Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 952 (1982)[1]

International means to protect freedom of expression by regulating commercial advertising

Parliamentary Assembly

The Assembly,

1. Considering that freedom of expression is a fundamental right laid down in the constitutions of most Council of Europe member states and in the European Convention on Human Rights ;

2. Considering that Article 10 of this convention reads as follows :

2.1. 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.

2.2. 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 rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary." ;

3. Considering that freedom of expression is a right which should enable individuals and groups to express themselves, but that due regard should be had to the rights of others ;

4. Noting that, in accordance with the jurisprudence of the European Commission of Human Rights, the protection conferred by Article 10 is not normally withheld from statements of a commercial nature, but that the level of protection may be less than that accorded to the expression of political ideas with which the values underlying the concept of freedom of expression in the convention are chiefly concerned ;

5. Desirous to counteract any abuses of human rights ;

6. Considering that appropriate advertising is an essential element of the market economy ;

7. Considering, however, that commercial advertising is often very intrusive, and that children especially may not possess adequate protection against its influence ;

8. Considering that commercial advertising sometimes strives for the sale of goods and services which are dangerous to health or undesirable for other reasons ;

9. Considering, in this respect, that there is, for instance, an alarming increase in the use of alcohol by youth in many of our member countries ;

10. Referring to its Recommendation 716 (1973), on the control of tobacco and alcohol advertising, and on measures to curb consumption of these products ;

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1. Assembly debate on 1 and 2 October 1982 (12th, 13th and 14th Sittings) (see Doc. 4940, report of the Legal Affairs Committee). Text adopted by the Assembly on 2 October 1982 (14th Sitting).

11. Considering that mass media, especially in view of modern technical developments, such as cable television and direct television broadcasts by satellites, are not limited by national boundaries, but that they are frequently heard, watched or read in several of our member countries ;

12. Considering that there is a danger of cultural messages, opinions and information being mixed with advertising, and that, as a consequence, the exercise of the right to freedom of expression may be undermined ;

13. Considering, for that reason, that any action aimed at protecting freedom of expression by regulating commercial advertising is bound to fail unless it is taken up at international level ;

14. Convinced that all action aimed at regulation or prohibition should be accompanied by a policy including measures such as better education of the young, strengthening of consumer associations and better use of leisure time ;

15. Recalling its recent Recommendation 926 (1981) on questions raised by cable television and by direct satellite broadcasts ;

16. Stressing the importance of :

16.1. the clear separation between programmes and advertising on the electronic media (see Recommendation 926, paragraph 18.iii) ;

16.2. effective measures to guarantee that advertisers will comply with national and international provisions (see Recommendation 926, paragraph 15.ii) ;

16.3. safeguards for the application of national legislation in the field of health, morals, public order, protection of children, etc. ;

17. Considering that the overwhelming majority of newspapers and periodicals in our member states are dependent on a steady flow of advertisements without which they would not be able to exist ;

18. Referring to the International Code of Advertising Practice of the International Chamber of Commerce ;

19. Welcoming the work of the Council of Europe's Intergovernmental Steering Committee on the Mass Media ;

20. Considering that this committee should, as a matter of urgency, study and propose adequate international measures, in particular :

20.1. co-operation and co-ordination in respect of commercial advertising, especially on radio and television ;

20.2. prohibition of misleading, hidden and subliminal advertising or messages ;

20.3. promotion of the conditions under which a pluriform supply of information can exist ;

20.4. introduction of a binding code of conduct for commercial advertising which should, in particular, take account of the effect of advertising on children, not be contrary to the process of emancipation, and promote as well as confirm the separation of advertising from information or opinions.

21. Recommends that the Committee of Ministers, in the light of Article 10 of the European Convention on Human Rights, instruct the Steering Committee on the Mass Media to examine international means to protect freedom of expression by regulating commercial advertising, especially on radio and television, and to make concrete proposals, possibly through the conclusion of a European convention.