a significant threat to the security of Latvia and other European countries.

On 5 December 2022, the State Security Service sent the Council a letter drawing attention to an appeal distributed by TV Rain and dedicated to the Russian soldiers currently fighting and being killed in Ukraine, and to mobilised citizens of Russia. It held that any direct or indirect collection or transfer of financial resources or other goods to a party which was involved in an armed conflict taking place outside the territory of the Republic of Latvia and whose action was directed against the territorial integrity or political independence of a State or was otherwise contrary to international law binding upon the Republic of Latvia, was subject to criminal liability according to Section 77 of the Criminal Law. The guilt of a legal entity could be determined by taking into account whether it had had the opportunity to ensure compliance with the rules and if it had actually taken the necessary measures.

In its conclusions, the Council acknowledged that while TV Rain had committed systematic violations it did not recognise or even understand their nature and significance. While the editor-in-chief of TV Rainhad considered such violations to have been errors, overstatements or technical problems, the Council was of the opinion that the creation of the e-mail address army@tvrain.tv to assist those mobilised in the Russian Federation could not, for example, be considered an "inadvertency" or a "mistake".

Considering the regular violation of regulatory acts and the essential non-compliance with the "Basic operation conditions" of the broadcast permit, the application of administrative penalties was not sufficient to prevent new violations.

With that in mind, the Council thus relied on Section 21, Part three, Clause 8 of the EMML, according to which it could cancel a broadcast permit or a retransmission permit if an electronic media service threatened national security or significantly threatened public order or security. As that measure constituted a restriction of freedom of expression, the Council had to carefully assess the extent of the violation and the actions taken by the electronic media service in connection with the consequences of the violations (Section 21, Part three, Clause 1, EMML). As provided in Article 100 of the Constitution, the right of persons to

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freedom of expression could be subject to restrictions in circumstances provided for by law to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals. Such restrictions had also to be based on Article 10 of the ECHR.

In the case in question, the Council thus considered the decision to cancel the broadcast permit was appropriate for achieving the legitimate aim of security of the state and society, and the preservation of the democratic state system. Such a restriction was therefore appropriate, permissible and necessary in a democratic country.

The Council further found that, given the important role of television in providing information to the public, there were no legal mechanisms to limit the damage caused by the electronic medium TV Rain, other than the cancellation of the broadcasting licence issued to the electronic medium.

Decision No. 436/1-2 on the cancellation of broadcast permit No. AA-180/1 of the electronic media SIA "TV Rain" programme "TV Rain"

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