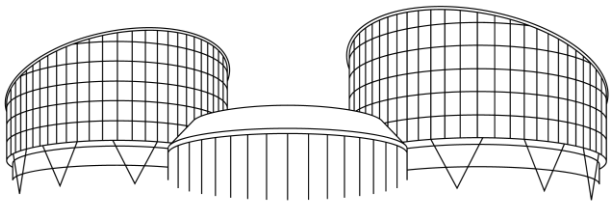

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF AKSU v. TURKEY

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

JUDGMENT

STRASBOURG

15 March 2012

This judgment is final but may be subject to editorial revision.

In the case of Aksu v. Turkey,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Nicolas Bratza, *President,*
Jean-Paul Costa,
Josep Casadevall,
Nina Vajić,
Dean Spielmann,
Karel Jungwiert,
Anatoly Kovler,
Elisabet Fura,
Alvina Gyulumyan,
Mark Villiger,
Päivi Hirvelä,
Luis López Guerra,
Mirjana Lazarova Trajkovska,
Nebojša Vučinić,
Işıl Karakaş,
Vincent A. de Gaetano,
Angelika Nußberger, *judges,*

and Michael O'Boyle, *Deputy Registrar*,

Having deliberated in private on 13 April 2011 and on 1 February 2012,

Delivers the following judgment, which was adopted on the last-mentioned 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 and 4 August 2004 respectively.

2. The applicant, who had been granted legal aid, was represented by Mr S. Esmer, a lawyer practising in Ankara. The Turkish Government ("the Government") were represented by their Agent.

3. The applicant alleged that three publications – a book and two dictionaries – that had received Government funding included remarks and expressions that reflected anti-Roma sentiment. He relied on Article 14 read in conjunction with Article 8 of the Convention.

4. The applications were allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). On 27 July 2010 a Chamber of that Section composed of the following judges: Françoise Tulkens, Ireneu

Cabral Barreto, Danutė Jočienė, Dragoljub Popović, Nona Tsotsoria, Işıl Karakaş and Kristina Pardalos, and also of Stanley Naismith, Deputy Section Registrar, delivered a judgment in which it decided to join the applications (Rule 42 § 1) and held by four votes to three that there had been no violation of Article 14 taken in conjunction with Article 8 of the Convention.

5. On 22 November 2010, following a request from the applicant dated 25 October 2010, a panel of the Grand Chamber decided to refer the case to the Grand Chamber under Article 43 of the Convention.

6. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24 of the Rules of Court.

7. The applicant and the Government each filed further written observations on the merits (Rule 59 § 1). In addition, third-party comments were received from the Greek Helsinki Monitor, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 13 April 2011 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr M. ÖZMEN, *Co-Agent*,
Ms A. EMÜLER,
Mr M.Z. UZUN,
Ms N. AKSOY,
Mr O. SAYDAM,
Mr U. AKSUNGUR, *Counsel*;

(b) *for the applicant*
Mr S. ESMER, *Counsel*.

The Court heard addresses by Mr Esmer and Mr Özmen.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant, who is of Roma origin, was born in 1931 and lives in Ankara.

A. Application no. 4149/04

1. The book "The Gypsies of Turkey (Türkiye Çingeneleri)"

10. In 2000 the Ministry of Culture published 3,000 copies of a book entitled "The Gypsies of Turkey", written by Associate Professor Ali Rafet Özkan. Before its publication, a publications advisory board approved the content of the book. The preface to the book states as follows:

> "...
>
> Gypsies live in peace on Turkish territory today, just as they have throughout history, but now they are left entirely to their own devices, without regulation, supervision or attention. Their unregulated way of life, in which they are abandoned entirely to their own fate, is a failing on Turkey's part. The Gypsies' current unordered way of life, and the fact that it is considered quite unnecessary to venture into their closed world in any way despite the long history we share, is a further shortcoming. Associated with this is the fact that while Gypsies have indeed lived for many years among us, they have been ostracised by local people and targeted by vilifying remarks which have, for the most part, been unenlightened and prejudiced. The negative response and distressing accusations which they encounter wherever they go have driven Gypsies, who already have a societal structure which is closed off from the outside world, to live in still narrower confines.
>
> We felt that there was a need to step into the unknown world of these people who have lived among us for centuries and have now become part of contemporary Turkish culture. My aim was thus to get to know them closely using an empirical approach, and to present the Gypsies of Turkey as they are, in all their aspects, on the basis of the principles of scientific objectivity.
>
> This study comprises an introduction and two sections.
>
> The introduction provides information about the Gypsy as a concept and the origins of the Gypsies, as well as detailed information about their migration, and considers their history in Turkey in the light of various archive documents and scholarly sources. In the first section, the socio-cultural characteristics of Gypsies are considered in broad terms. This section examines in particular the home life and travels of Gypsies, their music, dance, language, traditions and customs. The second section deals with the beliefs and practices of the Gypsies.
>
> This study – which I present without any pretensions, but merely in a bid to fill a significant gap (it being the first study of its kind), and to provide guidance to others working on the Gypsies in the future – was prepared using descriptive, comparative and phenomenological methods, in addition to participant observation and interview techniques.
>
> ..."

11. In the introduction, the author went on to state that:

> "...
>
> Gypsies have spread throughout the world but they have been unable to escape their status as a marginal group which is excluded and despised everywhere. Apart from the differences in their way of life, the characteristic which most obviously distinguishes Gypsies from others is the colour of their skin, which is darker, swarthier. In typological terms, most Gypsies are of medium height, of agile build, with large dark

black (occasionally hazel or blue) eyes and long thick eyelashes; the men have long moustaches. The mouth is slender and elegant, the teeth white and even, with a round jaw. They have a narrow forehead and temples and a small cranium. Their hair is curly, black, long and thick. Beyond middle age, the women are broad and corpulent. The younger people are slim, with firm and powerful muscles (see *Carmen* by Prosper Mérimée, *Gypsy Stories of our own and from around the world* by Tahir Alangu and *The sieve-making of the Gypsies of Posalar* by Esat Uras).

...

This research is intended to present the identity of the Gypsies, these people who have lived among us for centuries and have become an integral part of contemporary Turkish culture, but about whom no comprehensive scientific study has as yet been conducted because their cultural identity has been largely ignored as a result of the difficulties in identifying and defining them. This study will give an account of their socio-cultural characteristics, beliefs, mythologies, festivals and celebrations in all their aspects.

For the purpose of this study, an initial survey was conducted of information, documentation and materials concerning Gypsies, from Turkey and elsewhere. The information and documents thus identified were then classified on the basis of their scientific reliability, using validity criteria. Next, an empirical study involving observation of the participants was carried out by going among the Gypsy population and living with them. Visits were made to all the areas of Turkey with a Gypsy population – both nomadic and settled – and in this way an effort was made to establish the facts about their way of life, traditions, beliefs, forms of worship and practices, not only by gathering data and documentary and other material, but also by the empirical method of living among them."

12. In the book, the author devoted a chapter to the "Gypsies of Contemporary Turkey". In this chapter he stated that:

"Today's Gypsies are scattered all over Turkey. They are principally located in the Marmara, Aegean and Mediterranean regions, with a lower concentration in the Black Sea, Central Anatolia and South-east Anatolia regions. The distribution of Gypsies in Turkey will be dealt with here.

...

So far no general population census has included separate records for Gypsies; hence, the size of the Gypsy population in Turkey is not known with certainty. Rather than using estimated figures, we obtained information from Gypsies themselves, from local people living nearby and from local administrators. We attempted to clarify this information by making a comparison with the overall district population figures which we received from the district chiefs (*muhtar*).

...

Istanbul

...

Gypsies living within the provincial borders of Istanbul generally make their living from music, flower-selling, scrap metal dealing, rubbish and paper collection, blacksmithing and ironworking, portering, fortune-telling, cleaning, working with a horse and cart, copper smithing, slug collecting and door-to-door selling. There are also some, albeit few in number, who make a living from pick-pocketing, stealing and selling narcotics.

Tekirdağ

...

The Roma (Gypsies) of Tekirdağ make their livelihood from playing music, portering and shoe shining. Women work as domestic cleaners and handle bricks at the brick factory. Those in Çorlu and Lüleburgaz earn their living from music, portering, horse trading (livestock dealing), construction work and running lotteries, and the women earn their living from cleaning.

Kırklareli

...

The Roma of Kırklareli generally make their living from music, working with a horse and cart, street vending, portering, cleaning and scrap metal dealing.

Edirne

...

Those who live in Edirne city centre generally earn their living from working with a horse and cart, scrap metal dealing and street vending, while the women contribute to the family economy with cleaning work. Nearly all of the inhabitants of the Yukarı Zaferiye district of Keşan earn their livelihood from music. The rest of them work in various sectors such as labouring in the rice fields, concrete-pouring on construction sites, portering, working with a horse and cart, collecting frogs and slugs, scrap metal dealing, paper collection, house painting and selling *simit* (a type of bread roll). Those in Uzunköprü live from scrap metal dealing, tin smithing and basket-making.

...

Ankara

...

The Gypsies of the central district of Ankara earn their living from stealing, begging, door-to-door selling, fortune-telling, *zercilik* (robbing jewellery stores) and making magical charms. A small number are also involved in tin smithing, working with leather harnesses, sieve-making and basket-making. There are also many who work as musicians in nightclubs. It is reported that most of those who trade in ironmongery around Altındağ and Hamamönü are Gypsies from Çankırı.

...

We attempted to visit every province and district where Gypsies were located. The figures which we have given for each province were obtained by comparing information, noting the exaggerated figures given by the Gypsies and then talking to the district chiefs (*muhtar*), and where necessary the district police. ..."

Similar remarks to the ones quoted above were made in respect of the Roma population living in other parts of Turkey such as İzmir, Manisa, Konya, Adana and Antalya.

13. The closing paragraphs of the conclusion to "The Gypsies of Turkey" read as follows:

"The most important links connecting the Gypsies to each other are their family and social structures as well as their traditions. Despite the fact that they have led a

nomadic life for more than a thousand years, they have managed to protect their traditional way of living thanks to the practice of marrying within the group. Their attachment to these traditions begins at birth and continues till death. Doubtless, tradition is the most significant factor in the Gypsy way of life. The elderly members of Gypsy society bear the heaviest responsibility for 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 most striking 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 occupations, 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 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 addressed. This simply entails focusing on this issue with patience and determination."

2. The domestic proceedings initiated by the applicant

14. On 15 June 2001 the applicant filed a petition with the Ministry of Culture on behalf of the Turkish Roma/Gypsy associations. In his petition he submitted that in the book, the author had stated that Gypsies were engaged in illegal activities, lived as "thieves, pickpockets, swindlers, robbers, usurers, beggars, drug dealers, prostitutes and brothel keepers" and were polygamist and aggressive. The applicant also submitted that the book contained several other remarks that humiliated and debased Gypsies. Claiming that these remarks constituted a criminal offence, he requested that the sale of the book be stopped and all copies seized.

15. On the same day the head of the publications unit at the Ministry of Culture ordered that the remaining 299 copies of the book be returned to the publications unit.

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

17. On 17 October 2001 the head of the publications 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 a piece of scientific research and did not contain any insults or similar remarks. The applicant was also informed that the author of the book would

not permit any amendments to the text and that, at the author's request, the Ministry had transferred copyright of the book to him.

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

19. Subsequently, on 30 April 2002, the applicant brought proceedings in his own name against the Ministry of Culture and the author of the book before the Ankara Civil Court of General Jurisdiction, claiming compensation for the non-pecuniary damage he had sustained on account of the remarks contained in the book. He alleged that these remarks constituted an attack on his identity as a Roma/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.

20. The author of the book submitted, in reply, that his reference materials had been the records of the Adana police headquarters and books written by other authors on Gypsies, 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.

21. 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 Roma/Gypsies in Turkey. The first-instance court therefore held that the remarks in question did not insult the applicant. As to the applicant's case against the Ministry, the Civil Court decided that it lacked jurisdiction and that the administrative courts were competent to decide on the applicant's claim.

22. 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.

23. On 21 April 2003 the Court of Cassation upheld the judgment of the first-instance court. It noted that the remarks objected to by the applicant were of a general nature. It therefore found no grounds for concluding that they concerned all Roma/Gypsies or that they constituted an attack on the applicant's identity.

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

25. 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 Roma/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. The applicant did not appeal against this decision.

B. Application no. 41029/04

26. In 1991 and 1998 respectively the Language Association, a non-governmental organisation, published two dictionaries entitled "Turkish Dictionary for Pupils (*Öğrenciler için Türkçe Sözlük)*" and "Turkish Dictionary (*Türkçe Sözlük*)". Apart from their titles, both dictionaries had exactly the same content. The publication of these dictionaries was part-financed by the Ministry of Culture.

27. On 30 April 2002 the applicant sent a letter to the Executive Board of the Language Association on behalf of the Confederation of Roma/Gypsy Cultural Associations. In his letter, the applicant submitted that certain entries in the dictionaries were insulting to and discriminatory against Roma/Gypsies.

28. On page 279 of both dictionaries, the following entries were made regarding the word "Gypsy" (*çingene*):

> "**Gypsy"** (ç*ingene*): 1. an ethnic group or person belonging to an ethnic group originating from India, whose members lead a nomadic way of life and are widely dispersed in the world. 2. (metaphorically) miserly.
>
> **"Gypsy debt"** (*Çingene borcu*): an unimportant debt which consists of several small debts.
>
> **"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*): a verbal fight in which vulgar language is used.
>
> **"Gypsy money"** (*Çingene parası*): coins.
>
> **"Gypsy pink"** (*Çingene pembesi*): pink.
>
> **"Gypsy language"** (*çingenece*): language used by Gypsies.
>
> **"Gypsiness"** (*çingenelik*): 1. being a Gypsy 2. (metaphorically) being miserly or greedy.
>
> **"Becoming a Gypsy"** (*Çingeneleşmek*): displaying miserly behaviour.

29. In the applicant's opinion, the entries regarding the Gypsy community had negative, discriminatory and prejudiced connotations. The applicant further submitted that the Ministry of Education and the Turkish Language Society had amended their dictionaries at his request, and likewise asked the Language Association to correct the above-mentioned definitions and to remove any discriminatory expressions from the dictionaries. He received no reply to his letter.

30. 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.

31. 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 dictionaries. The applicant also requested compensation for the non-pecuniary damage he had sustained on account of the expressions contained in the dictionaries. In that connection he alleged that the dictionary definitions constituted an attack on his identity as a Roma/Gypsy and an insult to him personally.

32. In its submissions in reply, the Language Association maintained, *inter alia*, that the definitions and expressions contained in the dictionaries were based on historical and sociological reality and that there had been no intention to humiliate or debase an ethnic group. It further submitted that the dictionaries 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.

33. On 16 July 2003 the Ankara Civil Court dismissed the applicant's case. It held that the definitions and expressions in the dictionaries 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 similar expressions in Turkish concerning other ethnic groups, which appeared in dictionaries and encyclopaedias.

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

II. RELEVANT DOMESTIC LAW

A. Civil Code

35. Article 24 of the Civil Code reads as follows:

> "Any person whose personal rights are unlawfully infringed may apply to a judge for protection against all those causing the infringement.

An infringement is unlawful unless it is justified by the consent of the person whose rights have been infringed or is made necessary by an overriding private or public interest or by law."

Furthermore, according to Article 25 of the Civil Code:

"A claimant may ask a judge to prevent a threat of infringement, to order the cessation of an ongoing infringement or to establish the unlawfulness of such an infringement even where it has already ceased.

In addition to such action the claimant may also request that the rectification or the judgment be published or served on third parties.

..."

B. Criminal Code

36. Article 312 § 2 of the former Criminal Code provided as follows:

"...

Any person who incites others to hatred or hostility on the basis of a distinction between social class, race, religion, denomination or region shall, on conviction, be liable to between one and three years' imprisonment and to a fine of between nine thousand and thirty-six thousand liras. If this incitement endangers public safety, the sentence shall be increased by between one third and one half."

37. On 1 June 2005 a new Criminal Code (Law no. 5237) entered into force. Article 216 of the new Code provides as follows:

"1. Any person who publicly provokes hatred or hostility in one section of the public against another section with different characteristics based on social class, race, religion, sect or regional differences, such as to create a clear and close danger to public safety, shall be sentenced to a term of imprisonment of one to three years.

2. Any person who publicly denigrates a section of the public on grounds of social class, race, religion, sect, gender or regional differences shall be sentenced to a term of imprisonment of six months to one year.

..."

III. DOCUMENTS OF THE EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

38. In its fourth report on Turkey (CRI(2011)5), published on 8 February 2011, ECRI welcomed the fact that in order to discourage negative stereotyping, connotations which might have been perceived as discriminatory in the dictionary definition of the term "Gypsy" had been removed. It further encouraged the Turkish authorities to pursue and strengthen their efforts to combat negative stereotyping of the Roma and to build a constructive dialogue with the Roma community.

39. In its General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education, adopted on

15 December 2006, ECRI also recommended that member States ensure that school education played a key role in the fight against racism and racial discrimination in society by promoting critical thinking among pupils and equipping them with the necessary skills to become aware of and react to stereotypes or intolerant elements contained in the material they used.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

40. The applicant alleged that the book "The Gypsies of Turkey" and the dictionaries referred to in paragraphs 26-28 above contained expressions and definitions which offended his Roma/Gypsy identity.

41. The Government disputed this claim.

A. As to whether the applications should be examined under Article 8 or under Article 14 read in conjunction with Article 8 of the Convention

42. The Grand Chamber observes that the Chamber examined the applicant's complaints under Article 14 read in conjunction with Article 8 of the Convention. These provisions read as follows:

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."

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."

43. The Grand Chamber reiterates that the Court is the master of the characterisation to be given in domestic law to the facts of the case and is not bound by the characterisation given by the applicant or the Government (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 54, 17 September 2009). Discrimination for the purposes of Article 14 of the Convention means treating differently, without an objective and reasonable justification,

persons in relevantly similar situations. There will be no objective and reasonable justification if the difference in treatment does not pursue a "legitimate aim" or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see, amongst many other authorities, *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007-IV, and *Burden v. the United Kingdom* [GC], no. 13378/05, § 60, ECHR 2008-...).

44. The Court observes that discrimination on account of, *inter alia*, a person's ethnic origin is a form of racial discrimination. Racial discrimination is a particularly invidious 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). The Court further notes that as a result of their turbulent history and constant uprooting the Roma have become a specific type of disadvantaged and vulnerable minority. As the Court has noted in previous cases, they therefore require special protection (see *D.H. and Others*, cited above, § 182).

45. The Court observes that in the present case the applicant, who is of Roma origin, argued that a book and two dictionaries that had received Government funding included remarks and expressions that reflected anti-Roma sentiment. He considered that these statements constituted an attack on his Roma identity. However, the Court observes that the case does not concern a difference in treatment, and in particular ethnic discrimination, as the applicant has not succeeded in producing *prima facie* evidence that the impugned publications had a discriminatory intent or effect. The case is therefore not comparable to other applications previously lodged by members of the Roma community (see, regarding education, *D.H. and Others*, cited above, §§ 175-210; regarding housing, *Chapman v. the United Kingdom* [GC], no. 27238/95, § 73, ECHR 2001-I; and, regarding elections, *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 45, 22 December 2009). Accordingly, the main issue in the present case is whether the impugned publications, which allegedly contained racial insults, constituted interference with the applicant's right to respect for his private life and, if so, whether this interference was compatible with the said right. The Court will therefore examine the present case under Article 8 of the Convention only.

B. The Government's preliminary objection

1. The parties' submissions

(a) The Government

46. The Government contested the applicant's victim status in both applications, arguing that they were *actio popularis* applications. According to the Government, the applicant had failed to show that he had been directly affected by the impugned remarks and expressions.

(b) The applicant

47. The applicant alleged that because of his Roma/Gypsy origins, the debasing remarks and expressions contained in the book and dictionaries had caused him pecuniary and non-pecuniary damage. He therefore considered himself to have victim status under Article 34 of the Convention.

(c) The third party

48. 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. 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 should not be refused by the Court.

2. The Chamber judgment

49. The Chamber observed that although the applicant had not been directly targeted in person in either the book or the dictionaries in question, he had been able to initiate compensation proceedings and to argue the merits of his case before the domestic courts under the domestic legislation, namely Articles 24 and 25 of the Civil Code (see paragraph 35 above). As a result, the Chamber considered that the applicant had victim status under Article 34 of the Convention.

3. The Court's assessment

50. The Court reiterates that in order to be able to lodge a petition by virtue of Article 34 of the Convention, a person, non-governmental organisation or group of individuals must be able to claim to be a victim of a violation of the rights set forth in the Convention. To claim to be a victim of such a violation, a person must be directly affected by the impugned measure: the Convention does not, therefore, envisage the bringing of an *actio popularis* for the interpretation of the rights set out therein or permit individuals to complain about a provision of national law simply because

they consider, without having been directly affected by it, that it may contravene the Convention (see *Burden*, cited above, § 33, and *Tănase v. Moldova* [GC], no. 7/08, § 104, ECHR 2010-...).

51. Consequently, the existence of a victim who was personally affected by an alleged violation of a Convention right is indispensible for putting the protection mechanism of the Convention into motion, although this criterion is not to be applied in a rigid and inflexible way (see *Bitenc v. Slovenia* (dec.), no. 32963/02, 18 March 2008). The question of whether the applicant can claim to be a victim of the alleged violation of the Convention is relevant at all stages of the proceedings under the Convention (see *Burdov v. Russia*, no. 59498/00, § 30, ECHR 2002-III).

52. The Court reiterates that it interprets the concept of "victim" autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act (see *Sanles Sanles v. Spain* (dec.), no. 48335/99, ECHR 2000-XI), even though the Court should have regard to the fact that an applicant was a party to the domestic proceedings (see *Micallef v. Malta* [GC], no. 17056/06, § 48, ECHR 2009-...).

53. The Court observes that in the present case the applicant, who is of Roma origin, complained about remarks and expressions which allegedly debased the Roma community. It is true that the applicant was not personally targeted; he could, however, have felt offended by the remarks concerning the ethnic group to which he belonged. Furthermore, there was no dispute in the domestic proceedings regarding the applicant's standing before the court. Hence, the merits of his case were examined at two levels of jurisdiction.

54. In view of the foregoing and given the need to apply the criteria governing victim status in a flexible manner, the Court accepts that the applicant, although not directly targeted by the contested passages, can be considered a victim of the facts complained of within the meaning of Article 34 of the Convention. It therefore rejects the Government's preliminary objection that the applicant lacked victim status.

C. The merits of the case

1. Application no. 4149/04

(a) The parties' submissions

(i) The applicant

55. The applicant alleged that certain passages of the book "The Gypsies of Turkey" contained remarks and expressions which debased the Roma community. In particular, he referred to the chapter of the book which provided information about the lifestyle of the Roma people living in certain cities in Turkey, and in particular their alleged involvement in illegal

activities (see paragraph 12 above). According to the applicant, the author's overall intention was not important, as these passages in themselves constituted a clear insult to the Roma community. He also expressed his dissatisfaction with the domestic court decisions dismissing his compensation request.

(ii) The Government

56. The Government stated that the book had been published by the Ministry of Culture on the recommendation of the publications advisory board. According to the report of the advisory board, the book in question was a piece of comparative academic research which had been prepared as a contribution to ethnic studies in Turkey. It gave information about the origins of the Roma community, their language, traditions, beliefs, festivals, cuisine, clothing, music and living conditions. The Government stated that, following the applicant's objection, the book had been examined once again by a number of university professors, who reported that it did not include any insulting statements. Finally, the Government submitted that the Ministry of Culture was working hard to promote Roma culture and traditions.

(b) The Chamber judgment

57. The Chamber held that although the passages and remarks cited by the applicant, read on their own, appeared to be discriminatory and insulting, when the book was examined as a whole it was not possible to conclude that the author had acted in bad faith or had any intention to insult the Roma community. The Chamber had particular regard to the conclusion to the book, in which the author had made it clear that "The Gypsies of Turkey" 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 Chamber concluded that the author had referred to the biased portrayal of the Roma in order to demonstrate the perception of the Roma community by the public. As a result, the Chamber found no violation of the applicant's rights as protected by the Convention.

(c) The Court's assessment

(i) Applicability of Article 8 of the Convention

58. The Court reiterates that the notion of "private life" within the meaning of Article 8 of the Convention is a broad term not susceptible to exhaustive definition. The notion of personal autonomy is an important principle underlying the interpretation of the guarantees provided for by Article 8. It can therefore embrace multiple aspects of the person's physical and social identity. The Court further reiterates that it has accepted in the past that an individual's ethnic identity must be regarded as another such

element (see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 66, 4 December 2008, and *Ciubotaru v. Moldova*, no. 27138/04, § 49, 27 April 2010). In particular, any negative stereotyping of a group, when it reaches a certain level, is capable of impacting on the group's sense of identity and the feelings of self-worth and self-confidence of members of the group. It is in this sense that it can be seen as affecting the private life of members of the group.

59. Furthermore, 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 this 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, and *Ciubotaru*, cited above, § 50).

60. Turning to the circumstances of the present case, the Court notes that the applicant, who is of Roma origin, felt offended by certain passages of the book "The Gypsies of Turkey", which focused on the Roma community. He therefore initiated civil proceedings against the author of the book and the Ministry of Culture (see paragraphs 19-25 above). As a result, what is at stake in the present case is a publication allegedly affecting the identity of a group to which the applicant belonged, and thus his private life. The Court further notes that although "The Gypsies of Turkey" was published by the Ministry of Culture (see paragraph 10 above), the latter subsequently returned the copyright to the author of the book (see paragraph 17 above). Moreover, the applicant did not lodge an appeal against the decision of the Ankara Administrative Court dismissing his administrative complaint against the Ministry of Culture (see paragraph 25 above). He therefore did not pursue his case against the State authorities for their involvement in the publication at issue.

61. Under these circumstances, the Court is of the opinion that the main question raised in the present application is not whether there was direct interference by the domestic authorities with the private life of the applicant, but rather whether the respondent Government complied with their positive obligation under Article 8 to protect the applicant's private life from alleged interference by a third party, namely the author of the book. In other words the Court will seek to ascertain whether, in the light of Article 8 of the Convention, the Turkish courts ought to have upheld the applicant's civil claim by awarding him a sum in respect of non-pecuniary damage and banning the distribution of the book.

(ii) Compliance with Article 8 of the Convention

(α) General principles

62. The boundary between the State's positive and negative obligations under Article 8 does not lend itself to precise definition. The applicable principles are, nonetheless, similar. In both contexts, regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see, amongst many other authorities, *Keegan v. Ireland*, 26 May 1994, § 49, Series A no. 290; *Botta v. Italy*, 24 February 1998, § 33, *Reports of Judgments and Decisions* 1998-I; and *Gurgenidze v. Georgia*, no. 71678/01, § 38, 17 October 2006).

63. In cases like the present one where the complaint is that rights protected under Article 8 have been breached as a consequence of the exercise by others of their right to freedom of expression, due regard should be had, when applying Article 8, to the requirements of Article 10 of the Convention (see, for instance and *mutatis mutandis*, *Von Hannover v. Germany*, no. 59320/00, § 58, ECHR 2004-VI). Thus, in such cases the Court will need to balance the applicant's right to "respect for his private life" against the public interest in protecting freedom of expression, bearing in mind that no hierarchical relationship exists between the rights guaranteed by the two Articles (see *Timciuc v. Romania* (dec.) no. 28999/03, § 144, 12 October 2010).

64. In this context the Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society. Subject to paragraph 2 of Article 10 of the Convention, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no democratic society (see, amongst many authorities, *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24, and *Reinboth and Others v. Finland*, no. 30865/08, § 74, 25 January 2011). This freedom is subject to the exceptions set out in Article 10 § 2 which must, however, be strictly construed. The need for any restrictions must therefore be established convincingly (see, for example, *Lingens v. Austria*, 8 July 1986, § 41, Series A no. 103, and *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII).

65. Under Article 10 of the Convention, the Contracting States have a certain margin of appreciation in assessing whether an interference with the right to freedom of expression was "necessary in a democratic society". However, this margin goes hand in hand with a European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court (see *Tammer v. Estonia*, no. 41205/98, § 60,

ECHR 2001-I; *Peck v. the United Kingdom*, no. 44647/98, § 77, ECHR 2003-I; and *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, § 38, ECHR 2004-X). The Court's task in exercising its supervision is not to take the place of the national authorities but rather to review, in the light of the case as a whole, the decisions that they have taken pursuant to their margin of appreciation (see *Petrenco v. Moldova*, no. 20928/05, § 54, 30 March 2010; *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, § 41, 21 September 2010; and *Petrov v. Bulgaria* (dec.), no. 27103/04, 2 November 2010).

66. In similar cases the Court therefore attached significant weight to the fact that the domestic authorities had identified the existence of conflicting rights and the need to ensure a fair balance between them (see, for instance and *mutatis mutandis*, *Tammer*, cited above, § 69; *White v. Sweden*, no. 42435/02, § 27, 19 September 2006; *Standard Verlags GmbH v. Austria (no. 2)*, no. 21277/05 § 52, 4 June 2009; *Lappalainen v. Finland* (dec.), no. 22175/06, 20 January 2009; and *Papaianopol v. Romania*, no. 17590/02, § 30, 16 March 2010).

67. If the balance struck by the national judicial authorities is unsatisfactory, in particular because the importance or the scope of one of the fundamental rights at stake was not duly considered, the margin of appreciation accorded to the decisions of the national courts will be a narrow one. However, if the assessment was made in the light of the principles resulting from its well-established case-law, the Court would require strong reasons to substitute its own view for that of the domestic courts, which consequently will enjoy a wider margin of appreciation (see *MGN Limited v. the United Kingdom*, no. 39401/04, §§ 150 and 155, 18 January 2011, and *Von Hannover v. Germany (n^{o} 2)* [GC], nos. 40660/08 and 60641/08, § 107, 7 February 2012).

68. All of this presupposes that an effective legal system was in place and operating for the protection of the rights falling within the notion of "private life", and was available to the applicant (see *Karakó v. Hungary*, no. 39311/05, § 19, 28 April 2009). This must also be examined by the Court.

(β) Application of these principles to the present case

69. In the present case the domestic courts were called upon to strike a fair balance between the applicant's rights under Article 8 of the Convention as a member of the Roma community and the freedom of the author of the book at issue to carry out academic/scientific research on a specific ethnic group and publish his findings. The applicant claimed that the book, and in particular the chapter providing information about the living conditions of Roma in different cities of Turkey, constituted an insult towards the Roma community. In dismissing this claim at two levels of jurisdiction the Turkish courts relied, *inter alia*, on a report prepared by

seven university professors which found that the book in dispute was an academic study based on scientific research (see paragraph 25 above). They considered that the remarks and expressions were not insulting, were of a general nature, did not concern all Roma and did not constitute an attack on the applicant's identity (see paragraphs 21 and 23 above). Moreover, the Ankara Civil Court of General Jurisdiction found that the book examined the social structure of the Turkish Roma/Gypsy community and was based on scientific data (see paragraph 21 above).

70. In the Court's opinion, these conclusions cannot be considered to be unreasonable or based on a misrepresentation of the relevant facts. In this connection it is important to note that while the author pointed to certain illegal activities on the part of some members of the Roma community living in particular areas, nowhere in the book did he make negative remarks about the Roma population in general or claim that all members of the Roma community were engaged in illegal activities. Furthermore, in different parts of the book, namely in the preface, introduction and conclusion, the author emphasised in clear terms that his intention was to shed light on the unknown world of the Roma community in Turkey, who had been ostracised and targeted by vilifying remarks based mainly on prejudice (see paragraphs 10, 11 and 13 above). In view of the foregoing, and in the absence of any evidence justifying the conclusion that the author's statements were insincere, it was not unreasonable for the domestic courts to hold that he had put effort into his work and had not been driven by racist intentions (see, *mutatis mutandis*, *Jersild v. Denmark*, 23 September 1994, § 36, Series A no. 298).

71. Moreover, despite the somewhat laconic manner in which some of them were expressed, the reasons put forward by the domestic courts in support of their conclusions were in keeping with the principles set forth in the Court's case-law. In particular, the Turkish courts attached importance to the fact that the book had been written by an academic and was therefore to be considered as an academic work. In recent judgments, the Court has also stressed the importance of such works (see *Sorguç v. Turkey*, no. 17089/03, §§ 21-35, ECHR 2009-... (extracts), and *Sapan v. Turkey*, no. 44102/04, § 34, 8 June 2010). It is therefore consistent with the Court's case-law to submit to careful scrutiny any restrictions on the freedom of academics to carry out research and to publish their findings.

72. It is also in line with the Court's approach to consider the impugned passages not in isolation but in the context of the book as a whole and to take into account the method of research used by the author of the publication. In this connection the Court observes that the latter explained that he had collected information from members of the Roma community, local authorities and the police. He also stated that he had lived with the Roma community to observe their lifestyle according to scientific observation principles (see paragraph 11 above).

73. Moreover, it is to be noted that an effective legal system was operating for the protection of the rights falling within the notion of "private life" and was available to the applicant in the present case (see paragraph 68 above). The applicant was able to bring his case before two levels of jurisdiction and obtained reasoned decisions dealing with his claim. Furthermore, when he lodged a complaint with the Ministry of Culture, as a precautionary measure the Ministry ordered the withdrawal of the remaining 299 copies of the book, and the copyright was returned to the author at the latter's request (see paragraphs 15 and 17 above).

74. In the light of the above, the Court is satisfied that in balancing the conflicting fundamental rights under Articles 8 and 10 of the Convention, the Turkish courts made an assessment based on the principles resulting from the Court's well-established case-law.

75. The Court would nonetheless reiterate 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. and Others*, cited above, § 181). The Court also agrees with the conclusions of ECRI (see paragraph 38 above) that the Government should pursue their efforts to combat negative stereotyping of the Roma.

76. It follows from the considerations set forth above that in the present case the Turkish authorities did not overstep their margin of appreciation and did not disregard their positive obligation to secure to the applicant effective respect for his private life.

77. Consequently, there has been no violation of Article 8 in respect of application no. 4149/04.

2. Application no. 41029/04

(a) The parties' submissions

(i) The applicant

78. The applicant alleged that the expressions contained in the two impugned dictionaries printed by the Turkish Language Association were insulting towards the Roma/Gypsy community. In particular, he referred to the term "becoming a Gypsy" which was defined as "displaying miserly behaviour", and submitted that such insulting definitions should be removed from the dictionaries.

(ii) The Government

79. The Government stated that the words and expressions contained in the dictionaries were based on historical and sociological facts and that there was no intention to debase the Roma community. They further informed the Court that the Ministry of Culture had made a financial

contribution of 2,700 euros in total to the publication of the dictionaries in 1991 and 1998. However, the Government stressed that the dictionary for pupils was not a school textbook and that it was not distributed to schools or recommended by the Ministry of Education as part of the school curriculum. Finally, they pointed out that these dictionaries had not been reprinted and were actually out of print.

(b) The Chamber judgment

80. The Chamber had regard in particular to the fact that the definitions provided in the dictionaries had been prefaced with the comment that their use was "metaphorical". It therefore found that these expressions could not be considered as harming the applicant's ethnic identity. As a result, the Chamber found no violation of Article 8 of the Convention.

(c) The Court's assessment

81. The Court notes at the outset that the applicant considered himself to be the victim of negative stereotyping on account of some of the entries contained in the impugned dictionaries. Article 8 of the Convention is therefore applicable, for the reasons set forth in paragraph 60 above. The Court further observes that, although the publication of the dictionaries at issue was part-financed by the Ministry of Culture, the applicant merely brought a civil action against the Language Association, a non-governmental organisation, and did not bring any administrative proceedings against the Ministry in the domestic courts (see paragraphs 31-34 above). Therefore, as with application no. 4149/04 (see paragraphs 60 and 61 above), the Court will examine, in the light of the general principles set forth in paragraphs 62-68 above, whether the Government complied with their positive obligation under Article 8 to protect the applicant's private life from alleged interference by a third party, namely the Language Association.

82. In rejecting the applicant's claim, the Ankara Civil Court observed that the definitions and expressions in the dictionaries were based on historical and sociological reality and that there had been no intention to humiliate or debase the Roma community. It further noted that there were similar expressions in Turkish concerning other ethnic groups, which appeared in dictionaries and encyclopaedias (see paragraph 33 above).

83. Thus, the domestic court examined the impugned entries in order to ascertain whether they had unlawfully interfered with the applicant's rights under Article 8 of the Convention. In doing so, it applied the principles laid down in the Court's case-law (see paragraph 66 above).

84. In this connection the Court observes that a dictionary is a source of information which lists the words of a language and gives their various meanings, the basic one being simply descriptive or literal, while others may be figurative, allegorical or metaphorical. It reflects the language used

by society. In both dictionaries the literal definition of the word "*çingene*" ("Gypsy") was given on page 279. It is therefore clear that these dictionaries were substantial in volume and were meant to cover the entire Turkish language. The Court also notes the first definition of the word "Gypsy" given by the said dictionaries, which reads: "An ethnic group or person belonging to an ethnic group originating from India, whose members lead a nomadic way of life and are widely dispersed in the world". As a second meaning, it was stated that, in the metaphorical sense, the word "Gypsy" also meant "miserly" (see paragraph 28 above). On the same page, the dictionaries gave further definitions of certain expressions regarding the Gypsies, such as "Gypsy money" and "Gypsy pink". The Court notes in this connection that, as explained by the Ankara Civil Court, these expressions are part of spoken Turkish.

85. It is true that, although they had the same content, the dictionaries had different target groups, as the second dictionary's title was "The Turkish Dictionary for Pupils". It is clear that in a dictionary aimed at pupils, more diligence is required when giving the definitions of expressions which are part of daily language but which might be construed as humiliating or insulting. In the Court's view, it would have been preferable to label such expressions as "pejorative" or "insulting", rather than merely stating that they were metaphorical. Such a precaution would also be in line with ECRI's General Policy Recommendation No. 10, which stipulates that States should promote critical thinking among pupils and equip them with the necessary skills to become aware of and react to stereotypes or intolerant elements contained in the material they use (see paragraph 39 above).

86. However, this element alone is insufficient for the Court to substitute its own view for that of the domestic courts, having regard also to the fact that the impugned dictionary was not a school textbook and that it was not distributed to schools or recommended by the Ministry of Education as part of the school curriculum (see paragraph 79 above).

87. Finally, the Court observes that the applicant's case against the Language Association was examined at two levels of jurisdiction in the domestic courts (see paragraphs 31-34 above). Although ultimately his case was dismissed, the Court is satisfied that the applicant was provided with an effective means of redress, as required by Article 8 of the Convention.

88. In view of the foregoing, the Court considers that the domestic authorities did not overstep their margin of appreciation and did not disregard their positive obligation to secure to the applicant effective respect for his private life.

89. Consequently, there has been no violation of Article 8 of the Convention in respect of application no. 41029/04.

FOR THESE REASONS, THE COURT

1. *Dismisses*, unanimously, the Government's preliminary objection and *holds* that the applicant may claim to be a "victim" for the purposes of Article 34 of the Convention;

2. *Holds*, by sixteen votes to one, that there has been no violation of Article 8 of the Convention in respect of application no. 4149/04;

3. *Holds*, by sixteen votes to one, that there has been no violation of Article 8 of the Convention in respect of application no. 41029/04.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 15 March 2012.

Michael O'Boyle	Nicolas Bratza
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Gyulumyan is annexed to this judgment.

N.B.
M.O'B.

DISSENTING OPINION OF JUDGE GYULUMYAN

The majority has found that the Turkish authorities did not overstep their margin of appreciation and did not disregard their positive obligation to secure to the applicant effective respect for his private life. I disagree.

In the present case the applicant submitted that the remarks in the book entitled "The Gypsies of Turkey" and the expressions contained in the two dictionaries in question reflected clear anti-Roma sentiment and that the refusal of the domestic courts to award compensation and to ban the distribution of the books demonstrated an obvious bias against Roma. He relied on Article 14 read in conjunction with Article 8 of the Convention. The Court examined the case only under Article 8 of the Convention.

1. It seems to me that if the facts complained of are examined under Article 14 of the Convention the conclusion must be that there has been a violation of Article 14 of the Convention in conjunction with Article 8.

Contrary to what is stated in paragraph 45 of the judgment, I am not persuaded "that the case does not concern a difference in treatment, and in particular ethnic discrimination". The majority reached this conclusion only on the basis that "the applicant has not succeeded in producing *prima facie* evidence that the impugned publications had a discriminatory intent or effect". In that respect I agree with the partly dissenting opinion of Judge Giovanni Bonello in *Anguelova v. Bulgaria* (no. 38361/97, ECHR 2002-IV), in which he stated:

> "Alternatively [the Court] should, in my view, hold that when a member of a disadvantaged minority group suffers harm in an environment where racial tensions are high and impunity of State offenders epidemic, the burden to prove that the event was not ethnically induced shifts to the Government".

2. The Court did not take into consideration the environment in which the three publications were issued and was satisfied by the assessments made by the Turkish courts. These courts usually take a very different approach when dealing with cases concerning the denigration of Turkishness (Article 301 of the Turkish Criminal Code).

In the case *Altuğ Taner Akçam v. Turkey* (no. 27520/07, 25 October 2011), the Government submitted statistical information according to which, in 744 cases between 2003 and 2007, criminal proceedings instituted under Article 301 (Article 159/1 of the former Criminal Code) for insulting Turkishness had resulted in convictions.

In the criminal proceedings against Hrant Dink (see *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, § 28, ECHR 2010 ... (extracts)), the Turkish Court of Cassation, sitting as a full criminal court, interpreted the term "Turkishness "as follows (Yargıtay Ceza Genel Kurulu, E.2006/9-169, K.2006/184, judgment of 11 July 2006):

> "... [Turkishness is constituted by the national and moral values as a whole, that is, human, religious and historical values as well as the national language and national feelings and traditions ...".

When it came to the national feelings and traditions of Roma people the Turkish court took a radically different approach, which in itself suggests a difference in treatment based on ethnicity.

3. In the book dealt with in application no. 4149/04, the Roma are described in strong language "as a marginal group which is excluded and despised everywhere". Among the Roma occupations listed, reference is made to some Roma "who make a living from pick-pocketing, stealing and selling narcotics". Under one heading, the book states that "[t]he Gypsies of the central district of Ankara earn their living from stealing, begging ... *zercilik* (robbing jewellery stores) ...". In another paragraph, "sorcery" is listed as one of the "most striking characteristics" of the Roma group concerned.

4. In the dictionaries which are the subject of application no. 41029/04, several terms beginning with the word "Gypsy" are defined in language that can only be regarded as derogatory and inflammatory, such as "'Gypsy wedding': a crowded and noisy meeting", "'Gypsy fight': a verbal fight in which vulgar language is used" and "'Becoming a Gypsy': displaying miserly behaviour".

5. These and several other expressions in the three books clearly disclose violations of Roma dignity, intolerance and a lack of respect for a culture that is different from the majority of society. Furthermore, the statements perpetuate stereotypes of and prejudices against the Roma and incite discrimination against a minority which is undoubtedly among the most vulnerable in Europe today, if not the most vulnerable. It has to be noted that the books were published with support from the Turkish authorities. The fact that the Ministry of Culture returned the copyright of one of the books to the author did not amount to the withdrawal or denunciation of the official sponsorship.

6. The fact that the book had been written by an academic and was therefore to be considered as an academic work is neither a justification nor an excuse for insulting ethnic dignity. Article 2 of the Declaration on Race and Racial Prejudice, adopted by the General Conference of the United Nations Educational Scientific and Cultural Organization (UNESCO) on 27 November 1978, stated:

> "Any theory which involves the claim that racial or ethnic groups are inherently superior or inferior, ... or which bases value judgments on racial differentiation, has no scientific foundation and is contrary to the moral and ethical principles of humanity."

7. The Court quotes a country report and a policy recommendation by ECRI (paragraphs 38, 39 and 75) in which States are encouraged to combat negative stereotyping and to ensure that school education plays a key role in the fight against racism and racial discrimination. The Turkish Dictionary

for Pupils was intended for children, and the fact that it was decided from the outset not to distribute it to schools or recommend it as part of the school curriculum (paragraph 86) is not important from my perspective.

8. Apart from ECRI, the Court omits to mention that several institutions of the Council of Europe have taken targeted action aimed at furthering Roma rights. The Council of Europe High Level Meeting on Roma in October 2010 adopted the "Strasbourg Declaration on Roma". Its Preamble condemns unequivocally "racism, stigmatisation and hate speech directed against Roma, particularly in public and political discourse". Under the heading "Fighting stigmatisation and hate speech", the Declaration recommends that Member States:

> "Strengthen efforts in combating hate speech. Encourage the media to deal responsibly and fairly with the issue of Roma and refrain from negative stereotyping or stigmatisation."

9. A number of other human rights institutions and bodies of both global and regional organisations have specifically addressed discrimination faced by Roma minorities.

The Committee on the Elimination of Racial Discrimination (CERD) adopted General Recommendation XXVII on "Discrimination against Roma" in 2000. The Committee (in paragraph 9) called on States:

> "To endeavour, by encouraging a genuine dialogue, consultations or other appropriate means, to improve the relations between Roma communities and non-Roma communities, in particular at local levels, with a view to promoting tolerance and overcoming prejudices and negative stereotypes on both sides, to promoting efforts for adjustment and adaptation and to avoiding discrimination and ensuring that all persons fully enjoy their human rights and freedoms."

10. Drawing on this overwhelming input from global and regional intergovernmental organisations and bearing in mind the vulnerability of the Roma minority in Turkey and beyond, I respectfully disagree with the Court's conclusions. In my opinion, Turkey stands in violation of at least Article 8 of the Convention for supporting and not prohibiting the distribution of the books in question. There is no conflict with Article 10 inasmuch as the latter, in paragraph 2, refers to duties and responsibilities associated with freedom of expression and to the protection of the reputation and rights of others. It is of crucial importance that freedom of expression not only confers the right to hold opinions, but also imposes duties and responsibilities. It cannot therefore be interpreted as allowing the promotion or dissemination of the ideas of ethnic hatred and the superiority of one nation *vis-à-vis* other ethnic groups.

The continued stereotyping of the Roma must come to an end. It would be highly unfortunate for this Court to be seen to condone incitement to discrimination of the kind contained in the books in question.