European Court of Human Rights: Akdaş v. Turkey

IRIS 2010-8:1/1

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The applicant in this case, Rahmi Akdaş is a publisher, residing in Bandirma, Turkey. In 1999 he published the Turkish translation of the erotic novel “Les onze mille verges” by the French writer Guillaume Apollinaire (“The Eleven Thousand Rods”, “On Bir Bin Kırbaç” in Turkish). The novel contains graphic descriptions of scenes of sexual intercourse, including various practices such as sadomasochism, vampirism and paedophilia. Akdaş was convicted under the Criminal Code for publishing obscene or immoral material liable to arouse and exploit sexual desire among the population. The publisher argued that the book was a work of fiction, using literary techniques such as exaggeration or metaphor and that the post face to the edition in question was written by specialists in literary analysis. He added that the book did not contain any violent overtones and that the humorous and exaggerated nature of the text was more likely to extinguish sexual desire.

The criminal court of Istanbul ((Istanbul Asliye Ceza Mahkemesi) ordered the seizure and destruction of all copies of the book and Akdaş was given a “severe” fine of EUR 1,100, a fine that may be converted into days of imprisonment. In a final judgment of 11 March 2004, the Court of Cassation quashed the part of the judgment concerning the order to destroy copies of the book in view of a 2003 legislative amendment. It upheld the remainder of the judgment. Akdaş paid the fine in full in November 2004.

Relying on Article 10, Akdaş complained about this conviction and about the seizure of the book. Before the European Court it was not disputed that there had been an interference with Akdaş’ freedom of expression, that the interference had been prescribed by law and that it had pursued a legitimate aim, namely the protection of morals. The Court however found the interference not necessary in a democratic society. The Court reiterated that those who promoted artistic works also had “duties and responsibilities”, the scope of which depended on the situation and the means used. As the requirements of morals vary from time to time and from place to place, even within the same State, the national authorities are supposed to be in a better position than the international judge to give an opinion on the exact content of those requirements, as well as on the “necessity” of a “restriction” intended to satisfy them.

Nevertheless, the Court had regard in the present case to the fact that more then a century had elapsed since the book had first been published in France (in 1907), to its publication in various languages in a large number of countries and to the

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recognition it had gained through publication in the prestigious “La Pléiade” series. Acknowledgment of the cultural, historical and religious particularities of the Council of Europe’s member states could not go so far as to prevent public access in a particular language, in this instance Turkish, to a work belonging to the European literary heritage. Accordingly, the application of the legislation in force at the time of the events had not been intended to satisfy a pressing social need. In addition, the heavy fine imposed and the seizure of copies of the book had not been proportionate to the legitimate aim pursued and had thus not been necessary in a democratic society, within the meaning of Article 10. For that reason, the Court found a violation of Akdaş’ right to freedom of expression.

Arrêt de la Cour européenne des droits de l’homme (deuxième section), affaire Akdaş c. Turquie, n° 41056/04 du 16 février 2010

Judgment by the European Court of Human Rights (Second Section), case of Akdaş v. Turkey, No. 41056/04 of 16 February 2010

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