BCCSA
BROADCASTING COMPLAINTS
COMMISSION OF SOUTH AFRICA

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CASE NO: 28/1998

Date of Hearing: 28 and 29 October 1998
with further documentation up to 26 November

MRS ELNA BOESAK & OTHERS **Complainant**

vs

SABC **Respondent**

In regard to the film: **NEWS ITEM ON SABC TV 3**

Commission: **Prof Kobus van Rooyen S.C (Chair)**
Prof Willem de Klerk
Revd Barnard Mokwena

The Complainant in person

For the Respondent: Mr Malan Otto, General Manager, Central Complaints Office, SABC and with him Ms Esthea du Toit, Legal Department, SABC and Mr Ed Herbst, reporter SABC.

SUMMARY

Complainant alleged that

(1) the SABC, in its news reportage e Boesak trial, had created and sustained a hostile and partially-informed public climate in which a perception of Dr Boesak's as yet unproved – guilt was encouraged;

(2) the SABC had not given adequate coverage to the cross-examination of state witnesses;

(3) the SABC had made errors as to the amounts involved in so far as Dr Boesak was concerned and had erred in its translation into Afrikaans of the word "reconstructed"

The BCCSA held

(1) that there was not evidence to substantiate the claims in (1);

(2) that, save in exceptional circumstances, it was unable to come to a conclusion as to alleged biased reporting before a case had not come to an end, including the reportage of closing argument and judgment;

(3) that the SABC should establish the correct amounts involved in the charges as well as the correct division of the amounts. All editors should be informed of the correct position. The differing amounts mentioned in broadcasts were found to be confusing;

(4) that a translation error had occurred, but that it amounted to a bona fide error and that the mistake was also not attributable to negligence.

The complaint was, accordingly, dismissed. The SABC was, however, referred to the criticism in regard to the confusing reports as to the amounts involved.

JUDGMENT

PROF KOBUS VAN ROOYEN:

1. On the 23rd September 1998 the Complainant, the wife of Dr Allan Boesak, who is a co-accused in a trial in the Cape High Court, filed a complaint with this Commission, alleging that the news reporting on the trial had, up to that stage, been biased against Dr Boesak, had omitted relevant aspects of the evidence which emerged during cross-examination and had made certain factual errors. Complainant also alleged that "since February 1995, SABC TV News had, through comprehensive, repetitive and one-sided coverage of untested allegations against Dr Boesak, created and sustained a hostile and partially-informed public climate in which a perception of his – as yet unproved-guilt was encouraged". The children of Dr Boesak joined as co-complainants at a later stage.

2. At the commencement of these proceedings the Chair of the BCCSA directed that the Complainant should be more specific as to the broadcasts complained of and, for purposed of this adjudication and given the rule that complaints have to be lodged within 30 days of a broadcast, requested the Complainant to limit the broadcasts complained of to broadcasts during the preceding month. Thereafter, Complainant amended her complaint, and the SABC then in its defence, added some other broadcasts to illustrate that it had not been guilty of biased reporting. The Complainant was granted the opportunity to respond to these added broadcasts. This Commission could most certainly, not take the matter, further by initiating a further inquiry into broadcasts not raised directly by the parties. In fact, the parties accepted that for purposes of this adjudication, the broadcasts referred to would form the basis of the adjudication.

3. At the outset it must be stated that the Commission could find no evidence to substantiate the allegation that the SABC created and sustained a hostile and partially informed public climate in which perception of guilt was encouraged.

4. The SABC conceded that an error had been made in regard to the translation of the word "reconstructed" accounts to "gereproduseerde" accounts in one Afrikaans bulletin. It was further clear that there were confusing and differing reports as to the amounts involved.

5. It is also true that the accent during the conduct of the State's case has been on the charges that less time had been given to the content of the cross-examination of these witnesses. The SABC's defence was that given the nature of TV news reporting, which concentrated on outstanding news events conveyed to viewers within 60 to 70 seconds, it was impossible to convey every aspect of the trial. The SABC argues that the emphasis would shift to Dr Boesak's case when the defence commences with its evidence.

The Commission has come to the conclusion that it is impossible to come to a final conclusion on this mater before the case has drawn to a close. The Commission is aware of the fact that cross-examination could and often does give

rise to evidence in the accused's favour, but is also aware of the practical difficulties, which a broadcaster would have in dealing with such aspects appropriately.

In judging the TV news reporting of prosecution, the following guidelines (which are, or course, not closed) should be taken into consideration.

5.1 Viewers are aware of the fact that charges and state evidence are not conclusive and that these only represent one side of the case.

5.2 It would be particularly risqué for a broadcaster, given the short time allocated to a case in a news bulletin, to get involved in the details of cross-examination. The printed media has much space for this kind of reportage. A reader of a printed medium would also have the opportunity of studying the reported evidence with much greater attention. A newscast reaches the ear of the listener only once and cross-reference is usually impossible. In the case of a newscast, viewers and listeners could easily become confused and it is, accordingly, understandable that details would and should be left out. In fact, a broadcast, which attempts to convey the details of cross-examination in a short newscast, could find itself in contravention of the sub judice rule as a result of its undue accent on certain aspects of the evidence. The risk of reporting cross-examination out of context is high. A sentence such as "thereafter the state witness was subjected to sever cross-examination" (as employed in one newscast), would often be sufficient

5.3 In the light of the above, it would be prudent for broadcaster to limit their reportage to highlights of a case and not to get involved in the details of cross-examination or state evidence.

5.4 In light of the details of the charges read out in the present matter, it would be incumbent on the SABC to deal with the closing arguments and judgment in much more detail – probably even doing a news feature on the outcome.

6. Our conclusion is according as follows:

6.1.1 There is not evidence to substantiate the allegation that the SABC created and substained a hostile and partially-informed climate in which a perception of Dr Boesak's guilt was created.

6.2 It is impossible for the BCCSA to come to a conclusion on alleged bias before the case draws to a close. The matter has to be judged as a whole. Only in exceptional circumstances will it be possible to adjudicate alleged bias during the course of a trial. The SABC has indicated that all the material on the case would be available in its archives and that is a complaint were to be lodged after the conclusion of the case; such material would be made available if the BCCSA were to decide to entertain a complaint on bias. Such a complaint would obviously have to be based on grounds, which could substantiate a finding of bias.

6.3 It is clear that there has been considerable confusion in the media as to the exact amounts involved. The SABC is requested to ensure that further mistakes are not made in this respect. All editors should be informed as to the exact amounts and the division thereof. It would be prudent to obtain advice from the SABC legal department on this matter.

6.4 The allegations that 'reconstructed' was wrongly translated into Afrikaans as "gereproduseer" is well founded. The error, however, amounted to a bona fide error and the Commission could find no evidence of negligence in terms of clause 2 of the Code.

The Complaint is accordingly dismissed. The SABC is, however, referred to the criticism in 3 above.

JCW VAN ROOYEN SC
CHAIRPERSON

10 December 1998