CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 45624/99
by Ramazan AKBULUT
against Turkey

The European Court of Human Rights (Third Section), sitting on 6 February 2003 as a Chamber composed of

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mr B. ZUPANČIČ,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application introduced on 24 November 1998,

Having regard to the partial decision of 5 December 2000,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ramazan Akbulut, is a Turkish national, who was born in 1971 and lives in Yozgat.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant started his military career in 1989. On 16 June 1998 the Supreme Military Council (*Yüksek Askeri Şura*) decided to discharge the applicant from the army on grounds of acts of insubordination and immoral conduct pursuant to Article 50 (c) of Law 926.

The Government submit the following in the light of the intelligence reports concerning the applicant:

Sergeant Ramazan Akbulut was a member of Revolutionary Islamic Opinion (*Devrim Yanlısı İslami Görüş*) movement. He was involved in disseminating the ideology of this movement and established contacts with persons who adopted the same ideology. He had an antisocial character and his wife carried Islamic scarf. He refused to host women and men in the same room in his house because he believed that men and women should gather in separate rooms.

B. Relevant domestic law and practice

1. The Constitution

The relevant provisions of the Constitution are as follows:

Article 14 § 1

"None of the rights and freedoms set forth in the Constitution may be exercised with the aim of undermining the territorial integrity of the State or the indivisible unity of its people, imperilling the existence of the Turkish State and the Republic, abolishing fundamental rights and freedoms, handing over control of the State to a single individual or group or bringing about the dominance of one social class over the others, establishing discrimination on the grounds of language, race, religion or adherence to a religious sect or setting up by any other means a State order based on such beliefs and opinions."

Article 24

"Everyone shall have the right to freedom of conscience, faith and religious belief. Prayers, worship and religious services shall be conducted freely, provided that they do not violate the provisions of Article 14. No one shall be compelled to participate in prayers, worship or religious services or to reveal his religious beliefs and convictions; nor shall he be censured or prosecuted because of his religious beliefs or convictions.
...

No one may exploit or abuse religion, religious feelings or things held sacred by religion in any manner whatsoever with a view to causing the social, economic,

political or legal order of the State to be based on religious precepts, even if only in part, or for the purpose of securing political or personal influence thereby."

Article 125

"All acts or decisions of the administration are subject to judicial review ...

Decisions of the President of the Republic concerning matters within his sole jurisdiction and decisions of the Supreme Military Council shall not be subject to judicial review.

..."

Article 129 §§ 2, 3 and 4 of the Constitution provides that a disciplinary action cannot be imposed to the civil servants provided that that the right to defence is respected. Moreover, it lays out that the disciplinary actions, other that the warnings and the reprimands are subject to legal control. The provisions concerning the soldiers are reserved. Article 21 of Law on the Military Administrative High Court stipulates that the disciplinary actions imposed to the soldiers are not subject to legal control.

2. Law no. 357 ("the Military Legal Service Act")

Section 22 (c) of the Military Legal Service Act provides:

"Irrespective of length of service, servicemen whose continued presence in the armed forces is adjudged to be inappropriate on account of breaches of discipline or immoral behaviour on one of the grounds set out below, as established in one or more documents drawn up during their service in the last military rank they held, shall be subject to the provisions of the Turkish Pensions Act.

...

Where their conduct and attitude reveal that they have adopted unlawful opinions."

3. Law no. 926 ("the Military Personnel Act")

Section 50 (c) of the Military Personnel Act provides:

"Irrespective of length of service, servicemen whose continued presence in the armed forces is adjudged inappropriate on account of breaches of discipline and immoral behaviour shall be subject to the provisions of the Turkish Pensions Act. The Regulations for Military Personnel shall lay down which authorities have jurisdiction to commence proceedings, to examine, monitor and draw conclusions from personnel assessment files and to carry out any other act or formality in such proceedings. A decision of the Supreme Military Council is required to discharge an officer whose case has been submitted by the Chief of Staff to the Supreme Military Council."

Section 94 (b) of the Military Personnel Act provides:

"(b) Discharge from the army for the acts of insubordination and immoral conduct:

> Notwithstanding the seniority in the service, the non-commissioned officers whose maintenance is considered to be inappropriate for the acts of insubordination and immoral conduct are subject to Law on the Turkish Pension Fund. The investigation, examination and follow-up of the notation reports and the formalities and the competent authorities fulfilling these duties are subject to the provisions of The Regulations on assessment of officers and non-commissioned officers. The General Staff determines which non-commissioned officers' cases concerning their discharge from the army should be examined by the Supreme Military Council."

4. The Regulations on assessment of officers and non-commissioned officers

Article 99 of the Regulations on assessment of officers and non-commissioned officers provides:

> "Irrespective of length of service, the compulsory retirement procedure shall be applied to all servicemen whose continued presence in the armed forces is adjudged to be inappropriate on account of breaches of discipline or immoral behaviour on one of the grounds set out below, as established in one or more documents drawn up during their service in the last military rank they held:
>
> ...
>
> (e) where by his conduct and attitude the serviceman concerned has provided evidence that he holds unlawful, subversive, separatist, fundamentalist and ideological political opinions or takes an active part in the propagation of such opinions."

COMPLAINTS

The applicant complains under Article 9 of the Convention that the decision of the Supreme Military Council amounts to a violation of his right to freedom of thought, conscience and religion. He submits that the implicit reason for the aforementioned decision was based on his religious convictions and his wife's Islamic scarf.

The applicant complains under Article 13 of the Convention taken in conjunction with Article 9 of the lack of any independent national authority before which complaints can be brought with any prospect of success.

THE LAW

A. Alleged violation of Article 9 of the Convention

The applicant complains that the decision of the Supreme Military Council amounts to a violation of his right to freedom of thought, conscience, religion and expression. He maintains that the implicit reason for the aforementioned decision was based on his religious convictions and his wife's Islamic scarf.

The applicant relies on Article 9 of the Convention, which provides:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

1. The parties' submissions

(a) The Government

The Government argue that the question whether the applicant should have been allowed to remain a member of the armed forces lay at the heart of the issue before the Court. The order for his discharge from the army had not amounted to an interference with his freedom of conscience, religion or belief but had served the purpose of dismissing members of the army who had displayed a lack of loyalty to the principle on which the Turkish nation was founded, namely secularism, which it was the task of the armed forces to guarantee. They maintain that conduct and activities in breach of that principle could entail the risk of undermining the order prevailing in the armed forces and that it was natural that such conduct should be regarded as incompatible with military discipline. Relying, in particular, on the Vereinigung demokratischer Soldaten Österreichs and Gubi v. Austria judgment of 19 December 1994, the Kalaç v. Turkey judgment of 1 July 1997 and the Grigoriades v. Greece judgment of 25 November 1997, the Government submit that "the proper functioning of an army is hardly imaginable without legal rules designed to prevent servicemen from undermining military discipline" and that it was "accepted in Europe that discipline is essential to maintain the authority of the army and that the army is essential to ensure that democracy is protected from subversion, in

accordance with one of the major objectives of the European Convention on Human Rights".

The Government point out that the applicant was a member of sects known to have unlawful fundamentalist tendencies and that he had attended ideological meetings and committed various disciplinary offences, some of which had resulted in the imposition of penalties by his superiors. They observe that, according to documents in the applicant's personal files, a committee of nine members of the armed forces had concluded that the applicant had breached military discipline and that he should be discharged from the army. The Supreme Military Council had based its decision on that opinion.

Furthermore, the Government highlight that any attitude or conduct such as the applicant's antisocial character or his wife's Islamic scarf had not been taken as the sole basis for his discharge from the army.

(b) The applicant

The applicant submits that the sole reason for his discharge from the army was his religious convictions and his family's way of life. He alleges that he was not involved in the activities of a religious movement.

2. The Court's assessment

The Court reiterates that, as enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a 'democratic society' within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion (see *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A no. 260-A, p. 17, § 31, and *Buscarini v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-1).

The Court has held that in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected (see the *Kokkinakis* judgment cited above, p. 18, § 33).

The Court observes that it is well established that the Convention applies in principle to members of the armed forces and not only to civilians. However, when interpreting and applying the rules of the Convention in cases such as the present one, the Court must bear in mind the particular characteristics of military life and its effects on the situation of individual members of the armed forces (see *Engel and Others v. the Netherlands*, judgment of 8 June 1976, Series A no. 22, p. 23, § 54, and, *mutatis*

mutandis, *Grigoriades v. Greece*, judgment of 25 November 1997, *Reports of Judgments and Decisions* 1997-VII, pp. 2589-90, § 45).

In order to determine whether this provision was infringed in the instant case it must first be ascertained whether the measure in issue amounted to an interference with the applicant's exercise of his right to "freedom to manifest [his] religion or beliefs".

The Court considers that in choosing to pursue a military career the applicant was accepting of his own accord a system of military discipline that by its very nature implied the possibility of placing on certain of the rights and freedoms of members of the armed forces limitations which could not be imposed on civilians (see the *Engel and Others* judgment cited above, p. 24, § 57). States may adopt for their armies disciplinary regulations forbidding this or that kind of conduct, in particular an attitude inimical to an established order reflecting the requirements of military service (see *Kalaç v. Turkey*, judgment of 1 July 1997, *Reports* 1997-IV, p. 1210, § 28). These limitations may include a duty for military personnel to refrain from participating in the Islamic fundamentalist movement, whose aim and programme is to ensure the pre-eminence of religious rules (see *Yanaşık v. Turkey*, application no. 14524/89, Commission decision of 6 January 1993, Decisions and Reports (DR) 74, p. 14).

The Court notes that it is not disputed that members of the armed forces (army officers and non-commissioned officers) can perform their religious duties within the limits imposed by the requirements of military life. It appears from the evidence before it that a committee of nine members of the armed forces examined the applicant's assessment reports – which listed the disciplinary offences he had committed and stated that he was a member of a movement known to have fundamentalist Islamic tendencies – and found that he did not have the profile of an army officer or a non-commissioned officer. The committee concluded that the applicant had breached military discipline and should be discharged from the army. The Court further notes that the Supreme Military Council's order was based not on the applicant's religious beliefs and opinions, nor on the manner in which he performed his religious duties, but on his conduct and activities in breach of military discipline and the principle of secularism.

The Court concludes that the applicant's discharge did not amount to an interference with the right guaranteed by Article 9 of the Convention.

It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

B. Alleged violation of Article 13 of the Convention

The applicant complains under Article 13 of the Convention taken in conjunction with Article 9 of the lack of any independent national authority before which complaints can be brought with any prospect of success.

Article 13 of the Convention provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Court recalls that Article 13 requires a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see, among many others, *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172, p. 14, § 31).

Having regard to the conclusion it reached above concerning the applicant's complaints under Article 9, the Court finds that these complaints cannot be considered as "arguable" in terms of the Convention.

It follows that this complaint is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER
Registrar

Georg RESS
President