

**FOI Request: FOI/6/2004**

**Request from Mr. Paul Farrell for: 'copies of any records relating to the decision to maintain the ban on religious advertising on radio and television, following the recent review of the legislation covering the matter.'**

**Schedule No 1**

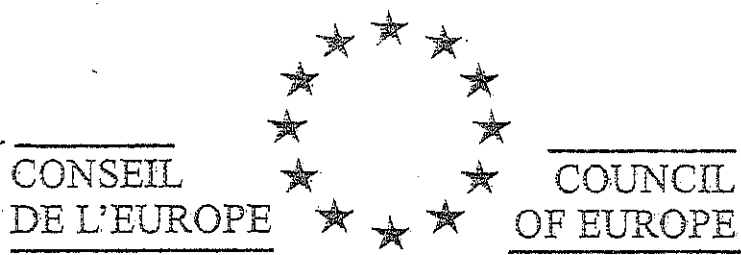
**File No S1/54-X/99 'Review of Ban on Religious Advertising – Public Consultation'.**

<b>Record No.</b>	<b>Date</b>	<b>Details</b>	<b>Release</b>
1	Various	File annex containing submissions received from the public as part of the consultation process – 235 pages	Not relevant to request
2	09.07.02	European Court of Human Rights: 'Murphy v Ireland' decision – 12 pages	Release
3	16.10.02	Council of Europe: European Court of Human Rights: 'Murphy v Ireland': Further observations of the Government of Ireland – 11 pages	Release
4	29.10.02	Submission from C. O'hObain to Minister with annotation re ban on religious advertising and European Court of Human Rights – Roy Murphy v Ireland – 4 pages	Release
5	07.01.03	e-mail from C. O'Cuinn to C. OhObáin enclosing Draft Press Release: 'Dermot Ahern to Examine Ban on Religious Advertising' – 1 page	Release
6	29.01.03	e-mail from C. OhObáin to J. Meleady enclosing copy of Press Release – 2 pages	Release
7		Copy of draft advert 'Minister Ahern invites comments on the ban on Religious Advertising' -1 page	Release
8		Copy of draft advert 'Minister Ahern invites comments on the ban on Religious Advertising' -1 page	Release
9		Copy of Parliamentary Question and Reply for oral answer on 29.01.03 – 1 page	Release
10	21.02.03	Memo from C. OhObáin to Runai Aire attaching copy of proposed advert for information - 2 pages	Release
11	21.02.03	Memo from C. OhObáin to Runai Aire attaching copy of proposed advert for information - 2 pages	Release
12	27.02.03	e-mail from J. Meleady to Brindley Advertising enclosing text of advert – 2 pages	Release

13	27.02.03	Fax message to J. Meleady from Brindley Advertising setting out costs re placing of adverts in various newspapers (with annotations) - 2 pages	Release
14	27.02.03	Fax message to J. Meleady from Brindley Advertising setting out costs re placing of adverts in various newspapers – 2 pages	Release
15		Copy of advert as published – 1page	Release
16	28.02.03	E- mail message from J. Meleady to R. Moore enclosing copy of newspaper advertisements re religious advertising - 1 page	Release
17	28.02.03	E-mail message from J. Meleady to C. O Cuinn enclosing copy of newspaper advertisement re religious advertising - 1 page	Release
18	28.02.03	E-mail message from J. Meleady to: Sec Office enclosing copy of newspaper advertisements re religious advertising – 1 page	Release
19	28.02.03	E-mail message from J. Meleady to C. McDonald enclosing copy of newspaper advertisements re religious advertising – 2 pages	Release
20	03.03.03	Newspaper cutting from Irish Times containing text of advert on public consultation process – 1 page	Release
21		E-mail message from J. Meleady to A. Toner re online forum – 1 page	Release
22	04.03.03	E-mail message from J. Meleady to A. Toner re online forum – 1 page	Release
23	04.03.03	Copy of DCMNR website home page and copy of online forum re ban on religious advertising – 4 pages	Release
24	31.03.03	E-mail message from J. Meleady to Fr. M. Clarke re submission – 3 pages	Release
25	26.03.03	Pay Direction for Brindley Advertising - 1 page	Release
26	01.04.03	Information note for Minister on progress of review of ban on religious advertising with annotations – 1 page	Release
27	01.04.03	Information note for the Minister on progress of review of ban on religious advertising – 1 page	Release
28	01.04.03	Letter from BCI to Minister Ahern re religious advertising – 1 page	Release
29	01.04.03	Letter from BCI to Minister Ahern re religious advertising – 1 page	Release
30	01.04.03	Letter from BCI to Minister Ahern re religious advertising marked “ Seen By Minister “ – 1 page	Release

31	07.05.03	Note of telephone conversation with Fr. Martin Clarke, Catholic Communications Office re submission – 1 page	Release
32	10.07.03	European Court of Human Rights – Case of Murphy v Ireland. Judgement – 27 pages	Release
33	10.07.03	Submission from C. ÓhObáin to Minister, Secretary General, Mr. Molloy re Roy Murphy case and review of ban on religious advertising – 1 page	Release
34	17.09.03	E-mail from C. ÓhObáin to J. Meleady enclosing communication from BCI re political advertising – 3 pages	Release
35	19.09.03	Submission from J. Meleady to Mr. ÓhObain, Mr. Molloy, Sec-Gen and Minister setting out options – 4 pages	Release
36	19.11.03	Submission from C. ÓhObáin to Mr. Molloy, Sec-Gen and Minister setting out recommendation – 3 pages	Release
37	11.12.03	Copy of letter from European Court of Human Rights to D. Foreign Affairs setting out Court Judgement – 1 page	Release
38	04.01.04	Newspaper article re religious advertising on TV and radio published in Sunday Tribune – 1 page	Release
39	09.01.04	Newspaper Article “ Mixed reaction to Minister’s ban on broadcasting religious adverts” published in Irish Times - 1 page	Release
40	09.01.04	Newspaper Article “ Religious message frustrated by tight media restrictions “ published in Irish Independent – 1 page	Release
41	27.01.04	Parliamentary Question for written answer 27 Jan. 2004 with draft reply: “To ask the Minister for Communications, Marine and Natural Resources if he will make a statement on the decision not to lift the ban on religious advertising: Bernard Allen – 2 pages	Release
42	27.01.04	E-mail from C. Ó hÓbain to J. Meleady re preparation of draft Aide Memoire on retention of ban – 1 page	Release
43	29.01.04	Draft press release re retention of ban on religious advertising – 2 pages	Release
44		Text of Press Release advising of decision of Minister to retain ban on religious advertising – 2 pages	Release
45	30.01.04	Newspaper Article “ Religious Ad ban to stay” published in Irish Daily Star – 1 page	Release

46	30.01.04	Newspaper Article " Religious Ads " published in Irish Examiner – 1 page	Release
47	30.01.04	Newspaper Article " Thou shalt not advertise just because you're loaded Ahern says " published in Irish Independent – 1 page	Release
48		Memo from K. Shiel to C. OhBáin seeking advice on request for meeting with Minister -3 pages	Release
49	25.04.97	High Court Judicial Review " Roy Murphy v. Independent Radio and Television Commission: Judgement of Mr. Jus. Geoghegan – 37 pages	Release



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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 44179/98  
 by Roy MURPHY  
 against Ireland

The European Court of Human Rights (Third Section), sitting on 9 July 2002 as a Chamber composed of

- Mr G. RESS, *President*,
- Mr I. CABRAL BARRETO,
- Mr L. CAFLISCH,
- Mr P. KÜRIS,
- Mr R. TÜRMEN,
- Mr J. HEDIGAN,
- Mrs H.S. GREVE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 31 July 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Roy Murphy, is an Irish national. He was born in 1949 and lives in Dublin. He is represented before the Court by F.H. O'Reilly and company, solicitors practising in Dublin.

### A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant is a pastor attached to the Irish Faith Centre, a bible based Christian ministry in Dublin. 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 10<sup>th</sup> - Saturday 15<sup>th</sup> April every night at 8.30 and Easter Sunday at 11.30am and also live by satellite at 7.30pm."

The radio station was prepared to broadcast the advertisement but 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"). The video was however transmitted by satellite.

The applicant took judicial review proceedings citing the IRTC and the Attorney General as respondents submitting 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, then that provision was unconstitutional.

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 also 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, section 10(3) constituted a reasonable limitation on the right to communicate and there were good reasons in the public interest for the ban. 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."

The Supreme Court rejected the applicant's appeal by judgment dated 28 May 1998. It pointed out at the outset as follows:

"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."

The court considered that religion was a private and a public affair and that the impugned provision was a restriction of the applicant's right to freely communicate (Article 40(3) of the Constitution) and of his right to freedom of expression (Article 40(6)(1) of the Constitution) which rights could be limited in the interests of the common good. The court cited with approval previous jurisprudence 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."

It 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 jurisprudence, 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 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.'

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, the court noted that parliament may well have decided that it would be inappropriate to involve agents of the State in deciding which advertisements in such a sensitive area would be likely to cause offence. In any event, once the impugned provision was broadly within the competence of parliament and parliament had respected the principle of proportionality, it is not for that court 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.

#### **B. Relevant domestic law and practice**

Article 40 of the Constitution of Ireland 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."

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."

Section 10 (3) of the Radio and Television Act 1988 ("the 1988 Act") provides 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."

## COMPLAINT

The applicant complains under Articles 9 and 10 of the Convention about Section 10(3) of the 1988 Act pursuant to which he was banned from advertising a forthcoming religious meeting.

## THE LAW

The applicant complains about section 10(3) of the 1988 Act and he invokes Articles 9 and 10 of the Convention.

Article 9 reads as follows:

"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 reads as follows:

"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. Exhaustion of domestic remedies

The Government argue that the applicant failed to exhaust domestic remedies in that he did not pursue before the Supreme Court the argument concerning the correct construction of section 10(3) of the 1988 Act and the alleged incorrect interpretation by the IRTC of the nature of the advertisement or of the relevant section of the 1988 Act.

The applicant points out that, shortly after the appeal commenced, the Supreme Court had indicated to his counsel that it did not think that there was much merit in this argument and invited counsel to concentrate on the constitutional argument. Counsel complied, but did not formally concede the argument concerning the correct construction and application of the relevant section. In any event, the Supreme Court would not, in accordance with established practice, rule on the constitutionality of the relevant section unless it was absolutely satisfied that the section was in fact applicable.

The Court recalls that an applicant is required to make normal use of domestic remedies which are effective, sufficient and accessible. In a legal system which provides constitutional protection for fundamental rights, it is incumbent on the aggrieved individual to test the extent of that protection and, in a common law system, to allow the domestic courts to develop those rights by way of interpretation. Nevertheless, the burden of proving the existence of effective and sufficient remedies lies upon the State invoking the rule (*Croke v. Ireland*, (dec.), no. 33267/96, 15 June 1999, and *Quinn v. Ireland*, (dec.), no. 36887/97, 21 September 1999, both unpublished).

The Court notes that the applicant argues before this Court, not that the relevant provision of domestic law was wrongly applied to him, but rather that it interferes in an unjustifiable manner with his rights of expression and religious belief. The argument pursued to the final court of appeal by him was that the relevant statutory provision violated his constitutional rights to freedom of expression and religion. Accordingly, even if he did abandon the argument concerning the correct construction and application of the relevant section, he can be considered to have quite reasonably chosen to have exhausted an effective and relevant domestic remedy which reflected his essential grievance before this Court (application no. 24196/94, decision of 22 January 1996, Decisions and Report (DR) 84, p. 72, and *Airey v. Ireland* judgment of 9 October 1979, Series A no. 32, § 23).

His complaint cannot therefore be rejected on the basis that he has not exhausted domestic remedies.

### B. Compatibility *ratione materiae* with the provisions of the Convention

The Government also maintain that neither Article 9 nor Article 10 guarantee the right to have the proposed advertisement broadcast by a commercial radio station. The applicant responds that his complaint is not that he wants the State to compel private stations to transmit the advertisement or that the failure by the station to so transmit constitutes a violation of Article 9 and 10 of the Convention. His complaint is rather that, relying on section 10(3) of the 1988 Act, the IRTC intervened and prevented the transmission of an advertisement that a radio station was willing to transmit.

The Court notes that it is not disputed that an organ of the State (IRTC) applied a statutory provision to prevent the transmission on a radio station, which otherwise would have taken place, of the applicant's advertisement. He therefore complains about a restriction by the State on his expression of matters of a religious nature, a complaint falling within the scope of both Article 9 (Kokkinakis v. Greece judgment of 25 May 1993, Series A no. 260-A, § 31) and of Article 10 (Groppera Radio AG and Others v. Switzerland judgment of 28 March 1990, Series A no. 173, § 55).

His complaint cannot therefore be rejected as being incompatible *ratione materiae* with the provisions of the Convention.

### C. Merits

The Government maintain that the applicant's complaints under Article 9 and 10 are both manifestly ill-founded or, alternatively, do not disclose a violation of those Articles of the Convention.

In the first place, they argue that the limitation on the applicant's rights guaranteed by Articles 9 and 10 was so minimal as not to constitute an interference within the meaning of those Articles. They refer, *inter alia*, to the fact that the applicant could advance his views orally, in writing and in assembly, that he could appear on radio and television and that he could transmit the relevant video by satellite and other means.

Secondly, and if it is considered that there was such an interference, the Government contend that it was prescribed by law (by section 10(3) of the 1988 Act) and that it was justified as proportionate to the legitimate aims of public order and safety and of the rights and freedoms of others.

In this latter respect, the Government point out that the State can, consistently with this Court's jurisprudence, regulate by a licensing system the manner in which broadcasting is organised in its territory. Relevant considerations include the nature and objectives of the proposed station, its potential audience and the rights and interests of a specific audience. Such limitations must, while finding their source in Article 10 § 1, be justified for

one of the reasons included in Article 10 § 2 of the Convention. They point out that broadcasting is considered more compelling and intrusive than the print media, a difference which explains why the former is subjected to a licensing regime and the latter is not.

The Government also note that the Irish broadcast media is subject to a principle of impartiality which would be undermined if a station was obliged, or even free, to accept advertising that was partisan on sensitive issues and, in this respect, the Government refer to the reasoning of the High Court quoted above concerning the undesirability of religious advertising on Irish radio.

They further observe that the vast majority of the Irish population adhere to a faith and consider that, consequently, they might take offence to religious advertisement on radio. Historically those of different religions have not always lived harmoniously in Ireland. Accordingly, some restrictions on the expression of matters of religion are necessary in order to reconcile the interests of various religious groups and ensure that everyone's beliefs are respected. The Government relies on the views expressed by the Supreme Court about the State's choice to prohibit broadcasting advertisements on three matters which had proved to be extremely divisive in Irish society.

Moreover, the Government maintain that the State is accorded a large margin of appreciation in deciding on the appropriate measure to meet the legitimate aims sought to be achieved since the domestic authorities are best placed to decide on the necessity of the particular measure and since the assessment in this case concerns morals and the religious sensibilities of others. The High and Supreme Courts correctly applied the above principles in deciding that the relevant statutory provision was a proportionate response.

The applicant considers that his being prevented from using his method of choice to advertise a religious event is clearly an interference with his Article 9 and 10 rights. He notes that the protection of Article 10 extends to ideas that "offend, shock or disturb" (*Handyside v. the United Kingdom* judgment of 7 December 1976, Series A no. 24, § 49).

As to the Government's argument that the necessary neutrality of the broadcast media justified the statutory provision, the applicant points out that that argument presumes that any system of licensing broadcast media can control that media and impose conditions regarding 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 *Informationsverein Lentia and Others v. Austria* judgment (of 24 November 1993, Series A no. 276).

The applicant argues that, in any event, it does not follow that the neutrality of the broadcast media would be undermined by the transmission of religious advertising. Much of the advertising broadcast is not

commercial and the applicant gives some examples including advertising about smoking, alcohol consumption, the importance of voting and about referenda (of the Referendum Commission, whose adverts are excluded from the scope of section 10(3) of the 1988 Act) which have related to particularly sensitive issues.

As to the protection of the rights and sensitivities of others, the applicant points out that Ireland is religiously homogeneous being over 95% Roman Catholic and, unlike in Northern Ireland, there is no history of religious disharmony. In addition, he points out that broadcasts frequently relate to material dealing with controversial religious themes and the suggestion that listeners to a local radio would take offence at this innocuous advertisement stretches credulity. The applicant adds that, indeed, that local radio station knows its audience and would hardly willingly transmit an advertisement which it considered would be likely to offend its listeners.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under Articles 9 and 10 the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court by a majority

*Declares* the application admissible.

  
Vincent BERGER  
Registrar

  
Georg RESS  
President



**CASE OF MURPHY v. IRELAND**

*(Application no. 44179/98)*

Question for those appearing before the Court

Did the application of section 10(3) of the Radio and Television Act 1988 to the applicant constitute an unjustifiable interference with his rights under Article 10 of the Convention (*Sunday Times v. the United Kingdom* (no. 1) judgment of 26 April 1979, Series A no. 30, § 59; *Müller and Others v. Switzerland* judgment of 24 May 1988, Series A no. 133, §§ 30 and 35; *Kokkinakis v. Greece* judgment of 25 May 1993, Series A no. 260-A, §§ 331-333; *Otto-Preminger-Institut v. Austria* judgment of 20 September 1994, Series A no. 295-A, §§ 49 and 50; *Jersild v. Denmark* judgment of 23 September 1994, Series A no. 298, § 31; and *United Christian Broadcasters Ltd v. the United Kingdom*, (dec.) no. 44802/98, 7 November 2000, unreported).

In particular, the parties are requested to address the following matters:

- the relevant prohibition applied to all advertising directed towards the ends specified in the relevant section without any qualification as to the source, nature or extent of that advertisement or advertising;
- the prohibition makes a distinction between the audiovisual and other media;
- the scope of the prohibition is limited to advertising in the audiovisual media; and
- the information regularly provided by the audiovisual media about the broadcasting of services on Sundays or of other religious events?



COUNCIL OF EUROPE

EUROPEAN COURT OF HUMAN RIGHTS

APPLICATION NUMBER 44179/98

ROY MURPHY

- v -

IRELAND

FURTHER OBSERVATIONS OF THE GOVERNMENT OF IRELAND

October 16 2002

***Introduction :***

1. By letter dated 15 July 2002 the government was informed that the Court (Third Section) had declared application no. 44179/98, *Murphy v. Ireland* admissible. The Government was informed that the Court had decided to obtain the parties oral submissions on the merits of this application. These further observations of the Government are directed towards identifying central aspects of the factual and legal issues in this case which, it is submitted, are of general assistance in resolving the controversies raised by the Applicant's claim and of particular relevance to the questions formulated by the Court. These further observations are supplementary to the Government's observations on admissibility and the merits of this application, dated 15 November 2000 and to the arguments that will be made orally on behalf of the Government.

***The nature of the advertisement :***

2. The advertisement the subject of this complaint was primarily directed towards imparting factual information as to a particular event. In the course of so doing, it posed rhetorical questions, which in turn assumed matters of religious controversy, and suggested the merits of a particular faith.
3. The content of the advertisement is of relevance in determining the nature and extent of the protection afforded by the Convention, to the speech. The key to understanding the constitutional protection afforded to the words lies in three central features of the proposed broadcast, the absence from the message of any *political* aspect, its *religious* character and its intended *advertisement* of the event.
4. These elements are worthy of separate consideration. Thus the message sought to be communicated was not one concerned with an issue *of controversial opinions pertaining to modern society in general* in the sense considered by the Court in

Vgt. Verein Gegen Tierfabriken v. Switzerland Judgement of 28 June 2001, at para. 70. It does not on that account enjoy a status entitling the Court to view it as generating a *reduced margin of appreciation*.

5. This is reinforced by the presence of the religious element to the words. The presence of that component activates two important constitutional consequences. First, it brings the words into an arena in which there is an important consideration competing with the right of the Applicant to speak; the religious sensitivities of the audience, and their right not to be gratuitously offended by the broadcast of a religious message. Second, it creates a point at which the jurisprudence of the Court has consistently emphasised the States enjoy an acute function in determining where the balance between these competing interests lie. Both of these factors will be returned to later in this submission. For present purposes, however, it suffices to note that the very fact that a constraint on speech raises an issue of striking the balance between the right of expression of the speaker, and the function of the State in regulating the dissemination of religious messages to a general audience that might not wish to hear them, is strongly suggestive of a generous margin of appreciation being afforded to the State to strike the appropriate balance.
6. Third, because the message is one shorn of a *political* component, and apart from the fact that the religious message (according to the Applicant's case) merely announces the event, there is (by reason of the latter aspect) little in the content of the speech to suggest a basis for subjecting its limitation to strict scrutiny. In this respect, the categorisation of the speech adopted in the commercial advertising cases (Markt Intern and Beerman v. Germany Judgement of 20 November 1989 at para. 33) presents an appropriate analogy (see Church of Scientology v. Sweden Commission Decision DR 16 28).
7. Thus, the features of the advertisement in issue here are such as to justify the affording by the Court of a very particular deference to the balance struck by the

Respondent State between the competing interests. The factors that may be taken into account by the State in achieving that balance, will now be considered.

*Particular Issues in Striking the Balance :*

8. The observations of the Government delivered on November 15 2000 emphasise the assertion by the Court in Wingrove v. United Kingdom (at para. 58) that a *wider margin of appreciation* is available to the Convention States *when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or especially religion*. The recognition in that decision of the particular ability of the State Authorities to identify the *vital forces* within their societies to judge the correct balance in this regard is of some importance in the present case. It is worth noting at this stage that Article 44.2.2° of the Constitution provides “The State guarantees not to endow any religion.” Provisions of the Constitution which recognised the special position of the Roman Catholic Church and recognised other Christian denominations and “the Jewish Congregation” were deleted in 1972 by the Fifth Amendment of the Constitution Act after approval by the people in a referendum.
  
9. Notwithstanding the Applicant’s emphasis upon the absence of a *contemporary tradition .. of religious disharmony* in the Irish State (para. 20 submissions of 28 December 2000), the critical role of religion in the divisions which have characterised Irish history, and the particular basis for the State to apprehend the existence of what in other societies might be regarded as unusual sensitivity to religious issues, creates a social context in which the legislature is entitled act with caution in conditioning the circumstances in which religious material will be made available through the broadcast media. It is, it is respectfully submitted, unreal (as the Applicant in the paragraph referred to in his Replying Submissions suggests) to expect either that that historical context, or its contemporary manifestation on part of the Island, be divorced from the attitudes of citizens of the State, today, or from the legitimacy of a concern on the part of the State that

unregulated advertising of religious messages might create widespread offence not readily understood by those less familiar with the complex tapestry of this aspect of Irish social attitude, and history.

10. This historical context creates a sensitivity, but the existence of a dominant religion in the State (also referred to by the Applicant) generates ground for different concern in the regulation of religious expression. A legislative environment which places no constraint upon the entitlement of any religion to advertise its events, or beliefs, creates the prospect of unequal representation of religious belief on the airwaves. It presents the spectre of larger religions exploiting the advantage of dominance, or of wealth, to the prejudice of smaller faiths. This may be undesirable, and if it is believed so to be, there are different ways of avoiding it. However a legislature seeking so to do, faces difficult choices. It is unattractive to justify imposing limitations on the right of some religions to advertise, but not others, since this creates the prospect of religious discrimination. It is equally unattractive to monitor the content of advertisement, since this presents the spectre of religious censorship, and a feeling of invasion by those whose advertisements are interfered with. One obvious option is to prohibit religious advertising completely in a manner which is fair to all. Thus, the present case demonstrates in perhaps more stark terms, the concerns reflected in the argument advanced by the Government in United Christian Broadcasting v. UK Judgement of 7 November 2000, and accepted by the Court that broad constraints on religious broadcasting may be necessary to ensure that one viewpoint is not allowed to dominant to the disadvantage of others (pp. 5-6)/
11. There is a third aspect to the context which might not be widely appreciated. The practice of proselytising, and legacy of a legal and social system designed to undermine one Church, and induce its members away from it, presents a particular aspect in Irish history. As one commentator notes *in the post-famine decades, the memory of proselytism contributed to a widening gulf between the main Catholic and Protestant Churches* (UCC Cork Multi-Text Project in History

. The dominance of the Catholic Church since the foundation of the State, has furnished a basis for inducing a similar discomfort on the part of minority religions. The consequence is to generate grounds for believing that overt religious advertising *even if directed only to events* but having as its evident object persuading persons to adopt the religious viewpoint of the advertiser, presents a particular sensitivity in Ireland.

***Broadcasting :***

12. Of course, one reason the prohibition entailed by the provisions which it is sought to challenge in these proceedings is not (it is submitted) in violation of the provisions of the Convention, arises from the fact that Irish law does not preclude the Applicant from communicating his message to the public *other* than by the broadcast media. The availability of other methods for expressing his view is of relevance in determining the extent to which there has been a violation of his Article 10 rights (see Jacobowski v. Germany Judgement of 23 June 1994 at para. 29).
  
13. This, however, brings into focus the particular considerations which apply in the context of regulation of the broadcast media, as opposed to print or other forms of communication. Such differential treatment is common in many areas of expression, and it is respectfully submitted (contrary to the suggestion at paragraph 14 of the Applicant's submissions of 28 December 2000) that such a distinction is not inconsistent with the Convention (and see Ioannou Ban on Publicity in the Light of the European Convention on Human Rights in Advertising in Europe (Kluwer 1994) at pp. 374-376, and Vgt Verein Gegen Tierfabriken v. Switzerland at para. 73). The authorities cited by the Applicant in this regard (Informationsverein Lentia v. Austria and Radio ABC v. Austria) do not establish the proposition seemingly contended for by the Applicant in this regard.

14. In fact, the difference in treatment of the differing media is explicable by reference to their historical development, and justifiable by reference to their impact, the different considerations that arise with a medium which in practical terms may not be as readily avoided by the listener or viewer as print or pure speech, and which may reflect the allocation by the State of a limited resource together with the fact (as recognised by the Court in Groppera Radio AG v. Switzerland) that national licensing systems are necessary for the orderly regulation of broadcasting enterprises. These considerations, of course, are reflected in European and international regulation of the broadcast media, notably in the EC Broadcasting Directive (89/552/EEC) and the Council of Europe Transfrontier Television Convention, both of which measures require constraints on the frequency and content of broadcast television advertisements, with the former including an express mandate that television advertising not be *offensive to religious ... beliefs* (Article 12(c)).
15. This latter mandate emphasises what is perhaps the critical feature of broadcast media as opposed to other media for the purposes of this application; the fact that broadcast media is through its impact and intrusiveness *offend* in a manner that the written word cannot. This concept of, and potential for, *offence* generates a very particular issue in the context of the regulation of religious expression.
16. In Ireland, the prohibition on religious advertising is found in the Broadcasting Authority Act 1960, section 20(4), the wording of which mirrors section 10(3) of the 1988 Act. When introducing the former legislation, the sponsoring Minister explained the rationale behind the prohibition in terms reflecting the various considerations referred to in the previous section of this submission. He observed that if advertisements directed towards religious 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* (52 Seanad Debates Cols. 476 February 10 1960). The provision was probably influenced by the fact that the Television Act 1954 in the United Kingdom contained a similar provision (Para. 6 Second Schedule). This was removed in 1990.

***The Calculus :***

17. In matching the provision which the Applicant seeks to contend violates the Convention against the competing considerations which the Respondent State is entitled to take into account in legislating within its margin of appreciation, the Court must factor a number of variables into its calculus. The message in issue here may on its face appear innocuous, but it is a message which is not merely informational, and which is underpinned by an evident belief in and propagation of a version of the resurrection (of which it proclaims there to be *evidence*), and of the status of Christ (described as *the son of the living God*). While the 2001 Act amends the 1998 Act to exempt from its terms the advertisement of the fact of an event, this does not demonstrate any necessary frailty in the Judgement of the Legislature reflected in the 1988 Act and, in any event, it remains to be seen whether this advertisement would be interpreted (for the reasons alluded to) as falling within the exemption provided for in the 2001 Act.
  
18. What is more important, however, is that if this Court is to determine that the terms of section 10(3) do violate the provisions of Article 10, it can only do so on the basis of a determination which overrides the view of the domestic legislature on an issue of the most sensitive social implication in which (perhaps uniquely) an external adjudicative body cannot replicate an understanding of the depth of feeling or degree of offence that religious proselytising, advertising or proclamation can generate. The entitlement of the legislature to *regulate* religious *expression* in principle, cannot be doubted. Its entitlement to thus *regulate* religious *advertising* must similarly follow. Once that entitlement is

recognised, the question that presents itself is how the permissible regulation is to be distinguished from the impermissible.

19. In particular, if religious advertising is to be permitted in principle, who is to decide what advertising will be permitted and what will not? Would it not be offensive, if not to the Convention then to particular religions, to have the State or an official, determining what is permissible and what is permissible content of religious advertising? If such advertising is permitted, are broadcasters to be obliged to carry it? If so, is this not an unacceptable interference with their rights of expression? If so, are they to be given the right to offend through declining certain types of advertisement, or to increase the prospect of dominant religions acquiring greater airspace through the application of their greater resources? Is it possible to limit the entitlement of larger wealthier religions to advertise, or to cap the amount of advertising for any one particular religion? Is this not a form of religious discrimination?
  
20. There may in particular social contexts be answers to these problems, and in some contexts they might not be problems at all. But this does not detract from the fact that they *may* be problematic, and that in some contexts, the State may be justified in making the decision reflected in the Irish Act; that the consequence of a complete freedom to engage in religious advertising may deeply offensive to some and that a prohibition on all religious advertising is fairer and less likely to cause offence and a feeling of victimisation, than none. It is to be noted that even in the context of *political* advertising, the Court has countenanced the prospect of a prohibition on advertising (see Vgt. Verein Gegen Tierfabriken v. Switzerland at para. 75).
  
21. These are questions which cannot be answered by pointing to the fact (if such it be) that the advertisements in issue here are largely informational and advise of an event. The Respondent State is entitled to believe that this may generate offence, and (as the advertisement in issue here demonstrates) the dividing line between

the mere imparting of information, and the underpinning of the message with contentious religious assumption, may not be readily drawn. In circumstances where the quality of the information which the Applicant is precluded from disseminating in this way is such as to generate a more diluted protection under the Convention, and in which he is free to disseminate that information in other ways, it is difficult to see how the decision to implement a general prohibition is outside the State's margin of appreciation.

***The particular problem of religion :***

22. This leads to the final point, which demonstrates a fundamentally false assumption underlying the Applicant's claim. It is central to his case that he is entitled to apply to religious expression the standards enunciated by the Court in Sunday Times v. United Kingdom, so that the protection afforded by Article 10 extends to the speech in question here, even if it *offends, shocks or disturbs* (para. 21, submission of 28 December 2000). This does illustrate the nature of the claim necessarily made by the Applicant. If this submission is correct, then nothing turns on the alleged innocuous nature of the advertisement in question. If the Applicant is correct he is entitled under the Convention to have broadcast advertisements of a religious nature that offend, shock and disturb.
  
23. This, of course, is a demonstrably wrong assumption, and it is an error which illustrates precisely why the Convention applies to religious expression a standard which is quite distinct from that applicable to speech not raising religious issue just as it illustrates precisely why the Applicant's claim is misconceived. Thus, religious offence is a basis for prohibitions upon otherwise acceptable and protected speech (Otto-Preminger Institute v. Austria) and this extends to speech in relation to which those who might be offended by publication and whom it is sought to protect, may never actually encounter it (Wingrove v. United Kingdom at para. 63). Indeed, uniquely, the existence of an *obligation* to prevent improper attacks on objects of religious veneration has been suggested (Otto-Preminger at

para. 49; Dubowska and Skup v. Poland Commission Decision 18 April 1997). This generates the necessity for a very particular approach to the question of religious expression, arising of course from the terms of the Convention itself (Kokkinakis v. Greece at para. 33), which in turn reflect the obvious fact that religious belief, which by definition is not the subject of reasoned decision making, is distinct from political or any other form of belief and presents an intensely personal and private matter. The regulation of that belief or expressions of it requires the taking account not merely of the rights of the prospective advertiser, but of other religions, of the broadcaster and of the rights of privacy and respect for religious beliefs of those persons who may be exposed to the advertisement. This is why, again perhaps uniquely, the existence of an absolute ban on advertisements of the nature in issue here will not merely fall plainly within the Contracting State's margin of appreciation, but may provide a solution to a problem which is in fact fairer and more respectful of religious difference and the competing rights of third parties, than the permitting of partial or regulated religious advertisement. This, it seems, was precisely the consideration which led the Court in United Christian Broadcasters v. UK to conclude that a restriction designed to prevent discrimination is within the State's margin of appreciation.

**Brian Murray SC**

**Donal O'Donnell SC**

Minister,

You may wish to discuss. We could discuss broadly in terms of the Forum Report or specifically in terms of European Court decision referred to in ultimate paragraph of this submission.

- 1. Mr. Molloy *ei 23/10/2002*
- 2. Secretary General *[Signature]*
- 3. Rúnai Aire

**Ban on Religious Advertising and European Court of Human Rights – Roy Murphy v Ireland**

*B. J. J. J.*  
*30*  
*10*  
*02*

**Ban on Religious Advertising**

- 1. The Minister has asked that the Department review the legislative provisions which impose a ban on religious advertising, to determine whether a basis exists for consideration of amendments to the existing legislation.
- 2. The ban on religious advertising is provided for in Section 20(4) of the Broadcasting Authority Act 1960 which states that:

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

The ban on religious advertising is extended to the independent radio and television sector by Section 10(3) of the Radio and Television Act 1988 which mirrors the provision in the 1960 Act.

- 3. The Government considered relaxing the ban on religious advertising on a number of occasions in 1999 when the then Broadcasting Bill was being drafted. Following discussions between the Department of Arts, Heritage, Gaeltacht and the Islands and the Office of the Attorney General two broad options were identified. ~~The first option, which was the Minister for Arts, Heritage, Gaeltacht and the Islands' preferred option, was to simply repeal the prohibition. The second option considered was to introduce a more selective prohibition.~~
- 4. The advice of the Office of the Attorney General was that it would be both possible and constitutional to introduce a more selective prohibition. Accordingly it would be possible to give the BCI powers to prohibit advertising directed towards a religious end that was offensive to public order and morality. However, any measure that might be introduced would have to be clearly proportionate and could not allow the BCI to discriminate on religious grounds alone. A number of safeguards would have to be built into the legislation to ensure that the provisions in the Constitution in relation to

freedom of expression, profession of religious belief and freedom from discrimination on religious grounds would be respected. It was considered that it would be necessary to introduce measures which would have to provide for:

- the seeking of views by the BCI
  - the explanation of reasons for a particular decision by the BCI,
  - the challenging of decisions by the BCI
  - express provision for a review of BCI decisions either in the Courts or through some other mechanism
5. The BCI would have to walk a thin line between, on the one hand, freedom of expression and free profession and practice of religion and, on the other, the need to maintain public order and morality. It was the view of the Minister for Arts, Heritage, Gaeltacht and the Islands at the time that this would have left the then IRTC in an extremely difficult position with an almost constant threat of court action in this specific area.
  6. A repeal of the blanket prohibition (either through a full repeal or the introduction of a more selective ban) will increase the risk of the transmission of religious advertising that might cause offence or cause concern. With regard to advertising that contains offensive material, the Codes of standards, practice and prohibitions in advertising, sponsorship and other forms of commercial promotion in broadcasting services provide some protection. These Codes, which are drawn up by the Minister under the Broadcasting Act, 1990, prohibit advertisements which are offensive to religious or political beliefs. The 2001 Act provides for responsibility for the Codes transferring to the BCI.
  7. An additional concern would be that, if the blanket ban is removed, it might be possible that a cult or a quasi-religious organisation could seek to transmit advertisements which in themselves are not offensive but may give rise to concern because of the nature of the organisation which presents the advertisement. However, it would be very difficult to prevent advertising which does not of itself cause offence even if a more selective prohibition was introduced rather than a total repeal.
  8. The essential question to be answered on this issue is whether Ireland as a society needs the protection provided by the blanket ban on the broadcasting of advertising directed towards a religious end. While there may be a case for the specific regulation of religious advertising, it is clear that this would be a very difficult matter and might create more problems than it would solve. In October 1999 the Government considered a proposal from the Minister for Arts, Heritage, Gaeltacht and the Islands to repeal the ban on religious advertising. The Government decided against repealing the advertisement, but

opted instead to lift the ban in the case of advertising of religious newspapers or programmes and in the case of notice-board type advertisements of religious events. Effect was given to this decision by Section 65 of the Broadcasting Act, 2001. The practical impact of the relaxation of the ban on religious advertising is that advertisements such as the recent "Power to Change" advertisements may be carried by a broadcaster in Ireland. In that particular case the version of the advertisement carried by broadcasters under Irish jurisdiction was different to the version carried by UK broadcasters widely available in Ireland.

9. When the Government considered the question of relaxing the ban on religious advertising in 1999 the option of a public consultation on the matter was ruled out due to time constraints relating to the passage of the legislation. If it is decided to reopen the debate then the option of a consulting widely should be considered.

#### **European Court of Human Rights – Roy Murphy v Ireland**

10. In November of this year the European Court of Human Rights (Council of Europe) will hold a hearing in the above case. The essence of the complaint made to the Court is that the ban on religious advertising contained in Irish law contravenes the European Convention on Human Rights as it restricts the freedom to express religious beliefs and freedom of expression.
11. This case stems from a decision of the IRTC in 1995 not to allow a local independent radio station to carry an advertisement from the Irish Faith Centre; a bible based Christian ministry in Dublin. A judicial review of the decision of the IRTC was sought and both the High Court and the Supreme Court considered the matter. The Supreme Court considered whether the ban on religious advertising contravened Articles 40(3) and 40(6)(1) of the Constitution by restricting the applicant's freedom to communicate and freedom of expression and found that it did not. Attached is a copy of the notification from the European Court of Human Rights, which sets out the background to the case in some detail. A copy of the submission to the Court prepared under the direction of the Department of Foreign Affairs is also attached.

#### **Conclusion**

12. At present Ireland has the option of leaving the ban in places, removing it, or relaxing it. The question, which the European Court of Human Rights has been asked to consider, is whether Ireland's ban on religious advertising contravenes the European Convention on Human Rights. If the Court were to find that the ban contravenes the Convention then this would reduce the options to removing or relaxing the ban.

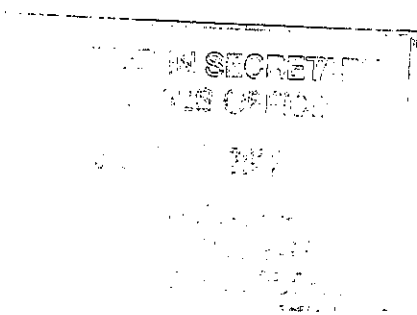
It is recommended that we proceed on the following basis:

- (i) await the outcome of the Court so as that the range of options available will be clear
- (ii) following a decision of the Court engage in a public consultation on the matter as part of a wider consultation that is likely to be initiated arising from decisions to be taken in relation to the recommendations of the Forum on Broadcasting.

Ciarán Ó hÓbáin

29 October 2002

Maybe we should brief Govt after the decision of the Court & then seek their based on Govt. decision.



Agreed  
DA  
31/10/

B.P.  
B.P.  
30  
10  
02

I think after the Court decision I should brief each and for Govt.  
DA

**Ó hÓbáin, Ciarán**

---

**From:** Ciaran O Cuinn [Ciaran.OCuinn@dcmnr.gov.ie]

**Sent:** 07 January 2003 12:26

**To:** Ó hÓbáin, Ciarán; Ciaran O'Hobain

## **Dermot Ahern To Examine Ban on Religious Advertising**

Consultation On the Issues Required Dublin, Friday, 27 December 2002  
Dermot Ahern T.D., Minister for Communication, Marine & Natural Resources today announced his intention to commence a public consultation on the ban of religious advertising on our airwaves.

***The ban on religious is more than forty years old. It was enacted in a society where religious issues were more contentious and divisive. The question now arises whether Ireland today needs this type of protection .***

***Acknowledging the complexities and sensitivities in this area, I have decided to initiate a process of public consultation on this issue as a prelude to my decision on whether to repeal the ban.***

***This consultation will be open to all interested parties the churches, broadcasters, and general public. It is to be hoped that this process will assist us in eliciting in advance of my decision, all of the complex issues involved.***

***Amongst factors to be considered will be the finding of the European Court of Human Rights in the Roy Murphy v Ireland case which concerns the ban on religious advertising. The Court is expected to deliver its findings in February.***

***It is important to state that in the event of repeal of the ban all religious advertising would come under the remit of the existing codes and Standards of Broadcast Advertising and Sponsorship.***

***The new broadcasting standards and codes which the BCI is presently drawing-up would protect against offensive advertisements in this area into the future.***

***My Department will shortly be placing newspaper advertisements inviting submissions to the consultation. Submissions will also be welcome through an online forum which will be established on my departmental website.***

### **ENDS.**

**For further information, please contact:**

**Richard Moore**

**Press Advisor**

**Department of Communications, Marine and Natural Resources**

**Leeson Lane**

08/01/03

Joe Meleady

---

**From:** Ciaran O'Hobain  
**Sent:** 29 January 2003 10:42  
**To:** Joe Meleady  
**Subject:** FW:

-----Original Message-----

**From:** Ciaran O Cuinn [mailto:Ciaran.OCuinn@dcmnr.gov.ie]  
**Sent:** 07 January 2003 12:26  
**To:** Ó hÓbáin, Ciarán; Ciaran O'Hobain  
**Subject:**

## **Dermot Ahern To Examine Ban on Religious Advertising**

Consultation On the Issues Required Dublin, Friday, 27 December 2002  
Dermot Ahern T.D., Minister for Communication, Marine & Natural Resources today announced his intention to commence a public consultation on the ban of religious advertising on our airwaves.

***The ban on religious is more than forty years old. It was enacted in a society where religious issues were more contentious and divisive. The question now arises whether Ireland today needs this type of protection .***

***Acknowledging the complexities and sensitivities in this area, I have decided to initiate a process of public consultation on this issue as a prelude to my decision on whether to repeal the ban.***

***This consultation will be open to all interested parties the churches, broadcasters, and general public. It is to be hoped that this process will assist us in eliciting in advance of my decision, all of the complex issues involved.***

***Amongst factors to be considered will be the finding of the European Court of Human Rights in the Roy Murphy v Ireland case which concerns the ban on religious advertising. The Court is expected to deliver its findings in February.***

***It is important to state that in the event of repeal of the ban all religious advertising would come under the remit of the existing codes and Standards of Broadcast Advertising and Sponsorship.***

***The new broadcasting standards and codes which the BCI is presently drawing-up would protect against offensive advertisements in this area into the future.***

***My Department will shortly be placing newspaper advertisements inviting submissions to the consultation. Submissions will also be welcome through an online forum which will be established on my departmental website.***

**EA S.**

**For further information, please contact:**

**Richard Moore**

**Press Advisor**

**Department of Communications, Marine and Natural Resources**

**Leeson Lane**

**Dublin 2**

**Tel: +353-(0) 1-678-2440**

**Fax: +353-(0) 1-676-6161**

**Or**

**Tom Mc Loughlin**

**Press Officer**

**Department of Communications, Marine and Natural Resources**

**Leeson Lane**

**Dublin 2**

**Tel: +353-(0) 1-678-2441**

**Fax: +353-(0) 1-676-6161**

**Parliamentary Question.**

**Dáil Eireann.**

To ask the Minister for Communications, Marine and Natural Resources the nature of the proposed public consultation on the ban on religious advertising on the airwaves; and if he will make a statement on the matter.

-Ruairi Quinn (Nominated by Thomas P. Broughan).

For ORAL answer on Wednesday, 29<sup>th</sup> January, 2003

**Ref No 1828/03**

---

**REPLY**

**Minister for Communications, Marine and Natural Resources (Mr. D. Ahern)**

It is my intention to shortly commence a public consultation process on the ban on religious advertising on our airwaves. To this end my Department will soon place advertisements in national newspapers and on the Department's website inviting comments and submission from interested parties on the matter. The consultation process will be open to all interested parties, including, churches, broadcasters, and the general public. I will consider the submissions received before bringing a proposal to Government.

558603

## **Department of Communications, Marine and Natural Resources**

**Roinn Cumarsáide, Mara agus Achmhainní Nádurtha**

### **MINISTER DERMOT AHERN INVITES COMMENTS ON THE BAN ON RELIGIOUS ADVERTISING**

The Minister for Communications, Marine and Natural Resources, Dermot Ahern TD, announced his intention to commence a public consultation on the ban of religious advertising on our airwaves on Friday 27<sup>th</sup> December 2002.

The current legislation (Section 64 of the Broadcasting Act, 2001) provides that religious advertising may be broadcast so long as it ‘does 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’

The question now arises whether Ireland today needs this type of protection. Acknowledging the complexities and sensitivities in this area, the Minister has decided to initiate a process of public consultation on this issue as a prelude to my decision on whether to repeal the ban.

It is important to state that in the event of repeal of the ban all religious advertising would come under the remit of the existing codes and Standards of Broadcast Advertising and Sponsorship.

The Minister now invites comments on Religious advertising and urges anyone with an interest in the subject to have their say.

Comments should be directed to Sheila Clifford at ...

An online forum will also be established on the website.

Inviting comments 28<sup>th</sup> February

**Department of Communications, Marine and Natural Resources**

**Roinn Cumarsáide, Mara agus Achmhainní Nádurtha**

**MINISTER DERMOT AHERN INVITES COMMENTS ON THE BAN ON RELIGIOUS ADVERTISING**

The Minister for Communications, Marine and Natural Resources, Dermot Ahern TD, announced his intention to commence a public consultation on the ban of religious advertising on our airwaves on Friday 27<sup>th</sup> December 2002.

The current legislation (Section 64 of the Broadcasting Act, 2001) provides that religious advertising may be broadcast so long as it 'does 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'

The question now arises whether Ireland today needs this type of protection. Acknowledging the complexities and sensitivities in this area, the Minister has decided to initiate a process of public consultation on this issue as a prelude to any decision on whether to repeal the ban.

It is important to state that in the event of repeal of the ban all religious advertising would come under the remit of the existing codes and Standards of Broadcast Advertising and Sponsorship.

The Minister now invites comments on Religious advertising and urges anyone with an interest in the subject to have their say.

Comments should be directed to Sheila Clifford at ...

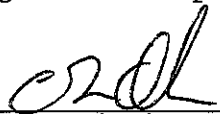
An online forum will also be established on the website.

Inviting comments 28<sup>th</sup> February

Rúnai Aire

**Public consultation on the ban on religious advertising**

Please find attached a proposed notice to be published in the national media announcing a public consultation on the ban on religious advertising. It is intended to give interested parties 4 weeks to make submissions.



Ciarán Ó hÓbáin  
21 February 2003

**Department of Communications, Marine and Natural Resources.**

**An Roinn Cumarsáide, Mara agus Acmhainní Nádurtha.**

Mr. Dermot Ahern T.D., Minister for Communications, Marine and Natural Resources has decided to review the legislative provisions that impose a ban on religious advertising on Irish radio and television services.

The ban on religious advertising on RTE is provided for in Section 20(4) of the Broadcasting Authority Act 1960 which states that:

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

The ban on religious advertising is extended to the independent radio and television sector by Section 10(3) of the Radio and Television Act 1988 which mirrors the provision in the 1960 Act.

Section 65 of the Broadcasting Act, 2001 provides that the ban on religious advertising does not prevent the broadcasting of a notice of the fact that a particular religious newspaper, magazine or periodical is available for sale or supply, or 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.

As part of his review the Minister now invites submissions from interested parties in the matter. An online forum will be established on the Department's website and submissions received electronically will be posted to the website.

The closing date for receipt of submissions is 31 March, 2003. Submissions should be provided in an electronic format or hard copy, if preferred, and should be sent to: Joe Meleady, Broadcasting Policy Division, Department of Communications, Marine and Natural Resources, 29-31 Adelaide Road, Dublin 2 (Telephone No (01) 6783094, Fax No (01) 6783099, E-mail;joe.meleady@dcmnr.gov.ie

Rúnaí Aire

✓ EC 24/1/03

**Public consultation on the ban on religious advertising**

Please find attached a proposed notice to be published in the national media announcing a public consultation on the ban on religious advertising. It is intended to give interested parties 4 weeks to make submissions.



Ciarán Ó hÓbáin  
21 February 2003

**Department of Communications, Marine and Natural Resources.**

**An Roinn Cumarsáide, Mara agus Acmhainní Nádurtha.**

### **Minister Dermot Ahern TD to Review Ban on Religious Advertising**

Mr. Dermot Ahern T.D., Minister for Communications, Marine and Natural Resources has decided to review the legislative provisions that impose a ban on religious advertising on Irish radio and television services.

The ban on religious advertising on RTÉ is provided for in Section 20(4) of the Broadcasting Authority Act 1960 which states that:

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

The ban on religious advertising is extended to the independent radio and television sector by Section 10(3) of the Radio and Television Act 1988 which mirrors the provision in the 1960 Act.

Section 65 of the Broadcasting Act, 2001 provides that the ban on religious advertising does not prevent the broadcasting of a notice of the fact that a particular religious newspaper, magazine or periodical is available for sale or supply, or 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.

As part of his review the Minister now invites submissions from interested parties in the matter. An online forum will be established on the Department's website and submissions received electronically will be posted to the website.

The closing date for receipt of submissions is 31 March, 2003. Submissions should be provided in an electronic format or hard copy, if preferred, and should be sent to: Joe Meleady, Broadcasting Policy Division, Department of Communications, Marine and Natural Resources, 29-31 Adelaide Road, Dublin 2 (Telephone No (01) 6783094, Fax No (01) 6783099, E-mail:joe.meleady@dcmnr.gov.ie .

**Seen by Minister**

**Date:** 25/2/03 EC

**Joe Meleady**

---

**From:** Joe Meleady  
**Sent:** 27 February 2003 16:50  
**To:** 'info@brindleyadv.ie'  
**Subject:** Advertisement re religious advertising.

Val,  
As discussed, attached is a copy of the advertisement which it is proposed to have inserted in the three main dailys on Monday next 3rd March. Can you please let me have a quotation for publication, proofs etc.



Religious  
Advertisement.doc

Joe Meleady.  
Broadcasting Policy Division.

**Department of Communications, Marine and Natural Resources.**

**An Roinn Cumarsáide, Mara agus Acmhainní Nádurtha.**

### **Minister Dermot Ahern TD to Review Ban on Religious Advertising**

Mr. Dermot Ahern T.D., Minister for Communications, Marine and Natural Resources has decided to review the legislative provisions that impose a ban on religious advertising on Irish radio and television services.

The ban on religious advertising on RTÉ is provided for in Section 20(4) of the Broadcasting Authority Act 1960 which states that:

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

The ban on religious advertising is extended to the independent radio and television sector by Section 10(3) of the Radio and Television Act 1988 which mirrors the provision in the 1960 Act.

Section 65 of the Broadcasting Act, 2001 provides that the ban on religious advertising does not prevent the broadcasting of a notice of the fact that a particular religious newspaper, magazine or periodical is available for sale or supply, or 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.

As part of his review the Minister now invites submissions from interested parties in the matter. An online forum will be established on the Department's website and submissions received electronically will be posted to the website.

The closing date for receipt of submissions is 31 March, 2003. Submissions should be provided in an electronic format or hard copy, if preferred, and should be sent to: Joe Meleady, Broadcasting Policy Division, Department of Communications, Marine and Natural Resources, 29-31 Adelaide Road, Dublin 2 (Telephone No (01) 6783094, Fax No (01) 6783099, E-mail:joe.meleady@dcmnr.gov.ie



# BRINDLEY ADVERTISING

Brindley Advertising Ltd., Brindley House, 17 Upper Mount St., Dublin 2. Tel: 6767467, Fax: 6767577

## FAX

**N.B. IF ALL PAGES DO NOT TRANSMIT, OR IF ANY PAGES ARE ILLEGIBLE,  
PLEASE CONTACT US.**

DATE: 27 Feb 03

FAX NO: .....

MESSAGE TO: Communications

ATTENTION OF: Joe

FROM: Val

TOTAL NUMBER OF PAGES (INCL. TOP SHEET): Two

DESCRIPTION: Proof & Casting

<u>IR Times</u>	<u>€3,396</u>
<u>IR Independent</u>	<u>€3,600</u>
<u>IR Examiner</u>	<u>€1,890</u>
<u>Production</u>	<u>€762</u>

above excl VAT @ 21%

9,648

2026-05 617

TOTAL: €11,674 - 08% inc VAT

Directors: Basil Brindley MIAPI (Chairman), Berenice Brindley, D.J. Brindley MIAPI, Eileen Byrne (Secretary), Michael McCabe

RECEIVED TIME 27. FEB. 17:31

NOTE: Val advised to proceed  
subject to insertion of  
'Comm' after B.A. Act on  
line by He. will forward  
final proof for our file  
gr.

DEPARTMENT OF COMMUNICATIONS, MARINE AND NATURAL RESOURCES  
 ROINN CUMARSAÍDE, MARA AGUS ACMHAINNÍ NÁDURTHA

## **Minister Dermot Ahern TD to Review Ban on Religious Advertising**

Mr. Dermot Ahern T.D., Minister for Communications, Marine and Natural Resources has decided to review the legislative provisions that impose a ban on religious advertising on Irish radio and television services.

The ban on religious advertising on RTÉ is provided for in Section 20(4) of the Broadcasting Authority Act, 1960 which states that:

*"the Authority shall not accept any advertisement which is directed towards any religious or political end or has any relation to any industrial dispute"*

The ban on religious advertising is extended to the independent radio and television sector by Section 10(3) of the Radio and Television Act 1988 which mirrors the provision in the 1960 Act.

Section 65 of the Broadcasting Act, 2001 provides that the ban on religious advertising does not prevent the broadcasting of a notice of the fact that a particular religious newspaper, magazine or periodical is available for sale or supply, or 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.

As part of his review the Minister now invites submissions from interested parties in the matter. An online forum will be established on the Department's website and submissions received electronically will be posted to the website.

The closing date for receipt of submissions is 31 March, 2003. Submissions should be provided in an electronic format or hard copy, if preferred, and should be sent to:

Joe Meleady,  
 Broadcasting Policy Division,  
 Department of Communications, Marine and Natural Resources,  
 29-31 Adelaide Road, Dublin 2.

Telephone No (01) 6783094, Fax No (01) 6783099,  
 E-mail: [joe.meleady@dcmnr.gov.ie](mailto:joe.meleady@dcmnr.gov.ie)





353 1 6767577



# BRINDLEY ADVERTISING

Brindley Advertising Ltd., Brindley House, 17 Upper Mount St., Dublin 2. Tel: 6767467, Fax: 6767577

## FAX

**N.B. IF ALL PAGES DO NOT TRANSMIT, OR IF ANY PAGES ARE ILLEGIBLE,  
PLEASE CONTACT US.**

DATE: 27 Feb 03

FAX NO: \_\_\_\_\_

MESSAGE TO: Communications

ATTENTION OF: Joe

FROM: VEI

TOTAL NUMBER OF PAGES (INCL. TOP SHEET): Two

DESCRIPTION: Review  
proof + casting

Monday

IR Times      €3,396

IR Independent      €3,600

IR Examiner      €1,890

Production      €762

above excl VAT @ 21%

353 1 6767577

DEPARTMENT OF COMMUNICATIONS, MARINE AND NATURAL RESOURCES  
ROINN CUMARSAÍDE, MARA AGUS ACMHAINNÍ NADURTHA

## **Minister Dermot Ahern TD to Review Ban on Religious Advertising**

Mr. Dermot Ahern T.D., Minister for Communications, Marine and Natural Resources has decided to review the legislative provisions that impose a ban on religious advertising on Irish radio and television services.

The ban on religious advertising on RTÉ is provided for in Section 20(4) of the Broadcasting Authority Act, 1960 which states that:

*"the Authority shall not accept any advertisement which is directed towards any religious or political end or has any relation to any industrial dispute"*

The ban on religious advertising is extended to the independent radio and television sector by Section 10(3) of the Radio and Television Act 1988 which mirrors the provision in the 1960 Act.

Section 65 of the Broadcasting Act, 2001 provides that the ban on religious advertising does not prevent the broadcasting of a notice of the fact that a particular religious newspaper, magazine or periodical is available for sale or supply, or 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.

As part of his review the Minister now invites submissions from interested parties in the matter. An online forum will be established on the Department's website and submissions received electronically will be posted to the website.

The closing date for receipt of submissions is 31 March, 2003. Submissions should be provided in an electronic format or hard copy, if preferred, and should be sent to:

Joe Meleady,  
Broadcasting Policy Division,  
Department of Communications, Marine and Natural Resources,  
29-31 Adelaide Road, Dublin 2.

Telephone No (01) 6783094, Fax No (01) 6783099,  
E-mail: [joe.meleady@dcmnr.gov.ie](mailto:joe.meleady@dcmnr.gov.ie)

# Minister Dermot Ahern TD to Review Ban on Religious Advertising

Mr. Dermot Ahern TD, Minister for Communications, Marine and Natural Resources, has decided to review the legislative provisions that impose a ban on religious advertising on Irish radio and television services.

The ban on religious advertising on RTE is provided for in Section 20(4) of the Broadcasting Authority Act, 1960 which states that:

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

The ban on religious advertising is extended to the independent radio and television sector by Section 10(3) of the Radio and Television Act 1988 which mirrors the provision in the 1960 Act.

Section 65 of the Broadcasting Act, 2001 provides that the ban on religious advertising does not prevent the broadcasting of a notice of the fact that a particular religious newspaper, magazine or periodical is available for sale or supply, or 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.

As part of his review the Minister now invites submissions from interested parties in the matter. An online forum will be established on the Department's website and submissions received electronically will be posted to the website.

The closing date for receipt of submissions is 31 March, 2003. Submissions should be provided in an electronic format or hard copy, if preferred, and should be sent to:

Joe Meleady,  
Broadcasting Policy Division,  
Department of Communications, Marine and Natural Resources,  
29-31 Adelaide Road, Dublin 2.  
Telephone No (01) 6783094, Fax No (01) 6783099,  
E-mail: joe.meleady@dcmr.gov.ie



**Joe Meleady**

---

**From:** Joe Meleady  
**Sent:** 28 February 2003 12:27  
**To:** sec.office  
**Subject:** FW: Newspaper advertisements re religious advertising.

-----Original Message-----

**From:** Joe Meleady  
**Sent:** 28 February 2003 12:24  
**To:** Catherine McDonald  
**Subject:** Newspaper advertisements re religious advertising.

Catherine,  
Please see attached for information a copy of an advertisement which will appear in the Times, Independent and Examiner on Monday next dealing with the proposed review of the ban on religious advertising.



Religious  
Advertisement.doc

Joe Meleady.  
Broadcasting Policy Division.

**Joe Meleady**

---

**From:** Joe Meleady  
**Sent:** 28 February 2003 12:18  
**To:** Ciaran O Cuinn  
**Subject:** Newspaper advertisements re religious advertising

Ciaran,

Attached for information is a copy of an advertisement which will appear in the Times, Independent and Examiner on Monday next dealing with the proposed review of the ban on religious advertising.



Religious  
Advertisement.doc

Joe Meleady.  
Broadcasting Policy Division.