European Court of Human Rights: Nur Radyo Ve Televizyon Yayıncılığı A.Ş. v. Turkey

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In 2002 the Turkish Broadcasting Authority (Radio ve Televizyon Üst Kurulu - the "RTÜK") revoked the broadcasting licence of Nur Radyo Ve Televizyon Yayıncılığı A.Ş. (Nur Radyo), a broadcasting company established in Istanbul at that time. In its motivation the RTÜK mainly referred to the fact that, despite six temporary broadcasting bans for programmes that had breached the constitutional principle of secularism or had incited hatred, Nur Radyo had continued to broadcast religious programmes. The RTÜK referred in particular to a programme "along the editorial line of Nur Radyo" that was broadcast on 19 November 2001 - during one of the bans - from Bursa. That concerned a pirate broadcast, transmitted via satellite and terrestrial links. RTÜK held Nur Radyo responsible for it and considered this new violation of the Turkish law as justifying the revocation of its broadcasting licence. In addition, criminal proceedings were initiated against the managers of Nur Radyo, in their personal capacity, on account of the pirate broadcast of 19 November 2001. The managers were acquitted, as the criminal court found that there was insufficient evidence of their presumed responsibility for the broadcasting of the pirated programme. Nur Radyo subsequently sought the review and immediate suspension of the RTÜK's decision to revoke its broadcasting licence, but was unsuccessful.

Nur Radyo then lodged an application with the European Court of Human Rights, arguing in particular that the revocation of its broadcasting licence had constituted an unjustified interference with its right to freedom of expression, as guaranteed by Article 10 of the European Convention on Human Rights.

The European Court noted that, in essence, the revocation of the licence was a reaction to a pirate broadcast, via satellite and terrestrial links, using a frequency that had not been allocated to the company and that came from Bursa, whereas Nur Radyo's broadcasting centre was in Istanbul. It further noted that the main reason why the RTÜK had found Nur Radyo to be responsible for that programme was because it reflected its editorial line. However, the criminal court had acquitted the managers of the company for lack of evidence of any responsibility for the pirate broadcast in question. The European Court thus took the view that it had been arbitrary to include the seventh programme in the aggregate assessment of the offences that led to the revocation. It concluded that the additional penalty imposed on Nur Radyo on the basis of offences for which other sanctions had already been imposed was not compatible with the principle of the

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rule of law. The European Court accordingly found that the breach of the freedom of expression of Nur Radyo had not been necessary in a democratic society and 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 (n° 2), n° 42284/05 du 12 octobre 2010

Judgment by the European Court of Human Rights (Second Section), case of Nur Radyo Ve Televizyon Yayıncılığı A.Ş. v. Turkey (n° 2), No. 42284/05 of 12 October 2010

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