

[SK] Violation of the Rules on Protection of Minors in Video on Demand

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On 19 February 2013, the Supreme Court ("Court") confirmed a fine imposed on a provider of audiovisual on-demand services (VoD) by the Council for Broadcasting and Retransmission of the Slovak republic ("Council"). The fine of EUR 100 refers to the failure to label programmes and videos in the VoD catalogue with proper visual symbols indicating the appropriate age group of minors.

The service in question is the online catch-up TV service for the Slovak major TV channel "jov". The videos contained extracts from the reality show "Hotel Paradise". These videos were however promoted by the VoD service provider as scenes "you will not see on TV". The videos contained mostly shots of contestants taking a shower including techniques such as slow motion and close ups to their private parts etc.

After receiving a complaint, the Council recorded videos with the BB FlashBack Standard Player - a simple software that records everything (audio and video) that takes place on the display of the computer. This monitoring revealed that videos were not classified according to any of the existing categories (7+, 12+, 15+, 18+) according to the obligatory unified labelling system. During the monitoring procedure, the service provider claimed that videos were "properly" labelled and challenged the credibility of the Council's recordings. He also contested the Council's competence to record programmes provided within Internet-based services (the law does not explicitly state such competence for Council). According to the service provider, only public notaries are entitled to certify anything that occurred on the Internet.

The Council argued that the service provider did not provide any facts indicating that videos had been properly labelled. Although the software used for the recording is quite simple it does record the actual images on the screen of the computer and the recordings were made personally by the employees of the office of the Council. The Council also stated that it is true that the law - contrary to what it stipulates in respect of broadcasters - does not contain an obligation for on-demand providers to archive and provide recordings of their services to the Council. This however would not constitute a legal obstacle for the Council to secure the recordings of these services through other means, when needed. This competency implicitly results from the Council's remit to monitor and enforce the

VoD providers' compliance with their legal obligations.

The Council stated that the videos in question should have been labelled as not suitable for minors under fifteen (15+) due to the intensive level of full-nudity display. This classification was considered sufficient due to the "bonus" character of these videos; the videos were created specifically for the "extra" fan section in the catalogue..

Another video that contained a "full" strip dance of a male contestant for another female contestant that was accompanied with loud cheers of the others was considered despite of its "bonus" character as not suitable for minors under eighteen (18+). Since all of these videos were not labelled with any of the unified labelling system's symbols, the Council imposed a fine of EUR 100. The low amount of the imposed fine results from the strict approach of Slovak Courts that demand that the fines for the first violation shall in general not exceed the minimum fine set by law.

The Court fully supported the Council's decision and its reasoning.

Najvyšší súd, 4Sž/21/2012, 19.02.2013

<http://www.justice.gov.sk/Stranky/Sudne-rozhodnutia/Sudne-rozhodnutie-detail.aspx?PorCis=7989D7EA-EB6C-4152-B7B1-A1AD842AF6BA&PojCislo=5300>

Decision of the Supreme Court of 19 February 2013

