European Court of Human Rights: Case of Murphy v. Ireland

IRIS 2003-9:1/3

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In a judgment of 10 July 2003 the European Court of Human Rights unanimously held that the applicant's exclusion from broadcasting an advertisement announcing a religious event, was considered to be prescribed by law, had a legitimate goal and was necessary in a democratic society. The decision by the Irish Radio and Television Commission (IRTC) to stop the broadcast of the advertisement was taken in application of Section 10(3) of the Irish Radio and Television Act, which stipulates that no advertisement shall be broadcast which is directed towards any religious or political end (see IRIS 1998-1: 6, IRIS 1998-7: 9 and IRIS 2003-2: 11). The Court accepted that the impugned provision sought to ensure respect for the religious doctrines and beliefs of others so that the aims of the prohibition were the protection of public order and safety together with the protection of the rights and freedoms of others. Recognising that a wide margin of appreciation is available to the Member States when regulating freedom of expression in the sphere of religion, referring to the fact that religion has been a divisive issue and that religious advertising might be considered offensive and open to the interpretation of proselytism in Ireland, the Court was of the opinion that the prohibition on broadcasting the advertisement was not an irrelevant nor a disproportionate restriction on the applicant's freedom of expression. While there is not a clear consensus, nor a uniform conception of the legislative regulation of the broadcasting of religious advertising in Europe, reference was made to the existence in other countries of similar prohibitions on the broadcasting of religious advertising, as well as to Article 12 of Directive 89/552/EEC of 3 October 1989 (Television without Frontiers Directive) according to which television advertising shall not prejudice respect for human dignity nor be offensive to religious or political beliefs. The Court also emphasized that the prohibition concerned only the audio-visual media, which have a more immediate, invasive and powerful impact, including on the passive recipient, and also the fact that advertising time is purchased and that this would lean in favour of unbalanced usage by religious groups with larger resources and advertising. For the Court it is important that the applicant, a pastor attached to the Irish Faith Centre, a bible based Christian ministry in Dublin, remained free to advertise in any of the print media or to participate as any other citizen in programmes on religious matters and to have services of his church broadcast in the audio-visual media. The Court indeed accepts that a total ban on religious advertising on radio and television is a proportionate measure: even a limited freedom to advertise

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would benefit a dominant religion more than those religions with significantly less adherents and resources. This would jar with the objective of promoting neutrality in broadcasting, and in particular, of ensuring a "level playing field" for all religions in the medium considered to have the most powerful impact. The Court reached the conclusion that the interference with the applicant's freedom of expression did not violate Article 10 of the Convention.

Judgment by the European Court of Human Rights (Third Section), Case of Murphy v. Ireland, Application no. 44179/98 of 10 July 2003

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