[IE] Broadcasts Regarding Referendums

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

The Irish Supreme Court has upheld a decision of the High Court (see IRIS 1998-6: 7) in 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.

In the recent Supreme Court action, the Court decided that RTE (the national broadcasting service) had acted unlawfully in its allocation of free air time in relation to the divorce referendum. Under section 18 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. In the divorce referendum campaign, RTE had limited free air time to certain established political parties, and thus 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. The Court said that this gave an advantage to the Yes side in the referendum, as party political broadcasts were "at least capable" of influencing the outcome of a referendum. RTE was not obliged to transmit party political broadcasts, but if it did, it must have regard to fair procedures and the Constitution. As the power to amend the Constitution lay with the people, no interference with the process could be permitted.

The Court noted that the decision might pose difficulties for RTE, as RTE might now be in a position where it "cannot safely transmit party political broadcasts during the course of referendum campaigns, as distinct from other campaigns". However, this was a matter for the legislature, rather than the courts, to resolve.

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RTE, the Broadcasting Complaints Commission and the Attorney General v Coughlan, Supreme Court, 26 January 2000, 27 January 2000.

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