[SK] Penalty for Publishing Classified Data in Print Magazine Cancelled

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Juraj Polak
Radio and Television of Slovakia (PSB)

At the beginning of December 2011, the Slovak Supreme Court (court of final resort) overruled a decision of a regional court (court competent to review administrative sanctions delivered by State authorities) and cancelled a penalty imposed on the Chief editor of the Slovak magazine Zurnal issued by the National Security Authority (hereinafter: NSA). The Supreme Court issued the same decision in late November in an identical matter concerning a journalist of the same magazine. The rulings effectively dismissed both NSA's decisions and returned these cases back to NSA for new legal investigation.

In 2007 NSA penalised the Chief editor and a journalist (author) for publishing the article "Draught in Secret Safes" in the magazine. This article dealt with a classified documents leak in the Secret Military Service pointing to a concrete classified document (at that time in possession of the magazine) and for revealing some of its content to the public. The NSA eventually imposed a maximum fine (circa EUR 500) on both persons for failure to maintain the confidentiality of classified information of which they have learnt and to comply with the obligation to give notice of classified information and surrender it to the NSA or Police. Both persons did not deny these facts as such. But they stressed that their motivation was solely to inform the public about problems with protecting classified documents in the Military Secret Service, and claimed to so having acted in the public interest. The article did not contain any names or other concrete facts that could directly endanger national security or people working in this sphere and the document itself contained information about actions from 2004. Under these circumstances they claimed that there was no actual need to impose sanctions and that the legal procedure itself was sufficient to secure their awareness about handling classified information.

On the contrary NSA in its decisions stated that it is possible to inform the public about a classified-data leak without actually revealing some of the information. It also stated that the document as such was marked as classified and a journalist is not competent to decide what parts of the document may be revealed to public without any security hazards. NSA also considered that the gravity of this unlawful action was increased by the fact that the subjects published classified information in a national magazine (and its e-version) and therefore displayed it to a large part of the public. The authority therefore concluded that there is a need to

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impose a fine on each subject and that the circumstances in this case justified the maximum amount set by law. NSA reaffirmed its decisions in the administrative procedure and these were also confirmed by the regional court.

The regional court's judgment was then challenged at the Supreme Court where the journalist's attorney pointed out that publishing given information in the article incited public consultation on a serious issue. The interest of the public in being informed may under specific circumstances prevail over the objective to preserve classified information. With reference to ECHR jurisprudence (see IRIS 1999-2/4) the attorney also argued that in specific cases journalists may decide whether or not it is necessary to reproduce documents to ensure the credibility of their statements. He stressed that in this case it was necessary to reveal classified information to provide "reliable and precise" information on an issue of general interest. Despite these facts the NSA and the regional court considered that there is a need for a sanction of a maximum fine. It was also stressed that in the NSA's decision the fact that the given classified information was published in print media to inform the public was used to describe the enormous gravity of these unlawful actions. According to the attorney this is in clear contradiction of ECHR case-law.

The Supreme Court in its reasoning stated that the amount of a fine is at the competent authority's discretion and in this case the amount was within the range set by law. However, the Supreme Court stressed that the authorities' considerations about the amount are an integral part of (the motivation of) its decision and therefore must be subject to a courts' review, meaning they must be clear and concrete. This applies even more when imposing the maximum fine. In this case the reasoning about the amount was too vague and the decisions needed to be dismissed.

One, however, cannot leave unnoticed the fact that even though concrete questions about substantial issues were raised before the Supreme Court (possibility to reveal classified information in the public interest, level of balance between freedom of expression and national security) no answers were given. The Supreme Court limited itself to reviewing only those considerations that led to imposing the maximum fine but it did not deliver any opinion on the core issue as to whether such actions under these circumstances are in breach of the provisions of the Act on the Protection of Classified Information with regard to the Charter of Fundamental Rights.

Najvyšší súd Slovenskej republiky 8Sžo/17/2011, 08/12/2011

http://www.supcourt.gov.sk/data/att/18591_subor.pdf

Decision of the Supreme Court 8Sžo/17/2011, 8 December 2011

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Najvyšší súd Slovenskej republiky 5Sžo/34/2011, 24/11/2011

http://www.supcourt.gov.sk/data/att/18245_subor.pdf

Decision of the Supreme Court 5Sžo/34/2011, 24 November 2011

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