

6. BROADCASTING CASE LAW

During 2005, the following cases were determined by the Maltese Courts:

No.	DATE OF DECREE / JUDGEMENT	COURT REFERENCE No.	PARTIES	COURT	REMARKS
1.	29/4/05	Writ of Summons 961/02 GV	Public Broadcasting Services Ltd. vs Awtorità tax-Xandir	Civil Court, First Hall	Court decided in favour of the Broadcasting Authority. PBS appealed.
2.	3/6/05	Rikors Kostituzzjonali 754/2000	General Workers Union vs Awtorità tax-Xandir	Civil Court, First Hall (Constitutional jurisdiction)	Court decided in favour of the General Workers Union. BA appealed.
3.	7/10/05	Citazz Nru. 96/95GV	Prof. Joseph M. Pirota vs Joseph Grima pro et noe et	Civil Court, First Hall	Court decided in favour of BA ex-Chairman

6.1 - Public Broadcasting Services Ltd. vs Broadcasting Authority

On 29th April 2005, the Civil Court, First Hall, delivered a judgement in the case *Public Broadcasting Services Limited vs Awtorità tax-Xandir*. PBS claimed in its writ of summons that the Authority had violated the provisions of the Constitution concerning a fair hearing in its dealings with the company. The court was also requested to declare that the Authority had not acted in a correct administrative manner in so far as PBS was concerned.

In its judgement the court pointed out that it resulted that PBS's writ was a mixed action as it requested a judicial review of a decision taken by the Authority as well as a constitutional remedy in the sense that the Court was asked to declare that the Authority had violated PBS's fundamental human right to a fair hearing. The Civil Court noted that case law had indicated that the civil courts always had jurisdiction except when such jurisdiction was removed by law. As a general rule, if the ordinary courts could grant an effective remedy then there was no need for extraordinary procedures to be filed. In this case the court declared that it would restrict this case to a judicial review of the workings of the Authority.

PBS declared that in June 2002 the Authority's Chief Executive had issued a charge against the company on the issue of Malta Labour Party spots broadcast on TVM. PBS was informed that it could contest this charge in a sitting held by the Authority later that month. PBS had replied to the Authority informing it that there was already a court case pending on the issue of these spots. It submitted that the matter ought to be left pending until a court ruling was obtained.

PBS had attended the sitting and had presented its defence. After this sitting the case was decided upon by the Authority and the court delivered judgement against PBS. The Civil Court, First Hall, observed that when the Authority had delivered its decision, it was fulfilling its



constitutional function. Furthermore, the court dismissed PBS's allegation that the Authority had not offered sufficient guarantees of independence and impartiality in the proceedings. The company had claimed that the Authority had formulated the charge against it, had proceeded against PBS and had decided the charge against PBS. However, the Authority claimed that it had not made any appraisal of guilt of PBS, but had directed its chief executive to proceed in terms of the Broadcasting Act.

The presiding judge held that from the evidence produced it did not result that the Authority had decided upon the case before giving PBS the opportunity to defend itself. Thus, the Civil Court concluded that the Authority had not violated PBS's rights. PBS Ltd. has appealed the judgement.

6.2 - General Workers Union vs Broadcasting Authority

On 3rd June 2005 the Civil Court, First Hall, sitting in its constitutional competence decided a case in the names *Tony Zarb u James Persall, Segretarju Ġenerali u President tal-General Workers Union in rapprezentanza tagħha vs l-Awtorità tax-Xandir*. The Civil Court, First Hall, upheld a constitutional application filed by the General Workers Union and concluded that the Broadcasting Authority violated the Union's fundamental human right to freedom of expression when it banned the Union from broadcasting a political spot on television.

The constitutional application was filed by Tony Zarb and James Persall, on behalf of the GWU, against the Authority. The Union claimed that its fundamental human right to freedom of expression had been violated following a decision taken by the Authority banning the union from broadcasting a political spot on TV. The ban, claimed the Union, was not reasonably justified in a democratic society, and it requested the court to declare that the ban issued by the Authority was in violation of its fundamental human rights and to provide it with a remedy. On its part, the Authority pleaded that it had not violated the Union's rights and that the prohibition was necessary in the interests of guaranteeing that all sides to the controversy aired their views.

The First Hall of the Civil Court heard that on 17th August 2000, the Authority had declared that, in terms of the Third Schedule to the Broadcasting Act, advertising could not be of a political nature and that it was only the Authority which could organise a scheme of political broadcasts. The Authority had found the text of the Union's advert to be political in nature and decided that it could not be broadcast. According to the Authority, the Broadcasting Act provided that in order for a political spot to be broadcast, the Authority had to organise a schedule of political broadcasts and the Union could apply to the Authority for inclusion therein.

The Court declared that it was in no doubt that the advert in question was of a political nature. The advert referred to social justice and indicated that there were some persons who were living comfortably while others were carrying all the burden alone. The advert reflected on the workings



of the government of the day. It had been broadcast a few times on two private television stations and had then been prohibited by the Authority. However, it was not reasonable, said the Court, that for a political advert to be aired, the advertiser had first to request the Authority to organise a schedule of political programmes. In effect the Authority could always refuse to organise such a schedule.

The Authority, said the Court, was bound to ensure balance in controversial matters of a political or industrial nature. However this was not to be ensured by banning the broadcasting of adverts such as the one in issue. The individual's right to freedom of expression had also to be respected, and there ought to be regulations to ensure such a balance was maintained.

The Court queried what the significance of the laws quoted by the Authority was, when nowadays there was liberalisation in broadcasting. The major political parties had their own television and radio stations and broadcast their own news programmes. These programmes certainly contained political content. It could be the case that the political parties' stations were balancing each other.

The GWU, said the court, was entitled to express its opinions even where these contained political elements. The Union was therefore entitled to broadcast adverts and to provide information of its opinions without interference from a public authority. The Authority was therefore not justified in prohibiting the advert in issue, for there was nothing in the advert that was justifiable in a democratic society. The Court therefore upheld the Union's application and declared that the GWU's fundamental human right to freedom of expression had been violated.

The Authority has appealed the judgement.

6.3 - Professor Joseph Pirotta vs Joseph Grima pro et noe et

On 7th October 2005, the Civil Court, First Hall, decided a libel suit in the names *Dr Joseph M. Pirotta vs Joseph Grima sew propju kif ukoll bħala direttur għan-nom u in rapprezentanza ta' Grima Communications Ltd. u Dr Emy Bezzina*. The First Hall of the Civil Court awarded Broadcasting Authority ex-Chairman Professor Joseph M. Pirotta Lm1,050 damages after he had been libelled during a radio programme aired in 1994. Prof. Pirotta had sued Joseph Grima, in his personal capacity and on behalf of Grima Communications Ltd., and lawyer Dr Emmy Bezzina.

Prof. Pirotta claimed he had been defamed in the course of a discussion programme *Il-Parlament tal-Poplu* (The People's Parliament) aired on Live FM on 7th October 1994. He submitted that Mr Grima and Dr Bezzina had commented unfavourably about his behaviour. In particular, Prof. Pirotta said they had alleged he was not impartial, nor was he acting correctly in his role as chairman of the Broadcasting Authority.



Among other statements, Mr Grima had alleged that Prof. Pirotta was stupid and childish (“vavu”) and that he was personally going to avenge himself on plaintiff. Both defendants had alleged that Prof. Pirotta had acted in a discriminatory manner and that he had treated the Malta Labour Party differently. Furthermore, Mr Grima had alleged that Prof. Pirotta did whatever the Prime Minister told him to do, Prof. Pirotta submitted.

Mr Grima pleaded that he was participating in a radio discussion in which he had expressed his personal opinion on a subject that was in the public interest, namely the granting of the first television licence to a political party. He further submitted that Prof. Pirotta was occupying an official post according to the Constitution and that therefore he was subject to public scrutiny and comment.

In its judgement, the Civil Court, First Hall, declared that every person was at liberty to express his own opinion and even to pass judgments on third parties. However, such freedom of expression could never be utilised to attack the reputation and honour of a third party especially when the allegations made were unfounded. The Court added that in the discussion Mr Grima had declared that Prof. Pirotta had not been independent in his actions as chairman and did whatever the Prime Minister told him to do.

The Court was of the opinion that it was libellous to allege that a public officer was the servant and lapdog of a political party. It was also libellous to allege that such officer was an accomplice to a crime.

When examining Mr Grima’s allegation of discrimination the Court had to determine solely whether discrimination was objectively apparent. In this case it resulted that when the MLP had applied for a television licence it had been awarded such a licence as it satisfied all the requirements of the Authority. The Court was satisfied that there was no discrimination on the part of the Authority against Grima Communications. It resulted that Grima Communications had not satisfied the conditions imposed by the Authority for the licence.

The Court noted that Dr Bezzina had not entered any evidence in this case. Defendant had declared in the course of the proceedings that he knew Prof. Pirotta to be a serious man and a man of integrity. Dr Bezzina added that he knew that the professor had always managed the Broadcasting Authority in a scrupulous manner and that he had no intention of diminishing his reputation. In the light of this declaration Dr Bezzina was ordered to pay Prof Pirotta Lm50 damages. The Court further ordered Dr Bezzina to publish, at his own expense, this declaration in one English language newspaper and in one Maltese language newspaper.

Mr Grima was ordered to pay Prof Pirotta Lm1,000 damages. Mr Joseph Grima lodged an appeal from the Civil Court’s judgement.

