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Case Number: 35/2003

Date of Hearing: 22 August 2003

Hagan & Others

Complainants

vs

SABC 1

Respondent

TRIBUNAL: Prof Kobus van Rooyen (Chairperson)

Prof Henning Viljoen

Ms Refiloe Mokoena (Co-opted member)

For Complainant: Mr CF Hagan

**For Respondent: Mrs Dorothy van Tonder (Manager: Broadcast
Compliance, Policy & Regulatory Affairs)**

Complaint about the anti-homosexuality stance in the series “Focus on the Family” broadcast in the religious programming slot on a Sunday morning – such programme one-sided in its treatment of the subject but such treatment not amounting to hate speech – balance not required in this type of religious programme which is of an instructional nature and not purported to be a discussion of controversial issues of public importance – no contravention of Code – complaint dismissed – Hagan & Others v SABC1, case 35/2003

SUMMARY

This complaint deals with the anti-homosexuality stance in the series “Focus on the Family” broadcast in the religious programming slot on a Sunday morning. The complainants aver that this programme is one-sided in its treatment of the subject and does not present a balanced viewpoint. It is also averred that the programme constitutes hate speech. It was decided that balance was not required in this type of religious programme that is of an instructional nature and not purported to be a discussion of controversial issues of public importance. Such treatment of the topic also found not to be hate speech as there was no advocacy of hatred and no incitement to cause harm. No contravention of Code found. Complaint dismissed.

JUDGMENT

HP Viljoen

- [1] On Sunday 6 July 2003 at 10:00 the Respondent broadcast a programme in the series “Focus on the Family” in the religious programming time slot. In this particular programme, which is outspokenly Christian and Biblically based, the subject on which instruction was given was homosexuality.
- [2] Mr CF Hagan, who appeared in person before this Tribunal, saw this programme and then lodged a complaint against the Respondent. His complaint, in part, reads as follows:

“This programme was blatantly homophobic and extreme. Homosexuality is a life style protected by the South African Constitution. Homosexuality is not considered a mental disorder by the American Psychiatric Association or any qualified psychologist in SA.

Under the guise of ‘Religion’ or ‘Christianity’ programmes by extremists can make their way onto the airways. There are American Christian Groups that promote gender supremacy, racial supremacy, etc.”

Complaints to the same effect were also received from Clynton Wratten and Kerry Horsley.

- [3] In reaction to the complaints, the Respondent set out its editorial code relating to topics like homosexuality where they strive to bring in, what they call, the opposite voice. The Respondent's letter continues:

“This has, in fact, been done very recently in both Crux and The Big Question. Occasionally though, only one side of the issue is aired, for practical reasons. We do strive, though, for balance over time since it cannot/need not be achieved in every single programme.

We contend that, apart from the way it is dealt with in religious programming, homosexuality is given fair treatment by the SABC. For instance, Gay Pride marches are covered in main news bulletins; sit-coms such as Will and Grace depict gay relationships as natural and acceptable; programmes such as Below the Belt celebrate homosexuality – and, indeed, pornography – without the opposite (religious/moral) voice being given a chance to express an opinion.

Focus on the Family was aired in a slot that has been established for more than a year as Christian. We would argue that it is nothing short of uneven to expect religious programmes always to provide equal debate when secular programming, from soaps to movies, promote lifestyles that are offensive to the religious majority.”

- [4] It is understandable that some people would feel offended by the tone of the programme, namely that homosexual people should be “healed” from their homosexuality. The programme should, however, be judged in context. Freedom

of expression, as protected in section 16 of the Constitution of our country, and applied by this Tribunal, entails that churches and religious groups can express themselves in public on, and instruct their followers in, the life styles they think to be correct. This is especially so in a programme broadcast in a time slot set aside for religious purposes. We agree with the Respondent that this is not a discussion programme in which a controversial subject of public importance is debated. It is not the type of programme that necessitates balance, in that opposing viewpoints need be given airtime in the same programme. It is more in the nature of an instructional or pedantic lesson to its followers. If the producers and presenters of a programme are convinced that homosexuality is contrary to the teachings of the Bible, the Qur'an or whatever doctrine, they may say so in public. Even if some people take umbrage, they have to accept this as a consequence of freedom of speech. The only exception to this statement would be if such expression would amount to hate speech.

[5] Hate speech, as defined in section 16(2) of the Constitution, as included in the Broadcasting Code, amounts to the advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm. After viewing the programme we have come to the conclusion that there is nothing that could be described as the advocacy of hatred in the programme. On the contrary, Christians are encouraged to respond to homosexual people with grace and understanding. We could also find no trace of any incitement to cause harm.

[6] As a result, no contravention of the Broadcasting Code could be found and the complaint is therefore dismissed.

HP Viljoen

16 September 2003

The Chairperson, and the co-opted member, concurred with the judgment.