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

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Turkish law means history professor lives in constant fear of prosecution for his views on the events of 1915 concerning the Armenian population

In today's Chamber judgment in the case **Altuğ Taner Akçam v. Turkey** (application no. 27520/07), which is not final[1], the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

Mr Taner Akçam alleged that the fear of prosecution for his views on the Armenian issue had caused him considerable stress and anxiety and had even made him stop writing on the subject.

Principal facts

The applicant, Altuğ Taner Akçam, is a Turkish and German national who was born in 1953 and lives in Ankara. A professor of history, he researches and publishes extensively on the historical events of 1915 concerning the Armenian population in the Ottoman Empire. The Republic of Turkey, one of the successor states of the Ottoman Empire, does not recognise the word "genocide" as an accurate description of events.

Affirming the Armenian issue as "genocide" is considered by some (especially extremist or ultranationalist groups) as a denigration of "Turkishness" (*Türklük*), which is a criminal offence punishable under Article 301 of the Turkish Criminal Code by a term of imprisonment of six months to two or three years. Amendments have been introduced following a number of controversial cases and criminal investigations brought against such prominent Turkish writers and journalists as Elif Şafak, Orhan Pamuk and Hrant Dink[2] for their opinions on the Armenian issue. Notably, in October 2005 Hrant Dink, editor of *AGOS*, a bilingual Turkish-Armenian newspaper, was convicted under Article 301 for denigrating "Turkishness". It was widely believed that because of the stigma attached to his criminal conviction, Mr Dink became the target of extremists and in January 2007 he was shot dead. The three major changes introduced to the text were: to replace "Turkishness" and "Republic" with "Turkish Nation" and "State of the Republic of Turkey"; to reduce the maximum length of imprisonment to be imposed on those found guilty under Article 301; and, most recently in 2008, to add a security clause, namely any investigation into the offence of denigrating "Turkishness" has to first be authorised by the Minister of Justice.

On 6 October 2006 Mr Taner Akçam published an editorial opinion in *AGOS* criticising the prosecution of Hrant Dink. Following that, three criminal complaints were filed against

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

2 See Dink v. Turkey (application nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09), 14.09.2010.

him by extremists under Article 301 alleging that he had denigrated "Turkishness". Following the first complaint, he was summoned to the local public prosecutor's office to submit a statement in his defence. The prosecutor in charge of the investigation subsequently decided not to prosecute on the ground that Mr Taner Akçam's views were protected under Article 10 of the European Convention. The investigations into the other two complaints were also terminated with decisions not to prosecute.

The Government submitted that it was unlikely that Mr Taner Akçam was at any risk of future prosecution on account of the recent safeguards introduced to Article 301, notably the fact that authorisation was now needed from the Ministry of Justice to launch an investigation. Accordingly, between May 2008 (when this amendment was introduced) and November 2009, the Ministry of Justice received 1,025 requests for authorisation to bring criminal proceedings under Article 301 and granted such authorisation in 80 cases (about 8% of the total requests). Furthermore, Mr Taner Akçam had not been prevented from carrying out his research; on the contrary, he had even been given access to the State Archives. His books on the subject are also widely available in Turkey.

According to Mr Taner Akçam, however, the percentage of prior authorisations granted by the Ministry of Justice was much higher, and these cases mainly concerned the prosecution of journalists in freedom of expression cases. He submitted statistics from the Media Monitoring Desk of the Independent Communications Network for the period from July to September 2008 according to which a total of 116 people, 77 of whom were journalists, were prosecuted in 73 freedom of expression cases.

Mr Taner Akçam further claimed that the criminal complaints filed against him for his views had turned into a harassment campaign, with the media presenting him as a "traitor" and "German spy". He has also received hate mail including insults and death threats.

He further alleged that the tangible fear of prosecution had not only cast a shadow over his professional activities – he effectively stopped writing on the Armenian issue in June 2007 when he brought his application to this Court – but had caused him considerable stress and anxiety.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Taner Akçam alleged that the Government could not guarantee that he would not face investigation and prosecution in the future for his views on the Armenian issue. He further alleged that, despite the amendment to Article 301 in May 2008 and the Government's reassurances, legal proceedings against those affirming the Armenian "genocide" had continued unabated. Moreover, the Government's policy on the Armenian issue had not in essence been changed and could not be predicted with any certainty in the future.

The application was lodged with the European Court of Human Rights on 21 June 2007.

Judgment was given by a Chamber of seven, composed as follows:

Françoise **Tulkens** (Belgium), *PRESIDENT*,
Danutė **Jočienė** (Lithuania),
David Thór **Björgvinsson** (Iceland),
Dragoljub **Popović** (Serbia),
András **Sajó** (Hungary),
Işıl **Karakaş** (Turkey),
Guido **Raimondi** (Italy), *JUDGES*,

and also Stanley **Naismith**, *SECTION REGISTRAR.*

Decision of the Court

The Court found that there had been an "interference" with Mr Taner Akçam's right to freedom of expression. The criminal investigation launched against him and the Turkish criminal courts' standpoint on the Armenian issue in their application of Article 301 of the Criminal Code (any criticism of the official line on the issue in effect being sanctioned), as well as the public campaign against him, confirmed that there was a considerable risk of prosecution faced by persons who expressed "unfavourable" opinions on the subject and indicated that the threat hanging over Mr Taner Akçal was real. The measures adopted to provide safeguards against arbitrary or unjustified prosecutions under Article 301 had not been sufficient. The statistical data provided by the Government showed that there were still a significant number of investigations, and Mr Taner Akçam alleged that this number was even higher. Nor did the Government explain the subject matter or the nature of the cases in which the Ministry of Justice granted authorisation for such investigations. Moreover, the Court agreed with Thomas Hammarberg, Human Rights Commissioner of the Council of Europe, in his report which stated that a system of prior authorisation by the Ministry of Justice in each individual case was not a lasting solution which could replace the integration of the relevant Convention standards into the Turkish legal system and practice.

Furthermore, in the Court's opinion, while the legislator's aim of protecting and preserving values and State institutions from public denigration could be accepted to a certain extent, the wording of Article 301 of the Criminal Code, as interpreted by the judiciary, was too wide and vague and did not enable individuals to regulate their conduct or to foresee the consequences of their acts. Despite the replacement of the term "Turkishness" by "the Turkish Nation", there was apparently no change in the interpretation of these concepts. For example, in the case ***Dink v. Turkey*** of 2010 the Court criticised the Court of Cassation for understanding them in the same way as before. Thus Article 301 constituted a continuing threat to the exercise of the right to freedom of expression. As was clear from the number of investigations and prosecutions brought under this Article, any opinion or idea that was considered offensive, shocking or disturbing could easily be made the target of a criminal investigation by public prosecutors. Indeed, the safeguards put in place to prevent the abusive application of Article 301 by the judiciary did not provide a guarantee of non-prosecution because any change of political will or of Government policy could affect the Ministry of Justice's interpretation of the law and open the way for arbitrary prosecutions.

In view of that lack of forseeability, the Court concluded that the interference with Mr Taner Akçam's freedom of expression had not been "prescribed by law", in violation of Article 10.

The Court held that the finding of a violation was sufficient just satisfaction under Article 41 in the circumstances of the case.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.