

CJEU, Mesopotamia Broadcast A/S METV (C-244/10) and Roj TV A/S (C-245/10) v Bundesrepublik Deutschland

Area of law

Freedom of expression - Hate speech

Subject matter

Which is the definition of “incitement to hatred” adopted at EU level?

Which are the powers of Communication authorities in case of programmes containing incitement to hatred?

Summary Facts Of The Case

The Danish company Mesopotamia Broadcast is the holder of several television licences in Denmark. It operates the television channel Roj TV, which is also a Danish company. Roj TV broadcasts programmes via satellite, mainly in Kurdish, throughout Europe and the Middle East. It commissions programmes from, among others, a company established in Germany.

Several complaints of government authorities in Turkey were lodged before the Danish Radio and Television Board in 2006 and in 2007, which eventually resulted in the decisions of the Danish Radio and Television Board of compliance of the Roj TV's programmes with Directive 89/552/EEC. The Danish Radio and Television Board observed that the applicant company's programmes did not incite hatred on grounds of race, sex, religion or nationality and that it merely broadcast information and opinions, and that the violent images broadcast reflected the real violence in Turkey and the Kurdish areas.

In the meantime, in 2008 the German Federal Interior Ministry started a parallel procedure which instead resulted in prohibition on Roj TV from carrying out its activities in Germany.

The decision of the German authority was based on the evaluation that Roj TV's programmes were at variance with the 'principles of international understanding' as defined by German constitutional law. The ground for the prohibition rested on the fact that Roj TV's programmes called for the resolution of differences between Kurds and Turks by violent means, including in Germany, and supported the efforts of the PKK (the Kurdistan Workers' Party, which is classified as a terrorist organisation by the European Union) to recruit young Kurds as guerrilla fighters against the Republic of Turkey.

The two companies brought an action before the German courts seeking to have that prohibition set aside, relying on the fact that, according to the directive, only Denmark could control their activities.

The German Federal Administrative Court faced with the case, decided to stay the proceedings and present a preliminary ruling to the CJEU whether the German authorities were lawfully entitled to prohibit the activities of Mesopotamia Broadcast and Roj TV. The German court wishes to know, in particular, whether the concept of 'incitement to hatred on grounds of race, sex, religion or nationality', the interpretation of which is reserved in the present context to the Danish authorities,

also includes infringements of the 'principles of international understanding'.

The CJEU on 22 September 2011 decided the case. The Court addressed in detail the analysis of the concept of 'incitement to hatred' laid down in the directive with the purpose of forestalling any ideology which fails to respect human values, in particular initiatives which attempt to justify violence by terrorist acts against a particular group of persons. According to the referring court, Mesopotamia Broadcast and Roj TV play a role in inciting violent confrontations between persons of Turkish and Kurdish origin in Turkey, and in heightening tensions between Turks and Kurds living in Germany. In those circumstances, the Court declares that the conduct of Mesopotamia Broadcast and Roj TV, as described by the German court, is covered by the concept of 'incitement to hatred'.

However, the CJEU stresses that according to the Television without frontiers directive, only the Danish authorities are competent to verify whether that conduct constitute 'incitement to hatred' and to enforce the application of the same directive on Roj TV so as to prohibit the such incitement. Moreover, the CJEU reminds that according to the directive, Member States are not authorised to restrict the retransmission on their territory of programmes broadcast from another Member State.

In that connection, the CJEU states that the contested measures are designed not to prevent the retransmission in Germany of television broadcasts carried out by Roj TV, but rather to prohibit the activities in Germany of that broadcaster and Mesopotamia Broadcast in their capacity as associations.

Thus, the reception and private use of Roj TV's programmes are not prohibited and, indeed, remain possible in Germany. However, as a prohibited association, Roj TV can no longer organise activities in Germany, and activities carried out for the benefit of that broadcaster are also prohibited there. Accordingly, the CJEU replies that the measures taken against Mesopotamia Broadcast and Roj TV do not, in principle, constitute an obstacle to the retransmission of programmes broadcast by Roj TV from Denmark. Nevertheless, the referring court must verify whether or not in practice the actual effects which result from the prohibition decision prevent the retransmission of those programmes to Germany.

Immediately after the decision of the CJEU (on September 2011), a Danish prosecutor initiated criminal proceedings against the two companies behind Roj TV, charging them of promoting a terror organization in violation of the Danish Criminal Code. The City Court of Copenhagen decided the case in 2012 and found that the defendant promoted a terrorist organisation (the PKK), highlighting that the TV channel in various programmes in a one-sided and uncritical way had communicated PKK's messages, including requests for rebellion and for joining the PKK. The sanction for such an offence was a fine of 349,000 euro for each broadcasting company, without the application of the deprivation of the right to broadcast nor the confiscation of the broadcasting licence.

On appeal to the High Court of Eastern Denmark (Østre Landsret) upheld the decision, confirming the findings of the lower court. The sanction was increased to 671,000 and adding the deprivation of the license to broadcast. The latter was justified by the application of an effective, proportionate and dissuasive criminal penalties as imposed by the EU's Council Framework Decision of 3 December 2001 on combating terrorism.. The Supreme Court, then in February 2014 upheld the ban.

The broadcasting companies then lodged a claim before the ECtHR claiming a violation of art 10 ECHR. The ECtHR decided the case on 24 May 2018.

The decision took into account the assessment provided by the domestic courts regarding the facts of the cases and the balancing exercise applied as regards the right to freedom of expression of the broadcasting company. On the basis of the domestic court assessment the ECtHR

acknowledged that not only the national courts addressed all the relevant facts and evidence, but they also evaluated the potential limitation of the freedom of expression taking into account the programmes' content, presentation and connection and found that the limitation was legitimate. Accordingly, the ECtHR found that art 17 ECHR was applicable due to the fact that the programmes and contents broadcasted were contrary to the prevention of terrorism and terrorist-related expressions advocating the use of violence. Therefore, by virtue of art 17 ECHR the complainant may not be protected by art 10 ECHR and their complaint is deemed inadmissible.

Relation to the scope of the Charter

Art 11 of the EU Charter was mentioned in the CJEU judgement along with art 10 ECHR, though no specific analysis of the impact of the provision on the specific case is provided by the CJEU.

Wider attention is given to the definition of incitement to hatred as provided by art 22a Dir. 89/522 which is interpreted by the CJEU as “*any ideology which fails to respect human values, in particular initiatives which attempt to justify violence by terrorist acts against a particular group of persons*” (par. 42).

Sources - CJEU Case Law

CJEU, Judgment of the Court (Third Chamber) of 22 September 2011, Mesopotamia Broadcast A/S METV (C-244/10) and Roj TV A/S (C-245/10) v Bundesrepublik Deutschland, Joined cases C-244/10 and C-245/10.

Sources - ECtHR Case Law

ECtHR, Roj TV v Denmark
