CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

## FOURTH SECTION

## FINAL DECISION

Application no. 62619/00
by Ömer Bilal KARAKAYA
against Turkey

The European Court of Human Rights (Fourth Section), sitting on 5 July 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr R. TÜRMEN,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 12 April 1999,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Ömer Bilal Karakaya, is a Turkish national, who was born in 1966 and lives in Bursa. He is represented before the Court by Mr M. Ali Bulut and Mr Yusuf Akmaz, lawyers practising in Ankara.

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

The applicant was a teacher at the Sorgun Anadolu High School at the time of the events.

On an unspecified date a newspaper article contained an allegation that the applicant was making inappropriate remarks in the class.

On 29 November 1995 the Sorgun District Governors' Office authorised the start of criminal proceedings against the applicant.

The case was brought before the Sorgun Criminal Court of First Instance which decided on 30 May 1996 that it lacked jurisdiction to try the case.

On 27 December 1996 the public prosecutor at the Yozgat Assize Court charged the applicant with insulting the Turkish Republic. He requested that the applicant be sentenced and convicted under Article 159 § 1 of the Criminal Code. The public prosecutor relied on the following statements of the applicant which were allegedly made in the class to the students.

> "There is no Turkish Nation; there is a Muslim Turkish Nation."
>
> "It is not 'Happy is whoever says I am a Turk' but 'Happy is whoever says I am a Muslim'."
>
> "Those who die in the southeast are not martyrs; those who die for Allah and Muslimism are martyrs"

On 14 March 1997 the applicant submitted his written defence statement to the Yozgat Assize Court. In his submission the applicant denied having made the above-mentioned statements. He claimed that once in the school canteen he had discussed with a friend how an author had interpreted the proverb: "Happy is whoever says I am a Turk" as "Happy is whoever says I am a Muslim" and that these were not his own words. He further alleged that once when he was in the teachers' room a colleague had asked him what the status of the PKK militants who died was and that he had replied that none of the PKK militants who died were martyrs.

On 20 October 1997 the Yozgat Assize Court considered that the offence in question fell under Article 312 of the Criminal Code, namely inciting the people to hatred and hostility on the basis of a distinction between religions and decided that it lacked jurisdiction to try the case.

On 19 November 1997 the Ankara State Security Court decided that it lacked jurisdiction to try the case since the offence in question fell under Article 159 § 1 of the Criminal Code.

On 26 December 1997 the Court of Cassation considered that the offence in question fell under the jurisdiction of the State Security Court.

On 18 June 1998 the public prosecutor, in his observations on the merits, requested that the applicant be sentenced and convicted under Article 159 § 1 of the Criminal Code.

On 7 July 1998 the public prosecutor sitting at the Ankara State Security Court changed. The new public prosecutor submitted his observations on the merits and requested that the applicant be sentenced and convicted under Article 312 § 2 of the Criminal Code.

In the proceedings before the Ankara State Security Court, the applicant denied having made the above-cited remarks. He claimed that once during the class they were discussing martyrdom and that he had said that in

Turkey there were Turks and that their belief was Islam. He also disputed the evidence given by the witnesses. The applicant also complained of the re-qualification of the charges against him.

On 23 July 1998 the Ankara State Security Court, after having examined the testimonies of seventy-seven witnesses, many of whom were students, convicted the applicant under Article 312 § 2 of the Criminal Code and sentenced him to one year's imprisonment and to a fine of 220.000 Turkish liras. The court reasoned that in considering the population living in Turkey as an element of a Muslim State, the applicant had discriminated against those who were not Muslims. In determining the sentence, the Court took into account the applicant's personality, status and the way the offence was committed.

On an unspecified date the applicant appealed to the Court of Cassation against the judgment of the State Security Court. The applicant contended that he had never made the impugned statements. He also challenged the veracity of the evidence given by the witnesses. He asserted that the students were 10-11 years old and that they were at an age where they could be very easily manipulated. The applicant also complained that the last minute change of the charges against him infringed his defence rights.

On 2 December 1998 the Court of Cassation held a hearing and upheld the judgment of the Ankara State Security Court.

On 19 February 1999 the principal public prosecutor at the Court of Cassation dismissed the applicant's request for the rectification of the judgment of 2 December 1998 of the Court of Cassation.

## COMPLAINTS

The applicant complained under Article 6 of the Convention that he was not heard within a reasonable time by an independent and impartial tribunal. He asserted in this regard that one of the three members of the State Security Court was a military judge. He alleged that the criminal proceedings against him were not concluded within a reasonable time. Finally, he submitted that he was convicted of an offence different from the one charged.

## PROCEDURE

On 4 May 2004 the Court decided to invite the Government to submit observations on the admissibility and merits of the applicant's complaints by 27 July 2004. Following the request of the Government this time was

extended to 7 September 2004. On 7 September 2004 the Government submitted its observations on admissibility and merits.

By letter dated 4 October 2004, the Government's observations were sent to the applicant, who was requested to submit any observations together with any claims for just satisfaction in reply by 2 November 2004.

By letter dated 4 April 2005, sent by registered post, the applicant's representatives were notified that the period allowed for submission of their client's observations had expired on 2 November 2004 and that no extension of time had been requested. The applicant's attention was drawn to Article 37 § 1 (a) of the Convention, which provides that the Court may strike a case out of its list of cases where the circumstances lead to the conclusion that the applicant does not intend to pursue the application. No response has been received.

## THE LAW

The Court notes that on 4 April 2005 the applicant's representatives were reminded that the period allowed for submission of their client's written observations had expired and warned of the possibility that the case might be struck out of the Court's list. The applicant's representatives have not submitted any reply to the Court.

The Court considers that in the circumstances the applicant may be regarded as no longer wishing to pursue his application within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 in fine, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the examination of the application to be continued.

Accordingly, the application of Article 29 § 3 of the Convention should be discontinued.

For these reasons, the Court unanimously

*Decides* to strike the application out of its list of cases.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President