# [SK] Retransmission Without Broadcasters' Consent

**IRIS 2013-8:1/37**

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On 19 June 2013, the Supreme Court ("Court") confirmed the decision of the Council for Broadcasting and Retransmission of the Slovak Republic ("Council") imposing a fine of EUR 100 on a major Slovak cable operator for providing TV channels without the consent of the respective broadcasters.

According to Slovak law, providers of retransmission services may provide TV channels only with the explicit consent of the respective broadcaster. In 2009, broadcasters of major Czech TV channels that are popular in Slovakia informed the Council of the revocation of their consent for the retransmission of their channels in Slovakia because of copyright issues.

Subsequently, the Council issued a caution to the largest cable operator for the ongoing transmission of Czech channels without the necessary consent. As this warning was ignored by the cable operator, the Council started a legal investigation. Together with the telecom office, the Council inspected the operator's distribution system. The inspection proved that the channels are within the operator's system. The operator did not object to the findings of the inspection. However, it submitted a report by an authorized expert in the field of electronic communications. According to this report based on "technological circumstances", a cable operator is not the provider of the retransmission, but only the "distributor of a signal".

In its decision, the Council stated that the submitted report did not address technological questions but assesses legal issues instead. The Council reminded the operator that only a competent public authority (in this case the Council) is entitled to make a binding decision in such a legal case. The Council stressed that the operator is the only entity that enters the contractual agreement with the end-user, who is able to receive these channels using the operator's equipment and services exclusively. Since there is no other entity involved in the transmission process, the Council qualified the cable operator as the provider of the retransmission and accordingly imposed a fine.

Before the Court, the operator objected to the Council's findings with regard to the expert's report. According to the operator, it would have been the Council's obligation to ask the opinion of another expert in the field of electronic communications in case it disagreed with the submitted reported. The Court

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however fully supported the Council's reasoning. It agreed that no expert has the power to answer legal questions in a legally binding manner. The Court also fully agreed with the Council's opinion that the operator alone is the provider of the retransmission of the given channels.

Besides this specific matter, the retransmission of Czech channels in Slovakia remains far from being satisfactory. There are several satellite operators that provide Czech channels in Slovakia. These operators are however established outside of Slovakia in countries where there is no obligation to obtain the consent of the broadcaster for the retransmission. This gives foreign operators big advantages and distorts competition on the Slovak market. Some of the Slovak operators succeeded in "bypassing" their obligation by means of complicated contractual relations with different entities established abroad or by relocating the whole business outside of Slovakia. The effort to at least level the conditions for all market players by removing the obligation from Slovak law was unsuccessful so far, which is why the situation remains problematic.

### *Najvyšší súd, 6Sž/10/2012, 19.06.2013*

http://www.justice.gov.sk/Stranky/Sudne-rozhodnutia/Sudne-rozhodnutie-detail.aspx?PorCis=5A5AA95D-217D-4192-A144-5C84BDEBC43F&PojCislo=6618

*Decision of the Supreme Court of 19 June 2013 (6Sž/10/2012)*

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