



NACIONĀLĀ ELEKTRONISKO
PLAŠSAIŅAS LĪDZEKĻU PADOME

Rīga, 8 February 2021

DECISION No. 68/1-2

On the Restriction of Distribution of the Programme “Rossiya RTR” in the territory of Republic of Latvia

The National Electronic Mass Media Council (hereinafter - the Council) in the following composition: Chairperson of the Council Ivars Āboliņš, Vice-Chair of the Council Aurēlija Ieva Druviete, Member of the Council Patriks Grīva, Member of the Council Jānis Eglītis, Member of the Council Ieva Kalderauska, reviewed an administrative case on the potential violation of Section 26, Paragraphs 3-4 of the Electronic Mass Media Law in the content of the programme “Rossiya RTR” distributed in the territory of Latvia.

I. DESCRIPTION OF ACTUAL CIRCUMSTANCES OF THE CASE

1. Discussion broadcast “60 minut” (“60 minutes”) of 10 July 2020

During the broadcast, the participants of the broadcast discuss that Ukraine may have planned to commit terrorist acts in Crimea in 2016 and the narrative of the broadcast is extremely hostile to the state and people of Ukraine, and in particular:

[1.1] Moderator of the broadcast speaks: *“And that is absolutely incredible coincidence: literary few days ago, that is, already during the times of Zelensky. Few days ago, during the times of Zelensky, this person, who prepared the act of terrorism against the inhabitants of Crimea, became as the head of the whole intelligence service of Ukraine. And his name is Valery Kondratyuk (Валерій Кондратюк), that is, Ukraine - the current and former, led by Poroshenko and Zelensky - has turned into the country - terrorist. It appears that it is absolutely officially.”*

[1.2] *“[Poroshenko, right now] we heard this talk, behaves like the evil-doer, like a beast, some kind of bastard... And we do not know how to treat him.”*

[1.3] (the words of the former President of Ukraine P.Poroshenko are [heard] in the video record): *“Accusations made by Russia towards Ukraine about terrorism in the occupied Crimea sound the same senseless and cynical as notifications of the Russian government about the fact that there are no Russian troops in Donbass. These fantasies are just a pretext for future military threats against Ukraine.”*

(The words of Oleksandr Turchinov, the former Secretary of the National Security and Defence Council (NSDC) of Ukraine (2014-2019) are [heard] in the video record): *“These provocative nightmares of the FSS are a part of the hybrid war that Russia is waging against our country.”* (The words of Anton Gerashcheko, the speaker of the MoI of Ukraine in 2016 are [heard] in the video record): *“With regard to the latest notices of the war*

criminal Vladimir Vladimirovich Putin that Ukraine has allegedly organized a terrorist act, I declare the following. The scandal with the deserters of the Russian military unit, which has nothing in common with Ukraine, was chosen as an excuse."

[1.4] Moderator of the broadcast speaks: *"To prevent, of course, the fact that Poroshenko has absolutely animalistic behaviour. I say this deliberately, simply because at the time when a military clash took place and one Russian citizen died, and it is pointless to argue about it. That is baseness. He lies, behaves simply unacceptably. And what about you, Ukrainians?! What about you, Ukrainians?! You have a president - terrorist. Terrorist governed you for five years!"*

[1.5] *"Special operations, that is, the entire Ukrainian state machinery was involved, the military persons in any case, organizing these sabotages, that is, it does not refer only to Poroshenko - president, the supreme commander, the discussion is about a terrorist country that really prepared acts of terrorism on the Russian territory, according to their opinion, even on the territory of Ukraine, which is even worse, to be honest. And I would like to remind you: we, these politicians, terrorists, criminals, yes...then you still remember how the pleiad of Ukrainian experts, also in this studio, other studios proved: "Well, those all are your Russian falsifications," that is, served for all this disinformation machinery."*

2. Discussion broadcast "60 minut" ("60 minutes") of 17 September 2020

In the broadcast discusses the situation in the Baltic States and the events in them. During the broadcast, in general, a negative attitude is expressed about the countries of the former Soviet Union, the host of the broadcast gives the participant the opportunity to make hostile and aggressive statements against Ukraine, and in particular:

[2.1] *"So, we have very many reasons to raise complaints. Belgium is far, Lithuania is close. Who return the Vilnius district to you? Vilnius district is a part of Belarus. Who return Klaipeda (port) to you? That is our army who conquered it by bleeding. We took it from Germany. Who gave those northern lands to Poland? That is Thuringia, Saxony - that is Germany. Therefore, we also have to make claims about boundaries. The same is about Latvia. What is Daugavpils?"*

[2.2] *"It will vote against, it will approach the Lukashenko option. That is also not beneficial for it. Jēkabpils is a Russian town in the territory of Latvia, completely Russian. Guys once contacted me, the Russian radio there is only in Russian. Estonia - what Tallinn? Reval! The three hundred years anniversary will be next year. To announce: "To rename Tallinn, renew Reval!" and to return Narva into the composition of Russia. Inhabitants of it are only Russians. We have to do so. Russian school were closed? To close the borders for trade, with Estonia. That is, move ahead, persecute them, to make them fear. See, our armed forces started exercises. Complete dislocation, stay on the border, reload, open missiles, they all are nerveless, the sound of caterpillars of our tanks... that is to make them respect us, otherwise they will tell something to us every month."*

[2.3] *"Lift our aircrafts in the air."* Moderator of the broadcast: *"They are already lifted..."* Answer: *"New, not two - ten, fifteen, twenty..."* After question of moderator of broadcast *"And what's next?"* answer: *"Move towards Berlin, towards Stockholm, move... Our ambassador in Turkey was killed, wasn't he? And what have we done? Delivery of tomatoes is reduced for us..."*

What do you in general do? The ambassador was killed! We have to bring southern military district armed force, army, fleet - everything moves towards the coast of Turkey.”

[2.4] *“Put this, I warned 10 years ago. Then act, then! No, that's it. Zjuganov congratulates him every time. What is it? The head of the parliamentary party congratulates the person, being hated by the whole nation. Separately, these are elections of Lukashenko, but something different is to immediately defend Belarus, in order they get silent in Vilnius, Warsaw, Kiev. To start attack to Kiev, start attack to Odes, voluntary, local inhabitants, rather than us. That is, now is the best time. Trump is now afraid of doing something. He is nothing until 20 January, he will not even shake a finger.”*

3. Discussion broadcast “60 minut” (“60 minutes”) of 21 October 2020

During the show, topics related to events in Belarus and Ukraine are discussed. During the show, the participants of the show express a very negative and contemptuous attitude towards the representatives of the Belarusian opposition, as well as calls for violence and calls of a military nature.

[3.1] *“We have to send special units, she (Sviatlana Tsikhanouskaya) sits in Vilnius, she has to be stolen from the hotel, delivered to Minsk and tried before a tribunal! Tribunal! Bring now. Tribunal! And hang in the middle of Minsk, so everyone sees”. The moderator of the broadcast: “And isn't there a composition of crime in such activity?” Answer: “If Stolipin would not hang enemies across the whole country, we would not have a state already in 1907. Do you understand that the whole state is put on the game and instead is some “bitch woman”? Look on that disgusting face. That is a witch, a monster! Look at her face.”*

[3.2] *“This woman (Sviatlana Tsikhanouskaya) also walks and begs - requests everywhere - give, give and sells, betrays the state. These political prostitutes, Europeans, say: well, well, we will help. What? Do they, Europeans, need Tsikhanouskaya? They need the territory, in order to transform it into a military base, in order to approach Smolensk. Then we will give such an attack that there will be nothing left from them. They are the same stupid as during the Hitler times.”*

[3.3] *“We do not need nuances here - when, who, what. They all are bastards, criminals, adventurers, all, who stand up against the state, against nation, calls to strikes, hunger. That is all - people should be arrested, a tribunal should be convoked that lasts for three days, and a judgment should be adopted - death penalty.”*

[3.4] *“And forget the name Belarus. Forget the name Belarus. You are Vitebsk, Gomel, Brest, Grodna, Mogilev, Minsk oblast - six oblasts of Russia. And Lukashenko will get rest in Sochi. The weather is good there.”*

[3.5] *“That is all, their countries will be destroyed. And they - these soldiers, these bases, that all was already targeted, regardless of the fact, how many they are, tens of millions, hundreds of millions. All will be destroyed in one form. These capitals will neither be Kiev, nor Brussels, not any other ...”*

[3.6] *“Well, we will bomb Doneck from Kiev. Attack Crimea. I think like that. They will not give an order from Kherson. All government is located in Kiev. We do not say that the city, houses and barracks should be destroyed, there are soldiers in barracks, clerks in houses... Correct, everything should be performed precisely, let the nature stay, towns...” Moderator of the*

broadcast:” *Today Vladimir Volfovich is disposed to hang and destroy.*” Answer: “*And to hang and destroy. And everyone should understand - we will not suffer anymore. The end will come to all parasites, dependants, idlers. That’s it! You will cease to exist until the year 30 - noone, neither NATO army, nor USA, nor those, who should be hanged because they cause threat to us.*”

4. Discussion broadcast “Voskrejnij večer c Vladimirom Solovjovom” (“Sunday evening with Vladimir Solovyov”) on December 6, 2020.

The main topics of the broadcast are related to the suppression of the rights of Russian-speaking persons both in Latvia and in other former USSR countries. It is claimed that it would have been good if the Soviet Union had been preserved. The moderator of the broadcast repeatedly expresses aggressively, hostile with offensive and rude words and expressions towards the guests of the broadcast, who represent Ukraine, as well as the Ukrainian nation as whole. Among other things, information provided in the broadcast:

[4.1] “*Journalists are being arrested in Latvia because they think and write in Russian, as well as communicate with someone in Russian, which is allegedly already a crime in Latvia. He claims that when the Soviet power was overthrown, it was a confusion of bloodless regimes, millions of refugees and inter-state conflicts, how many people became poor, how much damage was done and notes that it would be good to keep the Soviet Union, but there was hatred and it has taken precedence because you can have too much of a good thing.*”

[4.2] “*Need a new society, a new way of thinking and a small victorious war!*” After moderator of the broadcast asks what he mean by that he responds that he offers to restore Russia’s western borders, which were there on January 1, 1990, on the pretext that there are violations against the Russian population, the Russian language and it will be easy because “*NATO will remain silent because they do not care about the Baltics and anyone else.*”

[4.3] “*A breakthrough is needed on the ground so that under our (meaning: Russia) APCs, the rumble of airplanes we (meaning: Russia) could go somewhere, defend someone and celebrate a victory.*”

[4.4] “*You (meaning: Ukrainians) are Nazi scum (мразу). West will never impose sanctions on you (meaning: Ukraine), but I hope that we (meaning: Russia) will impose sanctions on you and then you will actually tremble.*”

II. LEGAL ASSESSMENT OF THE ACTUAL CIRCUMSTANCES OF THE CASE

Section 26 Cluse 3 of the Electronic Mass Media Law states: “*The programmes and broadcasts of the electronic mass media may not contain incitement to hatred or discrimination against a person or group of persons on the grounds of sex, race or ethnic origin, nationality, religious affiliation or faith, disability, age or other circumstances.*” But Section 26 Cluse 4 of the Electronic Mass Media Law states: “*The programmes and broadcasts of the electronic mass media may not contain incitement to war or the initiation of a military conflict.*”

Article 6 of Directive 2010/13/EU and Audiovisual Media Services Directive (EU) 2018/1808 of the European Parliament and the Council of 14 November 2018 (hereinafter also referred to

as – Directive) states: “Without prejudice to the obligation of Member States to respect and protect human dignity, 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 violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter.” Article 21 of Charter of Fundamental Rights of the European Union states: “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.”

In the Republic of Latvia, the provisions of the Directive have been implemented by implementing them in the Electronic Mass Media Law. Thus, the Electronic Mass Media Law and the Directive prohibits including content that incites hatred in the programmes and broadcasts. Taking into account the aforementioned, the Council analyses whether the content of the programme “Rossiya RTR” contains the violation of a prohibition of incitement to hatred and also if such violations have been committed in the programme, which contain the prohibition specified in Section 26, Clause 3 of the Electronic Mass Media Law – incitement to violence included in the programme or the prohibition specified in Section 26, Clause 4 – incitement to war or military conflict included in the programme.

- 1) Section 26, Clause 3 of the Electronic Mass Media Law: “The programmes and broadcasts of the electronic mass media may not contain [...] incitement to hatred.”

The notion of hatred here is understood as deep and persistent feelings that are characterized by unfavourable, condemning and also militant attitudes towards individuals, groups of people or events in society. The term “hate speech”, on the other hand, is understood as a form of expression that not only offends the dignity of other people or groups of people, but can also have far-reaching consequences - it divides society, and in some cases even leads to violence. The Council of Europe has clarified that the term “hate speech” refers to all forms of expression that spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance caused by aggressive nationalism; ethnocentrism, discrimination and hostility towards minorities, migrants and people with an immigrant background.¹

In turn, in the 2018 summary of the case law of the Supreme Court of the Republic of Latvia on hate speech and freedom of speech, the terms “incite” and “incitement” are interpreted as inciting other people to hatred, discrimination or violence. The expert of criminal law of Latvia Dr habil.iur. prof. Uldis Krastiņš has explained the causing of national hatred as: “Dissemination of beliefs, theories orally or in writing in mass media or otherwise to cause a hateful attitude towards a nation or nationality. Incitement of national hatred may express itself, by attributing any negative, shameful traditions, customs or tendencies to any nation or nationality, characterising qualities, peculiarities, etc. of any nation or nationality in a hurtful manner.” However, the Court of Justice of the European Union in its judgment of 22

¹ Recommendation No.R (97) 20 of the Committee of Ministers to Member States on “Hate Speech”. Available at: <https://rm.coe.int/1680505d5b>

September 2011 in the combined cases C-244/10 and C-245/10 *Mesopotamia Broadcast AS METV and RojTV AS* has explained the meaning of the words “incitement [encouragement]” and “hatred”. The court indicated that the words “incitement [encouragement]” and “hatred” mean an action pointed at a certain direction of actions, on the one hand, and a feeling of hatred or repulsion in respect of any aggregation of people, on the other hand.

The Council believes that the term “incitement to hatred” used in the Electronic Mass Media Law is broader and includes in itself a narrower term “incitement to national hatred” in terms of content. Namely, various types of hatred may be incited, i.e. hatred may be directed at various objects. Among other things the object of hatred can be against or the hatred can be directed at (incitement) a certain nation, as well as among several nations and their representatives. Thus, by the term “incitement to hatred” for the purpose of Section 26, Clause 3 of the Electronic Mass Media Law we also understand direct or indirect incitement to a hateful attitude, attributing negative, shameful traditions, customs or tendencies to any nation or nationality, characterising qualities, peculiarities, etc. of any nation or nationality in a hurtful manner.

Article 4.2.3 “Opinion and incitement to hatred” of the case law summary “Case law in criminal matters on incitement to national, ethnic and racial hatred” for 2012 of the Superior Court of the Republic of Latvia indicates: *“In several cases reviewed by Riga Regional Court, in which the crime was committed by writing in mass media or publishing of comments on the internet causing ethnic hatred and hostility, the accused persons indicated that it was just their opinion. One of the victims in such types of cases indicated that the actions of the person had deeply hurt her, and it may not be considered as an opinion. The court, similarly to other cases, does not analyse this argument in more detail. Yet, as indicated by the Senate on multiple occasions in matters on defamation and also based on the case law of the European Court of Human Rights, the opinion may not be disproportionately insulting. This conclusion may be even more attributed to a prohibition of incitement to hatred, because if two fundamental rights: the right to freedom of expression and the right to the protection of honour and human dignity must be balanced in matters on defamation, such balancing is not necessary in respect of expressions containing calls to violence against any race, ethnic or national group.”*

Thus, if the opinion is deeply and/or disproportionately defamatory, it may be justly considered as incitement to hatred. The aforementioned conclusion is also approved by the judgment of the European Human Rights Court of 17 December 2004 in the case *Pedersen and Baadsgaard v. Denmark*. In this judgment the court concluded that expression of opinion is one of the human liberties, but at the same time the opinion may not be disproportionately insulting.

- 2) Section 26, Clause 3 of the Electronic Mass Media Law: *“The programmes and broadcasts of the electronic mass media may not contain [...] encouragement to violence [...]”*. The notion of violence is understood here as intentional or deliberate use of real or imagined physical force or power against oneself, another person, group or community, which causes or is likely to cause injury, death, post-traumatic stress

disorder, developmental impairment or loss.² In turn, “to encourage” means trying to get someone to do something through one’s speech, gestures and behaviour. Assessing these concepts in relation to each other, the Council concludes that, given the different audiences in electronic mass media, including children, young people, people with disabilities, people of different nationalities, and the fact that certain groups may perceive certain offenses as especially harmful, and it is not foreseeable how grave this harm may be and what could be the consequences, the legislator has deliberately included in the Electronic Mass Media Law the prohibition to encourage violence, to prevent situations where electronic mass media programmes include content that may promote the viewers to violent, unjustified acts that may cause grave harm and serious consequences. Incitement to violence is, by its very nature, incitement to commit a crime against a person or group of persons, thereby causing harm to them. The dissemination of such content and encouragement in electronic mass media programmes is not justified and should not be allowed.

Section 26 Clause 4 of the Electronic Mass Media Law: “*the programmes and broadcasts of the electronic mass media may not contain incitement to war or the initiation of a military conflict [..]*.” The notion of “war” is understood as an organized, armed struggle between two or more countries, nations, tribes etc. or social groups within the country. War is characterized by the use of violent, physical force against the opposing warring party and also against civilians. Meanwhile, “instigators of war” are individuals, including nations, groups of nations whose policies aim to create and maintain political tensions in the world, as well as to increase military potential. “Incitement to war,” on the other hand, refers to the actions of a person or group of people that incite others to behave violently, usually by provoking or angering them. War threatens national security. Section 1 of the National Security Law provides that “*national security is a state, attained as a result of joint, purposeful measures implemented by the State and society, in which the independence of the State, its constitutional structure and territorial integrity, the prospect of free development of society, welfare and stability are guaranteed.*” Given the need to ensure national security and to anticipate and prevent internal and external national threats, as well as to guarantee national defense, public security and its democratic development, it is unacceptable for electronic mass media programmes to distribute content that calls for war or military conflict.

Discussion broadcast “60 minut” (“60 minutes”) of 10 July 2020

During the broadcast, the participants of the broadcast discuss that Ukraine may have planned to commit terrorist acts in Crimea in 2016, the narrative of the broadcast is extremely hostile to the state and people of Ukraine. Ukrainian officials deny the allegations and see them as provocative acts organized by Russia as part of a hybrid war organized by Russia against the

² World Health Organization. *Violence: a public health priority*. Geneva (Switzerland): World Health Organization, 1996.

Ukrainian state. At the same time, information indicates that the United States also questions the information provided by Russia on the preparation of terrorist acts by Ukraine, as the US government has not received any evidence for the Russian allegations. Consequently, there is no argument that Russia's accusations against Ukraine about organizing terrorist acts in Crimea in 2016 can be considered an irrefutable truth. During the discussion on this topic, the participants of the discussion and the host of the broadcast call Ukraine a terrorist country and its former President P.Poroshenko a terrorist.

In order to make such accusation to the former supreme head of the state and the state of Ukraine, there should be a justified legal substantiation in relation to terrorism. The following explanation is provided in the Encyclopaedic Dictionary of History "*Terrorism - a form of violence, which uses violence as a mechanism, causing or promoting changes. Terrorists use the threat of murder, destruction, mutilation or violence by intimidation (causing horror), thus terrorizing individuals, groups, communities or governments, to force them to submit to political demands that cannot be legitimately met or respected*"³ The following explanation is also available in the internet vocabulary: "*Terrorism - a criminal activity of an internationally non-recognized person or group of persons that undermines the international order, the stability of international relations, threatens the state, an individual or a group of people.*"⁴ At the same time, Council Decision (CFSP) 2019/1341 on the application of specific measures to combat terrorism is published in *the Official Journal of the European Union*, including the list of persons, groups and entities, being considered as terrorists.⁵ The above-mentioned list does not include either the former President of Ukraine P.Poroshenko, or the current President V.Zelensky, or the state of Ukraine and the nation in general. Therefore, there is no legitimate reason to call P.Poroshenko, V.Zelensky and the state of Ukraine as terrorists. Such announcements are to be assessed as deliberate lies, disinformation and hate speech against the Ukrainian nation, its supreme elected officials and the Ukrainian state.

In view of the above, it can be concluded that the information disseminated should be assessed not only as false, but also as incitement to hatred. Respectively, the hate speech distributed in the broadcast is to be assessed as hate speech according to national sign (*driven towards the Ukrainian nation*), as well as hate speech based on nationality (*driven towards the state of Ukraine*), being distributed by the television programme "Rossiya RTR" controlled by the government of the Russian Federation. The responsibility of the electronic mass media in this case is also strengthened by the fact that hostile statements are distributed not only by the participants of the broadcast, but also by the moderator of the broadcast - a journalist of electronic mass media. Such activity of the electronic mass media and moderator of the broadcast is not acceptable due to the fact that the duty of the moderator of the broadcast is to follow up in order the participants of the discussion would follow the generally accepted legal norms, ethical standards and comply with all other standards, determined by basic principles of activities of journalism. The duty of the moderator of the First Broadcast is to immediately address/interrupt the participant of the broadcast, who ignores and violates such standards during his discussion.

³Encyclopaedic Dictionary of History. <http://vesture.eu/Terrorisms> (viewed on 14 December 2020).

⁴Online Vocabulary *Tezaurus*. <https://tezaurus.lv/#/sv/terrorisms> (viewed on 14 December 2020).

⁵Official Journal of the European Union. <https://eur-lex.europa.eu/legal-content/lv/TXT/HTML/?uri=CELEX:32019D1341&from=en#d1e32-17-1> (viewed on 14 December 2020).

In the particular case, it is established that the moderator of the First Broadcast O.Skabeeva not only fails to perform such functions, but even names herself the former President of Ukraine P.Poroshenko as a terrorist and the Ukrainian state during the times of both, P.Poroshenko as well as V.Zelensky, as a terrorist state. Such behaviour and rhetoric of the moderator of the broadcast even more enhances the expressions of hate speech based on national sign (*driven towards the Ukrainian nation*), as well as expressions of hate speech based on nationality (*driven towards the Ukrainian state*). In this case, the journalist has a duty to withdraw from the views of the interviewees, taking a neutral position (*Jersild v Denmark*), but it can be concluded that the host of the broadcast has done the opposite, actively engaging and expressing hate speech. The risk must be taken into account that an unprepared listener / viewer may perceive the presenter's statements as true.

Evaluating the information expressed in the broadcast, as well as analysing it in connection with the content of the prohibition to “incite hatred” specified in regulatory enactments, the Council concludes that the broadcast “60 minutes” shown on programme “Rossiya RTR” on 10 July 2020 violates Section 26 Clause 3 and 4, as well as Article 6 of the Directive.

Discussion broadcast “60 minut” (“60 minutes”) of 17 September 2020

The broadcast discusses the situation in the Baltic States and the events taking place there. The participant of the broadcast V.Zhirinovskiy claims that Russia has to make demands to several cities of the Baltic States - Vilnius, Klaipeda, as well as Narva, Jekabpils and Daugavpils, because they are Russian cities. Russia should also claim the rights to northern Poland. For the part of the audience that does not know the facts about the inhabitants and nationalities in these cities, it may seem that this information is true. During the broadcast, there is a generally negative and contemptuous attitude towards the countries of the former Soviet Union, indicating that they are incapable of doing anything. The way in which the participants of the broadcast express this information can be assessed as extremely negative and contemptuous, suggesting that the countries of the former Soviet Union, which are now independent, are worth nothing and will not achieve much without Russia. In the opinion of the Council, the above information is considered to be incitement to hatred against the former Soviet Union countries, especially the Baltic States and their inhabitants - Latvian, Lithuanian and Estonian nations. The degree of insult is significant, as hate speech has affected all the countries bordering Russia. Such statements are clearly aimed at creating a hostile attitude towards the Baltic States, respectively, towards citizenship, nationality.

It is also mentioned during the broadcast that “*rockets must be deployed at the borders, because they are all scared and our (apparently meaning: Russian) tank chains must make them respect us!*” In addition, V. Zhirinovskiy points out that it is imperative to “*bring up our (apparently meaning: Russian) planes and go in the direction of Berlin, in the direction of Stockholm.*” This information undoubtedly contains remarks inciting to war or military conflict. Zhirinovskiy justifies such actions that could jeopardize the national security and sovereignty of countries, as well as the call to bring up planes and go to Stockholm and Berlin, is a clear incitement to military action and conflict between Russia and the European countries. During the broadcast, the host of the broadcast gives the participant the opportunity to make hostile and aggressive appeals against Ukraine, a call is made “*to organize (apparently meaning: Russia) so*

that the Ukrainian opposition forces are attacking Kiev and Odessa!” Such expressions are also a clear incitement to military action and conflict.

Even though the statements made by V. Zhirinovskiy during broadcast may be treated as an opinion, it is disproportionately insulting in the way that it calls for violence and incites hatred against a specific country or nationals. As concluded before, if the opinion is deeply and/or disproportionately defamatory, it may be justly considered as enticement to hatred. The aforementioned conclusion is also approved by the judgment of the European Human Rights Court of 17 December 2004 in the case *Pedersen and Baadsgaard v. Denmark*. In this judgment the court concluded that expression of opinion is one of the human liberties, but at the same time the opinion may not be disproportionately insulting.

By evaluating the statements distributed in the broadcast in context and analysing the context and the purpose of these statements Council concludes that these expressions endanger peaceful co-existence of different groups of society in Latvia as well as Lithuania and Estonia and Ukraine, due to the fact that also the representatives of the Russian minority live in these countries. Threat to peaceful co-existence of different social groups could be expressed in a way that these expressions could, probably, incite the Russian minority to the so called restoration of “the historical truth” propagated by V.Zhirinovskiy. In turn, the Latvian nation, Lithuanian nation, Estonian nation and Ukrainian nation would perceive such expressions as the offence of their national and state law. Therefore, the ethnic stress could arise between the above-mentioned nations and Russian minorities in these countries, which is already promoted by the aggressive propaganda of Russia now and attempts to rewrite the history in the light more beneficial for it, ignoring the facts.

Evaluating the information expressed in the broadcast, as well as analysing it in connection with the content of the prohibition to “incite hatred” and “incite to war or military conflict” specified in regulatory enactments, the Council concludes that the broadcast “60 minutes” shown on programme “Rossiya RTR” on 17 September 2020 violates Section 26 Clause 3 and 4, as well as Article 6 of the Directive.

Discussion broadcast “60 minut” (“60 minutes”) of 21 October 2020

During the broadcast, topics related to events in Belarus and Ukraine are discussed. During the broadcast, the participants of the broadcast express a very negative and contemptuous attitude towards the representatives of the Belarusian opposition, the expressions contain incitement to hatred, incitement to violence and even threats of a military nature. “Zhirinovskiy's statement “*it is necessary to bring her (meaning Sviatlana Tsikhanouskaya) back to Minsk, then the tribunal, and then hang her in the center of Minsk for all to see*” clearly points to an incitement for a violent transfer of the Belarusian opposition leader from Vilnius to Minsk and killing her. The Council has no doubt that such statements are a direct incitement for committing a crime - to grab, violently remove a person and murder her. The dissemination of such content and encouragement in electronic mass media programmes cannot be justified in any way and should not be allowed. Such statements are made with the aim of instilling fear, so that the public would not oppose the decisions and actions of the political authorities. Although the participant expressis verbis calls on the leader of the opposition Sviatlana Tsikhanouskaya to be hung, and not Ukrainians as a whole,

it can be concluded that such a call could also be directed against the Ukrainian people who oppose the policy of the government and support the opposition and its leader to bring about changes in the country.

Also during the broadcast, V. Zhirinovskiy expressed a very contemptuous attitude towards the leader of the Belarusian opposition: *“Some kind of a bitch? Look at that disgusting face. It's a witch, it's a monster! Look at her face!”* Such negative, contemptuous, insulting and offensive remarks against the leader of the Belarusian opposition significantly offend not only the individual but also the entire part of the Belarusian nation that identifies as belonging to the opposition and wants a change in the country. Such statements clearly incite hatred against the Belarusian nation and Belarus in general. Even though the statements made by V. Zhirinovskiy in this situation may also be treated as an opinion, it is disproportionately insulting in the way that it calls for violence and incites hatred against a specific country or nationals, which in accordance with the above statements may also be qualified as incitement to hatred.

At the same time, the Council concludes that the statements made in the program *“one million, ten million, one hundred million will be destroyed. There will be no capitals, neither Kiev nor Brussels (...) Kiev, as it is today, it is better to destroy and rebuild”* clearly indicates the desire and incitement for causing military conflict and undermining national sovereignty. There is no reasonable doubt that the dissemination of a view calling for the territorial integrity of a state to be undermined and destroyed is disproportionate and qualifies as incitement for war or military conflict.

Evaluating the information expressed in the broadcast, as well as analysing it in connection with the content of the prohibition to “incite hatred” and “incite to war or military conflict” specified in regulatory enactments, the Council concludes that the broadcast “60 minutes” shown on programme “Rossiya RTR” on 17 October 2020 violates Section 26 Clause 3 and 4, as well as Article 6 of the Directive.

Discussion broadcast "Voskrejnij večer s Vladimirom Solovjovom" ("Sunday evening with Vladimir Solovyov") on December 6, 2020.

The broadcast clearly expresses a message related to the suppression of the rights of Russian-speaking persons both in Latvia and other former USSR countries through such statements as *“journalists are arrested in Latvia because they think and write in Russian, it already is a crime in Latvia”*. Also an opinion is expressed that it would be good if the Soviet Union had been preserved. In general, the broadcast expresses the position that the situation in Latvia and other countries of the former Soviet Union has only worsened since the collapse of the Soviet Union, there is no growth, the political power and the Latvian people oppress the Russian-speakers. These statements qualify as incitement to hatred against the State of Latvia and other countries of the former Soviet Union, as well as undeniable incitements to hatred are directed not only against states, but also, for example, the Latvian nation. The words “incitement” and “hatred” mean an action aimed at a certain course of action, on the one hand, and a feeling of hostility or rejection towards a group of people, on the other hand, in this case the broadcast expresses the position that Latvians reject Russian-speakers, are hostile towards them and take actions to limit them and their rights. The expression of such statements in the electronic mass media undoubtedly increases the possibility and may also endanger the peaceful coexistence of various groups in society both in

Latvia. Also, taking into account that the mentioned information does not correspond to the truth, a deliberate distortion of the facts can be established with the aim to create a hostile attitude towards Latvians. In turn, statements related to the need to restore the Soviet Union should be considered as threatening the sovereignty of the Latvian state.

During the broadcast, V.Zhirinovskiy also expresses statements about the necessary changes in the society, describing it as follows: *“We need a new society, we need a new way of thinking and we need a small victorious war!”* After the question of the host of the broadcast, what does he mean by it, he explains that he is proposing to restore the Western borders of Russia such that they were on 1 January 1990. The reason is that there are violations against the Russian population, the Russian language, but in general there would be no big problems, because *“NATO will stay quiet because they don’t care about the Baltics and anyone else.”* Also: *“We need a breakthrough on the land, so that we [meaning: Russia] could go somewhere under the rumble of our [meaning: Russian] tanks, BTRs, planes, so that we would protect someone and celebrate it as a victory.”* These statements are a clear incitement to a military conflict with all former Soviet Union states and to restore the historic borders of the Soviet Union to facilitate Russia’s breakthrough. Against this background, there is, in essence, a call for all countries of the former Soviet Union to be re-incorporated into Russia and for their independence to be ended, as well as indication of the “worthlessness” of these countries, because, if such actions were to be carried out, then NATO and Europe as a whole would not oppose. The expression of such false statements is both hate speech against the countries of the former Soviet Union, undermining the value of the countries and their peoples, and a military threat.

Among other things, during the broadcast, the host repeatedly expresses aggressive, hostile statements using offensive and rude words and expressions towards the guests of the broadcast representing Ukraine, as well as the Ukrainian people as a whole, trying to significantly reduce the value of the Ukrainian people in the eyes of the audience: *“You (meaning Ukrainians) are Nazi scum. The West will never sanction you (meaning Ukraine), but I hope that we (meaning Russia) will sanction you and then you will tremble.”* The expressions of the host of the broadcast are to be considered extremely aggressive. Such statements are clearly aimed at creating a hostile attitude towards the Ukraine, respectively, towards citizenship, nationality. The responsibility of the electronic mass media in this case is also aggravated by the fact that the hostile remarks were made by the presenter of the broadcast himself, an electronic mass media journalist.

Incitement to hatred may be clearly established in the specific case. The Council justifies the aforementioned with the statements made in the judgment of the Court of Justice of the European Union of 22 September 2011 in the combined cases C-244/10 and C-245/10 *Mesopotamia Broadcast AS METV and RojTV AS*. The judgment explains the meaning of the words “incitement [encouragement]” and “hatred”. The court indicated that the words “incitement [encouragement]” and “hatred” mean an action pointed at a certain direction of actions, on the one hand, and a feeling of hatred or repulsion in respect of any aggregation of people, on the other hand. The electronic mass media with its active actions (by distributing incomplete, deceiving information) creates an impression that the Ukrainian nation and state are useless and its existence is irrelevant. And the Ukrainians should be afraid of Russia, because it is strong next door and can take such actions and impose sanctions so that Ukraine will tremble and not resist. Even though the statements made by moderator of the broadcast may be treated as an opinion, it is disproportionately insulting in the way that it calls for violence and incites hatred against a specific country or nationals. As

concluded before, if the opinion is deeply and/or disproportionately defamatory, it may be justly considered as enticement to hatred. The aforementioned conclusion is also approved by the judgment of the European Human Rights Court of 17 December 2004 in the case *Pedersen and Baadsgaard v. Denmark*. In this judgment the court concluded that expression of opinion is one of the human liberties, but at the same time the opinion may not be disproportionately insulting. Also, important to emphasize that the journalist should act professionally and distinguished themselves from the interviewed person, or in this case from the ideas from participants in the discussion (*Jersild v Denmark*, 1994). In this case, however, the moderator of the broadcast did the opposite.

Evaluating the information expressed in the broadcast, as well as analysing it in connection with the content of the prohibition to “incite hatred” and “incite to war or military conflict” specified in regulatory enactments, the Council concludes that the broadcast “Sunday evening with Vladimir Solovyov” shown on programme “Rossiya RTR” on 6 December 2020 violates Section 26 Clause 3 and 4, as well as Article 6 of the Directive.

III. ACTIONS OF THE COUNCIL IN THE EVENT OF VIOLATIONS

According to Section 26 Clause 3 of the Electronic Mass Media Law that states: “*The programmes and broadcasts of the electronic mass media may not contain incitement to hatred or discrimination against a person or group of persons on the grounds of sex, race or ethnic origin, nationality, religious affiliation or faith, disability, age or other circumstances.*” But Section 26 Clause 4 of the Electronic Mass Media Law states: “*The programmes and broadcasts of the electronic mass media may not contain incitement to war or the initiation of a military conflict.*”

Taking into account the conclusions drawn in this decision, and the information provided hereinafter, the Council believes that the broadcasts of the programme “Rossiya RTR” of July 10, 2020, September 17, 2020, October 21, 2020 broadcasts “60 minut” and of December 6, 2020 broadcast “Sunday evening with Vladimir Solovyov” contain information that contradicts Section 26, Clauses 3 and 4 of the Electronic Mass Media Law. Namely, the information included in the broadcast of the programme “Rossiya RTR” directly contradicts and thus significantly violates the prohibitions established in Section 26, Clauses 3 and 4 of the Electronic Mass Media Law to include incitement to hatred and a call to war or causing of military conflict in the programmes. In addition to the provisions of law, when making a decision, the Council also takes into account the following.

In 2020, the Russian Federation ranked 149th out of 180 in the press freedom index⁶. At the same time, the Council notes that the programme “Rossiya RTR” is the second most frequently mentioned medium among non-Latvians in Latvia (18% of cases), but to obtain information on international issues, the programme “Rossiya RTR” is the most popular source and is used by as many as 25% of non-Latvians living in Latvia⁷. However, Russia continues to impose new and stricter restrictions on the media, and opportunities to provide objective reporting and undermine

⁶ Available at:

<https://rsf.org/en/ranking?fbclid=IwAR2LXYd5WhbwsSEnfoF6B3xNpntSPRKnDhEGltfD9p7rrfb6JZJhAoWIuxg>

⁷ Research “Media Literacy of the Latvian Population”, Latvian Facts, 2020 Available

https://www.km.gov.lv/sites/km/files/media_file/medijpratibas_petijums_latvijas_dati_2020.pdf

the ethical standards of journalists⁸. Journalists and the independent media are also being repressed, with continued detentions of journalists and bloggers⁹. Electronic mass media is being used for the distribution of information conforming to the external political interests of Russia, officially justifying it with the protection of its population, the broadcasts belonging to the programme “Rossiya RTR” fully owned and controlled by Russia have been determined to contain propaganda in the form of incitement to hatred and a call to war or a military conflict, and the arguments used in it are also pertaining to Latvia. In addition, taking into consideration the circumstance that until 1990 Latvia was in the composition of the Soviet Union, and the fact that the largest national minority in Latvia is the Russian-speaking minority, the distribution of such content and one-sided plots to the Russian-speaking community of Latvia may cause a feeling that Latvia and Latvians reject this community and are hateful towards it due to national reasons (language), which can facilitate segregation of the Society.

The broadcasts distributed by electronic mass media not only provide one-sided information, but information is also manipulatively staged as ancillary tools of military aggression and are being positioned as war instruments. In events when the episodes of incitement to hatred or a call to war on incitement to violence are established in the discussion broadcasts, the Council considers that the electronic mass media is responsible for not restricting the expression of such opinions and a lack of reasonable opinions. The Council draws attention to the fact that Council highly values freedom of speech, which is one of the greatest values of a democratic state, which every member of society is entitled to exercise. The right of freedom of speech includes the right to freely obtain, retain and disseminate information and to express one's views. However, in certain cases, freedom of speech must be restricted in order to protect other people's rights, the democratic state system, public security and welfare. Namely, if the right for the participants to express an opinion granted in the discussion format are used in a dishonest way or in a way that conforms to the editorial policy of the mass media, the Council believes that the use of freedom of speech for the purpose of creating a hateful attitude or making a call to war is not an allowed expression of freedom of speech, as it does not conform to the general operational goals of the electronic mass media - to inform, educate and entertain the society, as well as it contradicts the fundamental principles of democracy. By looking at the stories in context and also individual expressions, both a clear call to war or the creation of military conflict and incitement to hatred due to ethnic origin and nationality may be established. The Council thereby concludes that the information included in the broadcasts of the programme “Rossiya RTR” clearly and significantly violates Clauses 3 and 4 of Section 26 of the Electronic Mass Media Law and contradicts Article 6 of the Directive.

Section 21.¹, Paragraph 1 of the Electronic Mass Media Law states “ *National Electronic Mass Media Council shall ensure the freedom of reception and shall not restrict the retransmission of an audio-visual programme of an electronic mass medium in the territory of Latvia from another Member State of the European Union or European Economic Area, except for the cases when an electronic mass medium programme has manifestly, seriously and gravely violated the provisions of Section 24 Paragraph nine or ten or Section 26, Clause 1, 2, 3, 4, 5, 6 and of this Law and such violation has occurred at least twice in the last 12 months.*” And Section 1, Clause 28 of Electronic

⁸ Resolution of the European Parliament of 10 June 2015 on relations between the EU and Russia. Clause O and Clauses 12-14 (2015/2001(INI))

⁹ Resolution of the European Parliament of 8 February 2018 on relations between the EU and Russia. Clause I (2018/2158(INI))

Mass Media Law states: “*retransmission - the reception and immediate complete or partial distribution of a programme in Latvia in the public electronic communications network without making any changes in the programme or the content of the broadcast [..].*”

By reading Section 21.¹, Paragraph one of the Electronic Mass Media Law in conjunction with the definition established in Section 1, Clause 28 one of the Electronic Mass Media Law, it may be concluded that in certain situations the Council may adopt a decision on the termination of retransmission of any programme in the territory of Latvia, regardless of whether its retransmission is ensured by a subject which has received a retransmission permit issued by the Council or a broadcasting permit, or by a subject which does it without the relevant permit, for example, because it is located in the jurisdiction of another country. It may be concluded from the aforementioned that the legislator has provided for the right of the Council to restrict retransmission of the programme “Rossiya RTR”, if a clear and significant violation of Section 26, Clauses 3 and 4 of the Electronic Mass Media Law has been established.

Taking into account the conclusions drawn in the decision, it may be concluded that the broadcasts of the programme “Rossiya RTR” of July 10, 2020, September 17, 2020, October 21, 2020 broadcasts “60 minut” and of December 6, 2020 broadcast “Sunday evening with Vladimir Solovyov” violated Section 26, Cluse 3 and 4 of the Electronic Mass Media Law, and the legal composition prescribed in Section 21.¹, Paragraph one of the Electronic Mass Media Law has taken place.

Section 21.¹, Paragraph one of the Electronic Mass Media Law prescribes to restrict retransmission, if the conditions prescribed in Section 24, Paragraph 9 or Section 26, Cluse 1.,2.,3.,4.,5.,6. or 9. of the Electronic Mass Media Law are met and such violation has happened in the last 12 months at least two times. The Council believes that Section 21.¹, Paragraph one of the Electronic Mass Media Law must be interpreted more broadly, and the term “retransmission” used in the text of the law must be understood not only as a retransmission for the purpose of Section 1, Clause 28 of the Electronic Mass Media Law, but also as a distribution of any other type of programme created abroad in Latvia. Thus, Section 21.¹, Paragraph one of the Electronic Mass Media Law must also be applied to the circumstances of the relevant case, where the programme “Rossiya RTR” is being distributed in Latvia, without using retransmission. The Council justifies this understanding that Section 21.¹ Paragraph one of the Electronic Mass Media Law must be interpreted more broadly, by the goals of the Directive and case law of the European Court of Justice. Article 3 of the Directive stipulates that “*Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of audio-visual media services from other Member States for reasons which fall within the fields coordinated by this Directive.*” The Council believes that if the Member State could depart from the obligation to ensure freedom of perception only in the event if the foreign television programme could be distributed by means of retransmission, a goal of the Directive to restrict the television broadcasting in the events when the relevant violations of the law are committed by distributing the television programme in any other technological way and not by retransmitting it, would not have been reached. Thus, in order to ensure reaching of the Directive’s goal (right to depart from the obligation to ensure freedom of perception if the relevant violations are committed in any event regardless of the type of programme retransmission), Section 21.¹, Paragraph one of the Electronic Mass Media Law must be interpreted more broadly, applying it to all types of broadcasting, not just to retransmission. The Council justifies a broader interpretation of Section

21.¹, Paragraph one of the Electronic Mass Media Law with the explanations provided in the judgments of the European Court of Justice in the cases *14/83 Von Colson and Kamann v. Land Nordrhein-Westfalen* (please refer to Paragraph 26 of the judgment) and *C-106/89 Marleasing SA v. La Comercial Internacional de Alimentacion SA* (please refer to Clause 8 of the judgment) regarding how an authority of the Member State must facilitate the reaching of the directive's goals if the directive has not been introduced at all or has been introduced incompletely. There is no doubt that these provisions must also be implemented in cases where the Directive has been fully transposed. The Council believes that the retransmission term in Section 21.¹, Paragraph one of the Electronic Mass Media Law must include all types of programme distribution, including satellite broadcasting and distribution of the programme on the internet.

The provisions of the Electronic Mass Media Law provide the Council with the right to decide whether an administrative act can be issued in a particular case. Laws and regulations also do not provide for the issuing of an administrative act of specific content; establishing of the content of such administrative act is in the Council's competence. The legislator has established such a procedure in Section 65, Paragraph four of the Administrative Procedure Law (hereinafter - the APL), prescribing: *"If the applicable legal standard allows the establishment to decide whether to issue the administrative act or not, but in the event of issuing does not prescribe its content (free administrative act), the establishment shall first consider the usefulness of the issuing. If the establishment concludes that the administrative act must be issued, it issues this act in compliance with the framework established in the applicable legal standard, and within this framework, based on considerations of usefulness, establishes the content of the administrative act. [..]."*

Considering everything mention above, the Council must first carry out a comprehensive assessment of the usefulness considerations on the usefulness of issuing and contesting of the administrative act. Assessment criteria of the usefulness considerations when a decision about the issuing of an administrative act are established in Section 66, Paragraph one of the APL, stating that in considering the usefulness of the issue of, or the content of an administrative act, an institution shall take a decision regarding:

- a. the necessity of the administrative act for the attaining of a legal (legitimate) goal;
- b. the suitability of the administrative act for the attaining of the relevant goal;
- c. the need for the administrative act, that is, whether it is possible to attain such goal by means which are less restrictive of the rights and legal interests of participants in the administrative proceeding;
- d. the conformity of the administrative act, comparing the infringement of the rights of a private person and the benefits for the public interest, as well as taking into account that a substantial restriction of the rights of a private person may only be justified by a significant benefit to the public.

The Council believes that the decision is necessary to reach a legitimate goal, based on the considerations hereinafter.

The need for an administrative act in order to achieve a legitimate aim

Article 100 of the Constitution of the Republic of Latvia states: “*Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views. Censorship is prohibited.*” Article 116 of the Constitution prescribes that the rights of persons set out in Article 100 of the Constitution may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals.

The Constitutional Court has explained that the Constitution has established restrictions on freedom of speech generally, while the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - ECHR) provides more specific criteria. Thus, in respect of the acceptable broader restriction of freedom of speech, the Constitutional standards must be interpreted for the purpose of Article 10 of the ECHR (*Paragraph 22 of the Judgment of the Constitutional Court of 29 October 2003 in case No. 2003-05-01*). The goal for the restriction of fundamental rights to the freedom of speech may only be recognised as legitimate if it conforms not only to the goals prescribed in Article 116 of the Constitution, but also in Article 10 of the ECHR for which freedom of speech may be restricted (Paragraph 9 of the Judgment of the Constitutional Court of 22 February 2010 in case No. 2009-45-01). Article 10, Paragraph two of the ECHR states: “*The exercising of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*” Section 21.¹, Paragraph one of the Electronic Mass Media Law and the situations prescribed in Section 26, Clauses 3 and 4 when the institution has the right to restrict the personal freedom of speech (retransmission of the electronic mass media programmes from other countries), in essence by themselves already point at the legitimate goals of this restriction prescribed in Article 116 of the Constitution and Article 10, Paragraph two of the ECHR.

The Constitutional Court has acknowledged that everyone has the right to freely express their views in any way - verbally, in writing, visually, with the help of artistic means of expression, etc. (see: Judgment of 5 June 2003 by the Constitutional Court in Case No. 2003-02-0106, Para 1 of the Concluding Part and Judgment of 29 October 2003 in Case No. 2003-05-01, Para 21). In addition to freedom of expression, such as speech, diversity of opinion in the media, participation in demonstrations and other events, freedom of expression includes various forms of artistic expression, such as writing, painting, music, and other combined expressions of freedom of expression, including use of symbols (see: Judgment of 2 July 2015 by the Constitutional Court in Case No. 2015-01-01, Para 11.4), however, the Constitutional Court has acknowledged that the right to freedom of expression is not absolute and may be restricted if it is necessary in the public interest (see Judgment of 2 July 2015 by the Constitutional Court in Case No. 2015-01-01, Para 13). Also, freedom of speech does not mean you can represent excessive behaviour. It may be derived from the Constitution and also the international human rights documents binding to Latvia, that the right to the freedom of speech may be restricted. The country may set the restriction of freedom of speech when the personal right to freedom of speech directly affects the rights of other persons, as well as in the situations when freedom of speech creates a direct threat to society (*please refer to Clause 22 of the Judgment of the Constitutional Court of 29 October 2003 in case*

No. 2003-05-01 and Manfred Nowak). *U.N. Covenant on Civil and Political Rights. CCPR Commentary.* – Publisher N.P. Engel, Kehl, Strasbourg, Arlington, 1993, p. 337). Taking into account the aforementioned, the Council believes that the legitimate goal in accordance with which it is allowed to restrict the personal freedom of speech by an administrative act in accordance with Section 21.¹, Paragraph one of the Electronic Mass Media Law for a violation of Section 26, Paragraphs 3 and 4, shall be an interest of the country to protect its national security, territorial integrity or public safety, ensuring protection against public segregation.

The Council believes that the decision is appropriate for reaching a legitimate goal. If the protected legitimate goal is directly affected by retransmission of the electronic mass media programme from other countries, restriction of such retransmission clearly eliminates the violation of the legitimate goal. Such restriction is appropriate and acceptable, especially in respect of the broadcasts of the television programmes and biased news.

Suitability of the administrative act to achieve the specific purpose

The conclusions drawn by the European Court of Human Rights (hereinafter - the ECtHR) that the audio visual media, as well as radio and television, taking into account their opportunities to transmit news via sound and image, has an ability to faster and more effectively affect the society than the printed media, should also be taken into consideration in respect of assessment of the restriction of freedom of speech (*please refer to Paragraph 97 of the ECtHR judgment in the case Manole and Other v. Moldova*). Thus, the information harmful to society via television creates a significantly greater effect on society than the printed media. The government should therefore set as stringent criteria for restriction of the television programme as in respect of the restriction of freedom of speech in the printed media. In this aspect, it is important to take into account the impact of the television plots on viewers with various methods affecting the perception of viewers.

Conclusions drawn in the Judgment of the Constitutional Court of 29 October 2003 in case No. 2003-05-01 must also be taken into account in this aspect. In this judgment the court refers to the opinion of the former ECtHR president Lucius Vildhaber in the interview where he pointed out that information that may be considered as a personal opinion of the journalist or a third party, and that which is being provided as news material, should be separated. News materials must always be precise, but the opinion is always subjective and emotional, thus it may displease somebody (*please refer to Paragraph 24 of the judgment*). It is also indicated in this judgment that the right to freedom of speech and press has been derived from the public rights to receive information and may not be considered as any special rights granted to a journalist. Society is entitled to receive true information - it is an axiom. And a duty and obligation of the media is to serve the public interest.

Thus, in the Council's opinion, the instrument prescribed in Section 21.¹, Paragraph one of the Electronic Mass Media Law for restricting the right to freedom of speech - restriction of retransmission of the electronic mass media programmes from other countries - shall be deemed as an appropriate means for reaching a legitimate goal.

The need for an administrative act in a democratic society

In this specific situation, as it was concluded before, a violation of the legitimate goal is caused by retransmission of the content (broadcasts) of the programme “Rossiya RTR”.

ECHR has concluded that it may not be excluded that a person or a group of persons will refer to the ECHR or the rights secured in its protocols, to ensure that they would have “the right” to actions, which in reality means actions with an intention to destroy the rights or freedoms established in the ECHR; any such destructive actions would end the democracy. These concerns made the ECHR authors include Article 17 in it, stating: “*Nothing (...) in the ECHR standards may be interpreted as implying for any State, group or person, any right to engage in any activity or perform any act aimed at (...) the destruction of any of the rights and freedoms set forth herein or at their restriction to a greater extent than is provided for in the ECHR*” (*Collected Edition of the "Travaux Préparatoires": Official Report of the Consultative Assembly, 1949, 1949, pages 1235-1239*). Nobody should be allowed to use the terms of the Convention to weaken or destroy the ideals and values of democratic society (*Paragraph 99 of the ECtHR judgment in the case Refah Partisi un Others v. Turkey [GC], No. 41340/98, 41342/98, 41343/98 and 41344/98, Clause 99*). In order to guarantee safety, stability and efficiency of the democratic system, the country may need to take special measures for its protection. Thus, ECtHR has recognised the legitimacy of the expression “democracy able to defend itself” (*Paragraph 100 of the judgment of the Grand Chamber of the European Court of Human Rights of 16 March 2006 in the case Ždanoka v. Latvia*).

In the Council’s opinion, an expression “democracy able to defend itself” may be applied to the relevant situation, from which the right of the country to restrict the rights prescribed in the ECHR, including the right to freedom of speech may be derived, if these rights are used in contradiction with the goals listed in the ECHR, The Constitutional Court has also recognised that a democratic country not only has the right but also an obligation to protect principles, based on which it was created (*please refer to Paragraph 13.6 of the Supreme Court judgment of 15 June 2006 in case No. 2005-13-0106*).

In the relevant event there is no doubt that the information reflected in the broadcasts of the programme “Rossiya RTR” clearly and significantly contradicts Section 26, Clauses 3 and 4 of the Electronic Mass Media Law and Article 6 of the Directive. Thus, this information also contradicts the legitimate goal protected by Section 26 of the Electronic Mass Media Law. Thus, in the Council’s opinion it is necessary to eliminate a violation of the legitimate goal created by retransmission of the programme “Rossiya RTR” to protect national security, territorial unity and public safety. In addition, a significant role of the television in the provision of information to the population, the Council believes that other legal mechanisms do not exist to restrict the violation caused by the programme “Rossiya RTR”, other than the Council's right prescribed in Section 21.¹, Paragraph one of the Electronic Mass Media Law to restrict retransmission of the programme.

The Council believes that the restricting goal of the administrative act may be reached by a reasonable time period to which retransmission of the programme “Rossiya RTR” on the territory of Latvia should be restricted. In the opinion of the Council, this period is 12 (twelve) months. Such time period provides an opportunity to both the distributors of the programme “Rossiya RTR” and its re-transmitters on the territory of Latvia to consider and find an appropriate solution to ensure that after the possible resuming of retransmission of the programme “Rossiya RTR”, the prohibitions in respect of the content of retransmitted programmes established by the legislator in the Electronic Mass Media Law are not repeatedly violated.

Proportionality of the administrative act

Proportionality (reasonableness) of the legal consequences must be considered always, namely, in the case of issuing each administrative act. Specification of the legal consequences is an integral part of the application of rights, and during this stage an obligation of the party applying the rights is to assess the legal consequences and select the consequences which reach the goal of the rights - justice (*Paragraph 14.2 of the Constitutional judgment of 28 February 2007 in case No. 2006-41-01*). The proportionality principle included in Section 13 of the APL states: “*The benefits which society derives from the restrictions imposed on an addressee must be greater than the restrictions on the rights or legal interests of the addressee. Significant restrictions on the rights or legal interests of a private person are only justified by a significant benefit to society.*”

In the Council's view, the benefits to society in this case are clear. The public will no longer be exposed to broadcasts that include opinions that are disproportionately offensive, disparaging and contemptuous towards Latvia and other countries and their people. The public will no longer be subject to the pressure of biased information that constantly talks of the Baltics and Latvia as a “failed state”, nor will the public be reached by such statements expressed in the electronic mass media that incite to war or military conflict and promote hatred on the grounds of ethnicity or nationality.

It must be established what potential damage and losses could be caused by the administrative act to the distributors of the programme “Rossiya RTR” and the electronic mass media retransmitting this programme or in any other way distributing it in the territory of Latvia. In respect of the restriction of the right to freedom of speech of the distributors of the programme “Rossiya RTR”, it may be concluded that the public benefit is greater than the violation of the personal rights, as protection of the public from biased broadcasts, the content whereof calls to war or military conflict and incites hatred due to ethnicity or nationality is in the public interest. At the same time, the right to freedom of speech of the programme “Rossiya RTR” in this case does not need to be especially protected. The Constitutional Court in Paragraph 31 of the conclusion part of its judgment in the case No. 2003-05-01 of 29 October 2003 concluded that an obligation of the press is to provide only true information, and freedom of speech in this aspect also includes the obligations and responsibility. Such conclusion in respect of the journalists has been made on multiple occasions by the ECtHR, indicating that Article 10 of the ECHR only protects them if they act “in good faith, provide precise and verified information in conformity with the journalist’s ethics” (*please refer to Human Rights. The 1998 Act and the European Convention. London, Sweet & Maxwell, 2000, p. 300, please also refer to the judgment of the Human Rights Court in the case Bladet Tromsø and Stensaas v. Norway, para.65, the judgment of 27 March 1996 in the case Goodwin v. United Kingdom, para.39 and the judgment of 21 January 1999 in the case Fressoz and Roire v. France, para. 54*).

The Council also evaluates the potential damages that could be caused to the electronic mass media retransmitting the programme “Rossiya RTR” in the territory of Latvia due to the prohibition of retransmission. ECtHR has established that pluralism and democracy is based on a compromise which requires the making of various concessions by individuals who sometimes have to be ready to restrict some of their freedoms to ensure greater stability of the country in general (*ECtHR judgment in the case Refah Partisi and Others v. Turkey [GC], No. 41340/98, 41342/98,*

41343/98 and 41344/98, para. 99). Thus, the question posed is on reaching a compromise between the requirements to protect a democratic society, on the one hand, and the requirements to protect human rights, on the other hand. Each time, when the state wishes to use the principle of “democracy able to defend itself” to justify interfering with the individual’s rights, it must carefully assess the range and consequences of the considered measure to ensure reaching of the aforementioned balance (*Paragraph 100 of the ECtHR judgment of 16 March 2006 in the case Ždanoka v Latvia [GC]*)

The Council sees the grounds for the assumption that the losses of the electronic mass media which retransmit the programme “Rossiya RTR” that may be incurred in relation to the prohibition established in the decision to retransmit the programme “Rossiya RTR” to a definite period will not be especially great. The Council therefore concludes that the public benefit will be greater than a prohibition to companies to retransmit the programme “Rossiya RTR”, the content of broadcasts of which causes significant damage to the society, for a certain period of time. Such restriction of rights may be justified by the right of society to security and greater stability of the country in general.

Taking into account the aforementioned, the Council believes that in accordance with Section 21.¹, Paragraph one of the Electronic Mass Media Law the grounds exist to adopt a decision on a prohibition to retransmit the programme “Rossiya RTR” in the territory of Latvia for 12 (twelve) months from the date of this decision coming into force.

This decision pursuant to Section 1, Clause 3 of the APL is a general administrative act as it pertains to a range of persons not established individually, being in specific and identifiable circumstances. Namely, this administrative act pertains to any person (electronic mass media) which retransmits the programme “Rossiya RTR” in the territory of Latvia for the purpose of Section 1, Clause 28 of the Electronic Mass media Law (*retransmission in the broader meaning of this term according to the information already mentioned in this decision*). This decision as a general administrative act must be announced publicly in the official newspaper “Latvijas Vēstnesis” according to Section 11, Paragraph two of the Law on Notification. In accordance with Section 11, Paragraph five of the Notification Law and Article 70, Paragraph one of the APL, this decision shall come into force on the next working day after its publishing in the official newspaper “Latvijas Vēstnesis”.

The Council, in accordance with Section 62, Paragraph three of the APL indicates the considerations for why it believes that the decision of the recipients of this decision had not to be listened to during the adoption of the relevant decision. Since the restriction established in the administrative act in the relevant situation is directed at any person who retransmits the programme “Rossiya RTR” in the territory of Latvia to protect significant public interests, listening to potential recipients is actually impossible due to their significant number. In addition, in the administrative act the Council has carried out an assessment of the arguments of potential administrative act recipients, and has justified the conformity of such restriction in the context of the protection of the right to freedom of speech. By concluding that the administrative act proportionally restricts the right of the person retransmitting the programme “Rossiya RTR” in the territory of Latvia, and such restriction in the public interest must be established without a delay, listening to an opinion of the potential recipients may not be adequate.

IV. ACTIONS OF THE COUNCIL IN THE EVENT OF DISTRIBUTION OF CONTENT INCITING HATRED FOR THE PURPOSE OF THE DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL “AUDIOVISUAL MEDIA SERVICES DIRECTIVE”

Since the programme in the territory of Latvia is being distributed (including retransmitted) from Sweden (holder of the broadcasting permit of the programme “Rossiya RTR” in the Kingdom of Sweden is Federal State Unitary Enterprise – The Russian Television and Radio Broadcasting Company), the Directive must be taken into account when viewing restricting of the programme distribution in the territory of Latvia.

Article 3 (1) of the Directive stipulates that *“Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of audio-visual media services from other Member States for reasons which fall within the fields coordinated by this Directive.”* However, Article 3 (2) of Directive states: *“A Member State may provisionally derogate from paragraph 1 of this Article where an audiovisual media service provided by a media service provider under the jurisdiction of another Member State manifestly, seriously and gravely infringes point (a) of Article 6(1) or Article 6a(1) or prejudices or presents a serious and grave risk of prejudice to public health.”*

Article 6 (1), clause a) of Directive states: *“Without prejudice to the obligation of Member States to respect and protect human dignity, 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 violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter”*

The Directive provides for the possibility for Member States to restrict the freedom of reception, but only under the conditions and in accordance with the procedure laid down in the Directive.

Article 3 (2) of the Directive provides that a Member State may temporarily suspend television retransmissions from other countries if the following conditions are met:

“A Member State may provisionally derogate from paragraph 1 of this Article where an audiovisual media service provided by a media service provider under the jurisdiction of another Member State manifestly, seriously and gravely infringes point (a) of Article 6(1) or Article 6a(1) or prejudices or presents a serious and grave risk of prejudice to public health.

The derogation referred to in the first subparagraph shall be subject to the following conditions:

(a) during the previous 12 months, the media service provider has on at least two prior occasions already performed one or more instances of conduct described in the first subparagraph;

(b) the Member State concerned has notified the media service provider, the Member State having jurisdiction over that provider and the Commission in writing of the alleged infringements and of the proportionate measures it intends to take should any such infringement occur again;

(c) the Member State concerned has respected the right of defence of the media service provider and, in particular, has given that provider the opportunity to express its views on the alleged infringements; and

(d) consultations with the Member State having jurisdiction over the media service provider and the Commission have not resulted in an amicable settlement within one month of the Commission's receipt of the notification referred to in point (b).”

Measures taken by the Council during procedure

1. On 18 August 2020, the Council sent a letter to the European Commission, representatives of Federal State Unitary Enterprise – The Russian Television and Radio Broadcasting Company (VGTRK) programme “Rossiya RTR”, and the Swedish regulator (“the Swedish Press and Broadcasting Authority”) regarding the fact that the Council has identified signs of incitement to hatred in the broadcast “Rossiya RTR” of 10 July 2020 “60 minutes”, which meet the criteria of Article 6 of the Directive.
2. On 5 October 2020, an e-mail was received regarding decision of the Swedish regulator stating that they were not entitled to deal with such a case and, according to the law, this is duty of the police and the Council letter was then referred to the police.
3. On 19 October 2020, an e-mail was received from the European Commission proposing a meeting and discuss the possible violations in the programme “Rossiya RTR.”
4. November 20, 2020 - call with representatives of the European Commission.
5. On December 17, 2020, the Swedish Press and Broadcasting Authority informed the Council that police and the Chancellor of Justice have reached the decision to close the case against programme “Rossiya RTR” regards to the first possible violation.
6. On January 13, 2021, the Council informed the Swedish Press and Broadcasting Authority, representatives of the programme “Rossiya RTR” (VGTRK), European Commission that the Council has identified signs of incitement to hatred, that meets the criteria of Article 6 of the Directive (incitement to hatred on grounds of nationality, in the broadest sense of the term), as well as calls for military conflict in the “60 minutes” broadcast of 10 July 2020, the “60 minutes” broadcast of 17 September 2020 and the “60 minutes” broadcast of 21 October 2020. At the same time, the Council informed about the possibility to find a solution (settlement) acceptable to the parties, as well as informed the parties about the intention to restrict the retransmission of the programme “Rossiya RTR” in the territory of Latvia.
7. On January 27, 2021, the Council received written explanations from VGTRK, regarding possible violations. In their explanations, the representatives of the programme state that they value freedom of speech and expression and do not consider that in this case there would be grounds to restrict the right of persons to express them.
8. On January 28, 2021, the Council met with representatives from VGTRK, during which the representatives of the programme were provided with the opportunity to express themselves in a language they understand, to present arguments and to ask questions about the identified violations.

9. On February 2, 2021, the Council met with the Swedish Press and Broadcasting Authority and representatives of European Commission, discussing issues related to the violations identified by the Council in the programme “Rossiya RTR.”

When adopting decision, the Council has taken into account the information provided by the Swedish Press and Broadcasting Authority in writing and also during the meeting on the action taken in relation to the violations found by the Council. The written letters indicate that the Swedish Press and Broadcasting Authority is not competent to deal with such violations, so it can be concluded that it is not possible to take active steps by the responsible regulator to further eliminate the violations. During the meeting, a spokeswoman for the Swedish Press and Broadcasting Authority said that a new body had been set up in late 2020 to deal with such and similar issues but said that given that the body was new and had never dealt with similar issues, there is currently no predictable timeframe for addressing this issue. Also, after repeated consultations with the representatives of the European Commission and providing answers to the questions, no solution was found to further eliminate the identified violations.

The Council has also carefully considered the explanations provided by the Federal State Unitary Enterprise - The Russian Television and Radio Broadcasting Company (VGTRK), both in writing and during the meeting. In the Council's view, the arguments put forward by the VGTRK are irrelevant, since even where incitement to hatred or incitement to war or military conflict has been identified in discussion broadcasts, the broadcaster is responsible for not restricting the expression of such views. Namely, in the event that the right granted to its participants to express their views freely in the form of discussions is exercised in bad faith or in a manner consistent with the media's editorial policy, the Council considers that freedom of expression with the purpose to incite hostile attitude or express incitement to war is not a permitted form of freedom of expression, as it does not correspond to the general goals of the activity of electronic mass media - to inform, educate and entertain the public, and are also contrary to the fundamental principles of democracy.

In view of the above, the Council concludes that it has fulfilled all its obligations under the Electronic Mass Media Law and the Directive by informing the electronic mass media, the country under the jurisdiction of which the service provider operates and the European Commission of violations established in the programme, as well as has respected the right to defense of the provider of the media service and especially - has given the opportunity for the aforementioned service provider to express their views on the alleged violations both in writing and verbally during the Council meeting. The Council also considered the written comments and consulted the Swedish Press and Broadcasting Authority, which has jurisdiction over the programme “Rossiya RTR”, and consulted the European Commission with the aim to reach a solution acceptable to the parties.

The Council concludes that all the actions provided for in the Directive have failed to prevent further infringements in the programme and that, in the Council's view, the activities of the electronic mass media are not expected to change dramatically in the future. The Council notes that this is not the first time that violations of the Electronic Mass Media Law and the Directive have been identified in the programme “Rossiya RTR” - previously the broadcast of the programme “Rossiya RTR” in the Republic of Latvia was restricted in 2019. The Council

considers that it is unacceptable that incitements to national hatred, which affect the peaceful coexistence of different nations, as well as incitement to war and military conflict, which threaten the sovereignty and independence of the Republic of Latvia and other countries, are spread in the electronic mass media in Latvia. The Council emphasizes that the harmful consequences for the public have already occurred at the moment of showing these broadcasts and it is not possible to measure how much damage has already been done to the public, therefore there is no doubt that immediate action is needed to protect audiences in Latvia and prevent similar situations.

In view of all the above, and after careful assessment of the written and verbal information provided to the Council by VGTRK, the Swedish Press and Broadcasting Authority and the European Commission, the Council concludes that the parties have not been able to agree on an acceptable solution to the situation.

Taking into consideration the above and based on Section 21.¹, Paragraph one of the Electronic Mass Media Law, the National Electronic Mass Media Council

decides:

To prohibit retransmission (including distribution) of the programme “Rossiya RTR” in the territory of Latvia for 12 (twelve) months from the date of this decision coming into force.

Chairperson of the Council

Ivars Āboliņš

*DOCUMENT SIGNED WITH SECURE ELECTRONIC SIGNATURE AND
CONTAINS TIME-STAMP*

In accordance with Section 188, Paragraph two of the Administrative Procedure Law, this decision may be appealed within one month from the date of its coming into force, by filing an appeal in the Administrative Regional Court. The Council decides that an appeal of this decision shall not stop its validity. It may be derived from Article 21.¹, Paragraph one of the Electronic Mass Media Law that in the exceptional situations prescribed in the relevant part of the Article, the Council may restrict the retransmission of programmes from other countries. Such restriction of retransmission by its essence is similar to the suspension of operation of the electronic mass media prescribed in Section 21, Paragraph two of the Electronic Mass Media Law. These legal instruments are similar because the council may not stop the operation of the foreign electronic mass media whose programme is being retransmitted in Latvia, as it is located abroad and is subjected not to the Council, but to the foreign supervisory authority. Yet, as it can be derived from Section 21.¹, Paragraph one of the Electronic Mass Media Law, the Council may instead restrict the transmission of the foreign electronic mass media programme in Latvia. The result in both cases is actually identical, namely, the programme created by the electronic mass media does not get to the potential audience of this programme in Latvia.

Since restriction of the retransmission by its nature is similar to the legal instrument prescribed in Section 21, Paragraph two of the Electronic Mass Media Law, whose purpose is to affect the operation of the electronic mass media, i.e., to motivate the electronic mass media to in the future comply with the law and create its programme in accordance with the requirements of the law, then restriction of retransmission has the same goal - to motivate the

foreign electronic mass media to continue creating its programme in accordance with the law of Latvia, including the Directive.

Since due to the aforementioned considerations, restriction of retransmission must serve as an instrument motivating the electronic mass media, restriction of retransmission in the event of the application of such legal instrument must start working immediately, and it must be in force regardless of whether the decision on the restriction of retransmission is being appealed. Only then will the goal that the restriction of retransmission motivates foreign mass media to comply with the law of Latvia in the future, be reached.

In the opposite case, i.e. if the validity of the decision on restriction of retransmission were stopped as a result of an appeal of the decision, the decision on the restriction of retransmission could actually not perform its task to motivate the electronic mass media breaching the law to comply with the law in the future. In turn, possibly in several years, when litigation in the dispute regarding the decision, whereby the retransmission was restricted, the circumstances could have changed, and thus the decision on the restriction of retransmission could actually not be able to fulfil its task to motivate foreign electronic mass media to comply with the law of Latvia.

The Council also emphasises that in the event if the goal of the retransmission restriction or a task of such decision is to motivate a foreign electronic mass media to comply with the law of Latvia in the future, it is important that restriction of the retransmission as the negative consequences of not complying with the law will take place as soon as possible after the events of non-compliance with the law. Only in such case could the restriction of retransmission have the greatest motivating impact on the foreign electronic mass media. By contrast, if the restriction of retransmission were to only come into force in many years, when litigation in the matter regarding legality of the restriction of retransmission had ended, restriction of retransmission as the negative consequences of failing to comply with the law in terms of time would be distanced from the event of a failure to comply with the law. The Council believes that the restriction of retransmission in such case could actually not fulfil its duty to motivate foreign electronic mass media to comply with the law in the future. In addition, the Council believes that the violations established in the decision are so severe that the appeal should not suspend the validity of the decision restricting retransmission, since due to the severity of violations it is important that the foreign electronic mass media as soon as possible, and to a greater extent, would become motivated to comply with the law of Latvia in the future.

Taking into account the aforementioned, the Council establishes that in accordance with Section 185, Paragraph four, Clause 2 of the Administrative Procedure Law, an appeal of this decision shall not stop its validity.