European Court of Human Rights: Case of Müslüm Gündüz v. Turkey

IRIS 2004-2:1/2

Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

In the case of Müslüm Gündüz v. Turkey, the European Court of Human Rights evaluated the necessity of a criminal conviction on the grounds of inciting the people to hatred and hostility. The applicant, in his capacity as the leader of an Islamic sect, during a TV-debate broadcast by *HBB* channel, demonstrated a profound dissatisfaction with contemporary democratic and secular institutions in Turkey by describing them as "impious". During the programme he also openly called for the introduction of the sharia. Because of these statements Müslüm Gündüz was found guilty by the state security court of incitement to hatred and hostility on the basis of a distinction based on religion. He was sentenced to two years' imprisonment.

In its judgment of 4 December 2003, the European Court of Human Rights came to the conclusion that this interference by the Turkish authorities with the applicant's right to freedom of expression violated Article 10 of the Convention. Although the applicant's conviction was prescribed by Turkish criminal law and had the protection of morals and the rights of others as well as the prevention of disorder or crime as legitimate goals, the Court was not convinced that the punishment of Müslüm Gündüz was to be considered as necessary in a democratic society. The Court observed that the applicant was invited to participate in the programme to present the sect and its nonconformist views, including the notion that democratic values were incompatible with its conception of Islam. This topic was the subject of widespread debate in the Turkish media and concerned an issue of general interest. The Court once more emphasised that Article 10 of the Convention also protects information and ideas that shock, offend and disturb. At the same time, however, there can be no doubt that expressions propagating, inciting or justifying hatred based on intolerance, including religious intolerance, do not enjoy the protection of Article 10. In the Court's view, the comments and statements of Müslüm Gündüz expressed during the lively television debate could not be regarded as a call to violence or as "hate speech" based on religious intolerance. The Court underlined that merely defending the sharia, without calling for the use of violence to establish it, cannot be regarded as "hate speech". Notwithstanding the margin of appreciation accorded to the national authorities, the Court was of the opinion that for the purposes of Article 10 there were insufficient arguments to justify the interference in the applicant's right to freedom of expression. By six votes to one the Court came to the conclusion that there had been a violation of Article 10. The Turkish Judge, M.

© European Audiovisual Observatory (Council of Europe) 2026

Türmen, dissented with the majority of the Court. He was of the opinion that the statements of Müslüm Gündüz comprised "hate speech" and were offensive for the majority of the Turkish people who have chosen to live in a secular society.

Arrêt de la Cour européenne des Droits de l'Homme (première section), affaire Müslüm Gündüz c. Turquie, recours n° 35071/97 du 4 décembre 2003

Judgment by the European Court of Human Rights (First Section), Case of Müslüm Gündüz v. Turkey, Application no. 35071/97 of 4 December 2003

https://hudoc.echr.coe.int/eng?i=001-61522

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026