[SK] Contradictory Judgments With Respect to the Accessibility Quotas

IRIS 2014-4:1/29

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On 19 March 2014, the Supreme Court ("Court") confirmed a decision of the Council for Broadcasting and Retransmission of the Slovak Republic ("Council") in which the Council had imposed a fine of 3,319 Euro on a major commercial TV broadcaster for failing to reach the prescribed quota of the total transmission time for programmes accompanied with open or closed subtitles or accompanied by translation into deaf sign language or broadcast in deaf sign language. This judgment was delivered despite the fact that a different decision of another chamber of the same court from 23 January 2014 exists, where the Court cancelled the Council's decision that imposed a fine of 3,319 Euro on the same broadcaster and for the same type of violation.

At the time of the adoption of these decisions the relevant legislation (Act on Broadcasting and Retransmission) did not explicitly prescribe in what timeframe the broadcasters are obliged to reach the assigned quotas. However, the Council argued that broadcasters are obliged to send reports on the given quotas each month. The Council referred to the provision of the Act on digital Broadcasting (this is a different Act than the Act on Broadcasting and Retransmission), which states that if the Act does not prescribe another time unit for the portion of transmission time the time unit "one month" shall be used. Furthermore, the Council stressed that the purpose of the quota is to make the audiovisual media services accessible to people with a visual or hearing disability. A longer time unit, e.g. one year, would allow a more disproportionate scheduling of transmitting these programmes (e.g. most of the programmes would be broadcast during the "slow" months such as summer holidays etc.) in contrast to the shorter time unit. Therefore, acknowledging the longer time unit would go against the purpose of the legal provision on quotas.

On the other hand, the Broadcaster argued that when the law is unclear about an aspect that directly influences a broadcaster's obligation, it is the regulatory authority's duty to interpret this aspect in favor of the broadcaster (in dubio pro mitius). Therefore, enforcing the broadcaster to reach the quota each month is excessive and unlawful. In both above mentioned cases the broadcaster failed to reach the quota in certain months. However, the average of the year for the prescribed quota was fulfilled.

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In its first decision, the Court agreed with the broadcaster's argument and confirmed that the law did not clearly prescribe the relevant time unit. With respect to the provision of the Act on digital Broadcasting the Court pointed out that this provision uses the term "portion of the transmission time", which is in other parts of this Act affiliated only with the licence requirements of an applicant for a TV license (the wording of the "quota obligation" refers only to the percentage of the programmes). In such a case it is necessary to interpret the law in favour of the broadcaster, what the Council has not done in his decision.

The latter decision of the Court (adopted by another chamber) agreed with the Council's arguments and stressed that the primary mission of the Council is to enforce the public interest in the exercise of the right to information, of freedom of expression and the right of access to cultural values and education. The Court emphasized that the purpose of the given quota is to provide the access to the audiovisual media services for people with a visual or hearing disability. In order to be effective, this access has to be continuous. Thus, the Court finds that the Council's interpretation is reasonable and lawful and in line with the purpose of the legal obligation.

It is certainly worth mentioning that the legal uncertainty, which arises from the unclear wording of the legal provision, was noticed by the legislator (Ministry of Culture). Therefore, the amendment of the Act on Broadcasting and Retransmission (for more details see IRIS 2013-2:1/36) explicitly constituted the time unit to reach the assigned quotas to "one month".

Najvyšší súd, 19.3.2014

http://www.justice.gov.sk/Stranky/Sudne-rozhodnutia/Sudne-rozhodnutie-detail.aspx?PorCis=9CA0BA37-74E9-44F6-8887-FD267CD3ABF1&PojCislo=12220

Decision of the Supreme Court, 19 March 2014

Najvyšší súd, 23.01.2014

http://www.justice.gov.sk/Stranky/Sudne-rozhodnutia/Sudne-rozhodnutie-detail.aspx?PorCis=64C3902D-4436-405C-95BA-59580EF0FCB2&PojCislo=10278

Decision of the Supreme Court, 23 January 2014

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