[MT] Administrative Sanctions Imposed by the Broadcasting Authority Found to be in Breach of Natural Justice

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On 7 February 2012, In Smash Communications Limited vs. Broadcasting Authority et, decided by the Civil Court, First Hall, the court concluded that the present system established in the Broadcasting Act regulating the imposition of administrative sanctions by the Broadcasting Authority was in breach of the principle of natural justice nemo iudex in causa propria - no person may be a judge in his/her own cause.

In brief, the facts of the case were as follows. The Broadcasting Authority's Chief Executive Officer had issued a charge against Smash Television alleging that in a particular programme there was a breach of the sponsorship rules as a sponsor had been given an excessive credit. The television station requested the Authority to allow it to challenge in court the procedure used by the Authority in the issue of the charge. The Authority agreed and Smash Communications Limited filed a court case against both the Authority and its Chief Executive. The Authority therefore did not hear the charge against the station and suspended the hearing until the court would have decided the case. The television station held that once it was the Chief Executive who was delegated by the Authority to issue the charge against the station and that once the Authority was to decide that charge, the Authority was in breach of the principle of natural justice that no person should be a judge in his/her own cause. This was so because the Chief Executive was an employee of the Authority and, in this respect, he was the lunga manus of the Authority. In other words, by issuing a charge against a television station, the Authority was through its Chief Executive alleging that there was a possible breach of broadcasting law. The authority which issued the charge against the station was the same authority called upon to decide the charge. In this case, the Authority was acting both as a prosecutor and a judge at one and the same time. Such conduct was offensive against the right to be adjudged by an independent and impartial tribunal established by law in so far as the Authority was exercising a concurrent jurisdiction: that of prosecutor and that of judge.

The Court further noted that although it was correct to state that the Broadcasting Law had a subsidiary law which stated that prosecutorial functions were to be exercised by the Chief Executive and not by the Authority, the fact still remained that the Chief Executive was an employee of the Authority subject to its direction

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even if the Chief Executive maintained that in so far as the institution of administrative offences were concerned, he carried out such functions on his own independent judgment and not following the receipt of any direction from the Authority. The Court nevertheless stated that this was more of a legal fiction rather than a reality as the Chief Executive and the Broadcasting Authority were inextricably linked to each other. Moreover, the Court stated that the procedure as set down by law did not comply with the legal maxim that justice should not only be done but must be seen to be done. The Chief Executive was seen as too much part of the Authority: he was appointed and paid by it; his staff were Authority employees; his office was situated in the Authority's building; he was invited to attend all Authority meetings (except when the Authority would be deliberating on the sanction to be imposed following the issue of a charge by the Chief Executive) and participated during Authority meetings even if he was not a member of the Authority and had no right to vote. At certain occasions he was also summoned to provide the Authority with information when it was deliberating its decision on a charge issued by him. All these factors taken together ensured that the Authority was not impartial and therefore could not hear charges issued by its own Chief Executive Officer.

According to Press Release No 05/12, the Broadcasting Authority informed the public that it had appealed the judgment before the Court of Appeal.

Judgment of the Civil Court, First Hall (reference 481/2004)

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