



GIBRALTAR REGULATORY
AUTHORITY

Decision

**Complaint from Mr Robert Vasquez
(independent candidate standing at the General
Election 2019) in relation to his exclusion from
GBC's electoral programmes**

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FOREWORD

GRA Decision on a complaint from Mr Robert Vasquez (independent candidate standing at the General Election 2019) in relation to his exclusion from GBC's electoral programmes

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A. BACKGROUND

Formal complaint

1. On the 2nd October 2019, a formal complaint was submitted to the Gibraltar Regulatory Authority (the "Authority") by Mr Robert Vasquez, an independent candidate standing for the general election 2019. The nature of the complaint is that the Gibraltar Broadcasting Corporation (the "GBC") excluded Mr Vasquez "...from programmes dealing with the issue of democracy..." which was his "...main campaign issue that includes dealing with corruption and cronyism." and that this was evidence of bias, lack of impartiality and undue prominence given to the three main political parties to the detriment of independent candidates.

Correspondence leading to the complaint

2. The complaint followed an exchange of correspondence between Mr Vasquez and Mr Gerard Teuma, CEO of GBC, in which Mr Vasquez complained initially on 28 September that the time allocated to independent candidates unfairly worked against them. Mr Vasquez said that the allocation during the electoral campaign of so much programme time to the three parties and to the leaders unfairly prejudiced the independent candidates. He also queried why he and Mr Pons, also an independent candidate, who were "leading on" democratic improvement and environmental issues respectively were not allowed to be involved in debates on those issues.
3. In response, GBC referred to its own Election guidelines on undue prominence and stated that they believed that the coverage given to candidates was appropriate based on "perceived public support"; however, they agreed to increase the duration of "The Independents" programme from 10 minutes to 20 minutes per independent candidate.
4. Mr Vasquez maintained that he did not accept that 'perceived public support' was a fair basis to decide on how much coverage is given to candidates and that fairness can be achieved only with objective standards and not subjective considerations like 'perceived public support'. He urged GBC to reconsider further, in particular to allow the independents participation in programmes that would cover the main issues upon which they are putting forward their respective candidatures.
5. Mr Vasquez then wrote to the Authority, copying GBC, on 2 October stating that there was "*clear bias in favour of the parties, in the form of participation in Leaders questions and debates and other debates from which the Independents are fully excluded*" and stating that a full complaint would follow.
6. GBC responded to say that their decision was based on the direction given to them by the Authority and quoting from the Code on objectivity, impartiality, accuracy and undue prominence ("the Code") as follows,

"5. Additional requirements that apply to the broadcasting of programmes at the time of an election

(1) Coverage of candidates at an election

Candidates at an election may vary. They may form part of a political party or may be standing as independents. Parties themselves may vary in support and prominence.

It may however not be possible or fair to allow each candidate or party to be given the same coverage. A broadcaster will therefore have to exercise its judgment as to how much coverage each candidate or party is to be given.

A broadcaster should however take the following factors into account when deciding the coverage that it is to give to candidates or parties;

(i) the level of support at previous elections;

(ii) the level of support going into the current election;

(iii) in the case of parties, the number of candidates that each party shall be presenting at the election.

If a candidate is to take part in a programme item, then a broadcaster, in deciding which other candidates should be offered an opportunity to also take part, should take into account the factors set out immediately above."

concluding that "point (ii) deals precisely with the "perceived level of support" .

7. GBC also wrote to the Authority directly on 2 October seeking guidance and clarification on the Code.
8. The Authority, mindful of the urgency and time constraints involved, informed GBC that it would be expediting the complaint and that *"In light of this, we have conducted a preliminary review and found that Mr Vasquez's complaint raises some valid points that need further consideration."*
9. The Authority's preliminary view was that *"...independent candidates should each be offered the opportunity to participate in one relevant debate (in the case of Mr Vasquez, the debate on democracy)."* The Authority invited GBC's comments before issuing a final decision. GBC responded in a letter on 3 October 2019.

Press release

10. Further, on 3 October at 13.25 the Authority received a copy of a press release issued by GBC. In it, GBC suggested that allowing the Independents to take part in debates would mean that *"anyone who is able to spend £150 to pay for an election deposit would in future guarantee Independents the right to take part in election debates with no filter. This would allow individuals with no previous political experience, acumen, or public support, to effectively 'buy' their way into GBC's election programming. GBC considers this would be wrong and dangerous, while undermining the public service broadcaster's editorial independence...Furthermore, it would allow political parties in future to possibly field their own 'Independent' candidates in addition to the ten*

candidates making up their slate, who would then be guaranteed a place on a debate, meaning there could potentially be a situation when there could be more than one candidate defending a particular set of policies, against other parties with only one voice in the same programme. This would destroy the values of even and fair coverage within election programming, which GBC has worked so hard to sustain over the years."

B. THE AUTHORITY'S POWERS AND DUTIES

The Authority has the function under the Broadcasting Act 2012 ("the Act") of inter alia, investigating any breach of the Act or any code of practice issued under the Act, including the Code. The Authority commenced this investigation following the complaint made by Mr Robert Vasquez (the "Complainant"), an independent candidate standing for the general election 2019.

The Authority has considered the views of the Complainant and GBC and whether there has been any breach by GBC of Schedule 3 of the Act and/or the Code.

C. COMPLAINANT'S MAIN ARGUMENTS

The main arguments raised by the Complainant are:

- I. That GBC has shown *"...bias, and so unfairness and lack of impartiality and undue prominence given to the three parties that favours those candidates and works against the Independents."*
- II. The main complaint relates to *"exclusion from programmes dealing with the issue of democracy. This is my main campaign issue that includes dealing with corruption and cronyism."*
- III. That the decision of GBC *"...breaches schedule 3 [of the Act] requirements, which are: Due impartiality, as satisfied by a series of programmes taken as a whole. Not to give undue prominence to the views and opinions of particular persons or bodies on any political controversy, including influencing the outcome of an election or promoting the interests of a party for political ends."*
- IV. The Complainant also states that GBC's decision *"goes against the Gibraltar Regulatory Code on objectivity, impartiality, current affairs programmes, political broadcasts and programmes, and advertising relating to an election or referendum. Specifically, its Second Section on Political Broadcast at Part 2, Third Section..."*

- V. The Complainant argued that GBC has *"...an obligation to broadcast different viewpoints on particular issues. If an Independent is leading on a particular issue... surely, this requirement is only met by inclusion in the debate that engages that issue?"*
- VI. Further, that *"the need for due impartiality on controversial matters must be preserved. The issues of parliamentary reform, electoral reform, corruption and cronyism...are all such matters and that it must be wrong to exclude the Complainant from a debate on those issues."* and that *"exclusion from the democracy programme means that views and facts on the issues of parliamentary reform, electoral reform, corruption and cronyism will not [sic] presented with due weight over the timeframe of the General Election."*
- VII. The Complainant objects to GBC using the *"...perceived level of support"* as a criterion *to determine whether a candidate can participate in an electoral television programme.* The Complainant stressed that as a candidate at the last general election he *"...failed to be elected by about 30 votes, having obtained 4,535 votes, so what about the criteria based on level of support at previous elections?"*

D. GBC'S MAIN ARGUMENTS

GBC's main arguments in response are summarised as follows:

- VIII. GBC highlighted that their *election campaign schedule includes a wide range of programmes across television and radio aimed at giving exposure to all candidates in keeping with the Code on Objectivity, Impartiality, Accuracy and Undue Prominence..."*
- IX. That they *"strongly believe that the decision to exclude Independent Candidates from debates fully abides by the Code."*
- X. GBC added that *"Independent Candidates have historically not received sufficient public support to obtain a seat in the House of Assembly and Parliament..."* and that *the decision to exclude independents reflects the lack of support from the electorate as per the GRA Code."*
- XI. GBC contended that *"...Mr Vasquez submitted himself for selection as a GSD candidate, and was unsuccessful in his application. Two days later, he presented himself as an Independent Candidate.... It therefore must follow that Mr Vasquez must agree with the GSD manifesto and its principles, otherwise he would not have put his name forward for party selection."* Further that *"Allowing Mr Vasquez to appear on a debate alongside a GSD candidate would de facto mean there would be two different candidates on the panel who subscribe to the GSD manifesto... giving "undue prominence" in favour of the GSD, and an entirely distorted debate, which is against everything the GRA mandates GBC to do."*
- XII. In their press release of 3 October GBC also suggested that allowing the Independents to take part in debates would mean that *"anyone who is able to spend £150 to pay for an election deposit would in future guarantee Independents the right to take part in*

election debates with no filter. This would allow individuals with no previous political experience, acumen, or public support, to effectively 'buy' their way into GBC's election programming. GBC considers this would be wrong and dangerous, while undermining the public service broadcaster's editorial independence...Furthermore, it would allow political parties in future to possibly field their own 'Independent' candidates in addition to the ten candidates making up their slate, who would then be guaranteed a place on a debate, meaning there could potentially be a situation when there could be more than one candidate defending a particular set of policies, against other parties with only one voice in the same programme. This would destroy the values of even and fair coverage within election programming, which GBC has worked so hard to sustain over the years."

E. THE AUTHORITY'S DECISION

Having considered the main issues as outlined above, the Authority has reached the following conclusion:

Level of support

1. It is correct for GBC to consider how much coverage to give each candidate based on levels of support.

The Code states:

5. Additional requirements that apply to the broadcasting of programmes at the time of an election

(1) Coverage of candidates at an election

...It may however not be possible or fair to allow each candidate or party to be given the same coverage. A broadcaster will therefore have to exercise its judgment as to how much coverage each candidate or party is to be given.

It is perfectly proper for GBC to take into account the level of support that candidates enjoy. However, the Authority considers that the addition of the word "perceived" by GBC may have introduced a subjective element which is not intended. The Code refers to levels of support based on

- (i) the level of support at previous elections;
- (ii) the level of support going into the current election.

The first is an objective measure which can be easily assessed; the second may be harder to quantify.

The Complainant says that he received 4,535 votes at the last election, and that his blog with 3,781 followers indicates that he has considerable public support. This is not

something which GBC appear to have taken into account; further, the Authority does not consider that it is appropriate to base a decision on support for the current independent candidates solely on historic levels of support for other independent candidates. Having said that, the Authority considers that in view of the time available for the election campaign, sufficient air time has been given to the independent candidates who each have a programme dedicated to them, in the same way as each candidate in a party will be allowed to appear on one television programme.

Due impartiality and undue prominence

2. At the time of an election, the content of programmes relating to an election or referendum shall not give undue prominence to the views and opinions or particular persons or bodies on any of those matters (Paragraph 2(1) and (2) of Schedule 3 of the Broadcasting Act).

The Standards and Guidance notes set out in the First Section of the Code deal with the application of the criteria of "due accuracy and "due impartiality" and should be applied with greater sensitivity.

"Undue prominence" is a significant imbalance of views broadcast within the coverage of programmes.

The requirement needs to be satisfied in relation to all the programmes included in the service in question taken as a whole.

The Authority agrees that GBC has created an *"...election campaign schedule includes a wide range of programmes across television and radio aimed at giving exposure to all candidates..."*.

The issue is simply whether in not allowing the independent candidates to participate in any debates, there is any failing by GBC in relation to giving undue prominence to the views or opinions of particular parties, in circumstances in which the independent candidates' entire campaign is based on issues which are being debated in special programmes on those topics.

The Authority does not agree with GBC's assessment that allowing the Complainant to participate would give undue prominence to the GSD because of his former association with the same. The Authority understands GBC's reluctance to include the Complainant in a debate programme based on his candidature in the previous general election, and until recently, his support of the GSD party. However, GBC should view the Complainant as an independent candidate with his own manifesto. There would therefore be no breach of the Code if he were to be allowed to participate and the Authority finds that GBC's arguments in relation to this are flawed.

However, ultimately the question of whether he should be allowed to participate is, in the Authority's view, a matter of editorial judgment for GBC, taking the entire electoral programming schedule as a whole.

The Authority does not accept GBC's suggestion that allowing these independent candidates to take part in a debate each on the topic related to their campaign would

mean that "*anyone who is able to spend £150 to pay for an election deposit would in future guarantee Independents the right to take part in election debates with no filter*"

In relation to Mr Pons, the Authority makes no finding given that no complaint has been made by him, but would highlight that the same issues arise in regard to the question of undue prominence.

In conclusion therefore, the Authority finds that there has been no breach of the Act or of the Code.

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