AS TO THE ADMISSIBILITY OF

Application No. 23886/94
by Z. Noyan Özkan
against Turkey

The European Commission of Human Rights (First Chamber) sitting in private on 5 April 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 22 February 1994 by Z. Noyan Özkan against Turkey and registered on 14 April 1994 under file No. 23886/94;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Decides as follows:

THE FACTS

The applicant, a Turkish citizen born in 1953 and residing in Izmir, is a lawyer.

The facts of the present case as submitted by the applicant may be summarised as follows:

On 18 July 1989, at 10.30 p.m., Channel 1 of Turkiye Radyo Televizyon Kurumu (Turkish Radio and Television Institution - "TRT") transmitted a film entitled "Les Jeux Interdits" edited by Rene Clement, a French editor.

After showing a major part of the film, TRT, without any explanation, stopped the transmission of the film and started another programme. The applicant, who had been watching the film, stayed tuned and waited in vain to receive an explanation or to watch the remaining part of the film.

On 19 July 1989, the applicant was informed by the press that during the transmission of the film, TRT had received threatening telephone calls from individuals who alleged that the film was disseminating Christian propaganda and demanded that its transmission be stopped. Upon these reactions, the Deputy Department Director of the TRT had stopped the transmission of the film.

On 21 and 24 July 1989 the applicant applied to TRT and criticised the discontinuation of the film. He asked TRT to apologize to its viewers and sought the retransmission of the film.

In its reply dated 10 August 1989, TRT stated that the transmission of the film was completed 18 minutes earlier than scheduled without prejudice to the integrity of the film. It also submitted that the Ankara Public Prosecutor had started an investigation into the discontinuation of this transmission.

On 7 September 1989 the applicant instituted proceedings against the TRT before the Ankara Administrative Court. In his statement of claim, he submitted that the discontinuation of the film violated his rights guaranteed under the Constitution. He alleged that the act of discontinuation contravened the law, whereas, under the relevant legislation, the transmission of a programme could only be banned or stopped in order to protect national security by the prime minister or a minister mandated by the prime minister. He asserted that in the present case there had been a breach of authority by the directors of the TRT. He requested the annulment of TRT's decision dismissing his request to have the film retransmitted. He also asserted that he had suffered emotional distress by being prevented from watching the film as a whole and asked for an indemnity for non-pecuniary damages.

In its reply dated 27 November 1989, TRT pleaded that its letter to the applicant dated 10 August 1989, which was no more than a reply to the applicant's allegations, could not be considered as an administrative act and therefore could not constitute the subject of the present proceedings. It stated that the film had been duly examined by the board of censorship before it was scheduled. However, during its transmission, TRT had received unforeseeable reactions to the film and in order to prevent undesirable consequences, the Deputy Department Director had decided to stop its transmission.
It also submitted that criminal proceedings had been initiated before the Ankara Criminal Court of First Instance (Ankara Asliye Ceza Mahkemesi) against the persons responsible for the discontinuation of the film. It maintained that on 24 July 1989, the General Director of TRT had made a press declaration on the present matter. TRT also argued that there were no grounds for an indemnity for non-pecuniary damages.

In a decision dated 13 February 1992, the Ankara Administrative Court dismissed the action. As regards the applicant's claim concerning the annulment of TRT's decision which allegedly dismissed his request for a retransmission of the film, the Court held that the TRT's letter to the applicant could not be considered as an administrative decision. It therefore held that the act, of which the applicant complained, could not constitute the subject of annulment proceedings. As regards the applicant's claim for an indemnity for non-pecuniary damages, the Court held that although the unexplained discontinuation of the film contravened the internal discipline of TRT and its broadcasting principles, it was not possible to accept that the emotional distress which could have been suffered by the applicant because of this act was of such an intensity as to give rise to a claim for non-pecuniary damages. Furthermore, the Court stated that it was questionable whether the applicant had actually watched the film at the time of the transmission.

The applicant appealed. In a decision dated 11 October 1993, the State Council, upholding the cogency of the decision of the Administrative Court, dismissed the appeal.

COMPLAINTS

1. The applicant complains under Article 10 of the Convention that the discontinuation of the transmission of the film by a State broadcasting enterprise without any valid reason and in contravention of the law, constituted an unjustified interference with his freedom of expression and in particular his right to receive information and ideas.

THE LAW

The applicant complains of a violation of Article 10 (Art. 10) of the Convention in that the allegedly unlawful and unexplained discontinuation of the transmission of a film by a State broadcasting enterprise constituted an unjustified interference with his freedom of expression, in particular his right to receive information and ideas.

Article 10 (Art. 10) provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The Commission first recalls that artistic expression in the form of watching or showing a film is included in the freedom of expression and in particular, in the concept of "receiving and imparting information and ideas" (see mutatis mutandis, Otto-Preminger-Institut v Austria, Comm. Report 14.1.93. paras. 50, 53, not yet published).

The Commission recalls however that restrictions to publish certain information do not conflict with Article 10 para. 1 (Art. 10-1) as long as sufficient alternative sources for that information remain available to the public. (cf. No. 5178/71, Dec. 6.7.76, D.R. 8 p. 5). In this respect, the Commission notes that the film in question is not prohibited in Turkey. There are sufficient alternative sources available to the public for watching the film, i.e. cinemas, video-tapes and private television channels. Consequently, the applicant is not deprived of access to the film in question.

The Commission therefore considers that there has been no interference with the applicant's rights protected by Article 10 para. 1 (Art. 10-1) of the Convention and accordingly no question arises as to a possible justification of such interference under Article 10 para. 2 (Art. 10-2).

It follows that the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)