

***Murphy v Independent Radio and Television Commission***

[1999] 1 I.R. 12, [1998] 2 I.L.R.M. 360 (28 May 1998)

[1999] 1 I.R. 12, [1997] 2 I.L.R.M. 467, [\[1997\] IEHC 71](#) (25 April 1997) affirmed

**THE SUPREME COURT**

**Hamilton C.J.**

**O'Flaherty J.**

**Denham J.**

**Barrington J.**

**Keane J.**

**Judicial Review No. 1995/314 JR**

**S.C. Appeal No. 191 of 1997**

**Roy Murphy**

**Applicant/Appellant**

**AND**

**The Independent Radio and Television Commission**

**and**

**The Attorney General**

**Respondents**

**JUDGMENT of the Supreme Court delivered pursuant to Article 34.4.5 of the Constitution on the 28th day of May 1998 by Mr. Justice Barrington**

1. This is an appeal from the Judgment and Order of Mr. Justice Geoghegan delivered and made herein on the 25th April, 1997.
2. The Applicant/Appellant is a Pastor attached to the Irish Faith Centre, a bible based Christian Ministry. The Centre is not an incorporated body and the Applicant makes the application on his own behalf and on its behalf.
3. In these proceedings the Applicant challenges a decision of the Independent Radio and Television Commission made in March 1995 to refuse to permit an independent radio station, 98FM, to broadcast the following advertisement which had been submitted by the Centre for transmission:-

"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".

4. The Broadcasting Station, 98FM, was prepared to broadcast the advertisement. The Independent Radio and Television Commission however felt itself bound by the provisions of section 10(3) of the Radio and Television Act, which 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".

and banned the broadcast.

5. In the Court below the Applicant made a two-pronged attack upon the decision of the Commission. He submitted first that the decision of the Commission that the advertisement was "directed towards any religious ... end" was mistaken in law. Alternatively he submitted that if the Commission had correctly construed section 10(3) as prohibiting the publication of an advertisement such as that of the Applicant then the sub-section was unconstitutional.

6. The submission that the Commission had misunderstood the nature of the advertisement or misconstrued the terms of the Section was never advanced with great force and was abandoned in the course of the hearing in this Court. The debate therefore turned upon the constitutionality of the sub-section. The Applicant submitted that the sub-section, by totally banning advertisements directed towards any religious end violated guarantees of freedom of religion contained in Article 44(2)(1) and (3) of the Constitution. He also submitted that they violated guarantees of free speech and free expression contained in Article 40(6) of the Constitution and guarantees of communication implied in Article 40(3) of the Constitution. Moreover he submitted that section 10(3), constituting as it did a total ban on the broadcasting of any advertisement "directed towards any religious end", swept far too widely and violated the principle of proportionality.

#### *Relevant Constitutional Provisions*

7. The Constitutional Provisions relied upon by the Applicant read as follows:-

Article 44.

- 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.

Article 40

- 3.1 The State guarantees in its laws to respect, and, as far as practicable, by its laws to 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 law.

### *High Court Judgment*

8. The learned High Court Judge rejected the submission that the prohibition contained in section 10(3) of the 1988 Act was an attack on the freedom of conscience or the free profession or practice of religion guaranteed by Article 44(2)(1) of the Constitution. The prohibition on this particular advertisement, he held, was not an attack on freedom of conscience or the free practice of religion. Indeed, he held that the advertisement itself "might be an intrusion on the quiet possession of religious beliefs". Nor, he held, could the advertisement be regarded as a discrimination made on the grounds of religious profession belief or status contrary to Article 44(2)(3) of the Constitution. This latter provision, he held, prohibited the making of distinctions on the grounds of religious profession belief or status (see *Quinns Supermarket v. Attorney General* [1972] I.R. 1) but the ban on this type of advertisement, did not distinguish between persons on the grounds of religious profession belief or status. This ban applied, no matter what the religion, and therefore there could be no question of religious discrimination involved.

### *Article 40*

9. The learned trial Judge next turned to the submission based upon the alleged violation of an implied right to communicate based on Article 40(3)(1) of the Constitution and the right to freedom of expression guaranteed by Article 40(6)(1) of the Constitution. The learned High Court Judge was at some loss to understand the conclusion which some people have drawn from the decision of Costello P. in *Attorney General v. Paperlink Limited* [1984] I.L.R.M. 373 that the right to

communicate information derives from Article 40(3)(1) but that the right to communicate opinions derives from Article 40(6)(1) of the Constitution. Nevertheless he held that the present case raised the question of the general right to communicate and this, he concluded, derived from Article 40(3) of the Constitution. In the view he took of the case Article 40(6)(1) of the Constitution was not relevant.

10. He held that Article 40(6)(1) was not relevant for two reasons. First, he held, that the proposed advertisement was not primarily concerned with matters of opinion but had, as its principal purpose, the communication of information. Secondly he held that Article 40(6)(1) did not seem to have any application to the right of a private citizen to express private opinions with a view to influencing some other person or persons.

11. At the same time the learned trial Judge expressed some puzzlement as to why such diverse rights as the right to freedom of expression, the right to free assembly and the right to join associations and unions should be referred to collectively in one paragraph at Article 40(6)(1) of the Constitution. Superficially the rights would seem to refer to quite different matters but nevertheless the learned High Court Judge, took the view, that the framers of the Constitution had deliberately included them in the one sub-section for a reason. He drew the conclusion that the reason was that they were concerned with the influencing of public opinion. An advertisement, and in particular a religious advertisement, was however directed to the individual listener and for that reason he drew the conclusion that Article 40(6)(1) had nothing to do with the matter at issue in this case.

12. The case therefore turned upon the provisions of Article 40(3)(1). The learned trial Judge accepted that the rights guaranteed by Article 40(3) were not absolute but might be regulated in the interests of the common good. He then drew an analogy with Article 10 of the European Convention on Human Rights (which deals with freedom of expression) and asked himself if the restriction on the advertisement in question would be regarded as a reasonable limitation on freedom of expression by the European Court of Human Rights.

13. "What would be considered reasonable limitations under that Article should equally ..." he said "be considered reasonable limitations under Article 40(3) of the Constitution".

14. Having considered the cases on Article 10 of the European Convention on Human Rights he reached the conclusion that for a restriction to survive under that Article it was not essential to show that the ban was absolutely necessary. He continued:-

"It is sufficient, in my view, if there are 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 the Oireachtas may well have taken into account. As McCullough J. pointed out,<sup>1</sup> 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 Oireachtas 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 interests of the common good on this particular form of exercise of the right to communicate".

#### *Proportionality*

15. The learned trial Judge then went on to deal with the submission that the prohibition in the present case was a blanket prohibition and therefore offended the principle of proportionality. The learned trial Judge said that he could not accept this view. He added:-

"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"

16. He accordingly concluded that the sub-section was not invalid having regard to the provisions of the Constitution.

---

<sup>1</sup> In *Regina v. Radio Authority, ex parte Bull* [1995] 3 W.L.R. 572, 591.

## *Submissions of Applicant/Appellant*

### *Article 44*

17. The Applicant/Appellant submitted that section 10(3) of the 1988 Act constituted a manifest discrimination or distinction on the grounds of religious profession and belief and thus violated Article 44 2.3 as interpreted in *Quinns Supermarket v. Attorney General* [1972] IR 1. Had the Plaintiff attempted to advertise any other form of meeting or video display he would have been perfectly free to do so. It was only because the advertisement was interpreted as directed towards a religious end that its publication was prohibited. This, the Plaintiff submitted, constituted a discrimination or distinction on the ground of the Applicant's religious profession belief or status.

18. The Plaintiff also claimed support for this interpretation from the judgment of the US Supreme Court in *Rosenberger v. University of Virginia* 132 L.Ed. 2d 700 (1995). In that case the United States Supreme Court condemned a decision of the University of Virginia to refuse to grant funding to a Christian student newspaper while supporting similar secular student publications. The case turned upon the establishment clause in the American Constitution but the Plaintiff found support in the following statement of principle of Rehnquist C.J. (at page 726 of the Report) where he stated:-

"The viewpoint discrimination inherent in the University's regulations required public officials to scan and interpret student publications to discern their underlying philosophic assumptions respecting religious theory and belief. That course of action was a denial of the right of free speech and would risk fostering a pervasive bias of hostility to religion, which could undermine the very neutrality the establishment clause requires".

### *Article 40(6)(1) and Article 40(3)(1)*

19. The Applicant submitted that the restriction clearly interfered with the Applicant's unspecified constitutional right to communicate guaranteed by Article 40(3)(1) and with his right of freedom of expression guaranteed by Article 40(6)(1). It was not just a question of interfering with the Plaintiff's private right to express his

convictions and opinions. It was also an interference with his public right of freedom of expression.

### *Proportionality*

20. The Plaintiff further submitted that the ban imposed by section 10(3) was not only an interference with his rights guaranteed by Article 40 and Article 44 of the Constitution but was a disproportionate interference with them. There was no necessity for the sub-section to sweep so widely and it offended the principle of proportionality as expounded by these Courts in numerous decisions including *Cox v. Ireland* [1992] 2 IR 503; *In re Article 26 of the Constitution and the Matrimonial Homes Bill*, 1993 [1994] 1 IR 305, and *Heaney v. Ireland* [1994] 3 IR 593.

21. Moreover the Plaintiff submitted that, even if one accepted that some forms of religious advertising might be offensive to some citizens, there was no impracticality in having a more sophisticated control whereby, through some form of administrative action, religious advertisements likely to cause offence might be banned while innocuous religious advertisements might be permitted.

### *Defendants Submissions*

#### *Article 44*

22. Mr. Rogers, Senior Counsel, on behalf of the Attorney General submitted that the learned High Court Judge had been perfectly right to find that section 10(3) did not offend Article 44 of the Constitution. The sub-section, he submitted, in no way impeded freedom of conscience or the free profession or practice of religion and did not constitute a discrimination on the grounds of religious profession belief or status.

#### *Article 40(3) and Article 40(6)(1) of the Constitution*

23. Counsel for the Attorney General referred to the fact that the learned trial Judge had held that Article 40(6)(1) had no relevance to the case, firstly, because the advertisement in question was principally concerned with communication of information and the source of this right is Article 40(3) and, secondly, because the



advertisement was addressed to individual listeners and was not concerned with the influencing of public opinion. While Counsel agreed that Article 40(6)(1) was not relevant to the Applicant/Appellant's case he nonetheless submitted that the learned trial Judge's interpretation of Article 40(6)(1) as being confined to communications intended to influence public opinion was overly restrictive and that the learned trial Judge had erred in law in this respect. Again Counsel submitted that the case was essentially to be determined on the basis of the right to communicate guaranteed by Article 40(3)(1). But accepting that there was a right to communicate guaranteed by Article 40(3)(1) he submitted that the restriction contained in section 10(3) was a legitimate restriction; that it was reasonable for the Oireachtas to decide to impose that restriction; and that the learned trial Judge was correct in holding that this was a legitimate exercise of legislative power on the part of the Oireachtas. At the same time Counsel demurred at the suggestion of the learned trial Judge that broadcasting should not be regarded as a special category of communication.

24. He also rejected any suggestion that there might exist a constitutional right to broadcast. He also submitted that the learned trial Judge had not adopted the correct approach to the problem presented by the present case. He had placed too much emphasis on the European Convention on Human Rights. This error in approach was illustrated by his statement that an Irish statutory provision which offended Article 10 of the European Convention would be unconstitutional in most if not all circumstances. While it was permissible to pay some regard to the provisions of the European Convention, in the final analysis, the constitutional validity of Acts of the Oireachtas had to be decided by reference to the provisions of the Irish Constitution.

25. Counsel further submitted that any right which the Applicant/Appellant might have in the present case fell to be regulated in accordance with the provisions of the common good.

#### *Proportionality*

26. Counsel submitted that any right to which the Applicant/Plaintiff might have fell to be regulated by the Oireachtas in accordance with the principle of proportionality as expounded in *Heaney v. Ireland* [1994] 3 IR 593. The restriction contained in section 10(3) of the 1988 Act was, he submitted, neither arbitrary unfair or irrational.

It applied to all religions irrespective of the religious profession belief or status of the person seeking to have the advertisement broadcast. There were very rational grounds for the restriction. Persons wishing to advertise for religious purposes might use many varied means of communication other than radio or television. There was no prohibition on broadcasting per se, merely on broadcasting advertisements of a particular kind.

### *Conclusion*

#### *The Legislation*

27. The learned trial Judge complained that no evidence had been adduced to explain to him the policy underlying the prohibition of religious advertisements contained in section 10(3) of the Act. But the Court thinks it is possible to gain some assistance on this point by examining the context in which the prohibition appears in the 1988 Act. Section 9 of the Act imposes on every broadcasting contractor a duty to ensure that "all news broadcast by him is reported and presented in an objective and impartial manner and without any expression of his own views". It goes on to provide that the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is to be fair to all interests concerned and that the broadcast matter must be presented in an objective and impartial manner and without any expression of the broadcaster's own views. It then goes on to provide that if it is not practicable to provide the necessary balance in a single broadcast the broadcaster may cover the missing issues in two or more related broadcasts provided all broadcasts are transmitted within a reasonable period of each other. The broadcasting contractor must also ensure that "anything which may reasonably be regarded as offending against good taste or decency, or as being likely to promote, or incite to, crime or as tending to undermine the authority of the State, is not broadcast by him".

28. Section 10 provides that programmes broadcast in a sound broadcasting service may include advertisements inserted therein. Section 10(3) contains the prohibition:-

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

29. It seems to the Court important to stress that there are three kinds of advertisements which are totally banned. These are:-

1. Advertisements directed towards any religious end,
2. Advertisements directed towards any political end,
3. Advertisements which have any relation to an industrial dispute.

30. One can best glean the policy of the Act by looking at the three kinds of prohibited advertisement collectively. One might get the 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. The Oireachtas 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 the Oireachtas 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.

#### *Article 44*

31. There is no question of any form of discrimination or distinction being made by sub-section 3 of section 10 on the grounds of religious profession belief or status. The ban contained in sub-section 3 is directed at material of a particular class and not at people who profess a particular religion. All people in the same position are treated equally. The fact that people who wish to advertise motor cars or tinned beans may be treated differently is not relevant.

32. It appears to the Court that the prohibition on advertising contained in section 10(3) is broad enough to cover not only advertisements tending to favour any or all religions but also advertisements tending to attack all or any religion. It cannot therefore be regarded as an attack on the citizen's right to practise his religion. It may however constitute a limitation on the manner in which the citizen can profess his religion.

33. It appears to the Court that it is not sufficient to say, in reply to this argument, that religion is a private affair and that the citizen's right to profess his religion is not

affected by denying him access to the airwaves. Religion is both a private and a public affair and a citizen, convinced of the truth of his own religion, will naturally wish, not only to convert his fellow citizens, but to influence the evolution of society.

34. Mr. Hogan, Senior Counsel for the Applicant, drew our attention to a passage which appears at page 164 of Dr. Kohn's book on *The Constitution of the Irish Free State* where Dr. Kohn makes this point, forcefully, in relation to the right of freedom of conscience guaranteed by Article 8 of the 1922 Constitution. He wrote:-

"Freedom of conscience, however, would be of merely passive significance if it were not supported by further guarantees for the unhampered expression of spiritual conviction in word and action. It is not the abstract principle but its articulate words of profession and practice which require to be protected against administrative or legislative restriction. Freedom of profession connotes the right of the believer to state his creed in public and propagate it in speech and writing, freedom of practice, his right to give practical expression informs of private and public worship. Both imply a right to active intervention in the public sphere. Hence the imposition of restriction that such exercise must not conflict with "public order and morality"."

35. Some people might say that Dr. Kohn's reference to the right of the believer to "state his creed in public and to propagate it in speech and writing" arises more appropriately under the right of freedom of expression guaranteed by Article 40.6.1 than under Article 44. But, in the present case, where the Plaintiff relies on both Articles it is not necessary to explore this matter further.

36. It is sufficient to admit that the ban on religious advertising is a restriction, however limited, on the freedom of the citizen to profess, express or practise his religion and to enquire whether, in the circumstances of the case, the restriction is justified.

*Article 40(3) and Article 40(6)(1)*

37. This case raises, yet again, the relationship between the unspecified right to freedom of communication guaranteed by Article 40(3) of the Constitution and the express right to freedom of expression guaranteed by Article 40(6)(1) of the Constitution. The learned trial Judge expressed himself puzzled as to why the right

to express convictions and opinions should be protected by Article 40(6)(1) of the Constitution while the right to communicate information should be protected by a different Article namely Article 40(3) of the Constitution. He was also puzzled as to why three rights so diverse as the right of freedom of expression, the right to free assembly and the right to join associations and unions should all be protected by the same sub-section of Article 40(6). He felt that the framers of the Constitution must have grouped these three rights together for some specific purpose but, as he was of the view that the case turned upon the right of freedom to communicate and not on the right of freedom of expression, he did not consider it necessary to carry this analysis any further.

38. The right to communicate as an unspecified right impliedly protected by Article 40(3) of the Constitution was first identified by Costello, P. in his judgment in *Attorney General v. Paperlink Ltd.* [1984] I.L.R.M. 373. It was also referred to by Keane, J. in *Oblique Financial Services Ltd. v. The Production Company Ltd.* [1994] 1 I.L.R.M. 74 when he stated:-

"Article 40(6)(1) is concerned not with the dissemination of factual information, but the rights of citizens, in formulating or publishing convictions or opinions, or conveying an opinion; and the rights of all citizens, including conveying information, arises in our law, not under Article 40(6)(1) but under Article 40(3)(1)".

39. It appears to the Court that the right to communicate must be one of the most basic rights of man. Next to the right to nurture it is hard to imagine any right more important to man's survival. But in this context one is speaking of a right to convey one's needs and emotions by words or gestures as well as by rational discourse.

40. Article 40(6)(1) deals with a different though related matter. It is concerned with the public activities of the citizen in a democratic society. That is why, the Court suggests, the framers of the Constitution grouped the right to freedom of expression, the right to free assembly and the right to form associations and unions in the one sub-section. All three rights relate to the practical running of a democratic society. As Barrington, J. stated in *Irish Times Ltd. and Ors. v. Radio Telefis Eireann and Ors.* (unreported, Judgment delivered on the 2nd April, 1998) the rights of the citizens "to express freely their convictions and opinions" guaranteed by Article 40(6)(1) is a

right not only to communicate opinions but also to communicate the facts on which those opinions are based. If this means that there is a certain overlapping between the right to communicate impliedly protected by Article 40.3 and the right of the citizens freely to express their convictions and opinions guaranteed by Article 40(6)(1) so be it. The overlap may result from the different philosophical systems from which the two rights derive.

41. The Court agrees, however, with Mr. Rogers when he submits that the learned trial Judge was perhaps unduly restrictive in denying to the Applicant any right to rely on Article 40(6)(1) because he was not attempting to influence public opinion. The Court doubts if the guarantee of freedom of expression contained in Article 40(6)(1) is confined to those who wish to influence public opinion. A politician who addresses the nation over the airwaves is clearly attempting to influence public opinion. But an advertisement, though apparently directed at an individual consumer, may also be intended to influence consumers generally. One could not say that the advertisement in the present case, with its opening question "What think ye of Christ?", is directed exclusively at individuals and not at the citizenry at large.

42. The Court is not suggesting that to invoke the protection of Article 40(6)(1) a person must be attempting to influence the citizens at large. But, on the facts of the present case, it would appear that the Applicant is *prima facie* entitled to invoke the protection of Article 40(6)(1) as well as the protection of Article 40(3).

43. His problem is that both the right of freedom of expression and the right of freedom of communication are personal rights and both can, in certain circumstances, be limited in the interests of the common good.

44. As Kenny, J. put the matter in *Ryan v. Attorney General* [1965] I.R. 294 at page 312:-

"None of the personal rights of the citizen are unlimited their exercise may be regulated by the Oireachtas when the common good requires this. When dealing with controversial social, economic and medical matters on which it is notorious views change from generation to generation, the Oireachtas has to reconcile the exercise of personal rights with the claims of the common good and its decision on the reconciliation 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".

### *Proportionality*

45. It is clear from what has gone before that S.10 s.s.3 amounts to a certain limitation on the Applicant's right freely to profess his religion, on his right of free communication and on his right to freedom of expression. It is also clear from the foregoing analysis of the legislation that the Oireachtas wished to protect society from certain dangers which it perceived. The real question is whether the limitation imposed upon the various constitutional rights is proportionate to the purpose which the Oireachtas wished to achieve.

46. In *Heaney v. Ireland* [1994] 2 I.L.R.M. 420 (at page 431) Costello, P. (whose Judgment on this issue was upheld on appeal by this Court) 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 has recently been formulated 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 rights are proportional to the objective.”

47. In the present case the limitation placed on the various constitutional rights is minimalist. The Applicant has the right to advance his views in speech or by writing or by holding assemblies or associating with persons of like mind to himself. He has no lesser right than any other citizen to appear on radio or television. The only restriction placed upon his activities is that he cannot advance his views by a paid advertisement on radio or television. The case is totally different from that which existed in *Cox v. Ireland* [1992] 2 I.R. 503 where a person who had violated the relevant section in even a minor way was liable to lose his job (if he was a public servant) and to be barred forever from obtaining employment in the public service.

48. As previously stated the restriction on constitutional rights in the present case is very slight. That is probably what the learned trial Judge had in mind when, in the course of his Judgment, he used the phrase:-

"Proportionality has already been taken into account".

49. Mr. Hogan, for the Applicant, argued that it would have been possible to have had – instead of a blanket ban on religious advertising – a more selective administrative system whereby inoffensive religious advertisements would be permitted, and religious advertisements likely to cause offence, banned. No doubt this is true. But the Oireachtas 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. In any event, once the Statute is broadly within the area of the competence of the Oireachtas and the Oireachtas has respected the principle of proportionality, it is not for this Court to interfere simply because it might have made a different decision.

50. 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 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.



51. It seems to the Court clear that the learned trial Judge dismissed the Applicant's claim because the Applicant had failed to rebut the presumption of constitutionality in favour of the statutory provision attacked. The Court does not think his statement that an Irish statutory provision which offended Article 10 of the European Convention would be unconstitutional in most if not all circumstances was intended to raise the suggestion that one could by examining the European Convention decide on whether a statute violated the Irish Constitution or not. Whatever methodology may be adopted by the European Court of Human Rights in deciding its cases we are bound to presume that a statute passed since the enactment of the Constitution does not violate the constitution and we can only rule such an act unconstitutional if that presumption has been rebutted. In the present case it has not been rebutted and the Court therefore upholds the decision of the learned trial Judge and dismisses the Applicant's appeal.