[IE] Political Advertising

IRIS 1998-9:1/9

Candelaria van Strien-Reney
Faculty of Law, National University of Ireland, Galway

The Radio and Television Act 1988 (section 10 subsection 3) prohibits advertisements directed towards any religious or political end, or related to an industrial dispute. In a recent decision, the Irish High Court upheld the refusal of the Independent Radio and Television Commission (IRTC) to permit a number of independent radio stations to broadcast an advertisement by "Youth Defence". "Youth Defence" is an organisation which tries to inform the public concerning issues about abortion and to ensure the protection of the unborn child. (The life of the unborn child is constitutionally protected in Ireland, but anti-abortion groups feel that the current level of protection is not sufficient, and have called for yet another constitutional amendment on this issue). In the past, members of "Youth Defence" had been arrested for exhibiting in public posters of aborted foetuses, but earlier this year the Director of Public Prosecutions informed police that the posters were not illegal. In the present case, the court was of the opinion that the word "political" in section 10(3) of the 1988 Act should be given a wide meaning. It would include attempts to change the laws or to change government policy, but it should not be given the very wide meaning of "public affairs generally". In considering whether the advertisement fell within this definition, the court decided that the IRTC was entitled to take into account general background information relating to the advertisement and to the advertiser which was available by means of the media or in the public domain. This was particularly relevant in the present case, because the advertisement itself specified that it was sponsored by "Youth Defence". It was unreal to separate the advertisement from the immediate and public background of the advertiser, even though the advertisement itself was not directed at bringing about a constitutional referendum or changing the law. The clear antiabortion message of the advertisement, and its proclaimed sponsorship by a group identified with a campaign to bring about such change, meant that the IRTC had been correct in deciding that the advertisement was "directed towards a political end" within the meaning of the relevant statute.

As regards the constitutional rights to freedom of expression and freedom of communication, the court followed the decisions of the High Court and Supreme Court in Murphy v. IRTC concerning religious advertising (See IRIS 1998-1:6 and IRIS 1998-7:9), where all three categories of advertisement (religious, political, industrial disputes) were considered to be divisive and sensitive. In the present case too, the court decided that the restriction on these freedoms was minimalist.

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Colgan v. Independent Radio and Television Commission and Ireland and the Attorney General. High Court, 20 July 1998.

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