



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

CASE OF MURPHY v. IRELAND

(Application no. 44179/98)

JUDGMENT

STRASBOURG

10 July 2003

FINAL

03/12/2003

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Murphy v. Ireland,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of

Mr G. RESS, *President*,

Mr L. CAFLISCH,

Mr P. KÜRIS,

Mr R. TÜRMESEN,

Mr B. ZUPANČIČ,

Mr J. HEDIGAN,

Mrs H.S. GREVE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 7 November 2002 and 19 June 2003,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 44179/98) against Ireland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Irish national, Mr Roy Murphy (“the applicant”), on 31 July 1998.

2. The applicant was represented by Mr F.H. O'Reilly, a solicitor practising in Dublin. The Irish Government (“the Government”) were represented by their Agent, Ms D. McQuade, of the Department of Foreign Affairs.

3. The applicant alleged that the prohibition of the broadcast of his advertisement pursuant to section 10(3) of the Radio and Television Act 1988 constituted a violation of his rights under Articles 9 and 10 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11). It was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1) and the present case was assigned to the newly composed Third Section (Rule 52 § 1).

5. The application was declared admissible on 9 July 2002 and the parties filed observations on the merits (Rule 59 § 1).

6. A hearing took place in public in the Human Rights Building, Strasbourg, on 7 November 2002 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Ms D. MCQUADE, of the Department of Foreign Affairs,	<i>Agent,</i>
Mr D. O'DONNELL, S.C.,	
Mr B. MURRAY, S.C.,	<i>Counsel,</i>
Mr C. O'TOOLE,	<i>Adviser.</i>

(b) *for the applicant*

Mr J. FINLAY, S.C.,	
Mr G. HOGAN, S.C.,	<i>Counsel,</i>
Mr F. O'REILLY,	<i>Solicitor.</i>

The applicant also attended.

The Court heard addresses by each of the counsel present.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1949 and lives in Dublin. He is a pastor attached to the Irish Faith Centre, a bible based Christian ministry in Dublin.

8. In early 1995 the Irish Faith Centre submitted an advertisement to an independent, local and commercial radio station for transmission. The text of the advertisement read as follows:

“What think ye of Christ? Would you, like Peter, only say that he is the son of the living God? Have you ever exposed yourself to the historical facts about Christ? The Irish Faith Centre are presenting for Easter week an hour long video by Dr Jean Scott Phd on the evidence of the resurrection from Monday 10th - Saturday 15th April every night at 8.30 and Easter Sunday at 11.30am and also live by satellite at 7.30pm.”

9. The radio station was prepared to broadcast the advertisement. However, in March 1995 the Independent Radio and Television Commission (“IRTC”) stopped the broadcast pursuant to Section 10(3) of the Radio and Television Act 1988 (“the 1988 Act”). This ruling did not affect the later transmission of the video by satellite.

10. The applicant applied for leave to take judicial review proceedings. He cited the IRTC and the Attorney General as respondents and submitted that the IRTC had wrongly construed Section 10(3) and, alternatively and

mainly, that if the IRTC had correctly applied section 10(3) of the 1988 Act, that provision was unconstitutional.

11. By judgment delivered on 25 April 1997, the High Court found that the IRTC had not infringed section 10(3) of the 1988 Act. It further considered that the unspecified right to communicate guaranteed by Article 40(3)(1) of the Constitution was at issue since the advertisement had, as its principal purpose, the communication of information. However, it found that section 10(3) was a reasonable limitation on the right to communicate and that there were good reasons in the public interest for the ban.

12. In so concluding the High Court judge stated as follows:

“I think that it would have been reasonable for [Parliament] to take the view that in Irish society religious advertising on commercial radio might be undesirable in the public interest. ... It is sufficient, in my view, if there were good reasons in the public interest for the ban. Irish people with religious beliefs tend to belong to particular churches and that being so religious advertising coming from a different church can be offensive to many people and might be open to the interpretation of proselytising. Religion has been a divisive factor in Northern Ireland and this is something which [Parliament] may well have taken into account. ... a person listening to commercial radio is for all practical purposes compelled to listen to the advertisements. That being so, it is legitimate for any [Parliament] to have regard to the type of advertisements which might be permitted. The impugned Section enjoys the presumption of constitutionality. It is not obvious to me that a restriction on religious advertising is not a reasonable restriction in the interest of the common good on this particular form of exercise of the right to communicate.

Of course it has been suggested on behalf of the Applicant that a blanket restriction is not proportional and that even if some restriction would be reasonable it would have to be less draconian. The absolute restriction according to the argument of Counsel for the Applicant infringes the doctrine of proportionality. I cannot accept this view. On the legislation as it stands there are very few limitations on the right to advertise and in that sense proportionality has already been taken into account. But at any rate, I do not think that one could subdivide religious advertising. Once a reasonable view can be put forward that religious advertising might be undesirable in the public interest, it would be impossible in practice to devise a wording that might have the effect of permitting certain alleged categories of innocuous religious advertising. It is the fact that the advertisement is directed towards a religious end and not some particular aspect of a religious end which might be potentially offensive to the public.”

13. The Supreme Court rejected the applicant's appeal by judgment dated 28 May 1998. The judgment began by noting that:

“One can best glean the policy of the Act of 1988 by looking at the three kinds of prohibited advertisement collectively. One might get a false impression by singling out one kind of banned advertisement and ignoring the others. All three kinds of banned advertisement relate to matters which have proved extremely divisive in Irish society in the past. [Parliament] was entitled to take the view that the citizens would resent having advertisements touching on these topics broadcast into their homes and that such advertisements, if permitted, might lead to unrest. Moreover, [Parliament] may well have thought that in relation to matters of such sensitivity, rich men should not be able to buy access to the airwaves to the detriment of their poorer rivals.”

14. The Supreme Court considered that religion was a private and a public affair and that the impugned provision was a restriction of the applicant's right freely to communicate and of his right to freedom of expression (Articles 40(3) and 40(6)(1) of the Constitution, respectively) which rights could be limited in the interests of the common good. The court cited with approval previous case-law which considered that the balance found by parliament between the individual rights and the common good should prevail:

“... unless it was oppressive to all or some of the citizens or unless there is no reasonable proportion between the benefit which the legislation will confer on the citizens or a substantial body of them and the interference with the personal rights of the citizen.”

15. The court went on to point out that the real question was whether the limitation imposed upon the various constitutional rights was proportionate to the purpose which parliament wished to achieve. Again quoting with approval previous case-law, it described the principle of proportionality as follows:

“In considering whether a restriction on the exercise of rights is permitted by the Constitution the courts in this country and elsewhere have found it helpful to apply the test of proportionality, a test which contains the notions of minimal restraints on the exercise of protected rights and the exigencies of the common good in a democratic society. This is a test frequently adopted by the European Court of Human Rights and by the Supreme Court of Canada in the following terms. 'The objective of the impugned provision must be of sufficient importance to warrant over-riding a constitutionally protected right. It must relate to concerns pressing and substantial in a free and democratic society. The means chosen must pass a proportionality test. They must (a) be rationally connected to the objective and not be arbitrary, unfair or based on irrational considerations; (b) impair the right as little as possible; and (c) be such that the effects on the rights are proportional to the objective.’”

16. The Supreme Court found that section 10(3) of the 1988 Act complied with this test - the restriction was “minimalist”, the applicant had the right to advance his views in speech or writing or by holding assemblies or associating with persons of like mind as himself; he had no lesser right than any other citizen to appear on radio or television; and the only restriction placed upon his activities was that he could not advance his views by a paid advertisement on radio or television. As regards the blanket nature of the ban and the applicant's argument that it would have been possible to introduce a more selective administrative system whereby inoffensive religious advertisements would be permitted, the Supreme Court noted:

“No doubt this is true. But [parliament] may well have decided that it would be inappropriate to involve agents of the State in deciding which advertisements, in this sensitive area, would be likely to cause offence and which not.”

17. The Supreme Court went on to conclude that:

“It therefore appears to the court that the ban on religious advertising contained in section 10(3) of the 1988 Act is rationally connected to the objective of the legislation and is not arbitrary or unfair or based on irrational considerations. It does appear to impair the various constitutional rights referred to as little as possible and it does appear that its effects on those rights are proportional to the objective of the legislation.”

18. In any event, once the impugned provision was broadly within the competence of parliament and parliament had respected the principle of proportionality, the Supreme Court indicated that it was not for it to interfere simply because it might have made a different decision. The presumption of constitutionality of the legislation had not therefore been rebutted and the applicant's appeal could not be allowed.

II. RELEVANT LAW

A. The Irish Constitution

19. Article 40 of the Constitution provides, in so far as relevant, as follows:

“3(1) The State guarantees in its laws to respect, and, as far as practicable, by its laws defend and vindicate the personal rights of the citizen. ...

6(1) The State guarantees liberty for the exercise of the following rights, subject to public order and morality:—

- (i) the right of the citizens to express freely their convictions and opinions.

The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State.

The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with the law.”

20. Article 44, in so far as relevant, reads as follows:

“2(1) Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen. ...

(3) The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.”

B. Domestic legislation

1. *The Broadcasting Authority Act 1960 (“the 1960 Act”)*

21. The 1960 Act was enacted to, *inter alia*, enable an Authority to be established for the purpose of providing a national television and sound broadcasting service. The national radio and television broadcaster (“RTE”) was also established. Section 20(4) of the 1960 Act provided as follows:

“The Authority shall not accept any advertisement which is directed towards any religious or political end or has any relation to any industrial dispute.”

22. When introducing this provision the Minister explained to Seanad Éireann (the Senate) the rationale of this provision:

“If advertisements directed towards these ends were permitted the Authority would have to accept advertisements from any religious group, including advertisements which the majority of viewers might consider very objectionable and offensive. Therefore, the only sound policy is not to permit any advertisements directed towards religious ends to be broadcast: otherwise the Authority would be placed in a very difficult position. There will of course be religious programmes as there have been on Radio Eireann, and appeals for funds for charitable purposes, but these are quite different and distinct from paid advertisements directed towards religious ends, and I think the policy enshrined in this subsection is the correct one.”

23. Section 18 of the 1960 Act is entitled “Impartiality” and provides as follows:

“(1) It shall be the duty of the Authority to secure that, when it broadcasts any information, news or feature which relates to matters of public controversy or is the subject of current public debate, the information, news or feature is presented objectively and impartially and without any expression of the Authority's own views.

(2) Nothing in this section shall prevent the Authority from transmitting political party broadcasts.”

2. *The Radio and Television Act 1988 (“the 1988 Act”)*

24. The 1988 Act was enacted to establish the Independent Radio and Television Commission (“IRTC”) having the function of entering into contracts for the provision of sound broadcasting and a television programme service additional to the services already provided by the national broadcaster, RTE.

25. Section 9 is entitled “Duty of sound broadcasting contractor in relation to programmes” and provides as follows:

“(1) Every sound broadcasting contractor shall ensure that –

(a) all news broadcast by him is reported and presented in an objective and impartial manner and without any expression of his own views;

(b) the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of his own views: Provided that should it prove impracticable in relation to a single broadcast to apply this paragraph, two or more related broadcasts may be considered as a whole, if the broadcasts are transmitted within a reasonable period of each other;

...

(2) Nothing in subsection (1) (a) or (1) (b) shall prevent a sound broadcasting contractor from transmitting political party broadcasts: Provided that a sound broadcasting contractor shall not, in the allocation of time for such broadcasts, give an unfair preference to any political party.”

26. Section 10(3) of the 1988 Act applied to independent radio and television broadcasters the same prohibition applied to RTE (by section 20(4) of the 1960 Act). Section 10(3) provided as follows:

“No advertisement shall be broadcast which is directed towards any religious or political end or which has any relation to an industrial dispute.”

3. *The Radio and Television (Amendment) Bill 1999 (“the 1999 Bill”)*

27. This bill, never passed, proposed amending section 10(3) of the 1988 Act. This proposal was prompted by the Supreme Court's judgment in the present case and a subsequent prohibition of an advertisement by the *Irish Catholic* newspaper pursuant to that provision. During the parliamentary debate on this Bill, the Minister (for Arts, Heritage, Gaeltacht and the Islands) noted that:

“Essentially we are dealing with a provision that is nearly 40 years old. It can be argued that it is timely to reconsider a prohibition such as is contained in these subsections. It can be argued that the blanket ban contained in these provisions is too blunt an instrument to be used in this day and age for what is now a largely well educated society with a sophisticated understanding of the way media, including the very powerful radio and television media, work. It is helpful to our debate that in the recent past the constitutionality of this very provision – that is, the prohibition on advertising directed towards a religious end – was tested in the courts during 1997 and 1998.”

28. Having referred in detail to the High and Supreme Court judgments in the present, the Minister went on:

“In dealing with the Bill, we are considering a proposal by the Opposition to amend a legislative provision that was found to be constitutional as recently as May 1998. We are being asked to amend a provision that was found by the Supreme Court not to be arbitrary or unfair and which impairs our constitutional rights as little as possible. The High Court and the Supreme Court acknowledged the sensitivity of the substance of the existing provisions of the section which the Bill is designed to amend. Anyone who reads these judgments must come to the conclusion that any amendment of the section which would give an agent of the State the power or responsibility of deciding which types of religious advertisements are permissible and which are not must be

approached with great care if we are not to create considerable and perhaps insurmountable difficulties for the [IRTC] as suggested in the Bill. ...

The Bill appears to have as its intention that the [IRTC] should have the scope to determine whether a political or religious newspaper or journal is *bona fide*. Where the journal or newspaper is *bona fide*, advertisements promoting the sale, for a cover charge of such publications, will not be prohibited under section 10(3) of the 1988 Act, provided the advertisement is directed to the promotion of the newspaper and is not sectarian or directed towards a political end. If the Bill were to be enacted, the [IRTC] would have a number of decisions to make. ... whether a particular religious journal or newspaper is *bona fide* ... [and] ... whether the advertisement promotes the publication and is not sectarian or directed towards a political end.

I am satisfied that the provisions in the proposed legislation would place the [IRTC] in the position of having to make a value judgment in distinguishing between publications. In order to come to a decision as to whether a particular publication is a *bona fide* political or religious journal, the [IRTC] would have to assess the goals of any particular publication and possibly the goals of the religious or political organisation itself. Furthermore, the [IRTC] would have to make an additional value judgment in determining what is or is not sectarian. The Bill provides no guidelines or parameters within which the [IRTC] can make these difficult and sensitive judgments.

There is no provision for an appeals mechanism even though the Bill would give the [IRTC] the power to discriminate between one newspaper and another without providing any detailed grounds for doing so. As I indicated earlier, the High Court and Supreme Court judgments indicated the practical and administrative difficulties that would have to be overcome if a selective ban on the type of advertisements covered by section 10(3) of the 1988 Act was to be introduced. The Bill does not provide any means for dealing with the concerns expressed in these judgments. It would be foolhardy to progress without ensuring that we are not making matters worse.

Turning to the policy rather than the detail proposed in the Bill, it is legitimate to consider whether a more selective ban on advertising directed towards a religious end might be developed. However, to make the ban selective, the means selected would have to ensure that any system provided for assessing the suitability of advertisements would be applied within the limits of the Constitution and in a constitutional manner. At the very least, the rights contained in Article 44 of the Constitution would have to be respected and fair proceedings for those aggrieved would have to be provided. Making the ban selective could also be seen as a curtailment of the right to free speech and expression provided by Article 40.6.1 of the Constitution. It might be a wiser course to consider providing the [IRTC] with powers to ban a particular advertisement in relation to religious material if it considers that the advertisement in question offends public order or morality rather than possibly discriminating between different publications.

However, it is clear that advertising directed towards a religious end is a very special category of advertising. Advertising is to some extent regulated in most countries. Television advertising in particular is regulated throughout the European Union through, at a minimum, the Television without Frontiers Directive. That directive recognises the importance which individual member states attach to the regulation of broadcast advertising in that it provides that a member state may impose stricter regulation on broadcasters operating under its jurisdiction than is provided for in the directive.

The regulation of advertising tends to be based on the general provision that all advertising should be legal, honest, decent and truthful. This is provided for in the codes of standards, practice and prohibitions in advertising, sponsorship and other forms of commercial promotion in broadcasting services which were drawn up under the provisions of section 4(1) of the Broadcasting Act, 1990. The same basic principle is provided in the Code of Advertising Standards for Ireland drawn up by the Advertising Standards Authority for Ireland.

The Advertising Standards Authority for Ireland is a self-regulatory body, which was established by the advertising industry in 1981, and deals with advertising in most media including newspapers, posters and cinema as well as broadcasting. Understandably, the code drawn up under the [UK] Broadcasting Act 1990, does not deal with advertising directed towards a religious end as there is a blanket ban on such advertising. On the other hand, the [Advertising Standards Authority for Ireland] ASAI code specifically excludes advertisements whose principal purpose is to express the advertisers' position on political, religious, industrial relations, social or aesthetic matters or on an issue of public interest or concern from the scope of its code. It is interesting [503] that the [ASAI] decided not to apply its standards to these sensitive areas even though there is no statutory bar against it so doing.

It would be extremely difficult to regulate religious advertising in the same way as advertising for goods and services is regulated. How does one determine if an advertisement directed towards a religious end is truthful? No product or service is being sold. While religious advertisers may hold their beliefs with the utmost conviction, the claims made in such advertisements are matters of belief and are not measurable by any objective standard.

While I oppose the Bill, I am prepared to look at the policy which it attempts to put in place, that is, a more selective ban on advertising directed towards a religious end. If an appropriate amendment can be developed, I would hope to introduce it on Committee Stage during the passage of the Broadcasting Bill, which I hope to publish in the immediate future... . In considering an amendment, I will have to have regard for many of the issues raised in the judgments which I quoted earlier.

These issues include in particular in relation to matters of such sensitivity, that rich men should not be able to buy access to the airwaves to the detriment of their poorer rivals; the provisions of Article 40 of the Constitution conferring a right to communicate and the right of citizens to express freely their convictions and opinions will be clearly respected, and the provisions of Article 44 of the Constitution which guarantee freedom of conscience and the free profession of and practice of religion to every citizen subject to public order and morality and which prohibit any imposition by the State of any disabilities or the making of any discrimination on the grounds of religious profession, belief or status will also be respected.

To achieve these aims it will be necessary to give consideration to devising fair procedures and natural justice measures to ensure that the body charged with regulating such advertisements will uphold and be seen to uphold these rights.

It may be that if we are to consider relaxing the existing total ban on broadcast advertising directed towards a religious end, we must inevitably consider the removal of the prohibition of the ban in its entirety rather than the introduction of a more selective prohibition. Given the concerns which I have already mentioned, it may be the only safe way to proceed. However such a step cannot be taken lightly. To proceed

to a more selective prohibition or to the removal of the prohibition without qualification will need considerable thought and consultation. Broadcasting, both television and radio, is recognised as the most powerful mass communications medium ever developed. Audiences for certain programmes are measured in millions. Radio is a secondary medium in that it can be present while other activities in the workplace, the home or the car are being carried out. Unlike a newspaper or magazine where a page can be turned quickly after a brief scan, a person is compelled to listen to, or at least hear, a radio advertisement if the listener wishes to ensure that her or his enjoyment of the programme is not interrupted. Children and young people are constantly exposed to the images, messages and attitudes which are promulgated on radio and television.

Parents might quite properly wish to ensure that their children are exposed only to the religious profession of their choosing. It is possible that many such people would find advertising directed towards a religious end offensive simply because of the particular religious organisation which is making the advertisement. While it might be possible to prevent the broadcast of advertising directed towards a religious end during the hours of broadcasting devoted to children's programming, we all know that children and young people watch prime time television and listen to the radio at all hours so such a measure would only offer limited protection. I will not deal here with the alleged problems surrounding various cults and sects that have caused anxiety to families and whose activities could be interpreted as being directed towards a religious end.

We must proceed very cautiously in this sensitive area. Perhaps in an era of ever increasing numbers of broadcast services becoming available via satellite, which is outside the legislative regime which applies to indigenous broadcasters, the total prohibition on advertising directed towards a religious end is an anachronism. It may be time to rely on our broadcasters not to offend or alienate their audiences through unacceptable advertising in this area. However, any change to the present position must be brought about through careful consideration and consultation with bodies such as the churches, the [IRTC] and broadcasters and the public generally.

The Bill before the House does not address any of the concerns which I have mentioned. There are no definitions or parameters within which the [IRTC] would exercise the powers which the Bill seeks to confer on it. There are no safeguards or recourse provided for those who are aggrieved by the decisions which the [IRTC] might take if this Bill were enacted. The prohibitions in the Broadcasting Authority Acts relating to RTE are not addressed. While I accept that it is appropriate for the House to consider the policy proposed ... we cannot proceed without considerably more thought than is evidenced by the provisions of the Bill. The enactment of the Bill is likely to cause far more problems than it would resolve.

This is a sensitive issue and I commend the Deputies opposite for giving us an opportunity to discuss it at length. While I understand the laudable motives of the Deputies in publishing this Bill, it is important that further consideration is given to the matter. There will be an opportunity to discuss the whole issue of broadcasting when I publish my broadcasting Bill. I will consider this issue and could be in a position to look at the overall problem in that context. If wording can be found we can easily bring that into the Bill by way of an amendment on Committee Stage."

4. *The Broadcasting Act 2001 (“the 2001 Act”)*

29. The 2001 Act was mainly designed to facilitate the introduction of digital terrestrial broadcasting in Ireland. The IRTC became the Broadcasting Commission of Ireland and was given expanded functions and powers in relation to digital broadcasting.

30. Section 18 of the 2001 Act applied section 10(3) of the 1988 Act to digital and other broadcasting services. However, section 65 of the 2001 Act relaxed the prohibition of the broadcasting of religious advertising as follows:

“65. Nothing in section 20(4) of the Act of 1960 or section 10(3) of the Act of 1988 (including either of those sections as applied by this Act) shall be construed as preventing the broadcasting of a notice of the fact -

(a) that a particular religious newspaper, magazine or periodical is available for sale or supply, or

(b) that any event or ceremony associated with any particular religion will take place,

if the contents of the notice do not address the issue of the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religion or religious organisation.”

31. This section was proposed by the Minister at the Committee stage on 30 November 2000 as an added section to the Bill already published. The Committee accepted the proposal without debate.

C. Council Directive 89/552/EEC of 3 October 1989

32. The Directive co-ordinates certain provisions of Member States of the European Community on television broadcasting. Article 12 of the Directive provides, *inter alia*, that television advertising shall not prejudice respect for human dignity, include any discrimination on grounds of race, sex or nationality or be offensive to religious or political beliefs.

THE LAW

ALLEGED VIOLATION OF ARTICLES 9 AND 10 OF THE CONVENTION

33. The applicant complains under Articles 9 and 10 about section 10(3) of the 1988 Act.

Article 9

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom ..., to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society ..., for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

Article 10

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of ... public safety, for the prevention of disorder or crime, for the protection of health or morals, ...”

A. The parties' submissions

1. The Government

34. The Government argued that the limitation on the applicant's rights under Articles 9 and 10 was so minimal as not to constitute an interference with those rights. They referred, *inter alia*, to the fact that the applicant could have otherwise advanced his views both orally and in writing, in the print media and in public assembly. He could also have appeared on radio and television and have transmitted the video by satellite and other means.

35. They also contended that any interference was “prescribed by law” (section 10(3) of the 1988 Act) and pursued aims (public order and safety together with the rights and freedoms of others) that were legitimate within the meaning of the second paragraph of Articles 9 and 10 of the Convention.

36. However, the majority of the Government's submissions to the Court concerned its contention that the prohibition of the broadcasting of religious advertisements was a proportionate response to those legitimate aims.

37. The Government maintained that certain key features of the case strongly suggested that a generous margin of appreciation should be accorded to the State as regards the means it chose to fulfil the aims it sought to achieve. The present case concerned the broadcasting (*Informationsverein Lentia and Others v. Austria*, judgment of

24 November 1993, Series A no. 276) of a paid advertisement (*Vgt Verein gegen Tierfabriken v. Switzerland*, no. 24699/94, ECHR 2001-VI) which promoted a religious event and beliefs (*Otto-Preminger-Institut v. Austria*, judgment of 20 September 1994, Series A no. 295-A and *Wingrove v. the United Kingdom*, judgment of 25 November 1996, *Reports of Judgments and Decisions* 1996-V) and which contained no political or “public interest” element. In such circumstances, particular deference had to be paid to the domestic authorities' assessment in that they were uniquely positioned to identify and assess the strength of the relevant vital forces within Irish society which dictated the correct balance between the competing interests involved. Accordingly, if the Minister introducing section 20(4) of the 1960 Act, which was subsequently applied by section 10(3) of the 1988 Act to the independent radio and television stations, was of the view that the Irish population was unwilling to tolerate any religious advertising, then the State should be allowed to restrict such advertising.

38. As to the religious nature of the relevant advertisement, the Government accepted that the advertisement appeared innocuous and that it was to some extent simply informational. However, they pointed out that it was also based on an evident belief in, and the propagation of, certain religious beliefs. In any event, it was simply the religious nature of the advertisement that constituted sufficient justification for its restriction.

The Government observed that the rights of an individual to express religious beliefs were necessarily determined and limited by reference to the Article 9 rights of others (*Larissis and Others v. Greece*, judgment of 24 February 1998, *Reports*, §§ 63-64). Moreover, the Convention clearly applied, in the Government's view, a distinct standard to the control of religious expression so that religious offence was a legitimate basis for the prohibition of otherwise acceptable and protected speech. This was explained by the fact that religious belief was not the subject of reasoned decision making: rather it presented an intensely personal and private matter and concerned deeply held and profoundly important convictions. Consequently, the simple proclamation of the truth of one religion necessarily proclaims the untruth of another. As such even innocuous religious expression can lead to volatile and explosive reactions.

Moreover, the Government underlined the particularly country-specific religious sensitivities in Ireland, noting the description of such concerns by the domestic courts in the present case. It might have been that there was no contemporary religious disharmony in Ireland. However, religious division had characterised Irish history, a history which included proselytising and the creation of legal and social systems to undermine one religion. That historical context, the current manifestation of religious division in Northern Ireland together with the fact that the vast majority of the Irish population adhered to a religion (indeed, to one dominant religion) entitled the State in 1960 and again in 1988 to apprehend unusual sensitivity to religious issues

in contemporary Irish society on the part of adherents of both dominant and minority religions. Given this potentially incendiary situation, the State was entitled to act with caution in conditioning the circumstances in which religious material, and in particular religious advertising, would be made available in the broadcast media.

The Government disputed that the *Sunday Times* and *Handyside* judgments (*Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A no. 24, and *Sunday Times v. the United Kingdom (no. 1)*, judgment of 26 April 1979, Series A no. 30) allowed the applicant to broadcast religious advertisements that offended, shocked and disturbed. The *Sunday Times* case could be distinguished from the present case: the former concerned expression of a political or public interest nature, the print media, and an editorial feature in a newspaper. The Government rejected the implication from the applicant's reliance on the *Sunday Times* jurisprudence that, in the area of religious advertising, one has the right to be a bit shocking, somewhat disturbing and mildly offensive.

39. Turning to the audio-visual (as opposed to print) context of the prohibition, the Government recalled that Article 10 § 1 specifically foresaw the regulation by a licensing system of the manner in which broadcasting was organised in a State's territory which control had to be justified for one of the reasons included in the second paragraph of Article 10 of the Convention. According to Convention jurisprudence relevant considerations included the nature and objectives of the proposed station, its potential audience and the rights and interests of a specific audience. The Government argued that control of the broadcasting media had been accepted as necessary for, *inter alia*, the orderly regulation of broadcasting enterprises and the appropriate allocation of limited broadcasting resources. In addition, and critically for the purposes of the present case, such regulation was necessary given the particularly intrusive and compelling nature of the broadcast media together with its consequent impact and potential for offence (including on the passive recipient).

40. As to the advertising context of the prohibition, the Government distinguished between paid advertising space and programmes, the latter being subject to the universally recognised and fundamental requirement of impartiality and neutrality. This was an obligation of the national and the independent broadcasters (section 18 of the 1960 Act and section 9 of the 1988 Act) and required each programme dealing with a controversial matter to be balanced or that the overall programming of the station on such matters would be such as to give a sufficient hearing to other or opposing views. Given the necessary neutrality of programmes, the State could expect a fair degree of tolerance on the part of the recipient. Conversely, the Government maintained that advertising was, by definition, partisan, one-sided and unbalanced in which case the principle of impartiality could not

be, and was not, applied. The State could therefore reasonably expect a lower degree of tolerance of advertising, particularly on sensitive issues.

In addition, just as the restriction on broadcasting of advertising promoted neutrality and balance, allowing or obliging stations to accept advertising on religious issues would undermine that balance. Moreover, they pointed out that the applicant's position went so far as to challenge the requirement of impartiality even in a political context as he wrongly implied that any restriction on political advertising would be invalid (*Vgt Verein gegen Tierfabriken v. Switzerland*, cited above, §§ 66-67).

41. Furthermore, the Government maintained that the means chosen by the State to balance freedom of expression against those sensitivities was limited: it was concerned with broadcasting of religious advertisements only so that proportionality was thereby built into the overall regulatory regime.

42. The Government accepted that there might have been different ways of responding to the concerns outlined by it above but considered that the State was entitled to view certain alternatives as inherently unattractive.

43. They rejected the idea of permitting limited religious advertising. In the first place, any limitation would have unequal consequences for broadcasters. The national broadcaster (RTE) would be compelled to broadcast any advertisement which satisfied the relevant criteria whereas independent broadcasters would be free to refuse, accept or favour any religious advertising satisfying such criteria on purely commercial grounds. Indeed, permitting some form of religious broadcasting would have unequal consequences for religions with the larger religions potentially exploiting their dominant position or resources to obtain access to the broadcast media to the prejudice of smaller religions. The present prohibition, in contrast, ensured that one viewpoint was not allowed to dominate over another and it promoted a "level playing field" for all religions irrespective of their wealth, their dominance, their power and their current popularity (*United Christian Broadcasters v. the United Kingdom*, application no. 44802/98, decision of 7 November 2000).

Secondly, the assessment of any such restrictions would be inherently problematic. Restricting the amount of advertising from certain religious groups could easily have been perceived as discriminatory - individuals might have been prepared to accept that no one could advertise, but to control advertising by certain religions was bound to inflame some religious sensibilities. In addition, the Government wondered whether it was indeed possible to distinguish between the passionate and committed preacher and the incendiary proselytiser. A limitation based on the content of the advertisement raised the spectre of subjective religious censorship by either the State or by the broadcasters themselves. The involvement of the State, or indeed of any non-State agent, in such censorship could potentially be considered offensive of itself and, further, there was a risk that the familiar would be considered more permissible than the marginal and unfamiliar.

The Government also rejected the idea of a limitation based on the level of offence as suggested by the applicant (advertising which was “likely and bound” or “calculated” to cause offence): the Government reiterated that in the Irish context there was no such thing as “a little bit of offence” as the fact of religious advertising was considered of itself to be potentially offensive.

Thirdly, the Government noted that section 65 of the 2001 Act had somewhat diluted the force of section 10(3) of the 1988 Act. However, the Government maintained that the State was entitled to consider in 1960 and in 1988 that a restraint on all broadcasting of religious advertising was necessary whether the message was purely informational or not. This choice was not undermined by the decision incorporated in the 2001 Act to allow the broadcasting of informational advertisements only. In any event, the applicant's advertisement would, in the Government's view, have still fallen foul of section 65 of the 2001 Act. Furthermore, the new regime had its own associated difficulties: the dividing line between religious information and the underpinning religious assumptions of a message was difficult to establish.

44. Finally, the Government pointed out that the prohibition challenged by the present applicant was not unique. A statutory prohibition of religious advertising was in force in the United Kingdom until the Broadcasting Act 1990 and numerous self-regulatory codes continue to control such matters. Swiss law (section 18 of the Federal Radio and Television Act together with section 15 of the Radio and Television Ordinance) prohibited, *inter alia*, religious and political advertising. Council Directive 89/552/EEC also contained a restriction on religious advertising.

45. In such circumstances, the Government submitted that the Irish State was entitled, under Articles 9 and 10, to act with caution and to chose to prohibit the broadcasting of religious advertising.

2. The applicant

46. The applicant maintained that his being prevented from using his method of choice to advertise a religious event by the application of section 10(3) of the 1988 Act clearly constituted an interference with his rights under Articles 9 and 10 of the Convention. The above-cited *Handyside* judgment indicated that the protection of Article 10 extended to ideas that “offend, shock or disturb”. He observed that the prohibition extended to all broadcasters and, while the possibility of advertising in other media and contexts may have reduced the impact of the interference, it remained nonetheless a significant and substantial one.

47. He accepted that the relevant restriction was “prescribed by law” and did not dispute that the aim of protecting public order and safety and the rights and freedoms of others constituted legitimate aims.

48. He also agreed that the main issue in the present case was whether the interference with his rights could be considered justified and he maintained that the Government had not demonstrated any “pressing social need” justifying the prohibition of the broadcasting of religious advertising, whether the matter was considered under Article 9 or under Article 10 of the Convention.

49. The applicant did not dispute that the above-cited *Otto-Preminger-Institut* and *Wingrove* cases indicated that a greater margin of appreciation was to be accorded to the State in matters of morals and religion. However, he submitted that, in both of those cases, the Court ended its examination of the applicable margin of appreciation by a reference to the final supervision of this Court. The State's margin was not therefore unlimited and did not absolve it from establishing the necessity of the restrictions in question, the Court being the final arbiter in that respect.

50. As to where the balance lay between the conflicting rights guaranteed by Articles 9 and 10, the applicant relied on the Court's statement in its *Otto-Preminger-Institut* judgment (§§ 46-50) where it was indicated that those who hold religious beliefs must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their own. In that case the Court found the expression in question to be so offensive as to be a malicious violation of the spirit of tolerance and that the “duties and responsibilities” of those who expressed themselves included an obligation to avoid in so far as possible expressions that were gratuitously offensive to others and thus an infringement of their rights. The applicant concluded that the key to the balance to be struck between the Article 10 rights of one person and the Article 9 rights of another lay in the degree of offensiveness in which the advertisement was couched.

However, he maintained that his advertisement was completely inoffensive. It may have advanced a particular religious view but it did not do so in terms which could possibly have caused offence to an adherent to any other religion. It fell to be contrasted with the expression at issue in the above-cited *Otto-Preminger-Institut* and *Wingrove* cases. Accordingly, a prohibition on religious advertising regardless of its nature or content could not be justified to protect the religious feeling of others. Such a prohibition would only be justified if the Article 9 rights of others included a right not to be exposed to any religious views different to their own. However, no such right exists under Article 9 or elsewhere in the Convention. Indeed, the applicant argued that such a position would be contrary to the pluralism, tolerance and broadmindedness required in a democratic society.

51. The applicant went on to point out that Ireland was religiously homogeneous being over ninety-five percent Roman Catholic. There was no contemporary problem of religious disharmony in Ireland. He submitted that broadcasts frequently related to controversial religious themes and that

the suggestion that listeners to a local radio would take offence at his innocuous advertisement stretched credulity. The applicant added that the relevant local radio station knew its audience well and would hardly willingly transmit an advertisement which it considered would be likely to offend its listeners.

52. He underlined that this was not a case about the licensing of broadcast media and did not concern the third sentence of Article 10 § 1 of the Convention. In any event, the relevant case-law (including *Groppera Radio AG and Others v. Switzerland*, judgment of 28 March 1990, Series A no. 173, § 64; *Informationsverein Lentia and Others*, cited above, at § 32; and *Radio ABC v. Austria*, judgment of 20 October 1997, *Reports* 1997-VI, § 28) provided that a restriction had to be justified under the third sentence of Article 10 § 1 as well as under the second paragraph of Article 10 of the Convention.

53. As to the Government's argument that the neutrality of broadcasting justified the prohibition, the applicant maintained that that argument presumed that any system of licensing could control the broadcast media and, in particular, impose conditions on the content of broadcasts which would not be compatible with the Convention if they were imposed on the print media. Such a principle would be, however, inconsistent with the principles laid down in the judgment in the above-cited case of *Informationsverein Lentia and Others v. Austria*. He argued that, in any event, it did not follow that the neutrality of the broadcast media would be undermined by the transmission of religious advertising. Much of the advertising broadcast was not commercial and related to sensitive issues including advertising about the effects of smoking, alcohol consumption, the importance of voting and about referenda. Indeed, the national broadcaster transmitted religious services of the Catholic and some Protestant Christian groupings and could publish notices advertising this. At fixed times twice a day bells were broadcast on RTE to signal Catholic prayer. Broadcasting religious material was not itself problematic and, indeed, it demonstrated that the Government was not concerned about favouring one religion over another.

54. As to the weight to be attached to the fact that the advertisement could have been published other than in the broadcast media, the applicant referred to the above-cited case of *Vgt Verein gegen Tierfabriken v. Switzerland* where the Court considered that access to such other media was indicative of the non-pressing nature of a restriction. Alternative publication means was not, in any event, sufficient justification for the exclusion from the broadcast media given the relatively reduced force and impact of the non-broadcast media.

55. The applicant disputed the Government's submission that alternative options were not feasible.

56. In the first place, he maintained that it would have been possible to have limited the prohibition to religious advertising couched in terms offensive to the religious beliefs of others. The precise terms by which this could be done, including the standard of offensiveness to be prohibited, would be a matter for the State and a certain margin of appreciation would be accorded in that respect. Contrary to the Government, the applicant considered such a restriction possible and he referred, in particular, to Council Directive No. 89/552/EEC.

According to the applicant, section 65 of the 2001 Act demonstrated that the State considered it possible to identify purely informational religious advertising and to allow the broadcasting of such advertising. Since his own advertisement contained an element of religious opinion and belief, he accepted in his oral submissions that his advertisement would be likely to fall foul of section 65 of the 2001 Act. However, he maintained that the dilution of the prohibition by section 65 of the 2001 Act was insufficient – the Convention also protected a person from expression on religious matters which was “likely and bound” or “calculated” to cause deep-seated offence to their religious beliefs.

57. Secondly, and as to the Government's wish to avoid benefiting dominant and powerful religious groups, the applicant noted that in the above-cited case of *Vgt Verein gegen Tierfabriken* the Government had referred to the risk of large and financially powerful groups seeking to exercise disproportionate influence through advertising. The Court, however, had found (at § 75 of that judgment) that the Government had not demonstrated in a “relevant and sufficient” manner why the grounds generally advanced in support of the prohibition of political advertising also served to justify the interference in the particular circumstances of the applicant association's case. The present applicant was in a similar position: there was no suggestion that he represented a large or powerful religion seeking to exercise a disproportionate influence through advertising. Indeed, section 65 of the 2001 Act was also inconsistent with any such concern by the Irish State: section 65 did not contain any limitation on access by religious groups to advertising notices in the broadcast media and, indeed, it could be argued that that section favoured large and well-established religions at the expense of smaller and less well-known groups because simple factual references to publications, events or ceremonies would be likely to have more impact in the case of established and familiar religions.

58. Thirdly, the applicant disagreed that the State would be put in an invidious position if it had to assess what kind of advertisement would cause offence. The State had already accepted that it would make a certain assessment under section 65 of the 2001 Act. In any event, bodies in many countries including Ireland regularly assessed commercial advertisements according to advertising standards which regulated, *inter alia*, the content and broadcasting of such advertisements. Accordingly, the applicant could

see no reason why the State should consider that assessing religious advertising would put them in an invidious position.

59. For these reasons, the applicant concluded that there was no pressing reason which justified the prohibition of his advertisement.

B. The Court's assessment

1. Interference

60. The Court notes that the applicant maintained that the application of section 10(3) of the 1988 Act in his case interfered with his rights guaranteed by Articles 9 and Article 10 of the Convention. While arguing that there had been no interference with his rights under either Article, the Government's submissions to the Court were, for the most part, expressed in terms of Article 10 of the Convention.

61. The Court considers that the matter essentially at issue in the present case is the applicant's exclusion from broadcasting an advertisement, an issue concerning primarily the regulation of his means of expression and not his profession or manifestation of his religion. It recalls that Article 10 protects not only the content and substance of information but also the means of dissemination since any restriction on the means necessarily interferes with the right to receive and impart information (*Öztürk v. Turkey* [GC], no. 22479/93, § 49, ECHR 1999-VI). Accordingly, the Court is of the view that the applicant's complaint about the prohibition contained in section 10(3) of the 1988 Act falls to be examined under Article 10 of the Convention. Given the parties' submissions concerning the scope of that Article and the above-cited *Handyside* judgment (see, in particular, § 49), the Court reiterates that even expression which could be considered offensive, shocking or disturbing to the religious sensitivities of others falls within the scope of the protection of Article 10, the question for the Court being whether any restriction imposed on that expression complies with the provisions of that Article.

In addition, having regard to the fact that the applicant was prevented from broadcasting the advertisement as a result of the application of section 10(3) of the 1988 Act, there clearly has been an interference with his right to freedom of expression.

2. "Prescribed by law"

62. The parties did not dispute, and the Court considers it clear, that the prohibition applied to the applicant was set out in a clear and accessible manner in section 10(3) of the 1988 Act.

3. *Legitimate aim*

63. The Government maintained that the prohibition sought to ensure respect for the religious doctrines and beliefs of others so that the aims of the impugned provision were public order and safety together with the protection of the rights and freedoms of others.

While disputing the necessity of the statutory provision, the applicant did not directly contest that these aims had been pursued by the enactment of section 10(3) of the 1988 Act.

64. The Court does not see any reason to doubt that these were indeed the aims of the impugned legislation and considers that they constituted legitimate aims for the purposes of Article 10 § 2 of the Convention (the above-cited *Otto-Preminger-Institut* judgment, at § 47).

4. *"Necessary in a democratic society"*

(a) General principles

65. The Court recalls that freedom of expression constitutes one of the essential foundations of a democratic society. As paragraph 2 of Article 10 expressly recognises, however, the exercise of that freedom carries with it duties and responsibilities. Amongst them, in the context of religious beliefs, is the general requirement to ensure the peaceful enjoyment of the rights guaranteed under Article 9 to the holders of such beliefs including a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profane (the above-cited *Otto-Preminger-Institut* judgment, §§ 46, 47 and 49).

66. No restriction on freedom of expression, whether in the context of religious beliefs or in any other, can be compatible with Article 10 unless it satisfies, *inter alia*, the test of necessity as required by the second paragraph of that Article. In examining whether restrictions to the rights and freedoms guaranteed by the Convention can be considered "necessary in a democratic society" the Court has, however, consistently held that the Contracting States enjoy a certain but not unlimited margin of appreciation (the above-cited *Wingrove* judgment, § 53).

67. In this latter respect, there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate of questions of public interest (see, *mutatis mutandis*, among many other authorities, *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, § 42; *Castells v. Spain*, judgment of 23 April 1992, Series A no. 236, § 43; and *Thorgeir Thorgeirson v. Iceland*, judgment of 25 June 1992, Series A no. 239, § 63). However, a wider margin of appreciation is generally available to the Contracting States when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion. Moreover, as in the field of morals,

and perhaps to an even greater degree, there is no uniform European conception of the requirements of "the protection of the rights of others" in relation to attacks on their religious convictions. What is likely to cause substantial offence to persons of a particular religious persuasion will vary significantly from time to time and from place to place, especially in an era characterised by an ever growing array of faiths and denominations. By reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements with regard to the rights of others as well as on the "necessity" of a "restriction" intended to protect from such material those whose deepest feelings and convictions would be seriously offended (the above-cited *Wingrove* judgment, at § 58).

The Court therefore observes that it is this margin of appreciation which distinguishes the present case from the above-cited case of *Vgt Verein gegen Tierfabriken v. Switzerland*. In the latter case, the Court considered that the advertisement prohibited concerned a matter of public interest to which a reduced margin of appreciation applied.

68. It is for the European Court to give a final ruling on the restriction's compatibility with the Convention and it will do so by assessing in the circumstances of a particular case, *inter alia*, whether the interference corresponded to a "pressing social need" and whether it was "proportionate to the legitimate aim pursued". Indeed, such supervision can be considered to be all the more necessary given the rather open-ended notion of respect for the religious beliefs of others and the risks of excessive interferences with freedom of expression under the guise of action taken against allegedly offensive material. In this regard, the scope of the restriction in the legislation is especially important. The Court's task in this case is therefore to determine whether the reasons relied on by the national authorities to justify the measures interfering with the applicant's freedom of expression are "relevant and sufficient" for the purposes of Article 10 § 2 of the Convention (the above-cited *Wingrove* judgment, §§ 53 and 58-59).

69. Moreover, it is recalled that the potential impact of the medium of expression concerned is an important factor in the consideration of the proportionality of an interference. The Court has acknowledged that account must be taken of the fact that the audio-visual media have a more immediate and powerful effect than the print media (*Jersild v. Denmark*, judgment of 23 September 1994, Series A no. 298, § 31).

(b) The application of those principles to the present case

70. The Court notes at the outset that the nature and purpose of the expression contained in the relevant advertisement accords with it being treated as religious, as opposed to commercial, expression even if the

applicant purchased the relevant broadcasting time (*Barthold v. Germany*, judgment of 25 March 1985, Series A no. 90, § 58).

71. The main factor which the Government considered justified the impugned prohibition was the particular religious sensitivities in Irish society which they submitted were such that the broadcasting of any religious advertising could be considered offensive. The applicant agreed that Article 10 permitted restrictions of religious expression which would offend others' religious sensitivities but submitted that the Convention did not protect an individual from being exposed to a religious view simply because it did not accord with his or her own, noting that his advertisement was innocuous and completely inoffensive. In any event, he disputed the Government's assessment of contemporary religious sensitivities in Ireland.

72. The Court agrees that the concepts of pluralism, tolerance and broadmindedness on which any democratic society is based (the above-cited *Handyside* judgment, at § 49) mean that Article 10 does not, as such, envisage that an individual is to be protected from exposure to a religious view simply because it is not his or her own. However, the Court observes that it is not to be excluded that an expression, which is not on its face offensive, could have an offensive impact in certain circumstances. The question before the Court is therefore whether a prohibition of a certain type (advertising) of expression (religious) through a particular means (the broadcast media) can be justifiably prohibited in the particular circumstances of the case.

73. Turning therefore to the country-specific religious sensitivities relied on by the Government, the Court has noted that the Minister identified, during the debate on the introduction of section 20(4) of the 1960 Act, the potential impact on religious sensitivities as justifying prudence in the context of the broadcasting of religious advertising and he drew a distinction between advertising time which was purchased and programming (paragraph 22 above). Section 20(4) was then applied to independent broadcasters through section 10(3) of the 1988 Act, the provision at issue in the present case. The Court has noted that, during the detailed debate on a proposed dilution of section 10(3) in April 1999, the Minister emphasised at some length the extreme sensitivity of the question of broadcasting of religious advertising in Ireland and the consequent necessity to proceed towards any proposed amendment of section 10(3) with care and on the basis of a full consideration of the issues and options (paragraphs 27-28 above).

Moreover, the domestic courts found that the Government were entitled to be prudent in this context. In particular, the High Court considered relevant the fact that religion had been a divisive issue in Northern Ireland. It further considered that Irish people with religious beliefs tended to belong to a particular church so that religious advertising from a different church might be considered offensive and open to the interpretation of proselytism.

Indeed, the High Court pointed out that it was the very fact that an advertisement was directed towards a religious end which might have been potentially offensive to the public. The Supreme Court also emphasised that the three subjects highlighted by section 10(3) of the 1988 Act concerned subjects which had proven “extremely divisive in Irish society in the past” and it also agreed that the Government had been entitled to take the view that Irish citizens would resent having advertisements touching on these topics broadcast into their homes and that such advertisements could lead to unrest.

74. The Court has also observed that the impugned provision was designed to correspond, and was indeed limited, to these particular concerns and that the bounds of the prohibition are an important consideration in the assessment of its proportionality (see paragraph 68 above).

The prohibition concerned only the audio-visual media. The State was, in the Court's view, entitled to be particularly wary of the potential for offence in the broadcasting context, such media being accepted by this Court (see paragraph 69) and acknowledged by the applicant, as having a more immediate, invasive and powerful impact including, as the Government and the High Court noted, on the passive recipient. He was consequently free to advertise the same matter in any of the print media (including local and national newspapers) and during public meetings and other assemblies.

Moreover, the prohibition related only to advertising. This Court considers that this limitation reflects a reasonable distinction made by the State between, on the one hand, purchasing broadcasting time to advertise and, on the other, coverage of religious matters through programming (including documentaries, debates, films, discussions and live coverage of religious events and occasions). Programming is not broadcast because a party has purchased airtime and, as outlined by the Government, must be impartial, neutral and balanced, the objective value of which obligation the parties did not dispute. The applicant retained the same right as any other citizen to participate in programmes on religious matters and to have services of his church broadcast in the audio-visual media. Advertising, however, tends to have a distinctly partial objective: it cannot be, and is not, therefore subject to the above-outlined principle of impartiality and the fact that advertising time is purchased would lean in favour of unbalanced usage by religious groups with larger resources and advertising.

Consequently, other than advertisements in the broadcast media, the applicant's religious expression was not otherwise restricted.

75. Such considerations provide, in the Court's view, highly “relevant reasons” justifying the Irish State's prohibition of the broadcasting of religious advertisements.

76. The applicant, however, also maintained that these reasons were not “sufficient” and, in particular, that the State could have achieved its aims by a more limited prohibition and, indeed, that it should have gone further than

the limited dilution of the prohibition contained in section 65 of the 2001 Act. However, the Court considers persuasive the Government's argument that a complete or partial relaxation of the impugned prohibition would sit uneasily with the nature and level of the religious sensitivities outlined above and with the principle of neutrality in the broadcast media.

77. In the first place, the Court would accept that a provision allowing one religion, and not another, to advertise would be difficult to justify and that a provision which allowed the filtering by the State or any organ designated by it, on a case by case basis, of unacceptable or excessive religious advertising would be difficult to apply fairly, objectively and coherently (the above-cited case of *United Christian Broadcasters Ltd v. the United Kingdom*). There is, in this context, some force in the Government's argument that the exclusion of all religious groupings from broadcasting advertisements generates less discomfort than any filtering of the amount and content of such expression by such groupings.

The applicant suggested that such a filtering process is already applied through the application of the principle of neutrality to programmes and programming. However, and as the Court has noted above, the distinct nature of advertising and programming means that the regulatory tools employed for programming are not directly applicable to advertising. The applicant also referred to the fact that advertisements (other than those prohibited by the impugned provision) are already subjected to advertising standards control. The Court does not, however, consider that the same public sensitivities and issues of neutrality arise in the case of religious advertisements and those concerning, for example, commercial services, goods or products.

78. Secondly, the Court considers it reasonable for the State to consider it likely that even a limited freedom to advertise would benefit a dominant religion more than those religions with significantly less adherents and resources. Such a result 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.

79. Thirdly, the applicant did not dispute the Government's concern that allowing limited religious advertising would result in unequal consequences for the national and independent broadcasters.

80. Fourthly, while the State has, subsequent to the facts of the present case, diluted section 10(3) of the 1988 Act (through section 65 of the 2001 Act), the Minister's comments in April 1999 together with the limited nature of the 2001 amendment do not undermine, and indeed are consistent with, the State's view of the religious sensitivities in Ireland in 1988 and its understanding of the consequent necessity for full reflection and prudence when considering any evolution including a relaxation of the provisions of section 10(3) of the 1988 Act. In addition, the nature of the assessment required by section 65 of the 2001 Act (whether or not the advertisement

amounted only to an announcement of the fact that a religious publication is for sale or that a religious event will take place) has been clearly chosen for its relatively objective and, consequently, uncontroversial nature.

81. Finally, and as to the parties' submissions concerning the existence of similar prohibitions on the broadcasting of religious advertising in other countries, the Court observes that there appears to be no clear consensus between the Contracting States as to the manner in which to legislate for the broadcasting of religious advertisements. Certain States have similar prohibitions (for example, Greece, Switzerland and Portugal), certain prohibit religious advertisements considered offensive (for example, Spain and see also Council Directive 89/552/EEC) and certain have no legislative restriction (the Netherlands). There appears to be no "uniform conception of the requirements of the protection of the rights of others" in the context of the legislative regulation of the broadcasting of religious advertising (see paragraph 67 above).

82. In the circumstances, and given the margin of appreciation accorded to the State in such matters, the Court considers that the State has demonstrated that there were "relevant and sufficient" reasons justifying the interference with the applicant's freedom of expression within the meaning of Article 10 of the Convention.

In consequence, it concludes that there has been no violation of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 10 of the Convention, under which Article the Court found the complaint was most appropriately considered.

Done in English, and notified in writing on 10 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President