[IE] Ban on Religious Advertising Upheld

IRIS 1998-1:1/7

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Ireland is a dualist country in the sense that the European Convention on Human Rights has not been incorporated into domestic law. However, in a judgment which is indicative of the increasing willingness of the Irish courts to take account of the Convention, the High Court in April 1997 ([1997] 2 ILRM 467) considered a ban on broadcast advertising in the light of Article 10 and the jurisprudence of the European Court of Human Rights.

The advertisement in question asked "What think ye of Christ?" and went on to announce the forthcoming Easter Week showing, and satellite transmission, of a video about the resurrection. The Independent Radio and Television Commission (IRTC), which governs the commercial broadcasting sector, had banned the advertisement on the grounds that the relevant legislation, the Radio and Television Act 1988, stated that: "No advertisement shall be broadcast which is directed towards any religious or political end or which has any relation to an industrial dispute." The High Court judge took the view that the advertisement in question was more than a mere notification of an event and therefore infringed the provision of the Act. However, a wider issue arose as to whether the provision itself was constitutional or whether it amounted to an unreasonable restriction on freedom of expression, freedom of conscience or the free profession or practice of religion. The court rejected arguments based on religion. Since any such advertisement would have been prohibited regardless of what religion was involved, there was no question of religious discrimination, the court said. Moreover, having regard to the provisions of the Irish Constitution on the right to communicate and freedom of expression, the prohibition on religious advertisements was not unconstitutional. "Although the European Convention on Human Rights is not part of Irish municipal law", the judge said, "regard can and should be had to its provisions when considering the nature of a fundamental right and perhaps more particularly the reasonable limitations which can be placed on the exercise of that right." He therefore went on to consider Article 10, and, in particular, the decision of the European Court of Human Rights in Informationsverein Lentia v Austria (ECHR, 24 November 93, Series A, vol 276). He concluded that the prohibition on religious advertisements in Irish legislation was part of the licensing system as contemplated by Article 10 and that it was reasonable for the Irish legislature to take the view that in Irish society religious advertising by commercial radio might be undesirable in the public interest, especially given the fact that religion has been a divisive factor in Northern Ireland. On the issue of proportionality, the court concluded that the legislation

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imposed very few limitations on the right to advertise and, at any rate, that it was not possible to subdivide religious advertising so as to allow certain categories of what might be described as innocuous religious advertising.

High Court, Roy Murphy v. Independent Radio and Television Commission and the Attorney General, 25 April 1997

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