[SK] Supreme Court decides on 30-minute advertising break rule

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Juraj Polak
Radio and Television of Slovakia (PSB)

On 19 March 2014, a decision of the Supreme Court confirmed the decision of the Rada pre vysielanie a retransmisiu (Council for Broadcasting and Retransmission of the Slovak Republic) imposing a fine of EUR 3,319 on a major Slovak commercial TV broadcaster for violating the rules on advertising.

According to article 35 (3) of the Broadcasting Act, “when broadcasting a news programme or an audiovisual work, other than serial, series, documentary film, a programme for minors or a religious ceremony, the programme may be interrupted by the insertion of advertising or teleshopping once in every thirty-minute section even if the scheduled duration of the news programme or audiovisual work is less than thirty minutes”. This provision (partially) transposes Article 20 (2) of the AVMS Directive.

The Council sanctioned the broadcaster for violation of article 35 (3) of the Broadcasting Act by inserting two advertising breaks within one 30 minute period of a film. The broadcaster however challenged the Council’s interpretation. According to the broadcaster, the wording of article 35 (3) of the Broadcasting Act as well as that of Article 20 (2) of the AVMS Directive is unclear and may provide for more than one meaning. In line with the principle “in dubio mitius”, the Council should adopt the least restrictive interpretation which in this case would mean that these provisions do not regulate the “scheduling” of the advertising breaks but only their number. The broadcaster argued that one of the aims of the AVMS Directive was to liberalise the rules on advertising and the Council’s interpretation is in direct contradiction with this aim.

The Council rejected these arguments and declared that the wording of the respective provisions is clear enough. The meaning of them is evident, not only based on the grammatical interpretation, but it is also fully in line with the purpose of Article 20 (2) AVMS Directive - namely to protect and ensure the integrity of programmes by regulating excessive interruption of programmes by advertising. The Council acknowledged only one ambiguity with respect to article 35 (3) of the Broadcasting Act and that is whether “scheduled duration” refers to net or gross time (meaning, the duration of the programme with or without the time of advertising breaks). In this respect the Council acts in accordance with the ECJ judgment ARD v. ProSieben Media AG (case C-6/98, see IRIS 1999-10/5) when

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using the gross time for the calculation of the permitted number of advertising breaks.

The Council also pointed out, that its interpretation does not in any way tighten up the rules on advertising. The number of breaks increased, the 20-minute rule was removed and certain genres (series, serials and documentaries) may under the new legislation be interrupted by advertising without any limits. The “only one break per 30 minutes” rule is actually the only remaining limitation. The enforcement of this rule by the regulatory authority is therefore just and proportionate.

The broadcaster repeated his arguments in front of the Court and asked the Court to initiate a preliminary ruling procedure before the ECJ. The Court however supported the Council’s interpretation and agreed, that the wording of article 35 (3) of the broadcasting Act is clear and obvious. Therefore, the Court denied the request for a preliminary ruling procedure before the ECJ and confirmed the Council’s decision.

Najvyšší súd, 6Sž/11/2013, 19/03/2014

http://www.justice.gov.sk/Stranky/Sudne-rozhodnutia/Sudne-rozhodnutie-detail.aspx?PorCis=060EC493-D330-425F-939B-51C34BCBE11E&PojCislo=12214

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