European Court of Human Rights: Animal Defenders International v. the United Kingdom

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The Grand Chamber of the European Court held, by nine votes to eight, that the UK's ban on political advertising on television did not violate Article 10 of the Convention. The majority opinion in this controversial judgment reflects a somewhat particular approach compared to the Court's previous case law on political advertising, such as in VgT Vereinigung gegen Tierfabriken v. Switzerland (see IRIS 2001-7/2 and IRIS 2009-10/2). Essentially the judgment in the case of Animal Defenders International v. UK accepts that a total ban on political advertising on television, characterized by a broad definition of the term "political", with no temporal limitations and no room for exceptions, is in accordance with the right to freedom of political expression. The dissenting opinions attached to the judgment argued for a radically different approach, but their arguments could not convince the majority of the Grand Chamber.

The applicant in this case is an NGO (Animal Defenders International, "ADI") campaigning against the use of animals in commerce, science and leisure, seeking to achieve changes in law and public policy and to influence public and parliamentary opinion to that end. In 2005, ADI began a campaign directed against the keeping and exhibition of primates in zoos and circuses and their use in television advertising. As part of the campaign, it wished to screen a TV advertisement with images of a girl in chains in an animal cage followed by a chimpanzee in the same position. It submitted the advert to the Broadcast Advertising Clearance Centre ("the BACC"), for a review of its compliance with relevant laws and codes. The BACC refused to clear the advert, drawing attention to the political nature of ADI's objectives, referring to section 321(2) of the Communications Act 2003, which prohibits advertisements "directed towards a political end". The refusal to broadcast the advert was confirmed by the High Court and later reached the House of Lords, which held that the ban on political advertising and its application in this case did not violate Article 10 of the European Convention. ADI subsequently submitted an application to the European Court, arguing that the refusal of their advert breached Article 10 of the Convention.

In the first part of its reasoning, the Court emphasizes that both ADI and the UK authorities had the same objective of maintaining a free and pluralist debate on matters of public interest, and more generally, of contributing to the democratic

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process as a legitimate aim. The Court weighed in the balance, on the one hand, ADI's right to impart information and ideas of general interest which the public is entitled to receive, with, on the other hand, the authorities' desire to protect the democratic debate and process from distortion by powerful financial groups with advantageous access to influential media.

The Court had three main considerations in making its assessment: the legislative process by which the ban had been adopted and any review by the judicial authorities; the impact of the ban and any steps that might have been taken to moderate its effect; and, what happens in other countries, particularly those where the Convention applies. As far as the process was concerned, account was taken of the fact that the complex regulatory regime governing political broadcasting in the United Kingdom had been subjected to exacting and pertinent reviews and validated by both parliamentary and judicial bodies. The Court also referred to the influential, immediate and powerful impact of the broadcast media, while there is no evidence that the development of the internet and social media in recent years in the United Kingdom has shifted this influence to the extent that the need for a ban specifically on broadcast media should be undermined, internet and social media not having "the same synchronicity or impact as broadcasted information". The Court also noticed that the ban was relaxed in a controlled fashion for political parties - the bodies most centrally part of the democratic process - by providing them with free party political, party election and referendum campaign broadcasts. The European Court agreed with the UK authorities that allowing a less restrictive prohibition could give rise to abuse and arbitrariness, such as wealthy bodies with agendas being fronted by social advocacy groups created for that precise purpose or creating a large number of similar interest groups, thereby accumulating advertising time. Given the complex regulatory background, this form of control could lead to uncertainty, litigation, expense and delay.

As to the impact of the ban, the Court noted that the ban only applied to advertising and that ADI had access to alternative media, both radio and television and also non-broadcast, such as print media, the internet and social media, demonstrations, posters and flyers. Finally, because there is no European consensus on how to regulate paid political advertising in broadcasting, this broadens the margin of appreciation to be accorded to the UK authorities in this case. Accordingly, the majority of the Court considers the reasons adduced by the authorities, to justify the prohibition of ADI's advertisement to be relevant and sufficient. The prohibition cannot therefore be considered to amount to a disproportionate interference with ADI's right to freedom of expression. Hence there is no violation of Article 10 of the Convention.

Judgment by the European Court of Human Rights (Grand Chamber), case Animal Defenders International v. the United Kingdom, Appl. nr.

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