Court of Justice of the European Union: Opinion in RojTV/FRG Preliminary Ruling Procedure

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On 5 May 2011, Advocate General (AG) Bot gave his opinion to the Court of Justice of the European Union (ECJ) in the joined cases C-244/10 and C-245/10. It concerned a reference for a preliminary ruling submitted by the German *Bundesverwaltungsgericht* (Federal Administrative Court - BVerwG) on the interpretation of the ban on the broadcast of programmes that incite to hatred, enshrined in Article 22a of the "Television Without Frontiers" Directive 89/552/EEC (TWF, now: Article 6 of the Audiovisual Media Services Directive 2010/13/EU, AVMSD).

The related national procedure concerned an order issued by the *Bundesministerium des Innern* (Federal Ministry for Home Affairs), prohibiting the operator of Danish television channel RojTV from operating the channel under the scope of the German *Vereinsgesetz* (Associations Act) (see IRIS 2008-8/16). In its initial ruling, the BVerwG held that the programmes broadcast on RojTV glorified the armed conflict being waged by the PKK against the Turkish Republic and therefore violated the ban on harming international understanding, set out in the German *Vereinsgesetz*. The BVerwG therefore asked whether the EU ban on the broadcast of programmes that incite to hatred included programmes that were likely to damage relations between Turkish and Kurdish groups living in Germany by glorifying the PKK (see IRIS 2010-4/16).

The AG explained that he could see no reason why the concept of incitement to hatred should be interpreted much differently to that of harming international understanding. In the AG's opinion, incitement to hatred meant an attempt to create a hostile or negative feeling towards another person who, as a result, was no longer able to live in harmony with the person attempting to createg such a feeling. The terms "incitement to hatred" and "harming international understanding" referred to the same behaviour, since the concept of violation of international understanding could not, taking into account the basic right to freedom of expression, be interpreted so broadly as to include messages that were not likely to create a feeling of intolerance. On the other hand, the AG considered that, since the aim pursued by the Directive justified a broad interpretation of the concept of incitement to hatred on grounds of race and nationality, this should include programmes that could harm understanding between different ethnic or cultural communities, such as the Kurdish and Turkish

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communities living in Germany.

However, the AG admitted that, in its current form, the ban imposed by the German authorities could only prohibit the retransmission of the RojTV television signal to public locations and not to private households. A ban on any form of distribution could, if necessary, be imposed by implementing the procedure provided for in Article 2a TWF (Article 3 AVMSD), which enabled a member state, under the conditions laid down (including notification to the broadcaster and the European Commission, and consultation with the transmitting member state), to take restrictive measures against such programmes.

Advocate General's opinion (C-244/10, C-245/10) of 5 May 2011

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