[MT] Administrative sanctions and broadcasting law

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On 7 February 2012, in Smash Communications Limited v. Broadcasting Authority et al, 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; see IRIS 2012-5/33). The defendants (the Broadcasting Authority and its Chief Executive) appealed this decision and on 24 June 2016 the Court of Appeal delivered its judgment.

The defendants pleaded that they acted in accordance with the Broadcasting Act, the relevant law in this case. The appellate court held that according to section 469A(1)(a) of the Code of Organization and Civil Procedure, which governs judicial review of administrative action, the Civil Court, First Hall, in its ordinary jurisdiction could annul an administrative act if the latter violates the Constitution. However, the competence that the Civil Court enjoys is limited to the administrative act, not to the law under which that act is made. Thus, if the administrative act is made in conformity with the law (as the defendants claimed in these proceedings), and the law allows no discretion as to how that administrative act can be exercised, the Civil Court cannot conclude that the law, in terms of which that administrative act has been made, is without effect once such power is conferred upon that court. This is not the case when it acts in its ordinary jurisdiction, as was the case under review, but when it acts in its extraordinary (that is, constitutional) jurisdiction. This does not imply that when the law allows the exercise of discretion and the public authority exercises it in such a way as to breach the Constitution, that act cannot be annulled in terms of section 469A(1)(a) of the Code. This is because discretion allowed by law may still be exercised in an unconstitutional fashion. This implies that if the law does not allow any form of choice to the public authority as to how it has to implement the law, it is only the Civil Court, sitting in its constitutional jurisdiction (and, on an appeal, the Constitutional Court), which can annul that administrative act, by declaring the law under which that action was performed as being without effect.

The Court of Appeal further held that the Civil Court, First Hall, has constitutional competence in terms of the Constitution (in addition to its ordinary competence). However, in the instant case, the Court of Appeal found that the Civil Court had failed to exercise such extraordinary competence. Further, the plaintiffs, on their

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part, had not filed their proceedings before that Civil Court sitting in its constitutional competence.

The Court of Appeal then examined whether the defendants could have acted differently; that is, whether the charge against Smash Communications Limited could have been issued by an organ of the Broadcasting Authority (its Chief Executive), so that the Authority could determine the administrative proceedings. Section 41 of the Broadcasting Act provides that it is the Authority which issues the charge and which decides it. There was no other alternative contemplated in the law, other than for the Broadcasting Authority or one of its organs to issue the administrative charge and for the Authority to decide the charge following the observance of the guarantees of a fair and public trial. Therefore the Civil Court in its ordinary jurisdiction misapplied the law. The Court of Appeal concluded by confirming the judgment of the court of first instance, in which the latter declared that the Chief Executive of the Broadcasting Authority was an officer of that Authority, but revoked the remaining part of the judgment in which the court of first instance found against the defendants. This judgment has left undecided the merits of the case; that is, whether the Broadcasting Authority is in breach of natural justice when it issues and determines administrative offences.

Judgment of the Court of Appeal, Ref. No. 481/2004, 24 June 2016

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