[MT] Civil Court Confirms the Independence of the Broadcasting Regulator

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Kevin Aquilina
Faculty of Laws, University of Malta

In the context of the general elections of 8 March 2008, the Broadcasting Authority adopted a scheme for general election broadcasts, wherein the four political parties competing in the general elections would participate in debates and press conferences on the public service broadcaster, during the period from 11 February to 6 March 2008. No political broadcasts were to take place both on 7 and 8 March 2008.

On 23 February 2008, the Green Party requested that the Civil Court, First Hall, prohibit the Broadcasting Authority from effecting changes to its scheme of election broadcasts. On 25 February the Civil Court heard the case and delivered a written decree.

In its decree, the Civil Court referred to the provisions of articles 119(1) and 118(8) of the Constitution of Malta. Article 119(1) provides that it is the function of the Broadcasting Authority to ensure that, so far as possible, in such sound and television broadcasting services as may be provided in Malta, due impartiality is preserved in respect of matters of political or industrial controversy or relating to current public policy, and that broadcasting facilities and time are fairly apportioned between persons belonging to different political parties. Article 118(8) states that, in the exercise of the above-mentioned functions, the Broadcasting Authority is not subject to the direction or control of any other person or authority.

In its decree, the Court held that, bearing in mind the above-mentioned Constitutional provisions, it is the Broadcasting Authority which has to ensure balance and impartiality in political broadcasting and that the Court's role in this respect is limited, in order to ensure that it does not substitute itself for the discretion exercised by the Authority in its constitutional function. The Court's function is to ascertain whether or not the Authority had in the relevant case acted beyond its lawful powers, whether it had observed the law and whether it acted in such an irrational way, so as to have executed its lawful duties in a wrongful manner.

The Court held that in order for it to be in a position to intervene, as requested by the Green Party, the latter would have to prove that there had been a serious breach of law on behalf of the Broadcasting Authority. However, such a breach

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could not be found to have taken place in the case under examination, as the Authority has based its decision on programming considerations and its reasoning could not be considered irrational under the circumstances; nor could it be proved to be in violation of the law. The Court held that the Authority did consider the relevant facts before arriving at its decision, and that its conclusions were not irrational. Hence, the Court refused to issue a warrant of prohibitory injunction to prevent the Authority from changing its general elections' programme schedule and found in favour of the Authority. By refusing to review the Authority's decision on the merits, the Court has recognised the independence of the broadcasting regulator when carrying out its lawful constitutional duties of ensuring balance and impartiality in political broadcasting.

Mandat ta' Inibizzjoni: Alternattiva Demokratika vs Awtorita ' tax-Xandir

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Warrant of Prohibitory Injunction: Democratic Alternative (The Green Party) v. Broadcasting Authority

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