



31.1.2019

NOTICE TO MEMBERS

Subject: Petition No 0481/2018 by S. D. (Lithuanian), on behalf of Lithuanian Russian Union, on bans imposed on Russian channels in Lithuania

1. Summary of petition

The petitioner complains about decisions of the Lithuanian government to ban the transmission of a great number of Russian TV channels in Lithuania. He argues that the decision is violating minorities' rights, is disproportional, and constitutes an assault on free speech.

2. Admissibility

Declared admissible on 10 October 2018. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 31 January 2019

Under the Audiovisual Media Services Directive¹ (hereinafter "AVMSD" or "the Directive"), Member States shall ensure freedom of reception of audiovisual media services. Hence, they shall not restrict retransmission on their territory of such services from other Member States for reasons which fall within the fields coordinated by the Directive.

Article 3(2) AVMSD allows Member States, in cases of manifest, serious and grave infringements of the provisions on the protection of minors or of the prohibition of incitement to hatred, to take certain measures derogating from the freedom of reception of audiovisual media services. This requires the Member State to follow a specific procedure to cooperate with the Member State of origin and the Commission. Pursuant to Article 3(2), the

¹ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (Text with EEA relevance), *OJ L 95, 15.4.2010, p. 1–24*.

Commission has to adopt a decision on whether the notified suspension is compatible with Union law.

Article 6 AVMSD provides that “Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality”.

On 8 March 2018, the Lithuanian authorities notified to the Commission the temporary suspension for a period of 12 months of the retransmission of the Russian-language television channel RTR Planeta, on the basis that RTR Planeta had infringed the prohibition of incitement to hatred. The Commission examined the notification pursuant to Article 3(2) AVMSD and on 4 May 2018 decided that the measures adopted by the Lithuanian authorities were compatible with EU law².

As it emerges from the Commission’s Decision, the channel in question broadcast on several occasions content inciting to violence and hatred on the basis of nationality. Among others, one (or more) participant(s) to the programmes called for physical violence against American and British people, the invasion of foreign countries such as Ukraine, the Baltic States, Germany and France, the restoration of the Soviet Union with all its previous territories and incited to shoot and deport the opposition to concentration camps.

The Commission found the infringements to be particularly serious, given that the statements partly related to an ongoing military confrontation involving Russia and contained unambiguous threats of occupation and/or destruction of other States, including the Baltic States. Moreover, the Commission noted that Lithuania has a sizable Russian-speaking minority, which appears to be the addressee of RTR Planeta, and that consequently tensions within Lithuania, with its history of formerly being part of the Soviet Union, could arise.

This is not the first time that the Commission has dealt with a notification by the Lithuanian authorities pursuant to Article 3(2) AVMSD concerning the repeated and serious infringement of the prohibition of incitement to hatred by the channel RTR Planeta. Already in 2015 and 2016, the Lithuanian Radio and Television Centre had adopted two separate decisions ordering the temporary suspension for a period of three months of the free reception of the television channel RTR Planeta in Lithuania. The Commission confirmed in its 2015 and 2017 decisions the compatibility with Union law of these measures³.

The petitioner does not appear to contest the conclusions reached by the Lithuanian authorities concerning the content of certain programmes broadcast by RTR Planeta. However, he raises two specific objections against the suspension decisions. First, he stresses that the channel in question broadcasts also a large number of programmes not containing incitement to hatred. According to the petitioner, therefore, the suspension decision would be disproportionate as it should have been limited solely to the specific programmes found to include incitement to hatred. Second, the petitioner alleges that the Lithuanian authorities have unlawfully extended the suspension measure to another channel, which was not distributed in Lithuania before the suspension decision.

As regards the first objection, the Commission observed in its Decision of 4 May 2018 that

² Commission Decision of 4.5.2018 C(2018) 2665 final.

³ Commission Decisions of 10.7.2015 C(2015) 4609 final and of 17.2.2017 C(2017) 814 final.

national authorities enjoy a margin of discretion in deciding which measures and/or sanctions to impose on broadcasters for infringements of the prohibition under Article 6 of the AVMSD. Accordingly, it would only question national measures in cases where they appear manifestly disproportionate, which was not the case in those circumstances. It should also be noted that Article 3(2) refers to a derogation from the freedom of reception of “audiovisual media services” in general and makes no reference to the need to target the suspension to the specific programmes (within the overall service) found to be in breach of the prohibition of incitement to hatred. In view of the above, the Commission would generally refer the petitioner to the Commission’s Decision, as well as to the previous decisions concerning RTR Planeta, where the Commission concluded that the suspension measures adopted by the Lithuanian authorities were compatible with EU law.

As regards the second objection, the Commission has received two complaints from Lithuanian distributors claiming that the Lithuanian authorities had wrongfully banned a Russian channel (Rossija RTR) other than the one that was subject to the suspension decision (RTR Planeta). The position of the Lithuanian authorities – also clarified in the context of the Article 3(2) notifications – is that RTR Planeta and Rossija RTR are in reality the same channel using different logos. While the Commission has not yet decided on those complaints, it is important to note that the issue complained about is currently pending before Lithuanian courts, as the distributors concerned have challenged the Lithuanian decision concerning Rossija RTR. The Commission Communication on EU Law⁴ stresses that certain individual cases of alleged incorrect application can often be satisfactorily dealt with by other, more appropriate mechanisms at (EU and) national level. In such cases, if there is legal protection available, the Commission will, as a general rule, direct complainants to the national level.

Conclusion

The Commission refers the petitioner to the Commission’s Decision of 4 May 2018, as well as to the previous decisions concerning RTR Planeta, where the Commission concluded that the suspension measures adopted by the Lithuanian authorities were compatible with EU law. As to the allegedly wrong application of those measures at national level against another channel, the Commission would direct the petitioner to the national level, namely to the cases pending before national courts that result from the appeals brought against the measures of the Lithuanian authorities.

⁴ Commission Communication, *EU Law: Better results through better application*, 2017/C 18/02, p. 15.