

DGI Directorate General of Human Rights and Rule of Law

Department for the Execution of Judgments of the ECtHR

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RULE 9.2. COMMUNICATION

in the group of cases

OZGUR RADYO-SES RADYO TELEVİZYON

YAYIN YAPIM VE TANITIM AS.

v.

TURKEY

(Application No: 64178/00)

by

MLSA Turkey

March 2024

Media and Law Studies Association (MLSA) is a non-profit organization founded in Istanbul (*registered as Medya ve Hukuk Çalışmaları Derneği*) in December 2017 to respond to an urgent and growing need for a return to democracy and normalization in Turkey by providing pro bono legal support to journalists whose freedom of expression is violated.

MLSA's legal unit provides legal representation and counseling services to journalists whose freedom of expression is threatened without considering their affiliations, political views, gender, or ethnicity. MLSA legal unit also conducts strategic litigation services where there is a systematic violation of freedom of expression.

MLSA also has maintained a trial monitoring program since 2017; the program has monitored more than 2.500 hearings all over the country. The program monitors cases concerning freedom of expression and/or freedom of assembly.

MLSA also maintains Free Web Turkey as an internet freedom watchdog platform in Turkey. The project monitors and reports on internet bans in Turkey every year, and also publishes weekly "censorship agendas" in which all news about internet censorship is published each week on the webpage and Twitter.

MLSA is also running a program to strengthen civil society in Turkey against legal threats following the adoption of a new law on CSOs, providing legal and administrative training for the members of CSOs and conducting simulation audits of threatened NGOs.

MLSA's editorial unit publishes opinion pieces and news articles on different aspects of Turkey's media landscape in cooperation with freelance journalists and provides a platform to journalists to express themselves.

CASE DESCRIPTION

1. This case concerns violations of the freedom of expression of the applicant broadcasting companies, due to warnings and license suspensions imposed in 1998, 1999, and 2000 by the Turkish Broadcasting Regulatory Authority (RTÜK will be Referred as *the Authority*) under Articles 4 (a), (g), and (j) of Broadcasting Law No. 3984, concerning **defamation and incitement to violence and to separatism**.
2. The Court considered that the statements at issue did not incite to violence or hate and covered questions of general interest. It furthermore took into account the fact that the applicant companies had quoted the sources of the statements, which had already been published by other media without being prosecuted. Furthermore, the Court considered that the penalties had been disproportionately severe and therefore not necessary in a democratic society (violation of Article 10).
3. The Action Report of the Turkish Government (DH-DD(2018)673)¹ argues that the judgment of the Court is being implemented through the following measures: the government argues that it had prescribed in detail the legal grounds to issue sanctions (para 9 - 15); the Authority started to motivate its judgements in line with ECHR case law (para 16-20); and the legal procedures provide enough protection from the encroachment of the Authority (para 21-35).

SUMMARY

4. The general measures in this case group remain unimplemented, and the legislative amendments have not only failed to yield improvement, but have led to a regression. The most recent legal amendment expanded the law's purview to include the possibility to suspend internet broadcasts within Turkey.
5. Regarding legislative actions, the government enacted the "*Law on the Establishment of Radio and Television Enterprises and Their Media Services*"² in 2011. However, the government has not demonstrated any theoretical or practical advancement with the new law's enactment. The legislation has not addressed any of the infringements identified in this case group. The latest amendments, introduced in 2019³, extended RTÜK's authority to encompass internet broadcasts, which resulted in Deutsche Welle (DW) and Voice of America (VoA) being banned for failing to obtain an operating license.

¹ **DH-DD(2018)673**, *Turkey's Government Action Report regarding Özgür Radyo-Ses Radyo Televizyon Yapım ve Tanıtım A.Ş.*, Dated 21/06/2018, [https://hudoc.exec.coe.int/#!%22execidentifier%22:\[%22DH-DD\(2018\)673E%22\]](https://hudoc.exec.coe.int/#!%22execidentifier%22:[%22DH-DD(2018)673E%22])

² **DH-DD(2018)673**, *Turkey's Government Action Report regarding Özgür Radyo-Ses Radyo Televizyon Yapım ve Tanıtım A.Ş.*, Dated 21/06/2018, p.9-11.

³ [1 Ağustos 2019 PERŞEMBE \(resmigazete.gov.tr\)](https://www.resmigazete.gov.tr)

6. MLSA analyzed all decisions made by the Authority in 2023, which included 353 administrative fines and 231 broadcast or program suspensions⁴. In 2023 alone, the Authority levied a total of 88 million, 480 thousand, and 826 Turkish Lira in administrative fines⁵. Furthermore, it sanctioned broadcast suspensions totaling 997 days and ordered the cessation of 292 programs⁶. The Authority did not disclose the cumulative amount of fines imposed or relevant data on their decisions. This information was acquired through MLSA Turkey's extensive research using internal resources⁷.
7. MLSA observes that the Authority's application of its discretion and execution of its mandate seems politically motivated and arbitrary, as exemplified by the channels upon which the fines were imposed. Notably, the Authority fined the FOX TV channel in excess of 43 million Lira⁸, which constitutes nearly half of all fines combined in 2023⁹. In contrast, none of the TV channels belonging to the government-aligned Turkuvaz Media Group or Demirören Media Group were subjected to fines.
8. According to one of the RTÜK members, İlhan Taşçı, from 1 January to 31 December, Tele 1, Halk TV, Flash Haber, FOX TV, KRT and SCZ TV (dissident TV channels) received 59 fines amounting to 67 million 850 thousand TL¹⁰. On the other hand, it imposed 4 fines totaling 2 million 147 thousand TL to Beyaz TV and TGRT Haber and none fine to ATV, A Haber, Ülke TV, Kanal 7, TV-Net (Government-affiliated TV channels)¹¹.
9. The Authority's latest pronouncements suggest that forthcoming legislation will further expand its jurisdiction, potentially including the authority to regulate social media platforms.

⁴ [MLSA RTÜK'ün 2023 karnesini çıkardı: 'Her zamanki'lerin yanında deprem, seçimler ve kriz \(mlsaturkey.com\)](https://mlsaturkey.com)

⁵ [MLSA RTÜK'ün 2023 karnesini çıkardı: 'Her zamanki'lerin yanında deprem, seçimler ve kriz \(mlsaturkey.com\)](https://mlsaturkey.com)

⁶ [MLSA RTÜK'ün 2023 karnesini çıkardı: 'Her zamanki'lerin yanında deprem, seçimler ve kriz \(mlsaturkey.com\)](https://mlsaturkey.com)

⁷ The methodology employed involved initially collecting data from the website of the Radio and Television Supreme Council (RTÜK), focusing on fines and sanctions issued by RTÜK. This was followed by a classification process tailored to meet specific requirements.

⁸ RTÜK meeting and decision nos, 2023/51 - 36, 37; 2023/ 23 - 13; 2023/ 08 - 5; 2023/12 - 16; 2023/14 - 23; 2023/ 45 - 18, respectively: [RTÜK | Kararlar \(rtuk.gov.tr\)](https://rtuk.gov.tr), [RTÜK | Kararlar \(rtuk.gov.tr\)](https://rtuk.gov.tr), [RTÜK | Kararlar \(rtuk.gov.tr\)](https://rtuk.gov.tr), [RTÜK | Kararlar \(rtuk.gov.tr\)](https://rtuk.gov.tr), [RTÜK | Kararlar \(rtuk.gov.tr\)](https://rtuk.gov.tr), [RTÜK | Kararlar \(rtuk.gov.tr\)](https://rtuk.gov.tr)

⁹ [MLSA RTÜK'ün 2023 karnesini çıkardı: 'Her zamanki'lerin yanında deprem, seçimler ve kriz \(mlsaturkey.com\)](https://mlsaturkey.com)

¹⁰ [RTÜK'ÜN 2023 KARNESİ... İLHAN TAŞCI: "İKTİDARI ELEŞTİREN KANALLARA 68 MİLYON TL'LİK CEZA KESİLİRKEN İKTİDARI ÖVENLERE 2. ARALARINDA TAM 35 KATLIK BİR FARK VAR" \(ankahaber.net\)](https://ankahaber.net)

¹¹ [RTÜK'ÜN 2023 KARNESİ... İLHAN TAŞCI: "İKTİDARI ELEŞTİREN KANALLARA 68 MİLYON TL'LİK CEZA KESİLİRKEN İKTİDARI ÖVENLERE 2. ARALARINDA TAM 35 KATLIK BİR FARK VAR" \(ankahaber.net\)](https://ankahaber.net)

GENERAL MEASURES

10. The Government's 2018 Action report claimed that Broadcasting Law no. 3984, the domestic legislation applied to the present case, was abolished and replaced on 1 February 2011 by Law No. 6112 on broadcasting. It is claimed that the Government adopted certain principles in relation to sanctions and broadcasting to be applied whereas the previous legislation had not had such requirements. It is given paragraph (b), (d) and (e) of Article 8 of the Law no. 6112 as an example. As opposed to the government's claim, the latter regulations are in line with previous legislation and, more importantly, they are not related to preventing the RTÜK's disproportionate measure towards TV channels, Radio Stations, and, more generally, the press.

Law no 3984	Law no 6112
Article 4/f: The principle that human beings should not be condemned in any way because of their race, sex, social class or religious beliefs	Article 8/b: It cannot incite the society to hatred and enmity or create feelings of hatred in the society by making distinctions based on race, language, religion, gender, class, region and sect.
Article 4/g: The principle of not allowing broadcasts that incite the society to violence, terrorism and ethnic discrimination and that create feelings of hatred in the society,	Article 8/d: cannot praise or encourage terrorism, cannot show terrorist organisations as powerful or justified, cannot reflect the intimidating and frightening characteristics of terrorist organisations

- 11. Furthermore, the government does not clarify how it plans to prevent similar warnings and license suspensions imposed by RTÜK. At the same time, MLSA's research indicates that RTÜK is becoming increasingly a censor mechanism.
- 12. The Government asserts that it has implemented the Court's judgment by amending legislation to define the legal grounds for imposing sanctions more predictably. However, the government's claim overlooks two primary issues, as it is set out below.
- 13. First, most provisions of Article 4 of Broadcasting Law no. 3984 were transposed into Article 8 of the new legislation with little to no change in wording; there has been no enhancement in the criteria for imposing sanctions on broadcasts.
- 14. Second, the issue stems from the Authority's application of the law. The Court ruled that the limitations on freedom of expression did not satisfy the "necessary in a democratic society" criterion. However, no amendments or legislative improvements have been made to compel the Authority to consider the necessity in a democratic society when levying sanctions. MLSA's findings indicate that, in practice, the

Authority continues to disregard the democratic necessity in its assessments of broadcasts.

15. The Government maintains that by repealing the former Broadcasting Law no. 3984 and enacting the new Law no. 6112 *on the Establishment of Radio and Television Enterprises and Their Media Services*¹², it has made progress in implementation. However, the example cases cited below, along with the data outlined in subsequent sections, suggest that the new legislation has not improved the situation.
16. In particular, the Government argues that Article 8§1-b of the new legislation reads as follows "*Media services shall not inflame society to hatred and hostility by discriminating on the basis of race, language, sex, class, region, religion and sect, nor shall they form hatred within society*"¹³. The government argues that the new legislation improved the situation regarding the imposition of sanctions based on incitement to violence; however, contrary to the narrative of the government, MLSA observes that the problem regarding the arbitrary imposition of fines on the grounds of 'incitement to violence' persisted in 2023 as exemplified in the following paragraphs. The authority imposed a total of **14 million 608 thousand 294 Turkish Liras on the grounds of incitement to violence**¹⁴.
17. The Government argues in its action report that the suspension of broadcast can only be imposed "*if the same violation is repeated in one year from the notification of the resolution of sanction to be given following a broadcast in violation of the principles under sub-paragraphs (b) and (d) of Article 8 § 1 of the same Law*"¹⁵. No information on the actual legislative framework is provided.
18. The broadcast of the entire channel can be suspended in terms of repeated violations but the government fails to inform the Committee that the "*program suspension*" can be imposed by RTÜK without requiring a repetition in the cases if there is a violation of the Article 8 subsection 1 paragraphs (a), (b), (d), (f), (g), (ğ), (h), (n), (ö), (s), (ş) ve (t).
19. In 2023, the Authority issued a total of 292 program suspensions. These suspensions concern HALK TV, one of the major opposition news outlets. 15 HALK TV programs were suspended¹⁶, followed by TELE1 with eight programs¹⁷ and KRT with

¹² **DH-DD(2018)673**, *Turkey's Government Action Report regarding Özgür Radyo-Ses Radyo Televizyon Yapım ve Tanıtım A.Ş.*, Dated 21/06/2018, p.9-11.

¹³ **DH-DD(2018)673**, *Turkey's Government Action Report regarding Özgür Radyo-Ses Radyo Televizyon Yapım ve Tanıtım A.Ş.*, Dated 21/06/2018, p.11.

¹⁴ [MLSA RTÜK'ün 2023 karnesini çıkardı: 'Her zamanki'lerin yanında deprem, seçimler ve kriz](https://mlsaturkey.com) (mlsaturkey.com)

¹⁵ [1324th meeting \(September 2018\) \(DH\) - Action report \(21/06/2018\) - Communication from Turkey concerning the OZGUR RADYO-SES RADYO TELEVIZYON YAYIN YAPIM VE TANITIM AS. v. Turkey \(Application No. 64178/00\) \[Anglais uniquement\] \(coe.int\)](#)

¹⁶ RTÜK meeting and decision nos, 2023/8 -3, 2023/12- 19, 2023/39- 15, [RTÜK | Kararlar \(rtuk.gov.tr\)](https://rtuk.gov.tr), [RTÜK | Kararlar \(rtuk.gov.tr\)](https://rtuk.gov.tr) , [RTÜK | Kararlar \(rtuk.gov.tr\)](https://rtuk.gov.tr)

¹⁷ RTÜK meeting and decision nos, 2023/08 - 4, 2023/31- 24, 2023/26 - 7, [RTÜK | Kararlar \(rtuk.gov.tr\)](https://rtuk.gov.tr) , [RTÜK | Kararlar \(rtuk.gov.tr\)](https://rtuk.gov.tr), [RTÜK | Kararlar \(rtuk.gov.tr\)](https://rtuk.gov.tr)

three programs¹⁸; two FOX TV programs were also suspended¹⁹. The Authority suspended the overall broadcast of various channels for 997 days in total.

20. The fine given to KRT TV indicates that the practice of RTÜK has not changed from the ECHR's judgment regarding Özgür Radyo. In its reasoning, due to the expressions in broadcast such as "Kürdistan", "... that is, the monopolization brought about by the state's refusal to allow Kurdish identity to find expression in Turkey, the PKK's monopoly of violence", assessed that the broadcast violate Law No. 6112 Article 8 and paragraph (a), which is "It shall not be contrary to the existence and independence of the State of the Republic of Turkey, the indivisible integrity of the State with its territory and nation, and the principles and reforms of Atatürk."²⁰
21. In light of the 2019 regulatory adjustments, there has been a notable expansion in the oversight capabilities of the RTÜK. This expansion extends beyond traditional broadcasting domains to encompass a broader range of digital platforms, including internet streaming services, online news websites, and various forms of digital content²¹.

Data on sanctions imposed by the Authority in 2023

22. MLSA analyzed all the sanction decisions issued by RTÜK in 2023. RTÜK issued **352 administrative fines, 61 program suspensions, and 169 broadcast suspensions**. The administrative fines totaled **88,480,826.72 TL**²².
23. In terms of penalties by channel, FOX TV was fined 43 million lira (the highest penalty)²³, which was followed by STAR TV and SHOW TV in the amount of fines received. HALK TV incurred the fourth-highest amount of 3.85 million Lira²⁴. TELE1, established in 2023, along with SZC and KRT TV, faced administrative fines for their commentary and news programs. The fines against STAR and SHOW TV were due to content in TV series, whereas HALK TV, TELE1, SZC, and KRT TV were fined for their editorial and news broadcasting content²⁵.

¹⁸ RTÜK meeting and decision no, 2023/31 - 23, [RTÜK | Kararlar \(rtuk.gov.tr\)](https://rtuk.gov.tr)

¹⁹ RTÜK meeting and decision no, 2023/51 - 36, [RTÜK | Kararlar \(rtuk.gov.tr\)](https://rtuk.gov.tr)

²⁰ RTÜK meeting and decision no, 2023/31 - 23, [RTÜK | Kararlar \(rtuk.gov.tr\)](https://rtuk.gov.tr)

²¹ See the relevant section in the submission, p. 41 et al., "**The Authority's jurisdiction expanded to cover internet broadcasts**"

²² [MLSA RTÜK'in 2023 karnesini çıkardı: 'Her zamanki'lerin yanında deprem, seçimler ve kriz \(mlsaturkey.com\)](https://mlsaturkey.com)

²³ With RTÜK meeting and decision no, 2023/ 51- 36, 9.082.640,00- TL fine given to FOX TV for criticizing the religious congregations under the article 8/1-(f), "It cannot be contrary to the national and spiritual values of the society, general morality and the principle of protection of the family", [RTÜK | Kararlar \(rtuk.gov.tr\)](https://rtuk.gov.tr)

²⁴ In one News broadcast, due to the sole expression "this country has a long tradition of murdering, torturing and imprisoning writers, journalists", 191.395,00- TL fine was given under the article 8/1-(ç), "it can not contain defamatory, insulting or slanderous expressions beyond the limits of criticism of individuals or institutions". All other reasonings for fines given to HALK TV are similar in that arbitrariness.

²⁵ As an example, with RTÜK meeting and decision no, 2023/23 - 13, 13.394.147,00- TL fine given to FOX TV, due to the statements in a news broadcasting that the questioning the possibilities for a political

24. During 2023, no fine has been issued to any channels of Demirören Media Group or Turkuvaz Media Group which is owned by Kalyon Group²⁶. These two groups are closely tied with the government with major investments in government-backed projects²⁷.

Sanctioning of broadcasts critical of the government

25. In 2023, administrative fines totaling more than 31 million Turkish Lira (approximately \$2.08 million) were imposed on criticisms directed at the Turkish government, the ruling Justice and Development Party (AKP), and its affiliates. Analysis of the breakdown of these penalties shows that the highest fines were attributed to criticisms made in election broadcasts, with a total of approximately 13.6 million Lira (\$907,000) levied. This was followed by fines for commentary on organized crime in Turkey, criticism of the government's disaster relief efforts during earthquakes, and rebuke of the government's far-right policies.

Fines imposed by category were as follows:

- Election broadcasts: 13,565,623.00 Lira
- Commentary on organized crime: 9,082,640.00 Lira
- Criticisms of earthquake disaster responses: 4,617,304.00 Lira
- Far-right policy criticism: 1,471,752.00 Lira
- Criticism related to refugees: 723,801.00 Lira
- Criticism of the economic order: 490,346.72 Lira
- Other: 1,240,436.00 Lira
- **Total:** 31,191,902.72 Lira

26. The most common legal justification for these fines was the violation of the principle of "*impartiality*." In 2023, FOX TV received the highest fines under this pretext, followed by fines of 770,000 Lira for HALK TV and 428,690 Lira for TELE1. Other significant fines were imposed for inciting hatred and hostility among the public, broadcasting content detrimental to the development of children, and content opposing the national and moral values of society.

Documented cases

27. MLSA wishes to highlight certain cases in which the Authority imposed significant penalties against the broadcasters due to their content, MLSA considers that the

power to change hands through free elections and the criticism regarding the rule of law and standards. [RTÜK | Kararlar \(rtuk.gov.tr\)](https://rtuk.gov.tr). Another example can be given from the fine given to SZC. Due to the allegations of irregularities regarding TÜİK (Türkish Statistical Institute) taking place in a news broadcasting, 429.049,00- TL fine was given to SZC TV (RTÜK meeting and decision no. 2023/51 - 47, [RTÜK | Kararlar \(rtuk.gov.tr\)](https://rtuk.gov.tr).)

²⁶ One of top 10 companies in the World to receive public tenders.

²⁷ Aydınli, S. (2019) 'Who controls the media in Turkey?', *bianet*. Available at: <https://bianet.org/haber/who-controls-the-media-in-turkey-208107> (Accessed: 9 March 2024).

Authority failed to consider the necessity in a democratic society prescribed in Article 10 of the Convention and as stated by the Court.

“Medya Mahallesi” decision against Halk TV (2023/39-15 – 4.10.2023)

28. One of the program suspensions against the opposition TV channel known as Halk TV was caused by the following statement:

“I think and say this based on my experience, based on my experience as a journalist, of course I am not a security expert, but based on my experience as a journalist. This is the case not only in Turkey but also in the world. Maybe the person, the terrorist, who was said to have blown himself up did not know that he had explosives, remote-controlled explosives on him or in the car. Because it is so meaningless, they come and say that they are avenging the PKK terrorist before they can do anything, before they can do anything. You can't die without doing anything. I mean, if you ask me, everything is contradictory, he blew himself up out of nowhere. But basically, get over it, as I said, I watch a lot of movies and I live in Turkey, it's one of the things that haunts me, I can't claim it, of course. Take it as a fantasy. But why is it so easy to kill the driver of a car in Ankara, a car is so easy to unlock, turn on the ignition, set off the bomb and drive off. Why kill someone in Kayseri, let's say in the middle of the night, when you can do that in Ankara, you know, I'm coming, hey look, I'm on my way, my bombs, bombs on our backs, pistols on our waist... right, what is it? Now these are of course questions that need to be discussed and clarified”.

29. These statements were made by a veteran journalist Ayşegül Arslan on her program titled “Medya Mahallesi” and she questioned the official narrative regarding the attack that took place in Ankara in October 2023. These statements were found to violate Article 8§1-t which reads as “*Broadcasters may not present the act of terrorism, its perpetrators or its victims in a way that has consequences that serve the aims of terrorism*”. RTÜK imposed an administrative fine of **357.022,00 TL** and five consecutive program suspensions²⁸.

“Çiğdem Toker” decision against FOX TV (2023/23-13 – 07.06.2023)

30. The highest administrative fine in 2023 was imposed against FOX TV for a statement during the election night coverage on May 28, 2023. One of the journalists in the broadcast said the following:

“We are talking about democracy, but we are talking about democracy by making a presupposition, a prelude on a democracy that we think should

²⁸ **Turkish Broadcasting Regulatory Authority (RTÜK)**, 2023. *Decision to impose an administrative fine and program suspension against HALK TV*, Meeting No: 2023/39, Decision No: 15, Date: 4 October 2023.

*be. This is how we codify the rule of law. In fact, this country does not carry the norms and standards of a state of law. This administration does not. Therefore, as I said, the question of whether a political power can change hands through free elections has now become a critical question. I think in this context, **I would like to say that democracy is not just about the ballot box.** In other words, we need to support voters and citizens to express themselves in other areas of politics and policy. **We need to make an effort for this, we need not to criminalize democratic protests, freedom to seek rights.** I say this to political actors.”*

31. The aforementioned words were interpreted by the Authority as incitement to violence and the Authority imposed the channel **₺13,394,147.00** administrative fine²⁹.
32. MLSA finds that the words used by the broadcasters in the context of an election and reminding listeners of the fact that democracy is not just about the ballot box is not unacceptable in a democratic society. If anything, the broadcaster reminded the necessities of a democratic society. Sanctioning such statements under the aforementioned legal grounds (*Article 8§1-b of Law No. 6112*) shows the exploitation of the provision within the law by the authorities.

“Selahattin Demirtaş’s Storybook” decision against Halk TV (2023/12-19 22.03.2023)

33. One of the other decisions of RTÜK to impose program suspension was against HALK TV for a program in which the storybook called “Dad” written by Selahattin Demirtaş, former Chairman of HDP was introduced. The following statements were found to be *praising an offense or an offender* and said to be violating Article 8§1-g of the Law:

“Now we continue... At the same time, Selahattin Demirtaş must have written his fifth book in prison. Production, production, production, Selahattin Demirtaş writes. The book he sent us is "Dad". It's a storybook. I read it with great pleasure. We thank Mr. Selahattin Demirtaş for thinking so kindly. At the same time, we embrace everyone who is imprisoned in prison and struggling for freedom. We send the greetings of all our people from the earthquake zone to the prisoners and convicts in prison who are seeking their freedom.”

34. The mere praising of a storybook authored by a *political prisoner* became a legal justification for five consecutive suspensions of the broadcast of this program³⁰. The mere praise of a book authored by a former presidential candidate and a former politician is severely sanctioned by the Authority. The decision is reflective of the

²⁹ **Turkish Broadcasting Regulatory Authority (RTÜK)**, 2023. Decision to impose an administrative fine against FOX TV, Meeting No: 2023/23, Decision No: 13, Date: 7 June 2023.

³⁰ **Turkish Broadcasting Regulatory Authority (RTÜK)**, 2023. Decision to impose an administrative fine and program suspension against HALK TV, Meeting No: 2023/12, Decision No: 19, Date: 22 March 2023.

politically motivated decision-making process of the Authority. MLSA wishes to note that the entire decision-making body of the Authority is composed of political appointments by political parties.

Kızılıcık Şerbeti (Cranberry Sorbet) decision against SHOW TV (2023/12-15 - 22.03.2023)

35. The TV show “Kızılıcık Şerbeti” explores the dynamics between two families with divergent lifestyles, their confrontation with societal norms, and the complexities of a secular and a conservative family uniting through marriage. The show has been particularly noted for addressing the secular family’s adjustment to Islamic social practices, such as abstaining from alcohol. In the wake of the broadcast's suspension, actors from the series took to social media to express their opposition, emphasizing that the controversial scene was intended to reflect social realities rather than endorse violence.
36. On 22 March 2024, RTÜK levied a hefty fine of 1,089,209 TL ³¹ on SHOW TV and also ordered five consecutive broadcast suspensions of “Kızılıcık Şerbeti.” The manner of the sanction’s imposition—deemed excessive and outside the necessities of a democratic society— left SHOW TV insufficient time³² to appeal before the next airing. Instead, the channel was compelled to air a documentary featuring President Erdoğan's quotes³³. However, after RTÜK's decision, the Ankara Administrative Court invalidated the Council’s ruling, allowing the series to resume broadcast³⁴.
37. The case is reflective of the fact that the judicial remedies against the Authority are not sufficient. When the Administrative Court vacated the decision rendered by the Authority, the Authority imposed another decision to suspend two broadcasts and imposition of a fine totaling 435,684.00 TL³⁵.

³¹ **Turkish Broadcasting Regulatory Authority (RTÜK)**, 2023. *Decision to impose administrative fine and program suspension against SHOW TV*, Meeting No: 2023/12, Decision No: 15, Date: 22 March 2023.

³² **Duvar English**. (2023) 'RTÜK blocks broadcast of famous Turkish series and mandates airing of Islamophobia documentary instead', *Duvar English*, 15 April. Available at: <https://www.duvarenglish.com/rtuk-blocks-broadcast-of-famous-turkish-series-and-mandates-airing-of-islamophobia-documentary-instead-news-62218> (Accessed: 9 March 2024).

³³ **Duvar English**, 2023. *RTÜK blocks broadcast of famous Turkish series and mandates airing of Islamophobia documentary instead*. [online] Duvar English. Available at: https://www.duvarenglish.com/rtuk-blocks-broadcast-of-famous-turkish-series-and-mandates-airing-of-islamophobia-documentary-instead-news-62218#google_vignette [Accessed 4 March 2024].

³⁴ **Duvar English**, 2023. *Famous Turkish series 'Kızılıcık Şerbeti' will start airing this week after court's decision*. [online] Duvar English. Available at: <https://www.duvarenglish.com/famous-turkish-series-kizilcik-serbeti-will-start-airing-this-week-after-court-s-decision-news-62285> [Accessed 4 March 2024].

³⁵ **Turkish Broadcasting Regulatory Authority (RTÜK)**, 2023. *Decision to impose an administrative fine and program suspension against SHOW TV*, Meeting No: 2023/45, Decision No: 13, Date: 17 November 2023.

“HDP votes” decision against KRT TV (2023/31-23 - 09.08.2023)

38. The Government argues in its action report that the practice of RTÜK regarding the statements of guests in television programs would no longer be subjected to administrative sanctions if they fall under freedom of expression³⁶.
39. The examples provided by the Government are not reflective of the situation in practice. For example, RTÜK decided to impose a sanction for the statements of a guest speaker of a program aired on KRT TV; the statements were as follows:

“Now, Kurdish voters, you know, when we look at their voting tendencies in Kurdistan, they can go to AKP, they can go to religious parties, they can go to parties like the Welfare Party in the past. The same voter can vote for both...The HDP has a monopoly in Kurdish politics. There are various reasons for this. In other words, the monopolization brought about by the state's refusal to allow Kurdish identity to find expression in Turkey, the PKK's monopoly on violence. It resonates in the Kurdish society in the form of the HDP's political hegemony...Because many Kurds supported or sympathized with the HDP because of this. Yes, it comes from such a tradition, but it is civilianizing, democratizing and expanding. The Kurds embraced it as part of the process of both ending the violence, voicing the needs of the Kurds and returning the usurped state that belonged to the Kurds in Turkey to the Kurds. Religious Kurds also embraced this, different segments also embraced it. Now this process has been interrupted. With the trench process, the HDP fell into a deep crisis of legitimacy and could not get out of it.”

40. The statements were found to violate Article 8§1-a which reads “Broadcasters may not violate the existence and independence of the State of the Republic of Turkey, the indivisible integrity of the State with its territory and nation, and the principles and reforms of Atatürk.”³⁷.

The Authority’s jurisdiction expanded to cover internet broadcasts:

41. The Authority unveiled the “Regulation on Radio, Television, and Voluntary Online Broadcasts” on August 1, 2019. This regulation and its amendments granted the Authority the power to regulate online broadcasts, including news websites based overseas. To continue operations within Turkey, these sites are required to establish a local company and pay taxes³⁸.

³⁶ **DH-DD(2018)673**, Turkey’s Government Action Report regarding Özgür Radyo-Ses Radyo Televizyon Yapım ve Tanıtım A.Ş., Dated 21/06/2018, p.18-19.

³⁷ **Turkish Broadcasting Regulatory Authority (RTÜK)**, 2023. Decision to impose an administrative fine and program suspension against KRT TV, Meeting No: 2023/31, Decision No: 23, Date: 9 August 2023.

³⁸ bianet (2019) 'Radio and Television Supreme Council authorized to inspect online broadcasts', *bianet*, 1 August. Available at:

42. In February 2022, the Authority directed Deutsche Welle, Voice of America, and Euronews to secure broadcasting licenses to maintain their operations. The outlets were informed that non-compliance would lead to a ban on internet access within 72 hours of the notice. While Euronews complied by removing certain video content³⁹ and was exempted from further requests, the Authority persisted in demanding licenses from Deutsche Welle and Voice of America. Both refused to apply for licenses, resulting in the blocking of their websites on July 1, 2022⁴⁰.
43. Further tightening its grip, on March 20, 2023, the Ministry of Industry and Technology declined to renew the journalist employment licenses for Deutsche Welle, leading to a suspension of its operations in Turkey⁴¹.
44. Since it was founded in 1994, RTÜK⁴², initially responsible for allocating radio and TV frequencies, has exponentially amplified its powers. These have culminated in a 2018 regulation expanding its oversight to online broadcasters. RTÜK's announcement on February 27, 2024, signals an intent to broaden its regulatory scope even further to encompass social media platforms, with YouTube⁴³ being explicitly mentioned.
45. The Authority's decisions in 2023 underscore the gravity of bringing platforms like YouTube under RTÜK's control. Such a move could dramatically narrow the space for independent media in Turkey, which currently utilizes YouTube as one of the remaining platforms for unrestricted broadcasting. This evolving situation presents an ongoing challenge to freedom of expression, highlighting the tension between regulatory authority and the media's ability to operate independently.

Conclusions and Recommendations

<https://bianet.org/haber/radio-and-television-supreme-council-authorized-to-inspect-online-broadcasts-211167> (Accessed: 9 March 2024).

³⁹ bianet (2022) '**Turkey blocks access to Voice of America, Deutsche Welle websites**', *bianet*, 1 July. Available at:

<https://bianet.org/haber/turkey-blocks-access-to-voice-of-america-deutsche-welle-websites-264002>

(Accessed: 9 March 2024).

⁴⁰ bianet (2022) '**Turkey's media watchdog notifies international news websites: 72 hours begin**', *bianet*, 22 February. Available at:

<https://bianet.org/haber/turkey-s-media-watchdog-notifies-international-news-websites-72-hours-begin-258077> (Accessed: 9 March 2024).

⁴¹ bianet (2023) '**Deutsche Welle to close office in Turkey as authorities refuse to extend license**', *bianet*, 20 March. Available at:

<https://bianet.org/haber/deutsche-welle-to-close-office-in-turkey-as-authorities-refuse-to-extend-license-275973> (Accessed: 9 March 2024).

⁴² Türkiye Cumhuriyeti (1994) '3984 sayılı Radyo ve Televizyonların Kuruluş ve Yayınları Hakkında Kanun: Madde 8'. Available at:

<https://www.lexpera.com.tr/resmi-gazete/metin/radyo-ve-televizyonlari-kurulus-ve-yayinlari-hakkinda-kanun-6112-sayili-kanun-ile-yururluktan-2> (Accessed: 7 March 2024).

⁴³ Radyo ve Televizyon Üst Kurulu Başkanlığı (2024) *Galatasaray-Antalyaspor maçı sonrası spor yayını yapan bazı mecralarda yapılan açıklamalar ve RTÜK'ün müdahalesi hakkında basın açıklaması*. Available at: <https://www.rtuk.gov.tr/basin-aciklamasi/4741> (Accessed: 7 March 2024).

46. The legislative amendments and new laws implemented have not ameliorated the violations of freedom of expression, nor have they addressed the issue of the Authority's failure to consider the necessity of actions within a democratic society. Instead, the 2019 amendments concerning internet broadcasts have exacerbated the already declining state of media freedom in Turkey. The bans and suspensions imposed on Voice of America and Deutsche Welle serve as stark indicators of the prevailing concerns regarding the Authority's overreach.
47. The data shared clearly illustrates the arbitrary nature of the Authority's discretionary powers. Government-affiliated media organizations have faced no sanctions for their broadcasts, while those critical of the government have been penalized. This selective imposition of sanctions underlines the unresolved issues associated with this case group.
48. Moreover, the Authority's recent declarations about extending supervision to social media content raise alarming issues that demand attention from international bodies. Such developments should be a matter of concern for both the Committee of Ministers and the Execution Department, as they represent a growing challenge to freedom of expression and media independence on a global scale.
49. Having in mind the fact that the case has been pending implementation since 2006, MLSA recommends that the Committee of Ministers promptly scrutinize the growing power of RTÜK, as the Authority's declaration to regulate social media platforms poses significant concerns for freedom of expression, and request that the Turkish authorities:
 - a. Present an updated action plan that addresses the issues raised in this communication, outlining specific legislative changes to resolve the increasing concerns about the Authority's exercise of jurisdiction.
 - b. Disclose comprehensive data on the Authority's sanctions.
 - c. Review the closures of Deutsche Welle (DW) and Voice of America (VoA) which underscore the Authority's negative impact on freedom of expression in Turkey.