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**CASE NUMBER: 58/2002**

**DATE OF HEARING: 18 OCTOBER 2002**

**LATEGAN, VAN LELYVELD AND DALRYMPLE  
COMPLAINANT**

**VS.**

**E-TV**

**RESPONDENT**

**TRIBUNAL: PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)  
DR WILLEM DE KLERK  
MR RATHA MOKGOATLHENG**

**FOR THE COMPLAINANT: NO REPRESENTATION**

**FOR THE RESPONDENT: MR. OLEFILE BOP TSHWEU - EXECUTIVE:  
REGULATORY AFFAIRS**

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*Hate speech- allegations of racism when presenter referred in critical terms to man who had attacked referee during rugby match – not amounting to hate speech. Lategan v e-tv Case number:58/2002*

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### **SUMMARY**

**After a spectator attacked an international referee on the field during a rugby match, this incident drew intense national and international attention. The Respondent's sport commentators made some very critical remarks about the incident, linking it to "White Brandy and Coke" hooligans and the "old South Africa".**

**BCCSA holding that the remarks were in particularly questionable taste but did not reach the level which, according to the Constitution of the RSA and the Broadcasting Code would amount to hate speech.**

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## **JUDGMENT**

**JCW van Rooyen**

[1] Race has always been a matter of public controversy in South Africa and in many other parts of the world – especially in parts of the world where different races live in one country. Race lay at the core of the Apartheid policy of the previous government, and inter alia showed its ugly hand when public power was misused and people died in detention without trial, when people of colour were moved without their consent, when people of colour were denied the right to equal opportunities and the right to vote and when jobs were reserved for Whites. On the other hand, within our new democracy there is sensitivity amongst many white complainants about what they term to be “reverse racism”. They allege that when farm murders are reported or discussed on air, the race of the alleged murderers are never mentioned, whilst it is clear, at least to them, that Blacks were the murderers. The truth of the matter is, of course, that broadcasters cannot simply decide, without being speculative, that the farm murderers are Black. In fact, we would be quite strict on broadcasters if they were simply to spread the news that the farm murder suspects are Black. We would expect a broadcaster to provide us with convincing evidence that the suspects, in a specific case, were Black. One cannot build a trustworthy broadcasting information service on mere speculation or gossip.

[2] Broadcasters all have a policy, which has partly been inspired by this Commission, of not mentioning race, unless there are compelling reasons to do so. Compelling reasons would, for example be where a suspect has fled and there is clear evidence that he was White or Black. The Broadcasters then have a public duty to report the race of the suspect.

- [3] When a white member of the public ran onto a rugby field a time ago and attacked an international referee who, according to him, had not given the South African side a fair deal, two presenters of the Respondent treated the matter critically during the sport slot, which forms part of the news between 19:00 and 20:00. There was a reference to the “white brandy and coke” hooligan and the “old South Africa”.
- [4] Mr. Tshweu wrote quite a lengthy explanation to the Commission in which he argued that the views expressed were expressed so as to counter views that the person who ran onto the field was a hero. A view that was not that extraordinary, since the printed media had disclosed that in some quarters the person who attacked the referee was regarded as a hero. He also submitted that there had been no malice in the criticism. According to him their “comments were a genuine criticism of practices that have to be rooted out of rugby if the sport is to flourish”.
- [5] Our task is to determine whether the Broadcasting Code was contravened. The only provision that would be relevant, is that of hate speech based on race. The test which has been held to be constitutionally valid by the Constitutional Court, is that of “advocacy of hatred based on race that constitutes incitement to cause harm”.
- [6] We believe that the words used by the presenters fell in the category of particularly questionable speech. The criticism need not have included references to the race of the person involved. Yet, the observations amount to a far cry from hate speech, as defined. This does not mean that speech, which does not fit the definition, would not, at times, cause dismay. But South Africans should realize that the law cannot intervene everywhere and correct all situations; even where dismay exists. There are some areas that are left to the internal policymakers of broadcasters. Only the most extreme cases fall under hate speech and allow us to intervene. The words complained about might be regarded as racist by some

viewers. Other viewers would argue that the words were merely used to describe the conduct of the person who ran onto the field, the accent being on hooliganism and not on race. Nevertheless, in the present instance the words did not go so far as to justify intervention by this Commission. They were expressed in moments of sharp criticism as to what had happened during the match and were expressed in, what the presenters regarded, as the public interest. We do not doubt their *bona fides*. It might, however, be appropriate if the Respondent had a re-look at its internal policy as to references as to race.

- [8] We have, accordingly, come to the conclusion that the Code has not been contravened.

**JCW VAN ROOYEN SC**  
**CHAIRPERSON**

*The Other Commissioners on the Tribunal concurred in the judgment of the Chairperson.*