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

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On 22 September 2011, the Court of Justice of the European Union (ECJ) published its judgment in the joined cases C-244/10 and C-245/10 following references for a preliminary ruling from the German *Bundesverwaltungsgericht* (Federal Administrative Court - BVerwG) concerning the interpretation of the ban on the broadcast of programmes that incite hatred, enshrined in Article 22a of the Television Without Frontiers Directive 89/552/EEC (now: Article 6 of the Audiovisual Media Services Directive 2010/13/EU).

The related national procedure concerned an order issued by the *Bundesministerium des Innern* (Federal Ministry for Home Affairs), prohibiting the operator of the Danish television channel RojTV from operating the channel within the scope of the German *Vereinsgesetz* (Associations Act). 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 as set out in the Associations Act. The BVerwG therefore asked whether the EU ban on the broadcast of programmes that incite hatred included programmes that were likely to damage relations between Turkish and Kurdish groups living in Germany by glorifying the PKK.

In its judgment, the ECJ followed the conclusions of the Advocate General (see IRIS 2011-7/3) and stated that the Directive, by using the concept “incitement to hatred”, was designed to forestall any ideology that failed to respect human values, in particular by glorifying violence by terrorist acts against a particular group of people. The behaviour of the broadcaster described by the referring court therefore fell within the field coordinated by the Directive.

The Federal Republic of Germany was not permitted to prohibit the retransmission of the channel concerned for reasons that fell within the fields coordinated by the Directive because it was solely for the member state from which television broadcasts emanated to monitor the application of the relevant provisions.

Nevertheless, the court concluded, with reference to its De Agostini ruling (joined cases C-34/95 to C-36/95, see IRIS 1997-8/7), that the Directive did not prevent a member state from taking measures against a foreign television broadcaster as long as it did not prevent retransmission per se of the television broadcasts. The

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prohibitions ordered by the German authorities on the basis of the law of associations mainly concerned public screenings of RojTV programmes and sympathy activities for the broadcaster held on German territory. The reception and private use of RojTV's programmes were not affected (and, in practice, not prevented) by the order.

Nevertheless, it was for the referring court to determine the actual effects that followed from such a prohibition, in particular whether it prevented retransmission per se in the member state receiving the broadcasts.

Judgment of the ECJ of 22 September 2011 (joined cases C-244/10 and C-245/10)

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