

[IE] religious advertising

IRIS 1998-7:1/12

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In a recent application for judicial review, the Irish Supreme Court confirmed a High Court ruling regarding the broadcasting of a religious advertisement (See IRIS 1998-1: 6). The High Court had upheld the refusal of the Independent Radio and Television Commission to permit an independent radio station to broadcast an advertisement for the showing of a video on a religious topic. Section 10 subsection 3 of the Radio and Television Act 1988, prohibits advertisements directed towards any religious or political end, or related to an industrial dispute. The appellant submitted that the subsection was unconstitutional as it violated freedom of religion, speech, expression and communication, all of which are protected by the Irish Constitution. He also submitted that the subsection offended the principle of proportionality as it constituted a total ban on religious advertising.

Examining the policy of the Act, the court was of the view that the three kinds of prohibited advertisements related to matters which had proved extremely divisive in Irish society, and the legislature may have felt that such advertisements, if permitted, could lead to unrest; the legislature may also have felt that the rich should not be able to buy access to the airwaves to the detriment of their poorer rivals.

Regarding freedom of religion the court held that as the ban contained in the subsection was directed at material of a particular type rather than at those who profess a particular religion, it did not constitute an attack on the citizen's right to practise his religion. However, it did constitute a limitation on the manner in which a citizen can profess, express or practise his religion. It was necessary therefore to enquire into whether the restriction was justified in the circumstances. The court pointed out that the rights of freedom of expression and freedom of communication are personal rights under the Irish Constitution, and can, in certain circumstances be limited in the interests of the common good. The essential question was therefore whether the limitation imposed on the various constitutional rights was proportionate to the aims of the legislature in reconciling the exercise of such rights with the claims of the common good. The court held that the restriction was minimalist, as it meant only that the applicant could not advance his views by a paid advertisement on radio or television.

Murphy vs. The Independent Radio and Television Commission and the Attorney General. Supreme Court, 28 May 1998.

