

22 October 2008

## SECOND SECTION

Application no. 27520/07  
by Altuğ Taner AKÇAM  
against Turkey  
lodged on 21 June 2007

### STATEMENT OF FACTS

#### THE FACTS

The applicant, Mr Altuğ Taner Akçam, is a German national who was born in 1953. He is represented before the Court by Mr P. Akhavan, a **professor** of international law who is licensed to practise law in the State of New York, the United States of America.

##### A. The circumstances of the case

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

The applicant is a **professor** of **history** who researches and publishes extensively on the issue of the Armenian massacre.

On 6 October 2006 the applicant published an editorial opinion in *AGOS*, a bilingual Turkish-Armenian newspaper, entitled “Hrant Dink, 301 and a Criminal Complaint”. In this editorial opinion the applicant criticised the prosecution of Hrant Dink, the late editor of *AGOS*, for the crime of “insulting Turkishness” under Article 301 of the Turkish Criminal Code. He also requested, in an expression of solidarity, to be prosecuted on the same ground by virtue of his opinions on the issue of the Armenian massacre.

On 12 October 2006 a complaint was lodged against the applicant with the Eyüp public prosecutor; the complainant alleged that the applicant’s defence of Hrant Dink in the editorial published in *AGOS* violated Articles 301, 214 (incitement to commit an offence), 215 (praising a crime and a criminal) and 216 (incitement to hatred and hostility among the people) of the Turkish Criminal Code.

On 5 January 2007 the applicant was summoned to the Şişli public prosecutor’s office where he was informed of the criminal charges against him and asked to submit his defence statement.

On 19 January 2007 Hrant Dink was assassinated.

On 30 January 2007 the charges against the applicant were dropped by the Şişli public prosecutor, who held that the applicant’s statements in his capacity as a **professor** of **history** came within the realm of protected expression under Article 10 of the European Convention on Human Rights and that they did not as such constitute degradation of Turkishness.

On 11 October 2007 a judgment was issued by the Şişli Criminal Court against Arat Dink (editor of *AGOS*) and Serkis Seropyan (the owner of *AGOS*) whereby both were sentenced to one year’s imprisonment under Article 301 of the Turkish Criminal Code for accusing the Turkish nation of genocide via the medium of the press. Although the applicant was not party to those proceedings, the court decided on its own motion that the Şişli public prosecutor had

erred in discontinuing the investigation against the applicant on 30 January 2007 and held that this matter should be duly investigated by the prosecutor's office.

On 10 January 2008 the applicant made an urgent request for interim measures under Rule 39 of the Rules of Court. He also requested that the respondent Government be notified of the introduction of the application in accordance with Rule 40 of the Rules of Court and that the case be given priority under Rule 41 of the Rules of Court.

On 14 January 2008 the applicant's requests under rules 39, 40 and 41 of the Rules of Court were rejected.

According to the information provided by the applicant's representative on 6 May 2008, no further prosecution has been instigated against the applicant following the judgment of the Şişli Criminal Court dated 11 October 2007.

## **B. Relevant domestic law**

Former Article 301 of the Turkish Criminal Code reads as follows:

- “1. A person who publicly degrades Turkishness, the State of the Republic of Turkey or the Grand National Assembly of Turkey shall be sentenced to a penalty of imprisonment for a term of six months to three years.
2. A person who publicly degrades the Government of the Republic of Turkey, the judicial bodies of the State or the military or security organisations of the State shall be sentenced to a penalty of imprisonment for a term of six months to two years.
3. In cases where denigration of Turkishness is committed by a Turkish citizen in another country the punishment shall be increased by one third.
4. The expression of an opinion for the purpose of criticism does not constitute an offence.”

The new text of Article 301 of the Turkish Criminal Code, as amended on 29 April 2008, reads as follows:

- “1. A person who publicly degrades the Turkish nation, the State of the Republic of Turkey, the Grand National Assembly of Turkey, the Government of the Republic of Turkey or the judicial bodies of the State, shall be sentenced a penalty of imprisonment for a term of six months to two years.
2. A person who publicly degrades the military or security organisations of the State shall be sentenced to a penalty in accordance with paragraph 1 above.
3. The expression of an opinion for the purpose of criticism does not constitute an offence.
4. The conduct of an investigation into such an offence shall be subject to the permission of the Minister of Justice.”

## **COMPLAINTS**

The applicant complained that Article 301 of the Turkish Criminal Code violated Article 7 of the Convention in that it was so vague and overly broad that an individual could not discern from its wording which acts or omissions might result in criminal liability.

The applicant further alleged, under Article 10 § 1 of the Convention, that the impugned Article 301 of the Turkish Criminal Code amounted to a restriction on the right to freedom of expression which could not be justified under Article 10 § 2 of the Convention due to the unforeseeability of the restriction imposed.

The applicant maintained, lastly, that Article 301 of the Turkish Criminal Code breached Article 14 of the Convention due to its highly discriminatory consequences.

## **QUESTIONS TO THE PARTIES**

1. Has there been an interference with the applicant's freedom of expression within the meaning of Article 10 § 1 of the Convention on account of Article 301 of the Turkish Criminal Code?

If so, was that interference prescribed by law and necessary in terms of Article 10 § 2 of the Convention?

2. Is there an ongoing interference with a threat of prosecution with the applicant's freedom of expression within the meaning of Article 10 § 1 of the Convention in view of the mere possibility that an investigation or prosecution may be brought against the applicant under Article 301 of the Turkish Criminal Code for his academic work on the Armenian issue?

3. Under Turkish law, is it possible to reopen criminal proceedings which had formerly been dropped by a decision not to prosecute (*takipsizlik kararı*) or otherwise discontinued?

4. What is the number of cases pending before national courts brought under Article 301 of the Turkish Criminal Code following the amendment of this provision on 29 April 2008?

The Government are requested to submit all documents regarding the proceedings initiated against the applicant, including the editorial opinion published by the applicant in the newspaper AGOS on 6 October 2006, entitled “Hrant Dink, 301 and a Criminal Complaint” (“Hrant Dink, 301 ve bir Suç Duyurusu”) which formed the subject-matter of the criminal complaint filed against him on 12 October 2006.

The Government are further requested to inform the Court about the application of both the former and the amended Articles 301 of the Turkish Criminal Code, and in particular, to enlighten the Court as to the meanings attributed to and the interpretation of the terms “Turkishness” and “the Turkish nation” by the relevant State authorities in practice.

AKÇAM v. TURKEY – STATEMENT OF FACTS AND QUESTIONS

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