[SK] Sanction against current affairs programme state tender dismissed

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On 25 March 2014, the *Rada pre vysielanie a retransmisiu* (Council for Broadcasting and Retransmission of the Slovak Republic) delivered a decision that formally terminated the legal proceedings taken against a major commercial broadcaster. The strictly formal decision (with no reasoning since no sanction was imposed) was however adopted based on the judgment of the Supreme Court ("Court") of 21 November 2013 which overruled the original decision of the Council in the given case.

In its original decision, the Council imposed a warning to the major commercial broadcaster for breaching the obligation to present current affairs programmes objectively and impartially. The programme reported upon the tender of an operator for the national medical emergency system. Among other things, the tender criteria and professional competency of the tender's committee members were questioned. The Council acknowledged these comments as legitimate with regard to the purpose of the article - media monitoring of the governmental tender procedure. However, when judging someone's professional capability, in order to maintain the objectiveness of the programme, it is necessary to provide his point of view to such delicate subject.

During the legal proceedings, the broadcaster claimed that he addressed each member of the committee. However, only one was willing to provide a statement on this subject (which was indeed used in the programme). The reporter informed the viewers about the refusal of other committee's members to comment on the subject.

The Council in its decision contended that the viewer was informed only by the reporter's statement without any means that would allow the viewer to verify it. As a result, the viewer was not properly informed about a crucial aspect of the topic. Therefore, the broadcaster did not preserve the objectiveness and impartiality of the current affairs programme.

The Court in its ruling stressed the educational aspect of the warning as a sanctioning tool. In order to adequately fulfil its purpose, the warning must contain "detailed instruction" for the broadcaster how to deal with similar situations in the future. The Court acknowledged the detailed arguments

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concerning the refusal to comment on the topic by the other members of the committee presented by the broadcaster during legal proceedings and pointed out that the Council in its decision did not contradict any of these arguments. According to the Court "it is impossible to force someone to comment on the topic in the programme". Furthermore, the Court stressed that it is unclear how the broadcaster should secure footage of the committee members' refusal to comment and how to "place" such footage into the storyline of the programme. In the Court's opinion, the broadcaster provided room for each member of the committee to comment on the topic as well as for the Health Ministry state body responsible for the tender. The Court came to the conclusion that the programme was objective and impartial. Therefore, the broadcaster fulfilled its legal obligation.

The Court overruled and returned the decision to the Council for a new procedure. The Council, being bound by the legal opinion of the Court, officially terminated the legal proceedings without imposing any sanction.

Najvyšší súd, 21/11/2013

http://www.justice.gov.sk/Stranky/Sudne-rozhodnutia/Sudne-rozhodnutie-detail.aspx?PorCis=0A24C1BB-10A2-4FDE-B122-DC0FCA01066A&PojCislo=8875

Decision of the Supreme Court of 21 November 2013

Rada pre vysielanie a retransmisiu, 25.03.2014

http://www.rvr.sk/_cms/data/modules/download/1400766162_RZK_014_2014.pdf

Council for Broadcasting and Retransmission of the Slovak Republic, decision of 25 March 2014

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