[IE] Broadcasts Regarding Referendums

IRIS 1998-6:1/9

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In April the High Court in Dublin decided a case concerning radio and television broadcasts in relation to constitutional referendums.

Under the Irish Constitution, there must be a referendum before any amendment to the Constitution can be made. In 1995 a referendum to remove the constitutional ban on divorce gave rise to much litigation regarding the conduct of referendum campaigns. Just before the referendum, the Supreme Court held that the government had acted unconstitutionally inter alia by offending the constitutional guarantee of equality- in spending public money on a one-sided information and advertising campaign which sought to promote a Yes vote. However, a subsequent challenge, again in the Supreme Court, to the result of the referendum - in which the amendment was passed by a majority of less than one per cent - failed because it could not be proven that the one-sided campaign had materially affected the outcome of the referendum.

The recent action was for judicial review of a decision by the Broadcasting Complaints Commission to dismiss a complaint regarding the allocation of free air time by RTE (the national broadcasting service) in relation to the divorce referendum. Under s18 of the Broadcasting Authority Act 1960 (as amended), RTE is obliged, in broadcasting matters of public controversy or public debate, to present such matters objectively and impartially and without any expression of RTE's own views, while preserving RTE's right to transmit party political broadcasts. The applicant sought a declaration that RTE had acted in excess of its powers under the Act by limiting free air time in the divorce referendum campaign to certain established political parties. The High Court held that the failure of RTE to allocate equal amounts of free air time for broadcasts by the Yes and No sides in the referendum campaign constituted an interference with the referendum process so as to be undemocratic and to be a constitutionally unfair procedure. The judge noted that RTE had allocated more than four times as much free broadcasting time to the arguments in favour of removing the constitutional ban on divorce as to the anti-divorce campaign. He also said that RTE did not appreciate fully that referendums were direct legislation by the people, and from the standpoint of the constitution and the laws, political parties were not de jure involved in the referendum process. RTE had treated referendum broadcasts as party political broadcasts and had allocated free air time to the political parties rather than to the Yes and No campaigns. The Court was prepared to accept that

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non-party groups might be afforded broadcast facilities on a similar basis to those given to political parties, or alternatively, RTE was free not to broadcast any party political broadcasts or any free referendum broadcasts. The decision does not in any way affect the content of such broadcasts.

As a result of the court's decision, RTE declined to allocate any free air time to either side in the subsequent referendums on the Amsterdam Treaty and the Northern Ireland Agreement. Regarding the Amsterdam Treaty, the government-appointed Referendum Commission sponsored a series of advertisements on RTE in which actors presented the arguments for both sides of the debate.

Coughlan v RTE, the Broadcasting Complaints Commission and the Attorney General, High Court, 24 April 1998. Irish Times 25 April 1998

McKenna v An Taoiseach and others (No.2) [1996] 1 ILRM 81

Hanafin v Minister for the Environment and others [1996] 2 ILRM 161

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