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A Case-Specific Instance of Media Capture: the Gorilla Case of Slovakia

Abstract: This article discusses an instance of case-specific self-inflicted partial media capture, acknowledging the chilling effect of legislation consistent with partial state capture. In general, this case illustrates the ethical and legal dilemmas in the reporting of a specific type of large-scale corruption in the media, which involves the denial of all accusations by most sources and a controversial stand by state authorities and politicians on the issue, forcing the media to primarily report rumors or contradictory claims and denials (after controversial files regarding the corruption were made public anonymously on the internet) or desist from reporting altogether (before the files were made public on the internet, due to possible libel threats). The findings question the normative expectations expressed in democratic theory related to the role of the media as a watchdog, in the specific context of large-scale corruption in post-communist states. Moreover, this paper suggests the need to re-examine the methodological aspects of quantitative content analysis of media coverage of corruption. This paper has also attempted to update the emerging theory on media capture with the term partial case-specific media capture.

Key words: Gorilla, Slovakia, oligarchs, media capture, corruption, state capture, intelligence services, wiretapping, post-communist

1. Introduction

This article examines the media coverage of an alleged large-scale corruption case, the importance of which was initially downplayed by state authorities and the media until a few years later it became the most well-known and extensively-covered (although still unproven) corruption scandal in the history of the country. The study investigates what this upside-down change in political and media importance reveals about the role of the media in a post-communist country. In answering this question, the study suggests that the media may find itself in broader politico-legal context which does not allow it to pursue its watchdog role, in a case

which suggests collusion between some politicians, state authorities and local oligarchs (i.e. a case of large-scale corruption). The unique circumstances of the revelations of this case and subsequent events suggest that this situation may be rather similar in many other countries. Moreover, there appears to be an important link between partial state capture and partial media capture. In other words, under conditions of partial state capture, the media cannot pursue its social watchdog role absolutely freely, without fear of legal and – even more so – financial retributions in the form of penalties and legal costs. This paper thus suggests the operational weaknesses of theories related to the role of the media in post-communist democracies, as well as insufficiencies in the definitions of related terminology, such as the vague and differentiated meanings of the term ‘media capture’. Moreover, this paper questions the appropriateness of traditional quantitative content analysis of the media coverage of large-scale corruption under these specific circumstances.

Journalistic stories, long and short, have been published related to the vaguely understood concept of ‘corruption,’ and suspicions or criticisms related to unethical, controversial, and economically harmful behavior in Slovakia since the fall of communism. Concurrently, a great deal of academic publications have dealt with corruption generally (Mungiu-Pippidi, 2013, 2014), regionally (Baboš, 2015; Kupka, Mochťak, 2014; Charron, Lapuente, Rothstein, 2013; Grigorescu, 2006), from the media perspective (Boeri, Severgnini, 2008; Suphachalasai, 2005), and locally, with a focus on Slovakia in particular (e.g. Baboš, Malová, 2014; Beblavý, Sičáková-Beblavá, 2014). However, academically relevant publications on the virtual absence of initial media coverage of the Gorilla case, the most important corruption case in modern Slovakian history, are lacking, even though these would reveal the challenges associated with reporting, or the demonstrable apathy towards reporting on large-scale corruption on the part of the media. The anonymously published files known by the codename *Gorila* (the Slovak version of the word ‘gorilla’)¹ caused a major political scandal, and subsequent public protests with serious consequences for a key governmental political party, the *SDKÚ-DS* (Slovak Democratic and Christian Union – Democratic Party). It also resulted in

¹ This code name is not related to the expression *800-pound gorilla* (US English metaphor for a person or organization so powerful that it can act without regard to the rights of others or the law), although it would be apt in this case. The nickname ‘Gorilla’ was allegedly in reference to the robust body of a key actor in this case.

rather negative publicity for almost all key governing right-wing and centrist political parties, and (much less so) *Smer-SD* (Direction – Social Democracy) – the key left-wing political party in Slovakia – shortly before the early parliamentary elections in March 2012. The infamous case suggested that even after the replacement of the previous governments of Vladimír Mečiar in 1998, which leaned towards a proto-oligarchic regime (the early phase of more developed oligarchic political system), a nucleus, the central and most important part of the oligarchic system, was still secretly garnering support from the main political parties (see e.g. Šátek, 2010, 2012). The extensive media coverage was in sharp contrast with the previous disinterest and prolonged disregard, or at least overly cautious approach, towards the case by the media and journalists (among those who knew about the files). Conservative estimates suggest that the file became known to selected unauthorized individuals and private institutions, including some editors and journalists, in or around 2009 at the latest.² All of these facts characterize this case as an interesting example of the interactions between the media and politics under the oligarchic politico-business collusion or (partial) state capture, as well as partial and partially self-inflicted media capture, in Slovakia.

2. Research questions and methodology

The study initially explains the role of the key print media in this particular case (including a special sub-case of the newspaper *Pravda*). The general research question was what the role of the media was within the wider context of the assumed state capture. A related sub-question investigated the actual occurrence of media capture and its causation. Finally, we explored the initial absence of reports from the media on the alleged large-scale corruption case, and the extensive reporting on the same case

² See anonymous, May 21, 2015, *Prečítajte si list bývalého agenta, ktorý nahrával Gorilu* [Read the letter by the former agent who wiretapped Gorilla], www.tvnoviny.sk/domace/1793994_prečitajte-si-list-byvaleho-agenta-ktory-nahraval-gorilu, A. Hanúšková, 2012, *Gorila na roztrhanie. Dzurinda konečne prehovoril...* [Gorilla as top agenda. Dzurinda finally spoke out], <http://www.noviny.sk/c/slovensko/gorila-na-roztrhanie-dzurinda-k-nej-vraj-barlicky-nepotrebuje->; 2012, February 1, *Policajt z Gorily: Dzurinda ovplyvňoval vyšetrovanie korupcie!* [Policeman from Gorilla: Dzurinda put pressure on investigating corruption!], www.topky.sk/cl/1000120/1297902/Policajt-z-Gorily--Dzurinda-ovplyvnoval-vysetrovanie-korupcie-.

later on. On the basis of these initial research questions, the paper discovered methodological challenges of corruption coverage analysis based on quantitative methods, as well as suggested some drawbacks of political science approaches to issues that do not get official and verified confirmation from public authorities. This later issue is tackled in a separate paper. The former issue is more relevant for an international audience than the results of content analysis of local newspapers.

It seems to be an axiom that the media plays a key role in a liberal democracy (Dahl, 1989), and may play an important role in emerging democracies (Kumar, 2006, p. 1). Neither Kumar's book nor the present case, nor academic research (Graber, 2003; Jebril, Štetka, Loveless, 2013), supports this established normative truism. Indeed, the present case study shows that during partial state capture, and in less developed democracies, the media cannot always substitute official authorities as expected by the so-called 'watchdog role' democratic theory. Färdigh, Andersson and Oscarsson (2011) have found that the role of a free press in fighting corruption varies relative to the level of establishment of electoral democracy in the country. This may be consistent with the rather widespread (partial or full) media capture (Besley, Prat, 2006) which goes alongside (partial or full) state capture in many post-communist countries. It should be noted that there is no academic consensus on what is meant by media capture (Petrova, 2008; Prat, 2016; Hrvatin, Petković, 2016; Szeidl, Szucs, 2017). In general, media capture can be understood as the control of media and its agenda by business and/or political interests, or the absence of a fully autonomous media for reasons such as poor market conditions, lack of professionalism, or the chilling effects of media legislation or penal legislation. The case discussed here is a peculiar case of a partial self-inflicted media capture. Although the cited papers discuss general media capture (in fact all of the media are seen as captured), our study deals with *a case-specific* partial self-inflicted media capture. In other words, our study relates (*correlation* but not necessarily *causation*) partial media capture to a single (*case-specific*), but extremely relevant, situation of partial state capture. The media was free and interested in reporting on many other cases of large-scale corruption, but those who knew about the case initially decided, voluntarily and individually, not to report on it. This is not to say that all of the media reported on all other large-scale corruption cases. The media is clearly selective in its reports on corruption (Školokay, 2016; Školokay, Ištoková, 2016). Yet this extremely significant case was initially ignored by the entire media

(save for one partial and minor exception),³ even though it later became one of the most discussed corruption cases. This in itself suggests the high social and political relevance of the case for the media. This case of partial media capture was allegedly caused by strict legislation, which seems to be only a half-truth at best. Indeed, there were strict legal regulations (libel threats or balanced reporting clauses), and ethical/professional regulations and rules (the difference between idealistic ethical regulations and practical possibilities) which limited the work of the media, and these will be discussed subsequently. These legal regulations (including regulations of the procedural type, in the case of wiretapped materials) were later used by the rich and influential to prevent the media from overly specific or allegedly critical one-sided reporting on the case. These real legal threats (at the national level), as it turned out, provide some justification for the media silence about the scandalous information, despite the fact that some had access to incriminating information (which was not officially verified). These developments also provide insight into the rather extensive but, from the point view of maintaining idealistic ethical/professional normative criteria, controversial initial coverage of the story by the media. However, we do not know whether, in the final analysis, the European Court of Human Rights (ECHR) would uphold these (possible or empirical) verdicts of national courts, especially the publication of an initial full-blown exposé of the Gorilla case in the media, which never materialized before it was made public on the internet. Our further analyses suggest possible media timidity in making their initial decision to ignore what turned out to be the most important corruption scandal in the history of Slovakia. Consequently, we argue that it was not the case that most journalists working for prominent newspapers simply decided to be law-abiding citizens: it was rather timidity which guided their actions. This overly timid approach by journalists who knew about the Gorilla file provides an ideal illustration of (partial) media capture. The sub-case of *Pravda* is an example of an even more peculiar case of media capture, and is placed in a chronological context after the publication of the file on the internet.

Content analysis of coverage in newspapers in this case study mainly focused on printed versions of selected newspapers. The underlying reason for this particular selection was to prioritize the representation of

³ Nicholson (2009) also raised some suspicions about possible large-scale corruption under the Dzurinda government referring to Penta and Malchárek in 2009. However, he did not mention SIS files as its source.

two quality newspapers, *Sme* (centre-right), and *Pravda* (center-left, with a minimally transparent ownership), which have two different ideological backgrounds, and one business newspaper (*Hospodárske noviny*). Although many Slovak dailies and weekly magazines reported on the case, and some are mentioned throughout the study, the general comparison of the overall output covers only these three dailies due to their reputable position and publicly respected status among the major Slovak newspapers. The other two papers with the highest circulation in Slovakia, *Nový čas* and *Plus jeden deň*, are publicly considered to be tabloid-like publications. Their credibility for reporting on the Gorilla case is therefore questionable by definition, and they are not included in the study. The other electronic and digital media, including the news channel TA3, were not included in our analysis due to the lack of original recorded audiovisual or audio sources. Moreover, this type of analysis is very time consuming.

Our analysis focused on the period between the time of the publishing of the first article on the Gorilla case in these print media (shortly before Christmas 2011, after the Gorilla transcripts appeared on the internet), and the end of January 2012. The sufficiency of the period selected for analysis is seemingly justified by the fact that, by February 2012, the press was filled with messages related to the parliamentary election campaigns (election day was March 10, 2012).

The analyses were conducted by two researchers independently, before reaching a final consensus to level out disagreements. Obviously, humans make errors, even experts sometimes do not share the same opinions, and face-to-face consultations were deemed necessary. However, differences and disagreements could not have impacted the overall results and observed trends. We did not perform the reliability test, as it was not found necessary for such a small sample and minor differences. Other methodological issues were deemed more important, such as those regarding the criteria and categories to use for the assessment of media coverage, and we found many issues challenging, although they were apparently often ignored in similar content analyses. Consequently, we established a set of qualitative criteria for the analysis of the quality and professionalism of the coverage of the Gorilla case by selected media outlets. Although the Journalist's Code of Ethics⁴ deals with individuals, we have to assume that the same rules in the final analysis apply to news outlets too. There-

⁴ There are various codes of ethics and other professional-ethical guidelines in the media sector, but this one is used by the Press Council of the Slovak Republic as *de facto* binding for all the journalists and the media.

fore, these criteria are based on the Fundamental Principles established in the Journalist's Code of Ethics, Article 2: impartiality, balance, objectivity, honesty, truthfulness, responsibility and scrupulous fact-checking. Additionally, the Fundamental Values include personal freedom, justice and decency. It would have been difficult to measure either principles or values independently, as they are loosely defined or undefined. The Journalist's Code of Ethics operationalizes its own normative professional criteria when it states that a journalist must scrupulously check every piece of information, ideally from two independent sources (Art. 3(1)), and is obliged to state the source of information (Art. 3(2)).

Therefore, we created three empirically analyzable categories: *objectivity*, meaning fair treatment of all parties (includes justice and decency, impartiality, balance, honesty, truthfulness, responsibility), *verification of the facts* (includes objectivity, honesty, truthfulness, responsibility, scrupulous fact-checking) and *stating sources* (includes impartiality, balance, objectivity, honesty, truthfulness, responsibility).

It is valid to question the mutual exclusivity of the sub-criteria; the problem lies with too many loose 'fundamental values' or 'principles' preferred by the Journalist's Code of Ethics. Our 'narrowing down' of these loose criteria leads to operational and yet still comprehensible indicators. Further explanation may be needed regarding why objectivity, as a criterion, does not consist of the value of objectivity while verification does. A comprehensive category cannot be defined by itself – there must be sub-indicators. Some of these sub-indicators may be present among other comprehensive categories and this is not a logical failure. Sub-indicators define qualitative parameters of a comprehensive category. Each comprehensive category should stand independently as an analytical tool. In other words, sub-indicators define the aims of the specific comprehensive category. Each comprehensive category has its specific aims which are reflected in their sub-indicators, and which in turn are strictly based on the Journalists Code of Ethics. In any case, the criteria stated in the Journalist's Code of Ethics are too ambitious and lack definitions of key terms.

Firstly, under *objectivity* we analyzed whether the media gave space to all parties involved. Did they show any signs of bias? The methodological problem generally observed in a large number of articles involved two separate issues: either no space was given to the accused persons, or they were not interested or unavailable to comment. This calls into question the official concept of journalistic objectivity. The usual problem of

media coverage lies with gaining testimonies from all of the actors involved in a story, especially those related to corruption cases. It is simply not possible for the media to contact all of the actors involved in a given story. Sometimes, it may not even be clear who all the interested parties are. The approach suggested by the Organisation for Security and Cooperation in Europe and the Council of Europe, referred to in the ECHR ruling in the case *Manole and Others vs. Moldova*, suggests that the media “should present a comprehensive description of events, reporting an issue in a reliable and unbiased way. The main differing views should be given due weight in the period in which the controversy is active.” In other words, objectivity is stipulated as a general aspect of reporting and is not necessarily reflected in the assessment of every single article. Indeed, this was also revealed in our analysis of newspaper coverage. Newspapers, by and large, did not regard the reporting on a case as a set of various isolated stories, but as a total of interconnected pieces – with single issues included as part of the whole. However, the current regulation, the Journalist’s Code of Ethics and Law, does not allow the use of such a liberal approach, even though in broadcasting it is already an accepted norm. Thus, we present the results with this caveat; the coding methodology obviously used an article as an analytical unit. However, available quantitative studies rarely, if ever, discuss this methodological, legal and ethical/professional challenge.

Secondly, *verification of the facts* refers to the whole process of obtaining sources. How did the journalists and media verify their information? Usually, information is verified by the use of at least two mutually independent sources (Art. 3(1)). However, the reality is that the use of two sources may not be sufficient, as they may not necessarily confirm one another or speak about the details of the same issue in an article. Clearly, the accused persons and institutions denied all accusations – this is understandable, even obvious. This also presents a methodological and ethical/professional challenge.

Thirdly, journalists and the media are always, with some legal and ethical exceptions which must be mentioned, obliged to *state the source of information* (Art. 3(2)). Did the media mention the source of information? For example, when the main source mentioned a wire agency, we do not expect other sources to be mentioned in the article. Once again, and as with many corruption stories, a pertinent problem identified with the Gorilla case was the inability of the main witness, former SIS (the Slovakian Intelligence Service) agent, to speak openly. Moreover, the reliability of

the leaked document was questionable. The first known holder of the file, Tom Nicholson, refused to state its source and the original audio recordings were also not available.

We did not find any studies which discussed the above-mentioned methodological issues related to the quantitative and qualitative analysis of media coverage of large-scale corruption under these unique and, perhaps at the same time, typical circumstances. However, it is worth mentioning that there is an academic discussion which forwards the notion that the concept of objectivity has partially, and mistakenly, managed to replace the more fundamental concepts of truth and fair play in journalism (Muñoz-Torres, 2012; Hampton, 2008). Therefore, we had to develop and use a new indicator related to the verification of events by witnesses, which we called confirmation. In this particular scandal, and generally in crime- or corruption-related scandals, key actors usually deny any accusations. Therefore, we were not only interested in whether the media provided information according to their internal standards, we additionally questioned whether readers realized the importance of the information – despite the fact that it was still ambiguous – correctly. Therefore, we checked whether a person had confirmed statements in the Gorilla file, at least partly, or denied all accusations.

Finally, two general journalistic issues were of interest to us; the total coverage, including all articles dealing with the case (except commentaries), and the location of reports on the front page. The analyzed data showed certain clear general trends in the media coverage of the Gorilla scandal after considering these issues.

It should be mentioned that we conducted interviews with former editors-in-chief. These were face-to-face meetings involving very simple questions, for example: “did you know about the Gorilla case before 2011?” and, if the answer was affirmative, “why was it not covered in your newspaper?”

The issues discussed above raise many questions regarding the relationship between state capture and media capture. According to Mungiu-Pippidi (2012, p. 41), “[m]edia capture in post-communist Europe is... not necessarily capture by the state, although there is an important correlation between media and state capture.” What is the mechanism which produces this relationship? This study suggests that weakened (captured) state institutions do not provide sufficient freedom – for example, preference (or, indeed, equal value) is given to media freedom instead of protection of the reputation of natural or legal persons in such cases, and in general, independent, support-

ive institutional and legal environments for other actors including organizations such as the media and the courts, as well as watchdog activities.

For comparative purposes and the enhancement of knowledge, we selectively utilized two other available analyses on this topic. The first was conducted by Svoráková (2012) and showed certain methodological drawbacks discussed later in this article; however, some observations by Svoráková seemed to be correct. Moreover, we should mention all previous studies on this topic, even when they are perceived as unreliable. The second analysis, conducted by Mikulová (2013), complemented our findings on the role of the *Pravda* newspaper.

3. How did the Gorilla story come to public attention?

What has become known as the ‘Gorilla case’ had its origin in the late 2005-early 2006. The file however, became publicly known only six years after it had become known to selected state authorities between 2005 and 2006. The lengthy document emerged via an international website, with summaries of quasi-transcripts of private conversations between some top and lower level public and private figures, shortly before Christmas in 2011.⁵ The published file was supposedly compiled by the Slovakian Intelligence Service (SIS).⁶ The individuals involved discussed privatization deals struck or planned during the second term of the government led by Dzurinda, a reformist Prime Minister in office between 1998 and 2006.⁷ The allegations that bribes worth millions of euros were paid or promised to public and party officials, politicians and/or political parties as incentives toward winning various public-procurement and privatization contracts lie at the heart of this scandal. Some ministers, representatives of some multinationals, and tycoons from Penta Investment Group, one of the largest Slovakian (private equity) investment groups, as well as all four political parties in Dzurinda’s second coalition government, were named in the file. Additionally, the illegal activities of other important politicians or political party nominees were remarked upon during the

⁵ The initial file was available online at: <http://skgorila.tumblr.com>, however, it is no longer accessible there. The file can be found at <http://www.hascak.net/spis-gorila/1341/>.

⁶ Officially called in English as the Slovakian Information Service.

⁷ He was also Minister of Foreign Affairs in Iveta Radičová’s 2010–2012 government.

conversations. These conversations were accidentally recorded in 2005 and 2006 in an apartment, and the first civilian who came into contact with the file was probably Tom Nicholson, a British-Canadian journalist naturalized in Slovakia. In 2009, Nicholson tried to contact the media and the police with the information, but editors from newspaper *Sme* and business weekly *Trend* did not dare to publish this information since there was no other evidence. Meanwhile, the police started to deal with the case in two independent investigations.⁸ The degree to which the material published online was genuine and matched the official documentation of the SIS still remains questionable (Nôta, 2015). Some analysts consider it authentic evidence (Svoráková, 2012, p. 2; especially see Šátek, 2012a, b). Nicholson, the key mover behind the scandal, however, raised doubts about the introductory and concluding parts of the document (in Hanus, Vagovič, 2012). There seems to be prevailing consensus that the information described in the file reflects, at least, the notion of how politics and big businesses secretly interact(ed) in Slovakia (see Šátek, 2012a, b; interviews with M. Gajdoš, the /former/ head of special police investigating team in Vagovič, 2017; Tódová, 2017). Gajdoš confirmed that the majority of facts mentioned in the file had been confirmed as accurate during the investigation (interviews with Gajdoš in Tódová, 2017; Vagovič, 2017).

The leakage of the file on the internet represents another important issue. It is less likely that the nation-wide scandal would have emerged had this not happened. It is still unknown how the classified information was leaked to the public and who initially published the Gorilla file on the internet. The most notable certainty is that it was nobody familiar with media logic – the period chosen for making it public, just before Christmas, was the least suitable time for initiating a nation-wide scandal (Murín, 2012, p. 400).

As well as some editors, certain top and low-level politicians knew about the Gorilla case a few years before it was made public.⁹ However, no me-

⁸ P. Bielík and B. Oprala (2016, April). Tom Nicholson: *Vyčítali mi, že som blázon bojujúci proti systému* [Tom Nicholson: They criticized me for being a fool fighting the system], <http://gaudeo.sk/tom-nicholson/>, see June 15, 2015, <https://dennikn.sk/minuta/160519/>, January 17, 2012, *Prokuratúra: Preskúmali kauzu Gorila zákonným spôsobom a nestranne* [The Office of the Prosecutor: The investigation of the Gorilla case according to law and impartially], <http://ipolitika.sk/2012/01/prokuratúra-preskumali-kauzu-gorila-zakonnym-sposobom-a-nestranne/>.

⁹ See anonymous, May 21, 2015, *Prečítajte si list bývalého agenta, ktorý nahrával Gorilu* [Read a letter by former agent who wiretapped Gorilla], www.tvnoviny.sk/domace/1793994_prečitajte-si-list-byvaleho-agenta-ktory-nahraval-gorilu; A. Ha-

dia outlet dared to publish or broadcast excerpts from this file due to their fear of the sizable libel suits that would have surely followed. The publisher of business newspaper *Hospodárske noviny* (HN) lost an appeal in 2016 against the verdict of the lower court, in which Penta successfully sued for a commentary referring to the Gorilla files published in 2013 (see Daniš, 2013).¹⁰ Similarly, *TV Markíza*, a major private TV broadcaster, was fined by the Broadcasting and Retransmission Board for broadcasting an item in the main news in 2015 which raised questions related to the Gorilla case. The reason for the judgment was intimated as the insufficient time allocation for the reaction of alleged key negative actors.¹¹ It should be mentioned that the Board for Broadcasting and Retransmission has pursued a long-standing policy of ‘plurality of opinions’, which sometimes seemed awkward.¹²

An eruption of media coverage, and politicians struggling to issue statements in endeavors to politically survive the scandal, protests and other forms of pressure from a discontented public, characterized this case. Public and media interest in this case was renewed after leaks about large indirect payments from Penta Investment Group to a company belonging to the former head of the counter-intelligence unit of SIS, code-named by the media Gorilla II (see, for example, Tódová,

núsková, 2012, *Gorila na roztrhanie. Dzurinda konečne prehovoril...* [Gorilla as top agenda. Dzurinda finally spoke out], www.noviny.sk/c/slovensko/gorila-na-roztrhanie-dzurinda-k-nej-vraj-barlicky-nepotrebuje-; 2012, February 1, *Policajt z Gorily: Dzurinda ovplyvňoval vyšetrovanie korupcie!* [Policeman from Gorilla: Dzurinda put pressure on those investigating corruption!], www.topky.sk/cl/1000120/1297902/Policajt-z-Gorily--Dzurinda-ovplyvnoval-vysetrovanie-korupcie-.

¹⁰ See www.kauzatorila.sk/aktualne/a219_penta-vyhrala-spor-s-hospodarskymi-novinami. The cause was a refusal of the right to a correction (based on the Press Law) by the publisher. The publisher submitted a special appeal to the Constitutional Court. The publisher argues that the Regional Court expanded the meaning of the Press Law by claiming that there is no need to strictly follow conditions for publishing a correction (e-mail from Vladimir Ruman, legal representative of the publishing house, April 10, 2017).

¹¹ See mk, (May 24, 2016). *Markíza dostala sankciu za reportáž Barbory Marekovej o Gorile* [Markíza was fined for a report by Barbora Mareková about the Gorilla], www.omeiach.com/tv/item/9149-markiza-dostala-sankciu-za-reportaz-barbory-marekovej-o-gorile.

¹² Mk (November 4, 2014), *RTVS potrestali za to, že nebola dostatočne proruská* [RTVS received a fine for not being sufficiently pro-Russian], https://www.omeiach.com/tv/item/5369-rtvs-potrestali-za-to-ze-nebola-dostatočne-proruska?fb_comment_id=635985599843202_637295759712186.

2015b),¹³ came to light in late 2015. On the other hand, the main negative non-political actor mentioned in the file, Penta Investment Group, made many PR¹⁴ and legal counter-efforts¹⁵ to tackle this issue.

4. The media and public issues in Slovakia

Although the media was the major reporter on many (broadly understood) corruption cases, very few cases were acquired by the media themselves, as a result of their own long-term painstaking investigations. Most often, stories arose from leaked sources.¹⁶ This was consistent with the case of the Gorilla files. Mihočková estimates that as many as 90% of corruption stories come from leaks or tips.¹⁷

From a media and liberal democratic perspective, direct and indirect purchase and co-purchase of some important media outlets (including the newspaper *Sme*) by local oligarchs, including those made (directly or indirectly) by Penta Investment Group in 2014/2015, raised doubts about the future freedom of a key part of the Slovakian media (see Kernová, 2015a, b; see also on this Media Pluralism Monitor 2015 – Results¹⁸). Although there may be multiple attributions, Penta's venture into the media business after the Gorilla scandal appears not to be a coincidence. This suggests a correlation between consequences ('lessons learned') of partial state capture and the need for 'captors' to achieve partial media capture (or, at least, capture of those media outlets which are most important for agenda-setting). Be that as it may, large amounts of research document the negative impact of owners (especially local) on freedom of the me-

¹³ The original transcript <http://skgorila2.tumblr.com/...>

¹⁴ See www.kauzatorila.sk and www.pentaokauze.sk/. According to the *intell-inews*, September 22, 2014, Penta had 3,000 mentions at the height of the Gorilla scandal. Jaroslav Haščák claimed that the Gorilla case was a PR disaster but mostly in Slovakia, less so in the Czech Republic or Poland, and this scandal had almost no impact in Germany (in Haluza, 2013).

¹⁵ See, for example, the letter sent by legal representatives of Penta to various websites, www.ginn.press/news/hascak-penta-utocia-na-gorilu or Valček, 201a and Burčík, 2016.

¹⁶ Interview with Zuzana Petková, November 14, 2013, investigative reporter from business weekly *Trend*.

¹⁷ Interview with Eva Mihočková, November 14, 2013, investigative reporter from weekly *Plus 7 Dní*.

¹⁸ <http://monitor.cmpf.eu.eu/mpm2015/results/slovakia/>.

dia (Djankov, McLiesh, Nenova, Shleifer, 2003; Baker, 2006; Winseck, 2008; Hanitzsch, Reich, 2013). Sikorski's (2017) meta-review research, in particular, revealed that, structurally, in relation to ownership structures, the partisanship of a news organization and the competitive context in which it operates tend to influence news coverage about political scandals. In this context, the circumstances under which the newspaper *Pravda* changed its owner, shortly before the Gorilla scandal, begs the question or whether this was somehow already reflected in the different media coverage of this scandal by this newspaper. Clearly, the true ownership of *Pravda* remained a mystery during those years. This sub-case of *Pravda* raises an issue regarding the impact of unknown media owners on the agenda of their media outlets *during* partial state capture. There appears to be a clear case of correlation between partial media capture and partial state capture. The supporting evidence is obviously only indirect, but, as will be demonstrated subsequently, clearly points in that direction. Interestingly, the captor behind *Pravda* daily remains unknown.

4.1. The Gorilla case in the Slovakian media

The 'Gorilla case' is probably the most covered single corruption case in Slovakian history. The database of a media content information storage company, SlovakiaOnline, includes 5,400 mentions of Gorilla (+ file SIS *or case or corruption*) from the period between December 2011 and July 2014. This is far more than the second most discussed single corruption case, Notice Board Tender, with about 1,300 mentions over a much longer period.¹⁹ However, as discussed, the media was relatively silent on this issue until the file was published on the internet. Why was this the case? Stanig (2009) argues that politicians can influence media content in two ways: through legal sanctions against editors or through pressure on publishers. However, in the Gorilla case, the major threat was a private entity, namely Penta. Nevertheless, it is true that all key political parties were involved in this scandal. Obviously, the media did not know in advance who would become the most serious threat to them.

Matúš Kostolný, the Editor-in-Chief of the key agenda-setting daily *Sme* at the time, was among the first editors contacted by Nicholson with the of-

¹⁹ On this case, see, for example, John Boyd, June 1, 2012, former MP charged with corruption in "Notice Board" Tender, *The Daily Slovakia*, www.thedaily.sk/former-mp-charged-with-corruption-in-notice-board-tender/#ixzz48WWUIAPj.

fer to cover the Gorilla case. Kostolný's explanation of the media silence on the case, therefore, is relevant and captures the difference between the initial apathy and the heightened interest after Gorilla had become a public topic in early 2012, at which time *Sme* was producing at least one article about the case daily. *Sme*'s hesitation to write about the case was driven by a lack of original evidence (e.g. initial original audio recordings, transcripts of the original interceptions, or a source) proving the file's authenticity – they also received legal counsel to decline to publish it (Kostolný, 2012a). The business newspaper *Hospodárske noviny* similarly remained silent, but for different reasons – it “did not publish anything on the SIS wiretaps simply due to a lack of knowledge on the matter.”²⁰ Some other editors were cautious for additional reasons. For example, Jozef Hajko, former Editor-in-Chief of business weekly *Trend*, stated: “Hypothetically speaking, before 2011, *Trend* would either publish a story based on Gorilla files only with statements of the key concerned actors, or would not publish anything due to a lack of verified and reliable facts/sources. It could just have been a conspiracy theory or provocation.”²¹ The weekly *.týždeň* was the first magazine to issue a story written by Nicholson on side issues – not related to the content of the files, but rather focused on the negative experience Nicholson had with a special prosecutor when he submitted transcripts of the Gorilla case to him (Hrib, 2014). In any case, the weekly *.týždeň* is not an agenda-setting publication in Slovakia, so the case did not attract attention amongst the hundreds of other corruption cases at that time. This is another interesting dynamic of this case; the agenda-setting factor. It would be very useful to explore how many corruption stories failed to attract nation-wide coverage due to being published initially in media which were not agenda-setting, especially when the inter-media agenda-setting function was rather low (see Školkay, Ištoková, 2016).

Be that as it may, it should be mentioned that a review of relevant court cases of the ECHR would suggest a refrain from the publishing of these transcripts (*Lešník v. Slovakia*, 2003IV, *Vides Aizsardzības Klubs v. Latvia*, 2004; *Cumpănă and Mazăre v. Romania*, 2004). However, in such cases the ECHR allows many additional conditions and excuses, and these might have softened any possible harsh repercussions for journalists, especially those of a criminal nature. In other words, it might be possible that the ECHR would accept the publishing of a story based on the

²⁰ Interview with Peter Vavro, then the Editor-in-Chief, Bratislava, July 17, 2017.

²¹ Interview with Jozef Hajko, former Editor-in-Chief of *Trend* (until 1999), Bratislava, July 17, 2017.

Gorilla file, due to their possible enormous social and political relevance, even under less favorable conditions with respect to the absence of watertight evidence. For example, the ECHR accepts the publishing of rumors or stories emanating from third sources by the media (*Thorgeir Thorgeirson v. Iceland*, *Cihan Öztürk v. Turkey*). Moreover, the ECHR accepts that allegations against individuals or public figures do not have to be initially proven in criminal proceedings (Voorhoof, 2015, pp. 309–310). In other words, the media could have taken advantage of the fact that police had begun investigations of the Gorilla files long before they were made public on the internet. The media could have reported extensively on this fact and investigated the story further. Nevertheless, it is true that certain chilling effects of the libel legislation, especially regulating publishers, were present during that period (Školkay, 2014; Hanák, 2016).

Nevertheless, the Gorilla case adequately supports Entman's (2012) theory about the low interest of politicians in making public scandals which deal with all major sides of the political spectrum, as well as difficulties for the media in exposing a full-blown scandal under circumstances of political collusion.

4.2. Internal quantitative content analysis

Our quantitative analysis focused on the period which commenced with the publishing of the first article on the Gorilla case in the print media, until the end of January 2012.

Table 1

Results of analysis of objectivity. Verification and the source of information by media (% rounded)

Newspaper	Objectivity	Verification	Confirmation	Source	Front page	Number of investigated articles
<i>Sme</i>	69	72	49	100	25	80
<i>Hospodárske Noviny</i>	53	75	40	100	22	60
<i>Pravda</i>	45	61	30	100	16	31

The highest number of articles, in total as well as on the front page, was published by the daily *Sme*, followed by the business daily *HN*, with the last, *Pravda*, lagging somewhat behind. This is surprising, consider-

ing that the most often mentioned subjects in the transcripts were right-wing parties. Moreover, *Pravda* published the lowest number of articles – from its already low total – on the front page.

However, the findings of quantitative research on the same topic, the media representation of the Gorilla case, conducted by Midulová (2013) for a slightly extended reference period (December 20, 2011–February 6, 2012), showed dramatically different results in the percentages of the front page articles. According to Midulová's data, *Pravda* exceeded both *Sme* and *HN* in the ratio of articles presented on the front page (35%, 27% and 22%, respectively), although the sequence of the total number of articles remained unchanged, with *Sme* taking the lead, followed by *HN* and, as usual, *Pravda* far behind. Further comparison of our research and Midulová's, demonstrates that *Pravda* suddenly (in just six days) reported on the scandal in five more front page articles, 50% of the total for the 41-day research period.

Pravda also fared worst with respect to objectivity (as defined above, and with the caveats mentioned above), while *Sme*, despite publishing the largest number of articles (thus increasing the risk of mistakes), was the most objective publication. Although neither newspaper reached reasonable (approximately 90%) objectivity, the differences seemingly indicate a medium quality of journalistic work.

A verification indicator proved that, in our case, there were usually two sources used (from 61% of the time in the case of *Pravda* to 75% in the case of *HN*), although these sources did not necessarily confirm or speak about details of the same issue in an article, as is clear from the confirmation indicator. These results varied from 30% to 49%. In other words, the majority of news articles mostly contained contradictory claims and denials, rather than facts. It is of little benefit that the sources of these claims were, in all cases, clearly identifiable.

In summary, the most professional coverage was indisputably provided by the daily *Sme*, while the least professional coverage was offered by the daily *Pravda* (which focused more on the impact of the story on elections) – the daily *HN* could be qualitatively placed in the middle. However, the sources predominantly denied all accusations stated in the file, thereby forcing the media to report mostly on rumors – in fact, this is not surprising considering the criminal nature of the alleged activities. The daily *Sme* wrote most frequently about the case, and *HN* published twice as many articles as *Pravda*. In most cases, the newspapers gained their information from their own editorial work, and the articles contained the name of the author. Due to the attractiveness of the topic, the active

work of journalists could be recognized in all analyzed media outputs. In almost half of the articles focusing on the Gorilla case, three or more quotes from certain individuals involved were frequently present. Such a consistent effort towards comprehensive coverage of the diverse attitudes can be considered an attempt to reasonably balance the sources during a highly confusing phase of this public scandal.

Regarding the content of the articles, *Pravda* reported on the case in the manner consistent with an intelligence game, far more frequently than did *Sme* or *HN*. *Pravda* also claimed that the file was published before the elections on purpose (Stupňan, 2012). The consequences for individual politicians were deduced in several cases in articles from this daily. On the contrary, the dailies *Sme* and *HN* rarely mentioned the Gorilla scandal in the context of elections. The content of the articles in *Sme* and *HN* was generally derived from statements by politicians and public figures. In fact, the statistical findings of Midulová (2013) demonstrated an overwhelming predominance of quotes from politicians in articles which gave space to any kind of personal statement, in all three dailies. According to her research, these findings support the theories (see Sigal, 1973; Hagen, 1993) advocating the existence of elite access to certain information sources amongst the news services, which consequently shapes the interpretation of particular pieces of information presented to the public. Nevertheless, the research confirmed that all three examined newspapers were very active in their own investigative and analytical work on the case during the period; the findings of other media sources were used in only a few cases.

Pravda's unusual way of reporting on this case (less attention was devoted to it, focusing on the impact of the case on elections) probably reflects transitions in their editorial policy after the change of the daily's ownership in 2010. Indeed, communication with Zuzana Petková, the former Deputy Editor-in-Chief at *Pravda*, revealed that the majority of journalists who were critical towards *Smer-SD* left the daily either voluntarily or under pressure.²² Although the major scandal revolved around right-wing politicians, the files frequently mentioned the head of the major leftist party (Leško, 2016). Therefore, *Pravda* found itself in a rather complicated situation – it was interested in covering the case as it mainly concerned parties of the right, yet it also struggled, as the scandal had the potential to harm *Smer-SD*.

²² Email from Zuzana Petková, petkova@trend.sk, April 27, 2016.

However, the right and left-wing bias of individual dailies cannot be confirmed, according to the statistical output of Midulová (2013), as the responsibility for the wrongdoing was mostly attributed to the rightist *SDKÚ-DS* in all three analyzed papers – the leftist *Smer-SD* was only marginally mentioned as a perpetrator.

It is notable that Svoráková (2012) rightly highlighted the important role played by social media in coordinating and providing full coverage of protests. However, her other claims on media coverage of this case can be considered as a misinterpretation or misunderstanding of the specific nature of television media work. Moreover, Svoráková's study is silent on the methodology she used.

5. Conclusion

This case illustrates an ethical and legal dilemma for the media when the sources of information vehemently deny all accusations, and force the media to report rumors or contradictory claims and denials (after files are made public on the internet) or desist from reporting altogether due to possible libel threats, until the files are made public on the internet. Our findings, supported by cited research, question normative expectations expressed in the democratic theory related to the role of the media in fighting large-scale corruption (intertwined with state capture) in post-communist states. However, anonymous publishing on the internet provides an escape route for the media from possible unresolvable dilemmas fueled by legal and ethical dynamics under dual capture – from partial *case-specific* media capture and possibly, in the long-term, from (partial) state capture. Nevertheless, the media could still have published many stories to instigate a nation-wide corruption scandal, even before making incriminating files public on the internet. This would be legally safe under standard politico-legal conditions. It appears that the media inflicted media capture on themselves – and/or they simply underestimated the importance of the Gorilla files. The latter explanation is difficult to accept. Perhaps the situation was challenging from the perspective of media freedom at that time, and the media simply did not want to enter another long and costly court case with an uncertain result.

The publishing of the file on the internet in December 2011 set off a wave of ardent media coverage of the scandal, followed by public statements from many prominent politicians who had been silent until then

– these politicians had maintained very low levels of interest in public scandals which related to major players on both sides of the political spectrum (Entman, 2012).

By contrast, the Slovakian media, with the exception of some investigative efforts by an individual journalist, were utterly inactive until the file was made public on the internet – despite Nicholson offering the case to some of the major stakeholders for more than two years, they showed no interest in further investigation of the Gorilla file. Although there were strong legal arguments for the exercise of caution with respect to the decision not to publish stories related to the Gorilla case before making it public on the internet, it remains questionable whether the media did not push themselves into a case-specific media capture.

The most professional initial coverage among quality newspapers was indisputably provided by the daily *Sme*, while the most problematic coverage was offered by the daily *Pravda* – the coverage of the daily *HN* could be qualitatively placed in the middle. The unusual failure of *Pravda* to properly inform the public about the scandal, however, may be linked to the change of ownership and the whole editorial policy. The demonstrable bias by the new management towards the leftist ideology, or even *Smer-SD*, empirically verifies how media ownership and/or ideology can negatively affect the freedom of the press or coverage of large-scale corruption. Ironically, some media outlets acted rather selectively, and their output was sometimes unbalanced (see Penta Investments, 2016), even long after the online publication of the Gorilla files.

We have updated the emerging terminology of media capture with *partial case-specific* media capture. Under such conditions, the media is captured only partially (and possibly temporarily and due to being too cautious) in a specific case. Perhaps our specification of ‘partial’ media capture (in contrast to the minimally differentiated and broadly used term ‘media capture’) can be found analytically useful. Partial media capture can be found in a situation when a part of the media or a specific media sector (e.g. online media) is free to report while others (usually more capable of agenda-setting) are constrained. From a broader methodological-theoretical perspective, the paper discovered methodological challenges of quantitative corruption analysis based on media reporting, as well as suggested drawbacks of political science approaches to issues that do not get official and verified confirmation from public authorities. The latter issue is tackled in a separate paper.

Finally, it should be mentioned that legally and economically constrained (especially print) media, under the control of local oligarchs, especially of Penta, is a rather worrying aspect of Slovakian democracy. The potential and ongoing oligarchization of key media houses in Central and Eastern Europe (Štetka, 2012; UEA, 2013; Wyka-Podkowka, 2014; Popović, 2015), despite the unrestrained opportunity for expression via the internet, still significantly threatens the detection and coverage of corruption scandals due to the agenda-setting and inter-media agenda-setting roles of the key print and TV media. This is especially evident when politicians become involved in activities which suppress their duties towards the public interest. In summary, the process of oligarchization of the media may result in media capture and this, in turn, may facilitate state capture. This is the opposite situation to that described in this paper (save for the *Pravda* case), but nevertheless possibly has a similar impact on media reporting of sensitive large-scale corruption cases.

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Specyficzny przypadek częściowego przechwycenia mediów: akcja „Goryl” na Słowacji

Streszczenie

Artykuł omawia specyficzny przypadek częściowego przechwycenia mediów w wyniku ich własnych działań, przy zaobserwowaniu słabego efektu chłodzącego prawodawstwa, który potwierdza model częściowego przejścia państwa. Ogólnie rzecz biorąc, przypadek ten ilustruje dylematy etyczne i prawne związane z informowaniem przez media o specyficznym rodzaju wielkiej korupcji, w sytuacji, w której większość źródeł zaprzeczała wszelkim oskarżeniom, a władze państwowe i politycy zajęli kontrowersyjne stanowisko w tej kwestii, co zmuszało media do przekazywania głównie pogłosek lub sprzecznych twierdzeń i zaprzeczeń (po tym, jak kontrowersyjne pliki dotyczące korupcji zostały anonimowo upublicznione w Internecie) lub całkowitego zaprzestania publikacji (przed udostępnieniem plików w Internecie).

z powodu możliwych oskarżeń o zniesławienie). Dylemat ten podważa normatywne oczekiwania wyrażone w teorii demokracji, związane z rolą mediów jako strażnika w specyficznym kontekście przypadków wielkiej korupcji w państwach postkomunistycznych. Co więcej, niniejszy artykuł sugeruje potrzebę ponownego zbadania metodologicznych aspektów ilościowych analiz treści medialnych relacji przypadków korupcji. Artykuł podejmuje także próbę zaktualizowania pojawiającej się teorii o przechwyceniu mediów za pomocą terminologii „częściowo specyficznego przypadku” (partial case specific) przechwycenia mediów.

Słowa kluczowe: „Goryl”, Słowacja, oligarchowie, przejęcie mediów, korupcja, przejęcie państwa, służby wywiadowcze, podsłuchy, postkomunistyczny