

ROJ TV
Att.: Manouchehr Tahsili Zonoozi
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Copenhagen, 3 May 2007

Decision regarding complaint from the Radio and Television Supreme Council

On 30 July 2006, the Radio and Television Board received three complaints from the Turkish radio and TV authority, the Radio and Television Supreme Council (RTSC), concerning programmes or parts of programmes broadcast by ROJ TV, cf. the following. The complaints are referred to as Letter 1 (Complaint 1), Letter 2 (Complaint 2) and Letter 3 (Complaint 3), cf. appendices 1, 2 and 3.

The complaint

With regard to the contested programme clips, RTSC is of the opinion that ROJ TV has violated provisions in the international conventions, agreements and Danish legislation listed below:

1. The European Convention on Human Rights
2. The UN's International COVENANT on Civil and Political Rights
3. The European Convention on Transfrontier Television
4. The Convention on the Rights of the Child
5. The EU directive "Television without Frontiers"
6. Executive Order No. 338 of 19 April 2006 on satellite, cable and short-wave broadcasting (previously Executive Order No. 1174 of 17 December 2002 on satellite, cable and short-wave radio and television broadcasts).

The complaints were accompanied by 3 CDs and DVDs of the contested programme clips.

In a letter dated 22 August 2006, the Board asked if ROJ TV wished to address the complaints. In a letter dated 18 September 2006, ROJ TV replied to the public hearing notice regarding the complaints, cf. appendix 4. The correspondence received in response to the public hearing notice contained five DVDs with copies of selected complete programmes.

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Per e-mail on 29 August 2006, the Board requested that RTSC send a written document specifying the times the contested programme clips were broadcast.

On 2 November 2007, a letter submitted by RTSC was received listing the exact times, cf. appendix 5.

In a 20 October 2006 letter, ROJ TV was requested to send copies of additional programmes to the Board as well as indicate whether the news broadcasts, which are sent in three different languages, had identical content (i.e. did they contain the same news but were simply broadcast in three different languages).

ROJ TV answered this question affirmatively in a 2 November 2006 letter containing an additional five DVDs.

Rules

The Radio and Television Board's regulatory power regarding satellite registrations was established in Act No. 338 of 11 April 2007 to consolidate the law on radio and television broadcasts and in Executive Order No. 338 of 19 April 2006 on satellite, cable and short-wave broadcasts. The Board does not have direct regulatory powers under the agreements and rules in points 1-4 above, cf. page 1. The provisions regarding the violations listed in the "Television without Frontiers" directive were implemented in section 7 of Danish Executive Order No. 338 of 19 April 2006.

The provisions in section 7, sub-sections 1-3 of Executive Order No. 338 of 19 April 2006 on satellite, cable and short-wave broadcasts (which are an implementation of articles 22 and 22a of the EU directive "Television without Frontiers") are worded as follows:

- "1. Registered companies that send radio and television broadcasts may not broadcast programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.
2. Other programmes that are likely to impair the physical, mental or moral development of minors may not be broadcast except where it is ensured by selection of the time of the broadcast or by any technical measure that minors in the area of transmission will not normally hear or see such broadcasts. Furthermore, when such programmes are broadcast in unencoded form, they must be preceded

by an acoustic warning or be identified by the presence of a visual symbol throughout their duration.

3. The broadcasts may not contain any incitement to hatred on grounds of race, gender, religion, nationality or sexual orientation."

In the following, the Board will treat the complaints on the basis of the above-mentioned rules and make its decision in relation to the provisions set down in Act No. 338 of 11 April 2007 to consolidate the law on radio and television broadcasts and in Executive Order No. 338 of 19 April 2006 on satellite, cable and short-wave broadcasts.

License granted to ROJ TV by the Board

ROJ TV was granted license on 9 December 2003 based on a 24 October 2003 application for license.

ROJ TV's application for license includes, for example, the following:

- That broadcasts will be aimed primarily at Kurds.
- That the aim is to describe the existing situation for Kurds spread out around the world.
- That programmes will primarily deal with social and health conditions, political topics and debates as well as entertainment programmes that preferably will be sent on the weekends.
- That broadcasts will under no circumstances be in conflict with the conditions stipulated in section 11 of the Executive Order and that no programmes will be broadcast that can be remotely construed to approximate the description given in section 11 (section 11 in the previous Executive Order contains the rules regarding the protection of minors and the prohibition of incitement to hatred and is the equivalent of section 7 in the present Executive Order, cf. the above).

A standard license was issued and states, for example, that:

- Rules for the protection of minors must be observed,
- Programmes must in no way incite hatred on grounds of race, gender, religion, nationality or sexual orientation.

Evaluation of the complaints

In general

The Radio and Television Board has examined the clips submitted in the three complaints, and in order to make a decision about the complaints

based on the submitted CD and DVD, the Board had the contested clips translated into Danish.

The three complaints are treated together in the following because the Board finds that the content of the complaints and the contested clips share so many features that the basis for the Board's decision is the same for all of the issues involved.

Below, the complaints are examined based on section 7, sub-sections 1-2 and section 7, sub-section 3, respectively. In addition, the Board has a number of supplementary comments, which combined with their evaluation of the complaints in relation to the above-mentioned provisions form the basis for their decision.

Section 7, sub-sections 1-2:

In some of the clips, ROJ TV reports information about demonstrations and events as well as requests to participate in them.

There are scenes containing violent episodes in the contested clips, but in all of the incidences, the Board is of the opinion that they represent the violence that actually exists in Turkey and in Kurdish areas. These violent scenes form the basis for the news clips about activities and episodes in the areas in question and, in the Board's opinion, are not emphasised in an unwarranted or exaggerated way.

Even though reporting this information can have an unpleasant effect on the Turkish authorities, it does not, in the opinion of the Board, violate radio and television legislation.

Based on this and the question of whether the clips in the three complaints violate section 7, sub-sections 1-2 (which concerns a ban on broadcasting programmes that might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence and which states that programmes that can impair the physical, mental or moral development of minors may not be broadcast except where it is ensured by selection of the time of the broadcast or by any technical measure that minors in the area of transmission will not normally hear or see such broadcasts), the Board is of the opinion that none of the clips contain gratuitous violence. All of the clips, with the exception of a music video, cf. Complaint 3, are ordinary news broadcasts or debate programmes that principally do not diverge from what can otherwise be viewed in similar programmes on DR or TV2, which is why, in the Board's opinion, they are not in violation of section 7, sub-sections 1-2.

Moreover, it is the Board's assessment that the programmes are not aimed at minors.

The music video in Complaint 3, which is not part of a news or debate programme, is not judged to be a typical music video aimed at minors and the young.

Section 7, sub-section 3:

In the Board's interpretation of section 7, sub-section 3 of the satellite and cable Executive Order of 21 April 2005 when addressing a complaint about ROJ TV, the Board emphasised that "incitement to hatred" is to be understood as direct requests. Thus, the fact that a person, organisation, etc. has a certain opinion does not alone signify incitement. In addition, it is not sufficient that it is commonly known that the person or organisation has that opinion.

Furthermore, in its interpretation of "incitement to hatred", the Board emphasises that statements or information that can be interpreted or perceived by some parties as incitement or a request to incitement must be released with the intention of inciting or encouraging hatred (intention) to be covered by the provision. As a result, solely passing on information is not encompassed by the term "incitement". A far-reaching interpretation would inhibit a free press from notifying and informing about the conditions and events in society and in the world that it deems relevant to communicate. This also means that based on the Board's assessment, the possible consequences of passing on information (for example, communicating the news) are not covered by the provision because passing on information and facts about an issue or event must be expected to have a variety of effects on people who have different preconceived notions about an issue or subject.

The contested clips all contain telegrams that are read aloud, quotes from other sources and coverage of or direct interviews with sources. Thus, it is not ROJ TV that is being represented.

The statements in the contested clips do not contain, in the opinion of the Board, incitement to hatred due to race, nationality, etc. In more than one clip, democracy, democratic solutions, democratic revolution and the like are even mentioned. Other statements are of a more ambiguous nature, but the Board has not determined that an incitement to hatred exists in the clips.

NON-BINDING ENGLISH TRANSLATION

In summary, the Board is of the opinion that the clips concerned inherently resemble news clips or debate programmes, where information, news and viewpoints are passed on as a part of news and debate programmes, and that they do not contain incitements to hatred. As a result, it is the opinion of the Board that no violation has occurred of section 7, sub-section 3, which prohibits incitement to hatred.

As far as the music video in Complaint 3 is concerned, the Board is of the opinion that it does not incite to hatred and that it does not represent ROJ TV's views.

Supplementary comments:

In addition to the contested clips, the DVD for Complaint 2 from RTSC contains recordings from a variety of television stations in Turkey. The pictures show riots, fights with the police, Molotov cocktails being thrown and demonstrations. RTSC argues that ROJ TV's broadcasts are to blame for these incidences.

The Board is of the opinion that the complaint does not contain documentation showing that ROJ TV's broadcasts were the cause of the riots, etc. in Turkey and in Kurdish areas.

For Complaints 1, 2 and 3, the Radio and Television Board hereby issues the following:

Decision

ROJ TV has not violated section 7, sub-sections 1-2 of Executive Order No. 338 of 19 April 2006 on satellite, cable and short-wave broadcasts, cf. the above rules, and

ROJ TV has not violated section 7, sub-section 3 of Executive Order No. 338 of 19 April 2006 on satellite, cable and short-wave broadcasts, cf. the above rules, and

this decision cannot be brought before another administrative authority,
and

this decision can be brought before a court of law.

NON-BINDING ENGLISH TRANSLATION

A copy of this decision has been sent to the Radio and Television Supreme Council in Turkey, the Prime Minister, the Ministry of Culture, the Ministry of Justice, the Ministry of Foreign Affairs and the EU Commission.

NB: This is an uncertified English translation.

With kind regards

Christian Scherfig
Chairman

Appendices

Appendix 1: Complaint 1

Appendix 2: Complaint 2

Appendix 3: Complaint 3

Appendix 4: ROJ TV's 18 September 2006 reply to the public hearing notice.

Appendix 5: RTSC's list of programme broadcast times for the contested clips.