

Comparative Research on the Approaches of Administrative Judiciaries to Sanctions Issued by Media Regulators in V-4

Freedom of Speech, Media Regulators vs Administrative Law Courts and Broadcast Media

Comparative Studies of the Czech Republic, Hungary, Poland, and Slovakia

The Case Study of Slovakia

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This is the first analytical report on how administrative judiciary-administrative law senates of the Supreme Court of Slovakia (SC), the regional courts (RC) and partly the Constitutional Court (CC) deal with regulatory challenges related to various, content-based types of administrative-legal sanctions issued by the electronic / digital media regulator Rada pre vysielanie a retransmisiu (Council for Broadcasting and Retransmission, RVR) in Slovakia. As far as we know, there is no such study available at local or international level. Yet, as this study documents, these are actually rather challenging regulatory issues which usually take years to come to conclusions or final verdicts. 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 regulators or courts, or both legal and normative assessors can in fact be wrong in their assessment of media / journalistic professionalism. 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. Furthermore, it is difficult to find international comparative studies of this type; there are some studies covering telecommunications and similar fields,¹ but studies produced both by lawyers and non-lawyers are uncommon, while non-lawyers bring additional analytical perspective and curiosity resulting from missing background in law.

We focused on the regulatory areas of human dignity, balanced coverage, commercial communication, hate speech, right of reply, and protection of minors. Surprisingly, we did not find any RVR, RC, or SC case that would deal directly with hate speech. Furthermore, as a result of legislation, right of reply is out of scope of administrative senates. Nevertheless, we included this regulatory area into our study for its importance as well as for comparative reasons. It should be mentioned here that there are three areas in which Slovak regulation goes significantly beyond the scope of the Audiovisual Media Services Directive (AVMSD) of the European Union: regulation of objectivity and internal pluralism in broadcasting, protection of minors, and protection of human dignity. Especially objectivity in news and current affairs problems has become a key issue for the RVR as judiciary often returned contradictory verdicts in this regard. Numerically, though, the majority of those sanctions deals with commercial communications.

We have been interested in finding the key normative and legal values motivating judges (or rather

¹ See, eg, P Larouche and X Taton, *Enforcement and Judicial Review of Decisions of National Regulatory Authorities. Identification of Best Practices*. A CERRE Study. Brussels (21 April 2011), https://pure.uvt.nl/portal/files/1375355/Larouche_Enforcement_and_judicial_review__111208_publ.

administrative law senates) in their regulatory rulings (usually in connection with appeals of broadcasters against decision of the RVR or lower regional courts) on broadcast (and maybe soon online media) regulatory issues, however, appeals or RVR's rulings of technical nature, eg, not awarding licence or ones related to transfer of ownership were out of our 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 the RVR 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 the RVR 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 SC, even the same senate of the SC, 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 EU (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 (Visegrad Group)? 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? Does the regulatory Board of the RVR accept all regulatory suggestions by the staff (office)? 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 RVR—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 RVR? 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 SC 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 CC in Slovakia shows long-term, more liberal values, following the ECtHR rulings. 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 may be 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. As the expert Slavomíra Salajová put it: ‘Only the staff of the