European Court of Human Rights: Cases of Nur Radyo and Özgür Radyo v. Turkey

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In two judgments the European Court of Human Rights considered the suspension of broadcasting licences by the *Radio ve Televizyon Üst Kurulu* (Turkish Radio and Television Supreme Council – RTÜK) as a breach of Article 10 of the Convention.

In the case of Nur Radyo Ve Televizyon Yayıncılığı A.Ş. the applicant company complained about the temporary broadcasting ban imposed on it by the RTÜK. In 1999 RTÜK censured Nur Radyo for broadcasting certain comments by a representative of the Mihr religious community, who had described an earthquake in which thousands of people had died in the Izmit region of Turkey (August 1999) as a "warning from Allah" against the "enemies of Allah", who had decided on their "death". The RTÜK found that such comments breached the rule laid down in section 4 (c) of Law no. 3984 prohibiting broadcasting that was contrary to the principles forming part of the general principles laid down in the Constitution, to democratic rules and to human rights. As the applicant company had already received a warning for breaching the same rule, the RTÜK decided to suspend its radio broadcasting licence for 180 days. Nur Radyo challenged this measure in the Turkish courts, but to no avail. Finally it applied before the European Court of Human Rights, alleging a violation of its right to freedom of expression. Nur Radyo argued, in particular, that it had put forward a religious explanation for the earthquake, which all listeners were free to support or oppose. The European Court acknowledged the seriousness of the offending comments and the particularly tragic context in which they were made. It also notes that they were of a proselytising nature in that they accorded religious significance to a natural disaster. However, although the comments might have been shocking and offensive, they did not in any way incite to violence and were not liable to stir up hatred against people. The Court reiterated that the nature and severity of the penalty imposed were also factors to be taken into account when assessing the proportionality of an interference. It therefore considered that the broadcasting ban imposed on the applicant company had been disproportionate to the aims pursued, which constitutes a violation of Article 10 of the Convention.

In the other case, the applicant company was Özgür Radyo-Ses Radyo Televizyon Yayın Yapım Ve Tanıtım A.Ş. The case concerned the 365-day suspension of the company's operating licence on account of a song that it had broadcast. The RTÜK took the view that the words of the offending song infringed the principle set forth in section 4(g) of Law no. 3984, prohibiting the broadcasting of material

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likely to incite the population to violence, terrorism or ethnic discrimination, and of a nature to arouse feelings of hatred. After exhausting all national remedies, Özgür Radyo-Ses Radyo Televizyon lodged a complaint in Strasbourg under Article 10 of the Convention that the Turkish authorities had interfered with its right to freedom of expression in a manner that could not be regarded as necessary in a democratic society. In its judgment, the European Court considered that the song reflected a political content and criticised the military. The song however referred to events that took place more than 30 years ago. Over and above, the lyrics of the song were very well known in Turkey and the song had been distributed over many years, with the authorisation of the Ministry of Culture. According to the Court the song did present a risk of inciting to hatred or hostility amongst the population. There was no pressing social need for the interference and the sanction suspending the broadcaster's licence for such a long period was not proportionate to the legitimate aim of the protection of public order. The Court found that there had been a violation of Article 10 of the Convention.

Arrêt de la Cour européenne des Droits de l'Homme (deuxième section), affaire Nur Radyo Ve Televizyon Yayıncılığı A.Ş c. Turquie, requête n° 6587/03 du 27 novembre 2007

Judgment of the European Court of Human Rights (second section), case of Nur Radyo Ve Televizyon Yayıncılığı A.Ş v. Turkey, Application no. 6587/03 of 27 November 2007

https://hudoc.echr.coe.int/eng?i=001-83526

Arrêt de la Cour européenne des Droits de l'Homme (deuxième section), affaire Özgür Radyo-Ses Radyo Televizyon Yayın Yapım Ve Tanıtım A.Ş. c. Turquie, requête n° 11369/03 du 4 décembre 2007

Judgment of the European Court of Human Rights (second section), case of Özgür Radyo-Ses Radyo Televizyon Yayın Yapım Ve Tanıtım A.Ş. v. Turkey, Application no. 11369/03 of 4 December 2007

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