[SK] Fine for Promotion of Marihuana Dismissed

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The Supreme Court ("Court") overruled the decision of the Council for Broadcasting and Retransmission of the Slovak Republic ("Council") with its ruling of 30 October 2013, imposing a fine of EUR 500 on a provider of audiovisual on-demand services for the open promotion of marihuana usage. The Court's decision became final on 27 November 2013.

The provider (also publisher of Slovakia's largest tabloid) disseminated an interview with a young hip hop artist about his comment on "thanking the green magical herb for inspiration" during his acceptance speech at the major Slovak musical awards (covered by national media). During the interview, it was made clear that "the magical herb" in question is marihuana. The young artist stated that although marihuana is not for everyone it is "blessing" for others and claimed that marihuana is much safer than the widely tolerated alcohol.

The provider argued that he was merely covering a public event and statements that were made in the context thereof. Such media coverage must be considered as information in the public interest and thus highly protected under the freedom of speech and media.

The Council stated in its decision that the topic of the interview itself did not constitute a violation of valid legislation. The Council, however, contested the manner in which the interview was conducted. Particularly the humorous comments of the reporter that trivialised and justified the statements of the artist. The Council therefore assumed that the provider did not only inform but rather openly promoted illegal narcotics.

In its appeal, the provider stressed that the Council did not fully take into account all the presented arguments. The Council did not sufficiently analyse the context of the interview and thus misinterpreted the comments of the reporter even though the provider referred to the decisions of the European Court of Human Rights to support the significance of the context analysis in cases involving freedom of speech and media. According to the provider, the interview was a legitimate effort to find out whether the young artist tried to start a public debate on a relevant subject or whether he was simply trying to draw attention to himself.

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The Court agreed with the objections raised in the appeal. Although the Court did not express its opinion on whether the programme actually promoted illegal narcotics, it, however, stated that the Council ignored relevant arguments raised by the provider. The Council analysed the interview only with respect to Slovak legislation and omitted to interpret the case according to the standard of Article 10 of the European Convention on Human Rights. Overall, the Court considered the reasoning of the decision biased and formalistic and thus unlawful. Therefore, the Court overruled and returned the decision to the Council for a new procedure.

Najvyšší súd, 6Sž/3/2013, 30.10.2013

http://www.justice.gov.sk/Stranky/Sudne-rozhodnutia/Sudne-rozhodnutie-detail.aspx?PorCis=224ABE9F-2F73-40F2-82D7-DAD0F9C5D8CE&PojCislo=8707

Decision of the Supreme Court of 30 October 2013, 6Sž/3/2013

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