

Mr. Štefan Füle
EU Commissioner for Enlargement and European Neighborhood Policy
European Commission
Brussels

Vienna, 05 July 2013

RE: Radio Vatan vs. Turkey

Dear Mr. Commissioner,

A few months ago, we took the opportunity to inform you of the case of Radio Vatan, a Turkish private broadcasting radio that was initially registered by the Turkish Radio and Television Supreme Council (here and after “the Council”) in 1995.

Since then the situation with Radio Vatan has deteriorated dramatically due to the current political developments in Turkey and the effort of the current Turkish Government to shut down all possible communication channels for dissenting opinions. The Council has ceased broadcasts of Radio Vatan pursuant to their own resolutions in the provinces of Ankara, Bursa and Kocaeli. All three of these provinces belong to the most populated provinces in Turkey. The resolutions of the Council did not only interrupt the broadcasting of Radio Vatan, but all the transmitters and relevant equipment of the radio have been sealed and thus prevented from use.

As we have reported in our previous letter, all private radio broadcasters function on a temporary basis since 1995 due to the fact that the Council has not issued a public call for tenders. Private radio stations that applied for a license in 1995 are allowed to perform terrestrial broadcasting within the frame of their applications.

However, in 2007 the Council asked Radio Vatan to immediately terminate its radio broadcast alleging that Radio Vatan suspended its broadcast in 1996 and thus its application for license is deemed null and void. The Council argued that it was informed of the suspension of Radio

Vatan's broadcast via a letter signed by the general manager of the radio's company. The radio's general manager was, however, an unauthorized person to sign any statement pertaining to a suspension of broadcasting. According to the Turkish Commercial Code, any person who is authorized to represent or bind a company should be identified upon the list of authorized signatures arranged at the notary in the name of the company. There has been no authorization for the general manager to represent and bind the company. Thus the mentioned letter could not have had any legal effects. Furthermore, there was nothing in the Turkish legislation enabling the Council to terminate broadcasting even in the event of a radio having suspended its broadcast. This has been confirmed by Turkish Criminal Court in its decision acquitting representatives of the radio company from charges brought on them by the Council. The Criminal Court in its verdict of 18 February 2010 stated, *inter alia*, that:

“although it was claimed that the company suspended broadcast for a while in 1996, and the application dated 1995 would be invalid due to the intermission, there has been no judgment regarding invalidity of the application of the companies which suspend broadcasts, so the application made in 1995 was still valid.”

It is clear from the stated facts that the Turkish authorities acted *ultra vires*. This is confirmed by the fact that the Turkish authorities have acted differently in the case of NET Radio, in which case the Ankara Administrative Court reversed the decision of the Council on termination of broadcasting following a suspension of broadcast by the radio. However, the same court in an identical factual and legal situation upheld the decision of the Council against Radio Vatan. It needs to be mentioned that Radio Vatan is the only Christian broadcaster in Turkey.

The radio has made an application to the European Court of Human Rights alleging the breach of Article 10 of the European Convention on Human Rights, and other articles (Article 6, Article 14, Article 1 of Protocol no. 1) on 9 July 2010. The Court has not yet decided, but we took the opportunity to inform the European Commission due to the fact that Turkey is a candidate for accession to the European Union and should thus respect the fundamental values upon which it is based – namely in the current case the freedom of expression which is the most important political freedom guaranteed not only by the Convention, but also by the Charter of Human Rights. Freedom of expression forms the basis of a free society. Without freedom of expression there is no discussion and without discussion there is no genuine democracy.

Dear Mr. Commissioner,

We hope that the above-mentioned facts concerning Radio Vatan will supplement the information the European Commission already has on Turkey's adherence to common values shared by the European Union. Every nation's adherence to the values of a free society is put to a test in time of unrest and turmoil. But a democratic country of free citizens cannot forsake free speech and freedom of religion in order to suppress political opposition and opinions which may not always be favorable to the Government. Such is the definition and the mandate of a free society. We stand at your disposal in case you need any further information.

Sincerely,

Daniel Lipsic

Senior Legal Counsel