[CY] Supreme Court: The right to be heard cannot be limited to written submission of positions

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The Supreme Court has rejected an appeal by the Radio Television Authority ("the Authority") against a decision of the Administrative Court, ordering the cancellation of a fine against Antenna Television issued in 2012. The reason given by the Administrative Court for the cancellation of the fine, was the decision of the Authority to accept only written testimony from service providers when examining cases of violation of the law. The facts are as follows:

The Authority had been examining a case against Antenna for violating regulations related to the protection of minors, in a programme aired in 2012. The Authority invited the service provider to submit its position, in writing, within 45 days - which Antenna did, while noting that, for the sake of a fair trial, it reserved the right to be heard in person. The Authority rejected Antenna's repeated requests to be invited to present its position in person.

In 2010, the Authority had decided - based on its own interpretation of Regulation 42(6) of Regulations 10/2000 on the procedure before the Radio Television Authority - that it would only receive service providers' positions in writing, "in order to accelerate the examination process" for a large number of pending cases. According to the Regulation,

> "(6) The procedure before the Authority is as follows:
>
> A copy of the eventual violation or a complaint against the provider is sent to the provider;
>
> The provider against which the complaint was made is invited to present its views either in person or in writing [...]"

The Administrative Court found that the above provision gave the right to the service provider to choose the mode of presenting its position. It noted that even in the case that Antenna had not claimed that right, in accordance with ECHR case-law, that in itself could not be interpreted as Antenna abandoning its right. Without a positive response allowing the service provider to be heard orally, the right to a fair trial had not been respected.

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Before the Supreme Court, the Authority insisted that its interpretation of the regulation was correct, while also arguing that the requirements of ECHR case-law related to procedures before the courts, and, as it was an administrative body, procedures before it had to be considered differently. It also challenged the Administrative Court's decision on other grounds.

The Supreme Court noted that the phrase "either in person or in writing" should not be read as a distinction between the two possibilities but as in conjunction "and" or, also, in disjunction between them, "and/or".

It refered to a decision of the ECtHR, in Sigma Radio Television Ltd v. Cyprus (2011) ECHR 1179, where, in interpreting the regulation, the ECHR had noted in two cases the opportunity "to make written submissions and /or oral submissions during the hearing".

In its verdict, the Supreme Court rejected the Authority's appeal by concluding: "...the first instance Court made a correct, proportionally weighed and rational interpretation of the relevant provisions, guided by ensuring a just procedure before the Authority and by the protection of the rights of the appellant..."

On the basis of the above decision, which becomes case-law, manydecisions in similar cases have been issued by the Supreme Court since December 2021.

Έφεση κατά απόφασης Διοικητικού Δικαστηρίου, 38/19 (Υπόθ. 1873/12, Αρχή Ραδιοτηλεόρασης Κύπρου ν. Αντέννα Ltd, 30 Νοεμβρίου 2021

http://www.cylaw.org/cgi-bin/open.pl?file=/apofaseis/aad/meros_3/2021/3-202111-38-193.htm

Appeal against a decision by the Administrative Court, 38/19 (case 1873/12, Cyprus Radio Television Authority v. Antenna Ltd, 30 November 2021

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