

SOCIAL MEDIA AND COURTS IN SLOVAKIA

Our task was to explore the number and characteristics of cases related to social media at national courts of all levels in Slovakia during the period 2013 – 2017. In the end, there were 37 cases found that dealt with social media in a relevant way, i. e. in their quality as media, not as a simple means of interpersonal connection (for example, Facebook was often mentioned in cases related to divorce and sharing care about minors). From that number, 24 were related to Facebook, the rest (but simultaneously also some of FB cases) to Youtube, *Pokec* (a local social media network), blogs and internet discussions.

In most examined cases the main conflict arose between on the one hand guaranteed freedoms of speech/press/expression /information and on the other hand the protection of personality rights. In the outcome, during the monitored period only 27 % of controversial publications or speeches were approved by courts in Slovakia. Among all the examined judgments there were three outstanding verdicts that constituted a precedential view on the balance of various rights and freedoms. Simply said, one of them rejected a demand for strict understanding of balanced reporting clause (mentioning also plurality of media, including social media), the another approved a request for a proper protection of minors in legacy media regardless of lack of such regulation in social media environment, while the third one supported protection of freedom of speech and press of social media activist/freelance journalist.

Categories of Cases with Social Media Involved

Similar to the “legacy” media situation, most of the judicial cases that are related to social media present a controversy about a content that is published by one party to be read by the public but is considered undesirable by the opposite party. Sometimes the opposite party represents the public interest, as it is in cases connected with publishing hate and extremist materials. There is also certain number of cases there the merit rests in publishing both through the “legacy” and “new” media – the new ones being sometimes complementary.

The chart 1 presents a closer look at some of the indicators and their balance. The structure of Chart 1 reflects i. a. the hierarchy of courts in Slovakia according the model district (*okresný*) – provincial (*krajský*) – Supreme (*Najvyšší*). Outside this model there is the Constitutional Court, to which relate two cases in the table but the same cases are allocated also to the “standard” courts – and that means these cases are present there twice each. That fact is taken in account in the charts below, so the duplicity is eliminated.

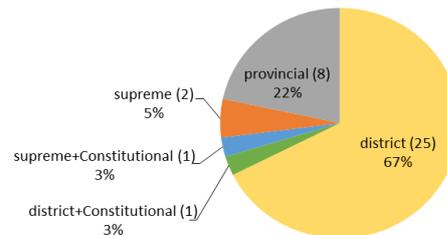
Court Levels and Judgement Dates

Two thirds of cases related to social media (25) were closed at district courts, although one case went through the Constitutional Court, too. Nine cases were those where appeal was submitted to a provincial level. Just two cases made it to the Supreme Court.

If we try to explain overall ratio of cases, this could be explained by a rather clear and simple typology of most cases – defamation, libel, publishing illegal materials.

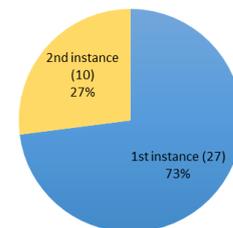
Chart 1: Court Level

Court at what level dealt with a case as the latest



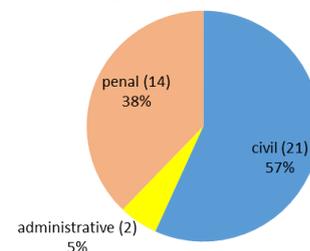
A significant majority, three quarters (73% or 27 cases) of cases was decided by the first instance of court level. This corresponds with the portion attributed to district courts plus one administrative case went directly to the Supreme Court. This clearly suggests that the Supreme Court and Constitutional Court deal actually with very limited, rather atypical sample of cases.

Chart 2: Cases Decided in 1st and 2nd instance



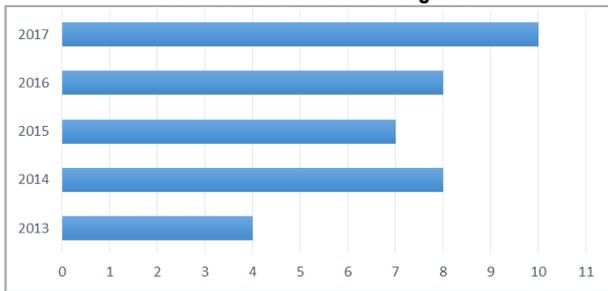
More than half of cases (57%) belong to the area of civil law; a lesser part (38%) constitute more serious penal cases. Most of cases from the penal area were connected to extremist an ethnic-hate displays. Only two administrative / broadcasting law cases dealt indirectly and vaguely with social media.

Chart 3: Type of Legal Approach towards the Case



As for the judgement dates, there seems to be growing number of court cases related to social media. The turning point seems to be 2014 year, when in comparison to 2013, there was decided double of court cases of this type - from 4 to 8. For decisive date is taken the date of final judgment here. After 2013 year, the quantity of reported cases was quite stable, with a slight increase in 2017 again.

Chart 4: Year of Decision/Judgment



Reference and Type of SM, Presence of Politics and Extremism

Although all the examined cases were related to social media by the typology of the committed delict, not in all of them were social media also mentioned in the sanctioning part of judgment. Such was just a 43% minority of the cases.

Chart 5: Direct Reference to Social Media in the Court Judgments

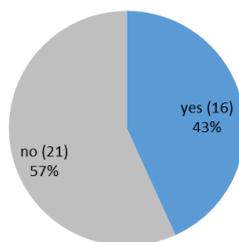


Chart 6: The Key Social Media Mentioned in the Judgments

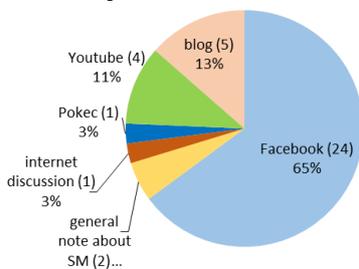
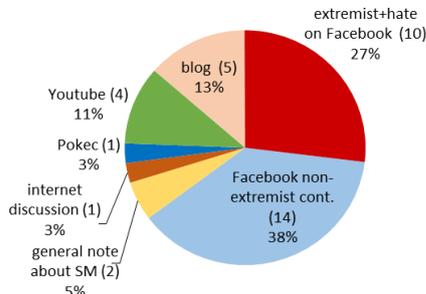


Chart 7: Extremist and hate content on Social Media



As mentioned, the largest part of court cases was primarily related to the largest social network, Facebook. If we include the set of cases (Chart 6) that was simply defined by displaying publicly neo-nazi and ethnic-hate materials on a Facebook account, the ratio for this social media network goes to 65 %. In the Chart 7, that part is visually differentiated there. It is formed by 10 cases

(27 %), while the part for Facebook with other motives is slightly bigger – 14 cases (38%). Note: In some of the following consideration, it will be reasonable to show also ratios of that part where the mentioned group of cases is excluded entirely.

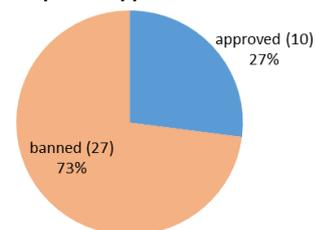
The remaining minority of cases is mainly related to blogs and Youtube. In two cases the utilized social media were not specified.

**To Ban or Not to Ban?
Rights and Freedoms before the Court**

Usually, in cases related to any media, including the social media, the basic issue is a dispute about publishing some stuff or speech which appeared sensitive or unwelcome for somebody. In the end, the legal outcome rests in resolution whether or not such publishing or making public in general could be allowed from the legal point of view, which reflects a resultant of conflicting fundamental human rights.

Within the examined set of cases, more successful were those who demanded a ban and a withdrawal of texts or other stuff published against their interest. Ban was implied in almost three quarters of cases.

Chart 8: Publication / Speech Approved or Banned in the Outcome



Finally, there is an interesting overview of frequency of various rights tackled in verdicts.

**Chart 9: Specific Rights Referred to by Judges
(Summary of processing data by 3 researchers)**



Andrej Školkay and Juraj Filin with contributions by Ľubica Adamcová, Igor Daniš and Silvia Augustínová
This work has been supported by the European Union H2020 CSA Project COMPACT: From research to policy through raising awareness of the state of the art on social media and convergence, Project Number 762128, Grant Agreement 762128.