

7. BROADCASTING CASE LAW

Summary of cases:

No.	Date of Decree/ Judgement	Court Ref. No.	Parties	Court	Remarks
1.	5/11/07	961/2002 GV	Public Broadcasting Services vs Broadcasting Authority	Court of Appeal	Court declared appeal abandoned in view of the fact that PBS Ltd. failed to pay security for costs. Hence the judgement of the First Hall, Civil Court dated 29 th April 2005 in favour of the Broadcasting Authority became effective.
2.	30/11/07	96/1995	Dr. Joseph M. Pirotta vs Joseph Grima <i>pro et noe</i>	Court of Appeal	Court confirmed judgement of Civil Court, First Hall, in favour of plaintiff, ex-BA Chairman.
3.	22/11/07	733/2005 AL	Smash Communications Ltd. vs Malta Communications Authority	Civil Court, First Hall	Court rejected law suit on the basis of a preliminary plea.

7.1 Public Broadcasting Services vs Broadcasting Authority. On 26th June 2002, the Broadcasting Authority's Chief Executive accused TVM of having breached the Authority's directive to broadcast Malta Labour Party spots by way of remedy to the broadcasts of Malta-EU Information Centre (M.I.C.) spots once TVM failed to broadcast the Malta Labour Party spots.

After the Authority heard both the Chief Executive and TVM, it concluded that PBS Ltd. was guilty as accused and inflicted an administrative penalty to the amount of three thousand Malta Liri (Lm3,000) equivalent to six thousand, nine hundred and ninety Euros (€6,990). Although PBS Ltd. paid the penalty, it commenced judicial review proceedings of the Authority's decision before the Civil Court, First Hall. By means of a judgement dated 29th April 2005, the Court found in favour of the Authority. PBS Ltd. appealed the judgement before the Court of Appeal. It, however, resulted that PBS Ltd. failed to pay security for costs, and hence, during the first sitting the Court of Appeal declared the appeal abandoned. Hence the Civil Court First Hall's judgement dated 29th April 2005 in favour of the Authority became final, and the Authority's decision was thus confirmed.



7.2 Dr. Joseph M. Pirotta vs Joseph Grima *pro et noe*.

On 7th October 1994 a programme was aired on a radio station – *Live FM* – whereby the presenter, Mr Joseph Grima, passed several vulgar, insolent and unfair remarks against the ex-Chairman of the Broadcasting Authority, Professor Joseph M. Pirotta. Amongst other things, it was claimed that the Authority's ex-Chairman acted incorrectly and in a biased and discriminatory manner and that he was acting on instructions given to him by the Prime Minister. Other vulgar words were hurled at the Authority's ex-Chairman during the said programme, and Professor Pirotta was also referred to by such appellations as stupid, fool, etc.

The Authority's ex-Chairman filed libel proceedings against the station's owner. The latter pleaded that the above words used by him during the broadcast in question were permissible under article 10 of the European Convention on Human Rights and Fundamental Freedoms regulating freedom of expression. Indeed, the station owner, Mr Joseph Grima, claimed that he was exercising his right to freedom of expression, that the Authority's ex-chairman was a public figure, that the statements made were based on substantially correct facts and that any person including Professor Pirotta himself could have phoned-in and intervened during the programme to make his case.

The Civil Court, First Hall, in its 7th October 1995 judgement found in favour of the Authority's ex-Chairman. On 3rd November 2007 the Court of Appeal confirmed the Civil Court, First Hall's judgement declaring that the words used with regard to Professor Pirotta offended his honour, reputation and exposed him to public ridicule.

In its judgement the Civil Court held that, in so far as fair comment was pleaded by Mr. Joseph Grima, criticism of public officials could be severe provided it was based on facts that were substantially true. The criticism had to be acceptable in a democratic society, or in the public interest. A balance had to be struck between the right of freedom of expression and the defence to a person's reputation, honour and good name, which every person in a democratic society was entitled to enjoy. It was not acceptable to attack a person's reputation by alleging false statements. When the words uttered were *per se* derogatory and injurious, the intention to inflict harm was presumed. The question is not what the defendant intended but what reasonable persons, knowing the circumstances in which the words were uttered would understand to be their meaning. Liability for libel does not depend on the intention of the defamer but on the fact of the defamation. The question is not what the writer of an alleged libel meant but what was the meaning of the words he had used. It is not the defendant's intention or the meaning in his or her own mind that constitutes the libel but what was the meaning and inference that would naturally be drawn by reasonable and intelligent persons reading it.

Aggrieved by the decision of the Civil Court, Mr. Joseph Grima entered an appeal calling for its revocation.



On 30th November, 2007 the Court of Appeal delivered its judgement by dismissing Mr. Grima's appeal, thereby rejecting all his grievances. It confirmed the decision of the Civil Court in its entirety, including the award of damages, which was not considered to be exaggerated in the circumstances. The following reasons were given for the Court's decision:

- The fact that listeners could participate "live" was no defence, nor did it neutralise any libellous comment.
- The statements against Professor Pirotta were offensive, and were not acceptable in a democratic society. The offensive words amounted effectively to "character assassination" of Professor Pirotta. Nor was the veracity of the allegations proven.
- For words to be libellous, it was not necessary that they be repeated by others. In the context of libel, it was sufficient if the words offended a person's honour, reputation and exposed him to public ridicule. There have been numerous judicial attempts to define what is defamatory. The most common is that a defamatory allegation is one that tends to make reasonable people think the worst of the claimant.
- Professor Pirotta was entitled to sue for libel without the need to require a correction/rectification.
- In view of the gravity of the offensive comments, it was not appropriate to consider Mr. Grima's apology for the purposes of mitigating the quantum of damages. His apology was made too late, and after the damage had been done.

7.3 Smash Communications Ltd. vs Malta Communications Authority.

The Civil Court, First Hall, dismissed a writ of summons file by Smash Communications Ltd. against the Malta Communications Authority whereby *Smash* had requested the court to order MCA to assign a digital frequency to Smash Communications Ltd. However, the Court dismissed the writ of summons on the ground that *Smash* had not complied with the provisions of article 460 of the Code of Organisation and Civil Procedure which requires the service of a judicial letter or a protest upon any authority such as the Malta Communications Authority at least 10 days prior to the institution of judicial proceedings.

