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МФПЧ Латвийский комитет по правам человека

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TO: THE EUROPEAN COMMISSION

CONTRIBUTION FOR THE RULE OF LAW REPORT ON LATVIA

MEDIA PLURALISM

We express our concerns on the lack of the independence of the National Electronic Mass Media Council (NEMMC) as the Latvian media regulatory authority supervising the compliance of media service providers with the relevant laws.

Under the Electronic Mass Media Law¹, all five members of the NEMMC are elected by the Parliament and are nominated by its human rights commission, after a consultation with professional associations and NGOs. These rules have not prevented the ruling coalition from nominating all five members of the Council and have not effectively limited the risk of political influence over the media. As indicated by the Venice Commission, a system reflecting political diversity in relation to the composition of the Media Council might be considered as an option, in order to ensure that all major political parties and social groups have fair representation there². Although there is no single European model of organisation of the media regulatory authorities, the overarching principle is that an institution overseeing the media should be independent and impartial: this should be reflected especially in the way how their members are appointed³.

The role of the NEMMC as a regulator has been changed by the recent legislative reform in this area. Some of the competences of NEMMC were assigned to the newly established Public Electronic Media Council (PEMC). The new Law on Public Electronic Media and their management (*Sabiedrisko elektronisko plašsaziņas līdzekļu un to pārvaldības likums*) was adopted on November 19, 2020 and entered into force on January 1, 2021⁴. The above-mentioned Law assigned the competences over the management of the publicly-owned Latvian Television (LTV) and Latvian Radio to the separate institution, the Public Electronic Media Council (PEMC), which is now in charge of appointing and removing management and supervisory boards of the Public Electronic Media. Three members of the Council are appointed by the Parliament and are nominated as follows: one member – by the President, one

¹ <https://likumi.lv/ta/en/en/id/214039>

² CDL-AD(2015)015, Opinion on Media Legislation (Act CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary

³ CDL-AD(2020)013, Albania - Opinion on draft amendments to the Law n°97/2013 on the Audiovisual Media Service

⁴ it has not been officially translated yet, the Latvian version is here: <https://likumi.lv/ta/en/en/id/319096>

– by the Council on cooperation between the Cabinet and NGOs, one – by the Parliament. The PEMC has not been appointed up to now. The Parliament’s human rights commission has determined March 2 as the deadline for applying for the potential Parliament’s candidates⁵.

Another essential legislative reform in the field of electronic mass media is the change of share of languages in which the content of the programmes is originally formed.

With the amendments to the Electronic Mass Media Law adopted on July 6, 2020, entering into force on July 1, 2021, the new paragraph (12.¹) (*Retransmission Permit, Additional Conditions for the Provision of the Services of the Distribution of Retransmission and Television Programmes*) was introduced to the Section 19. These amendments have not been officially translated yet.⁶

The English version of the paragraph (12.¹) is as follows (unofficial translation from Latvian):

(12.¹) The provider of the television programme distribution service (including an electronic mass medium conducting retransmission of television programmes via cable television) has a duty to provide all its subscribers with a basic programme offer including the television programmes provided for in Paragraphs six, 6.1, eight, nine and twelve of this Section, as well as additional television programmes of which at least 80 per cent shall be the programmes the content of which is originally formed in one of the official languages of a Member State of the European Union or of the states of the European Economic Area (hereinafter – basic programme offer). Only such electronic mass media television programmes in respect of which the National Electronic Mass Media Council has not taken a decision on the prohibition of retransmission in the last three years, may be included in the basic programme offer.

It is worth noting that the population of Latvia is not homogenous in the usage of languages. According to the 2017 surveys by the statistical office, 37% of residents speak Russian at home.⁷ Moreover, an essential part of native Latvian-speakers are fluent in Russian. However, Russian is not the official language of any Member State of the European Union or of the countries of the European Economic Area. Therefore, the above-mentioned provision restricting to less than 20 % the amount of programmes the content of which may originally formed in Russian, essentially restricts the right of Latvian population to free access to information. As noted by the Advisory Committee on the Framework Convention for the Protection of National Minorities, the authorities should reconsider their approach to the quota requirements in the broadcasting media and develop, in close consultation with minority representatives and media professionals, more appropriate means to ensure that Latvian language speakers and speakers of national minority languages can benefit from a diverse but shared media space; efforts to promote the state language should be pursued through incentive-based methods rather than through the imposition of quotas or sanctions and flexibility must be applied to ensure that minority languages are not disproportionately affected or excluded from the media⁸. Most recently, on March 3, 2021, the Committee of Ministers of the Council of Europe has recommended to Latvia to “reconsider the approach to the quota requirements in the broadcasting media; develop, in close consultation with minority representatives and

⁵<https://lvportals.lv/dienaskartiba/324701-cilvektiesibu-komisija-aicina-pieteikt-kandidatus-sabiedrisko-elektronisko-plassazinas-lidzeklu-padomes-locekla-amatam-2021>

⁶ The Latvian version of the Law as amended is here: <https://likumi.lv/ta/id/214039-elektronisko-plassazinas-lidzeklu-likums>.

⁷ <https://www.csb.gov.lv/en/statistics/statistics-by-theme/population/census/search-in-theme/1442-home-latvian-spoken-62-latvian-population>

⁸ ACFC/OP/III(2018)001REV, Third Opinion on Latvia

media professionals, more appropriate means to ensure that Latvian language speakers and speakers of national minority languages benefit from a diverse and shared media space; pursue efforts to promote the State language through incentive-based and voluntary methods rather than through the imposition of quotas or sanctions”⁹.

The restrictions on the rebroadcasting of television programmes, the content of which is originally produced in Russian, are already established by a ban of retransmission of the programmes in respect of which the NEMMC has taken an appropriate decision.

On 8 February 2021, the National Electronic Mass Media Council has imposed a one-year ban on retransmission and distribution in the territory of Latvia the programmes of the channel "Rossija RTR", the main public channel of the Russian Federation (Decision Nr. 68/1-2.¹⁰

The NEMMC has found that information presented in several broadcasts of “Rossija RTR” violates Article 6 of the Audiovisual Media Services Directive and Section 26(3) and (4) of the Electronic Mass Media Law prohibiting incitement to hatred or discrimination, and calling for a military conflict.

The ban on retransmission of "Rossija RTR" in the territory of Latvia came into force on February 15, 2021, giving operators rebroadcasting television programmes via cable television a week to withdraw the channel from their basic programme offers¹¹.

On February 9, 2021 the NEMMC has decided to exclude the following 16 programmes broadcasting in Russian from the list of programmes to be rebroadcasted (Decision Nr. 69/1-2 (LV): “REN TV Baltic”; “NTV Mir Baltic”; “Karusel International”; “NTV Serial”; “NTV Stilj”; “NTV Pravo”; “Kinomiks”; “Nashe novoye kino”; “Rodnoye kino”; “Indiyskoye kino”; “Kinokomediya”; “Kinoseriya”; “KVN TV”; “Kukhnya TV”; “BOX TV”; “HD Life”¹².

This decision is explained by the reason that “*it is not possible to identify in the territory of Latvia the legal representative of broadcasting service provider of television programmes*”.

These latest activities of the NEMMC have injured broad parts of Latvia’s public, deprived of a major share of their usual television programme offer.

There are no possibilities for consumers to contest the restriction of the basic television programme offer. According to section 21.⁵ (*Prohibition to Distribute an Electronic Mass Media Audiovisual Programme and On-demand Audiovisual Service of Another Country*) of the Electronic Mass Media Law, “*the decision on prohibition to distribute an electronic mass medium programme or on-demand audiovisual service shall be a general administrative act*”.

In addition to the recent exclusion of the above-mentioned 17 programmes broadcasting in Russian, decisions to cancel the broadcasting permits of another 27 television programmes in Latvia were taken earlier, starting with June 13, 2019. Of these 44 programmes in total, only 10 decisions were based on the provider’s own initiative or on its refusal to pay the fee. Another

⁹ Resolution CM/ResCMN(2021)9

¹⁰https://www.neplpadome.lv/lv/assets/documents/Normativie%20Akti/Lemums_Nr.68_1_2_par_RTR_08.02.2021.pdf

¹¹ [https://www.neplpadome.lv/en/home/news/news1/the-national-electronic-mass-media-council-\(nemmc\)-has-imposed-a-one-year-ban.html](https://www.neplpadome.lv/en/home/news/news1/the-national-electronic-mass-media-council-(nemmc)-has-imposed-a-one-year-ban.html)

¹²https://www.neplpadome.lv/lv/assets/documents/Normativie%20Akti/Lemums_Nr.69_1-2_Par_izmainam_Latvijā_retranslējamo_audio_un_audiovizuālo_programmu_sarakstā_09.02.2021.pdf

26 decisions were explained by a failure to identify a legal representative in Latvia of a service provider of television programmes. Finally, the decision on 7 programmes, namely the ones produced by the multilingual TV network “RT (Russia Today)” as of June 30, 2020 was based on the assertion that economic resources were passed onto a subject to EU sanctions.

In general, out of all 44 programmes excluded since June 13, 2019, there are 30 broadcasting in Russian. It is crucial to realise that the aim of these NEMMC decisions was the limitation of all popular TV channels broadcasting in Russian, even the cultural or educational ones.

In our opinion, the rationale behind the above-mentioned NEMMC decisions is of a political nature and is aimed at eradicating information disseminated in Russian.

It should be also noted that since 2020, there is only one Latvian nationwide channel, namely the state-owned LTV-7, producing news programmes originally formed in Russian. Even these news programmes are planned to be eliminated soon from distribution via television¹³.

Moreover, on December 3, 2020, the Parliament adopted, in the first reading of the three, the bill No. 780/Lp13, “Amendment to the Pre-Election Campaign Law”, banning paid electoral campaigning in the media not in the Latvian language. This was done despite a critical letter from the office of the OSCE High Commissioner on National Minorities, received in September¹⁴ and the standards developed by ECtHR judgment in *Şükran Aydın and Others v. Turkey*.

Legal guarantees for the activities of journalists.

With regard to the protection of journalists, problematic remains the criminalisation of “*violation of sanctions imposed by the UN, EU, and other international organisations or sanctions imposed by Latvia*” (see Section 84 Article 1 of the Criminal Law, as amended on June 6, 2019, and entered into force on July 3, 2019). The applicable punishment is the deprivation of liberty for a period of up to four years, or community service, or a fine.

On December 3, 2020, the State Security Service searched the apartments and detained five Latvian journalists writing in Russian – Alla Berezovska, Andrejs Jakovlevs, Tatjana Kirilova, Vladimirs Lindermans, Andrejs Solopenko and one photo correspondent – Sergejs Melkonovs. Their articles and photos were published by news portal Baltnews.lv.

After their apartments were searched, all the office equipment, cameras and means of communication were seized (including those of their relatives). Afterwards, they were interrogated in the premises of the State Security Service. After the interrogations, the journalists were released, but their equipment, bank cards and cash were not returned for more than a month. The camera and other equipment of photo correspondent has not been returned up to now. On February 18, 2021, one more journalist, Andrejs Tatarcuks, was also searched by the State Security Service.

All seven persons mentioned above are lawful Latvian residents (citizens or stateless “non-citizens”), declared suspected of violating EU sanctions against Russia.

¹³<https://rus.delfi.lv/news/daily/latvia/russkoe-veschanie-ltv7-mozhet-ujti-s-teleekranov-v-sentyabre.d?id=52967341>

¹⁴<https://titania.saeima.lv/LIVS13/saeimalivs13.nsf/0/38CBD809ACA764E3C2258602002B29ED?OpenDocument>

The official statement of the State Security Service (SSS) says “*The procedural activities were performed within the criminal proceedings led by SSS and initiated on 16 January 2020 pursuant to Section 84 Article 1 of the Criminal Law (for the violation of sanctions imposed by the United Nations, European Union and other international organisations or sanctions imposed by the Republic of Latvia). The information obtained from the investigation provides ground to suspicion that economic resources were passed onto a person who is subject to the European Union sanctions for activities which undermine the territorial integrity, sovereignty and independence of Ukraine*”¹⁵.

According to the SSS, the work of the journalists provided that “*economic resources were passed onto*” Dmitry Kiselyov, who is included in the personal sanctions list. However, Mr. Kiselyov is not an owner of *Baltnews.lv*. This agency is a part of the state-owned holding “Russia Today”, and the holding itself is not a subject of the sanctions. Mr. Kiselyov is indeed one of the holding’s managers, but there is no reason to assume that a journalist's work for a state media can provide personal “*economic resources*” to its manager.

There is another ongoing criminal case against Mr Jurijs Aleksejevs, one of the best-known journalists in Latvia writing in Russian, former editor-in-chief of the “Biznes & Baltiya” daily (1992-2010). This case has been going for more than two years.

Mr Aleksejevs' web portal imhoclub.lv , active from 2011, has been repeatedly subject to politicized attacks by the Security Police (now State Security Service) in its public annual reports (see the reports for 2013, 2014, 2015 and 2016, chapters on information space security), well before the allegedly incriminating and thus questionable searches.¹⁶

The criminal proceedings against Mr Aleksejevs are connected to his activities as the editor-in-chief of the web portal imhoclub.lv. These criminal proceedings are led by SSS and were initiated in 2018 under Section 80, Paragraph 2 (action directed against Latvia committed by an organised group), Section 81.¹ (assistance to a foreign state in action directed against Latvia) and Section 74.¹ (acquittal of genocide, crime against humanity) of the Criminal Law. The applicable punishment for the crime provided in Section 80, Paragraph 2 is deprivation of liberty for a period of five years and up to fifteen years and with probationary supervision for a period up to three years.

On November 23, 2018, Mr Aleksejevs was detained by SSS for a second time, his apartment was searched, the office equipment and means of communication were seized. The SSS demanded detention, but the judge chose other security measures: police supervision, night curfew and a ban to leave the state. This security measures are in force up to now, despite the fact that for the last two years Aleksejevs has never been summoned for interrogation to the SSS investigator.

In our opinion, the guarantees for the journalistic profession, standards and protection in Latvia are low for a European Union member state, and the trends are concerning.

Sincerely yours, secretary-executive

A. Kuzmins

¹⁵<https://vdd.gov.lv/en/useful/publications/vdd-performs-procedural-activities-related-to-violation-of-international-sanctions.art198>

¹⁶ The English versions of those reports aren't available right now at <https://www.vdd.gov.lv/en/useful/annual-reports/> but the Latvian ones are available at <https://vdd.gov.lv/lv/noderigi/gada-parskati/>