[MT] The Right to a Fair and Public Trial in Administrative Broadcasting Proceedings

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Kevin Aquilina
Faculty of Laws, University of Malta

On 11 May 2009, the Civil Court, First Hall, decided that the Malta Broadcasting Authority had not, when hearing a charge issued by the Chief Executive of the said Authority against the public service broadcaster, given the latter a fair hearing during administrative proceedings. This court case involved the first instance of application by the Authority in 2000 of the then new law which changed the procedure as to the enforcement of broadcasting legislation from one based on criminal proceedings to one based on administrative proceedings.

The facts of the case are as follows. On 21 March 2000, a programme was broadcast prior to the watershed on the public service television station (TVM) dealing with sex education. The Authority took note of a Memorandum submitted to it by its Chief Executive and also heard the oral submissions of the station in connection with the alleged infringement of the good taste and decency provision of the Broadcasting Act. On 12 July 2000, the Authority found the station in breach of the Broadcasting Act and imposed an administrative penalty of MTL 600 (now EUR 1397.62), while also ordering the station to broadcast a summary of the Authority's findings during the principal news bulletin of TVM. It did so after noting the new amendments to the Broadcasting Act, which had come into effect the day before, on 11 July 2000. These amendments had empowered the Authority to inflict administrative sanctions, such as the above-mentioned penalty, a power which it did not previously have, as infringements of broadcasting law were prior to 11 July 2000 considered criminal offences. The station sought judicial review of the Authority's decision, claiming that it had not been given a fair hearing in the infliction of such a penalty.

The court argued that the new amendments to the Broadcasting Act had raised the standard of administrative proceedings from disciplinary proceedings to proceedings which had to respect the right to a fair and public trial. It further expressed its opinion that once the new law had come into force and the proceedings in question had not yet been definitively decided, the Authority was bound to comply with these new provisions, as that was the law in force at the specific moment in time. In the court's view, the Authority should - following the entry into force of the new amendments - either have requested TVM to declare that it was not going to adduce further evidence and that it was relying on the evidence it had already produced or else TVM should have been given the

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opportunity to produce fresh evidence. Furthermore, TVM had not received a charge in terms of the new law, nor was it informed on which provision of the law its conduct was being investigated. The Authority failed to inform TVM that the latter had the right to adduce evidence to defend itself and to be assisted by a lawyer. In addition, the Chief Executive of the Authority, who filed a written statement, was not cross-examined by TVM. Finally, the court concluded that when a law is changed following the commission of a criminal offence, it is the law most favourable to the accused that should apply. The Court thus found in favour of TVM and ordered the Authority to refund the administrative penalty which TVM had paid to the Authority.

On the other hand, the court observed that it resulted from the facts of the case that the Authority had not acted as a prosecutor and as a judge at the same time, as TVM had alleged, and therefore rejected TVM's contention in this regard.

The decision is now final as the Broadcasting Authority did not appeal the judgment.

Public Broadcasting Services Limited v Awtorita' Tax-Xandir

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