European Court of Human Rights: ROJ TV A/S v. Denmark

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The European Court of Human Rights (ECtHR) has rejected the application by the Denmark-based TV company ROJ TV A/S, which was convicted and deprived of its licence because some of its programmes were considered to have promoted the Kurdistan Workers' Party (PKK), which is listed as a terrorist organisation within the EU and in the US, Canada and Australia.

The case concerned the conviction of ROJ TV A/S for terrorism offences, as the Danish courts had found that a series of programmes broadcast by ROJ TV A/S between 2006 and 2010 had promoted the PKK. The Danish courts had found it established that the PKK could be considered a terrorist organisation within the meaning of the Danish Penal Code and that ROJ TV A/S had supported the PKK's terror operations by broadcasting propaganda for the PKK. It was fined and its licence withdrawn. ROJ TV A/S invoked Article 10 of the European Convention of Human Rights (ECHR) by complaining that its conviction and the withdrawal of its licence had interfered with and violated its freedom of expression.

The ECtHR found that the domestic courts had carefully assessed the evidence before them and conducted a balancing exercise, taking ROJ TV's right to freedom of expression into account. It did not find any elements indicating that the Danish courts did not base their findings on an acceptable assessment of the relevant facts. Most importantly, the ECtHR found that the television station could not benefit from the protection afforded by Article 10 ECHR, as it had tried to employ that right for ends which were contrary to the values of the ECHR by inciting violence and supporting terrorist activity. Because such expressions are in violation of Article 17 of the ECHR (prohibition on the abuse of rights), the complaint by ROJ TV A/S did not attract the protection of the right to freedom of expression. Under Article 17 of the ECHR "nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention." The purpose of Article 17 is to make it impossible for persons, groups or organisations to derive from the Convention a right to engage in any activity or perform any act aimed at destroying any of the rights and freedoms set forth in the Convention. The ECtHR reiterated that the decisive point when assessing whether statements, verbal or non-verbal, are removed from the

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protection of Article 10 by Article 17 of the ECHR is whether the statements in question are directed against the Convention's underlying values - for example, by stirring up hatred or violence - and whether by making the statement, the author attempted to rely on the ECHR to engage in an activity or perform acts aimed at the destruction of the rights and freedoms laid down in it.

The ECtHR reiterated that Article 17 ECHR is only applicable on an exceptional basis and in extreme cases (see Perinçek v. Switzerland, IRIS 2016-1/1). In the present case however, the ECtHR attached significant weight to the fact that the City Court of Copenhagen had found that the one-sided coverage (with repetitive incitement to participate in fighting and actions, incitement to join the organisation in question and its guerrillas, and the portrayal of deceased guerrilla members as heroes) had amounted to propaganda for the PKK, a terrorist organisation, and that it could not be considered to constitute only a declaration of sympathy. In addition, ROJ TV A/S had been financed to a significant extent by the PKK in the years 2006-2010. Furthermore, the High Court of Eastern Denmark had found explicitly that, having regard to the content, presentation and connection of the programmes of ROJ TV, the case concerned the promotion of the PKK's terror operations. The ECHR referred to the nature of the impugned programmes, which included incitement to violence and support for terrorist activity (elements extensively examined by the national courts). It also considered the fact that the views expressed in the programmes of ROJ TV A/S had been disseminated to a wide audience through television broadcasting and that they related directly to an issue which is paramount in modern European society - the prevention of terrorism and terrorist-related expressions advocating the use of violence. For these reasons ROJ TV A/S could not, under Article 17 of the ECHR, rely on the protection afforded by Article 10 of the ECHR. Therefore, the ECtHR was of the opinion that ROJ TV A/S was attempting to deflect Article 10 of the ECHR from its real purpose by employing this right for ends which were clearly contrary to the values of the ECHR. Consequently, the Court found unanimously that, by reason of Article 17 ECHR, ROJ TV A/S could not benefit from the protection afforded by Article 10 of the ECHR. The ECtHR considered the application incompatible ratione materiae with the provisions of the Convention; accordingly, the application by ROJ TV A/S was rejected by the Court. The decision by the ECtHR is final.

Decision by the European Court of Human Rights, Second Section, case of ROJ TV A/S v. Denmark, Application no. 24683/14, 17 April 2018, notified in writing on 24 May 2018

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