Media Law

Chapter Four

Broadcasting Law

Yohannes Eneyew Ayalew (LL.M, LL.M, MA(Hon), LL.B)
Lecturer in Law, School of Law Bahir Dar University
eneyewyohannes@gamil.com,
@yeayalew

Contents

- Registrations and licensing of radio and TV
- Content and programming regulation
- The law of advertising (commercial speech)
- Responsibility, restrictions and penalty
- Competition (anti-trust), transparency and other rules related to broadcasting



ኢ.ብ.ሳ.

ስልክ ቁጥር: 0115-53 87 55/56
Tel. 0115-53 87 65/66
0115-53 87 60

ፋክስ: 0115-53 67 50
Fax: 0115-53 67 67

ፖ.ሳ.ቁ. 43142
P.O.Box:

ኢ-ሜይል:
E-Mail:eba@eba.gov.et
ድረ ገፅ:
Website: www.eba.gov.et

FDRE Broadcasting Authority Notice

- seeking explanation
- Failure to report Abiy Ahmed's rally held on June 23rd (16) 2018

How this notice fall in the ambit of Art 7(1) BP, and could the ENN's FOE under art 29 muzzled?

In general...

- Expression of ideas is, or ought to be, free whatever means are used, and the means are infinite: burning or waving a flag, placing flowers at a certain spot, whistling a tune, dressing in a particular way, different ways of using one’s face, head or body, moving or reaching out, gestures or sounds of approval or disapproval.

Zeno Zencovich

Broadcasting : Separate regulatory regimes

- ECHR Art 10(1) “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article **shall not** prevent States from requiring the **licensing of broadcasting**, television or cinema enterprises.”
- However, the Strasbourg Court’s jurisprudence affirmed, time and again, that broadcasting licensing regime should meet the legality and necessity tests.
- IACHR Art 13(3) The right of expression may not be restricted by indirect methods or means, such as the abuse of government or **private controls over radio broadcasting** frequencies.

ECtHR Case laws on Broadcasting

I. The *Groppera Radio AG and others v. Switzerland*, judgment of 28 March 1990, Series A No. 173

- "The Swiss authorities' ban on rebroadcasting of programmes from Italy by Swiss cable network operators had not infringed those companies' right to impart information and ideas as guaranteed by Article 10. The ban had not gone beyond the margin of appreciation allowing national authorities to interfere with exercise of freedom of expression: it was not a form of censorship directed against programmes' content or tendencies but a measure taken against a station which **it was reasonable for the Swiss authorities** to regard as, in reality, a Swiss station operating from the other side of the border in order to circumvent the statutory telecommunications system in force in Switzerland."

II. *Informationsverein Lentia and others v. Austria*, judgment of 24 November 1993, Series A No. 276, paras 32-33 and 38-42.

The court found that the Austrian public monopoly over broadcasting violates article 10 since it is not necessary in a democratic society, and shortfalls pressing social need.

III. Murphy v. Ireland, No. 44179/98, judgment of 10 July 2003,para 74

 The prohibition on broadcasting a radio advertisement for a religious meeting could be justified under Article 10

What is Broadcasting Media?

- Broadcasting : a transmission through radio or television.
- Art 2(2) Broadcasting Proclamation No.533/2007 defines it as— a radio or television transmission program conducted to educate, inform or entertain the public
- It could be terrestrial, cable or satellite.
- Broadcasting media is tightly regulated ? Why

1) They are required to be impartial in the presentation of news and political views (pluralism)
2) They are under positive obligation to cover current affairs and other serious programmes.
3) Mandatory right of reply (US system)
4) Influence minors, and electors Television as a bad teacher
5) Limitation of frequencies see Para III, BP ” to ensure proper and fair utilization of the limited radio wave wealth of the country”

Turner Broadcasting System v. FCC
512(US)1994, 662

The Supreme Court has observed that

'It would be **wrong to treat cable in the same way as the press**. Cable operators exercises 'bottleneck' or gateway control, in that they decide which programmes are available to viewers on their system. That puts them in a much more powerful position than the press proprietors who are unable to cut off the access of readers to other newspapers in the same way.

Moreover, rules requiring **cable operators to carry local terrestrial** and public television, or to make some channels available for educational programmes, do not interfere with operators' own **First Amendment freedom**, they can still make and transmit their own programmes.

Principle of Pluralism

- In many countries, the broadcast media is led by diversity of views principle.
- Charter of Fundamental Rights of the EU—Art 11(2) provides [sic] “ The freedom and **pluralism** of the media shall be respected.”

I. **Internal Pluralism** : the public should have access to a wide variety of types of information within the public broadcasting channel.

II. **External Pluralism** : Once private broadcasting is permitted, competition law must supplement programme regulation to ensure the access of viewers and listeners to a multiplicity of voices within that sector. Otherwise commercial television is dominated by handful of media companies.

- German Constitutional Court in the 3rd (1981) and 4th television (1986) cases

Ethiopian approach : diversity of views

- Article 29(5)

“Any media financed by or under the control of the State shall be operated in a manner ensuring its capacity **to entertain diversity** in the expression of opinion.”

* Art 30(1) BP Any program to be transmitted shall reflect **different and balanced viewpoints** to serve the public at large.

ETV, OBS, Amhara Tv, Tig Tv pro government

→ESAT, OMN Opposition

Do you think that the Ethiopian Broadcasting media’s embraced the notion of ‘diversity/plurality of views’? What’s their role for polarization? Spare 3 minutes, and reflect your thoughts.

Types of Broadcasting Services –Art 16 BP

1. **Public Broadcasting** – it should enhance the participation of the public through the presentation of government policies and strategies as well as activities related to development, democracy and good governance. It should present programs which educate the public./Art 16(2) Examples : Etv, OBN, Atv, Fana
2. **Commercial Broadcasting** :- a service used to broadcast various issues of the country & registered by the Ministry of Trade./Art 16(3) and Art 5 Comm.code/ Examples: Kana Tv, LTV, JTV
3. **Community Broadcasting – a** service used to empower members of the community./Art 16(4)Examples :Fana Fm Dessie, Haraomya FM

Obligations of Broadcasting Licensees

1) Pluralism Art 30
2) Sources and content of any program should be ascertained
3) Protection of others right-Art 30(3)
4) Protection and well-being of children-Art 31

radio or television transmission programs that may **corrupt the outlook of children or harm their feelings and thinking** or encourage them to undesirable behavior **shall not be transmitted** at hours[6am—10pm) during which children normally watch or listen to such programs.

*How do you see the Kana Tv series of movies ? Do they prohibit children's under the age of 18?

5) Advertisements—Art 33

6) Sponsored programs—Art 36 it shouldn’t agitate the sale or hire of the sponsors program.

…advertisements

- Art 33(2) Commercial advertisement shall be truthful, not misleading and publicize lawful trade activities.
- Art 33(4) Broadcasting advertisement by interrupting any program the transmission time of which is not more than 20 minutes or children's program shall be prohibited.

How do you evaluate the Etv's repeated interruption of live transmission during 5000m race competitions in light of the above prohibition?

Commercial Speech : Advertisement Law

- Advertisement Proclamation No.759/2012 article 2(1) defines “advertisement” means a commercial advertisement which is disseminated through **the means of advertisement** dissemination to promote sales of goods or services or to publicize name, logo, trademark or objectives, and includes public and private advertisements.
- Art 2(2) AP “means of advertisement dissemination” includes the mass media, outdoor advertisement, telecom, postal, internet web site and fax services, cinema, film, video and any other related means of advertisement dissemination;

Contents of Advertisement—Art 6 AP

1) Any advertisement shall, in its content and presentation be:

a) not be contrary to the law or moral;

b) be free from misleading or unfair statements;

c) respect the **social and traditional values of the society** and not infringe the legitimate interests of consumers;

d) describe the true nature, use, quality and other similar information of the product or service intended to be promoted;

e) not undermine the commodities or services of other persons;

f) protect the dignity and interests of the country; and

g) respect professional code of conduct.

❖ **Infomercials**—possible ? See Art 18 AP, Etv's advertisement time after 8pm news.

Unlawful advertisements Art 7

Misleading or unfair advertisement see for example superlative adverts Art 8(17)

Prohibited Advertisements—Art 34

1/ Any advertisement that violates gender equality and that disregards the dignity and human rights of women

2/ cigarette and cigarette related advertisements;

3/ advertisements related to narcotic drugs;

4/ advertisements of liquors with more than 12% alcoholic contents;

5/ advertisements that encourage users to buy medicine that cannot be administered without medical prescription;

6/ other advertisements prohibited by law(see Art 25 AP)

Thank you!