



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF AKSU v. TURKEY

(Applications nos. 4149/04 and 41029/04)

JUDGMENT

STRASBOURG

27 July 2010

**THIS CASE WAS REFERRED TO THE GRAND CHAMBER
WHICH DELIVERED JUDGMENT IN THE CASE ON
15/03/2012**

This judgment may be subject to editorial revision.

In the case of Aksu v. Turkey,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 22 June 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in two applications (nos. 4149/04 and 41029/04) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mr Mustafa Aksu (“the applicant”), on 23 January 2004 and 4 August 2004 respectively.

2. The applicant was represented by Ms Ş. Buldu, a lawyer practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. On 29 April 2008 the Court decided to give notice of the applications to the Government. It also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

4. Third-party comments were received from the Greek Helsinki Monitor, which had been given leave by the President to intervene in the procedure (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court). The Government replied to those comments (Rule 44 § 5).

THE FACTS

5. The applicant was born in 1931 and lives in Ankara.

A. Concerning application no. 4149/04

1. The compensation proceedings initiated by the applicant

6. In 2000 the Ministry of Culture published a book entitled “The Gypsies of Turkey”, written by Associate Professor Ali Rafet Özkan.

7. On 15 June 2001 the applicant 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, the author had stated that Gypsies were engaged in illegitimate activities, lived as “thieves, pickpockets, swindlers, robbers, usurers, beggars, drug dealers, prostitutes and brothel keepers” and were polygamist and aggressive. Furthermore, Gypsy women were presented as being unfaithful to their husbands. The applicant also submitted that the book contained several other expressions that humiliated and debased Gypsies. Claiming that the expressions constituted criminal offences, he requested that the sale of the book be stopped and all copies seized.

8. On the same day, the head of the publication unit at the Ministry of Culture ordered that all copies of the book be returned to the publication unit as there were corrections to be made.

9. On 11 October 2001 the applicant wrote a letter to the Ministry of Culture enquiring whether the copies of the book had been seized.

10. On 17 October 2001 the head of the publication unit at the Ministry of Culture informed the applicant that the publications advisory board of the Ministry, composed of seven professors, had decided that the book was scientific research and that the expressions in the book did not contain any insults or similar expressions. The applicant was also informed that the author of the book would not permit any amendments to the text and that, in accordance with the author’s request, the Ministry had transferred the copyright of the book to him.

11. On 4 February 2002 the applicant sent letters to the Ministry of Culture and to Associate Professor Ali Rafet Özkan and repeated his initial request. He received no reply.

12. Subsequently, on 30 April 2002, the applicant brought proceedings before the Ankara Civil Court of General Jurisdiction against the Ministry of Culture and the author of the book, and requested compensation for the non-pecuniary damage he had suffered on account of the expressions contained in the book. He alleged that the expressions constituted an attack on his identity as a Gypsy and were insulting. The applicant also asked for the copies of the book to be confiscated and for its publication and distribution to be banned.

13. The author of the book submitted, in reply, that he had used the records of the Adana police headquarters and books written by other authors on Gypsies when writing the book and that he had not had any intention to

insult or humiliate Gypsies. The author further stated that the passages referred to by the applicant should not be considered in isolation, but in the context of the whole book.

14. On 24 September 2002 the Ankara Civil Court dismissed the applicant's requests in so far as they concerned the author of the book. It considered that the book was the result of academic research, was based on scientific data and examined the social structures of Gypsies in Turkey. The first-instance court therefore held that the expressions in question did not insult the applicant. As to the applicant's case against the Ministry, the first-instance court decided that it lacked jurisdiction as the administrative courts had jurisdiction over the applicant's claim.

15. On 25 October 2002 the applicant appealed. In his petition, he submitted that the book could not be considered as scientific research and that therefore the Ministry of Culture should not have published it.

16. On 21 April 2003 the Court of Cassation upheld the judgment of the first-instance court. In its decision it noted that the expressions in question were of a general nature. It therefore found no grounds for concluding that they concerned all Gypsies or that they constituted an attack on the applicant's identity.

17. On 8 December 2003 a request by the applicant for rectification of the decision was dismissed.

18. Subsequently, on an unspecified date, the applicant initiated proceedings against the Ministry of Culture before the Ankara Administrative Court. He requested non-pecuniary compensation, alleging that the content of the book published by the Ministry of Culture had been offensive and insulting towards the Gypsy community. On 7 April 2004 the Administrative Court dismissed the applicant's case. It held that before its publication, the book in question had been examined by a Rapporteur appointed by the publications advisory board. Following his approval, the advisory board had agreed to publish the book. In the wake of the applicant's allegations the advisory board, composed of seven professors, had examined the book again on 25 September 2001 and had decided that it was an academic study based on scientific research and that no inconvenience would be caused by continuing its distribution and sale. The Administrative Court therefore concluded that the applicant's allegations were unsubstantiated. It is not clear from the documents in the case file whether or not the applicant lodged an appeal against this decision.

2. The conclusion to the book "The Gypsies of Turkey"

19. The last paragraphs of the conclusion to "The Gypsies of Turkey" read as follows:

"The most important links connecting the Gypsies to each other are their familial and social structures as well as their traditions. Despite the fact that they have been leading a nomadic life for more than a thousand years, they have managed to protect

their traditional way of living thanks to their endogamous character. Their attachment to these traditions begins at birth and continues till death. Doubtless, tradition is the most significant factor in the way of life of the Gypsies. The elderly members of the Gypsy society bear the heaviest responsibility in protecting and sustaining the traditions. However, due to ever-changing circumstances and needs, the social structure of the Gypsies has become difficult to preserve. In particular “Natia”, one of these social structures, can no longer be sustained in today’s Turkey.

The liveliest characteristic of Gypsies is their way of living. Hence, all branches of socio-cultural activity, consisting of migration and settlement, dance, music, language, eating and drinking, fortune telling, sorcery and professions, constitute the true nature of Gypsy life. That is to say, these elements form the visible part of the iceberg. Other persons usually recognise Gypsies through these phenomena. Nevertheless, the way to truly know Gypsies is to mingle with their society and to fully analyse their traditions and beliefs. The secret world of the Gypsies reveals itself through their beliefs, in particular through their superstitions and taboos.

Gypsies, like everyone, feel the need to have faith and to worship. In addition to adopting the religion of the country they live in, they also perpetuate the traditional beliefs specific to their culture. Consequently, it is observed that Gypsies have genuine feasts and celebrations stemming from their beliefs which can be partly traced to Hinduism.

In our opinion, these people, who suffer from humiliation and rejection everywhere, could be transformed into citizens who are an asset to our State and our nation once their educational, social, cultural and medical problems are solved. The only thing that needs to be done is to focus on this issue with patience and determination.”

B. Concerning application no. 41029/04

20. In December 1998 the Language Association, a non-governmental organisation, published a dictionary entitled “Turkish Dictionary for Pupils”. The publication of the dictionary was financed by the Ministry of Culture.

21. On 30 April 2002 the applicant sent a letter to the Executive Board of the Language Association on behalf of the Confederation of Gypsy Cultural Associations. In his letter, the applicant submitted that certain entries in the dictionary were insulting to and discriminatory against Gypsies. In this connection, he referred to the descriptions and idioms below:

“Gypsy” (*çingene*): (metaphorically) stingy.

“Gypsiness” (*çingenelik*) (metaphorically): stinginess, greediness.

“Becoming a Gypsy” (*Çingeneleşmek*): “displaying stingy behaviour”.

“Gypsy’s debt” (*Çingene borcu*): an unimportant debt.

“Gypsy plays Kurd dances” (*Çingene çalar Kürt oynar*): a place where there is a lot of commotion and noise.

“Gypsy tent” (*Çingene çergesi*) (metaphorically): a dirty and poor place.

“Gypsy wedding” (*Çingene düğünü*): a crowded and noisy meeting.

“Gypsy fight” (*Çingene kavgası*): verbal fight in which vulgar language is used.

“Gypsy money” (*Çingene parası*): coins.

“Gypsy pink” (*Çingene pembesi*): pink.

22. In the applicant’s opinion, these descriptions had negative, discriminatory and prejudiced meanings. The applicant further submitted that the Ministry of Education and the Turkish Language Society had amended their dictionaries at his request and asked the Language Association to correct the definitions of the aforementioned words and to remove the discriminatory expressions from the dictionary. He received no reply to his letter.

23. Subsequently, on 15 July 2002, the applicant sent a further letter to the Language Association, repeating his request. He added that he would bring a case against the Association if his request was not granted by 20 August 2002.

24. On 16 April 2003 the applicant brought proceedings in the Ankara Civil Court of General Jurisdiction against the Language Association, requesting that the aforementioned definitions and expressions be removed from the dictionary. The applicant also requested compensation for the non-pecuniary damage he had suffered on account of the expressions contained in the dictionary. He alleged in that connection that the dictionary definitions constituted an attack on his identity as a Gypsy and an insult to his personality.

25. On 26 May 2003 the representative of the Language Association made submissions to the first-instance court. He maintained, *inter alia*, that the definitions and expressions contained in the dictionary were based on historical and sociological reality and that there had been no intention to humiliate or debase an ethnic group. He further submitted that the dictionary contained expressions and definitions that were commonly used in society and that there were other similar expressions in Turkish which concerned Albanians, Jews and Turks.

26. On 16 July 2003 the Ankara Civil Court dismissed the applicant’s case. It held that the definitions and expressions in the dictionary were based on historical and sociological reality and that there had been no intention to humiliate or debase an ethnic group. It further noted that there were other similar expressions in Turkish concerning other ethnic groups, which existed in dictionaries and encyclopaedias.

27. The applicant appealed. On 15 March 2004 the Court of Cassation upheld the judgment of 16 July 2003.

THE LAW

I. JOINDER OF THE APPLICATIONS

28. Having regard to the similar subject matter of the applications, the Court finds it appropriate to join them.

II. ADMISSIBILITY

A. The victim status of the applicant

1. *The parties' submissions*

(a) The Government

29. The Government contested the admissibility of the applications, alleging that they were *actio popularis* in nature. They stated that the domestic courts had dismissed the applicant's actions on the ground that the expressions in the book and the definitions in the dictionary were of a general character and did not personally affect all Roma people. The Government stated that, in particular, the applicant had failed to show that he was personally affected by the allegedly discriminatory remarks.

(b) The applicant

30. The applicant alleged that because of his Roma origin the discriminatory remarks contained in the book and the dictionary had caused him non-pecuniary damage and as a result he should be considered as having victim status.

(c) The Greek Helsinki Monitor

31. The Greek Helsinki Monitor stated that any member of an ethnic group allegedly targeted by generally discriminatory expressions based on race had the status of victim, as such expressions created prejudice against every member of that group. Referring to the judgment in the case of *Micallef v. Malta* (no. 17056/06, 15 January 2008), they further stated that the Court's protection should be no less than that afforded under the

domestic system: where a person's victim status had been recognised domestically it could not be refused by the Court.

2. *The Court's assessment*

32. The Court reiterates that, according to Article 34 of the Convention, the Court may receive applications from any person claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The Court further reiterates that for an applicant to be able to claim to be a victim of a violation, there must be a sufficiently direct link between the applicant and the damage allegedly sustained (see *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 35, ECHR 2004-III). It also emphasises that it has discretion as regards the granting of victim status when the complaint relates to an issue of general interest (see *Micallef v. Malta* [GC], no. 17056/06, § 46, ECHR 2009-...).

33. In the present applications, the applicant, who is of Roma/Gypsy origin, felt offended by the language used in the book and the dictionary in question. Although he was not targeted directly in person by the author of the book or the publisher of the dictionary, he was able, under Articles 24 and 25 of the Civil Code, to initiate compensation proceedings before the domestic courts. It is therefore particularly important to note, in the Court's view, that although the cases were dismissed in the end, the applicant had standing under domestic law to argue his cases before the domestic courts, and the merits of the applicant's lawsuits were examined at two levels of jurisdiction.

34. In sum, the Court concludes that in the present applications, the applicant has victim status under Article 34 of the Convention. Accordingly, the Government's preliminary objection under this head cannot be upheld.

B. Exhaustion of domestic remedies

35. The Government stated that the applications should be rejected for non-exhaustion of domestic remedies since the applicant had not initiated proceedings before the administrative courts against the Ministry of Culture.

36. The Court reiterates that it is in the first place for the applicant to select which legal remedy to pursue: where there is a choice of remedies available to the applicant to obtain redress for an alleged violation of the Convention, Article 35 § 1 of the Convention must be applied in a manner corresponding to the reality of the applicant's situation, in order to guarantee effective protection of the rights and freedoms in the Convention (see *I.G., M.K. and R.H. v. Slovakia* (dec.), no. 15966/04, 22 September 2009).

37. As far as application no. 4149/04 is concerned, the Court notes that the applicant initiated compensation proceedings against the author of the

book before the Ankara Civil Court of General Jurisdiction. Following the dismissal of his claims, he also brought an action against the Ministry of Culture before the Ankara Administrative Court, which was likewise rejected on 7 April 2004. However, it is not clear whether the applicant appealed against that judgment or not. As regards application no. 41029/04, the applicant did not bring any administrative proceedings against the Ministry of Culture but simply brought compensation proceedings against the Language Association.

38. The Court observes that in the instant cases the applicant's main complaints relate to the allegedly insulting statements contained in the book and the dictionary, both of which were written by private third parties. In both cases, the applicant chose to initiate civil proceedings against those third parties, which proceedings were pursued in full, up to cassation. By doing so he chose a reasonable, albeit ultimately unsuccessful, channel of redress. Accordingly, the Court considers that the applicant can be considered to have exhausted domestic remedies. As a result, this part of the Government's preliminary objections should be dismissed.

39. The Court notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

40. The applicant submitted that the remarks in the book entitled "The Gypsies of Turkey" and the expressions in the dictionary in question reflected clear anti-Roma sentiment and that the refusal of the domestic courts to award compensation demonstrated an obvious bias against the Roma. He invoked Articles 6 and 14 of the Convention.

41. The Court considers that in the circumstances of the present applications it is more appropriate to deal with the applicant's complaints under Article 14 of the Convention in conjunction with Article 8 of the Convention.

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. The parties’ submissions

1. The applicant

42. In respect of application no. 4149/04 the applicant stated that he was dissatisfied with the decisions of the domestic courts which had refused his compensation request. In his view, he had been discriminated against on account of his ethnic identity and his dignity had been harmed because of the numerous passages in the book which used discriminatory and insulting language.

43. In respect of application no. 41029/04 the applicant stated that the discriminatory expressions contained in the dictionary and the domestic courts’ decisions dismissing his case constituted discrimination against the Roma community and breached his rights under Article 8 of the Convention.

2. The Government

44. In respect of application no. 4149/04, the Government submitted that the book was published by the Ministry of Culture following the approval of the publications advisory board, composed of seven professors. According to the report of this board, the book was to be considered as academic research which would contribute to the study of the ethnology of Turkey and had been written in accordance with academic principles. Following the objections of the applicant, the book was again reviewed by the board, which decided that it was an academic study and did not have insulting content. Accordingly, the Government stated that they had not acted in a discriminatory manner towards the Roma people. In their submission the Ministry of Culture was taking steps to promote Roma culture and traditions. They concluded that the applicant had failed to establish that the book in question had caused him non-pecuniary damage and harmed his integrity.

45. In respect of application no. 41029/04, the Government submitted that the words and expressions described in the dictionary were based on historical and sociological reality and that there had been no intention to humiliate or debase an ethnic group.

3. *The Greek Helsinki Monitor*

46. The Greek Helsinki Monitor submitted that the Contracting States had a positive obligation to prohibit discrimination, to penalise any acts of discrimination including dissemination of racist ideas, incitement to racial hatred and the financing of such acts, as well as to compensate victims of such acts for damage they had suffered. According to the Greek Helsinki Monitor, the positive obligations of the State became even more pressing when the person whose right to respect for his or her private life had been violated belonged to a vulnerable social group. In this connection they referred to *Chapman v. the United Kingdom* ([GC], no. 27238/95, ECHR 2001-I), in which the Court had held that the vulnerable position of Gypsies as a minority meant that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases. According to the case-law, Contracting States had a positive obligation by virtue of Article 8 to facilitate the Gypsy way of life.

B. The Court's assessment

47. The Court recalls firstly that, according to its established case-law, discrimination means treating differently, without any objective and reasonable justification, persons in relevantly similar situations. However, Article 14 does not prohibit a member State from treating groups differently in order to correct "factual inequalities" between them; indeed in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007-....).

48. The Court further reiterates that Article 14 of the Convention complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those texts. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts in issue fall within the ambit of one or more of the latter (see *Koppi v. Austria*, no. 33001/03, § 25, 10 December 2009).

49. According to its established case-law, the Court notes 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 (see *Chapman*, cited above, § 96, and *D.H.*, cited above, § 181). In *Chapman* (cited above, §§ 93-94), the Court also observed that there could be said to be an emerging international consensus amongst the Contracting States of the Council of Europe, recognising the special needs of minorities

and an obligation 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. Furthermore, discrimination on account of, *inter alia*, a person's ethnic origin is a form of racial discrimination. Racial discrimination is a particularly insidious kind of discrimination and, in view of its perilous consequences, requires from the authorities 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 but as a source of enrichment (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 145, ECHR 2005-VII, and *Timishev v. Russia*, nos. 55762/00 and 55974/00, § 56, ECHR 2005-XII). In the light of the principles cited above, the Court finds that in the present cases Article 14 of the Convention is applicable in conjunction with Article 8.

50. In this connection the Court further reiterates that, while the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to its negative undertaking there may be positive obligations inherent in the effective respect for private life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see *Tavlı v. Turkey*, no. 11449/02, § 28, 9 November 2006).

51. Turning to the facts of the present cases, the Court observes that the applicant, who is of Roma origin, brought two civil lawsuits concerning the book and the dictionary in question, which in his view contained discriminatory remarks directed against the Roma community. He requested the national courts to order the retraction and correction of the insulting and erroneous statements, and he claimed compensation for the non-pecuniary damage sustained.

52. The Court observes that Article 24 of the Civil Code protects individuals against assault. According to this provision, an individual who considers that he or she was subjected to an assault on his or her person may claim protection from the judge against the persons responsible. Article 25 of the Civil Code further allows the claimant to request compensation for physical and psychological damage. It is clear from the facts of the present applications that the applicant was able to initiate civil lawsuits against the author of the book and the Language Association which had compiled the dictionary in question. During the domestic proceedings he was able to put forward his arguments at two levels of jurisdiction. It is also clear from the case file that the domestic courts conducted a thorough examination of the cases.

53. In respect of the book entitled "The Gypsies of Turkey", the Ankara Civil Court of General Jurisdiction considered that it was an academic study

which analysed the socio-economic situation of the Roma people in Turkey. In reply to the applicant's arguments that there were numerous paragraphs in the book that contained offensive and discriminatory language directed against the Roma community, the court held that, when read as a whole, the book was not insulting and the aim of the author was to make an academic study based on scientific and comparative research. The case was further examined by the Court of Cassation, which also found against the applicant, holding that the author of the book had made general remarks about the Roma community, that there was no attack on the applicant's person and that the statements in the book could not be considered to be directed against all Roma people.

54. In respect of the dictionary in question, the applicant initiated compensation proceedings against the Language Association. However, the domestic courts dismissed the case, holding that the expressions contained in the dictionary were based on historical and scientific reality, and that the Language Association had had no intention to humiliate or debase an ethnic group.

55. In view of the above, the Court observes that the applicant was able to argue his cases thoroughly before the domestic courts. As part of their obligations under Article 8, the domestic courts provided a forum for solving the dispute, which was between private persons. As stated previously in many Court judgments, the domestic courts are in a better position to evaluate the facts of a given case. The Court points out once again that it is not its function to deal with errors of fact or law allegedly made by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

56. As regards application no. 4149/04, the Court notes that, although the passages and remarks cited by the applicant, when read on their own, appear to be discriminatory or insulting, 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 to insult the Roma community. It is made clear in the conclusion to the book that it was an academic study which conducted a comparative analysis and focused on the history and socio-economic living conditions of the Roma people in Turkey. The Court observes that the author in fact referred to the biased portrayal of the Roma and gave examples of their stereotyped image. It is important to note that the passages referred to by the applicant were not the author's comments but examples of the perception of Roma people in Turkish society. However, the author sought to correct such prejudices and made it clear that the Roma people should be respected. Bearing these considerations in mind and again stressing its subsidiary role, the Court is not persuaded that the author of the book insulted the applicant's integrity or that the domestic authorities failed to protect the applicant's rights.

57. As regards application no. 41029/04, the Court observes that the definitions provided by the dictionary were prefaced with the comment that the terms were of a metaphorical nature. The Court therefore finds no reason to depart from the domestic courts' findings that the applicant's integrity was not harmed and that he had not been subjected to discriminatory treatment because of the expressions described in the dictionary.

58. In the light of the foregoing, the Court concludes that in the present cases it cannot be said that the applicant 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. As a result, there has been no breach of Article 14 of the Convention taken in conjunction with Article 8 of the Convention.

FOR THESE REASONS, THE COURT

1. *Decides* unanimously to join the applications;
2. *Declares* unanimously the applications admissible;
3. *Holds* by 4 votes to 3 that there has been no violation of Article 14 of the Convention in conjunction with Article 8 of the Convention.

Done in English, and notified in writing on 27 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Françoise Tulkens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Tulkens, Tsotsoria and Pardalos is annexed to this judgment.

F.T.
S.H.N.

JOINT DISSENTING OPINION OF JUDGES TULKENS, TSOTSORIA AND PARDALOS

1. Unlike the majority, we believe that in the present case there has been a violation of Article 14 of the Convention taken together with Article 8. Admittedly there are differences between the two cases, but their common feature is that they both concern the question of *prejudice* against Roma people. In our view this is a particularly sensitive question as, in respect of a minority and highly vulnerable social group, prejudice is the breeding-ground of discrimination and exclusion.

2. The first case concerns a work that was written by an academic and, so long as it fulfils the requirements of scientific research, should obviously allow the free expression of critical views. However, in our view there are still certain grey areas as regards the effect of this book. It was published by the Ministry of Culture which, according to the Government, was taking steps to promote Roma culture and tradition. With this in mind, we feel that the various passages from the book that have been identified by the applicant and that, in themselves, convey a series of highly discriminatory prejudices and stereotypes, should have given rise to serious explanation by the author, more forceful in tone than the work's concluding comments (see paragraph 19). Stereotypes are ready-made opinions that focus on peculiarities, and prejudices are preconceived ideas that lead to bias: they are dangerous because they reflect or even induce an implicit discrimination. In this connection, the fact that the author had not intended to insult or humiliate the Roma is not relevant. Lastly, it is difficult to accept that the offending passages, whose discriminatory nature is not in dispute, should not be regarded in isolation but in the context of the book as a whole. This contrasts with the Court's judgment in *Lindon, Otchakovsky-Laurens and July v. France*, where it found that there had been no violation of Article 10 merely on the basis of three offending passages, without taking into account the general context of the novel in question¹.

3. The second application, which is more problematic, concerns a dictionary published by the *Language Association* entitled "Turkish Dictionary for Pupils". The fact that this dictionary was intended for pupils is of great significance in our view. Without denying that the entries in the dictionary are insulting and discriminatory against Gypsies, the Government argued that the words and expressions used were based on the historical and sociological reality and that there had been no intention to humiliate a particular ethnic group. The majority, for its part, found that there had been no discriminatory treatment on account of the fact that the terms were "of a

¹ *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, ECHR 2007-XI.

metaphorical nature”. That explanation, in our opinion, certainly does not suffice to remove or lessen the seriously discriminatory character of the descriptions in question. On the contrary, recourse to such a form of rhetoric or figure of speech actually gives more weight to the prejudice. In a publication financed by the Ministry of Culture and intended for pupils, the national authorities had an obligation to take all measures to ensure respect for Roma identity and to avoid any stigmatisation.

4. For many years the Council of Europe has been paying particular attention to the situation of Roma. Thus, in its Resolution 1740(2010) on the situation of Roma in Europe and relevant activities of the Council of Europe, adopted on 22 June 2010, the Parliamentary Assembly of the Council of Europe urges all member States to “promote a positive image of diversity and address stereotypes and prejudices ... and develop policies and training programmes to combat anti-Roma prejudices ...”. In its report of 26 February 2010 on the situation of Roma in Europe and relevant activities of the Council of Europe (doc. 12174), the Committee on Legal Affairs and Human Rights recalls that the Roma “constitute the largest minority in Europe” and that this minority, “even today, is still frequently rejected by the rest of the population because of deep-seated prejudices. Moreover, in these times of economic crisis, this highly vulnerable minority presents an easy target and is used as a scapegoat”. In its Recommendation CM/Rec(2008)5 to member States on policies for Roma and/or Travellers in Europe, adopted on 20 February 2008, the Committee of Ministers of the Council of Europe emphasises the role of the media and education in the persistence of anti-Roma prejudices and their potential to help overcome them.

Similarly, the European Commission against Racism and Intolerance (ECRI) general policy Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies, of 6 March 1998, recommends that Governments ensure that the name used officially for the various Roma/Gypsy communities should be the name by which the community in question wishes to be known. Lastly, in its third report on Turkey, adopted on 25 June 2004, ECRI notes the decision to drop a pejorative definition of the term “cingene” (Gypsy) from a dictionary published by the Turkish Ministry of Education.

5. Lastly, the data collected by the European Union’s Fundamental Rights Agency (FRA), and that Agency’s opinions and reports specifically about Roma and Travellers, are valuable sources of information which should urge us to be more vigilant.