[SK] Promotion of referendum answers do not qualify as political advertising

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The Council for Broadcasting and Retransmission (hereinafter “Council”) on 24 February 2015 dismissed a complaint about at story aired in the prime time news programme of the Slovak public service broadcaster. The story covered a meeting of the national committee of the Christian democratic movement “KDH”, a well-established conservative political party in Slovakia.

The claimant complained about the fact that at the end of the story the spokeswoman of the political movement invited people to attend the upcoming national referendum and to vote yes to all three questions. Although the Council investigated this complaint only as to the provisions on the objectiveness and impartiality (the complaint was declared unfounded, since the story only reported on the meeting and did not analyse or further examine the outcomes), the official dismissal of this compliant does have more significant implications. By an official declaration of “no violation of legal provisions”, the Council confirmed its previous press statements that the definition of political advertising does not cover TV or radio appeals to vote in a specific direction in the referendum (including ads in return for remuneration).

Political advertising is defined as any public announcement that promotes a political party, a political movement and its candidates or is in their favour during the election or referendum campaign. Political advertising on TV as such is forbidden, with the exception of TV campaigns specifically regulated by a relevant specific Act (e.g. the Act on National Elections). Practical problems however arose when a referendum of a civic nature was declared. The topic of the referendum was rights of lesbian, gay, bisexual and transgender (LGBT) people (to marriage and child adoption) and it was initiated by civic society with no previous political involvement. The Act on the referendum does not regulate or in any way offer information regarding TV campaigns before the referendum. According to the published statements of the Council, even if a political advert explicitly mentions the referendum campaign, it will not fall within the relevant definition unless any direct promotion of a specific political party or movement (officially registered with the Home Department) or candidates takes place.

This interpretation has been challenged by several activists and major commercial and public broadcasters. According to their opinion, the provision should be

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interpreted in accordance with its purpose, which is the prevention of the economic or any other monopolisation of public debate before elections or referendums. In the given example the term “political movement” should be understood in a less formalistic and more sociological/philosophical manner and civic movements actively contributing to the change of the legal system (as well as their natural opponents) should logically fall within the scope of the given definition.

Besides, recently the Home Department released an official statement which is in clear contradiction to the official statements of the Council. According to the Home Department, the legal rules are “clear” and since the specific legal rule (i.e. the Act on the referendum) does not allow TV campaigns, any promotion connected to a particular vote in the referendum on TV is forbidden.

Decision of the Council for Broadcasting and Retransmission of 24 February 2015

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