[LU] Collaboration between National Regulatory Authorities: the case of Luxembourg and Serbia

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Amélie Lacourt
European Audiovisual Observatory

On 15 May 2023, the board of ALIA (the Luxembourg Independent Authority for Audiovisual Media) issued a decision concerning the programme "Ficus for the Boss" broadcast on 19 January 2022 on the N1 television channel as part of a current affairs programme, after the REM (the Serbian Regulatory Authority) had forwarded a complaint reporting hateful content against Ana Brnabić (prime minister and member of the Serbian Progressive Party). According to the REM, the content of the programme stigmatised the prime minister by making an inappropriate comparison between her and people who collaborated in a Nazi extermination camp, and trivialised and relativised the crimes of genocide committed by the Nazis. Although the programme was intended for the Serbian public, the channel is under a Luxembourg concession, and therefore under Luxembourg jurisdiction.

The opinion of ALIA's Consultative Assembly, which must be consulted in the event of a complaint relating to incitement to hatred in particular, was requested. The Assembly considered that "all the elements [of the programme in question were] brought together with the aim of presenting a negative image of the person featured" and concluded that by establishing "links between Ms Brnabić's behaviour in politics and possible future behaviour in a conflict situation and the war crimes committed by the guards of Majdanek death camp", the authors of the programme had resorted to a "procedure [that] easily leads to sowing hatred". The Assembly recommended that the Luxembourg Authority reprimand the service provider Adria News s.à.r.l., a recommendation that the board eventually followed. The board, however, did not find that Ms Brnabić had been subject to incitement to hatred, given the importance of freedom of expression when it comes to criticising governments and their policies. It nevertheless considered that the footage diminished the magnitude and unique nature of the horror of the Holocaust, infringing the right to respect for the dignity of the groups of victims targeted by the Nazi policy of extermination and of their descendants, and could not be justified by the right to freedom of expression which entails rights and duties inherent in responsible journalism.

The REM decided to make the decision accessible to the Serbian public by publishing a Serbian version of the transmission (originally in English) of ALIA's decision (in French). Following this, and in order to clarify its position, on 12 June

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2023 ALIA published a statement on cooperation between Regulatory Authorities. In it, the Luxembourg Authority pointed out that the transmission accompanying ALIA's decision to the REM was altered when it was published on REM's website. Not only had ALIA's logo, the header, the footer and part of the signature of the author of the letter been added by the REM to a Serbian translation without authorisation, but some elements of the transmission had not been reproduced correctly. The same applied to the reproduction of the decision in Cyrillic. ALIA considered that the lack of evidence that these were authorised translations and the fact that they had undergone changes undermined the credibility of the documents produced by REM.

A second statement by the REM also indicated that it hoped ALIA's decision would lead the service provider to refrain in future from discrediting a person's political activities by broadcasting reports such as the one that was the subject of the decision. As a result, ALIA “strongly condemn[ed] any attempt by the Serbian regulator to use its decisions to discredit Serbian media outlets and put them in difficulty in the exercise of their mission, namely the provision of impartial and balanced information in the exercise of freedom of expression and journalism”. ALIA also reiterated its reminder to the Serbian regulator of “its duty of impartiality, […] transparency, completeness and sincerity in the processing and sharing of information received from ALIA in order to guarantee effective and respectful cooperation between regulators”.

DECISION DEC003/2023-P002/2022 of 15 May 2023 of the Board of Directors of the Luxembourg Independent Authority for Audiovisual Media concerning a complaint against the service N1

ALIA statement, Cooperation between regulatory authorities: a case study

https://www.alia.lu/2023-06-12_Statement-ALIA-_Cooperation-between-regulatory-authorities.pdf

REM supplementary statement, "An independent authority from Luxembourg fined N1 television for the show "Heroes of the Evil Age" about Ana Brnabić"

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