



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-244/10 and C-245/10
Mesopotamia Broadcast A/S METV and Roj TV A/S v Bundesrepublik
Deutschland

Germany cannot prevent the retransmission on its territory of programmes in Kurdish which are broadcast by Roj TV from Denmark

However, so long as the retransmission of those programmes is not prevented, Germany may prohibit, on its territory, the activities of Roj TV and Mesopotamia Broadcast as associations

The 'Television without Frontiers' Directive¹ seeks to remove obstacles to the freedom to provide television broadcasting services within the European Union. The directive provides that Member States have powers to ensure that the activities of television broadcasters established on their territory are lawful. They must, in particular, ensure that the programmes of those broadcasters do not contain any incitement to hatred on grounds of race, sex, religion or nationality.

In addition, Member States may not restrict the retransmission on their territory of programmes broadcast by television broadcasters established in another Member State for reasons related to the incitement to hatred, which is to be assessed, according to the directive, exclusively by that latter State.

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.

In 2008, the German authorities prohibited Mesopotamia Broadcast from conducting, through the agency of Roj TV, any activities in Germany, on the ground 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 Bundesverwaltungsgericht (the German Federal Administrative Court) asks the Court of Justice 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'.

¹ Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L 298, p. 23), as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 (OJ 1997 L 202, p. 60).

By its judgment delivered today, the Court interprets 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, in the present case, the Court stresses that **the Danish authorities alone are competent to verify whether that conduct does in fact constitute ‘incitement to hatred’** and to ensure that Roj TV’s programmes do not contain such incitement.

Next, the Court points out that Member States may adopt laws pursuing a public-policy objective which do not relate specifically to the broadcasting and distribution of programmes. However, **Member States are not authorised to restrict the retransmission on their territory of programmes broadcast from another Member State**.

In that connection, the Court states that, according to the information provided by the German Government, 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.

In that context, 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. In particular, the production of programmes and the organisation of events, consisting in the screening of Roj TV’s programmes in a public place, in particular a stadium, as well as sympathy actions taking place in Germany, are prohibited.

Accordingly, the Court 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.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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