

CASE STUDIES OF SOCIAL MEDIA AND FREEDOM OF SPEECH SLOVAKIA

We present a narrative sample of the examined cases above that brought various interesting conflicting legal situations that show the attempt of Slovak courts to balancing the colliding rights and freedoms cases related to social media at national courts of all levels in Slovakia during the period 2013 – 2017. We discuss here two selected court cases.

Case Studies: Both Mocking and Critical Speech on Youtube Approved

Already in December 2011 a tabloid daily published an article about mocking in a Youtube discussion a manager of air traffic control for his poor English in which he made a statement in a promotional video for the airport. The information was presented in the paper with photo and full name of the manager. The manager sued the daily and the district court subsequently accepted his arguments, putting the personality protection at first place. The publisher then appealed the case in the provincial court that, on the contrary, had approved the publication. The grounds for such decision were that the criticism in the article was adequate and the manager had agreed with making public the video with his talk. The newspaper by publishing it did not harm legitimate rights of the plaintiff. The case was closed as late as in 2016 by the mended judgment of the district court. The basic point for including this case into our research on social media is its firm connection with the internet environment, in this case first of all with a Youtube discussion, from which it stemmed.



During the year 2012 a local newspaper in Eastern Slovakia published a series of articles investigating the issue of air pollution coming from an industry zone of a former woodworking plant. In summer 2012 a student of journalism made a video on this topic in which, besides mayors and local citizens, had appeared also the editor of the respective paper. He talked about his suspicions towards specific firm located in the grounds. The video was displayed at Youtube and generated significant discussion there. The company then sued the editor for damaging its reputation. The district court rejected the accusations arguing with fundamental freedoms such as freedom of the press and freedom of expression. According to the court, the journalist expressed in the interview just reasonable doubts and questions and, on the other hand, he was not author of the video. After appealing, the provincial court, too, confirmed, basically, the judgment pointing also at bad reputation of the respective company that it has due to environmental delicts

proved by inspections. This judgment came in 2016 but the company did not give up the case and asked the Supreme Court for remedy. Finally, in the end of 2017 this was fully rejected. In a newspaper interview the editor then expressed his conviction that the aim of initiating the court proceedings was to intimidate him by the owner of the factory who was connected to highly ranked politicians.

Case Study: Activist Daňo and the Right to Ask Uncomfortable Questions

On March 2013 Slovak minister of transport Ján Počiatek took part in an internet discussion of a tabloid daily with the topic of drugs. A question appeared there: “In case that a public appeal was delivered to you, are you able to undergo a test that would proof whether you take narcotic and psychotropic substances?” The immediate answer of the minister was: “Any time and without any hesitation and for whatever substances.” This had created an impulse for a bit peculiar investigative Youtube journalist Martin Daňo; within a few days, several authorities including both the transport ministry and the governmental office obtained an e-mail from Daňo in which he says he has information from three sources that the minister takes drugs. He asked minister to undergo a drug test and pose a question to addressees whether they think that performing the function of minister is compatible with taking drugs. (This appeal was, as was later stated by the court, published on social media that were not specified, while the minister in his statement mentioned Facebook. On the other side, Daňo specialized in publishing videos on Youtube. His videos concerning the case were, surprisingly, not mentioned in the judgment at all.)

The minister did not answer in a manner Mr. Daňo was requested him; on the contrary, he submitted a criminal notification. Daňo was in this respect indicted by the district prosecutor for the offense of defamation. After that, he addressed a complaint to the Constitutional Court of the Slovak Republic against the accusation.

Daňo argued like this: “For posing a question, in which were not presented any false facts, the complainant faces criminal prosecution... The criminal proceedings alone constitute the so-called chilling effect on the complainant, but also on other journalists who will not be allowed to interest in this issue. In other words, until the final termination of the criminal proceedings no reporter will be allowed to ask the aggrieved whether or not he does or does not use narcotic and psychotropic substances and whether he would fulfill his public promise. According to the complainant, such a procedure undermines the activity of journalists as watchdogs of democracy and violates the freedom of expression and the right to a fair hearing before a public authority.”

The respective chamber of the Constitutional Court in the end had issued an ambivalent ruling: it formally rejected the complaint because not all legal means were still exploited in the case. On the other side, the court also articulated some relevant comments and arguments supporting the complainant's standpoint. Some of them are as follows.

"The aggrieved (= the minister) himself joined in this issue to the public discussion, while the complainant, as a journalist, continued in the spirit of what the aggrieved himself promised."

"The prosecution for defamation public officials stood at the birth of the Strasbourg jurisprudence on freedom of expression, and at the Strasbourg level, in our country, as well as in the Czech Republic, discussions are taking place about the constitutionality of the merits of the defamation."

"Criminal protection of honor, so called law on insulting, has its origins in a more static, less urban and less "profane" society with completely different information flows, as we know now."

Finally, in June 2017 the district court made his judgment, taking into consideration the clearly articulated, however informative arguments of the Constitutional Court. The district court i. a. confirmed the right of journalist to keep secret his source of information. In its verdict, the court dismissed the accused journalist.

In an interesting section, the court reminds the proposal of the accused "to examine the mental status of the Prosecutor of the Bratislava III District Prosecutor's Office, who filed the indictment, by experts from the branches of psychiatry, psychology and advocacy, since it is not possible lawfully to file such an indictment." To the denounced question about whether carrying out function of minister is compatible with taking drugs the district court had said: "The court must admit that it is beyond its understanding, how such a sentence can at all occur in a factual sentence for the offense of defamation. The question is completely legitimate and it is only a waste of time to look for any illegality in it."

Case Study: Opposite Opinion in the News Is Not Always Inevitable

In September 2010, a newfeed of the commercial TV station JOJ presented a short story about recalling a less-known politician from the list of candidates of her party. The Council for the Broadcasting and Retransmission after her complaint issued decision about a fine for the owner of the TV station, the company MAC TV. It argued that the respective piece of information showed a bias because the position of the other side was not presented.

The broadcaster challenged the decision at courts, but he was not successful nor at the provincial neither the Supreme Court. The courts considered the competence of the broadcasting council – given by law – as decisive in the case. However, the broadcaster turned to the Constitutional Court of the Slovak Republic that had in the end issued an essential judgment in favor of him. Above all, this ruling reflected shifts and changes in

media landscape, with a remark on social media playing also an important role there. It says as follows.

"In today's times of the media pluralism and of the participation of domestic and foreign private media in forming the media market and mediating information, the times of unlimited information sources, starting with printed and electronic media, Internet and mobile networks, new media and social networks, as well as of the membership of the Slovak Republic in the European Union, the stated abovementioned legal requirement of objectively and impartially informing by news programs and political-journalistic programs provided by the media cannot be... justified by an interest on protection of democratic public order in those intentions, as was stated in connection with Act no. 468/1991."



"The mentioned provisions of Act No. 468/1991Zb. at the time of their admission should have been regarded in relation to the period in which they were adopted by the legislator. In the time of transformation of the Slovak Republic after the period of non-freedom, it was a legitimate public interest (the interest in protecting democratic public order respectively strengthening it) that, in the absence of media pluralism and lack of electronic media as such, i. e. limited to insufficient source of information, the legislator demanded from a small number of broadcasters operating in the media market (respectively one public service television and radio) to ensure pluralism in broadcasting in terms of presenting multiple perspectives on one issue and to strive to achieve as much as possible the objectivity of mediated themes and events in terms of acquiring and taking into account as many sources, from which a medium is deriving, as possible. The purpose of this legal limitation of the broadcaster was to prevent propagandistic, unilateral and grossly distorting dissemination of (dis)information typical of the public media in times of non-freedom, thus the interest in protection of democratic public order or its strengthening."

Compiled by SCM (2019)

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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.