European Court of Human Rights: Sigma Radio Television Ltd. v. Cyprus

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This case concerns a complaint by a broadcasting company regarding a number of decisions by the Cyprus Radio and Television Authority (CRTA) imposing fines on the company for violations of legislation concerning radio and television programmes in its broadcasts and the alleged unfairness of the related domestic proceedings. The breaches found by the CRTA concerned advertisements for children's toys; the duration of advertising breaks; the placement of sponsors' names during news programmes; product placement in a comedy series; news programmes that lacked objectivity or contained material unsuitable for minors or were disrespectful of crime victims and their relatives; films, series and trailers that contained offensive remarks and inappropriate language or included scenes of violence unsuitable for children; and, in one particular case, racist and discriminatory remarks in an entertainment series.

Sigma RTV alleged substantially that it had been denied a fair hearing before an independent and impartial tribunal, invoking Article 6 of the Convention. In this connection it complained about the proceedings before the CRTA and the judicial review proceedings before the Supreme Court. Sigma RTV's grievance as to the proceedings before the CRTA concentrated on the multiplicity of its functions in prosecuting, investigating, trying and deciding cases and imposing sanctions. In addition, Sigma RTV complained that the members and staff of the CRTA had a direct and personal interest in imposing fines, as the amounts thus collected were deposited in the CRTA's Fund, from which their salaries and/or remuneration were paid.

The European Court notes that a number of uncontested procedural guarantees were available to Sigma RTV in the proceedings before the CRTA: the company was given details of the probable violation or the complaint made against it and the reasoned decisions were arrived at after a hearing had been held, while Sigma RTV was able to make written submissions and/or oral submissions during the hearing. Furthermore, it was open to Sigma RTV to make a wide range of complaints in the context of the judicial review proceedings before the CRTA. Despite the existence of these safeguards, the combination of the different functions of the CRTA and, in particular, the fact that all fines are deposited in its own fund for its own use, gives rise, in the Court's view, to legitimate concerns that the CRTA lacks the necessary structural impartiality to comply with the

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requirements of Article 6. Nonetheless, the Court reiterates that even where an adjudicatory body, including an administrative one as in the present case, which determines disputes over “civil rights and obligations” does not comply with Article 6 §1 in some respect, no violation of the Convention can be found if the proceedings before that body are “subject to subsequent control by a judicial body that has ‘full’ jurisdiction and does provide the guarantees of Article 6 §1”. Although the Supreme Court could not substitute its own decision for that of the CRTA and its jurisdiction over the facts was limited, it could have annulled the decisions on a number of grounds, including if the decision had been reached on the basis of a misconception of fact or law, if there had been no proper enquiry or a lack of due reasoning, or on procedural grounds. The European Court notes that indeed the Supreme Court examined all the above issues, point by point, without refusing to deal with any of them and that the Supreme Court gave clear reasons for the dismissal of the Sigma RTV’s points. The Court came to the conclusion that Sigma RTV’s allegations as to shortcomings in the proceedings before the CRTA, including those concerning objective partiality and the breach of the principles of natural justice, were subject to review by the Supreme Court and that the scope of the review of the Supreme Court in the judicial review proceedings in the present case was sufficient to comply with Article 6 of the Convention.

The Court also dismissed Sigma RTV’s complaints regarding the alleged violation of Article 10 of the Convention as all decisions by the CRTA were in accordance with Art. 10 §2, the sanctions and fines being prescribed by law, being proportionate and being pertinently justified on the basis of legitimate aims. These aims, in general, included the protection of consumers and children from unethical advertising practices, the protection of children from broadcasts containing violence or any other material likely to impair their physical, mental or moral development, the importance of ensuring that viewers were informed of the true content of the broadcasts by the use of appropriate acoustic and visual warnings, the protection of pluralism of information, the need for a fair and accurate presentation of facts and events and the protection of the reputation, honour, good name and privacy of persons involved in or affected by the broadcast. The Court found therefore, that the interference with Sigma RTV’s exercise of their right to freedom of expression in these cases can reasonably be regarded as having been necessary in a democratic society for the protection of the rights of others. The Court accordingly declared inadmissible, as manifestly ill-founded, Sigma RTV’s complaints under Article 10 in respect of the CRTA’s decisions. One complaint however received a more thorough analysis on the merits: the complaint regarding the racist and discriminatory content of a fictional series. The Court emphasises that it is particularly conscious of the vital importance of combating racial and gender discrimination in all its forms and manifestations and that the CRTA could not be said in the circumstances to have overstepped its margin of appreciation in view of the profound analysis at the national level, even though the remarks had been made in the context of a

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fictional entertainment series. Lastly, as to the proportionality of the impugned measure, the Court found, bearing in mind the amount of the fine and the fact that the CRTA, when imposing the fine, took into account the repeated violations by the applicant in other episodes of the same series, that the fine imposed (approximately EUR 3,500) was proportionate to the aim pursued. Accordingly, there has been no violation of Article 10 of the Convention.

Finally the Court also dismissed the complaint regarding the alleged discrimination against Sigma RTV, operating as a private broadcaster under stricter rules, restrictions and monitoring than the national public broadcasting company in Cyprus, CyBC. The European Court was of the opinion that, given the differences in the legal status and the applicable legal frameworks and the different objectives of private stations and the CyBC in the Cypriot broadcasting system, it cannot be said that they are in a comparable position for the purposes of Article 14 of the Convention. The Court found, therefore, that the present case does not indicate discrimination contrary to Article 14 of the Convention.

Judgment by the European Court of Human Rights (Fifth Section), case of Sigma Radio Television Ltd. v. Cyprus, Nos. 32181/04 and 35122/05 of 21 July 2011

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