[GB] Offence to Public Feeling Justifies Refusal to Televise Election Broadcast

IRIS 2003-7:1/19

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The Broadcasting Act 1990, Section 6(1)(a), imposes a duty on the Independent Television Commission to do all it can to secure that every service which it licenses complies with a requirement that "nothing is included in its programmes which offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling." The 1996 agreement between the BBC and the Secretary of State provides, in clause 5.1(d), that the Corporation shall do all it can to secure that all programmes which it broadcasts or transmits "do not include anything which offends against good taste or decency or is likely to encourage or incite to crime or lead to disorder or to be offensive to public feeling."

Several broadcasters (BBC, ITV, Channel 4 and Channel 5) had been presented with a tape for a party election broadcast by ProLife a party that campaigned for the absolute respect for human life. The tape contained "prolonged and graphic" images of different forms of abortion.

Initially, the broadcasters declined to broadcast the tape; two revised versions were also turned down. Finally, ProLife's election broadcast was transmitted in the form of a blank screen accompanied by a soundtrack. The case turned on the exercise of their judgment by the broadcasters under Article 10(2) of the European Convention on Human Rights, in the context of a party election broadcast.

Overturning the Court of Appeal's decision in the case (see IRIS 2002-4: 7), the House of Lords held (by a majority) that the broadcasters had been entitled to refuse to broadcast the original (and revised) tape containing the images. To do otherwise would be to unjustifiably offend public feeling. Lord Hoffmann said: "[I]n my opinion...there is no public interest in exempting PEBs [Party Election Broadcasts] from the taste and decency requirements on the ground that their message requires them to broadcast offensive material."

Regina v. British Broadcasting Corporation ex parte Prolife Alliance, [2003] UKHL 23, on appeal from [2002] EWCA Civ 297, Judgment: 10 April 2003, Reasons: 15 May 2003

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