European Court of Human Rights: Aksu v. Turkey (Grand Chamber)

IRIS 2012-5:1/1

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For the facts of this case we refer to IRIS 2010-10/1 in which the Court's Chamber judgment of 27 July 2010 was reported. In essence Mr. Mustafa Aksu, who is of Roma/Gypsy origin, complained in Strasbourg that two publications financed or supported by the Ministry of Culture in Turkey, had offended him in his Roma identity, under Article 14 (the anti-discrimination provision) in conjunction with Article 8 (right to privacy). The action of Mr. Aksu was directed against a book entitled "The Gypsies of Turkey" and a dictionary entitled "Turkish Dictionary for Pupils", both containing insulting, denigrating or stereotyping statements about Roma. In its judgment of 27 July 2010 the European Court was not persuaded that the author of the book insulted Mr. Aksu's integrity or that the domestic authorities had failed to protect his 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. The European Court 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, with the smallest majority, concluded that it could not 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 Turkish authorities to take the necessary measures to secure respect for Mr. Aksu' s private life (see also IRIS 2010-10/1).

The Grand Chamber has now confirmed that Mr. Aksu' s rights under the Convention have not been violated. The Grand Chamber decided not to examine the complaint under the anti-discrimination provision. According to the Court "the case does not concern a difference in treatment, and in particular ethnic discrimination, as the applicant has not succeeded in producing prima facie evidence that the impugned publications had a discriminatory intent or effect. The case is therefore not comparable to other applications previously lodged by members of the Roma community". The main issue in the present case is whether the impugned publications, which allegedly contained racial insults, constituted interference with Mr. Aksu' s right to respect for his private life and, if so, whether this interference was compatible with the said right. The Court therefore examined the case under Article 8 of the Convention only, clarifying that the notion of personal autonomy is an important principle and that it can embrace multiple aspects of the person's physical and social identity. The Court accepts

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that an individual's ethnic identity must be regarded as another such element and that in particular, any negative stereotyping of a group, when it reaches a certain level, is capable of impacting on the group's sense of identity and the feelings of self-worth and self-confidence of members of the group. It is in this sense that it can be seen as affecting the private life of members of the group. However, in applying the protection of privacy under Article 8 of the Convention, the Court emphasises that due regard should be given to the requirements of freedom of expression under Article 10 of the Convention.

With regard to the book the Court explains that the Turkish courts attached importance to the fact it had been written by an academic and that it was to be considered as an academic work. It is therefore consistent with the Court's case-law to submit to careful scrutiny any restrictions on the freedom of academics to carry out research and to publish their findings. The Court explains why it is satisfied that in balancing the conflicting fundamental rights under Articles 8 and 10 of the Convention, the Turkish courts made an assessment based on the principles resulting from the Court's well-established case law. Although no violation of Article 8 was found, the Court nonetheless reiterated that the vulnerable position of Roma/Gypsies means that special consideration should be given to their needs and their different lifestyle, both in the relevant regulatory framework and in reaching decisions in particular cases. Therefore it is clear that in a dictionary aimed at pupils, more diligence is required when giving the definitions of expressions which are part of daily language but which might be construed as humiliating or insulting. In the Court's view, it would have been preferable to label such expressions as "pejorative" or "insulting", rather than merely stating that they were metaphorical. According to the Court, States should promote critical thinking among pupils and equip them with the necessary skills to become aware of and react to stereotypes or intolerant elements contained in the material they use. The Court also emphasises that the authorities and Government should pursue their efforts to combat negative stereotyping of the Roma. Finally the Court considers that the domestic authorities did not overstep their margin of appreciation and did not disregard their positive obligation to secure to Mr. Aksu effective respect for his private life. By 16 votes to one the Grand Chamber holds that there hasn't been a violation of Article 8 the Convention.

Judgment by the European Court of Human Rights (Grand Chamber), case of Aksu v. Turkey, No. 4149/04 and 41029/04 of 15 March 2012

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