
DIFFERENCES OF LEGAL AND ETHICAL PROTECTION OF MINORS IN ADVERTISEMENT IN SLOVAKIA

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Abstract

Protection of children against negative effects of media communication is a very actual matter of discussion. This paper is focused on the legal and ethical principles which regulate the protection of the minors in commercial communication disseminated by both – print and audio-visual media. On the basis of the comparison of relevant Slovak law and the Code of Ethics of Advertisement Practice we will answer the question if the ethical rules are more or less in accordance with the legal protection of minors. The aim of this paper is explain how the advertisement law and ethics guarantee the protection of the minors in Slovakia.

Keywords: minor, child, advertisement, law, ethics

1. Introduction

The society is tied with the existence of normative systems. The purpose of the existence of normative systems in society is a regulation of human behaviour and protection of the values that majority of society considers significant [1]. The legal system, in contrast with other normative systems represents a social, common will. Whereas in one society there exist more than one system of ethical and moral rules, which are respected by the members of some specific community on voluntary principle, legal system is only one. In the field of non-normative systems exists the normative pluralism while in the legal system exists normative monism. Respect of law is enforced by the state. The state disposes the means which are applicable in the situation when the obliged person does not obey what is prescribed by law. The institutions which control the fulfilment of the ethical rules dispose other means, for example public warning of the breach of ethical value [2].

The content of the ethical and legal principles could more or less differ. The breach of law can in some aspects mean also the breach of ethical principles. As a result the companies voluntarily undertook the duty to consider

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not only the potential economic effects of advertisement issue but also its ethical aspects. It is a part of the company's policy of corporate social responsibility.

The aim of this paper is to compare the relevant differences between the ethical and legal rules related to the minors in advertisement. We will focus on both printed and audio-visual advertisement. Regulation of the advertisement in Slovakia includes following rules:

- Code of Ethics for Advertising Practice [The Slovak Advertising Standards Council, *Code of Ethics for Advertising Practice*, 2015, <http://www.rpr.sk/sk/eticky-kodex>, accessed 03.07.2015];
- Advertisement Act No. 147/2001 [*Advertisement Act No. 147/2001*, 2001, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2001/147/20150101>, accessed 05.07.2015];
- Act on Broadcasting and Retransmission No. 308/2000 [*Act on Broadcasting and Retransmission No. 308/2000*, 2000, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2000/308/20150701>, accessed 05.07.2015];
- Consumer Protection Act No. 250/2007 [*Consumer Protection Act No. 250/2007*, 2007, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2007/250/20150101>, accessed 05.07.2015];
- Act on Contracts Negotiated away from Business Premises and Distance Sales No. 102/2014 [*Act on Contracts Negotiated away from Business Premises and Distance Sales No. 102/2014*, 2014, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2014/102/20150401>, accessed 05.07.2015];
- Commercial Code No. 513/1991 (Commercial Code defines the forms of unfair competitions which include also the misleading advertisement) [*Commercial Code No. 513/1991*, 1991, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1991/513/20150701>, accessed 05.07.2015].

The Advertisement Act is a general law to the other relevant acts which regulate the advertisement, which means that the paragraphs of Advertisement Act are used unless a specific law provides otherwise.

The Act on Broadcasting and Retransmission does not operate with the term 'advertisement' but 'media commercial communication' and it understands the term 'advertisement' narrower than 'media commercial communication', respectively it understands the advertisement as one of the forms of media commercial communication [<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2000/308/20150701>]. However by comparing the articles of the Advertisement Act and the Act on Broadcasting and Retransmission and Consumer Protection mentioned above it is possible to abstract the conceptual features of advertising communication which are following:

- It is a form of communication (note, information, presentation, etc.);
- It relates to the commercial activities of the provider of advertisement and
- Its purpose is to place the products or services to the market.

The ethical rules on the other hand define the meaning of advertisement wider, as commercial and non-commercial communication [<http://www.rpr.sk/sk/eticky-kodex>]. It means that the non-commercial communication shall follow the ethical principles but does not have to fulfil the

legal rule. Information disseminated for the purpose of e.g. charity presentation could be than conformal with the law and concurrently not conformal with the ethics.

The Advertisement Act does not define the term ‘minor’. Some law specifies the meaning of this term, e.g. tort law, criminal law, but such specification is used only for the purposes of given legal area. However, on the basis of international Convention of the Rights of Child (passed by United Nations) [United Nations, *Convention on the Rights of the Child*, 1989, <http://www.unicef-irc.org/portfolios/crc.html>, accessed 06.07.2015] we can conclude that a minor is a person from the birth to the age of majority. According to the Slovak Civil Code the person attains the majority in the age of eighteen or, if he/she get married, uppermost in the age of sixteen [*Civil Code No. 40/1964*, 1964, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20150401>, accessed 06.07.2015]. We could also say that for the purpose of the legal requirements for advertisement the terms minor, child and juvenile are the synonyms.

The Code of Ethics for Advertising Practice distinguishes minors and children. The minors are all persons under the age of eighteen including their graphic portrayal and other presentation, while the children are under the age of fifteen [<http://www.rpr.sk/sk/eticky-kodex>]. This distinction is important for determination which concrete ethical requirements are applicable to the advertisement aimed at children respectively at older consumers - minors.

2. Comparison of legal and ethical rules related to the minors in advertisement

Since only legislation is enforceable by the state, advertisers are legally obliged to meet only the legal principles determined for content and form of advertisement. The ethical standards are not enforceable so in theoretical level, in the situation when ethics settles wider protection of minors or more strict rules for advertisement for minors the advertisement can be in accordance with law and currently breaches the ethical standards.

The legal requirements for the advertisement are overall divided into the general requirements related to all forms of commercial communication regardless the type of presented product or service and specific requirements which settle the rules of presentation of some products that is regulated more strictly on behalf of the protection of public interest, public health, protection of environment etc. (e.g. tobacco, alcohol, drugs and other medicaments). In the following interpretation we will focused only on the ethical and legal articles which are relevant for the protection of the minors (and children).

2.1. The general requirements for advertisement

Protection of minors is incorporated to the both sections of the advertisement law mentioned above. Firstly, in general, it is forbidden to abuse

the trust of minors, in particular to encourage them to behave in the way that is capable to endanger their health, mental development or moral development and to display them in dangerous situations [<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2001/147/20150101>]. Minors of lower age especially children are not able to presumed the results of their actions and do not understand that event presented in the advertisement is not real or, in other words, that in reality the subsequence of such event shall be very different (and negative).

The general requirements on the commercial communication in television and radio are specified more precisely and they determine the obligation of broadcaster to ensure that media commercial communication could not cause physical or moral detriment to minors. Therefore advertisement in audio-visual media must not:

- directly encourage minors to buy or rent goods or services by exploiting their inexperience or credulity,
- directly encourage minors to persuade their parents or others on the need to buy offered products or services,
- abuse the special trust of minors in their parents, teachers or other persons or
- unreasonably show minors in dangerous situations [<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2000/308/20150701>].

Especially, broadcast advertising and teleshopping (which are particular forms of commercial communication) for minors or with the participation of minors must contain nothing that might harm the interests of children or anything that does not take into account their special susceptibilities. Teleshopping shall not contain encouragements for minors to order, sale or lease of goods or services. The product placement is strictly forbidden in the programs for children under the age of twelve [<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2000/308/20150701>].

The ethical principles determine the conditions for advertisement concerning minor more precisely and as it is mentioned above the Code of Ethics divides between minors and children. The Code declares that the way how the minors and children receive the advertisement and how they react on it depends on their age, experience and circumstances under which the minors perceive the advertisement. All advertisements that involve minors shall be considered from this point of view [<http://www.rpr.sk/sk/eticky-kodex>].

In general, no advertisement must exploit the natural credulity of minors and their lack of life experience. The communication intended for minors must not influence them by using inappropriate violence. Showing a naked body in advertisement is not forbidden in principle, however, the advisors shall be careful in the process of making the presentation and show the naked human body in proper way and only if the presentation of body [<http://www.rpr.sk/sk/eticky-kodex>] is relevant e.g. as it is in the advertisement presenting a shampoo.

The advertising of a product shall not contain any encouragement to minors to make a purchase or in any way imply that if the minor does not buy a product or he/she does not persuade third person to buy chosen product it will mean that the minor does not fulfil any obligation against a third person or organization. Advertising must not encourage minors to think that if he/she does not possess the advertised product he/she will become in any way inferior in relation to other minors. Commercial communication shall encourage minors to urge their parents or other adults to make a purchase and communication focused on the children does not imply urgency or necessity purchase. Advertising shall not arise in children a faith that if the parents or other family members do not make a purchase, they do not fulfil some obligation who they have against their children. It must not also diminish or disparage the authority, responsibility, judgment or tastes of parents or other adults responsible for the care and health of minors [<http://www.rpr.sk/sk/eticky-kodex>].

Particular attention is paid to the children safety and according the Code of Ethics, all situations in which minors appear, must be carefully considered in terms of safety. Advertising must not encourage minors to go to unknown places or talking to strangers. In the scenes in the street the child must not be shown alone, without the supervision unless it is clear that the child is mature enough to be responsible for their safety. The child must not appear in advertisement playing in the street when it is not obvious that the area is solely designed for children games. When the minor acts in advertising as a road user it must be quite clear that he/she is aware of the safety rules and principles of road traffic and he/she is able to act in accordance with such rules. The minor may be allusively shown in hazardous or dangerous situation only when the purpose of advertising is to promote safety and security principles. Drugs, disinfectants and other chemicals used in household which are potential health endangering products in advertising must not be portrayed in advertisement within the reach of children without parental supervision and a child must not be shown manipulating with such products [<http://www.rpr.sk/sk/eticky-kodex>].

The minors are protected also against an exaggeration in advertisement. Although in particular the exaggeration in advertisement is permitted, presentation which uses superlatives in connection of the offered product (service) shall be made in such way, that the consumers shall be aware of the fact that advertisement uses the superlatives [3]. If the information which exaggerates some attribute of the product (service) and such information is included among others which are strictly based on facts the advertisement could invoke the impression that also the exaggerated information is truthful. Such advertisement must be considered as misleading presentation [3]. If we want to evaluate the exaggeration in advertising from the perspective of minors we must take into account that the minors and especially small children do not probably understand the exaggeration or they are not able to detach the true advertising information from the other notes. The protection of minors against these elements of presentation is than adequate.

According to the Code of Ethics if the advertisement contains a reference to the contest or competition for minors, then such competition rules must be published in a reasonable and proportionate manner. Advertising targeted to children should clearly distinguish actual dimensions, characteristics and appearance of any advertising product and the scenes of reality clearly recognized from fantasy [<http://www.rpr.sk/sk/eticky-kodex>].

The Code of Ethics inserts these principles related to the exaggeration among the specific requirements for advertisement, however, since that principles are applicable to all advertisements regardless the product or service they present, we suppose that these principles comply rather with the terms of general provisions.

2.2 The specific requirements for advertisement

The specific requirements for advertisement in connection of minors cover the presentation of the alcohol products, drugs and (in the case of ethical standards) also the advertisement for tobacco. (Although the advertisement for tobacco is forbidden, the law respects some forms of presentation which are not considered as advertisement. As the most questionable form of presentation we consider the giving of cigarettes and tobacco for free during the business meeting related to the tobacco. The term business meeting is too vague and many meetings including the meetings with potential customers can be described as business meetings. Then it is rather easy to evade the legal ban given on the tobacco advertisement.)

Advertising for alcoholic beverages shall not be aimed at minors. Minors or the person *who can be theoretically considered as a minor* must not be shown in the presentation of alcohol and must not be in advertising to associate with the consumption of alcoholic beverages [<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2001/147/20150101>]. In August 2014 the new billboard campaign was issued in Slovakia, which should support the sale of vodka Gas Familia of Slovak producer. The campaign shown the young people who looked like the persons in the age of circa eighteen, respectively there were the doubts that the people are not eighteen yet. All the actors seemed to be intoxicated. The campaign was indicated as not conformed with the protection of minors precisely because the actors in advertisement looked like the minors [Stratégie.sk, *Novákampaň Gas Familia: Od Tatier k Dunaju*, <http://strategie.hnonline.sk/spravy/marketing/nova-kampan-gas-familia-od-tatier-k-dunaju>, accessed 06.07.2015]. According to this law, it is not relevant if the actors are or are not in the age under the eighteen, the crucial question is how they look like. Also the adult who could be possibly considered as a minor must not be connected with the consumption of the alcoholic beverages in commercial communication. It is not sufficient too if the presenter of the alcoholic beverages declares or writes that the actors are surely adults while they still can be regarded as the minors.

A quite comparable legislation is in the Act on the Broadcasting and Retransmission which in addition forbids aiming the advertisement of alcohol products to the minors [<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2000/308/20150701>].

And, finally, the minors are protected against the negative aspects of presentation of drugs; the advertisement (printed or broadcasted) or any of its element presented the drugs must not be addressed to the children.

Among the legal protection of the minors we should subsume the restriction of broadcasting of alcohol advertisement and of advertisement for erotic services during the day. These types of products/services must not be presented in the program between 6 am and 10 pm except the advertisement of wine which broadcasting is permitted from 8 pm and except the advertisement of beer which broadcasting is permitted during the whole day [<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2000/308/20150701>].

Comparable standards of protection of minors against negative effect of advertisement of alcohol beverages, tobacco products and medicaments are given also by the Code of Ethics of Advertisement Practice. The Code differentiates the advertisements which are strictly forbidden if it is focused on the minors and the advertisement which is in general permitted, however, there are many restrictions related to the content of advertisement [<http://www.rpr.sk/sk/eticky-kodex>]. The minors are considered as the risk group of consumers (because of their vulnerability, credulity and their lack of life experience).

Among the banned forms of presentation are all advertisements of alcohol, tobacco products, consumer competitions related a tobacco and gambling if it targets to the minor customers. The minors shall not in be used in any form as presenters of alcohol or tobacco even indirectly, presenting fictitious persons, animated characters or figures resembling or suggestive conduct of minors. Nor the minors neither the persons that look like minors shall be portrayed as the consumers of alcohol or tobacco products. The tobacco must not be described as a product attractive for minors. Billboard advertising campaign of alcohol must not be placed on the public places in close proximity to schools, playgrounds or similar areas designed especially for minors, a building or other space designed especially for minors or on the places where the event dedicated solely to the minors is held [<http://www.rpr.sk/sk/eticky-kodex>].

3. Conclusions

Children are vulnerable and as potential customers are quite easy manipulated. Depending on their age, they do not distinguish between reality and fantasy, they do not understand an exaggeration and they do not understand a point of joke or a pun. The protection of minors against the negative effects of commercial (and media) communication cannot be ensured only by the family. In the era of internet and at the times when significant percentage of minors dispose with smartphones which made the music, videos, TV and radio

programs available literally in the pocket, it is utopia to demand the family members to control all the information which their children obtain. If we accept that in democratic society the media besides the generation of profit shall follow a public interest, we have to also accept that some behaviour of media which is significant in relation to the protection of public interest will be regulated by law. Protection of minors is a question of public interest.

The legislation guarantees the protection of minors against negative impact of advertisement in sufficient level except the rules that permit the broadcasting the advertisement of beer. We believe that also the advertisement of beer shall be restrict because current legislation de facto gives an impression that the beer is not an alcoholic beverage. The standards for broadcasting the advertisement of beer and wine should be harmonised.

On the basis of comparison the legal and ethical rules which regulate the advertisement we can conclude that the main principles and standards applicable in the field of the protection of minors are comparable. The Code of Ethics defines some rules especially the rules related to the advertisement of alcohol and tobacco more precisely and this regulation specifies more obligations for advertisers and wider restrictions related to the content, form and a way of a dissemination of advertising information. However, these obligations and restrictions are not compelled by law; they are obeyed on voluntary base only.

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