

European Court of Human Rights: Aksu v. Turkey

IRIS 2010-10:1/1

*Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy*

In 2000 the Turkish Ministry of Culture published a book entitled “The Gypsies of Turkey”, written by an associate professor. A few months later Mr. Mustafa Aksu, who is of Roma/Gypsy origin, filed a petition with the Ministry of Culture on behalf of the Turkish Gypsy associations. In his petition, he stated that in twenty-four pages of the book Gypsies were presented as being engaged in illegitimate activities, living as “thieves, pickpockets, swindlers, robbers, usurers, beggars, drug dealers, prostitutes and brothel keepers” and being polygamist and aggressive. Gypsy women were presented as being unfaithful to their husbands and several other expressions were humiliating and debasing to Gypsies. Claiming that the expressions constituted criminal offences, Mr. Aksu requested that the sale of the book be stopped and all copies seized. During the same period Mr. Aksu also took an action in regard to a dictionary entitled “Turkish Dictionary for Pupils” which was financed by the Ministry of Culture. According to Mr. Aksu, certain entries in the dictionary were insulting to, and discriminatory against, Gypsies. The Ministry of Culture and later the judicial authorities in Ankara however rejected these complaints and Mr. Aksu lodged two applications with the European Court of Human Rights. He submitted that the remarks in the book and the expressions in the dictionary reflected clear anti-Roma sentiment, that he had been discriminated against on account of his ethnic identity and that his dignity had been harmed because of the numerous passages in the book which used discriminatory and insulting language. He argued that that the refusal of the domestic courts to award compensation demonstrated an obvious bias against the Roma and he therefore invoked Articles 6 (fair trial) and 14 (non-discrimination) of the Convention. The Court considered, however, that it was more appropriate to deal with the complaints under Article 14 of the Convention in conjunction with Article 8 (right of privacy) of the Convention.

In its judgment of 27 July 2010 the Court began by referring to the vulnerable position of Roma/Gypsies, the special needs of minorities and the obligation of the European states to protect their security, identity and lifestyle, not only for the purpose of safeguarding the interests of the minorities themselves, but also to preserve a cultural diversity of value to the whole community. The Court also emphasised that racial discrimination requires that the authorities exert special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat. Regarding the book,

the Court accepted that the passages and remarks cited by Mr. Aksu, when read on their own, appear to be discriminatory or insulting. However, when the book is examined as a whole it is not possible to conclude that the author acted with bad faith or had any intention of insulting the Roma community. The conclusion to the book also clarified that it was an academic study that had conducted a comparative analysis and focused on the history and socio-economic living conditions of the Roma people in Turkey. The passages referred to by Mr. Aksu were not the author's own comments, but examples of the perception of Roma people in Turkish society, while the author sought to correct such prejudices and make it clear that the Roma people should be respected. Bearing these considerations in mind and stressing its subsidiary role, which leaves a broad margin of appreciation to the national authorities, the Court was not persuaded that the author of the book had insulted the applicant's integrity or that the domestic authorities had failed to protect the applicant's rights. Regarding the dictionary, the Court observed that the definitions provided therein were prefaced with the comment that the terms were of a metaphorical nature. Therefore it found no reason to depart from the domestic courts' findings that Mr. Aksu's integrity was not harmed and that he had not been subjected to discriminatory treatment because of the expressions described in the dictionary. The Court concluded that in the present cases it cannot be said that Mr. Aksu was discriminated against on account of his ethnic identity as a Roma or that there was a failure on the part of the authorities to take the necessary measures to secure respect for the applicant's private life.

Three dissenting judges, including the president of the second section of the Court, expressed their concern about the approach of the majority, as various passages of the book convey a series of highly discriminatory prejudices and stereotypes that should have given rise to serious explanation by the author and are more forceful in tone than the work's concluding comments. The dissenting judges also found that the dictionary contained seriously discriminatory descriptions and that in a publication financed by the Ministry of Culture and intended for pupils, the Turkish authorities had an obligation to take all measures to ensure respect for Roma identity and to avoid any stigmatisation. They also referred to data and reports collected by the European Union's Fundamental Rights Agency (FRA) showing that more vigilance is needed towards Roma. These arguments and references however could not persuade the (slim) majority of the Court, which accepted that the publication of the book and the dictionary were not to be considered as violating the rights of Mr. Aksu under Articles 14 and 8 of the Convention.

Judgment by the European Court of Human Rights (Second Section), case of Aksu v. Turkey, No. 4149/04 and 41029/04 of 27 July 2010

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=871867&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB>

86142BF01C1166DEA398649

