

POLITICAL ADVERTISING: THE REGULATORY POSITION & THE PUBLIC VIEW

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PREFACE

Advertising is a significant component of the political communication strategies adopted by election candidates, political parties and interest groups. Different regulatory regimes, however, govern advertisements of a political nature across different media.

In Ireland, for example, political advertising in the print media is permitted while the regulatory regime governing television and radio is very different. Ireland is one of a number of countries in which paid political advertising on television and radio is prohibited by legislation.

The newly established Broadcasting Authority of Ireland (BAI)¹ is tasked with overseeing regulations on political advertising, and with adjudicating on potentially problematic advertisements on television and radio. The topic continues to be a source of controversy and is now further impacted upon by technological change and judicial intervention.

The advent of the Internet – where a regulatory framework is still being developed – has opened up a new communication channel for broadcast advertising of a political nature. The 2008 presidential and congressional elections in the United States saw the growth of web-based political advertising not just on candidate websites but also websites such as YouTube and Facebook. The Internet allows not just politicians and political parties to freely advertise – one independent video, which set extracts from Barack Obama’s speeches to music, was viewed by 20 million people on YouTube.² Many political parties in Ireland – and their supporters – now upload broadcast content which could be considered to be ‘advertising’ and, consequentially, would be banned on television and radio.

In October 2009 the Conservative Party in the United Kingdom became the first political party at Westminster to run a marketing campaign on the Internet music service, Spotify to target younger voters. “The growth of Spotify in the UK has been phenomenal. We were particularly impressed with its advertising model and its potential for political campaigning,” a Conservative Party spokesman said. One newspaper noted that the campaign allowed “the party to skirt political advertising rules that apply to traditional media” in the United Kingdom.³

This study is timely as the status quo has been challenged not just by the Internet but also by judicial review at European level. An expanding volume of case law has opened

up freedom of expression rights to groups and organisations previously impacted upon by political advertising bans.

Against this evolving background, the study seeks to contribute to an informed debate on the current regulatory regime and to equip policy makers with sufficient information so as to approach the subject in an informed way.

The study examines the regulatory context in which political advertisements in Ireland and internationally are broadcast, or are not broadcast, as the case may be. The discussion is firstly set against the impact of the existing legislative regime in Ireland, which has had a particular impact on advertising of a political nature by charitable organisations and other non-party political groups. Secondly, the study considers the policy implications of recent judgements of the European Court of Human Rights.

The research for this study was funded under the Broadcasting Authority of Ireland’s Media Research Scheme. Public attitudes to political advertising – and reactions to potential changes to the current regulatory system – are tested in specially commissioned opinion poll research. The results of this study provide a useful benchmark against which a number of policy recommendations are made.

Dr. Kevin Rafter
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¹ See www.bai.ie

² See www.youtube.com/YesWeCan by Will.i.am and Jesse Dylan

³ The Guardian, 16 October 2009

INTRODUCTION

Background

This study is concerned with political advertising which is one of the means by which political parties and interest groups communicate their messages to the public.

Throughout the text reference is made to 'free' political advertising and also to paid political advertising. These two categories of political advertising are distinguished as political broadcasts transmitted free of charge; and paid advertising of a political nature. In many countries free political advertising is more commonly described by the term 'Party Political Broadcasts' (PPBs). This free advertising is generally allocated to parties or candidates during election campaigns – sometimes in addition to allowing the purchase of political advertising and sometimes where prohibitions are in place.

A PPB system allows countries to control political advertising in terms of the amount of time involved, the timing of broadcasts and the method of allocation between parties. This type of system is more commonly associated with publicly owned television and radio stations and stems from the public broadcast tradition in several west European countries.

There is considerable variation in the legal treatment of political advertising in Europe and elsewhere. Moreover, what is meant by political advertising, is generally not defined in law – in some countries political advertising is included in the general scheme applicable to commercial advertising but this situation is the exception rather than the norm.

In many countries, political advertising is not exclusive to advertising by politicians or political parties. Rather what is under discussion is advertising of a political nature which seeks to promote issues in the public domain such as animal rights, trade union activities and abortion. In these cases, the term 'political' is used in a broader sense than 'party political' with wide-reaching restrictions in place for all advertising that is considered to be of a political nature.

A small number of countries have imposed a blanket ban on paid political advertising. More common, however, is where countries permit some paid political advertising with clearly defined limitations and restrictions in place. These restrictions come in various ways – limits on durations and frequency; timing of adverts in station schedules; and prices

charged. For example, in some countries political advertising is only allowed in a limited period prior to election day. In others paid political advertising is allowed on commercial radio stations only during election periods but never on television. In others, only commercial broadcasters are allowed to broadcast paid political advertising.

Alongside these two categorisations of paid advertising regimes – where there is a prohibition and where there is permission with some restrictions – stand a small number of countries which allow paid political advertising with minimal, if any, regulatory rules. The United States is the leading country in this liberal category where election campaigns are dominated by very heavy spending on broadcast political advertising with few restrictions on candidates or parties. In terms of any analysis of political advertising systems, however, the United States is the exception in "standing alone".⁴

Indeed, even in the most liberal regime in Europe there are more stringent restrictions on broadcast political advertisements than is the case in the United States.

Paid political advertising is banned in Ireland although a system of free political advertising is in place for parties during election and referendum campaigns. The ban on paid political advertising applies not just to political parties and election candidates but also to organisations promoting issues which are considered to be of a political nature. These latter organisations are essentially precluded from all forms of broadcast advertising.

In terms of any analysis of political advertising systems, however, the United States is the exception in "standing alone".

The current regulatory regime in Ireland has generated ongoing controversy and may also conflict with recent European Court judgements in the area of human rights law.

The debate about political advertising

The main concern about a system of paid political advertising is that access to such advertising would be confined to parties and candidates with significant financial resources. In such an environment smaller parties would not have the resources to purchase advertising space and their

⁴Holtz-Bacha and Kaid, 2006, p.13.

voice and presence would be diminished in the political market place.

The view is expressed that under a system of paid political advertising the electorate would only receive information from a small number of political parties which could afford to advertise.⁵ The political playing field, in effect, would not be level and those with money would have an unfair advantage.

“To allow more money to be spent on buying attention-grabbing advertisements on TV and radio would further destroy the semblance of equal opportunity between parties of all sizes, views and persuasions,” was on recent argument.⁶

The prevention of such an outcome is one of the main arguments in favour of limiting the freedom of expression rights of those effected by the political advertising ban. During a debate on the continuation of the ban in the United Kingdom in 2002, a senior British government minister stated that the prohibition was justified to deny “powerful interests the chance to skew political debate... safeguard[ing] the public and democratic debate, and protect[ing] the impartiality of broadcasters.”⁷

In recent cases that have come before the European Court of Human Rights several governments have argued that the retention of the status quo was necessary to ensure the airwaves were not dominated by those with greater financial strength at the expense of less well-off organisations. In a 2008 case the Norwegian government argued that the political advertising ban ensured that “all political parties could compete on an equal footing.”⁸

An escalation in costs, and funds spent in election campaigns, is seen as a related concern, with the situation in the United States frequently mentioned as an argument for the retention of the status quo in countries where prohibition exists. The fear that a relaxation of the current ban in Ireland would lead to an American-type political advertising regime was mentioned during debate on recent Irish broadcast legislation in one of the few references to such advertising in the parliamentary proceedings.⁹ Similarly in the United Kingdom one member of the House of Commons argued in 2009 that in the event of a change to the prohibition on paid political advertisements, “we have no need for a crystal ball to work out what might happen. We need only look at the USA. The dollar is king when it comes to US elections.”¹⁰

Both critics and proponents of a system of paid political advertising argue that a liberal regulatory regime would impact on the quality of political/public debate – critics claiming it would lessen the quality of debate while proponents saying it would have a negative impact.

The body of international academic research on political advertising provides a number of general themes including that the content of most advertisements is dominated by issues; that generally the personality of political leaders is stressed over the party they represent; and that

political advertisements tend to be overwhelmingly positive with the exception of those broadcast in the United States.

There is sufficient academic research from a number of countries to support the view that exposure to political advertising affects the evaluation of candidates and parties although not always to the benefit of those paying for the advertising space.

“Although many countries still resist the conclusion that political advertising has an effect on election outcomes, our data suggest otherwise in many situations. Across several countries with different political systems, different media systems, and different cultural characteristics, it is still possible to see similar effects from political advertising. Exposure to political television messages during a campaign can sometimes increase, and sometimes decrease, the image of political leaders.”¹¹

Political advertising works on a number of levels including impacting of voter knowledge and understanding of key issues; impact on voter ability to evaluate candidates positions; impact of voting decisions; and impact of voter participation. The results of international studies shows that exposure to political advertisements encourages voters to seek out more information about candidates. Indeed, it has been argued that, “the success of political advertising in communicating knowledge and information to voters has been repeatedly documented by researchers.”¹²

Challenges

One of the main consequences of the ban on political advertising is that political parties and interest groups are prevented from using television and radio, which are the most effective means of communicating with voters. Television, in particular, in most countries is the medium that reaches most voters.

As one writer argued about the 2008 election contests in the United States, “political advertising and the direct-to-voters technology of the Internet used in the US presidential race energised the apathetic, brought more people into political activism, engaged more voters, brought in small donations from more people than ever before. That is a good thing.”¹³

The ban in countries like Ireland and the United Kingdom was conceived in a different era. The discrimination between print advertising (which is permitted) and broadcast advertising (which is banned) was justified on the particular power of the broadcast medium. But the ban now makes little allowance for advances in telecommunications and also changes in political campaigning. Indeed, the growth of cable and satellite broadcast channels, and the arrival of digital broadcasting, has seriously challenged the influence - and relevance - of long standing regulatory arrangements.

Many political parties, candidates and interest groups are now using the Internet to distribute advertising that cannot be placed on television stations. The Internet provides an array of new

5_United Kingdom Electoral Commission, Party political broadcasting, p.15

6_Evans, 2009.

7_Hansard HC vol 395 col 788 3 December 2002.

8_Lewis, 2009.

9_See Oireachtas debate, 4 June 2009. <http://debates.oireachtas.ie/DDebate.aspx?F=SEN20080604.xml&Node=H7&Page=15>

10_Evans, 2009.

11_Kaid and Holtz-Bacha, 2006, p.455.

12_Kaid, 2006, p.46

13_Staines, 2009.

opportunities to communicate directly with the wider public. But the opening up of this new medium means there are even more significant differences in terms of protection to speech between different communications media.

Traditionally there were different regulatory regimes in place between print and broadcast, and also within the broadcast sector, largely between public and commercial outlets. The nature of the Internet – and its wide-spread availability – places even greater pressure on existing political advertising regulation in the television and radio sectors.

In addition, to these challenges – arising from the changes in the structure and dynamic of the telecommunications world – the ban of political advertising has been threatened by judicial intervention. A number of recent rulings by the European Court of Human Rights have highlighted the conflict that exists between the political advertising ban and the rights of those effected by the restrictive regulatory regime.

THE VIEW FROM ABROAD

Introduction

The international regulatory spectrum on paid political advertising ranges from complete liberalisation to countries with a restricted regime to those that simply ban all advertising of a political nature.

Numerous countries have dealt with the issue of paid political advertising by imposing an outright ban. In countries in this category the ban generally applies to political parties as well as civic society groups and organisations seeking to promote causes with a political dimension. Many of these countries permit a regulated system of free political advertising specifically for political parties during electoral contests.

Other countries allow paid political advertising but in a restricted environment. The type of limitations vary but include restrictions on scheduling – no political adverts during news or current affairs programmes; regulations of the duration of such adverts; restriction on the costs that broadcasters can charge parties and candidates with obligations to treat all purchasers of political advertising equally; and outlawing political broadcasts on publicly owned stations but applying a more liberal regime for commercial broadcasters

Alongside, jurisdictions that apply an outright ban on paid political advertising and those which permit such adverts with defined regulatory restrictions, a third category exists – countries which operate a liberal attitude to advertising of a political nature. The United States is most identified with a liberal regime although it has to be stressed that the United States is an international exception. Only a handful of countries operate such a liberal regime.

In the United States political advertising is equated with protected political speech. A government ban on political advertising would be considered a violation of the US Constitution.

Previous attempts to place limits on political advertising spending in the United States were unsuccessful and were eventually overturned by the courts. National political campaigns in the US are now media campaigns, and political advertising is at the heart of these campaigns.

The broadcasting traditions in Europe and in the United States are very different. The US broadcasting sector has long been privately owned and driven by commercial considerations. The role of government has been limited in regulating

broadcasting. The position of the public sector has been much stronger and pervasive in Europe where broadcasting grew out of state owned monopoly provision. These legacy restrictions suppress the quantity of political advertising in most European states and have to date, some would argue, limited the arrival of what has been described as 'American-style' politics.

A government ban on political advertising would be considered a violation of the First Amendment of the US Constitution.

The United States

Television has been the predominant form of political communications in the United States since the 1950s. The first televised political advertisement aired during the 1952 presidential election. Dwight D. Eisenhower's campaign commissioned a television spot – 'I like Ike' – in a question and answer format with an animated cartoon produced by Walt Disney studios. Eisenhower's opponent was unimpressed with the advertising 'slots' and commented, "the idea that you can merchandise candidates for high office like breakfast cereal is the ultimate indignity to the democratic process."¹⁴

Nevertheless, from the 1952 US presidential election onwards television advertising has been a vital forum for stressing the personal qualities of candidates, highlighting their positions on key issues and attacking their opponents.

The most controversial broadcast advert remains the so-called 'Daisy Ad' from 1964 which featured a young girl picking petals off a daisy in a field and counting out a sequence just before an adult voiceover interjects a military countdown as the image moves to footage of nuclear explosion, and then the voice of President Lyndon Johnson: "these are the stakes – to make a world in which all of God's children can live, or to go into the dark. We can either love each other, or we must die."¹⁵

The simple but highly effective message reinforced a perception that Johnson's challenger could not be trusted with the nuclear threat. The 'Daisy Ad' aired only once as a paid advertisement but its influence on political advertising in the United States remains strong. Since the 1964 campaign, television advertising itself has become part of the news cycle of American electoral contests with the print and broadcast media reporting on 'spots' as part of the campaign. The most recent development

¹⁴ See www.livingroomcandidate.org which hosts more than 300 adverts from every US presidential election since 1952.

¹⁵ See www.conelrad.com/daisy/index

has been the migration of television spots to the Internet which has played a greater role in political communication as broadband access has increased.

The 2008 presidential and congressional elections in the United States saw the growth of web-based political advertising not just on candidate websites but also on sites such as YouTube and Facebook. The technology has developed to the extent that the Obama campaign even purchased advertising space in home video games.

The most recent development has been the migration of television spots to the Internet which has played a greater role in political communication as broadband access has increased.

The 2008 campaign also saw the single most expensive piece of political advertising ever in US presidential elections when the Obama campaign spent \$3.5m on a single advertisement. The half-hour peaktime broadcast – part advert, part programme – was aired on the three main networks, CBS, NBC and Fox as well as on a number of cable channels. Official audience research figures estimated that 33.5m people watched the broadcast.¹⁶ The scale of the Obama campaign's embrace of different political advertising platforms led the New York Times to conclude that the Democratic candidate had "unleashed an advertising campaign of a scale and complexity unrivalled in the television era."¹⁷

The American embrace of paid political advertising has long been assisted by a constitutional guarantee of free speech and free expression which has reduced the ability of lawmakers to regulate most aspects of political advertising. The First Amendment in the US Constitution states that the Houses of Congress will make no law, "abridging the freedom of speech or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

These principles of free speech have been strongly protected by the courts to such an extent that few regulations on political advertising exist in the United States. Broadcast stations are obliged to provide all candidates with equal time but they are permitted from censoring or altering the content of political adverts. One of the few regulatory requirements is that candidates must provide a personal endorsement to accompany advertisements in the manner of, 'I'm Barack Obama and I approve this message'.

One of the fears of opponents of political advertising is that with the focus on visual imagery, and the short space of time available, political adverts contribute to a reduction in the quality of debate. Contrary to the generally-held perception, research has shown that political advertising in the United States has not lessened the level of reasoned debate to the detriment of discussion of issues nor has political advertising led to an increase in negative campaigning. A 2001 study examined presidential ads from 1952 to 1996 and found that

60 per cent of all advertising spots were primarily focused on issues while in the 2000 presidential campaign some 78 per cent of these adverts were issue based.¹⁸ These adverts do not provide substantial policy information but they enhance voter curiosity about key issues.

Controversy about the negativity in US political adverts remains a topic of discussion but again research of the actual advertisements themselves points to as many positive adverts as ones with negative content.

United Kingdom

The political advertising market in the United Kingdom is similar to Ireland's with paid political advertising permitted in print and online but outlawed on radio and television with free airtime allocated during electoral periods.

Party Political Broadcasts (PPBs) were first broadcast in the United Kingdom in 1951 and, with some modification to account for new parties and additional channels, the system has remained in place over the last half century. During the 1950s with the exception of an election results night programme PPBs were the only mention of the campaign on the BBC during the election period. For many years the broadcasts were transmitted live and consisted of a leading politician taking directly to the camera.

Few broadcasts made an impact like the final PPB in the 1959 election. The so-called 'Supermac' PPB was one of the first to be pre-recorded and featured Conservative Party leader Harold Macmillan, the outgoing Prime Minister, walking towards a globe, spinning it and then turning directly to the camera to say: "Let me tell you what I'm going to do about the rest of the world." Numerous political assessments of the 1959 campaign refer to this PPB as crucial in determining the outcome of the election.

The system in the UK was put on a legislative footing in 1990 and is now overseen by the BBC and Ofcom, the communications regulator although the specifics of allocation and scheduling are determined by broadcasters which cooperate through a liaison group comprised of the various broadcast companies.

The BBC and the main terrestrial channels in the United Kingdom – ITV, Channel 4 and Channel 5 – are obliged to broadcast PPBs in peak-time slots, at specific times of under three minutes, for parliamentary elections and referendums. All registered parties which contest at least one-sixth of all seats in an election qualify for PPBs. Under current rules, the allocation criteria is laid down by the broadcasters with the Conservatives and the Labour Party generally receiving five PPBs per election, the Liberals usually four – and not less than three – while smaller parties generally can expect to receive one PPB each based on their previous parliamentary presence and performance in opinion polls.

Production values have increased with an effective end to political talking heads and evidence of

¹⁶ See www.adage.com

¹⁷ New York Times, Oct 17 2008.

¹⁸ Kaid and Holtz-Bacha, 2006, p.41

greater influence of American political advertising in tone and substance. The professionalisation of PPBs has also been influenced by greater involvement of advertising agencies. PPBs now feature fewer politicians, less speech and more music. In more recent times, PPBs have themselves become news stories with broadcasts made by well-known film directors and featuring music stars and other celebrity figures.

The 1992 Labour Party PPB 'Jennifer's Ear' was made by film director Mike Newell which told a fictional story of a young girl who was on a waiting list for ear surgery due to the policies of the incumbent Conservative Party government. Newell oversaw another Labour Party broadcast in 1997 'Angel' which was notable for the absence of politicians and featured actor Peter Postlethwaite while a 2001 PPB featured Geri Halliwell of the Spice Girls band.

Despite the involvement of well-known celebrity figures, the general view is that the value impact of election broadcasts has declined. But as one set of writers noted, "How could it be otherwise, as we have moved from the time of two channels and captive audiences to an era when there are some 270 television channels and only five of them are obliged to show party election broadcasts?"¹⁹

Party political broadcasts have become shorter in duration – the maximum length in 1955 was 30 minutes while today it is just over four minutes while the minimum length is two minutes and 30 seconds. Following a landmark court case in 2003 involving controversy over a BBC demand that the Pro-Life Alliance remove graphic images of aborted fetuses from a PPB, the courts decided that the PPB system in the UK must comply with taste and decency standards.

Alongside this system of 'free' political advertising, paid political advertising remains prohibited in the United Kingdom. This position was upheld by a December 2008 judicial ruling by the House of Lords. Indeed, there remains strong opposition in the United Kingdom to the idea of paid political advertising with the most frequently arguments against a policy change being the need to ensure a level playing field between the main political parties and a desire to control costs. It is also argued that the PPB system effectively offers a subsidy-in-kind to most parties and helps to offset to some degree the historic fundraising advantage of the Conservative Party.²⁰ Like elsewhere, the UK regime is being undermined by the Internet as the Conservative Party example mentioned in the introduction illustrates.

Other European countries

Paid political advertising is outlawed in France. Candidates and parties are, however, allocated unpaid advertising space on public service television. New restrictive regulations on time, format and content were introduced for PPBs in the 1990s. The use of official buildings in PPBs is prohibited as is the use of French national and European symbols as well as the use of the French national anthem. There are also clear rules outlawing attacks on political opponents. The

allocation of PPBs is determined by a lottery among qualifying parties and candidates.

The influence of American political advertising has also been felt in France where in more recent times PPBs have moved away from talking-head presentation and have been defined by pacy editing and music. Research has shown that French PPBs tend to be positive in their tone and content. In several countries including in France and in Spain prohibitions on advertising in the 24 hours prior to the opening of polling are in place. Non-political groups in France such as charitable organisations and trade unions are permitted to advertise specific broadcast messages so long as they do not contain content of a political nature.

Spanish law dictates that no party can be given preferential treatment when booking advertising space with private media operators – all parties must be given the opportunity to purchase similar slots while the fees levied cannot be higher than those levied on commercial advertisers. Non-political groups are not covered by the broadcasting ban.

Paid political advertising is also prohibited in Portugal. The law is very explicit in Portugal where all television and radio stations – public and private – must allocate specific peak time slots for PPBs during election periods. Legislation obliges public stations to dedicate sufficient programming to explaining the significance of elections for national life.

For presidential elections in Portugal an additional regulatory obligation is imposed. On the final day of a presidential campaign each of the candidates is given space of a 10 minute PPB on public radio and television. These slots between 9pm and midnight are allocated by lottery. The candidate has to be the main speaker for the broadcast.

Political advertising has been a feature of national elections in Germany since the 1950s. The country today has one of the most liberal political advertising regimes in Europe – although it is still much more restrictive than the system in the United States.²¹ Each registered political party in Germany is entitled to free political advertising time on public television channels with the smaller parties given a minimum of two spots calculated according to the outcome of the previous election and the expected outcome of the current contest.

Aside from this system of free political advertising on public television stations, all political parties are entitled to purchase advertising space on commercial broadcast stations although individual candidates are prohibited from placing advertisements. The evidence from recent electoral contests in Germany shows that only larger parties have been in a financial position to purchase additional advertising space. Not all the smaller parties, however, have been excluded from advertising on commercial stations – during the 2002 national elections in Germany the Green Party purchased advertising time on MTV to target younger voters. The trend in political advertising in Germany has been marked by shorter durations,

19_Scammel and Langer, 2006, p.72.

20_Scammel and Langer, 2006, p.70.

21_Hottz-Bacha, 2006, p. 163.

and a faster pace in individual spots. The maximum length of an individual spot is fixed at 90 seconds. The slots are allocated randomly but broadcast in peak-time on public television stations.

Paid political advertising has not permitted in Denmark, Norway and Sweden although recent court challenges have led to a re-evaluation of traditional prohibitions. In parts of the Nordic region parties have been able to bypass domestic advertising restrictions by purchasing space on satellite and cable channels transmitting from outside the national jurisdiction. The loophole was ended in Denmark when all the main political parties voluntarily agreed not to use the extra-national advertising option.

The political advertising regimes in Iceland and Finland are extremely liberal with few regulatory restrictions in place. Parties can purchase advertising on commercial television channels and the slots are treated in the same way as commercial advertising while no announcements are required designating the content to be of a political nature. In Finland, slots can only be sold to registered groups while the content is required not to be a negative assessment of individual candidates. Like in many other countries, the regime requires fair conduct in the pricing of all political advertising – in most jurisdictions this regulation is guaranteed with an ‘equal pricing’ legislative requirement to ensure all parties are charged the same price for slots. In recent electoral contests in Finland the main political parties devoted as such as 40 per cent of their overall election budgets to advertising on television stations.

The rules and regulations have evolved in central and eastern Europe in the aftermath of the end of communism post-1989. During the beginning of the democratisation of political life, broadcast political advertising, particularly on television, contributed to the process of transition. Over time the duration of these adverts has shortened.

In the Czech Republic political advertising is only permitted during an election campaign when all political parties are legally entitled to share equally in 48 hours of free broadcast time on public television and radio. In Hungary only paid political advertising is permitted. The order of transmission of free political adverts in Bulgaria is determined by the drawing of lots.

In the Baltic states political advertising has become the principal means of political communications in the post-communist era. In Estonia, parties can purchase advertising slots on all licensed television stations except since 1998 the main state owned station. There are few restrictions on content although in Latvia and Lithuania political adverts must be distinguished from other forms of advertising.

The situation in relation to free political advertising varies – free time is provided on public television in Latvia and Lithuania but there is no such allocation on Estonian television since 1999 where commercial broadcasters do not have to treat parties equally when pricing advertising slots. The latter situation

means that larger parties are at an advantage when it comes to securing discounts.

The regime in Latvia means political parties are provided with free advertising on public stations but they can also purchase additional commercial advertising slots on the same networks. The free political advertising gives the main parties access to two ten-minute slots in the national election campaign which can be divided into shorter broadcasts. In Lithuania political advertising is permitted during the designated election campaign period but such advertising must be identified as being of a political nature. The most common means of allocating PPBs is based on a proportional system linked to previous election results. However, in countries such as Latvia and Lithuania all parties are allocated an equal amount of time.

The regulatory regime in Greece means that individual candidates cannot purchase advertising slots but political parties are permitted to use television and radio advertising to promote their causes. A maximum limit on the amount of money spent on political advertising is in place and, in recent times, has been set at not more than 20 per cent of the overall campaign budget for an individual political party.

The rules and regulations have evolved in central and eastern Europe in the aftermath of the end of communism.

Political advertising has a long place in Dutch electoral history. The first free political adverts were broadcast on radio in the 1920s while each of the main parties were given two ten-minute television slots in the 1959 national election. The regime in the Netherlands differs from most other European countries in that PPBs are not considered purely in the context of electoral campaigns. Every year in the Netherlands every political party with parliamentary representation is allocated a number of slots – most recently up to 20 broadcast slots per party – while in an election period registered parties are allocated in the region of six slots each usually in the final two weeks of the campaign. The duration of these PPBs has been set most recently at around three minutes each. The commercial broadcast stations have been open to receiving paid political advertising since the late 1990s although the amounts spent by the main parties on television adverts remains relatively small. The timing of these adverts is determined by a lottery system. Public stations provided their facilities such as studios and camera without charge to the parties while the Dutch state provides a subsidy to make each broadcast.

Paid political advertising had a late arrival in Italy with the decision of a number of commercial stations to air political slots in 1979. Free political advertising had been a feature of the system since 1960. Public service stations are prohibited from taking paid political adverts – a ban on paid political advertisements on commercial television was introduced in 2002. The law in Italy obliges all public and commercial broadcast stations to ensure that candidates and parties are treated equally, and

are given equal access to the airwaves in terms of free political advertising. Political advertising on national stations is confined only to election periods although advertising on local stations is permitted between elections. The cost of advertising on local television stations is discounted by 50 per cent on normal commercial rates.

Other countries

Few countries outside the United States permit paid political advertising on television and radio during election campaigns. Two of the exceptions include Australia and New Zealand. Both countries have long histories with paid political advertising in the cinema from the 1920s, radio from the 1930s and television from the mid-1960s.

Public funding subsidies are provided to political parties in New Zealand in proportion to their performance at previous elections – this is the only money that can be spent on paid advertising in the campaign. In New Zealand broadcasters are required to treat all political parties equally. In Australia political parties are treated like any other purchasers of advertising. Indeed, there are few restrictions on political advertising in Australia. An attempt to ban political advertising in 1991 was ruled unconstitutional by the High Court in Australia.

Despite this liberal attitude, in both countries a 'blackout' of broadcast advertising is imposed prior to polling. As elections are always held on Saturdays in Australia, the blackout starts three days previously at midnight on Wednesday night. In New Zealand, the blackout applies only to election day.

Research shows a pattern of positive campaigning during the first few weeks of Australian election campaigns followed by quite negative advertising late in the campaign. These attacks can be extremely personal.²²

Paid political advertising has been outlawed in Brazil since 1974. Candidates and parties are given access to free airtime and these broadcasts are transmitted simultaneously by all stations, in predetermined time slots during election times. In non-election periods parties have the right to two 20-minute television slots each year. The regulatory rules, however, apply only to traditional broadcast companies – cable and satellite channels are not covered by the mandatory free political advertisements.

The allocation of free airtime in Chile is determined by reference to the performance of political parties in the previous election. Parties are required to submit all adverts to a national regulatory body two days prior to broadcast although television stations can only refuse to broadcast if the adverts do not meet technical or time rules.

The system in Mexico contains provision for state funding of political parties to purchase television advertising time so as to allow equal access to the airwaves. During elections in Mexico in 2003, one party was forced to withdraw negative television adverts targeting their opponents following public

criticism of the tone adopted and claims of 'dirty tactics'.

Individual candidates are prevented from engaging in paid print and broadcast advertising in Japan during election campaigns. As a compensation for this restrictive regime, free political advertising space is provided although restrictions are in place about the formats. Outside election times political parties are free to purchase political advertising space. The electoral law in South Korea provides each candidate with 30 television spots and 30 radio slots, each to a maximum of one minute in duration.

Political advertising is permitted in Turkey during the final seven days of an election campaign. The broadcast adverts are produced for free by the national television and radio service, and range between two minutes and ten minutes in duration. Strict rules are in place including bans on using the national flag while male speakers must wear suits and ties and women speakers must wear skirt suits.

In South Africa, only public broadcast stations are required to transmit PPBs. Paid political advertising is only permitted on radio which is seen as an inexpensive medium and which prevents wealthy candidates gaining an advantage from expensively produced television adverts. PPBs on television are allocated based on past electoral history, the number of candidates nominated and a requirement to ensure all parties are granted access to the national airwaves. The regulations stipulate that PPBs cannot be broadcast near paid political advertising.

Political Advertising regulatory regimes

COUNTRY	WHERE IS PAID POLITICAL ADVERTISING ALLOWED?	FREE POLITICAL ADVERTISING
Argentina	Public & commercial	Free time on public
Australia	Commercial only	Free time on public
Austria	Commercial only	No free time
Belgium	Outright ban	Free time on public
Brazil	Outright ban	Free time on public & commercial
Bulgaria	Public & commercial	No free time
Canada	Public & commercial	Free time on public & commercial
Chile	Outright ban	Free time on public & commercial
Czech Republic	Outright ban	Free time on public
Estonia	Commercial only	No free time
Finland	Commercial only	No free time
France	Outright ban	Free time on public
Germany	Commercial only	Free time on public
Greece	Commercial only	Free time on public
Ireland	Outright ban	Free time on public & commercial
Israel	Outright ban	Free time on public & commercial
Italy	Commercial ban	Free time on commercial
Japan	Commercial ban	No free time
Latvia	Commercial & public	Free time on public
Lithuania	Commercial & public	Free time on public
Mexico	Commercial only	No free time
Netherlands	Commercial only	Free time on public
Poland	Commercial & public	Free time on public
Portugal	Outright ban	Free time on public & commercial
Russia	Commercial & public	Free time on public
South Korea	Commercial & public	No free time
Spain	Outright ban	Free time on public
United Kingdom	Outright ban	Free time on public & commercial
United States	Commercial only	No free time

Note: In terms of the column Paid Political Advertising: 'Outright ban' equates to a prohibition on paid political advertising; 'Commercial only' is where paid political advertising is permitted only on commercial broadcast stations; 'Commercial & public' is where paid political advertising is allowed on commercial and public broadcast stations.

Source: Derived from Holtz-Bacha and Kaid, 2006.

POLITICAL ADVERTISING IN IRELAND

Not for discussion

Paid political advertising on television and radio is banned in Ireland. The ban applies not just to political parties and election candidates but also to organisations promoting issues considered to be of a political nature. This 'blanket ban' has been reaffirmed in several pieces of broadcasting legislation approved by the Oireachtas over many years.

For example, the Broadcasting Act, 1988 included the clause: "No advertisement shall be broadcast which is directed towards any religious or political end or which has any relation to an industrial dispute."

The longstanding ban on religious advertising was modified in the most recent broadcasting legislation which passed into law in July 2009. Indeed, the subject of religious advertising was debated in some detail in parliament during the passage of the Broadcasting Act, 2009. A summary of the issues involved is provided in Appendix 2.

During these parliamentary debates, however, there was no serious discussion about the merits, or otherwise, of amending the current regime in relation to political advertising.

Section 41 (3) of the Broadcasting Act, 2009 states that, "a broadcaster shall not broadcast an advertisement which is directed towards a political end or which has any relation to an industrial dispute."

During the parliamentary proceedings, Communications Minister Eamon Ryan said: "In regard to the political code restriction, the general direction from the Legislature is that we should not open up political advertising as it would be almost impossible for an authority to judge the political aspect of such advertisements and to make calls in terms of whether it is accurate, inaccurate, acceptable or unacceptable. It is a difficult and grey area."²³

However, as is discussed in the next chapter, this stance is open to legal challenge in light of recent judgements on political advertising by the European Court of Human Rights.

While no legal definition of the term 'political advertising' is provided in Ireland the scope of the ban as reaffirmed by the Broadcasting Act, 2009 remains wide reaching and includes all advertising that might contain political content.

This 'blanket ban' has been reaffirmed in several pieces of broadcasting legislation approved by the Oireachtas over many years.

Decisions about whether or not advertisements potentially breach the legislation have been taken by RTE and the Broadcasting Commission of Ireland in respect of commercial and public sector broadcasters. Both bodies have placed a very narrow construct on the word 'political'.

Resultantly, in addition to advertising for political parties, any advertisements which are directed towards procuring or opposing changes in legislation, government policies or policies of government authorities have been deemed to be directed towards a political end and have, therefore, been banned.

Controversy

The restrictive nature of the political advertising regime in Ireland has led to ongoing controversy. None of the main political parties have sought to advertise on television and radio. The contentious advertisements have almost exclusively arisen from organisations promoting issues considered to be of a political nature.

These organisations include book publishers, charities and trade unions. The advertisements would, if allowed to be broadcast, have promoted issues such as a book written by an active politician, a music concert to raise funds and increase awareness of the US invasion in Iraq and a campaign to encourage the Irish government to fully implement an international resolution on gender equality.

The accompanying case studies are a small sample of those which have come to public notice after the regulatory authorities – either RTE and/or the BCI – adjudged the proposed advertisements to be contrary to the broadcasting legislation. There are many other cases that do not attract public comment following agreement not to proceed by both the advertiser and the broadcaster.

The contentious advertisements have almost exclusively arisen from organisations promoting issues which were considered to be of a political nature.

²³ See Oireachtas debate, 4 June 2009.

Abortion

In 1998 Project Truth, a group linked to the Youth Defense organisation, commissioned a 30-second radio advertisement to raise awareness about abortion.

The radio version of the advert opened with the sound of muffled heartbeat followed by a voice announcement: "her heart has been beating since she was 18 days old. At eight weeks she's perfectly formed. She sucks her thumb. And she already has 20 milk-teeth buds." The sound of a heart stopped and the voice-over continued. "In another two weeks she would have had fingernails. She might have grown up to be a doctor, scientist, a mother. But now nobody will ever know. Have you any conception what abortion is about."

The regulatory authorities banned the advert. The decision was appealed to the High Court but the original ruling was upheld. Mr Justice O'Sullivan concluded that, "an advertisement has a political end within the meaning of Section 10 (3) if it is directed towards furthering the interests of a particular party or towards procuring changes in the law of this country or, I would add, countering suggested changes in those laws".

Gerry Adams book

In late 2003, Brandon Books sought to publicise a book written by Sinn Fein president, Gerry Adams. Adams recorded a 20-second radio advertisement for the book, *Hope and History: Making Peace in Ireland*.²⁴ The adverts were to be broadcast on several local radio stations.

In the advert, Adams said: "This is Gerry Adams. My new book is called Hope and History. It's on sale in good bookshops in all 32 counties. It's the story of the effort to bring about change in this country. It's the story of the difficult and ongoing struggle for peace and justice. That's Hope and History and this is Gerry Adams. Slan agus beannacht."

The BCI banned the advert. A spokeswoman explained: "One of the local stations forwarded the presentation for the advertisement to the BCI which offered the view that it was not permissible under the Radio and Television Act, 1988. The Act does not permit advertisements which are considered to be for a political end."²⁵

The rationale for the BCI decision was based on the fact that the book was written by a current politician who was giving his views on events in which he and his party continued to be involved and were still the subject of political debate.

Steve McDonagh of Brandon Books argued that the book was a personal memoir of Mr Adams' involvement in the peace process in Northern Ireland. "Banning a straightforward ad for the memoir is nonsense," Mr McDonagh argued.

Irish Anti-War Movement

The Irish Anti-War Movement sought to promote a music concert to raise funds and raise awareness of the US invasion in Iraq. The concert was scheduled for 19 June 2004 prior to a planned visit to Ireland by then United States President George Bush.

The concert at the Point Depot in Dublin was billed by organisers as, 'When Bush Comes to Shove: an anti-war gig'. Featured musicians included Christy Moore, Damien Rice and Mary Black.

The radio advertisement was rejected by the BCI which deemed the content political because the organising group, and the aims of the concert, were political. The Irish Anti-War Movement was also informed that a separate radio advertisement calling on the public to attend protests against the Bush visit would not be broadcast.

National Consumer Agency

The National Consumer Agency – a government funded and appointed agency – sought to gain support for changes in the Groceries Order which outlawed below-cost selling. The subject was being considered by a public consultation process and the National Consumer Agency wanted to encourage the public to make submissions about possible changes in the Groceries Order as a part of the consultation process.

A radio campaign was planned by the National Consumer Agency but fell foul of the broadcasting authorities. The decision was based on the rationale that as the end result of the campaign was influencing a political decision-making process the advertisement would be considered to be political.

²⁴ Radio advertisements for books written by Adams had also previously been banned in 1987 and 1992 when the Section 31 broadcasting ban applied to members of Sinn Fein.

²⁵ The Irish Times, 1 December 2003

Trocaire

In 2007 the Catholic development agency Trocaire commissioned radio and television advertisements to promote gender equality. The campaign was organised to coincide with the organisation's annual Lenten campaign

The campaign placed particular emphasis on women in conflict and on rallying support for a United Nations resolution which pledges to protect women and children. Trocaire called on the Irish government to produce a national campaign which would lead to the full implementation of the UN resolution. Specifically, the advertising campaign highlighted the difficulties faced by female children while encouraging the public to sign a petition lobbying the Irish Government to enact a specific UN resolution and asking for the public to either donate online or order a Trocaire Lenten donation box.

RTE approved the radio and television advertisement. "RTE's view is that we define political ends quite tightly... We would feel this Trocaire advertisement is much more general in nature. We also try to distinguish between national campaigns and international campaigns," a RTE spokesman explained.²⁶

The BCI, however, reached a different interpretation and banned the advertisement from commercial radio and television stations. Following consideration of the content of the advertisement the BCI judged that it was contrary to the broadcasting legislation which prohibited advertising directed towards a political end.

In reaching its conclusion, the BCI focused in particular on the element of the advertising campaign which encouraged members of the public to participate in a campaign for gender equality by signing a petition lobbying the government to enact a UN Security Council resolution.

Following further consultations between the BCI and Trocaire a compromise was reached with an alternative wording proposed. The BCI proposed that the wording in the original script, "Support Trocaire's Lenten Campaign to help end gender inequality" was replaced by "Support Trocaire to end gender inequality."

The BCI argued that the compromise wording met the requirements of the Broadcasting Act, 1988 whereas the original text failed to do so because one of the objectives of the campaign was "the procurement of changes in Government policy or decisions so as to prioritise, implement or influence governmental action."

The original advertisement wording was deemed to be political because it called on the government to produce a national action plan and also encouraged the public to sign a petition to push pressure on the government to act. But as the revised wording focused on Trocaire's social and humanitarian agenda – it was not political.

The Trocaire case is probably the most bizarre example to emerge from the broadcasting prohibition on advertising of a political nature where RTE and BCI arrived at different decisions on the same advertisement based on the same legislation.

²⁶ Peter Feeney of RTE quoted in the Irish Times, 7 March 2007.

Party Political Broadcasts

Alongside the ban on paid political advertising, the regulatory arrangements in Ireland allow registered political parties access to a system of Party Political Broadcasts during election and referendums campaigns. A government established commission during referendum campaigns is also allowed to advertise both sides of the arguments on radio and television. Vested interested groups such as charities and trade unions have no such access.

The system of free PPBs is the only direct access which political parties have to the broadcast media given the ban on paid political advertising in Ireland. In the United Kingdom where a similar system operates it has been argued that, "the principle that political parties should be able freely to publicise their platforms and policies to voters, and that voters should be able to receive such information, remains compelling."²⁷

PPBs are intended to encourage public participation in the voting process and also to provide voters with information to support their voting decisions. They remain the only real opportunity in the broadcast media for qualifying political parties to present a message directly to the electorate. There is no external commentary – no reporter providing commentary or interviewer influencing the agenda.

There is mixed evidence about the effectiveness of PPBs. Research following the 2001 general election in the UK found that 63% of respondents thought it was either 'very important' or 'quite important' for election broadcasts to be shown on TV. But just because voters noted the importance of PPBs did not mean they watched the broadcasts – only 32% said they paid any attention to them.

Party political broadcasts, regardless of their impact, are watched by sizable audiences in Ireland – the 16 television broadcasts in the 2007 general election had an average viewership of 500,000 people. Opinion poll research undertaken for this study showed that six in 10 of all adults could recall party political broadcasts from the 2007 general election.

Under the Broadcasting Act, 2009 broadcasters are required to ensure that they do not give an unfair preference to any qualifying parties when allocating time for PPBs. The allocation system is determined by the broadcasters and is generally calculated by the performance of the parties in the previous electoral contest.

Unlike in other countries no body of research exists in Ireland to seriously comment on the trends in party political broadcasts or to reach conclusions about changes in content, tone or approach. In general, however, it can be noted that production values have increased while the use of so-called negative advertising has been relatively minimal.

Conclusion

The implementation of the legislative ban on political advertising in Ireland has resulted in a lack of equality in the treatment of different groups. As a counterbalancing measure to the broadcast ban registered political parties can qualify for access

to a system of party political broadcast at election times. While the ban on paid political advertising also applies to third party groups such as trade unions and charitable bodies they do not have a corresponding entitlement to free broadcasts.

It is surprising that the legislative discussions on the Broadcasting Act, 2009 did not contain more substantial consideration of the ongoing controversies involving regulatory interpretation of the current regime.

It is even more surprising that this debate did not take place given the developments at European level which this report now turns to, and which in all likelihood leave Section 41 (3) of the Broadcasting Act, 2009 open to legal challenge.

FREEDOM OF EXPRESSION

Introduction

There is a significant body of expert legal opinion that the current ban on political advertising in Ireland and the United Kingdom is incompatible with the principles of European human rights law.

A number of recent European Court judgements have opened the door for political parties, and particularly in the case of Ireland, non-governmental bodies, to claim a right to purchase broadcast space for advertising of a political nature.

The discussion below shows that a legal challenge to the political advertising ban which was reaffirmed in the Broadcasting Act, 2009 would have a very strong chance of succeeding.

Legal background

International human rights law encompasses civil and political rights including the right to freedom of political expression. Reference to human rights principles can be found in the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms. The various treaties of the European Union also make reference to human rights and fundamental freedoms which are common to all member states. Individuals and member states can appeal alleged violation of the European Convention on Human Rights (ECHR) to the European Court of Human Rights in Strasbourg. All final judgements of the Court are binding on the respondent state involved.

Article 10 of the ECHR deals with "the right of freedom of expression." This includes the right to receive and impart information and ideas "without interference by public authority and regardless of frontiers." Restrictions on this freedom are permitted but in order to comply with the ECHR these restrictions must be both "necessary in a democratic society" and they must be targeted at achieving certain specified objectives such as health or morals or in the interests of public safety.

Article 10 of the European Convention states:

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 national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The European Court of Human Rights has applied Article 10 to broadcasting in several cases. For example, in a 1994 judgement the Court ruled that, "...Article 10 guarantees freedom of expression to 'everyone'. No distinction is made in it according to whether the type of aim pursued is profit-making or not... Article 10 does not apply solely to certain types of information or ideas or forms of expression... in particular those of a political nature; it also encompasses artistic expression..., information of a commercial nature ... and even light music and commercials transmitted by cable."

In addition to the European Convention, the European Union's Charter of Fundamental Rights, which will become into force with the passing of the Lisbon Treaty, impacts on broadcast and freedom of expression. Article 11 of the European Union Charter provides that "everyone has the right to freedom of expression". In Article 52 of the European Union Charter it is stated that the limitations on rights are "subject to the principle of proportionality" and may be made only if they are "necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others."

One legal expert has noted the European Union Charter most likely expands the protection of free expression already contained in the ECHR. "The reference to respecting the freedom of the media, however, could be read to strengthen the right of free expression in the broadcast media. It seems clear that the Charter cannot weaken the protections of the ECHR, and if there is a change, it is to strengthen them."²⁸

A number of judgements in recent years point to a trend by the European Court in finding national prohibitions on political advertising to be incompatible with human rights provisions. It is not clear if the Irish ban on political advertising would be sufficient robust to withstand a legal challenge to the European Court.

"I believe that arbitrary restrictions on political advertising (including broadcasting) especially by non-candidates/non-parties in particular are highly suspect under Article 10 ECHR and under Article 11 of the EU Charter of Fundamental Rights. Election campaigns are not a monopoly of political parties and candidates, and other stakeholders have the right to express views in all media of communication"

Professor Clifford Jones, University of Florida, author of *Regulating political advertising in the EU and USA: a human rights perspective*.²⁹

"The ban does raise significant freedom of expression issues and must remain questionable. Recent European Court judgements leave open the door to other pressure groups challenging the application of the ban to their particular advert. The door is open in Strasbourg as the European Court seems anxious to allow small political parties to have access to airwaves where they are shut out. I would say the ban is vulnerable to being chipped away at"

Professor Eric Barendt, University College London, author of *Freedom of Speech*.³⁰

The case of Switzerland

In January 1994 a television commercial concerning animal welfare was banned in Switzerland. The commercial had been produced by VgT, an animal rights group, and was intended for broadcast on Swiss television in response to commercials sponsored by the meat industry. The material included a shelter with pigs in a small pen. A comparison was made with the conditions in Second World War concentration camps. The commercial ended with the statement: "eat less meat, for the sake of your health, the animals, and the environment."

The proposed advert was deemed to be in breach of Switzerland's ban on paid political advertising on television as the broadcast had a "clear political character". A legal appeal against the ban was taken – VgT lost in the Swiss courts but in June 2001 the European Court of Human Rights held that the refusal to broadcast the advertisement had been a violation of Article 10 of the European Convention of Human Rights.

In VgT Verein gegen Tierfabriken v. Switzerland (VgT) – the European Court held that a blanket ban on political advertising did constitute an interference with the right to freedom of expression guaranteed by Article 10 of the European Convention on Human Rights.

The Court noted that it "cannot exclude that a prohibition of political advertising may be compatible with the requirements of Article 10 of the Convention in certain situations" but any interference has to be prescribed by law and be "necessary in a democratic society." This ruling in effect meant that there had to be a "pressing social need" to ban the broadcast.

The Court found that a prohibition on political advertising which applied only to broadcast media but excluded the print media, did not appear to be a particularly pressing need.

The Court did allow for the possibility that a ban on paid political advertising may in certain situations be compatible with Article 10. Such interference with the freedom of expression, however, had – the Court ruled – to be justified in a "relevant and sufficient manner".

This situation had not been proved in the VgT case as the lobby group was intending merely to engage with an ongoing debate on animal welfare and was not seeking to unduly influence public opinion or to

endanger the equality of opportunity between the different forces of society.

Swiss law was changed to reflect the European Court judgement. The ban on paid advertising by political parties and candidates remained in place. However, certain types of 'political advertising' was permitted. Civic society organisations were now allowed to place advertising that had a certain political content although such advertising is still banned prior to elections or referendums.

The case of the United Kingdom

The British government in 2002 accepted that the UK ban on paid political advertising may be incompatible with European human rights provisions. Nevertheless, the UK Electoral Commission has argued that the case for retaining the ban on paid political advertising in the broadcast media is persuasive and is in the interests of the electorate.

"It seems to us that the UK system would survive scrutiny under the Human Rights Act, at least if the regime of free and unmediated broadcasts is robust."³¹

The Electoral Commission in the UK put some store in the belief that the provision of free broadcasts (PPBs) was a significant counterbalance to the ban on political advertising. The Commission argued that this counterbalance alongside the assessment that the ban is in the public interest in a democratic society would be sufficient for the current system to survive scrutiny under human rights law before the European Court.

The prohibition was most recently upheld in a December 2008 judicial ruling by the House of Lords in which Lord Bingham referred to the necessity to protect political debate from the "potential mischief of partial political advertising".

The latter case involved Animal Defenders International (ADI) which challenged the political advertising ban after it was prevented from broadcasting an advertisement publicising the plight of animals.

The House of Lords judgement said the blanket ban was justified, as a system of deciding upon the merits or otherwise of individual advertisements was unworkable. The outcome of the European Court decision in the VgT case was side-stepped

29_Extracts from interviews, April 2009

30_Extracts from interviews, April 2009

31_Electoral Commission, Party Political Broadcasting, p.4

in the House of Lords judgement – Lord Bingham noted that VgT's advert had been a response to commercials by the meat industry whereas the ADI advert were not responding to anything.

The House of Lords attempt to preserve the UK ban on paid political advertising has, in the words of one writer, been undermined not just by the VgT judgement – which the House of Lords effectively side-stepped – but also by a subsequent case involving a small political party in Norway.³²

The case of Norway

Prior to local and regional elections in Norway in 2003 broadcast station TV Vest AS transmitted three short advertisements for the Rogaland Pensioners Party, a small political party representing the interests of elderly voters. The decision to broadcast the adverts – each of the three was 15 seconds in duration – was in contravention of Norway's ban on all political advertising. The regulatory regime outlawed paid political advertising and did not contain any provision for a free PPB-type system

The advertisements promoted the party and contained an appeal for electoral support. The text of one of the advertisements read:

“Tor Kristian Ronneberg, Pensioners Party. A sufficient number of good nursing home places. Secure jobs, particularly for older workers, and decent pension schemes. If you are interested in any of this, vote for the Pensioners Party.”

The broadcast was accompanied by the text: “We need your vote on 15 September! Vote for the Pensioners Party.”

The broadcaster had been given a prior warning that airing the advertisements was against Norwegian law. A fine was subsequently imposed. The station appealed the decision but lost at every stage of the process at national level in Norway.

The broadcaster and the political party eventually took a case to the European Court of Human Rights in which they claimed that the complete ban on all political advertising in Norway amounted to a violation of their rights under Article 10 of the ECHR.

The Pensioners Party argued that political advertising would allow it to establish direct communication with the electorate without the mediated involvement of journalists and other editorial staff. The absence of a system of free party political broadcasts meant the party seldom received any focus in editorial television programmes. The Norwegian government fell back on the long established criticism of political advertising that a prohibition prevented the airwaves being dominated by wealthy political parties.

In its judgement, the European Court acknowledged that the broadcast sector had a more powerful impact than the print media and that there were occasions when it was justifiable to restrict freedom of political expression to protect the integrity of a democracy itself.

Nevertheless, having considered the case the European Court said it could not accept the prohibition was justified. In the first instance, the Court noted that while the ban may have been intended to prevent wealthy parties dominating the airwaves, the Pensioners Party in Norway could not be described as belonging to this category of political party. The Pensioners Party was, in fact, a small party with insignificant resources.

Given the allocation system in editorial broadcasts small parties received far less space than the bigger parties which strengthened the argument that paid political advertising was the only broadcast means for the Pensioners Party to get its message to the public. The European Court ruled that the Norwegian ban constituted a disproportionate interference with the rights of the Pensioners Party under Article 10 of the ECHR.

In an analysis of the case, Lewis noted: “the judgement of the Court in Pensioners Party is highly significant for the UK since... the Communications Act 2003 imposes a blanket broadcasting ban on political advertising similar to that in Norway.”³³ A similar statement can be made in relation to the significance of the Norwegian case for the ban on paid political advertising in Ireland.

With the Pensioners Party case, the European Court reaffirmed the implications in the VgT judgement for domestic parliaments continuing to impose blanket bans on advertising of a political nature. Organisations denied access have had their right to freedom of expression violated by the banning of their advertisements. This backdrop makes it all the more surprising that the Broadcasting Act, 2009 reaffirmed the Irish ban on political advertising.

“One possible far reaching effect of VgT and Pensioners Party, however, may be to confer some such right of access [to broadcasting space] in order for political groups and NGOs to be able to communicate their messages effectively, in situations where those putting out opposing or competing messages do have such access.”³⁴ The Pensioners Party case has far reaching consequences in particular for non-governmental organisations seeking to purchase advertising space on television and radio.

Unlike in Norway, registered political parties in Ireland through the party political broadcast system have limited access to broadcast space at specific times. Charities and trade unions, however, do not have this broadcasting access. These organisations in Ireland (and in the UK) are in exactly the same position as the Pensioners Party in Norway.

The Pensioners Party case has far reaching consequences in particular for non-governmental organisations seeking to purchase advertising space on television and radio.

Conclusion

There is an increasing body of European Court case law which points to a fundamental problem with the

32_Lewis, 2009, p.9

34_Lewis, 2009, p.7

34_Lewis, 2009, p.14

blanket ban on political advertising in the context of the right to freedom of expression in Article 10 of the European Convention on Human Rights.

There is a significant body of opinion that the current ban on political advertising in countries including Ireland and the United Kingdom is incompatible with European human rights law.

Long-standing arguments presented to justify the prohibition have been undermined by the European Court. Jones has argued that based on recent case law, "it seems that the European Court will find it difficult to justify a clear suppression of political expression based on the argument that some candidates or parties may be able to spend more than others."³⁵

There is no doubt but that current bans on political advertising in many European countries will face judicial challenge and that based on the direction of recent judgements these prohibitions may be found to be illegal under European human rights principles.

A direct challenge to the Irish ban cannot be ruled out in light of the Swiss and Norwegian cases. The VgT and Pensioners Party judgements clearly indicate that the current Irish ban on political advertising is open to serious challenge before the European Court. This situation is most likely for non-governmental organisations which do not have access to a system of party political broadcasts.

Organisations like Trocaire and Barnardos, which have fallen foul of regulatory prohibition on political advertising in Ireland in recent years, could reasonably argue that they have a 'right to broadcast' under European law.

WHAT THE PUBLIC THINKS

Introduction

For this research project, an opinion poll was undertaken to gauge public attitudes to the regulation of political advertising on television and radio in Ireland. The survey fieldwork was conducted by RED C. Some 1,002 interviews were carried out by phone using a random digit dial sample to ensure all households including ex-directory households were covered in the survey.

Half of all respondents were reached using a random digit dial landline sample with the other half using a random dial mobile phone sample. This method ensured that the survey reached 98 per cent of the population including mobile only households, landline only households and dual phone households. The survey was structured and weighted to known profiles on age, gender, class, region and phone type to ensure that the sample was representative of the total Irish population over the age of 18.

A copy of the survey questionnaire is included in Appendix 1.

Research Summary

Almost half of respondents oppose changing the current regulatory regime on paid political advertising.

People are more open to changing the current system if limitations on spending and/or limitations on the broadcast period accompany liberalisation. There is a significant difference in attitude across age categories with younger people more strongly in favour of liberalisation.

There is no difference in the public's attitude to the current restrictions between political parties and interest groups such as trade unions or charities.

Four in ten of all adults believe the status quo is an infringement on the freedom of expression of organisations covered by the ban.

There is strong support for the idea that the rules governing party political broadcasts be determined by an independent body.

The majority of people recall party political broadcasts from the 2007 general election and agree they can influence voting intentions.

Twenty five per cent describe party political broadcasts as 'boring' while 20 per cent see them as 'informative'.

There is a significant difference in attitude across age categories with younger people more strongly in favour of liberalisation.

Attitudes to political advertising

Given the arguments presented against a liberalisation of the current political advertising regime, survey participants were asked for their response to possible changes in the regulatory status quo to allow political parties and other interest groups to advertise on television and radio.

Over half of respondents (56%) disagreed that the law should be changed to allow political parties to advertise on television and radio.

There was a slight decrease in the numbers opposed to a change in the law to allow interest groups to advertise on television and radio – 52% were opposed to a change confined to organisations such as trade unions and charities.

These figures are generally in line with unpublished results of opinion poll research commissioned by the Broadcasting Commission of Ireland in June 2007. In the latter survey 51% said the law should not be changed to allow lobby groups to advertise on radio and television while 59% were opposed to changing the current regime to permit political parties to advertise.³⁶

The numbers who disagreed slightly or disagree strongly with a change in the current regulatory regime declined when changes were presented in the context of some limitation being introduced on the amount of money that could be spent or some restriction on the time period in which advertisements of a political nature could be placed.

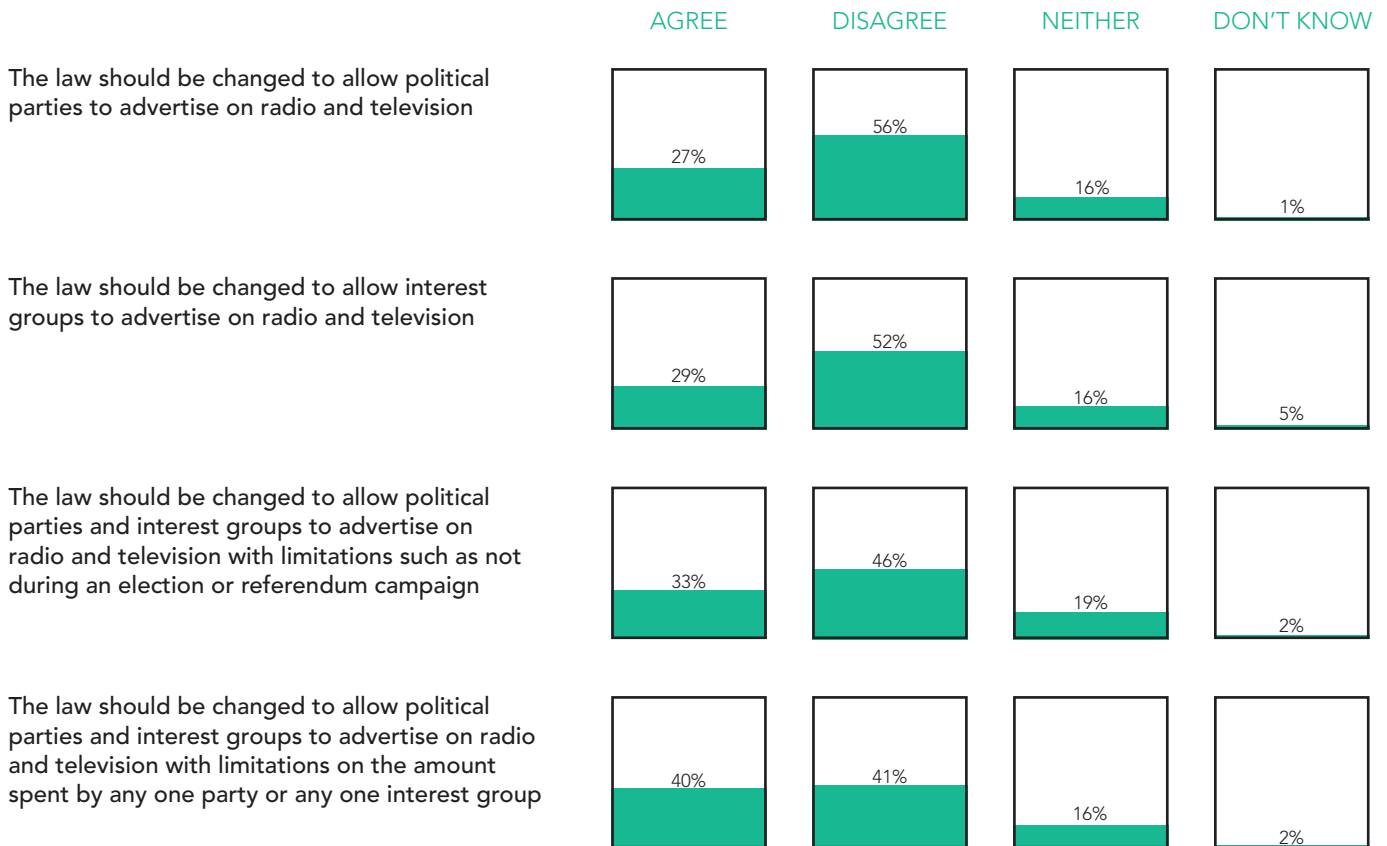
When asked if television and radio advertising by political parties and interest groups should be allowed with limitations such as not during an election or referendum campaign, 46% disagreed.

When asked if television and radio advertising by political parties and interest groups should be allowed with limitations on the amount of money spent by any one party or interest group, 41% disagreed. The numbers in agreement with a liberalisation in the current regime increased once the proposition was matched with some restriction.

When asked if the law should be changed to allow political parties to advertise on television and

³⁶ The survey question was, 'Television and radio advertising by political parties and interest groups seeking to influence or change government policy is currently prohibited. Can you please tell me the extent to which you agree or disagree with each of the statements I read out: 1. The law should be changed to allow political parties to advertise on radio and television; 2. The law should be changed to allow lobby groups to advertise on radio and television. (Information provided by the BAI)

radio, 27% agreed; when asked if the law should be changed to allow interest groups to advertise, 29% agreed; when asked if political parties and interest groups should be allowed to advertise with time limitations such as not during an election or referendum campaign, 33% agreed; when asked if political parties and interest groups should be allowed to advertise subject to spending limitations, 40% agreed.



Those in the 18-24 age group were more likely to favour a change to the status quo on broadcast political advertising. In this age group 48% supported allowing political parties and interest groups to advertise subject to spending limitations; a similar number (48%) in the 18-24 age group also favoured relaxation of the current regime subject to limitations during an election campaign or a referendum campaign. The corresponding numbers in the 65+ age group were 38% (money limitation) and 30% (timing limitation).

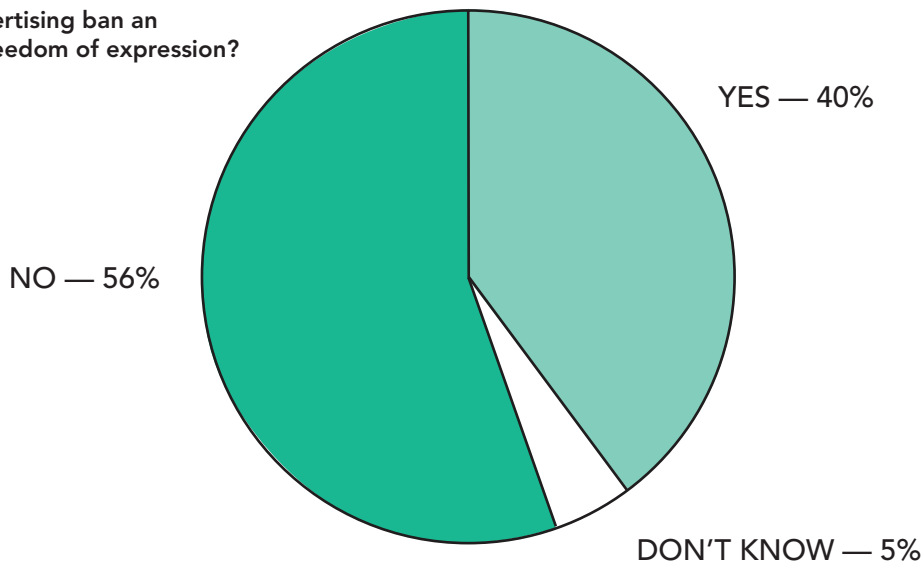
The opinion poll data showed that Fine Gael supporters were most likely to favour the introduction of paid political advertising subject to limitations on the amount spent by political parties or interest groups.

Freedom of expression

Survey participants were asked if the current ban on paid political advertising was an infringement of the freedom of expression of organisations such as political parties and interest groups including charities and trade unions.

Four in ten of respondents (40%) said the current ban was an infringement on the freedom of expression of these bodies. Some 56% disagreed with the argument that the ban on paid political advertising infringed on freedom of expression rights.

Is the political advertising ban an infringement on freedom of expression?



Once again, there was a significant difference in attitudes dependent on age profile. Some 56% of those in the 18-24 age category believed the current regime was an infringement on freedom of expression against 29% in the 65+ age group.

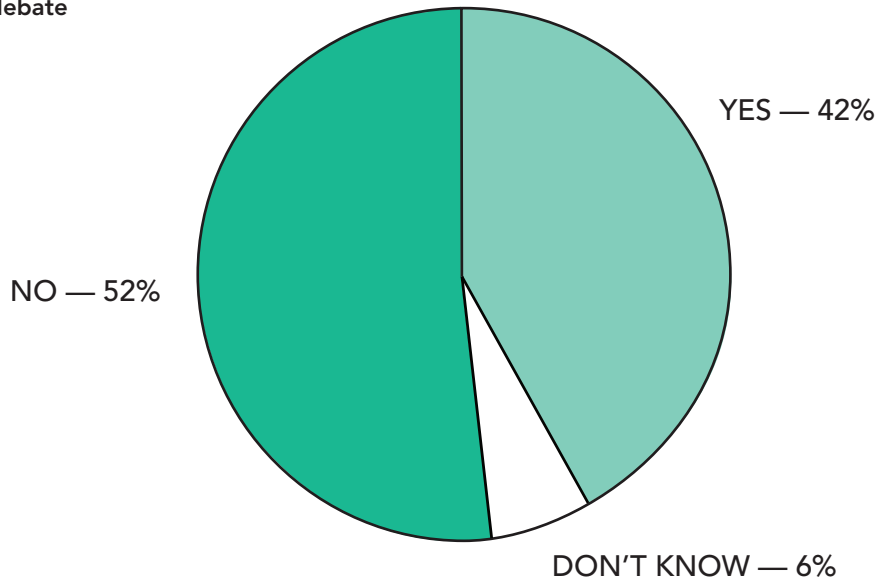
There was little significant difference in responses by gender, region or social class. The breakdown by voting intentions showed that Fianna Fail supporters (47%) were strongest in identifying the current ban with an infringement on freedom of expression against Fine Gael (40%) and the Labour Party (37%).

Concerns about change

Respondents were asked about concerns raised in relation to a change in the current prohibition on paid political advertising in Ireland. They were asked for their opinions about the impact upon the quality of public debate, the availability of information from all political parties and the so-called 'Americanisation' of politics in Ireland

One of the most frequent concerns expressed about a relaxation of the current rules banning paid political advertising in Ireland – and also articulated elsewhere in terms of possible legal changes – is that the quality of public debate would suffer. When asked about the current ban, and what would be the impact on public/political discourse of relaxing the ban, 52% said a change would not assist the quality of debate. Just over four in ten respondents (42%) said relaxing the ban on political advertising would improve the quality of public debate.

Impact on public debate

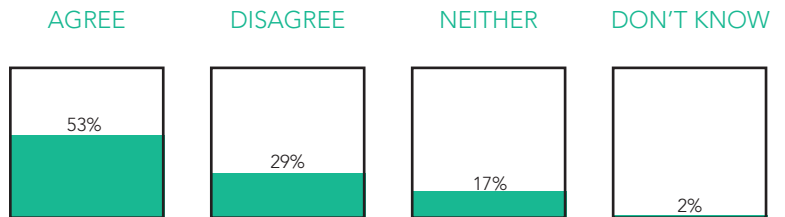


In the opinion poll survey respondents were asked for their view on the statement, 'under a system of paid advertising, it is likely that the public would receive information only from a very small number of political parties which could afford to advertise'.

Some 53% agreed that under a system of paid political advertising the public would be restricted to information from parties with access to financial resources. Of those, 37% agreed strongly while 16% agreed slightly with the view that a small number of parties which could afford to advertise would benefit most from a change in the current regime.

Only 29% disagreed with the view that under a system of paid advertising access to information would be restricted – and of these, 19% disagreed strongly and 10% disagreed slightly.

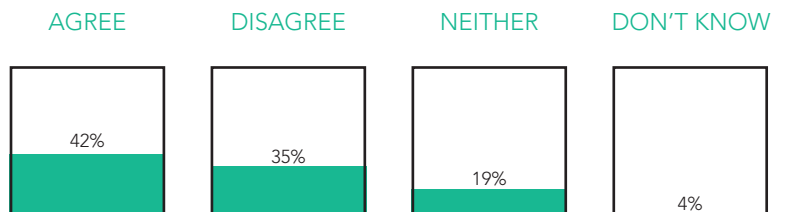
By relaxing the ban on political advertising, it is likely that the public would receive information only from a small number of political parties which would afford to advertise.



Respondents were also asked for their view on the statement, 'the relaxation of the ban on paid political advertising would lead to the "Americanisation" of politics in Ireland'.

Forty two per cent (42%) agreed that a liberalisation of the current regime would create an environment most generally associated with electoral politics in the United States while 35% were in disagreement.

The relaxation of the ban on political advertising would lead to the 'Americanisation' of politics in Ireland.



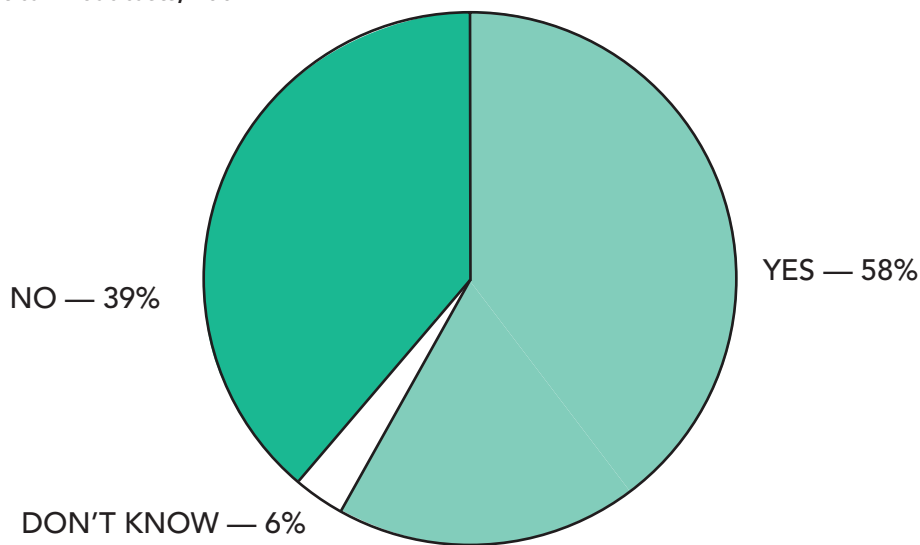
Party Political Broadcasts

The opinion poll survey was also used to test public attitudes to the current regime of free political advertising in Ireland, namely the system of party political broadcasts during election and referendum campaigns.

With reference to the 2007 general election, respondents were asked if they could recall any party political broadcasts from the campaign. Almost six in 10 of all adults (58%) could recall party political broadcasts from 2007 while 39% had no recall.

People over 35 years were more likely to recall the party political broadcasts – 70% in the 35-44 age category; 75% in the 45-54 age category and 68% in the 65+ age category against 40% of those aged between 18 and 24 years.

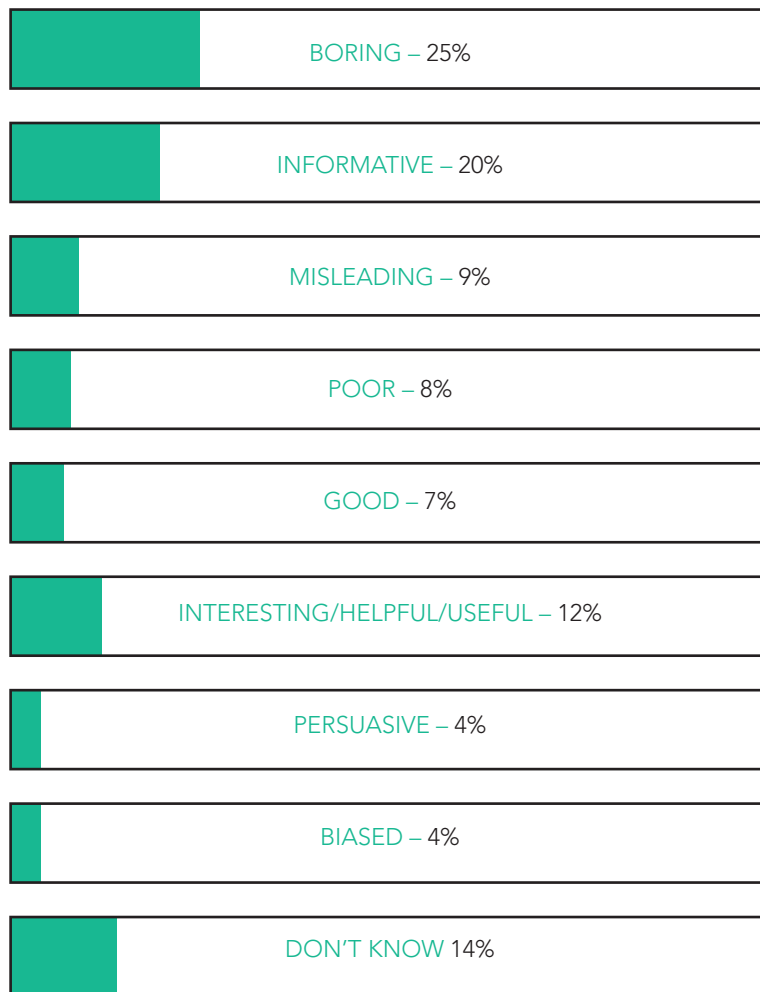
Recall of Party Political Broadcasts, 2007



The other groups with greater recall of party political broadcasts from the 2007 general election included men; those living in Connaught-Ulster; members of the farming community; and Fine Gael voters.

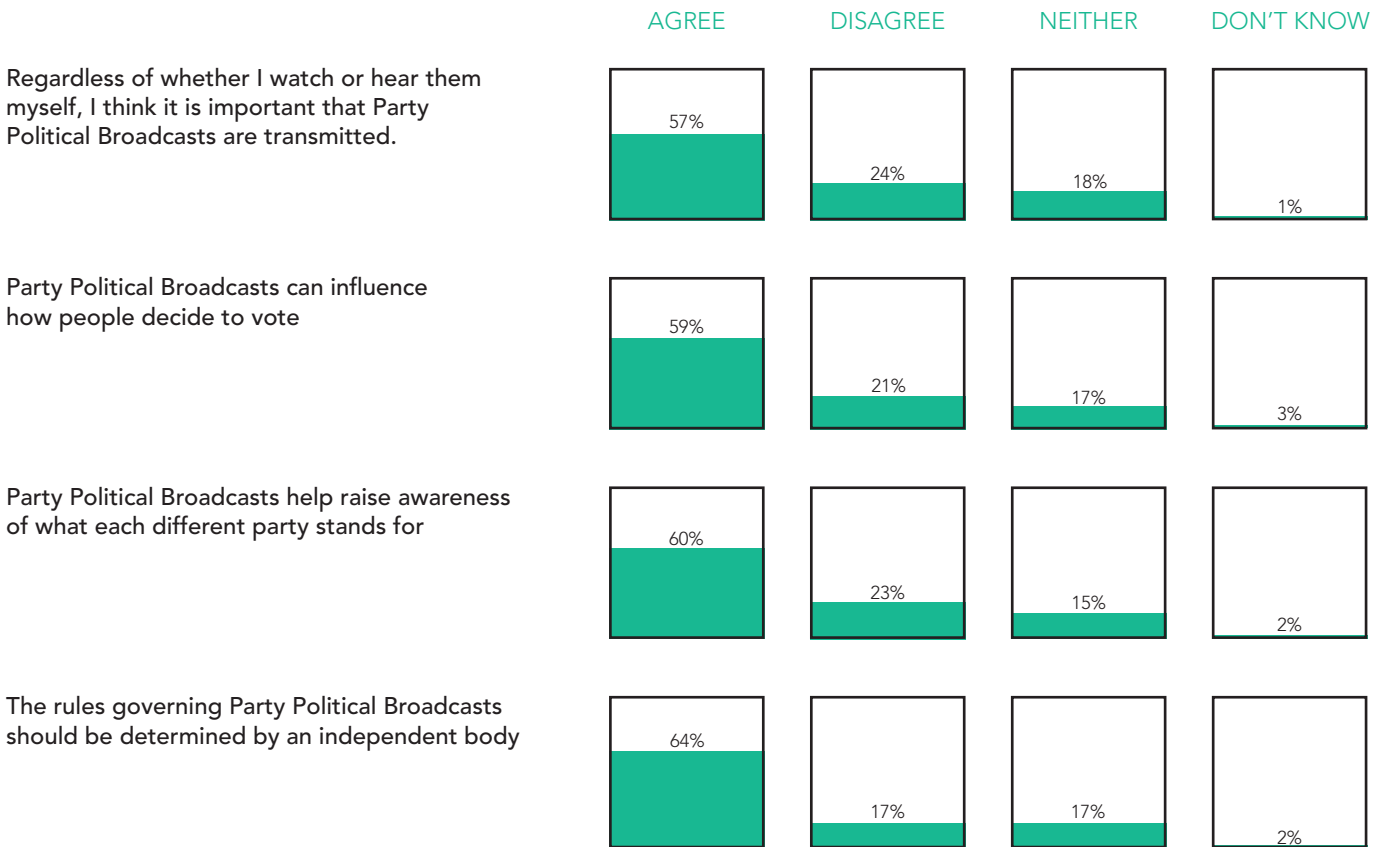
Respondents were presented with a series of adjectives to describe party political broadcasts including boring, informative, misleading and biased. One quarter (25%) opted for 'boring' as the best way to describe party political broadcasts while 20% said these advertising spots were 'informative'. One in ten (10%) believed that the material in the broadcasts was false and misleading.

Attitudes to party political broadcast



Despite the wide variation in opinions on the value of party political broadcasts the survey evidence pointed to strong public support for the current system. Respondents were asked for their view on the statement, 'regardless of whether I watch or hear them myself, I think it is important that Party Political Broadcasts are shown'.

Almost six in ten (57%) agreed that it was important that party political broadcasts were shown – regardless of whether or not they personally watched the broadcasts. Some 41% strongly agreed with this viewpoint while 16% agreed. Only 24% were in disagreement with this position.



Two-thirds of those in the 45+ age category agreed that it was important that party political broadcasts were transmitted, regardless of whether or not they saw or heard them.

Sixty per cent (60%) said party political broadcasts helped raise public awareness about what each individual party stood for – 42% strongly agreed with this position while 18% agreed. Only 23% opposed the idea that public awareness was not impacted upon by the system of party political broadcasts.

The results were similar when respondents were presented with the statement, 'party political broadcasts can influence how people decide to vote'. Sixty per cent (60%) agreed about the influencing factor while 21% disagreed.

The survey questionnaire was also constructed to ascertain opinions on the governance of the system of party political broadcasts. Respondents were presented with the statement, 'the rules governing party political broadcasts and their allocation between political parties should be determined by an independent body'.

Almost two thirds (64%) agreed that an independent body should be given responsibility for over-seeing the system of party political broadcasts – nearly half (47%) strongly agreed with this suggestion. Only 17% disagreed.

CONCLUSIONS & RECOMMENDATIONS

Conclusions

At a time when considerable concern has been expressed about the decline in public participation in the democratic process, and increased apathy exists towards the political system, it is not unreasonable to argue that all avenues to enhance the quality of democratic discourse should be explored.

Broadcast is the medium through which most people received their political news. The current restrictive regime in Ireland prevents election candidates, political parties and interest groups from accessing the most powerful medium available to publicise their policies and promote their agendas with the public.

The Internet has assumed an increasingly important role in political communications and has provided new ways of communicating political messages with the public. Traditional concerns about television and radio political advertising are equally applicable to the Internet but there is no debate about regulating political content on the web.

In an era of media convergence between the various strands of broadcasting – television, radio and the Internet – it does seem timely to review the longstanding blanket ban on political advertising on television and radio. To do otherwise would be to be locked in a policy and technological time warp.

In light of recent European Court judicial determinations, the current regime in Ireland is open to legal challenge, most particularly in relation to interest groups which do not have access to a system of free broadcasts which are provided to political parties at times of elections and referendums.

The opinion poll research commissioned for this study indicates public resistance to a liberal political advertising regime – but as the discussion in this study has shown, change does not mean movement towards such a regime. The empirical data does indicate public willingness to accept modification to the current regulatory system provided certain limitations are put in place alongside a less restrictive environment for political advertising. The favourable backing for the system of party political broadcasts – notwithstanding mixed views about the content of these free adverts – indicates an acceptance that the broadcast media has a role to play in political information provision.

In the opinion poll research – and as mentioned

in the parliamentary debate on the Broadcasting Act, 2009 – fears exist about movement towards ‘American-style politics’. But, as discussed previously, the US situation is the international exception. There is little evidence from other jurisdictions – where limitations on paid political advertisements are freer than in Ireland – that pressures exists to move towards a US-type model.

Moreover, legislative limits on election campaign expenditure in Ireland would prevent movement towards the US-type model. With these limits in place it is questionable whether the authorities should continue to apply an outright ban on how these limited resources are spent. Arrangements can also be put in place to prevent a situation arising where one party or group might outspend its rivals on the airwaves.

There are mixed views in the academic literature about the impact of political advertising on the quality of political debate, and about whether a relaxation of an advertising ban would enhance or diminish the quality of political debate. Given the power of the broadcast medium there is validity in seeing “political advertising as a stimulant to voter engagement”.³⁷

Moreover, in terms of a widely-held view that equates political advertising with negativity two academic experts concluded that, “international comparative research suggests that the predominance of negativity is a peculiarly US phenomenon.”³⁸ Indeed, numerous studies question whether negative advertising is actually a winning strategy or whether voters simply find it off-putting.³⁹

According to one authority, “the current commercials [in the US] are the most visually sophisticated in the history of television advertising, combining text, statistics and multiple themes.”⁴⁰

This study shares the view that the current prohibition on advertising of a political nature in Ireland places an unnecessary limitation on the quality of democratic discourse by impinging upon genuine efforts to enhance participation in political debate.⁴¹

It is difficult to see what harm would arise from a more relaxed attitude to the broadcasting of advertisements from political parties and interest groups provided workable and transparency rules are put in place to oversee a less restricted regime.

37_Scammell and Langer, 2006, p763

38_Scammell and Langer, 2006, p.765

39_See Miskin and Grant, 2004.

40_See Museum of Moving Image. <http://livingroom-candidate.org>

41_O’Neill and Wright in The Irish Times, 21 January 2003

Recommendations

The recommendations in this study on political advertising have been formulated in the context of technological change, judicial development and public opinion. The recommendations are framed against a preference to see managed policy change at a national level rather than waiting for judicial interpretation to force a response or for Internet developments to render the current regime obsolete.

The recommendations envisage a revised regime in which there is greater similarity in the regulatory treatment of political advertising on different broadcast platforms and an acceptance that political advertising has a role to play in democratic discourse.

1. Political parties and other groups should be given greater freedom to publicise their policies and agendas on television and radio. This change should be implemented in the context of providing non-political parties with access to political advertising opportunities while expanding the Party Political Broadcast system for registered political parties.

2. Broadcast advertising by interest groups other than political parties should be permitted outside election and referendum campaigns subject to defined rules including:

- Advertising of a political nature should not be broadcast near news or current affairs programming.

- Advertising of a political nature should not be transmitted alongside normal commercial advertising.

- Advertising of a political nature should be bookended by clear announcements that these broadcasts are a different form of advertising.

3. Consideration should be given to having defined advertising slots which are broadcast at certain times in a daily schedule and contain only advertisements of a political nature.

4. The public will need reassurance that the system ensures those with access to resources do not disproportionately benefit under a new regime. Central to any legislative and regulatory change must be the principle of equity of access to public discourse on the airwaves.

5. Political advertising whether free or paid should be treated like other advertising in law and regulated by a specific code.

6. Legislative change should be sponsored to provide greater clarity in regard to regulations governing qualification for Party Political Broadcasts as well as their length and frequency.

7. The establishment of committee of broadcasters under the remit of the BAI with an independent chairperson is recommended to oversee the PPB system.

8. The obligation to carry PPBs should be reviewed. The reach of PPBs must be extensive if they are to

be an effective platform for parties to communicate directly with voters. The obligation should not be limited to public service broadcasters or national stations. Arguments that 'genre based' services such as sport or music channels should be excluded from the requirement to carry PPBs should be rejected. In many cases, the audience for 'genre based' channels are those most removed from the political system. It is in the democratic interest that PPBs reach as wide an audience as possible. With that objective in mind, it is recommended that all television and radio stations licensed in Ireland should be required to carry PPBs in their schedules.

9. Consideration should be given to allowing register parties a number of annual PPBs outside election and referendum campaigns to be broadcast at agreed times such as at the start of the parliamentary year or after the annual budget.

APPENDIX 1

RED C OPINION POLL QUESTIONNAIRE

Q1. Television and radio advertising by political parties and interest groups is currently prohibited in Ireland. Here are some statements other people have made about such advertising, can you tell me on a scale of 1 to 5 where 1 is disagree strongly and 5 is agree strongly how much you agree or disagree with each of the following statements:

The law should be changed to allow political parties to advertise on radio and television

The law should be changed to allow interest groups to advertise on radio and television

Television and radio advertising by political parties and interest groups should be allowed with limitations such as not during an election or referendum campaign

Television and radio advertising by political parties and interest groups should be allowed with limitations on the amount spent by any one party or interest group

- 5 Agree strongly
- 4 Agree slightly
- 3 Neither
- 2 Disagree slightly
- 1 Disagree strongly

Q2. Do you think the current ban on television and radio advertising by political parties and interest groups including charities and trade unions is an infringement on the freedom of expression of these organizations?

- Yes
- No
- Don't know

Q3. Do you think that relaxing the current ban would assist the quality of political/public debate?

- Yes
- No
- Don't know

Q4. One of the concerns of relaxing the current ban is that a system of paid political advertising would be confined to parties and candidates who had access to significant financial resources - smaller parties would not have the resources to purchase such advertising space.

Here are some statements other people have made about such concerns with paid political advertising, can you tell me on a scale of 1 to 5 where 1 is disagree strongly and 5 is agree strongly how much you agree or disagree with each of the following statements:

Under a system of paid advertising, it is likely that the public would receive information only from a very small number of political parties which could afford to advertise

The relaxation of the ban on paid political advertising would lead to the 'Americanisation' of politics in Ireland

Under a system of paid political advertising, the quality of public debate would decline

Q5. During the 2007 general election do you recall seeing a television party political broadcasts or hearing a radio party political broadcast

- Yes
- No
- Don't know – do not read out

Q6. Under the current regulatory rules, political parties are allowed free information advertisements on radio and television during elections and referendums known as Party Political Broadcasts.

Here are some statements other people have made about Political Broadcasts, can you tell me on a scale of 1 to 5 where 1 is disagree strongly and 5 is agree strongly how much you agree or disagree with each of the following statements:

Regardless of whether I watch or hear them myself, I think it is important that Party Political Broadcasts are shown

Party Political Broadcasts help raise public awareness of what each different party stands for

Party Political Broadcasts can influence how people decide to vote

The rules governing Party Political Broadcasts and their allocation between political parties should be determined by an independent body

5 Agree strongly

4 Agree slightly

3 Neither

2 Disagree slightly

1 Disagree strongly

Q7. How would you describe party political broadcasts?

Boring

Dull

Informative

Useful

Persuasive

Educational

Slick

Cheap

Unintelligible

Helpful

Other (specify)

APPENDIX 2

RELIGIOUS ADVERTISING

The Broadcasting Act, 2009 notes that a broadcaster shall not broadcast an advertisement which addresses 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 longstanding prohibition on religious advertising was, however, modified in the 2009 legislation, so that now the ban does not prevent the broadcasting of certain notices of fact including advertising 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.

Until the 2009 legislation, the same regulations applied to political and religious advertising – both forms of advertising were banned in Ireland. The change in the regime governing religious advertising arose following repeated controversies – similar to those about political advertising by vested interest groups as described previously.

For example, a radio advertisement for the Irish Catholic newspaper was banned in December 2002. The Broadcasting Commission of Ireland argued that the advertisement infringed broadcasting legislation due to the wording, “These are hard times for the Catholic Church, so hard that it’s easy to forget all the good the Church does. To remind us of that, the Irish Catholic will be running an Advent series, starting this week, showing how the Church puts Christ into Christmas through the countless good deeds of thousands of ordinary Catholics.”

Both RTE and the BCI had difficulties with the wording. The BCI found sections of the script inappropriate and contrary to the legislative provisions, in particular, the reference in the opening sentence to the “good” which the church does, and also the mention of the “good deeds of thousands of ordinary Catholics.” The advertisement was banned on public and commercial radio stations in Ireland. This was just one of a number of advertisements in recent years which the regulatory authorities deemed contrary to legislative provisions based on the ban on religious advertising.

The Irish broadcasting ban on religious advertising was unsuccessfully appealed to the European Court of Human Rights – and that judgement has been considered in more recent cases involving political advertising. Significantly, the European Court noted that the “sensitivities as to divisiveness or

offensiveness” in filtering religious advertising on a case by case basis would be difficult to apply which made the argument for the continuation of a blanket ban. These “sensitivities” did not – the European Court ruled – exist for political advertisements.⁴²

A relaxation of the ban on religious advertising was debated in the Oireachtas in the context of what became the Broadcasting Act, 2009. There was a general willingness by all participants in the parliamentary proceedings to modify the blanket ban on religious advertising. During the various contributions in Seanad Eireann, one member made reference to the “analogy” in the treatment of religious and political advertisements but the matter was not developed.

During the final stages of the debate, Communications Minister Eamon Ryan noted: “We had a long and interesting debate on religious advertising at various stages in the drafting and amendment of the Bill. [...] The changes we have made allow the authority greater flexibility in assessing advertising. We have recently seen some high profile cases in which the codes that were in place provided too inflexible a regime. The BCC and some of the people involved in those cases said that the solution we have found should work because it is more flexible. It is up to the new authority to apply it in a sensible and respectful way.”⁴³

The new regime governing religious advertising requires the new Broadcasting Authority of Ireland (BAI) to prepare guidelines to oversee the regulation of religious advertising on Irish television and radio.

⁴² Lewis, 2009, p.13

⁴³ See <http://debates.oireachtas.ie/DDebate.aspx?F=SEN20090630.xml&Ex=All&Page=8>

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