[MT] Yes for Divorce Movement/Yes for Marriage v Broadcasting Authority

IRIS 2011-9:1/28

Kevin Aquilina
Faculty of Laws, University of Malta

On 23 May 2011 the Civil Court, First Hall, sitting in its constitutional capacity, held that the Broadcasting Authority - by withholding two political spots from being broadcast during the divorce referendum campaign - was not in breach of freedom of expression under the Constitution of Malta and the European Convention on Human Rights and Fundamental Freedoms. No appeal was lodged against this judgment to the Constitutional Court.

In Advocate Dr. Deborah Schembri and others in their personal name and on behalf of the Yes for Divorce Movement/Yes for Marriage, the said Yes Movement filed a freedom of expression case against the Broadcasting Authority on 16 May 2011. The Yes Movement claimed that, as part of the scheme of divorce referendum broadcasts organised by the said Authority on public service television, the Authority had stopped the airing of two political spots of the Yes Movement. The latter had prepared two spots consisting of footage showing Mgr. Charles Vella, who had in the past granted an interview during prime time on a private television station where he discussed, amongst other things, the divorce issue. This footage was used by the Yes Movement as part of its referendum campaign after it obtained permission from the private television station and the programme producer, but not from Mgr. Vella, whose image was shown on both spots together with an excerpt of what he had stated during the said programme.

The Authority allowed the broadcast of the spots twice on 12 May 2011, but withdrew them the following day after the receipt of a letter of protest by Mgr. Vella, who informed the Authority that he had not given consent for his image to be used in the Yes Movement's campaign. According to the Authority's scheme of referendum broadcasts, third parties could be portrayed in political spots provided that they gave their consent for this purpose. Mgr Vella noted that in the two spots in question, his interview had been edited and taken out of context, giving the impression that he was advocating the introduction of divorce legislation in Malta. In its pleadings, the Authority submitted that Mgr. Vella was a private person and not a public figure; that it initially allowed the spots to be aired until it received Mgr. Vella's complaint, whereupon it took immediate action to stop the spots from being broadcast in its scheme of referendum broadcasts, whilst asking the Yes Movement to substitute them with two others; that Mgr. Vella had not given his consent for the broadcast of his image in the Yes Movement spots; that

© European Audiovisual Observatory (Council of Europe) 2026

Mgr. Vella - who was against divorce legislation - was depicted in the two spots in an abusive way and out of context; and that the television programme in which Mgr. Vella had participated had been broadcast before the House of Representatives had decided to call a referendum on the divorce issue, before the Yes Movement had been established and before the date of the referendum had actually been announced. Moreover, the said television programme had dealt with several issues, amongst which was that of divorce. The Authority further pleaded that, although Mgr. Vella participated in a television discussion programme, this did not imply that he had renounced any copyright he enjoyed over the reproduction of his own image. Finally, it noted that the inclusion of Mgr. Vella's television programme interview in the two said political spots favouring divorce did not fall under extant fair use rules.

The court considered the Yes Movement's submissions that Mgr. Vella was a public person, had spoken on television, his intervention was made in public and that both the television station and programme producer had given their consent for the broadcast of excerpts of Mgr. Vella's interview during the two spots in question. The court further noted that Mgr. Vella did not occupy any institutional office, in so far as both the Government and Church were concerned. As a private citizen, he was still an influential person, as he was the founder of the Cana Movement - a Catholic Church institution having the family at heart. He was also an institutional figure in Italy in the family sector and remained an expert on family matters, having written on the issue of the family during the course of his career. The court found that as Mgr. Vella was an influential person and the Yes Movement had extracted passages from his programme interview for its spots to favour its cause. But the extract, the court held, was taken out of context and Mgr. Vella had not participated at all in the divorce referendum debate; nor did he support the Yes Movement. Although Mgr. Vella was, prior to the campaign, interviewed on divorce, this did not imply that what he said during the television programme could be reproduced without his consent and out of context in the two spots depicting him as though he favoured the introduction of divorce in Malta. Furthermore, when the Authority stopped the said spots from being aired, it immediately permitted the Yes Movement to replace the said two spots with another two of the Yes Movement's choice, an option of which the Yes Movement availed itself.

Schembri Deborah Av Dr et Noe v. l-Awtorita' tax-Xandir, 23/05/2011

http://www.justiceservices.gov.mt/courtservices/Judgements/default.aspx

Decision of the Civil Court, First Hall (Constitutional jurisdiction), Yes for Divorce Movement/Yes for Marriage v. Broadcasting Authority, reference no. 22/2011, 23 May 2011

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026