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EDITORIAL

According to the Chinese zodiac, 2023 is the year of the Water Rabbit, which should bring longevity, peace, and prosperity. One can only hope that all this will be realised for the whole world, and especially for the Ukrainian people.

The year 2022 did not, however, end with signs of peace, and this was reflected in the additional sanctions adopted by the Council of the EU against Russian media outlets. In France, the media regulator ARCOM issued a formal notice to Eutelsat to cease the broadcasting of three Russian channels after the Council of State asked ARCOM to re-examine their situation.

The year 2023 may be the year of the Water Rabbit for the Chinese, but for the European audiovisual sector it will most likely be the year of the EMFA. The European Commission considers that there is a need for more EU legislation in the media field, and has therefore proposed an EU Regulation, the so-called European Media Freedom Act (EMFA). The first reactions to this proposal have already appeared. For example, in Germany, both the Broadcasting Commission of the German Länder and the Bundesrat have expressed critical views on its legal basis.

The European Audiovisual Observatory will add its contribution to the discussion with a Note entitled "The proposal for a European Media Freedom Act". This publication presents, in a factual, neutral way, the main lines of the EMFA proposal, looking both at the proposed rules themselves and at the first views expressed by regulators, industry stakeholders and academia.

On behalf of the entire team of the European Audiovisual Observatory, I wish you a healthy, peaceful and successful 2023!

Maja Cappello, Editor

European Audiovisual Observatory

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INTERNATIONAL

COUNCIL OF EUROPE

SPAIN

European Court of Human Rights: *Mas Gavarró v. Spain*

Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

In a decision of 18 October 2022, the European Court of Human Rights (ECtHR) saw no reason to consider a violation of the right to privacy and reputation based on Article 8 of the European Convention on Human Rights (ECHR). It declared an application by Artur Mas Gavarró, the former President of the Government of the Autonomous Community of Catalonia, manifestly ill-founded after the Spanish courts had dismissed Mr. Gavarró's complaint against the newspaper El Mundo for alleged criminal defamation. The ECtHR confirmed that, in order to be in accordance with the right to freedom of expression as guaranteed under Article 10 ECHR, criminal law provisions could only be applied in very strict circumstances. The decision of the ECtHR further clarified that a civil libel action or a request for a correction or rectification could have been a less intrusive interference with the right to freedom of expression in order to safeguard Mr. Gavarró's right to protection of his personal reputation.

The case concerned the publication of a number of articles both in the printed and online version of the daily newspaper El Mundo. In particular, one of the articles, published during an election campaign for the presidency in Catalonia, was based on an alleged draft police report sent to journalists revealing unlawful financing of Mr. Gavarró's political party, Convergència i Unió. The newspaper also reported, on the authority of the alleged report by the Central Unit for Economic and Fiscal Crime (UDEF), that Mr. Gavarró, who was then a candidate for re-election, held bank accounts abroad into which bribes had been paid. The existence of the police report or of judicial proceedings were denied however both by the competent investigative judge and by the Criminal Investigation Division of the Catalan police. Two weeks later the chief superintendent of the police confirmed that the report on which El Mundo had based its allegations had not been drawn up by the UDEF or any of its officials.

Mr. Gavarró lodged a criminal complaint for insult and defamation against the journalists who had written the articles and against the newspaper's publisher. A judicial investigation was opened, but a few months later a decision was made to discontinue the case. Mr. Gavarró was unsuccessful in his appeal against that decision. The Constitutional Court also rejected his appeal. Relying on Article 8 ECHR, Mr. Gavarró complained of the inaction of the police, the prosecution service and the domestic courts in failing to investigate the alleged interference

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with his right to the protection of his personal reputation.

The ECtHR observed that the main aim of the procedure had been to determine whether the journalists' conduct had been serious enough to constitute the criminal offence of insult or defamation under Spanish law. It reiterated that the State's obligation under Article 8 ECHR to put in place and apply in practice an adequate legal framework affording protection of one's reputation did not always require the adoption of effective criminal-law provisions covering the various acts at issue. The legal framework could also consist of civil remedies providing sufficient protection. A prison sentence imposed in the context of a political debate or a debate of public interest would only be compatible with freedom of expression as guaranteed by Article 10 ECHR in exceptional circumstances, particularly where other fundamental rights had been seriously infringed, such as in the event of hate speech or incitement to violence. Under the Spanish system, the offences of insult and defamation were subject to a special intentional element with a certain threshold, namely they had to involve a purely malicious lie or flagrant contempt for the truth. The legislature had thus chosen to criminalise only certain serious forms of insult and defamation, and not all forms of defamation or damage to a person's reputation.

The ECtHR observed that Mr. Gavarró could have brought a civil action for the publication of a correction in the newspaper within three days, or could have initiated a special procedure for the protection of the right to one's honour in order to obtain redress for the alleged damage to his reputation. Such civil proceedings, if successful, could have ensured that Mr. Gavarró's good reputation was restored and contained remedies that could not be considered as ineffective. However, there was no trace of a civil procedure initiated by Mas Gavarró for that purpose. By choosing to use only the criminal-law avenue, Mr. Gavarró had deprived himself of any redress for the infringement of his rights in the context of the civil procedures which had been available to him. He had thus limited the scope of the examination carried out by the domestic courts, which had only been able to rule only on the lack of gravity of the alleged infringement under the criminal law. Hence, Mr. Gavarró had not demonstrated that the Spanish authorities had provided him with insufficient protection or that his right to respect for his reputation had actually been infringed. Therefore his application was manifestly ill-founded. The ECtHR declared, unanimously, the application inadmissible.

Décision de la Cour européenne des droits de l'homme, troisième section, rendue le 18 octobre 2022 dans l'affaire Mas Gavarró c. Espagne, requête n° 26111/15

Decision by the European Court of Human Rights, Third Section, in the case of Mas Gavarró v. Spain, Application no. 26111/15, 18 October 2022

https://hudoc.echr.coe.int/eng?i=001-220990

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EUROPEAN UNION

RUSSIAN FEDERATION

Four additional Russian media outlets added to the list of banned media in the EU

Justine Radel-Cormann
European Audiovisual Observatory

On 16 December 2022, the Council of the European Union adopted a Decision (CFSP) 2022/2478 banning four further media outlets to the list of Russian broadcasters prohibited in the EU, following Russia's invasion of Ukraine (see IRIS 2022-3/6).

The Council Decision amended Annex IX of previous Council Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. The new broadcasters are the following: NTV/NTV Mir, Rossiya 1, REN TV and Pervyi Kanal. The list now contains more than a dozen banned media outlets (such as RT English, RT UK, Sputnik, Rossiya 24, TV Centre International) (see IRIS 2022-7:1/2 and 2022-7:1/7).

They can no longer broadcast content to the European Union nor execute broadcasting licence or authorisation, transmission and distribution arrangements they may have had within the territory of the European Union.

This new measure belongs to the EU's ninth package of initiatives aiming at diminishing Russia's war effort, which also includes actions related to banking and energy sectors.

The 2022/2478 Decision did not need the approval of other EU institutions and entered into force on 17 December 2022.

Council Decision (CFSP) 2022/2478 of 16 December 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.LI.2022.322.01.0614.01.ENG&toc=OJ%3AL%3A2022%3A322I%3ATOC

Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [consolidated text]

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014D0512-20221204

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NATIONAL

BULGARIA

[BG] Bill for implementation of Directive 2019/789 and Directive 2019/790 submitted to the Parliament

Nikola Stoychev
Dimitrov, Petrov & Co., Law Firm

On 22 November 2022, the caretaker government in Bulgaria submitted the *Законопроект за изменение и допълнение на Закона авторското право и сродните му права* (draft Bill for amendment and supplement to the Copyright and Neighbouring Rights Act – the Bill) to Parliament for adoption.

The Bill would transpose the EU directives concerning copyright, namely: 1) Directive 2019/789 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes; and 2) Directive 2019/790 on copyright and related rights in the Digital Single Market.

The implementation process of the acts in Bulgaria started early (in June 2020) with preliminary non-official consultations on a preliminary draft of the Bill, initiated by the *Министерство на културата* (Ministry of Culture). All major stakeholders took part in this process and helped the Ministry refine the draft.

Based on that process, in September 2021, an updated draft of the Bill was published by the Ministry for official public consultation. This happened after the implementation deadlines had already passed and after the European Commission (EC) had opened infringement procedures against 23 Member States (including Bulgaria). All relevant stakeholders (including international companies that would be affected by the new rules) became involved again and provided detailed statements and proposals for amendments. In accordance with these proposals, a final draft of the Bill has been approved by the caretaker government and has now been submitted to Parliament.

The delay was largely due to the conflicting interests of the affected stakeholders and the controversies over some of the text of the Directives. In addition, since 2020 Bulgaria has been in a political stalemate (with several Parliamentary elections, a presidential election and now a lack of clarity if a government will be formed), which has further prolonged the process.

The Bill seems to include the mandatory requirements of Directive 2019/789 and Directive 2019/790. It introduces a handful of the provisions that are left to the discretion of each Member State and even proposes changes to longstanding provisions that are not, in fact, covered by the directives. The proposed Bill, however, could undergo significant changes during the parliamentary process for

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its adoption, considering the interests of all parties in the industry chain – especially regarding the discretionary rules.

Законопроект за изменение и допълнение на Закона авторското право и сродните му права

https://www.parliament.bg/bg/bills/ID/164507

Bill for amendment and supplement to the Copyright and Neighbouring Rights Act

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CZECHIA

[CZ] Broadcasting Council imposes fine for inappropriate advertisment

Jan Fučík
Česká televize

The television broadcaster, AMC Networks Central Europe s.r.o., has been found by the Broadcasting Council to have committed an offence contracy to Article 60(1)(l) of Act No. 231/2001 Coll. by violating the provisions of Article 49(1)(c) of the same Act. Under this last Article, broadcasters are obliged to ensure that any commercial communication regarding erotic services and products, or human medicinal products or dietary supplements to support erections and sexual performance are not broadcast between 06:00 a.m. and 10:00 p.m.

At 2:07 p.m. on 15 January 2022, the network's SPORT2 programme broadcast an advertisement for "Arginmax". The Broadcasting Council found this to be a commercial communication containing the promotion of the food supplement ARGINMAX FORTE, a preparation for long-term improvement of erection and sexual performance. The advertisment included the audio: "Arginmax improves erections and sexual performance in the long-term" and the image of the words: “Arginmax improves erections and sexual performance long-term".

The communication showed a doctor, Radim Uzel, sitting behind a table in his office. A nurse is also in his office, reading a magazine. She says with surprise, "It says here that half of men over 50 already have erectile disfunction". The doctor quickly picks up a packet of Arginmax and says to the viewer, "And the other half takes Arginmax!"

The Council imposed a fine of CZK 10 000 for this misdemeanor.

Rozhodnutí Rady pro vysílání č.j.RRTV/11387/22

https://www.rrtv.cz/files/Pokuty/f98a6e04-66f3-4e47-bd8f-f63007ce9072.pdf

Decision of the Broadcasting Council Nr. RRTV/11387/22

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GERMANY

KJM approves age verification system based on biometric age checks

Sebastian Klein
Institute of European Media Law

On 7 November 2022, the *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM) announced that it had approved another age verification system, which means there are now 102 KJM-approved age verification systems on the market.

The latest system to be approved, known as "FaceAssure", was devised by Privately SA. Machine learning was used to train it to estimate a person's age based on their biometric features. In order to mitigate the fact that some young people look older than they really are, the KJM requires the system to operate a five-year buffer. It must therefore estimate a person's age to be at least 23 in order to grant them access to content suitable for adults only (18+). The system is also designed to prevent users submitting still images, while the biometric data transmitted is only stored on the user's own device, an example of Privacy by Design.

The KJM, after examining the system, concluded that the version submitted, when used as a partial solution, was a suitable identification mechanism under its criteria for guaranteeing a closed user group of adults pursuant to the German *Jugendmedienschutz-Staatsvertrag* (State Treaty on the Protection of Minors in the Media - JMStV).

According to the JMStV, certain telemedia content, that is likely to impair the development of young people, may only be distributed if the provider ensures that it is only accessible for adults. Technical systems that are designed to prevent children and adolescents accessing such content can be submitted to the KJM, which will check whether they meet the legal requirements.

In principle, face-to-face checks are required to compare a person's face with an official identity document. However, a face-to-face check is not required if software is used to automatically determine the person's likely age, using biometric characteristics from a live camera image, and generates a reliability score for the age verification result.

Pressemitteilung der KJM

https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/kjm-bewertet-altersverifikationssystem-mit-biometrischer-alterskontrolle-positiv

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KJM press release

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[DE] Broadcasting Commission and Federal Council adopt position on EMFA

Sebastian Klein
Institute of European Media Law

At its meeting on 19 October 2022, the *Rundfunkkommission* (Broadcasting Commission) of the German *Länder* expressed its views on the proposed European Media Freedom Act (EMFA). The draft Act had been published by the European Commission on 16 September.

The EMFA is designed to protect media pluralism and independence in the EU. It also includes special rules for public service media and establishes an EU-wide media regulation authority. Its key objective is to protect the independence of the media and media professionals. It bans state interference, in particular direct and indirect state influence on journalists or their family members. This includes searches, sanctions and similar measures. In particular, the use of spyware is prohibited, except on grounds of national security. The proposal also contains various transparency obligations concerning media and media ownership.

The Broadcasting Commission's statement was critical of the EMFA. Although it shared the European Commission's wish to guarantee and protect media diversity and independence in Europe, the Broadcasting Commission did not believe that the EMFA was an effective way of achieving this. It thought that the creation of supposedly good competitive conditions was not enough on its own to ensure that the broadest possible variety of topics and opinions would receive media coverage or be accessible to users. The purely economic view of media and media companies, created by the single market, fell short and led to concentration in the media sector. In its current form, the proposed legislation was a threat to diversity at national, regional and local level.

The Broadcasting Commission stressed in particular that cultural sovereignty and, therefore, competence for media regulation, lay with the member states, and that this was not sufficiently reflected in the proposal. The *Länder* feared that the EMFA would lead to significant centralisation at European level, with the European Commission exercising too much influence. From the point of view of a broadcasting system such as the one in Germany, which was independently regulated and deliberately decentralised for this very reason, this had to be viewed critically.

In their resolution, the *Länder* promised to take every possible step, including legal measures at both national and European level, to protect diversity. In particular, they expressly mentioned the possibility of instigating court action to assert their rights to be involved in the legislative process, which were enshrined in the *Grundgesetz* (Basic Law).

Meanwhile, at its meeting on 25 November 2022, the *Bundesrat* (Federal Council), the second chamber of the German parliament alongside the *Bundestag*, referring to the Broadcasting Commission's position, unanimously adopted a so-called

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"subsidiarity complaint" alleging violation of the division of powers. The *Länder* claimed that the proposal, especially in its form as a Regulation, lacked an adequate legal basis, interfered with national sovereign rights, and went against the principles of subsidiarity and proportionality.

Beschluss der Rundfunkkommission vom 19.10.2022

https://www.rlp.de/fileadmin/rlp-stk/pdf-Dateien/Medienpolitik/Beschluesse_der_Rundfunkkommission/2022-10-19_RFK-Beschluss_zum_EMFA.pdf

Broadcasting Commission resolution of 19 October 2022

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[DE] Public broadcasting reforms adopted

Sebastian Klein
Institute of European Media Law

At their meeting on 21 October 2022, the Minister-Presidents of the German *Bundesländer* adopted the *3. Medienänderungsstaatsvertrag* (third state treaty amending the state media treaty), which, among other things, sets out the framework for public service broadcasting in Germany, defines the remit of the broadcasters that make up the ARD, ZDF and Deutschlandradio, and contains guidelines for jointly organised channels and additional services.

At the heart of the reforms is a new definition of the remit of public broadcasters. Under their remit, the public broadcasters are to act as a medium and factor in the process of the formation of free individual and public opinion through the production and transmission of their offers, thereby serving the democratic, social and cultural needs of society. In their offers, the public-service broadcasting corporations must provide a comprehensive overview of international, European, national and regional events in all major areas of life. In so doing, they must further international understanding, European integration, social cohesion and dialogue involving the whole of society at federal and state levels. According to the treaty's explanatory memorandum, the new definition of the programming remit is designed to be much more detailed than before. It takes into account the case law of the *Bundesverfassungsgericht* (Federal Constitutional Court), under which the *Länder* are responsible for determining the programming remit, as well as taking relevant media policy and programming decisions. The revised treaty includes a new provision emphasising the importance of public broadcasting as a platform for dialogue involving the whole of society. The explanatory memorandum states that the diversity of offers should "also include aspects that extend beyond standard formats aimed at mass audiences, and keep a journalistic eye on the entire spectrum of different perspectives and realities. At the same time, public broadcasters should aim to reach all sections of civil society with an overall offer and create for all these social groupings an inclusive space for communication and debate characterised by public-service quality standards".

The amended treaty also highlights the important role that a public broadcasting system, that is broadly embedded in society, can play in promoting democracy. Not least in an effort to close the generation gap in terms of the use of public broadcasting services. It specifically states that all age groups, especially children, adolescents, young adults and families, should be targeted. Insofar as public broadcasters should not only address aspects of culture, education, information and advice, but also provide entertainment, such offerings should reflect the public-service profile of the broadcasters.

Public broadcasters' online remit is also developed further, with broadcasters permitted to move certain channels onto the Internet. Their supervisory bodies are also given additional responsibilities. In particular, they must ensure

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“economical and efficient budgetary and financial management”, lay down “quality standards for content and form” and develop “standardised inspection processes”.

As a result of the amendments, there could be fewer linear channels and more purely online broadcasters in the future. The only linear television channels that remain mandatory are Das Erste, ZDF, the Dritte channels that make up the ARD, and the cultural channels 3sat and Arte. All other TV channels can now be moved online with the agreement of the supervisory bodies. These mainly include special-interest public-service channels such as the Kinderkanal or channels such as tagesschau24 or ZDFinfo, which mainly broadcast documentaries or news programmes. It is currently unclear whether broadcasters will take this opportunity to move these channels onto the Internet.

The draft must now be ratified by the 16 state parliaments and is expected to enter into force on 1 July 2023.

Dritter Staatsvertrag zur Änderung medienrechtlicher Staatsverträge (Dritter Medienänderungsstaatsvertrag)

https://www.rlp.de/fileadmin/rlp-stk/pdf-Dateien/Medienpolitik/Rechtsgrundlagen__Staatsvertraege_/3_MAEStV_final_Druckfassung.pdf

Third state treaty amending the state media treaty

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FRANCE

[FR] ARCOM issues C8 with formal notice for failing to exercise restraint in relation to ongoing judicial proceedings and opens sanction procedure

Amélie Blocman
Légipresse

Following a heated argument between TV presenter Cyril Hanouna and an opposition MP on the set of the programme '*Touche pas à mon poste*', broadcast on C8 on 10 November 2022, the French audiovisual regulator, ARCOM, through its director general, announced that it had referred the matter to the independent rapporteur, a member of the *Conseil d'Etat*, in accordance with Article 42-7 of the Law of 30 September 1986. Taking into account previous warnings issued to the C8 channel, the rapporteur considered that the incident justified the instigation of a sanction procedure. The independent rapporteur now needs to decide whether to institute legal proceedings and investigate the on-set altercation between the presenter and the MP.

The day before the argument, the ARCOM had already issued a formal notice to the channel after references to the murder of young girl in Paris on 14 October had been broadcast during the episodes of '*Touche pas à mon poste*' on 18, 19 and 24 October.

After receiving numerous complaints about the disputed sequences, the ARCOM found that, even though the judicial investigation of the case had still been ongoing, the presenter had repeatedly commented on how the person under investigation should be tried and punished, as well as their psychological profile. In particular, he called several times for a trial to be held quickly and for life sentences to be issued automatically in such cases.

The ARCOM considered that, in view of the repeated nature of these sequences, the broadcaster had breached its obligation to exercise restraint when dealing with an ongoing court case, an obligation enshrined in its decision of 18 April 2018 concerning the honesty and independence of information and news programmes. The ARCOM noted, among other things, that the presenter had given his opinion at great length without any opposing argument being expressed, which represented a breach of the broadcaster's obligation to respect the expression of different viewpoints on a controversial issue. The ARCOM therefore issued a formal notice to C8.

Arcom, décision n° 2022-704 du 16 novembre 2022 mettant en demeure la société C8

https://www.legifrance.gouv.fr/download/pdf?id=QbesWdclvEgekw0Esll9qDkhrqEkpM01d0ueR1WkGMM=

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ARCOM, decision no. 2022-704 of 16 November 2022 issuing a formal notice to C8

Séquence de l'émission « TPMP » diffusée le 10 novembre 2022 : le directeur général de l'Arcom saisit le rapporteur indépendant

https://www.arcom.fr/larcom/presse/sequence-de-lemission-tpmp-diffusee-le-10-novembre-2022-le-directeur-general-de-larcom-saisit-le-rapporteur-independant

Sequence from the programme "TPMP" broadcast on 10 November 2022: Arcom's Director General General of Arcom refers the matter to the independent rapporteur

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[FR] Conseil d'Etat powerless to annul ARCOM's formal notice requiring pornographic website to block access to minors

Amélie Blocman
Légipresse

The provider of the Pornhub website asked the *Conseil d'Etat* (Council of State) to annul the formal notice addressed to it on 13 December 2021 by the president of the *Conseil supérieur de l'audiovisuel* (the previous French audiovisual regulator – CSA), which has since been replaced by ARCOM, on the grounds that the CSA had acted outside its remit. Alleging that the company was allowing minors to access pornographic content, the formal notice ordered it to take all necessary measures to comply with Article 227-24 of the Penal Code. According to Article 23 of the Law of 30 July 2020, "if a provider of an online public communication service is found to be allowing minors to access pornographic content in violation of Article 227-24 of the Penal Code, the ARCOM president will send it – in a manner in which the date of receipt can be proven – a formal notice ordering it to take all possible steps to prevent minors accessing the content concerned. The recipient of the injunction then has 15 days in which to present its observations. If the injunction is breached and the content remains accessible to minors after this deadline, the ARCOM president may refer the matter to the president of the Paris judicial court with the request that, ruling on the merits under the accelerated procedure, it should order the persons mentioned in Article 6(I)(1) of Law no. 2004-575 of 21 June 2004 on confidence in the digital economy to block access to the service. The French public prosecutor is informed of the court president's decision (…)."

The *Conseil d'Etat* ruled that the formal notice provided for in the first paragraph of Article 23 of the Law of 30 July 2020 was indissociable from the procedure that could be instigated by the ARCOM president with the Paris judicial court if the recipient failed to comply. It was therefore not a decision that the *Conseil d'Etat* had jurisdiction to review. The application was therefore rejected on the grounds that it had been submitted to a judicial body without the necessary jurisdiction. There was also no need to rule on the request for a constitutionality ruling to be referred to the *Conseil constitutionnel* (Constitutional Council).

CE, 29 novembre 2022, N° 463163, Société MG Freesites Ltd

https://www.legifrance.gouv.fr/ceta/id/CETATEXT000046663432?init=true&page=1&query=&searchField=ALL&tab_selection=cetat

Conseil d'Etat, 29 November 2022, no. 463163, Société MG Freesites Ltd

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[FR] Suspension of ARCOM decision on Eutelsat retransmission of Russian channels

Amélie Lacourt
European Audiovisual Observatory

French company Eutelsat, in which the French state is the biggest shareholder, provides the satellite transmission of television channels and radio stations including Russian channels Rossiya 1, Perviy Kanal and NTV, which are distributed by NTV+ and Trikolor in Russia, Ukraine and the Baltic countries.

Since July 2022, Reporters Without Borders (RSF), an international non-profit organisation that seeks to defend and promote freedom of information, has been challenging Eutelsat's activities. It claims that content broadcast by the Russian channels breaches the obligations of audiovisual media and satellite operators in relation to respect for human dignity and media independence and pluralism. Meanwhile, NTV+ and Trikolor have recently stopped carrying eight international news channels (BBC World, CNN, Deutsche Welle, Euronews (in Russian), France 24, NHK World, RAINews 24 and TV5 Monde).

In this context, RSF has stepped up its efforts to end the dissemination of disinformation and content that incites hatred and violence against the Ukrainian population and that calls for mass extermination. It began by calling on the French authorities to reallocate the satellite slots used by the Russian channels to independent media. Then, on 8 September 2022, considering that, under Article 43-4 of the French freedom of communication law of 30 September 1986 (known as the Léotard law), the three channels were subject to French jurisdiction and to the authority of ARCOM (the French audiovisual and digital communications regulator), RSF asked ARCOM to order Eutelsat to stop transmitting them.

According to Article 43-4, ARCOM has legal authority if TV signals are transmitted from a satellite uplink station located in France or another European Union member state, or if the transmission involves the use of satellite capacity over which France has jurisdiction.

Just a few weeks later, on 29 September, ARCOM declared that it lacked the legal authority to grant RSF's request. It claimed that the location of the satellite uplink was uncertain and that the number of EU citizens having access to the channels via Eutelsat could only be very small since they were aimed at Russian territory and were encrypted.

On 17 November, RSF therefore asked the *Conseil d'Etat* (Council of State) to overrule ARCOM's assertion and asked an administrative judge to suspend its decision. In a ruling of 9 December 2022, the *Conseil d'Etat* then suspended the execution of ARCOM's decision and ordered the regulator to re-examine RSF's request. It ruled that there was "serious doubt about the legality of the decision" because ARCOM had failed to examine whether it had jurisdiction under Article 43-6 of the law of 30 September 1986 and Article 5 of the European Convention

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on Transfrontier Television of 5 May 1989 (to which France and Ukraine are parties). The *Conseil d'Etat* also emphasised the "conditions in which the disputed television services are distributed and broadcast in the Ukrainian territories annexed by Russia in 2014 and 2022".

Conseil d'État 468969, lecture du 9 décembre 2022, ECLI:FR:CEORD:2022:468969.20221209 Decision n° 468969

https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2022-12-09/468969

Council of State 468969, reading of 9 December 2022, ECLI:FR:CEORD:2022:468969.20221209 Decision no. 468969

Dans le dossier Eutelsat, le Conseil d'Etat donne raison à RSF contre l'Arcom

https://rsf.org/fr/dans-le-dossier-eutelsat-le-conseil-d-%C3%A9tat-donne-raison-%C3%A0-rsf-contre-l-arcom

French regulator told to reconsider RSF's request for ban on Russian propaganda broadcasts by Eutelsat

https://rsf.org/en/french-regulator-told-reconsider-rsf-s-request-ban-russian-propaganda-broadcasts-eutelsat

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UNITED KINGDOM

[GB] Ofcom Opinion determines BBC News online article breached BBC Editorial Guidelines.

Julian Wilkins
Wordley Partnership

Ofcom has issued an opinion concerning a BBC News online article published on the 2 December 2021 about an antisemitic attack on Jewish students. The article was considered not to have observed due accuracy and impartiality with the consequence of being in breach of the BBC's Editorial's Guidelines. Additionally, Ofcom investigated a news broadcast on the BBC concerning the same attack and this was found not to have breached Rule 5.1 (due accuracy and impartiality) and 5.2 (correcting significant mistakes quickly) of the Ofcom's Broadcasting Code.

On the 29 November 2021 a group of Jewish students aboard a privately -hired bus in Oxford Street, London, was subjected to an antisemitic attack whilst celebrating Chanukah. One of the students recorded some of the incident. One of the passengers aboard the bus had also made a short recording of the incident

The BBC reported the incident on 2 December 2021 in both an online article and a news report broadcast on BBC London News. Referring to the audio recording, both reports reported that "*racial slurs about Muslims*" could be heard from within the bus. A Hebrew phrase meaning "*Call someone, it's urgent*" was identified instead by the BBC as the slur "*dirty muslims*". This inaccuracy caused significant upset to the Jewish community and complaints to Ofcom. Other aspects of the reporting suggested that there had been wrongdoing on the bus and they were protagonists as much as the antisemitic attackers.

Regarding the BBC online content, under the BBC Charter Agreement, the BBC is responsible for editorial standards with Ofcom having no requirement to investigate nor enforcement powers. Ofcom has an Online Arrangement with the BBC whereby if a complaint raises potentially substantive issues under the relevant guidelines then Ofcom can investigate and provide an Opinion as to whether the BBC has breached its editorial guidelines.

Ofcom has investigative and enforcement powers in respect of the broadcast version of the same story.

The BBC online article remained unaltered for almost eight weeks despite complaints and information showing the original report was inaccurate. The BBC published a separate article on the 8 January 2022 disputing the anti-Muslim slur. However, the original inaccurate article remained published. There was no hyperlink to the 8 January article to show the revision to the explanation concerning the events. The 2 December 2021 article remained unamended until the BBC's Executive Complaints Unit (ECU) had published its determination on the

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26 January 2022 with the consequence the article was revised to say the audio recording was disputed by Hebrew speakers and others. Meanwhile, the unamended article had caused significant upset to the victims of the attack and the wider Jewish community.

Ofcom concurred with the ECU's findings that the offending article had fallen short of the BBC's Editorial Guidelines, including section 3 relating to due accuracy and section 4 about due impartiality.

Ofcom considered the action taken by the BBC on 26 January 2022 was sufficient to correct matters but the broadcaster's failure to act sooner to remedy the breach of the BBC's Editorial Guidelines sooner was a significant and concerning omission. Ofcom commented that had the BBC acted sooner this could have gone some way to resolve the issues raised by the complainants and would have enabled the focus of attention to be on the incident, and not on the BBC's reporting.

Regarding the broadcast version, Ofcom acknowledged that it was an unscripted live report and the reporter's intended meaning "*was not expressed with complete clarity*." Further, the reference to the BBC hearing slurs about Muslim people in the footage represented a brief section of the report which had predominantly focused on the attack on the bus and the police's investigation of the antisemitic attack, the impact on its victims and the circulation of one of the victim's mobile phone recordings on social media. Also, at the time of broadcast the alternative interpretation that the words on the recording did not include an anti-Muslim slur was not known until later.

The BBC responded quickly when they became aware that their reporting had mischaracterised the words on the mobile phone recording. Therefore, Ofcom determined that at the time of broadcast the news report was duly accurate and had not breached Rule 5.1 of

Ofcom rules, namely " *News, in whatever form, must be reported with due accuracy and presented with due impartiality*." This finding had the consequence that Rule 5.2 had not been breached namely: "*Significant mistakes in news should normally be acknowledged and corrected on air quickly* .."

BBC News Online and BBC London News – Ofcom Broadcast and On Demand Bulletin issue 461, 7thNovember 2022.

https://www.ofcom.org.uk/__data/assets/pdf_file/0023/247163/BBC-News-Online-and-BBC-London-News-2-December-2021.pdf

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[GB] Ofcom reports on its first year of VSP regulation

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Ofcom, the UK's communications regulator, published its first report on video-sharing platforms (VSPs) since becoming the statutory regulator for such platforms established in the UK. This is the first of its kind under the VSP regime and reveals information previously unpublished by in-scope regulated companies.

- Platforms' compliance with the new VSP regime

Ofcom's report outlines the regulator's key outcomes from the first year of regulation (October 2021 to October 2022). Its findings stem from the use of the regulator's statutory powers under section 368Z10(3) of the Communications Act 2003 to issue enforceable information requests to all notified VSPs.

Specifically, some platforms made positive changes to their systems and processes in light of new VSP requirements, e.g., TikTok's dedicated online safety committee to provide oversight of content and safety compliance, Snapchat's parental control feature, and OnlyFans' age assurance tools for all new UK subscribers. However, Ofcom found that platforms provided limited evidence of how well their user safety measures operate, blurring as a result their effectiveness and consistency. It also emerged that some platforms are not adequately resourced, equipped and prepared for regulation. There is a clear need for some of them to improve the quality of their responses to the regulator's information requests. Moreover, Ofcom found that risk assessment processes were not prioritised by platforms, despite their importance in proactively identifying and mitigating safety risks. Risk assessments, however, will be a requirement on all regulated services under future online safety laws that will eventually supersede the VSP regime. Finally, some adult VSPs' access control measures were not found to be sufficiently robust in preventing children from accessing pornographic content.

Moving towards the second year of the implementation of the regime, Ofcom will dedicate most of its attention to the comprehensiveness of user policies (also known as Community Guidelines), including their application and enforcement; the availability of appropriate tools empowering users to tailor their online experience; and the implementation of suitable age verification (AV) mechanisms to protect children from harmful online content, including pornography.

To increase transparency of platform processes and raise awareness of how VSPs protect against harmful content, Ofcom's report also sets out the measures adopted by some platforms to protect their users. The following platforms were reviewed in particular: TikTok, Snapchat, Twitch, Vimeo, BitChute, and some smaller VSPs including Fruitlab, ReCast Sport and Thomas Cook, as well as smaller adults VSPs like AdmireMe, FanzWorld and Xpanded. The report explains the

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governance processes within each regulated service (giving detail on their systems for online safety risk management) and the journey followed by users/ subscribers on each of these platforms.

- Additional sets of research

Ofcom also made available a report on the *VSP Landscape* in the UK, describing the context in which providers apply protection measures. The report offers insights into: (a) who the notified VSP providers are; (b) how many users of VSPs there are in the UK and their demographics; (c) what the main business models used by VSP providers are; and (d) what information VSP providers make publicly available in their transparency reports.

With the aim of building its evidence base around the appropriateness of certain protection measures, Ofcom commissioned further sets of research to understand people's experiences of using (and attitudes towards) safety measures on VSPs. The research explored a range of users' perspectives, from parents (or carers) of children aged 6-17 to users of porn platforms.

More specifically, the *VSP Parental Guidance Research* looked at parents' attitudes towards children's online behaviours. In summary, it found that parents tended to perceive VSPs generally as having a constant and unregulated stream of content. Based on their current understanding and the information available to them, six in ten parents said they did not use parental controls on the VSPs that their child uses, because their child "did not need them". Just over half of parents remembered seeing or receiving guidance on how to keep their child safe online from multiple sources (government websites being the most trusted). However, the study revealed that the process of finding information on online safety was described by many parents as overwhelming and often only prompted by a specific incident (e.g., school guidance, discovering their child was looking at inappropriate content). Parents were also appreciative of safety guidance from VSPs that was clear, digestible, accessible, and easy to understand.

An additional set of research, i.e., *Adult Users' Attitudes to Age-Verification (AV) on Adult Sites*, found that, although there was broad support from adult participants for age assurance measures to prevent under-18s from accessing online pornography, UK adult sites were not doing enough to protect children. The biggest adult video-sharing site, OnlyFans, introduced new age verification in response to regulation (using third-party tools) but smaller sites based in the UK did not have sufficiently robust access control measures. Subscriber sign-on processes show that smaller UK-established adult VSPs have AV measures in place when users sign up to post content, but users can generally access adult content simply by self-declaring that they are over 18. Ofcom's research showed that 81% of participants accepted AV measures where these were expected in general (e.g., whilst purchasing alcohol online or participating in online gambling). A similar proportion (80%) felt Internet users should be required to verify their age when accessing pornography online, especially on dedicated adult sites. The use of a credit card was the preferred means of AV for paid access to

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pornography. Serious concerns were expressed by participants about how user data might be processed and stored during AV processes to access pornography, reflecting a very low level of trust in the data privacy practices of adult sites.

These findings will inform Ofcom's regulation of VSPs, including the rules on the protection of children, and its engagement with notified providers.

Ofcom's first year of VSP regulation

https://www.ofcom.org.uk/__data/assets/pdf_file/0032/245579/2022-vsp-report.pdf

The VSP Landscape: understanding the VSP industry in the UK

https://www.ofcom.org.uk/__data/assets/pdf_file/0030/245577/2022-vsp-landscape.pdf

VSP Parental Guidance Research Summary Report

https://www.ofcom.org.uk/__data/assets/pdf_file/0031/245578/2022-vsp-parental-guidance-research.pdf

Adult Users' Attitudes to Age Verification on Adult Sites

https://www.ofcom.org.uk/__data/assets/pdf_file/0029/245576/2022-adult-attitudes-to-age-verification-adult-sites.pdf

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ITALY

[IT] The Italian Court of Cassation allows global delisting/removal orders against search engines

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On 15 November 2022 through decision no. 34658/2022 (the Decision), the Italian Court of Cassation confirmed the legitimacy of global delisting/removal orders against search engines.

The case originated in 2017 when the Italian Data Protection Authority (*Garante per la Protezione dei Dati Personali* – Garante) ordered a search engine to delist from its services the URLs that were the object of the proceedings, and also referred to the non-European versions of the same search engine, thereby issuing a *de facto* global delisting order. The search engine appealed the Garante's decision before the Court of Milan which, through a decision of 21 September 2020, accepted the search engine's arguments and stated that Italian law does not allow an extraterritorial and global application of the Italian Data Protection Law (at the time, Legislative Decree No. 196/2003 prior to the amendments introduced in compliance with Regulation EU 2016/679) or of the resolutions adopted by the Garante.

The decision rendered by the Court of Milan was appealed by the Garante before the Court of Cassation. The Court of Cassation is called upon to ensure the correct interpretation and application of Italian law, rather than consider the merits of a case.

In reaching its conclusions, the Court of Cassation analysed, in particular, two judgments rendered by the Court of Justice of the European Union: Case C-507/2017, *Google v. CNIL* (the CNIL Case) and Case C-18/18, *Eva Glawischnig-Piesczek v. Facebook Ireland Limited* (the Glawischnig Case).

The Court of Cassation noted that, while in the CNIL Case, the CJEU had held that the data subject could request and obtain delisting from a search engine only in the versions of that search engine available in the territory of the European Union, on the contrary, in the Glawischnig Case, the CJEU had allowed a delisting order with global reach. Of relevance, the Court of Cassation also noted, however, that in the CNIL Case the CJEU had affirmed that while EU law did not require that the delisting granted in that case apply to all versions of the search engine, it also did not prohibit such a practice in general. Accordingly, the CJEU noted that "a supervisory or judicial authority of a Member State remains competent to weigh up, in the light of national standards of protection of fundamental rights [...] a data subject's right to privacy and the protection of personal data concerning him or her, on the one hand, and the right to freedom of information, on the other,

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and, after weighing those rights against each other, to order, where appropriate, the operator of that search engine to carry out a de-referencing concerning all versions of that search engine" (paragraph 72).

By analysing the aforementioned judgments, the Court of Cassation affirmed that although EU law does not require member states to ensure that data subjects availing themselves of the right to delisting are granted this on a global scale, it equally does not prohibit member states from affording such level of protection.

In the light of the foregoing, the Italian Court of Cassation set down the following groundbreaking principle: "With reference to the processing of personal data, the protection afforded to the data subject, which is closely related to confidentiality and personal identity and preordained to guarantee the personal dignity of the individual, pursuant to Articles 3(1) and Article 2 of the Italian Constitution, and expressed through the. "right to be forgotten" allows, in compliance with the law of the European Union, Italian authorities, i.e. the Italian Data Protection Authority (*Garante per la Protezione dei Dati Personali*) and judges, to order the operator of a search engine to carry out a delisting on all versions, including non-European versions, of the search engine, subject to balancing the right of the person concerned to the protection of his or her privacy and the protection of his or her personal data and the right to freedom of information, to be operated in accordance with the protection standards of the Italian legal framework" (paragraph 27).

Corte di Cassazione - Ordinanza n. 34658 del 15 novembre 2022

Court of Cassation - Decision No. 34658 of 15 November 2022

Court of Justice of the European Union - Case C-507/17

https://curia.europa.eu/juris/document/document.jsf?docid=218105&doclang=EN

Court of Justice of the European Union - Case C-18/18

https://curia.europa.eu/juris/document/document.jsf?text=&docid=218621&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=59923

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MOLDOVA

[MD] Six Moldovan TV channels suspended

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On 16 December 2022, the Commission for Emergency Situations (CSE), chaired by the Prime Minister Natalia Gavrilita, adopted a resolution that affected the audiovisual landscape of Moldova. The CSE was established in January 2022 to counteract the energy crisis in the country against the background of the state of emergency, introduced by the Parliament of Moldova. Its decisions are obligatory for public authorities, legal entities and individuals in the country.

The official statement says: “In order to protect the national information space and prevent the risk of disinformation through the spread of false information or attempts to manipulate public opinion, and based on the list of natural and legal persons subject to international sanctions, as well as the multiple findings of the Audiovisual Council regarding a lack of accurate information in the coverage of national events, but also of the war in Ukraine, the broadcasting license of six audiovisual media services will be suspended during the state of emergency”. Those services are the following TV channels: Primul in Moldova, RTR Moldova, Accent TV, NTV Moldova, TV6, and Orhei TV. They will keep their websites with news and other information.

Primul in Moldova retransmits the programming of Moscow’s "First Channel", RTR Moldova retransmits programmes of the Russian state broadcaster Rossiya TV, Accent TV retransmits Moscow’s entertainment channel “Pyatnitsa!”, NTV Moldova retransmits programmes of the Russian national NTV channel, TV6 retransmits programmes of TV6 Moscow, and Orhei TV retransmits programmes by “Tsentralnoe televidenie” owned by Moscow’s TVCenter company.

The resolution of the CSE resulted in protests by the channels as well as by the political opposition in Moldova.

CSE a aprobat măsuri privind securitatea energetică și protecția spațiului informațional, 16-12-2022

https://gov.md/ro/content/cse-aprobat-masuri-privind-securitatea-energetica-si-protectia-spatiului-informational

Press release of the Government of Moldova, 16 December 2022

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NETHERLANDS

[NL] Court rules that newspaper article critical of tax advisors was within the limits of journalistic freedom

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On 18 November 2022, the *Rechtbank Amsterdam* (Amsterdam District Court) delivered a judgment on the scope of journalistic freedom. The case concerned an online newspaper article about the modus operandi of two fairly well-known legal and tax advisors. While the advisors were portrayed particularly negatively, the Court ruled that the article was not unlawful and did not have to be corrected. Importantly, it held that the advisors should be considered "public figures" subject to increased criticism, and that the statements in the article had had a suffient factual basis.

The article in question, published by the national NRC newspaper, described how the advisors had been involved in a number of lawsuits over the years, most of which they had lost (e.g., on rent arrears and the wrongful seizure of the assets of a former client). During these procedures, they had reportedly left "a trail" of requests to disqualify judges. The article further highlighted that the duo was currently being prosecuted for blackmailing two Dutch public figures - a father and son - with the publication of an unauthorised family biography. It also noted that one of the advisors had recently been questioned on suspiscion of libel in his role as legal advisor for a foundation supporting victims of (sexually) transgressive behaviour.

After they had been informed of the forthcoming article, the advisors requested NRC refrain from publication. The newspaper did not comply with the request and published the article regardless. In response, the advisors initiated court proceedings requesting the rectification of alleged errors.

The Court first considered that granting the rectification would amount to an infringement of the newspaper's right to freedom of expression as protected by Article 10 of the European Convention on Human Rights (ECHR). As a general rule, an infringement could only be justified if it was prescribed by law, necessary to protect the legitimate interests as listed in Article 10(2) ECHR, and proportionate to those aims.

The Court then went on to assess the particular circumstances of the case. It held that the article had contributed to a public debate of general interest; that the advisors could be considered "public figures" who had to expect more criticism and scrutiny than ordinary individuals; that the (implicit) accusations in the article had a sufficiently strong basis in the facts; that there were no indications that NRC had purposefully wanted to harm the advisors; and that it had provided the advisors with the opportunity to express their views.

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Based on those considerations, the Court concluded that the article could not be regarded as unlawful so as to justify an infringement on the newspaper's journalistic freedom. The advisors' claim was therefore rejected.

Rechtbank Amsterdam, ECLI:NL:RBAMS:2022:6753, 18 november 2022

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2022:6753

Amsterdam District Court, ECLI:NL:RBAMS:2022:6753, 18 November 2022

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[NL] Report on the safety of female journalists in the Netherlands

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On 1 December 2022, a major report on the safety of female journalists was published. It included the finding that 8 out of 10 female journalists in the Netherlands have experienced some form of intimidation, aggression, or threats; and that this was “alarmingly common”. The report was published by PersVeilig - a well-known joint initiative of Dutch journalists and law enforcement, comprised of the Dutch Association of Journalists, Dutch Association of Editors in Chief, the Dutch Police and the Dutch Public Prosecution Service - and aims to strengthen the position of journalists against violence and aggression, including when reporting threats.

In September 2022, PersVeilig commissioned the research into the safety of female journalists and, following a survey of over 290 female journalists in the Netherlands, published a 48-page report detailing a number of significant findings. First, as mentioned above, 82 per cent of female journalists have experienced some form of intimidation, aggression or threats; and almost a third of female journalists experienced this monthly (19 per cent), or more often (11 per cent).

Second, more than half of female journalists had experienced online aggression at least once in the past twelve months, particularly via Twitter (50 per cent). The research showed that, compared to the entire professional group, female journalists were more often confronted with aggressive or intimidating statements via social media and less often with face-to-face incidents. A third of female journalists who had experienced aggression, threats or intimidation, perceived the incident to have been discriminatory on the basis of gender and that they had been abused or belittled on that basis.

Third, the research showed that aggression, intimidation and threats have a major impact on the work of female journalists. For six out of ten female journalists, aggression, intimidation and threats affect the way they do their job. In most cases, that meant choosing words more carefully (52 per cent), treating people differently (35 per cent), avoiding certain social media (23 per cent) or no longer publishing about certain topics (19 per cent).

Finally, 37 per cent of female journalists had not discussed an incident with an employer or colleague; while in only 7 per cent of cases, a report had been made to the police.

Notably, the report followed the recent announcement, by the Dutch State Secretary for Culture and Media (Staatssecretaris Cultuur en Media) and Minister for Justice and Security (Minister van Justitie en Veiligheid), of a series of new measures to protect press freedom and safety in the Netherlands (see IRIS 2022-

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8/15). The measures will include further research into specific aspects and target groups of harassment against journalists, such as online intimidation, aggression against female journalists and against journalists with a non-Western background, with the results providing insight for better policy.

PersVeilig, Research on safety of journalists, 1 December 2022

PersVeilig, Onderzoek veiligheid journalisten, 1 december 2022

https://www.persveilig.nl/over-persveilig/onderzoek

Nederlandse Vereniging van Journalisten, Gevolgen online agressie tegen vrouwelijke journalisten groot, 1 december 2022

https://www.nvj.nl/nieuws/gevolgen-online-agressie-tegen-vrouwelijke-journalisten-groot

Dutch Association of Journalists, Consequnces of online aggression against female journalists, 1 December 2022

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ROMANIA

[RO] Audiovisual media and the International Day for the Elimination of Violence against Women

Eugen Cojocariu
Radio Romania International

The National Audiovisual Council (CNA) joined the national campaign launched for the International Day for the Elimination of Violence against Women on 25 November, and supported by the Government of Romania through the Ministry of Family, Youth and Equal Opportunities (see inter alia IRIS 2011-9/31, IRIS 2012-1/39, IRIS 2012-4/36, IRIS 2014-3/38, IRIS 2017-6/27, IRIS 2019-8/35, IRIS 2022-5/15, and IRIS 2022-8/24).

In this context, the Council reminded broadcasters that in audiovisual programmes in which the topic of violence against women is addressed, it is mandatory to ensure that the public is informed of the existence of the telephone number for victims of domestic violence "Telverde", in accordance with Article 42 [2] of the Audiovisual Law no. 504/2002 (Chapter III [5] - Protection of victims of domestic violence).

During 2022, the Council warned broadcasters about the need to display the Telverde number on the screen, by sending letters both to television stations and to users who upload content, after analysing the monitoring reports related to audiovisual productions broadcast by central TV stations. The members of the Council took into account the fact that the characters in these productions are characterised by the way they speak and act. However, taking into consideration the image of women and gender stereotypes in traditional society, the Council drew attention to the fact that, even in the case of some audiovisual fictional productions in which female characters are victims, the Telverde number must be shown on screen.

The National Audiovisual Council has discussed the way in which women are presented in the audiovisual space as victims of domectic violence with representatives of broadcasters on several occassions this year, and, where it found deviations from the provisions of the legislation, decided to apply sanctions.

Among the sanctions given by the Council was a fine of RON 10 000 (approximately EUR 2 000) applied to a broadcaster for breaching the provisions of Article 47 paragraph (3) of the Audiovisual Content Regulation Code, according to which "[g]eneralising defamatory statements against a group/community defined by gender, age, race, ethnicity, nationality, citizenship, religious beliefs, sexual orientation, education level, social category, medical condition or physical characteristics are prohibited in audiovisual programmes".

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A public summons was applied by the CNA to a radio station because the broadcaster had breached the provisions of Articles 42^2 and 42^3 of the Audiovisual Law no. 504/2002. At the same time, seven public summonses were applied by the Council to some central television stations which were not observing the provisions of Article 42^2 of the Audiovisual Law.

Article 42^3 provides: “Informing victims of domestic violence about the existence of the telephone number "Telverde intended for victims of domestic violence" is done, in the case of broadcasters, by reading the text "In case of emergency, call the Telverde number intended for victims of domestic violence", accompanied by a note with the Telverde telephone number.

25 noiembrie - Ziua internaţională pentru eliminarea violenţei asupra femeilor - Comunicat de presă, 25.11.2022

https://cna.ro/article12283,12283.html

November 25 - International Day for the Elimination of Violence against Women - Press release, 25.11.2022

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[RO] Modification of the Audiovisual Law rejected

Eugen Cojocariu
Radio Romania International

On 24 October 2022, the Senate (upper chamber of the Romanian Parliament) rejected a draft law for the amendment and completion of Audiovisual Law no. 504/2002. The decision of the Senate was final (see inter alia IRIS 2011-4/31, IRIS 2011-7/37, IRIS 2013-3/26, IRIS 2013-6/27, IRIS 2014-1/37, IRIS 2014-2/31, IRIS 2014-7/29, IRIS 2015-1/27, IRIS 2016-10/24, IRIS 2017-1/30, IRIS 2017-7/28, IRIS 2018-6/30, IRIS 2018-8/36, IRIS 2018-10/22, IRIS 2019-1/31, IRIS 2019-2/21, IRIS 2019-4/29, IRIS 2019-5/22, and IRIS 2022-2/12).

The draft law had been tacitly adopted by the Chamber of Deputies on 23 May 2022, as a result of its exceeding the 45-day legal deadline to discuss and adopt draft laws. The draft law would have introduced the sign "C" (censorship) for audiovisual content (especially films and radio drama) produced during the totalitarian regimes that ruled Romania before 1989 and aired today by broadcasters in Romania. The introduction of the sign "C" was intended to reduce to a mimimum the impact of the propagandanistic ideas found in this content on a population which, for the most part, was too young in 1989 to clearly undestand the propaganda used by the totalitarian regimes.

In Article 17 paragraph (1) (d) after point 13, a new point, 14, was to be introduced: “14 – protection of the population against policies that promote, directly or indirectly, totalitarian ideologies”. In Article 29 paragraph (1), after letter i) a new letter was to be introduced, letter j): “j) not to promote, directly or indirectly, totalitarian ideologies”. In Article 42, after Chapter III^{5} – “Protection of victims of domestic violence”, a new Chapter would have been introduced, Chapter III^{6} – “Protection of the population against totalitarian ideologies”, with the following content:

“Art. 42^{5} – In the framework of broadcasting in television and radio services of programmes made during totalitarian periods, the population must be informed that those productions were made during a time when no freedom of expression was guaranteed”.

Art. 42^{6} – “In the case of radio stations, informing the population that those productions were made during a time when freedom of expression was not guaranteed shall be done by reading the following text: "This production was made under socio-political conditions that did not allow freedom of creation and expression".”

Art. 42^{7} – “In the case of television services, informing the population that those productions were made during a time when freedom of expression was not guaranteed shall be done through displaying the text: “This production was made under socio-political conditions that did not allow freedom of creation and

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expression", and shall be accompanied by a warning sign”.

Previously, on 1 February 2022, the *Consiliul Naţional al Audiovizualului* (National Audiovisual Council) had issued Recommendation no. 4/2022 regarding the broadcasting of some Romanian cinematographic productions made before 1989. The recommendation was made in order to inform the public about the historical and socio-political context in which the films had been created, some of which had a pronounced propagandistic character. When broadcasting a film, depending on its content, the Council recommended that broadcasters chose one of the following options: a) the broadcast of a discussion of Romanian film productions made before 1989, with the participation of guests who understood film productions from that period and the historical and cultural context in which they were made. This specialised analysis of those cinematographic productions could be done within the programme services either before or after the film's broadcast; b) by informing the public, at the beginning of the programme, of the broadcast of a Romanian film production made before 1989, by displaying, in a static and legible manner, the mention: "Film made during the communist period, in which broadcast was conditional on a censorship visa" or the mention: "Film made during the communist period, in which state censorship and propaganda operated". The choice is left up to the station, depending on the individual film.

According to the Audiovisual Law, the editorial decision to broadcast belongs exclusively to the broadcaster.

Projet de loi visant à modifier et à compléter la loi n° 504/2002 relative à l’audiovisuel -formulaire adopté par la Chambre des députés

Draft law for for the amendment and completion of Audiovisual Law no. 504/2002 - form adopted by the Chamber of Deputies

Recomandare CNA privind difuzarea unor producții cinematografice românești realizate înainte de anul 1989

https://cna.ro/article11710,11710.html

NAC recommendation regarding the broadcasting of Romanian cinematographic productions made before 1989

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SLOVENIA

[SI] Slovenian referendum on changes to the PSB Law

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In a referendum held on 27 November 2022, the majority of Slovenian citizens voted in favour of a change to the Law on RTV Slovenia, the main aim of which was to depoliticise the public service broadcaster RTV Slovenia. This is to be achieved by removing the role of the National Assembly in appointing members to the governing body and by replacing the Director General with a four-person board.

Since the change of government in Slovenia, the SDS (the opposition and former governing party) has pushed for a range of public referenda on legislative proposals of the new government. Two other referenda were held on the same day. One concerned the restructuring of the Government and the other was a legislative proposal to ensure long-term care for the elderly. All three referenda resulted in the approval of government legislation by the voters.

Regarding RTV Slovenia, there have been ongoing protests by journalists regarding alleged political interference by the leadership structures appointed under the previous government. The new Act will reorganise the broadcaster's management and governing bodies. The Governing bodies – formerly the Programme Council and the Supervisory Council – will be re-named the Council and the Financial Committee.

Previously, the procedure for appointing the Programme Council included five members directly selected by the National Assembly proposed by the political party. A further 16 members were appointed by the National Assembly based on candidates submitted from a range of universities and faculties as well as societies, associations of societies or their organisations, especially in the field of art, culture, science, and journalism, and other civil society organisations. The employees of RTV Slovenia elected three members. The Council also always included one representative from the Italian national community and one from the Hungarian community, one from the Academy of Sciences and Arts, and two representatives appointed by the president representing religious communities. The National Assembly previously also adopted the decision to appoint all of these members on the basis of a majority vote.

The new system for appointing the Council does not involve the National Assembly or the political parties. The size of the Council has been reduced. It still includes one representative from the Italian national community and one from the Hungarian, one from the Academy of Sciences and Arts, and now just one representative appointed by the president representing religious communities.

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The employees of RTV Slovenia now elect six members. The remaining members are directly selected following a public call to relevant organisations, made by the following organisations: the National Council for Culture (two members, one from the cultural sector and from the audiovisual sector); the Olympic Committee (one member from a sports federation or organisation); the Information Commissioner (one member from organisations active in the field of media, development of the information society and the promotion of transparency); and the Council for Sustainable Development and Environmental Protection (one member based on a public call to organisations active in the field of environmental, nature and climate protection).

The law changes the management structure, and RTV Slovenia will no longer be run by a director general but by a four-member management board. The president of the management board is appointed by the Council on the basis of a public tender, two additional members of the board are also appointed by the Council at the proposal of the president of the board, and the labour director is elected by the employees of RTV Slovenia in direct elections.

The Council appoints and dismisses the finance committee, which has five members. One member is proposed for appointment by each of the following: the Ministry responsible for finance; the Ministry responsible for the media; the Council of employees of the public institution RTV Slovenia; the Association of Supervisors of Slovenia (a training organisation for supervisory board members); and the Association of accountants, financiers and auditors of Slovenia.

Predloga zakona o spremembah in dopolnitvah Zakona o Radioteleviziji Slovenija 13. 5. 2022

https://imss.dz-rs.si/IMiS/ImisAdmin.nsf/ImisnetAgent?OpenAgent&2&DZ-MSS-01/8fe890d96268d37b177b8d171bd44c2b9fee80731a9c42adcb36a6ec5baf6dc5

Draft law on amendments and additions to the Act on Radio and Television Slovenia 13/05/2022

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UKRAINE

[UA] New statute on the media adopted

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On 13 December 2022, the Ukrainian Parliament, the Supreme Rada, adopted, during its second and final reading, the draft statute “On the Media”. The statute was signed by the President on 29 December 2022, and officially published on 31 December 2022. The statute enters into force on 31 March 2023.

This statute was debated by the deputies for several years and is one of the pledges that Ukraine undertook as a candidate country to the EU. It encompasses all forms of the media, and the relationship between various media actors. The statute is 279 pages long and has 10 chapters.

One of the chapters deals with the regulation of the media in times of military aggression against Ukraine. It includes restrictions on the content of the media, on the dissemination of media and media products from the “aggressor state”, and on the register of individuals that present a danger to national security.

The new statute annuls and replaces several current statutes of Ukraine, such as the 1994 Statute on Television and Radio Broadcasting (IRIS 2006-5/34), the 1995 Statute on Information Agencies (IRIS 1995-6/22), the 1997 Statute on the National Council on Television and Radio Broadcasting (IRIS 1997-8/20), the 1997 Statute On the Procedures of the Coverage of Activities of the Bodies of State Power and Bodies of Local Self-Government in Ukraine by the Mass Media (IRIS 1998-8/19) and the 2004 Statute on Protection of Public Morals (IRIS Plus 2006-06). Hundreds of other statutes are amended, even if just to replace the traditional term “means of mass information” for “media”.

“Media” is defined in Article 1 of the Statute (among some 60 other definitions) as “a means of dissemination of mass information in any form, which becomes public in a periodic or regular way under editorial control and a permanent title as its identifiable feature”.

The new statute incorporates a number of provisions of the Audiovisual Media Services Directive, such as on European works, works created by producers who are independent of broadcasters, and on a list of designated events.

The new statute met some criticism for providing legal grounds for a state-run national TV channel on the Parliament’s activity, “Rada” (as opposed to making it part of the public service media), and for increasing the powers of the national regulator, the National Council on Television and Radio Broadcasting, especially in the sphere of online media.

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ЗАКОН УКРАЇНИ Про медіа

http://www.golos.com.ua/article/367279

Statute of Ukraine “On the Media”, 13 December 2022, No. 2849-IX

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