European Court of Human Rights: Case of Özgür Radyo v. Turkey

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In 1998 and 1999 the Istanbul radio station Özgür Radyo was given three warnings and its licence was twice suspended by *Radyo Televizyon Üst Kurulu* (Turkish broadcasting regulatory authority - RTÜK). The first suspension was for a period of 90 days, the second suspension period lasted 365 days. Some of Özgür Radyo 's programmes had touched on various themes such as corruption, the methods used by the security forces to tackle terrorism and possible links between the State and the Mafia. The radio station was sanctioned by RTÜK because one programme was considered defamatory and other programmes had allegedly incited people to engage in violence, terrorism or ethnic discrimination and stirred up hatred or offended the independence, the national unity or the territorial integrity of the Turkish State. The radio station turned to the administrative courts for an order setting aside each of the penalties, but its applications were dismissed.

In its complaint to the European Court of Human Rights, Özgür Radyo argued primarily that the penalties that had been imposed by the RTÜK entailed a violation of Article 10 of the European Convention (freedom of expression). There was no discussion as to the fact that the sanctions (both the warnings and the suspension of the licence) were prescribed by law (Art. 4 and 33 of the Turkish Broadcasting Act n° 3984 of 12 April 1991) and pursued a legitimate aim as listed in Article 10 para. 2 of the Convention. Thus, the decisive issue before the Court was whether the interference with the applicant's right to freedom of expression had been "necessary in a democratic society". In assessing the situation, the Court said it would have particular regard to the words that had been used in the programmes and to the context in which they were broadcast, including the background to the case and in particular the problems linked to the prevention of terrorism.

The Court emphasizes that the programmes covered very serious issues of general interest that had been widely debated in the media and that the dissemination of information on those themes was entirely consistent with the media's role as a "watchdog" in a democratic society. The Court also notes that the information concerned had already been made available to the public. Some of the programmes had only reproduced orally, without further comment, newspaper articles that had already been published and for which no one had been prosecuted. Moreover, Özgür Radyo had been diligent in explaining that it

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was citing newspaper articles and in identifying the sources. The Court also observes that although certain particularly acerbic parts of the programmes had made them to some degree hostile in tone, they had not encouraged the use of violence, armed resistance or insurrection and did not constitute hate speech. The Court strongly underlines that this is an essential factor to be taken into consideration. Finally the Court refers to the severity of the penalties that had been imposed on the applicant, especially in terms of the suspension of the licence, first for a period of 90 days and in a second decision for a period of one year. The latter being the maximum penalty prescribed in Art. 33 of the Turkish Broadcasting Act n° 3984. Taking into account all these elements of the case, the Strasbourg Court considers the penalties disproportionate to the aims pursued and, therefore, not “necessary in a democratic society”. Consequently, the Court unanimously holds that there has been a violation of Article 10.

Arrêt de la Cour européenne des Droits de l’Homme (première section), affaire Özgür Radyo-Ses Radyo Televizyon Yayın Yapım Ve Tanıtım A.Ş. c. Turquie, nos 64178/00, 64179/00, 64181/00, 64183/00, 64184/00, 30 mars 2006

Judgment by the European Court of Human Rights (First Section), case of Özgür Radyo-Ses Radyo Televizyon Yayın Yapım Ve Tanıtım A.Ş. t. Turkey, nrs. 64178/00, 64179/00, 64181/00, 64183/00, 64184/00, 30 March 2006

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