[TR] Turkish Constitutional Court made a precedent decision on a Bizim FM Radio station case

IRIS 2018-2:1/31

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Radio stations and television broadcasting history date back to the 1920s in Turkey. For approximately 40 years, Turkish channels were only allowed to broadcast under state supervision. During the 1990s, private channels also started broadcasting in Turkey, and their legal status was clarified in the Constitution in 1993. Upon the amendment, the Turkish Radio and Television Supreme Council was due to provide channel and broadcasting licences to private and state channels. Around a thousand applications were received and the eligible applicants were licensed by the Supreme Council.

Due to changes in Law No. 3984 of 1995 on the Establishment of Radio and Television Enterprises and their Broadcasts and Law No. 6112 on the Establishment of Radio and Television Enterprises and their Media Services, which came into force in 2011, there has to be a frequency auction to start new radio channels. However, there has been no auction by the administration until today, so effectively, all broadcasting stations either have have been broadcasting since before 1995, or they have received special permission from the administration.

Bizim FM was one of the radio stations that was granted a broadcasting licence in 1995. It was the channel owner himself who voluntarily suspended broadcasting activities until 2011. When the owner wanted to resume radio broadcasting activities, he applied to the Supreme Council for a broadcasting licence, which is needed to broadcast at national level. The Council rejected his application without legal motivation. The Bizim FM owner went on to apply to the related administrative court. Upon the dismissal, he appealed the case at the Council of State, which decided in favour of the applicant; however, the Supreme Council, as a defendant, requested a revision of the decision. As a result of the revision, the Council of State turned from its decision and approved the first instance administrative court. Finally, the applicant filed an individual application to the Constitutional Court.

The Constitutional Court referred to Article 10 of the European Convention of Human Rights (ECHR) with regard to the Turkish Constitution.

Article 26 of the Turkish Constitution, in line with Article 10 of the ECHR, refers to freedom of speech and thought.

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In addition, the Constitutional Court referred to Article 28 of the Constitution which ensures freedom of the press.

Based on these articles, the Constitutional Court ruled that the administration had failed to ensure effective pluralism of the media and secure freedom of press and information, as well as freedom of expression and thought. Therefore, the decision was made in favour of the applicant and it was held that the judgement shall be sent to the Radio and Television Supreme Council (RTÜK) to remove the violation of the structural problems and the previously named constitutional rights.

Press release of the Constitutional Court, 19 December 2017

http://www.constitutionalcourt.gov.tr/inlinepages/press/PressReleasesofJudgments/detail/88.html

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