European Court of Human Rights: Case of Erbakan v. Turkey

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The European Court of Human Rights held by six votes to one that the criminal proceedings instituted in 1998 against the leader of a political party - because of a public speech during an election campaign in 1994 - and the ensuing sentence of imprisonment delivered by the State Security Court, had been a violation of Article 10 of the European Convention on Human Rights. In its judgment, the Court especially considered the interest of a democratic society in ensuring and maintaining freedom of political debate. The Court also found there was a breach of Article 6 § 1 of the Convention, as civilians standing trial for offences under the Criminal Code had legitimate reason to fear that a State Security Court which included a military judge among its members might not be independent and impartial.

The case concerns the application of Necmettin Erbakan, who was Prime Minister of Turkey from June 1996 to June 1997. In 1997 and 1998, he was the chairman of *Refah Partisi* (the Welfare Party), a political party which was dissolved in 1998 for engaging in activities contrary to the principles of secularism (see also ECHR, 13 February 2003). In February 1994, the applicant gave a public speech in Bingöl, a city in south-east Turkey. More than four years later criminal proceedings were brought against Erbakan for incitement to hatred or hostility through comments made in his 1994 speech about distinctions between religions, races and regions (Article 312 § 2 of the Criminal Code). The applicant contested the accusations against him, in particular disputing the authenticity and reliability of a video cassette, produced by the public prosecutor's office, containing a recording of the speech. In March 2000, the State Security Court convicted Erbakan and sentenced him to one year's imprisonment and a fine. In reaching its judgment, the State Security Court took into account the situation at the material time in the city of Bingöl, where the inhabitants had been victims of terrorist acts perpetrated by an extremist organisation. It concluded that the applicant, in particular by making a distinction between "believers" and "non-believers", had overstepped the acceptable limits of freedom of political debate. A few months later, the Court of Cassation dismissed the applicant's appeal on points of law and upheld the conviction. In January 2001, pursuant to Laws no. 4454 and 4616, the State Security Court stayed the execution of the sentence, a decision which was confirmed by the Court of Diyarbakir in April 2005.

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Relying on Article 10 of the Convention, the applicant complained before the European Court of Human Rights that his conviction had infringed his right to freedom of expression.

In its judgment of 6 July 2006, the Court held that by using religious terminology in his speech,Erbakan had indeed reduced diversity - a factor inherent in any society - to a simple division between “believers” and “non-believers” and had called for a political line to be formed on the basis of religious affiliation. The Court also pointed out that combating all forms of intolerance and hate speech was an integral part of human rights protection and that it was crucially important that politicians avoid making comments in their speeches likely to foster such intolerance. However, in view of the fundamental nature of freedom of political debate in a democratic society, a severe penalty in relation to political speech can only be justified by compelling reasons. The Court noted in this perspective that the Turkish authorities had not sought to establish the content of the speech in question until five years after the rally, and had done so purely on the basis of a video recording the authenticity of which was disputed. The Court concluded that it was particularly difficult to hold the applicant responsible for all the comments cited in the indictment. Furthermore, it had not been established that the speech had given rise to, or been likely to give rise to, a “present risk” and an “imminent danger”. Also taking into account the severity of the one year’s imprisonment sentence, the Court found that the interference in the applicant’s freedom of expression had not been necessary in a democratic society. The Court accordingly held that there had been a violation of Article 10.

Arrêt de la Cour européenne des Droits de l’Homme (première section), affaire Erbakan c. Turquie, n° 59405/00

Judgment by the European Court of Human Rights (First Section), case of Erbakan v. Turkey, nr. 59405/00

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