

[IE] Irish Supreme Court Strengthens Media Reporting of Court Cases

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In April, the Irish Supreme Court decided in favour of the national broadcaster, RTE, and a number of newspaper publishers, in an appeal taken by them against the decision of a judge in Cork in early 1997 to ban contemporaneous reporting of a drugs trial. The trial concerned four non-nationals charged in connection with the seizure of £47 million of cocaine. The media first sought judicial review in the High Court (*The Irish Times Ltd, Examiner Publications (Cork) Ltd. Independent Newspapers Ireland Ltd, News Group Newspapers Ltd and Radio Telefis Eireann v Ireland, the Attorney General and His Honour Judge Anthony G. Murphy, Circuit Court Judge of the Cork Circuit, Co. Cork, High Court 18 February 1997, [1997] 2 ILRM 541*) but when that court upheld the trial judge's decision, a further appeal to the Supreme Court became necessary. The fact that the appeal in this instance was taken by both broadcast and print media and resulted in a unanimous decision in their favour from the highest court in the land is of immense significance. As the judges recognised, there were very fundamental issues at stake in this case.

First of all, they clarified the meaning and application of the principle of open justice enshrined in Article 34.1 of the Irish Constitution. They made very clear that the fundamental and core value expressed there is the administration of justice in public on behalf of all the inhabitants of the State. As the Chief Justice explained, justice is best served in an open court where the judicial process can be scrutinised, since it is only in this way that respect for the Rule of Law and public confidence in the administration of justice, so essential to the workings of a democratic state, can be maintained.

Secondly, the judges identified the various constitutional rights involved (the accused's right to a fair trial, to fair procedures; the community's right of access to the courts, to information on the hearing, to the administration of justice in public, coupled with their freedom of expression; the freedom of expression of the press, the right to report, the right to communicate). The judges then proceeded to establish clear principles for reconciling these various rights and freedoms when they come into competition or conflict with each other. The primary aim is to give a mutually harmonious application, the Court said, but where that is not possible, the hierarchy of rights should be considered both as between the conflicting rights and the general welfare of society.

Direct reference was made to the reality of life in a "modern democracy in the age of information technology". As Mrs Justice Denham put it, part of that reality is that "most people learn of matters before the courts from the press. Thus any curtailment of the press must be viewed as a curtailment of the access of the people to the administration of justice and should be analysed accordingly." Drawing on its own previous judgments in cases such as *Z v DPP* in 1994 ([1994] 2 I.R. 476; [1994] 2 ILRM 481), the Court also set out the appropriate test to be applied in assessing the risk that media reporting might pose to a fair trial. To warrant excluding the media, the trial judge would have to be satisfied that there was a real risk that could not be avoided by recourse to other less far-reaching measures, such as appropriate rulings or directions. Even discharging a jury and putting the trial back for hearing at a later stage should be regarded as an extreme step and trial judges should have confidence in the ability of juries to understand and comply with directions. Applications to discharge juries are made all too frequently, and often on very tentative grounds, the Court said.

These tests elaborated by the Court and its clarification of the role and powers of the trial judge will operate as guidelines to judges. Reporters also will have a clearer sense of their rights. The affirmation by the Court of the value of the media role in informing the public and of the importance of a well-informed public to the functioning of democracy will have long-term benefits.

Supreme Court, 2 April 1998, The Irish Times Ltd and others v His Honour Judge Anthony G. Murphy, and Radio Telefis Eireann v Ireland, the Attorney General and His Honour Judge Anthony G. Murphy and others

