[SK] Fine for the Violation of the “Language Act” Confirmed

IRIS 2014-6:1/41

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On 21 May 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 165 Euro on a local commercial TV broadcaster for failing to ensure that programme services are being broadcast in Slovak language.

The Act on Broadcasting and Retransmission obliges the broadcasters to exercise their broadcasting in line with the provisions of so called “Language Act”. The Language Act stated that the TV broadcasting usually must be carried out in Slovak language unless the programme or a part of the programme services falls under one of the exceptions laid down in the Language Act. The “most used” exceptions (besides specific cases such as foreign language learning programmes, foreign music songs, exceptions concerning Czech language, which is considered as “understandable” for Slovaks etc.) are subtitling, simultaneous translation or consecutive transmission of the given programme in Slovak language.

The Broadcaster in question is a broadcaster, who is localized in the south region of Slovak Republic known for its high penetration of the citizens of Hungarian nationality. In his news programme, the broadcaster reported about a traffic accident that happened in this region. Among statements of the police and other officials in Slovak language the programme also included the dialogue of two witnesses of this accident transmitted exclusively in Hungarian language without any other means that would allow Slovak viewers to understand this dialogue (subtitling, translation etc.). Therefore, the Council concluded that the broadcaster violated the relevant provisions of the Language Act along with the provisions of the Act on Broadcasting and Retransmission and imposed a minimum fine of 165 Euro.

In his appeal, the broadcaster claimed that the given programme was an acquired work and as such it is qualified as an audiovisual work under the Copyright Act. According to the broadcaster, he did not have the right to edit the programme in any way (including inserting of subtitles). Therefore, there was a conflict of two legal norms, which should be solved in line with the principle “lex specialis derogat lex generali”.

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In its reply, the Council stated that it was the free decision of the broadcaster to acquire the given programme. Therefore, he was obliged to take necessary precautions to secure the compliance of the programme with the law (e.g. the right to adjust the programme with relation to the language requirements). The Council also emphasised that in reality there was no conflict of legal norms, since there was no legal obligation for the broadcaster to transmit this particular programme. Furthermore, the Council stressed that for instance the inserting of subtitles does not qualify as a change of the audiovisual work under the provisions of the Copyright Act. Thus it does not require the consent of the author.

The Court fully acknowledged the arguments of the Council and confirmed the decision. The Court emphasized that admitting the argument on the acquired programme and the impossibility to adjust such a programme under the provisions of the Copyright Act would create absurd situations, where basically any audiovisual work could be broadcast on TV as long as it is acquired and does not represent an own production of the broadcaster.

It is worth mentioning that the provisions of the Language Act (especially its strict character) were subject to European Commission's criticism. As a response, the Ministry of Culture amended the relevant provisions of this Act (for more details see IRIS 2014-1:1/41) and allowed the Council to grant TV licences for broadcasting in all other EU languages. However, the Council may grant such licence only on regional or local level and only if a sufficient offer of broadcasting in Slovak language exists in the given geographic area. Broadcasters with a standard licence still have to observe the general obligation to broadcast in Slovak language.

Najvyšší súd, 21.5.2014

http://www.justice.gov.sk/Stranky/Sudne-rozhodnutia/Sudne-rozhodnutie-detail.aspx?PorCis=D241AA9E-EE4F-4DD8-8BC4-ADD799653F7A&PojCislo=13564

Decision of the Supreme Court of 21 May 2014

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