

Comparative Media Law Practice

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Media Regulatory Authorities in the Visegrad Countries

Edited by
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Czech Republic
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Introduction

This is the first comparative analytical report on how administrative judiciary-administrative law courts or senates, higher regional courts, and partly constitutional courts deal with regulatory challenges related to various, content-based types of administrative-legal sanctions issued by the electronic / digital media regulators in the Czech Republic, Hungary, Poland and Slovakia. The selection of these four countries and their electronic / digital media regulatory systems stems from their recent and sometimes rather distant common history combined with geographical factor (V-4 or Visegrad Group). It is scientifically naturally very interesting to find similarities, but especially differences, in legal argumentation and legal-regulatory development among such a group of countries. In fact, even local administrative law judges themselves are very much interested in examples from these neighbouring countries. The whole research project was enabled by funding from the Hungarian Academy of Sciences.

As these studies document, these are actually rather challenging regulatory issues which usually take years to come to conclusions or final verdicts. Yet there is no such country-specific or comparative study. Sure, one can find many studies on electronic media law and regulation, however, those studies mostly use civic or criminal law regulatory-judicial examples, but rarely concentrate on more systematic or in-depth approach, and even less often focus on administrative law content related aspects. Moreover, it is hard to find full texts of controversial broadcast items—yet sometimes either media regulator or court(s), or sometimes even civic organisations, or all three public legal and normative assessors can in fact be wrong in their assessment of professionalism of work of journalists / media. Therefore, in some cases, we included full transcript of the most arguable or the most interesting news and current affairs in broadcasting. For similar reasons, we have included extensive, although simplified transcripts of courts' verdicts.

The authors focused on the regulatory areas of human dignity, balanced coverage, commercial communication, hate speech, right of reply, and protection of minors. These are arguably the key media regulatory issues. Already here we could find substantial differences among four countries. For example, whilst the Hungarian case law covers each of the before mentioned regulatory areas in Slovakia, we did not find any case that would deal directly with hate speech related to electronic / digital media and administrative law. In the Czech Republic, no hate speech case connected with media was found either (in administrative law nor in criminal law). Cases related with right to reply in the Czech Republic and Slovakia are decided by civil courts in civil proceedings. Thus, the manner of judicial review is quite different in this area. In Poland, the right of reply was replaced by the right to disclaimer that is out of competences of the National Broadcasting Council. Also there were no cases concerning the balanced coverage.

Our *ad hoc* research group has been interested in finding the key normative and legal values motivating judges (or rather administrative courts or administrative law senates) in their regulatory rulings (usually in connection with appeals of broadcasters against decision of the media regulators or lower regional courts) on broadcast (and maybe soon online media) regulatory issues. However, appeals or media regulators' rulings of technical nature, eg, not granting licence or ones related to transfer of ownership, were out of our research scope.

Of course, by definition, fundamental rights are actually competing rights. Thus, can we identify freedom of speech or other basic human rights (eg, personality rights or human dignity) as a key driving force behind rulings either media regulators or administrative courts? If preference was given to fundamental human values other than freedom of speech, which were these? What does 'balanced coverage' actually mean for media regulators on the one hand, and for the courts on the other? What kind of moral and legal justification was used for a given legal-normative preference? Have there actually been value-based conflicts between courts and the regulator?

Another interesting question is that of the consistency of the rulings. Do courts refer in their rulings to their previous ones, especially when there are two or three different specialised senates? Were various senates / courts consistent in their rulings? This may seem to be a useless research question, but in fact, it will be shown that various senates of the court, even the same senate of the court, have been inconsistent in their rulings.

Which international legal sources have been used to support these rulings and verdicts, eg, European Court of Human Rights (ECtHR), or also possibly Court of Justice of the European Union (CJEU)? Which international legal sources were not used to support these rulings and verdicts, and why? Have there been any common trait in rulings / verdicts? Could these traits be seen as long-term, or rather short-term ones? If there are no similarities, why not? Is there any known, important difference in key principles of media regulation in comparison with other EU Member States, especially within V-4?

Which principles mentioned above bring the biggest regulatory challenges? Is the regulation of the electronic / digital media too complicated, demanding or strict to broadcasters, or is it OK, comparatively speaking? Do broadcasters complain, either officially or off the record, with respect to principles of media regulation? Can their complaints be seen as legitimate in some areas? What else could help in improving the current state of affairs? How could we characterise the cooperation between the staff (office) and the Board of the media regulator? Do the regulatory boards of the media authorities accept all regulatory suggestions of the staffs (offices)? If not, in which area can one notice the biggest or most important divergences? Which arguments of the office count usually? What is the role of the professional, ideological, and education backgrounds of the members of the media regulator—does it have any impact on how they see imposing a regulation? Is there any foreign impact or inspiration, either from the European Platform of Regulatory Agencies (EPRA) or from other bodies? Do we see any areas of administrative law procedures which could be improved? How? How can we characterise or assess direct or indirect intervention of the Parliament and the Ministry of Finance or other external bodies in the work of the media regulator? Do broadcasters complain, either officially or off the record, with respect to the professional competences or work of board members? Have the appeals of the broadcasters against sanctions usually been well-argued? Is there any external professional or civic informal, at least *ad hoc*, supervision or criticism of the work of the media regulator? If yes, how could we evaluate it, eg, commentaries in the media, reports by NGOs)?

How professionally competent is judiciary seen in general, and in this area of administrative law in particular? Have argumentation used in the administrative courts rulings been persuasive enough? Which cases are seen as the most difficult ones to decide for the judiciary? Is there any long-term, value-based difference / tendency between various levels of courts? Indeed, it seems that the Constitutional Courts in Slovakia and Hungary show long-term,

more liberal values, following the ECtHR rulings. In Poland, the Constitutional Court focuses above all on the provisions of Polish law, and only in identical cases refers to the judgments of the ECtHR. In the majority of judgments, the Constitutional Court merely states that the freedom of speech does not have an absolute nature, and its limits are imposed by other freedoms. In the majority of the judgments, the Constitutional Court of Poland shares the view of the National Broadcasting Council.

In the Czech Republic, it is the Supreme Administrative Court that seems to be the dominant player, because its decisions are very rarely revoked by the Constitutional Court in media cases. The Czech Supreme Administrative Court seems to be more liberal in balanced coverage cases, while more protective in cases dealing with protection of minors.

Further research questions we were interested: Is there any platform at which the courts and the regulator could discuss issues of common interest? What is the annual percentage of accepted / rejected rulings focused at content broadcast, issued by the media regulator in the years 2010–2014? Can we see any areas of judiciary work which could be improved? If yes, how? What else could help improve the current state of affairs?

Of course, some questions above were too ambitious to be answered in this research, nevertheless, they show how interesting and important this type of research can be. We focused our analysis primarily on the period between 2010 (or back to 2007, if there were not enough cases) and 2014. It is a problem that many regulatory and court cases actually last a few years until the final verdict is issued, therefore, it was impossible to follow strict differentiation with respect to the time span. Finally, this report is certainly imperfect; yet there is a hope that it will serve as a starting point for a more refined research in the future in this increasingly important regulatory area. This follow-up research is needed, indeed.

The Editors

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