

[CZ] Supreme Administrative Court about warning

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In its resolution of 14 July 2014, the widened chamber of the Supreme Administrative Court upheld the legal interpretation of the Council for Radio and Television Broadcasting (Council) in dispute regarding legal issues concerning the warning according to Article 59 paragraph 1 of Act No. 231/2001 of the collection of laws on radio and television broadcasts.

Article 59 of Act No. 231/2001 states:

- (1) If a broadcaster or re-broadcaster breaches any obligations set out herein or any conditions stipulated in the licence granted to such a broadcaster or re-broadcaster, then the Council shall warn such a (re)broadcaster of the breach and shall grant such a (re)broadcaster a grace period to take corrective action.
- (2) The length of the grace period for corrective action as referred to in the preceding paragraph shall be adequate to the nature of the obligation so breached.
- (3) If corrective action is taken within the prescribed period, the Council shall not impose any penalty.

The dispute was whether the warning according to Article 59 paragraph 1 of Act No. 231/2001 has to be seen as relevant only in cases when it relates to an identical act, resp. broadcasting of an identical spot, communications etc., or whether the condition is fulfilled even in cases where broadcasts have similar characteristics in a material way. The widened chamber of the Supreme Administrative Court, after a thorough review of the meaning and purpose of the Act No. 231/2001, its relation to Community law, the case law of the Constitutional Court and possible future state administrative practice of the Council for Radio and Television Broadcasting, came to the following conclusion: the warning issued by the Council for Radio and Television Broadcasting pursuant to Article 59 paragraph 1 of Act No. 231/2001 of the collection of laws on radio and television broadcasts constitutes a qualified basis for the imposition of penalties for subsequent violations of broadcaster's obligations set out in this Act or the conditions of the license granted, if the subsequent breach of law contains similar facts as the unlawful offence of which the operator was alerted.

The opinion of the Supreme Administrative Court means that broadcasters may be fined by the Council in all cases, when they received a warning about a similar

violation, not just when they were warned in relation to the previous broadcasting of the same content (reports, film, commercial, communication etc.).

Usnesení rozšířeného senátu Nejvyššího správního soudu (No. 8 As 85/2012-88)

http://www.nssoud.cz/files/SOUDNI_VYKON/2012/0085_8As_120_20140717145821_prevedeno.pdf

Resolution of the Widened Chamber of the Supreme Administrative Court No. 8 (As 85/2012-88)

