[SK] Fine for Call TV Quiz Show Confirmed

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On 6 May 2014, the Supreme 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 EUR 16,000 on the major commercial TV broadcaster for failing the obligation to broadcast only fair teleshopping.

The Council received a substantial amount of complaints against interactive quizzes offering money prizes broadcast on various TV channels. The complaints habitually referred to these as a "fraud" and questioned the core practises of such programmes, e.g. premium rate telephone numbers (PRTN), encouraging viewers to call in, but actually connecting only a minimum portion of callers etc.. The Council replied that it is not entitled to review, whether such business practices are in line with the relevant legislation and advised the applicants to address the Slovak Business Inspection. The Council however acknowledged that complaints that objected the unfair manners in which the quiz questions were presented can be a relevant violation of the law and declared that such actions may under certain circumstances qualify as the violation of the legal obligation to broadcast only fair teleshopping.

First however, it must have been assessed, whether these programmes may qualify as teleshopping. According to the judgement "No. C-195/06 KommAustria v ORF" of the European Court of Justice (ECJ) the main criteria when assessing Call TV Quiz Shows are whether the show represents a real offer of services having regard to the purpose of the broadcast of which the game forms a part, the significance of the game within the broadcast in terms of time and of anticipated economic effects in relation to those expected in respect of that broadcast as a whole and also to the type of questions, which the candidates are asked. The show in question invited viewers to participate through PRTN in game of chance with the possibility of winning prize money, i.e. the broadcaster in return for payment made a service available to the viewer by allowing him to participate in a game of chance. The Council therefore needed to assess, whether this possibility represents a real offer of service for the viewers.

In its decision, the Council declared that the purpose of the show was clearly to "acquire" as many callers as possible. The interactive element did not only represent a small supply of interactive entertainment in addition to the main purpose of the show, since the only purpose of the show was the offer to

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participate in an interactive game of chance. The shows in question represent circa 6% - 7 % of the daily transmission time of the broadcaster and one third of the daily time is devoted to the commercial media communication. Therefore, the shows constitute a relevant proportion of the broadcasting time as a whole. The Council also stated that even though the actual economic effects of the shows for the broadcasters cannot be established precisely (the Council lacks competences in this respect) due to the considerable broadcasting time devoted to these shows as well as the fact that these shows are not interrupted by advertising, it is reasonable to presume that the economic effect is significantly.

The question that needed to be correctly answered in order to win prize money was a form of mathematical exercise, which was displayed on the screen in pictures. The Council stated that the instructions given by the host of the show were misleading and confusing. During the show, instructions varied from counting the numbers to numeric characters and from counting numbers/numeric characters “on the picture” to counting these “on the screen” even though only counting all numeric characters (i.e. not only numbers but also letters and signs that could be considered as roman figures e.g. “C” = 100 etc.) on the whole screen (not only in the picture) could lead to the correct answer. Furthermore, the solution provided by the broadcaster interpreted same signs differently without any logical justification (bracket in one case was considered as “C”, and thus 100 but the second bracket was considered as “nothing”). Based on all these facts, the Council declared that the show must be qualified as teleshopping. This teleshopping deceived the viewers by presenting false chance to win (in return for payment) and thus cannot be considered as “fair”.

In his appeal, the broadcaster claimed that this show is merely an entertainment programme. According to the broadcaster, the transmission time devoted to this show is low and trivial compared to the transmission time of the TV Channel as a whole. The broadcaster also argued that the show in question is an acquired programme that does not bring any economic effect to him (i.e. he broadcasts the programme for free and does not share the incomes from phone calls).

The Court fully supported the Council’s arguments with regard to the assessment of the programme as teleshopping as well as with regard to the misleading manner, in which the instructions for solving the problems were presented. With regard to the broadcaster’s claim of not having any profit from this show, the Court stated that the producer of this show on his website offers two types of business models for broadcasters. Broadcasters can either receive payment from the producer of the show for the provided transmission time (same principle as advertising) or they may provide the transmission time for free and participate on the incomes from phone calls. According to the Court, the broadcaster did not provide any evidence that could lead to a reasonable assumption that the broadcaster in this case did not profit from the show.

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http://www.justice.gov.sk/Stranky/Sudne-rozhodnutia/Sudne-rozhodnutie-detail.aspx?PorCis=BA233297-9A34-4E49-956C-285990BFFA3E&PojCislo=13945

Decision of the Supreme Court of 6 May 2014

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