[SK] Violation of Ban on Political Advertising

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On 21 May 2013, the Supreme Court's (hereinafter "Court") ruling of 25 April 2013 has been published, which confirmed the decision of the Council for Broadcasting and Retransmission of Slovak republic (hereinafter "Council"). The Council imposed a fine of EUR 100,000 on the major commercial broadcaster for broadcasting political advertising outside the official election campaign set by law (21 days before the election day).

Three months prior to the election, the broadcaster aired, on a rather large scale, sponsorship announcements of the civic association "Citizen in action" (about 20 messages per day). These announcements presented (in graphics, words and text) the top three candidates and their basic ideas and the slogans of the newly-founded political party "99% citizen's voice". The spots visually referred to the internet site "www.99percent.sk" which was the official internet site of the party. The "signature" slogan of this party "I am also the 99%" was featured both by reading out and in text format.

Due to the upcoming elections the speed of the decision-taking mattered greatly in this case. The broadcaster exercised procedural rights (requests for prolongation of the time limit for submitting its opinion combined with requests to "clarify" the accusations).

The case was nevertheless put on the agenda of the very next Council meeting (two weeks) and the broadcaster was invited to present his opinion in person. On the day of the meeting, the broadcaster requested the Council to postpone the hearing in order to have "sufficient time to thoroughly familiarise with the case".

The Council scheduled a special meeting that took place one week later (regularly, the Council meets every two weeks). During the hearing at the meeting, the broadcaster claimed that the given messages were proper sponsorship announcements of a civic association. They merely promoted the ideas and goals of the civic association, which is fully in line with provisions on sponsorship.

However, the broadcaster did not elaborate on the candidates and slogans of the political party that had been broadcast within those announcements. The Council stated that the mere labelling of the spots as sponsorship announcements and the fact that the civic association paid for these spots cannot change their

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purpose. Messages clearly promoting candidates and slogans of a political party qualify as political advertising. Political advertising, however, may not be in any circumstances broadcast on TV before the legally determined official election campaign has begun.

Due to the high frequency of these spots, the Council qualified the broadcasting of the political advertising as a severe violation that is capable of seriously disrupting the process of a fair election. Accordingly, the Council imposed an exceptionally high fine in the amount of EUR 100,000.

Before the court, the broadcaster repeated the arguments regarding sponsorship and claimed that his procedural rights had been violated due to the insufficient time for the submission of his opinion and the failure of the Council to sufficiently clarify the case. The Court, however, found the factual base of the case to be clear and simple. Thus, no special treatment of the broadcaster was necessary. On the contrary, the circumstances of the case justified the unusually high pace of the Council's actions. The Court also agreed on the gravity of the violation and fully supported the amount of the fine.

Najvyšší súd, 25/04/2013

Decision of the Supreme Court of 25 April 2013

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