[CY] The Appointment of the Regulator's Members Comes into Force with a Letter of Notification

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The Second Instance (Revisional) of the Supreme Court decided that the appointment of a member of the Cyprus Radio Television Authority entered into force with the notification letter addressed to the appointee. Thus, the absence of that member from the deliberation process that ended up with the sanctioning of ANT1 channel for breaches of the law made the composition of the Authority unlawful; as a result, the Court cancelled the Authority's decision against ANT1.

The facts of the case are as follows: a member of the Radio Television Authority resigned in July 2005 but was reappointed by the Council of Ministers on 22 December 2005. The decision was notified to the interested person on 13 January 2006 and published in the official gazette on 22 March 2006. On 1 February 2006, the day of the decision against ANT1, the member was present in the meeting but withdrew from it. ANT1's appeal against the decision for unlawful composition of the Authority was rejected by the first instance of the Supreme Court on the grounds that after the member's resignation, his absence could not affect it. The second instance of the Supreme Court noted, that, at the time, the facts related to the reappointment and the events that had followed were not known to the first instance Court.

The Authority's argument was that the withdrawal of the member from the meeting at which it was decided to fine the broadcaster was justified because his appointment was published at an ulterior date. The appointment enters into force after its publication in the official gazette, argued the Authority. Conversely, the appellant claimed that the appointment started on the date of its notification to the member and its publication was not a necessary element to complete the act. Thus, the member should have taken part in the meeting and be properly updated on previous meetings of the deliberation process.

In examining the case, the Court noted that, even in the case of a law requiring the publication of the act, and given its individual nature, the publication is not a component element of the act. Also, the Constitutional provision regarding the publication of the decisions of the Council of Ministers giving them leave to use the discretion of the Council to consider whether this publication is useful or desirable, instead of the necessity for the completion and the substance of the act. The appointment of members of the governing councils of semi-governmental

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organisations is an individual act and its publication is simply informative, about an already expressed will of the body.

Considering the above, the Court decided that the respective person became a member of the Radio Television Authority before the date of the latter's decision of 1 February 2006 and with his absence the body's composition was not lawful. As a result, the Court decided that the Authority's decision is cancelled.

ΑΝΩΤΑΤΟ ΔΙΚΑΣΤΗΡΙΟ ΚΥΠΡΟΥ, ΔΕΥΤΕΡΟΒΑΘΜΙΑ ΔΙΚΑΙΟΔΟΣΙΑ (Αναθεωρητική Εφεση Αρ. 220/2009) 9 Δεκεμβρίου 2013

http://www.cylaw.org/cgi-bin/open.pl?file=/apofaseis/aad/meros_3/2013/3-201312-220-09_3.htm

Decision of the Supreme Court (case 220/2009) of 9 December 2013

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