

## **CJEU, Baltic Media Alliance Ltd v Lietuvos radijo ir televizijos komisija, Case C-622/17, pending**

### Deciding bodies and decisions

COMMISSION DECISION of 10.7.2015 on the compatibility of the measures adopted by Lithuania pursuant to Article 3(2) of 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, Brussels, 10.7.2015, C(2015) 4609 final, at par. 18.

COMMISSION DECISION of 17.2.2017 on the compatibility of the measures adopted by Lithuania pursuant to Article 3(2) of 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, Brussels, 17.2.2017, C(2017) 814 final.

COMMISSION DECISION of 4.5.2018 on the compatibility of the measures adopted by Lithuania pursuant to Article 3 (2) of 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, Brussels, 4.5.2018, C(2018) 2665 final.

Request for a preliminary ruling from the Vilniaus apygardos administracinis teismas (Lithuania) lodged on 3 November 2017 — Baltic Media Alliance Ltd v Lietuvos radijo ir televizijos komisija, Case C-622/17

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### Area of law

Freedom of expression - hate speech

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### Subject matter

Which are the powers of Communication authorities in case of programmes containing incitement to hatred?

Which is the balance between prohibition of hate speech and freedom of broadcasting?

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### Summary Facts Of The Case

In 2015, the Lithuanian communication authority adopted a decision regarding the RTR Planeta, a Russian channel transmitted in in Lithuanian country via cable and satellite, which consisted in a temporary suspension of the re-transmission of the channel for three months. The decision was

based on the fact that RTR Planeta broadcast programmes that could “be considered as being aimed at creating tensions and violence between Russians, Russian-speaking Ukrainians and the broader Ukrainian population” as well as “inciting tensions and violence between the Russians and the Ukrainians but also against the EU and NATO States”. Therefore, they were deemed as incompatible with EU law and seriously and gravely infringing art 6 AVMS.

Accordingly, the Communication authority sent the decision to the European Commission, which found the decision compatible with EU law.

After such decision, the Communication authority tried to establish a dialogue with the broadcaster so as to enforce the application of EU law through the collaboration of the Swedish communication authority (being RTR Planeta a registered broadcaster in Sweden), which eventually ended up in another suspension order.

In 2018, the Communication authority informed the Commission of another set of infringements to art 6 AVMS. This time the order sanctioned the RTR Platena with a suspension of twelve months.

The Commission in evaluating the compliance with EU law of the Lithuanian Communication authority based its reasoning on the definition of “incitement to hatred” provided in CJEU decision, *Mesopotamia*, joined cases C-244/10 and C-245/10. In particular, the Commission evaluated if the Lithuanian authorities provided information on the content of programmes that could be qualified as incitement to hatred, “since they involve express language that can be considered on the one hand as an action intended to direct specific behaviour and, on the other hand, as creating a feeling of animosity or rejection with regard to a group of persons”.

Having confirmed the evaluation of the Lithuanian communication authority, the Commission acknowledged that freedom of expression is a fundamental right protected by the Charter, but it may be limited according to art 52(3) CFR. The express choice of the legislator regarding hate speech is then a legitimate ground for limitation.

As a result the Commission affirms the compatibility of the measure with EU law.

Few months before the decision of the Lithuanian Communication authority was taken, also a Lithuanian court faced the application of the provisions implementing art 6 AVMS in an administrative proceeding.

The Vilnius county administrative court received the appeal by Baltic Media Alliance against the decision of the Lithuanian Communication authority, requesting the annulment of the decision no. KS-12 of the latter prohibiting the retransmission of the Baltic Media Alliance channels in Lithuanian country. Similar to the previous case of RTR Planeta, Baltic Media Alliance received the information regarding the decision of the Lithuanian communication authority and decided to appeal against it before the Lithuanian courts.

The Vilnius administrative court decided then to stay the proceedings and present a preliminary reference to the CJEU presenting the following questions:

“Does Article 3(1) and (2) of Directive 2010/13/EU 1 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 cover only cases in which a receiving Member State seeks to suspend television broadcasting and/or re-broadcasting, or does it also cover other measures taken by a receiving Member State with a view to restricting in some other way the freedom of reception of programmes and their transmission?

Must recital 8 and Article 3(1) and (2) of 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 be interpreted as prohibiting receiving Member States, after they have established that material referred to in Article 6 of that directive was published, transmitted for distribution and distributed in

a television programme re-broadcast and/or distributed via the Internet from a Member State of the European Union, from taking, without the conditions set out in Article 3(2) of that directive having been fulfilled, a decision such as that provided for in Article 33(11) and 33(12)(1) of the Lithuanian Law on the provision of information to the public, that is to say, a decision imposing an obligation on re-broadcasters operating in the territory of the receiving Member State and other persons providing services relating to distribution of television programmes via the Internet to determine, on a provisional basis, that the television programme may be re-broadcast and/or distributed via the Internet only in television programme packages that are available for an additional fee?"

The case is still pending before the CJEU.

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### Relation to the scope of the Charter

Reference to the Charter was included also in the decision of the European Commission, affirming the legitimacy of the limitations to freedom of expression on the basis of art 52(3). In this case, then the Commission applies (without a very detailed analysis) the three steps test provided by the Charter.

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### Sources - EU and national law

- Directive 2010/13
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