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# Constrains on Freedom of Expression in Turkey: The Effects of Article 301

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University of San Francisco

# **Constrains on Freedom of Expression in Turkey**

## **The Effects of Article 301**

A Thesis presented to  
The Faculty of the College of Arts and Sciences  
Master's Program in International Studies

In Partial Fulfillment  
Of the Requirements for the Degree  
Master of Arts in International Studies

by  
Armine Sargsyan  
December 2012

# Constrains on Freedom of Expression in Turkey

## The Effects of Article 301

In Partial Fulfillment of the Requirements for the Degree

MASTER OF ARTS

in

INTERNATIONAL STUDIES

by

Armine Sargsyan

December 2012

UNIVERSITY OF SAN FRANCISCO

Under the guidance and approval of the committee, and approval by all the members, this thesis has been accepted in partial fulfillment of the requirements for the degree.

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## **Abstract**

Concerns over human rights violations in Turkey by the European Union (EU) have hindered the Republic of Turkey's accession to the EU. Freedom of expression has been denied through a number of laws since the creation of the Republic in 1923. This thesis presents how and why speech has been constrained in Turkey, and it provides an argument that Ottoman history has a direct impact on the country's politics today. It also examines the implications of legislation that has been applied to silence individuals addressing controversial issues in public. In particular, Article 301 of the Turkish Penal Code has been one of the main laws used to punish those who speak of granting more rights to minorities. Hundreds of scholars have been prosecuted under Article 301, and this paper looks into a few noteworthy cases to portray the impact that this law has had on Turkish society. In recent years, there have been a number of legislative reforms carried out in the country to bring Turkish laws in line with European law; however, there is still much work to be done to improve Turkey's human rights record and acquire EU membership.

## Part I: Introduction

The suppression of freedom of expression is a serious human rights violation, condemned internationally under Article 19 of the Universal Declaration of Human Rights and Article 10 of the European Convention on Human Rights. When the Republic of Turkey was established in 1923, its leaders wished to create a democratic state with Western ideology. However, freedom of speech was constrained based on various articles in the Turkish Constitution, especially since the military regime of 1980-1983. Article 159 to the Turkish Penal Code states:

Those who publicly insult or deride the moral character of Turkishness, the Republic, the Grand National Assembly [Turkish Parliament] or the Government, or the Ministries, the military or security forces of the State or the moral character of the judiciary, shall be punished by between one and six years of severe imprisonment.<sup>1</sup>

The suppression of speech is based on the idea that the security of the state is to be safeguarded, especially from the threat of Armenian, Greek, and Kurdish nationalists. In the case of Armenians, Turkey has continuously denied that the massacres of 1.5 million Armenians in 1915-1923 by the Ottoman government constituted genocide, a fact that is widely accepted by various scholars throughout the world as the first major genocide of the twentieth century. Furthermore, Turkish occupation of northern Cyprus has caused hostilities with Greece, and a peaceful conflict resolution is yet to be reached. Lastly, ethnic Kurds in eastern Turkey have been fighting for decades to gain autonomy and create their own state, which is a direct threat to the territorial integrity of the Republic of Turkey. Thus, open debate, especially about these three issues, is thought to

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<sup>1</sup> William Hale, "Human Rights, the European Union and the Turkish Accession Process," *Turkish Studies*, Vol. 4, No. 1, (Spring 2003): 111.

endanger national security, and the need to limit people's rights has led to state censorship.

The text of Article 159 to the Turkish Penal Code was amended in 2002 as part of a harmonization package to bring Turkish laws in line with the European Union's requirements and, in return, be granted a EU membership. As the accession process to the European Union became a reality in 2002, Turkey enacted a number of reforms; nonetheless, freedom of expression was not fully granted. Coming into effect on June 1, 2005, Article 301 to the Turkish Penal Code made it a crime to insult "Turkishness." Although vague, "Turkishness" means the Republic of Turkey, Turkish ethnicity, or Turkish governmental institutions. Even though the wording of the old article was modified, the contents of the previous provisions remained in the new code.

Since its introduction, Article 301 has been criticized by local and international human rights advocates for its abuse of free speech. Dozens of scholars, journalists, and writers have been charged with insulting Turkishness and have faced jail time. Even though many have been acquitted, not all have been lucky as seen in the case of Turkish-Armenian newspaper editor Hrant Dink, who was shot and killed in front of his office in Istanbul by a 17-year-old boy.<sup>2</sup> The prominent cases of Orhan Pamuk, Hrant Dink, Taner Akçam, and Ragip Zarakolu have exposed this human right violation globally and have led to criticism and calls to amend the Turkish Penal Code.

The European Union pressured the Turkish government to amend Article 301 in 2008 following the assassination of Hrant Dink. Although the amendment lowered the

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<sup>2</sup> Maureen Freely, "Why They Killed Hrant Dink," *Index on Censorship*, No. 36, (February 2007): 15.

prison sentence and made it a requirement to gain permission of the Justice Ministry to file a criminal case, the reforms did not lift restraints on freedom of speech and press. In 2011, there was a wave of arrests of prominent Turkish scholars, which sparked more international outrage; thus, the Turkish government was pressured once again to amend its penal code. New judicial reforms were passed in early 2012, but Article 301 was not affected, and it is highly unlikely that it will be abolished anytime soon. Thus, this thesis addresses why freedom of expression was constrained in the Republic of Turkey, and what the effects of Article 301 have been since 2005. It also looks at history to explain how certain events have influenced politics today. This thesis further discusses the alleged role and power of the deep state. Finally, it examines freedom of speech in the global context, since this issue impacts the international community as a whole.

### **Methodology**

The qualitative method has been used to conduct research for this paper. The study relies on primary and secondary sources - books, journals, newspaper articles, and historical analysis. These sources contributed to an enhanced understanding of the issue. Publications by nongovernmental organizations, such as the Human Rights Watch and Amnesty International, were useful in gaining access to coverage of the high profile cases in Turkey that brought this issue to the attention of the international community. Additionally, the study examines the text of Article 301 and scholarly publications that untangle the reality behind this article. All findings in the paper derive from academic sources and news reports.



The first section looks at Turkey's history with its human rights violations, and in particular, the Armenian and Kurdish issues. This has a direct impact on today's social and political condition in Turkey. Since the government claims that there was no genocide, those who argue against this rhetoric threaten the national unity and security of Turkey. Additionally, the Kurdish struggle for independence is also a national security question. Those supporting the Kurdish Workers' Party (PKK) and advocating for Kurdish rights are seen as traitors by the Turkish government and prosecuted under Article 301.

The following section discusses legislation implemented after the 1982 Constitution and how this affected free speech. One of the pieces of legislation was Article 159, which eventually became Article 301 in 2005. It is imperative to understand that Article 301 is not the only provision in the penal code that constrains speech. There are a number of other articles to the Turkish Penal Code that make it punishable by law to criticize the president, the prime minister, the military, and the judicial systems. Additionally, this section will discuss the amendments to Article 301 in 2008.

The next section reviews literature that addresses the political motivations behind Article 301 and its effects on Turkish society. It identifies the reason for the enactment of legislation constraining freedom of expression. This section also explores theory of free speech in general. It discusses whether this freedom is an absolute right or not. Should people be allowed to say whatever they please, or should there be limits to free speech in certain aspects?

The next part of this research focuses on four case studies of Turkish scholars prosecuted under Article 301. Since the primary concentration of this thesis is on the

Turkish government's censorship of the Armenian Genocide, those scholars were chosen who have been indicted for daring to utter the word "genocide." Thus, the discussion will center on the cases of Orhan Pamuk, Hrant Dink, Taner Akçam, and Ragıp Zarakolu.

The last section discusses and reflects on freedom of speech in Turkey, as well as in the global context. In the analysis of Turkey, this paper examines Turkey's deep state, which is believed to be the force behind the government that rules the country. Some scholars believe that the military, in order to retain power, has curtailed people's basic rights, and freedom of expression has been affected as a consequence. The next step in this section is to look at the potential changes to the Turkish Penal Code. Although the amendments to the penal code in February 2012 did not change laws pertaining to freedom of speech, the debate following human rights activists' arrests in October 2011 and the constant pressure by the European Union for the abolition of Article 301 makes one hope that Turkey will allow more freedoms to its citizens through the new constitution it is currently drafting. The last section also discusses Turkey's power over the United States government. The Republic of Turkey is not only censoring its own public, but it obstructs the U.S. government's efforts to recognize the Armenian Genocide. Additionally, Turkey has threatened to sever relations with European nations which recognize the genocide.

The paper ends with recommendations for future research. With the ongoing changes to Turkish law and the refusal by the government to alter those laws pertaining to freedom of expression, it would be interesting to see whether Turkey will reach its goal in becoming a member of the EU or choose an alternate route and become a regional and even global power independently.

## **Part II: Background Information**

### **Brief History of the Armenian Genocide and the Kurdish Issue**

April 24, 1915. This date marks the beginning of the Armenian Genocide. Of the nearly two million Armenians living within the boundaries of the Ottoman Empire before 1914, only half a million survived the genocide. Although the Armenian population of the Ottoman Empire was previously harassed, overtaxed, and subject to pogroms, the genocide was implemented to rid Turkey once and for all of its Armenian problem.

The Ottoman Empire was experiencing a military, administrative, and economic decline at the end of the seventeenth century. Taking advantage of a weak Ottoman military, the Russian Empire pursued a policy of expanding its territory westward towards the Black Sea. By the end of the eighteenth century, nationalist sentiments were on the rise in the Balkans; the Balkan people welcomed these territorial advances and believed that with Russian help they would be liberated from Turkish control.<sup>3</sup> This led to Balkan and Greek uprisings in the nineteenth century. The sultan's sovereignty declined, and the Ottoman Empire suffered territorial losses. In an attempt to halt further nationalist movements within the empire, Sultan Abdülmecid I implemented a series of reforms that sought to modernize the Ottoman Empire. Spanning from 1839 to 1878, the reform movement is called Tanzimat.<sup>4</sup> This attempt to integrate Muslims and non-Muslims into the Ottoman society and promote equality did not yield any positive results for the Armenians, but instead it increased the resentment towards the Christian minority, whom the Muslims could not accept as their equal. The Armenian population of the empire

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<sup>3</sup> Hagop Barsoumian, "The Eastern Question and the Tanzimat Era," in *The Armenian People from Ancient to Modern Times, Volume II: Foreign Domination to Statehood: The Fifteenth Century to the Twentieth Century*, ed. Richard G. Hovannisian, 175-201. (New York: St. Martin's Press, 2004), 178.

<sup>4</sup> Barsoumian, 180.

was heavily taxed, regarded as second-class citizens, and did not have equal rights in Muslim courts.

By the late 1870s, Christian minorities in the Balkans demanded autonomy; the Armenian population, on the other hand, only asked for security and remained loyal to the Ottoman government, except in a few isolated locations. By the time Armenians demanded social, economic, and political reforms, the Ottoman Empire was defeated in the Russo-Turkish War of 1877-1878 and lost its western territories, which prompted paranoia among Turks that Armenians would follow in the footsteps of the Balkan Christians and seek security from the Russia Empire.<sup>5</sup> Ottoman control over the Balkans ended with the Treaty of San Stefano, which also gave the Russian Empire the Armenian-populated districts of Alashkert, Ardahan, Batum, Bayazid, and Kars.<sup>6</sup> Alarmed by Russian expansion of authority, the Great Powers of Europe (Great Britain, France, Germany, Austria-Hungary, and Italy) forced the Russian Empire to give back territory it took under its control during the war, and in return, they promised to guarantee the security of Armenians. Nevertheless, when the Russian troops pulled back from Bayazid and Alashkert, a massacre of Armenians took place in Alashkert by the Kurds; Armenians realized that they were on their own.<sup>7</sup> Small Armenian groups emerged in the 1880s that started secret meetings and shooting practices, which made the sultan become even more fearful that the Armenians would call for autonomy and the empire would collapse.

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<sup>5</sup> Richard G. Hovannisian, "The Armenian Questions in the Ottoman Empire, 1876-1914," in *The Armenian People from Ancient to Modern Times, Volume II: Foreign Domination to Statehood: The Fifteenth Century to the Twentieth Century*, ed. Richard G. Hovannisian, 203-238. (New York: St. Martin's Press, 2004), 206.

<sup>6</sup> Hovannisian, 208.

<sup>7</sup> Hovannisian, 210.

The 1890s are described as a decade of “demonstration, confrontation, revolt and massacre.”<sup>8</sup> Sultan Abdülhamid II ordered Kurdish paramilitaries to raid Armenian churches, schools, shops, and homes in search of weapons. Even when no weapons were discovered, Armenians were attacked and provoked to rebel. In October 1895, nearly two thousand Armenians gathered in Constantinople to petition for their civil liberties and demand the sultan to curtail the power of the Kurdish paramilitaries. However, this led to a violent police intervention and a massacre. The clash in Constantinople was followed by purges in the Armenian-populated provinces of Bitlis, Diyarbekir, Erzerum, Harput, Sivas, Trabizon, and Van. These became known as the Hamidian massacres of 1895-1896. Thousands (some argue the number is close to 300,000) lost their lives, and others were forced to convert to Islam. Thus, “the twenty-five-year process of eliminating the Armenians of the Ottoman Empire had begun.”<sup>9</sup>

The Young Turks came to power in 1908 and brought new hopes for equality; however, the Young Turk regime’s plan was far from that. The First Balkan War of 1912-1913 between the Balkan League (Bulgaria, Greece, Montenegro, and Serbia) and the Ottoman Empire led to Turkish loss of territory. Ottoman leaders were fearful that with European help other minority groups would soon start an uprising. Thus, in April 1909, Armenians of Adana were attacked and massacred, which is considered to be a prelude to the 1915 events. Conditions worsened for the Armenian population of the Ottoman Empire, and in February 1915, the men enlisted in the army were disarmed and ordered to perform manual labor. Armenians were forced to give up their weapons, which they were legally permitted to hold as a self-protection method against the Kurds.

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<sup>8</sup> Hovannisian, 218.

<sup>9</sup> Hovannisian, 222.

During this process, Armenian men were jailed, interrogated, and tortured.<sup>10</sup> They were later deported and killed within the first few days of the genocide. As the question of men was solved, the next stage was the mass deportation of the elderly, women, and children. Between April and August 1915, Armenians from all over the empire were forced to leave their homes and all of their belongings behind and march towards the Syrian Desert. They marched without food or water, frequently were attacked by Kurdish bandits, and the prettiest girls were raped or taken to the harems. Although there were some Turks who tried to help Armenians by providing shelter or taking in the children and raising them as their own, nobody was able to stop the inevitable from happening.

World War I had created the perfect conditions for the genocidal plan of the Young Turks. Although the blueprint of the genocide may have been drafted before the war, as Europe became engulfed in bloody warfare, the extermination of the Armenian population of the Ottoman Empire was the least of their concerns.<sup>11</sup> The genocide was well documented by eyewitnesses, foreign officials, and missionaries who sent word about atrocities committed against Armenians. The American Committee for Armenian and Syrian Relief was founded in 1915 to save the survivors of the genocide.<sup>12</sup> If not for the humanitarian aid from the United States and Europe, the Armenian population of the Ottoman Empire would completely perish.

Mustafa Kemal Atatürk, the founder of the Republic of Turkey, while addressing the Turkish Parliament on April 24, 1920, called the events of 1915 “shameful acts” and

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<sup>10</sup> Christopher J. Walker, “World War I and the Armenian Genocide,” in *The Armenian People from Ancient to Modern Times, Volume II: Foreign Domination to Statehood: The Fifteenth Century to the Twentieth Century*, ed. Richard G. Hovannisian, 239-273. (New York: St. Martin’s Press, 2004), 246.

<sup>11</sup> Richard G. Hovannisian, “Wartime Radicalization or Premeditated Continuum?” in *The Armenian Genocide: Cultural and Ethical Legacies*, ed. Richard G. Hovannisian, 3-17. (New Brunswick: Transaction Publishers, 2007), 5.

<sup>12</sup> Near East Relief and Armenian Genocide. <http://www.armenian-genocide.org/ner.html>.

demanded to punish genocide perpetrators who had fled to Germany at the time. However, as the Treaty of Sèvres threatened to allocate Ottoman territory to different nations and create an independent Armenia, Mustafa Kemal changed his rhetoric and called for the halt of the “senseless” death sentences against former Ottoman leaders.<sup>13</sup> To this day, the Republic of Turkey has failed to recognize the killings of 1.5 million Armenians in the last years of the Ottoman Empire as genocide. The reasons and motivations behind the deportations and massacres of 1915-1916 differ in the Turkish version of history, which tries to conceal the fact that it was a premeditated attack against a population that served as a scapegoat for Turkey.<sup>14</sup> Loss to the Russian army in WWI was blamed on the Armenians, who were said to have conspired against the Ottoman Empire. This was used as an excuse to deport Armenian populations living close to the border with the Russian Empire. However, no explanation was given as to why those Armenians living in the westernmost areas of the Ottoman Empire were also deported. The massacres of 1915-1923 are not the only turbulent events in that period of the Turkish history. The other issue concerns the Kurdish rebellions since the 1920s.

Although historically Kurds coexisted peacefully with Turks during the years of the Ottoman Empire, they were repressed and struggled to maintain their identity. When public manifestation of Kurdish identity was outlawed by Mustafa Kemal, Kurds organized a revolt in 1925, which ended with Kurdish defeat. Following the 1925 Kurdish Revolt, the use of the Kurdish language in publications and education, as well as

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<sup>13</sup> Taner Akçam, “Facing History: Denial and the Turkish National Security Concept,” in *Confronting Genocide*, eds. René Provost and Payam Akhavan, 151-157. (Germany: Springer Verlag GmbH, 2011), 155.

<sup>14</sup> Nazan Maksudyan, “Walls of Silence: Translating the Armenian Genocide into Turkish and Self-Censorship,” *Critique*, Vol. 37, No. 4, (November 2009): 639.

the expression of their cultural practices in public were banned by law. The main reason behind this was because Mustafa Kemal's vision was to Westernize Turkey and to create a unified Turkish image; a separate Kurdish identity was believed to undermine "national unity and integrity" of the country.<sup>15</sup> Thus, all Kurdish rebellions in the 1920s and 1930s resulted in their defeat and massacres. They were forced to move to eastern Turkey and live in the homes vacated by Armenians during the genocide. A martial law was declared in the southeast by Mustafa Kemal, lasting until the 1950s, to keep the Kurdish population restrained. Additionally, Kosovar Albanians and Assyrians were encouraged to resettle in the southeast to change the demographic composition of the region.<sup>16</sup> The Turkish government denied the very existence of Kurds by claiming that they were "mountain Turks" and that there was no Kurdish language.<sup>17</sup> These efforts by the Turkish government, however, did not stop the emergence of Kurdish cultural and national awareness in the 1960s.

The political instability in the country in the 1970s gave rise to the Kurdish Workers Party (PKK), internationally recognized as a terrorist group, which fights for an independent and united Kurdish state.<sup>18</sup> The Turkish military state became embroiled in a conflict with the PKK for about two decades until the 1999 capture of Abdullah Öcalan, PKK's leader. In recent years, reforms in the country have expanded minority rights,

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<sup>15</sup> Marcie J. Patton, "Turkey's Tug of War," *Middle East Report*, No. 239, (Summer 2006): 44.

<sup>16</sup> Carl Dahlgren, "The Political Geography of Kurdistan," *Eurasian Geography and Economics*, No.4, (2002): 279.

<sup>17</sup> Mary Lou O'Neil, "Linguistic Human Rights and the Rights of Kurds," in *Human Rights in Turkey*, ed. Zehra F. Kabasakal Arat, 73-86. (Philadelphia: University of Pennsylvania Press, 2007), 74.

<sup>18</sup> Lauren Fulton, "A Muted Controversy: Freedom of Speech in Turkey," *Harvard International Review*, (Spring 2008): 27.



allowing for the usage of the Kurdish language in media and education; however, Kurdish nationalism is prohibited, and those speaking out for Kurdish rights are jailed.<sup>19</sup>

Since the discussion about the Armenian and Kurdish issues was threatening the unity of Turkey, the government adopted a new constitution in 1982, which permitted the expression of thought, but at the same time constrained free speech through various articles. As more and more scholars and journalists began to write in support of minority rights in Turkey, this issue reached bigger audiences, and the international community applied pressure on Turkey to grant basic human rights to its citizens. In spite of this, the Turkish government has continued to prosecute those who speak of the Armenian and Kurdish issues, and the support for minority rights and free expression of thought has become associated with disloyalty and a threat to Turkey's sovereignty.

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<sup>19</sup> Fulton, 27.

### Trajectory of the Legislative Process

With the Treaty of Lausanne of 1923, the Republic of Turkey signed a peace agreement with Europe, and its current-day borders were established. The treaty recognized Jews, Armenians, and Greeks as minorities and granted them basic rights. Kurds, on the other hand, were not accepted as minorities and were not entitled to special privileges. The Treaty of Lausanne also gave basic rights to Turkish citizens, but there were some constraints to those rights, notably on freedom of expression. Article 159 of the Turkish Penal Code (TPC) was primarily used to prosecute individuals for speaking about minority rights.<sup>20</sup> Amended seven times (in 1936, 1938, 1946, 1961, twice in 2002, and 2003<sup>21</sup>), Article 159 was replaced by Article 301 in 2005.<sup>22</sup> However, this did not bring about change that the European Union demanded.

Turkish history in the twentieth century is marked with unstable governments and military coups. The final military rule in Turkey (1980-1983) saw the adoption of the current constitution, which although on the surface was liberal, constrained the right to free speech. Articles 22-26 of the Turkish Constitution permitted free expression of thought and opinion. Additionally, the constitution allowed for free and uncensored press; however, in the Preamble, it stated that “no protection shall be accorded to thoughts and opinions contrary to Turkish national interests, the principle of the indivisibility of the existence of Turkey with its state and territory, Turkish historical and

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<sup>20</sup> Mehmet Özcan, “Amendment in Article 301 and Its Effects on EU-Turkey Relations,” *USAK Yearbook*, Vol.2, (2009): 379.

<sup>21</sup> Algan,; 2237.

<sup>22</sup> Bülent Algan, “The Brand New Version of Article 301 of Turkish Penal Code and the Future of Freedom of Expression Cases in Turkey,” *German Law Journal*, Vol. 9, No. 12, (2008): 2237.

moral values or the nationalism, principles and reforms of Atatürk.”<sup>23</sup> Moreover, Articles 158 and 159 made it a crime to “publicly insult or ridicule the moral personality of Turkishness, the republic, the Parliament, the Government, State Ministers, the military.”<sup>24</sup> Other articles limiting free speech were Articles 13 and 14. The original text of Article 13 stated that fundamental rights and freedoms could be restricted to preserve state territory, national sovereignty and security, and public order. Article 14 added that the rights and freedoms embodied in the constitution could not be exercised with the purpose of violating the indivisible integrity of the nation and its territory, and endangering the existence of the Turkish State and the Republic.<sup>25</sup> Nevertheless, constitutional provisions did not constitute a criminal offence unless the penal code allowed those provisions to take effect.

In particular, the Turkish government’s penal code included Articles 159 and 312 that were most commonly used to limit free expression of thought and opinion, as well as Article 8 of the Law for the Struggle against Terrorism (Law No. 3713). Article 159 of the Turkish Penal Code originally states:

Those who publicly insult or deride the moral character of Turkishness, the Republic, the Grand National Assembly [the Turkish parliament] or the Government, or the Ministers, the military or security forces of the State or the moral character of the judiciary, shall be punished by between one and six years of severe imprisonment.<sup>26</sup>

Article 312 forbade anyone to incite public hatred based on race, class, religion, or regional difference. It was mainly used to prosecute those who called for greater

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<sup>23</sup> Hale, 110.

<sup>24</sup> Fulton, 27.

<sup>25</sup> Hale, 110-111.

<sup>26</sup> Hale, 111.

cultural and political rights for Kurds. Lastly, Article 8 of Law 3713 made it a crime to support Kurdish separatism in writing or orally.

With Turkey's bid to join the European Union (EU) came legislative and judicial reforms. During the Helsinki summit held in December 1999, the EU recognized Turkey as an official candidate for accession into the union. However, in order to become a EU member, Turkey had to enact a number of reforms to meet the political criteria adopted by the EU at a meeting in Copenhagen in June 1993. Compliance with the Copenhagen political criteria was a prerequisite for the opening of accession negotiations. Thus, the Turkish legislation had to align with the EU standards in the following areas:

Freedom of expression, freedom of association and peaceful assembly, fight against torture practices, trial detention period, training on human rights issues, functioning and efficiency of the judiciary, maintenance of de facto moratorium on capital punishment, and broadcasting in languages other than Turkish.<sup>27</sup>

Even though the European Council declared Turkey as an official candidate to join the union, it would have to meet the Copenhagen political criteria before negotiations for its possible accession could start and the conflict with Cyprus over Northern Cyprus would be resolved. The United Nations was to negotiate a permanent solution to the conflict in Cyprus, which eventually failed in 2004.

The Turkish government took the first step in the process of aligning Turkish legislation with the EU *acquis* in October 2001 by passing a package of 34 constitutional amendments that dealt with freedom of expression, organization and assembly, minority

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<sup>27</sup> Engin I. Erdem, "European Union, Political Parties and Democratization: The Case of Turkey, 1997-2004," (lecture, MPSA Annual National Conference, Chicago, IL, April 3-6, 2008).

languages, death penalty, and the military's role in politics.<sup>28</sup> In the field of freedom of expression, Article 26 was amended, lifting the ban on the use of the Kurdish language in public, which had been prohibited by the military regime's constitution. However, not until another harmonization package came into effect in August 2002 did the amendment affect the use of the Kurdish language in media and education. Moreover, the Preamble of the Constitution was amended, with the words "thoughts or opinions" replaced with "actions." Articles 13 and 14 were also modified, stating that restrictions on fundamental rights and freedoms may only be applied by law and should not be in conflict with the democratic order of the Republic.<sup>29</sup> In spite of the reform package, the European Commission, which is the executive body of the EU, required further reforms, as it found that the October 2001 amendments did not address the fundamental human rights problems in Turkey.

In 2002, the Turkish Parliament followed up the first amendments with three other EU harmonization law packages. The European Commission, in its second progress report, concluded that the reforms were not sufficient enough to meet the Copenhagen political criteria for the following reasons:

First, the reforms contained a number of restrictions on the full enjoyment of fundamental rights and freedoms. Second, the effective implementation of reforms has yet to be realized. Third, Turkey needs to make further reforms regarding the fight against torture, the civilian control of the military, freedom of expression, and compliance with the decisions of the ECHR.<sup>30</sup>

Despite the efforts of the Turkish government to improve Turkish law, Penal Code Article 159 and Article 8 of the Anti-Terror Law were left unchanged. Four other EU harmonization law packages were adopted in 2003 by the newly elected Justice and

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<sup>28</sup> Hale, 109.

<sup>29</sup> Hale, 113.

<sup>30</sup> Erdem, 15-16.

Development Party (AKP). It is interesting to note that in 2001, the AKP built its electoral campaign around freedom of speech, opinion, and consciousness, and it advocated for Turkey's accession to the EU. In contradiction to this belief, Abdullah Gül (AKP Minister of Foreign Affairs from 2003-2007), while a deputy of political Islamist Refah (Welfare Party) in 1995, said that when it came to Turkey's EU membership, Turkey was the only party that was supposed to give concessions and nothing was to be expected in return from the EU. Thus, he was against Turkey joining the union.<sup>31</sup> However, once AKP was in power, its leadership's stance on joining Europe changed, and reforms continued. The biggest improvement the 2003 harmonization law package brought was the abolition of Article 8 of the Anti-Terror Law.

Reforms also took place the following year, with Turkey adopting a new penal code in September 2004, which went into effect in June 2005. Article 312 was replaced by Article 216, which changed the words "incitement to hatred on the basis of differences of social class, race, religion sect, or region" to "in a way that may be dangerous for public order."<sup>32</sup> This article has been mainly used against journalists writing about the Kurdish issue or allegedly denigrating the armed forces. Instead of Article 8 of the Anti-Terror Law that was abolished in 2003, the new penal code included Article 302, which dealt with "separatist propaganda" and "damaging state unity and integrity."<sup>33</sup> Another clause in the new penal code that prosecutes individuals based on the expression of their thoughts is Article 299, which states that insulting the President of the Republic carries a

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<sup>31</sup> H. Tarik Oğuzlu and Burak Bilgehan Özpek, "Turkey's Europeanization," *International Journal*, Vol. 63, No. 4, (Autumn 2008): 994.

<sup>32</sup> Thomas W. Smith, "The ECHR and Turkey's Human Rights reforms," in *Human Rights in Turkey*, ed. Zehra F. Kabasakal Arat, 262-274. (Philadelphia: University of Pennsylvania Press, 2007), 272.

<sup>33</sup> Erol Önderoğlu, "Article 302 Joins Article 301," *Bianet*, September 4, 2007. <http://www.bianet.org/english/media/101554-article-302-joins-301>.

prison sentence from one to six years.<sup>34</sup> Aside from these, the article that caused the most uproar in Turkey and among the international community was Article 301 to the Turkish Penal Code. The original text of Article 301 stated:

1. A person who publicly denigrates Turkishness, the Republic or the Grand National Assembly of Turkey, shall be sentenced a penalty of imprisonment for a term of six months to three years.
2. A person who publicly denigrates the Government of the Republic of Turkey, the judicial bodies of the State, the military or security organizations, shall be sentenced to a penalty of imprisonment for a term of six months to two years.
3. Where denigrating of Turkishness is committed by a Turkish citizen in another country, the penalty to be imposed shall be increased by one thirds.
4. Expressions of thought intended to criticize shall not constitute a crime.<sup>35</sup>

This article was problematic because it was vague and could be applied when a person was peacefully expressing opinions in Turkey and even abroad. Thus, it posed a direct threat to the fundamental right of freedom of expression ensured by the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights (ICCPR), both of which Turkey has signed.<sup>36</sup> Immediately after coming into effect, writers, journalists, scholars, publishers, and human rights activists were prosecuted under Article 301. What brought the international community's attention to this was the high profile case of Orhan Pamuk, a well-known novelist and a Nobel Prize winner in Literature, who spoke about the Armenian and Kurdish massacres and faced prosecution for his statements. The European Union and the United Nations criticized Turkey for suppressing freedom of speech and demanded Article 301 to be abolished.

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<sup>34</sup> Miklos Haraszti, "Review of the Draft Turkish Penal Code: Freedom of Media Concerns," *Organization for Security and Cooperation in Europe*, (May 2005): 10.

<sup>35</sup> Algan, 2238.

<sup>36</sup> "Turkey: Article 301: How the Law on "denigrating Turkishness" is an Insult to Free Expression," *Amnesty International*, March 2006. <http://www.amnesty.org/en/library/info/EUR44/003/2006>.

The most problematic aspect of this article was not its implementation but the content. The term “Turkishness” was very vague and posed a serious concern because there was no clear definition of the word. It could mean anything that had to do with Turkey or was Turkish. The term could also apply to those who lived outside of Turkey. Additionally, while trying cases against “insulting Turkishness,” the court could interpret the word anyway it pleased, and the article did not specify if there had to be a clear intent to harm the Turkish nation for the person to be prosecuted. Although most individuals that were indicted under Article 301 were acquitted, they were publicly harassed and many received death threats. The death of newspaper editor Hrant Dink, who had been tried under Article 301 for writing about the Armenian Genocide, sparked international outrage. Thus, the government of Turkey was pressured once again to amend its Penal Code in 2008. The revised text of Article 301 states:

1. A person who publicly denigrates Turkish Nation, the State of the Republic of Turkey, the Grand National Assembly of Turkey, the Government of the Republic of Turkey of the judicial bodies of the State, shall be sentenced a penalty of imprisonment for a term of six months and two years.
2. A person who publicly denigrates the military or security structures shall be punishable according to the first paragraph.
3. Expressions of thought intended to criticize shall not constitute a crime.
4. The prosecution under this article shall be subject to the approval of the Minister of Justice.<sup>37</sup>

The most important change in the article was the replacement of the word “Turkishness” with the “Turkish Nation” and “State of the Republic of Turkey.” Despite the change in wording, the article remains as vague as it was before; this law still threatens the right to freedom of expression. The words “publicly denigrate” are also ambiguous. The second change to Article 301 reduced the maximum prison sentence to

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<sup>37</sup> Algan, 2239-2240.



two years. Another noticeable change was that the prison sentence would not be longer if the Turkish Nation was insulted by a Turkish citizen living abroad. Lastly, prosecution under the law required an approval of the Turkish Ministry of Justice. Therefore, a suit could not be filed under Article 301 without an approval from the Minister of Justice. This ensured that no arbitrary cases would be brought forward.

Despite the changes to Article 301, the amendments did not improve freedom of speech in Turkey. The 2008 U.S. Department of State's Human Rights Report criticized restrictions on freedom of expression and cited Article 301 as its main concern. The European Commission further criticized Turkey in its annual progress report. It was concluded that the reforms were not sufficient enough to ensure freedom of speech in the country. Furthermore, Turkish officials did not follow up on the constitutional amendments and enforce the new law.<sup>38</sup> Although the Turkish government showed an effort with the attempt to bring the law in line with the European Union, it did not fully commit itself to strengthening human rights and left provisions that cast a shadow on those reforms.

Another change made by the Turkish Parliament that did not improve civil liberties involved the Anti-Terror Law. The revised law increased the power of the security forces to fight terrorism, and its aim was to silence people. One of the earliest cases was the prosecution of three journalists of *Hürriyet Daily News* for interviewing PKK leaders in northern Iraq.<sup>39</sup> Today, the Anti-Terror Law is used more often and seems to be replacing Article 301 in freedom of expression cases. Since coming into effect in

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<sup>38</sup> Andrea Gates, "Mixed Messages and Mixed Results: The EU's Promotion of Human Rights in Turkey," *European Law Journal*, Vol. 15, No. 3, (May 2009): 410.

<sup>39</sup> Erol Önderoğlu, "Journalists Threatened Under Anti-Terror Law," *Bianet*, May 9, 2006. <http://www.bianet.org/english/politics/78781-journalists-threatened-under-anti-terror-law>.

2006, this law has been used to curb Kurdish calls for autonomy and imprison those who write about Kurdish civil liberties.

Articles limiting people's basic rights in Turkey have caused prosecutions of those who express their thoughts freely. The European Court of Human Rights has found that from 1959-2011 Turkey was the top violator of the Convention on the Protection of Human Rights and Fundamental Freedoms, which it ratified in 1954. Most cases brought against Turkey have involved the right for fair trial, protection of property, and right to liberty and security.<sup>40</sup> The Turkish government has only won 10 percent of cases brought against it in the European Court of Human Rights. Despite amendments to the Turkish Constitution and the Turkish Penal Code, freedom of expression remains suppressed. The amendments in 2008 did not solve the problem; the difference between Article 159 and Article 301 is "exclusively phraseological."<sup>41</sup> Although the wording was changed, the content remained the same.

Major reforms were passed in Turkey from 2001 to 2004 that introduced important changes to the legislation, but amid the progress, substantial problems still remain in Turkey. Freedom of press and speech are not guaranteed, and the Turkish security forces continue to use force, torturing and abusing prisoners and protesters. Minority groups are still considered second-class citizens; the Armenian, Cypriot, and Kurdish issues remain taboo; and people who wish to speak about those subjects are silenced through Article 301 and the Anti-Terror Law. Despite these laws and the threat

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<sup>40</sup> "Turkey Ranks First in Violations in Between 1959-2011," *Bianet*, May 15, 2012. <http://www.bianet.org/english/human-rights/138337-turkey-ranks-first-in-violations-in-between-1959-2011>.

<sup>41</sup> Algan, 2245.

of facing prosecution, many have published newspaper articles and books that address Turkish government's poor human rights record.

### **Part III: Literature Review**

Although the discourse on free speech in Turkey is not a new one, scholars and human rights advocates have been engaged in the discussion of this issue more actively since the 1990s. As this is an ongoing problem and laws pertaining to freedom of expression in Turkey are constantly changing, so must the literature. Further study of this issue ought to focus on the new legislative changes and concentrate on other laws that violate basic human rights. Currently, most of the research has focused on Article 301; however, as the charges brought against individuals under this article have been minimal since 2010, the focus should shift to the Anti-Terror Law, which is replacing Article 301 as a new threat for scholars, journalists, and human rights activists who speak about the Armenian, Kurdish, and Cypriot conflicts. This literature review explores the reason for the suppression of free speech in Turkey and its effects on society. Furthermore, it discusses the theoretical framework of this fundamental right.

#### **Ideology Behind the Suppression of Free Speech**

The main reason the Republic of Turkey has constrained people's right to freely express their thoughts has direct ties to its history. Both Hakan Yilmaz and Taner Akçam explain that Turkey's skepticism of Europe today derives from the memory of Western powers dividing up the Ottoman Empire to create an independent Armenia, an autonomous Kurdistan, and to ensure Greek presence in the Dardanelles, the Aegean Sea, and eastern Thrace.<sup>42</sup> Thus, talk of Armenian Genocide recognition in Turkey and

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<sup>42</sup> Hakan Yilmaz, "Euro-scepticism in Turkey: Parties, Elites, and Public Opinion," *South European Society and Politics*, Vol. 16, No. 1, (March 2011):188.

internationally, as well as the creation of an independent Kurdish state, is out of the question. According to Akçam, at certain points in Turkish history, national security and human rights became intertwined, and self-defensive measures were used to guard national integrity. In order to protect public order and public security, the Turkish government has taken liberty to limit certain liberties of its citizens.<sup>43</sup>

Oğuzlu and Özpek argue that just as Europe supported independence movements in the Balkans during the last century of the Ottoman Empire, European Union accession might have the same results for the Republic of Turkey.<sup>44</sup> Additionally, Fatma Müge Göçek writes that the Armenian, Kurdish, and Cypriot issues impede Turkey's chances of joining the EU and democratizing. According to her, "the fear of loss of territory and the fear of abandonment not only became prominent themes in the Ottoman Empire but also persisted into the Turkish nation-state and still influence the premise of its official narrative."<sup>45</sup> Thus, even though Turkey has been carrying out legislative reforms, Europe's intervention in its internal affairs has triggered Sèvres syndrome fears: the fear that Turkey's territory will be carved up according to the territorial boundaries established by the Treaty of Sèvres.

Ersel Aydinli claims that Turkey's Sèvres syndrome is deeply rooted in the society and "any argument or movement which carries a separatist potential is readily seen as dangerous and subversive."<sup>46</sup> Therefore, PKK's struggle to create an independent

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<sup>43</sup> Taner Akçam, "Facing History: Denial and the Turkish National Security Concept," in *Confronting Genocide*, eds. R. Provost and P. Akhavan, 151-157. (Netherlands: Springer Science+Business Media B.V., 2011), 152.

<sup>44</sup> H. Tarik Oğuzlu and Burak Bilgehan Özpek, 997.

<sup>45</sup> Fatma Müge Göçek, "Through a Glass Darkly: Consequences of a Politicized Past in Contemporary Turkey," *The ANNALS of the American Academy of Political and Social Science*, Vol. 617, (May 2008): 90-91.

<sup>46</sup> Ersel Aydinli, "Between Security and Liberalization: Decoding Turkey's Struggle with the PKK," *Security Dialogue*, Vol. 33, No. 2, (June 2002):215.

Kurdish state is threatening national sovereignty of the country. For this reason, the Turkish government has prosecuted those who call for Kurdish autonomy. Some journalists have even been jailed for allegedly conspiring with the PKK to create an independent Kurdistan. Göçek makes it clear that in order for Turkey to democratize and not worry about surviving and sustaining itself at the expense of its citizens, Turkey needs to confront and find resolution to its past in entirety rather than looking at the Armenian, Kurdish, and Cyprus issues in fragments.<sup>47</sup> She traces these issues back to the Treaty of San Stefano of 1878, which ended the Russo-Turkish War of 1877-1878 and posed a serious threat to Ottoman territorial integrity.

The Turkish Republic, in order to maintain its unity, wishes to be seen as a homogeneous nation in the eyes of Europe. The Turkish Constitution, according to Baskin Oran, denies the existence of minorities other than those identified in the Treaty of Lausanne, and it punishes those who defy this monolithic concept of the Turkish nation. The Anti-Terror Law of 1991 (Law No. 3173) described terrorism as an act to damage the “indivisible unity of the State,” which is understood as its territory and the nation itself. Loss of territory is one of the main fears of Kemalists.<sup>48</sup> As Jahnisa Tate explains, the creators of the Republic of Turkey were afraid that the newfound state would face the fate of its predecessor, and to avoid division, adversarial politics faced serious barriers.<sup>49</sup> Additionally, Mustafa Kemal wished to create a national identity not based on religion or race, which would prevail over outside challenges to its

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<sup>47</sup> Göçek, 105.

<sup>48</sup> Baskin Oran, “The Minority Concept and Rights in Turkey: The Lausanne Peace Treaty and Current Issues,” in *Human Rights in Turkey*, ed. Zehra F. Arat, 35-56. (Philadelphia: University of Pennsylvania Press, 2007), 45.

<sup>49</sup> Jahnisa Tate, “Turkey’s Article 301: A Legitimate Tool for Maintaining Order or a Threat to Freedom of Expression?” *Georgia Journal of International and Comparative Law*, (October 2008): 190.

unity. Consequently, those who publicly discuss the fragmented nature of Turkey face prosecution.

Ali Tekin has also addressed Turkey's issue of sovereignty. He claims that Turkey perceives the Treaty of Lausanne to be the "guarantor of its security and survival and an entrenched idea that any change in the contents of this treaty would produce security risks."<sup>50</sup> The fear that Treaty of Sèvres may be revived has not diminished, and for this reason, the Kemalist elite, whose primary concern is the survival of the nation, created an indivisible, homogeneous, and a powerful sovereign nation. According to Nora Onar, Kemalists are ambivalent towards the West, but at the same time they have strived to westernize the Turkish Republic. The commitment to preserving national sovereignty at all costs has enhanced the role of the military.<sup>51</sup> The armed forces in Turkey were able to maintain power through drafting the current Turkish Constitution in 1982. Paul Kubicek argues that the military constitution "gave the state sizeable discretion to restrict freedom of expression and association and gave the military an institutionalized role in many aspects of policymaking and in the judicial system."<sup>52</sup> Through the enactment of Article 159, and the current government's Article 301, the military has ensured that minorities' demands for equality and autonomy are suppressed. Turkey's ill-treatment of the Kurdish minority, and the failure to reform and democratize its laws, prevented the country from being considered for EU membership for almost two decades. This did not become a reality until the 1999 Helsinki summit.

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<sup>50</sup> Ali Tekin, "Sharing Sovereignty: Turkey's Sovereignty Culture and EU Accession" (presentation, ECPR Standing Group on International Relations, Sixth Pan-European Conference on International Relations, Turin, Italy, September 12-15, 2007): 4.

<sup>51</sup> Nora Fisher Onar, "Neo Ottomanism, Historical Legacies and Turkish Foreign Policy," *Center for Economics and Foreign Policy Studies*, (October 2009): 4.

<sup>52</sup> Paul Kubicek, "The European Union and Grassroots Democratization in Turkey," *Turkish Studies*, Vol. 6, No. 3, (September 2005): 365.

While liberals in Turkey wish to democratize the country and uphold human rights in order to obtain EU membership, Kemalists want to maintain the status quo by not allowing basic freedoms that are the universal norm in Europe. Tekin further questions whether Turkey will allow a potential EU membership to undermine its sovereignty. Because of the Sèvres syndrome, Kemalist elites have been hesitant to recognize social, cultural, and ethnic rights of minorities, and EU membership will clash with Turkey's national sovereignty.<sup>53</sup> Oğuzlu and Kibaroglu further argue that the reason why Turkey strives to become a member of the European community is out of security-related reasons. Firstly, Turkey does not want a repetition of the Ottoman-era exclusion and dismemberment that it suffered. It does not wish to be perceived as a threat to the West, and that is why it wants to join the European community. As a result, the West will not interfere in the internal affairs of the country.<sup>54</sup> Furthermore, in the past, the West used Christian minorities residing within the boundaries of the Ottoman Empire to hold leverage over the Ottoman government.

As Onar mentions in her discussion of the Armenian question, the need for the Republic of Turkey to censor its public, as well as the international community, derives from its fears of territorial reconfiguration. Onar discusses the usage of Article 301 to silence journalists and scholars who engage in the discussion of the Armenian claims. Thus, current literature that focuses on the implications for the enactment of Article 301 and other legislation that limits freedom of speech traces this issue back to Ottoman history and the dissolution of the empire.

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<sup>53</sup> Tekin, 9.

<sup>54</sup> Tarik Oğuzlu and Mustafa Kibaroglu, "Is the Westernization Process Losing Pace in Turkey: Who's to Blame?" *Turkish Studies*, Vol. 10, No. 4, (December 2009): 579.



### The Effects of Constrained Free Speech

The effects of Article 301 of the Turkish Penal Code have been immense, as hundreds of journalists and scholars have been incarcerated for simply writing and expressing their views on issues that need to be discussed in order to create a democratic society in Turkey. Those who fear prosecution choose self-censorship. Nazan Maksudyan, in her argument of Turkey's ban on the discussion of the Armenian Genocide, writes that many translators, editors, and publishers, in order to escape prosecution, have chosen to censor their own writings. In their translations of books that address the Armenian massacres, editors and publishers use language that does not suggest that the 1915 events were a premeditated attack to exterminate the whole Armenian race. She also states that euphemistic terms are used as a method for censorship. Such words as "exterminate" become "resorting to violence" in the Turkish translations of genocide-era texts.<sup>55</sup> This process hinders free discussion of human rights violations in Turkey and is a consequence of suppressed free speech through legislation.

Nonetheless, there are scholars who have spoken about the genocide and other issues that are silenced in Turkey despite facing prosecution and imprisonment. The World Socialist Web Site reported in 2006 that Article 301 of the Turkish Penal Code was a highly controversial law that Amnesty International called a "direct threat to the fundamental right to freedom of expression."<sup>56</sup> It pointed out that this article was used to silence such prominent authors as Orhan Pamuk and Noam Chomsky's publishers in Turkey, who discussed the Armenian and Kurdish issues. The Freedom House 2011

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<sup>55</sup> Nazan Maksudyan, 642.

<sup>56</sup> Sinan Ikinici, "Freedom of Speech Under Continuing Attack in Turkey," *World Socialist Web Site*, October 27, 2006. <http://www.wsws.org/articles/2006/oct2006/turk-o27.shtml>.

report on freedom of press in Turkey found that despite the amendments to the Turkish Penal Code in 2008, 104 journalists were imprisoned in the first half of 2011 for offenses related to freedom of speech.<sup>57</sup> Moreover, according to the International Communication Network (BIA) 2011 Media Monitoring Report, 104 journalists and 30 distributors were behind bars, and Article 301 of the Turkish Penal Code and the Anti-Terror Law were jointly applied in these arrests.<sup>58</sup> In 2010, the BIA Monitoring Report found that a total of 249 people were facing prosecution under Article 301 for expressing their thoughts, while in 2009, this number was 125. Additionally, it found that the Anti-Terror Law was starting to be used more frequently to suppress human rights. The number of people that stood trial based on this law in 2010 was 110, a significant increase from the 20 indicted in 2009.<sup>59</sup>

The Organization for Security and Co-operation in Europe (OSCE) 2012 Report on Freedom of Media found that the number of journalists imprisoned in Turkey doubled from 2011. Most of these journalists were charged with Articles 5 and 7 of the Anti-Terror Law, suspected of aiding terrorist organizations.<sup>60</sup> In some cases, journalists were kept in jail awaiting trial, and if found guilty, they could face longer prison sentences than they would under Article 301. Amnesty International's 2011 annual report criticized Turkey's legislation, claiming that it had stifled free expression.<sup>61</sup> The Human

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<sup>57</sup> "Turkey: Freedom of the Press 2011," *Freedom House*, (2011).

<http://www.freedomhouse.org/report/freedom-press/2011/turkey>.

<sup>58</sup> Emel Gülcan, "BIA Media Monitoring Report 2011/Full Text," *Bianet*, March 1, 2012.

<http://www.bianet.org/english/freedom-of-expression/136599-bia-media-monitoring-report-2011-full-text>.

<sup>59</sup> Erol Onderoglu, "Talking About 'Issues' Prohibited: 249 Suspects in Three Months!" *Bianet*, August 5, 2010. <http://www.bianet.org/english/freedom-of-expression/123922-talking-about-issues-prohibited-249-suspects-in-three-months>.

<sup>60</sup> "Main Findings of the Table of Imprisoned Journalists in Turkey," *OSCE Office of the Representative on Freedom of the Media*, April 2012. <http://www.osce.org/fom/89371>.

<sup>61</sup> "Turkey: Annual Report 2011," *Amnesty International*, 2011.

<http://www.amnesty.org/en/region/turkey/report-2011>.

Rights Watch World Report also criticized the state of freedom of speech in the country. It stated that Turkish laws lagged behind, and individuals were prosecuted for non-violent writings and discourse.<sup>62</sup> The report raised concern regarding government-sponsored internet censorship that restricted access to information and violated human rights.

The European Commission 2011 Report on Turkey's progress to becoming a EU member found that public debate of issues such as minority rights and the role of the military were becoming more popular subjects of public discussion. After the 2008 penal code amendments, only few cases were initiated on the basis of Article 301. However, freedom of media and speech remained restricted. European Commission's report conveyed concern that writers and journalists writing about the Kurdish issue were convicted of terrorism propaganda. The report concluded:

*Overall, open debate, including on issues perceived as sensitive, continued. However, in practice, freedom of expression is undermined by the high number of legal cases and investigations against journalists, writers, academics and human rights defenders and undue pressure on the media, which raises serious concerns. The present legislation does not sufficiently guarantee freedom of expression in line with the ECHR and ECtHR case law and permits restrictive interpretation by the judiciary. Frequent website bans are another cause for serious concern. Turkey's legal and judicial practices, legislation, criminal procedures and political responses are obstacles to the free exchange of information and ideas.*<sup>63</sup>

The 2012 European Commission Report, despite the recent legislative reforms, did not find improvements in the current status of freedom of speech in Turkey. Merel van Beeren also noted that despite changes in the Turkish Penal Code, the state continued to prohibit the discussion of controversial issues and expected its citizens to maintain the status quo. According to van Beeren, although the press is protected under the Turkish

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<sup>62</sup> "World Report 2012: Turkey," *Human Rights Watch*, January 2012. <http://www.hrw.org/world-report-2012/world-report-2012-turkey>.

<sup>63</sup> "Turkey 2011 Progress Report," *European Commission*, (October 2011): 27.

Constitution, the judicial system has censored minority media outlets “under the pretext of combating terrorism, preserving territorial unity and protecting the state.”<sup>64</sup> Despite reforms that are meant to improve human rights, in practice Turkey continues to repress its population and fails to democratize. Lauren McLaren and Burak Cop point out that Article 301 poses a threat to democracy in Turkey and undermines freedom of speech. In 2005, a total of 357 people faced criminal charges for publicly denigrating Turkishness. This number was the highest in 2006, with 386 cases filed against 526 people, but it went down to 77 cases in 2009 after the 2008 amendments, since prosecutors now needed an approval from the Minister of Justice.<sup>65</sup>

Overall, the Turkish government’s policy on limiting freedom of expression has had a negative impact on the country, hindering its EU accession and stirring up international criticism of its human rights record. In 2006, the European Parliament’s progress report on Turkey’s accession found that the reform process had slowed down and that progress was yet to be made in implementing freedom of expression laws, protecting minority rights, and resolving the conflict with Cyprus.<sup>66</sup> By limiting speech, Turkey has taken away a right that is recognized in international human rights laws. However, the Republic of Turkey sees it necessary to suppress this right as a way to protect its national unity.

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<sup>64</sup> Merel van Beeren, “The Daily Battles of the Turkish Journalist,” (M.A. Thesis, New York University, 2012).

<sup>65</sup> Lauren McLaren and Burak Cop, “The Failure of Democracy in Turkey: A Comparative Analysis,” *Government and Opposition*, Vol. 46, No. 4, (2011): 486.

<sup>66</sup> Vincent Morelli, “European Union Enlargement: A Status Report on Turkey’s Accession Negotiations,” *Congressional Research Service*, (September 2011): 4.

## Theory of Free Speech on Legal and Moral Grounds

Although considered a fundamental right, in practice, freedom of speech has been subject to limitations on moral and legal grounds. Internationally, it is guaranteed under Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), which states:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.<sup>67</sup>

Additionally, Article 10 of the European Convention on Human Rights also requires states to guarantee freedom of expression. It calls on states to allow the freedom “to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”<sup>68</sup> Simultaneously, all international laws pertaining to freedom of speech are subject to restrictions for the purpose of respecting the rights of others and protecting national security and public order. “Pressing social needs” limit public discourse, but they do not authorize governments to place restrictions on individual rights.<sup>69</sup>

John Stuart Mill, in his book *On Liberty*, defends basic human rights by suggesting that there is always a struggle between the authority and those who seek liberty. He believes that developing new ideas will ultimately uncover truths, and freedom of expression is essential in this process. Irene M. Ten Cate argues that Mill saw

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<sup>67</sup> “International Covenant on Civil and Political Rights,” *Office of the United Nations High Commissioner for Human Rights*, New York City, December 1966.

<sup>68</sup> “European Convention on Human Rights,” *Council of Europe*, Rome, November 4, 1950.

<sup>69</sup> Shawn Marie Boyne, “Free Speech, Terrorism, and European Security: Defining and Defending the Political Community,” *Pace Law Review*, Vol. 30, (February 2010): 440.

the role of free speech as a means to develop culture and promote independent thinking, which in turn will contribute to the overall value of the society.<sup>70</sup> Yet, free speech can pose a serious threat to personal and national security if it reveals secrets, puts other's life in danger, and so on.<sup>71</sup> The real question for van Mill is where limitations on speech are, not whether or not restrictions are needed.

Although an advocate of freedom of expression, John Stuart Mill placed limitations on this right based on his "harm principle," which is explained through the following:

[T]he sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.<sup>72</sup>

Thus, it can be understood that both the government and the public can interfere to prevent harm from taking place. However, Mill also believes that free discussion can benefit the overall society. To attain truth, logical arguments should be allowed, no matter how immoral those discussions may be. In analyzing Mill, Philip Kitcher argues that "gaining knowledge is important for the realization of this freedom, and freedom of discussion is important for the role it plays in enabling people to gain relevant forms of knowledge."<sup>73</sup> New ideas reveal truths, which are essential in the principle of

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<sup>70</sup> Irene M. Ten Cate, "Speech, Truth, and Freedom: An Examination of John Stuart Mill's and Justice Oliver Wendell Holmes's Free Speech Defenses," *Yale Journal of Law & Humanities*, Vol. 22, No. 1, (Winter 2010): 41.

<sup>71</sup> David van Mill, "Freedom of Speech," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Palo Alto, 2012.

<sup>72</sup> Frederick Schauer, "On the Relation between Chapters One and Two of John Stuart Mill's *On Liberty*," *Capital University Law Review*, (April 2011): 571.

<sup>73</sup> Philip Kitcher, "Varieties of Freedom and their Distribution," *Social Research*, Vol. 77, No. 3, (Fall 2010): 858.

utilitarianism.<sup>74</sup> For Mill, utilitarianism is the greatest good for the greatest amount of people. Therefore, if freedom of expression can increase knowledge and the value of the overall society, then it should be unlimited.

Joel Feinberg, on the other hand, introduces the “offence principle” contrary to Mill’s “harm principle.” He believes that some forms of discourse need to be prohibited because of their offensive nature. J. Angelo Corlett highlights Feinberg’s five areas of unprotected expression, which are insulting and spreading hateful speech, invasion of privacy, causing fear, provoking retaliatory violence, and provoking crime or a revolt.<sup>75</sup> Although Feinberg deems freedom of speech important for the development of humans, whenever it poses direct and substantial harm, this liberty should be limited.

John Stuart Mill and Joel Feinberg understand the importance of free dialogue, but they both believe that this right may be constrained when it can cause damage to the society. However, William Magnuson argues that the international community has an obligation to protect free speech and intervene in the affairs of foreign governments when this right is violated. He does not suggest military invasion every time freedom of expression is affected, but the adoption of a broader international law on this issue will make it the responsibility of each state to protect fundamental human rights. Magnuson states: “Moral arguments that place the value of individual rights above the value of territorial sovereignty naturally apply to the freedom of expression.”<sup>76</sup> Protecting free speech is more important than upholding the notion of a sacred state sovereignty, a concept that has lost its value as globalization has taken a center stage in the latter half of

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<sup>74</sup> Ten Cate, 62.

<sup>75</sup> J. Angelo Corlett, “The Philosophy of Joel Feinberg,” *Journal of Ethics*, Vol. 10, (2006): 132.

<sup>76</sup> William Magnuson, “The Responsibility to Protect and Decline Sovereignty: Free Speech Protection Under International Law,” *Vanderbilt Journal of Transnational Law*, Vol. 43, No. 2, (March 2010): 302.

the last century. Thus, freedom of expression becomes the responsibility of the global community, both morally and legally.



## Part IV: Case Studies

### Orhan Pamuk

Internationally known Turkish novelist and recipient of the 2006 Nobel Prize in Literature, Orhan Pamuk was one of the first scholars to be charged under Article 301 of the Turkish Penal Code. His crime was “insulting Turkishness” through statements made in an interview with Swiss magazine *Das Bild* in February 2005. Pamuk simply stated that thirty-thousand Kurds and one million Armenians were killed in Turkey and that nobody dared to talk about it.<sup>77</sup> This statement unleashed a firestorm of death threats, demonstrations, and acts of violence from ultra-nationalists, and he was forced to flee from Turkey.

Orhan Pamuk confessed that he felt “somewhat embarrassed” that his trial was “overdramatized.”<sup>78</sup> At the time, similar cases were pending against sixty other writers and journalists. However, it was only his trial that gained so much international attention and strong criticism from Europe. Despite the fact that Turkish-Armenian journalist Hrant Dink had previously been found guilty for the same charges Pamuk was facing, he was optimistic that he would not be imprisoned.

The trial commenced in December 2005, but since Pamuk was charged under *ex post facto* law (his statement was made while Article 159 was still in effect), Şişli Court of First Instance No. 2 needed an approval from the Ministry of Justice to proceed with the trial. In January 2006, the case was dropped because the Ministry of Justice withheld permission to carry out the trial. The Ministry claimed that after the May 2005 legislative

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<sup>77</sup> Holly Carter, “Turkey: Case Against Novelist Threatens Freedom of Expression,” *Human Rights Watch*, September 29, 2005. <http://www.hrw.org/news/2005/09/28/turkey-case-against-novelist-threatens-freedom-expression>.

<sup>78</sup> Orhan Pamuk, “On Trial,” *The New Yorker*, December 19, 2005. [http://www.newyorker.com/archive/2005/12/19/051219ta\\_talk\\_pamuk](http://www.newyorker.com/archive/2005/12/19/051219ta_talk_pamuk).

reforms the case was out of its jurisdiction. This might have been regarded as a victory for human rights in Turkey, but it was only a small step towards granting freedom of speech in the country. The dropping of the case did not occur on the grounds of freedom of expression, but rather for a lack of approval to proceed with the case. Many in Turkey saw Pamuk's trial as part of a wider struggle between those who opposed joining Europe and those who supported legislative change and EU membership.<sup>79</sup> The case was a test of Turkey's commitment to democracy, which some thought was achieved through this victory.

Perhaps the reason the Ministry of Justice refused to intervene in the Pamuk case was because of the international outrage it sparked and the close monitoring by the European Union and international governmental organizations. Additionally, the decision to drop the case came right before the EU was to begin a review of Turkey's judicial system.<sup>80</sup> Possibly, in order to avoid further disapproval, Pamuk was acquitted. Europe welcomed the dropping of the case, but it still pressured the Turkish government to repeal Article 301 and halt the ongoing trials against other human rights activists for "insulting Turkishness." Although Pamuk was set free, Turkey's image as a country that had taken the path of democracy was damaged. Europe became even more skeptical of Turkey and questioned whether it would ever become a suitable EU candidate and make the necessary judicial reforms to gain acceptance into the union.

Orhan Pamuk became an advocate of human rights in Turkey. He stood by his words even as he was facing up to three years in prison. In an interview with *BBC News*

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<sup>79</sup> "Turkish Writer's Insult Trial Halted," *BBC News*, December 16, 2005.  
<http://news.bbc.co.uk/2/hi/europe/4533664.stm>.

<sup>80</sup> Selcan Hacaoglu, "Turkish Court Drops Charges Against Novelist," *The Independent*, January 26, 2006.  
<http://www.independent.co.uk/news/world/europe/turkish-court-drops-charges-against-novelist-524208.html>.

he stated, "What happened to the Ottoman Armenians in 1915 was a major thing that was hidden from the Turkish nation; it was a taboo. But we have to be able to talk about the past."<sup>81</sup> His statement was meant to stand for freedom of expression rights in Turkey and allow others to speak about the history of the early twentieth century. He believed that in order to prove that the reforms in Turkey worked and that the country was moving in the right direction, someone needed to speak about subjects and events that were censored by the authorities.

Additionally, Pamuk denounced the Turkish government for its mistreatment of writers at the 2008 Frankfurt Book Fair. He blamed the AKP regime for using Article 301 to silence scholars and claimed that in the process it made Turkish literature poorer. He also stated that many international and domestic web sites were blocked in Turkey for "political reasons."<sup>82</sup> This censorship of the Internet has been an obstacle for those who want to learn the truth about Turkey's past. With scholars silenced and no alternative sources to conduct research on the prohibited subjects, many in Turkey remain unaware of this human rights struggle.

After his 2005 statement, six individuals took legal action against Pamuk for "having accused all Turkish people."<sup>83</sup> The Şişli Court declined to hear the case because it argued that the violation was against the Turkish nation as a whole rather than individuals. The case was appealed, and in 2009 the Supreme Court of Appeal's General

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<sup>81</sup> Sarah Rainsford, "Author's Trial set to Test Turkey," *BBC News*, December 14, 2005. <http://news.bbc.co.uk/2/hi/europe/4527318.stm>.

<sup>82</sup> Motoko Rich, "Turkish Novelist Denounces Government at Book Fair," *New York Times*, October 15, 2005. <http://www.nytimes.com/2008/10/16/world/europe/16frankfurt.html>.

<sup>83</sup> Musa Kesler, "Nobel Laureate Orhan Pamuk Gets Fined," *Hürriyet*, March 27, 2011. <http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=orhan-pamuk-will-pay-compensation-for-his-words-court-decided-2011-03-27>.

Committee found that the 2005 statement violated people's honor and self-respect. Pamuk was ordered to pay 6,000 liras in compensation for insulting Turkishness.<sup>84</sup>

Even though his comments in the Swiss magazine about the Armenian and Kurdish massacres led to his prosecution by the Turkish authorities and endangered his life, Orhan Pamuk opened an important dialogue in the country. In an interview with *The Telegraph* in 2012, he stated with pride that now everyone discusses the Armenian issue.<sup>85</sup> His prosecution not only educated the public about these subjects and human rights violations in Turkey, but it granted others the courage to freely express their thoughts and opinions.

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<sup>84</sup> Nanore Barsoumian, "Pamuk Fined for Mentioning Armenian, Kurdish Deaths," *Asbarez*, April 5, 2011. <http://asbarez.com/94684/pamuk-fined-for-mentioning-armenian-kurdish-deaths/>.

<sup>85</sup> Sameer Rahim, "Orhan Pamuk, a Book is a Promise," *The Telegraph*, November 9, 2012. <http://www.telegraph.co.uk/culture/books/bookreviews/9663819/Orhan-Pamuk-A-book-is-a-promise.html>.

## Hrant Dink

Hrant Dink, editor of Turkish-Armenian newspaper *Agos*, was passionate about human rights and wanted to inform the Turkish public about the Armenian Genocide and Armenian identity. He wanted Armenians and Turks to come to terms with the past and live peacefully side-by-side. He used *Agos* to encourage Turkey's Armenian population to come out of hiding and admit their Armenian identity, meanwhile reaffirming their Turkish citizenship.<sup>86</sup> He believed that if the Turkish public learned about what happened in 1915, they would be compassionate and make their own government recognize the genocide. By writing and speaking about the Armenian issue in Turkey, Dink was indicted under Article 159 and later Article 301 three times. He was also responsible for helping to organize a conference about the Armenian Genocide in Turkey in 2005, and this further made him a target for prosecution.

The first charge against Dink came in 2002 for insulting the concept of Turkishness under Article 159 after he stated at a human rights panel:

Since my childhood, I have been singing the national anthem along with you. Recently, there is a section where I cannot sing any longer and remain silent. You sing it, I join you later. It is: Smile at my heroic race... Where is the heroism of this race? We are trying to form the concept of citizenship on national unity and a heroic race. For example, if it were Smile at my hard-working people..., I would sing it louder than all of you, but it is not. Of the oath I am Turkish, honest and hard-working, I like the 'honest and hard-working' part and I shout it loudly. The I am Turkish part, I try to understand as I am from Turkey.<sup>87</sup>

Dink was prosecuted for refusing to simply identify himself as a Turk; instead he described himself as an Armenian of Turkey. Moreover, a series of articles published in *Agos* in 2004, entitled "The Armenian identity," led to charges filed against Dink for

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<sup>86</sup> Freely, 15.

<sup>87</sup> "Dink'in birlikte yargılandığı arkadaşı: 301'den beraatine şaşırmişti," *Hürriyet*, January 20, 2007. <http://www.hurriyet.com.tr/gundem/5809675.asp>.

“degrading Turkishness.” He was sentenced to six months in prison; this sentence was suspended since Dink did not have a previous criminal record, although other charges were pending against him.<sup>88</sup> Dink’s case was not known worldwide, but the high profile case of Orhan Pamuk made the international community aware of this human rights abuse in Turkey; Hrant Dink’s case gained the international community’s attention as well. Just like Pamuk, Dink was branded a traitor and an enemy of Turkey.<sup>89</sup> A day after an investigation was opened against Dink in February 2005, nationalist group Ülkü Ocakları gathered in front of *Agos* and shouted slogans, such as, “Be careful”, “you will be held accountable,” and “your hand will be broken.”<sup>90</sup> These death threats continued for years, until Dink’s 2007 murder. Reportedly, there were a total of 26,000 death threats, but Dink was not intimidated by these threats and continued to fight for the rights of Turkish-Armenians until the end.<sup>91</sup>

In 2006, Dink was charged under Article 301 along with his son Arat Dink and Editor-in-chief Serkis Seropyan for another article published in *Agos*, entitled “I vote against 301.” The trial was supposed to commence on March 22, 2007, but it never took place because Dink was murdered on January 19 of that year. On that Friday morning, as Dink stepped out of his office to run errands, he was shot three times by 17-year-old Ogün Samast. Dink’s death was mourned by 100,000 Turks, who went into the streets,

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<sup>88</sup> “Turkey: Outspoken Turkish-Armenian Journalist Murdered,” *Human Rights Watch*, January 20, 2007. <http://www.hrw.org/news/2007/01/19/turkey-outspoken-turkish-armenian-journalist-murdered>.

<sup>89</sup> Handan T. Satrioglu, “Hrant Dink: Silenced in the Shadow of Turkey’s Penal Code 301,” *World Politics Review Exclusive*, February 2, 2007. <http://www.worldpoliticsreview.com/articles/517/hrant-dink-silenced-in-the-shadow-of-turkeys-penal-code-301>.

<sup>90</sup> “A Chronology: Hrant Dink’s Murder,” *Bianet*, June 27, 2007. <http://www.bianet.org/english/politics/98382-a-chronology-hrant-dinks-murder>.

<sup>91</sup> Freely, 17.

carrying signs that read, “We are all Hrant Dink, we are all Armenians,” and “Murderous 301.”<sup>92</sup>

Hrant Dink’s assassin received a hero’s welcome at the gendarmerie following his arrest, which was secretly filmed on a mobile phone. Others were arrested soon after in connection with the murder. Yasin Hayal, a militant nationalist, was charged with masterminding the murder and received a life in prison sentence; however, he and several others were acquitted of state-sponsored terrorism charges.<sup>93</sup> Samast, on the other hand, was sentenced to twenty-three years in prison. Human Rights Watch reported that the Istanbul and Trabzon police failed to prevent Dink’s murder, and during the investigation, the prosecutors failed to take legal action against state authorities who withheld evidence.<sup>94</sup> Moreover, those behind Dink’s murder were promoted to higher-ranking positions. For example, Yakup Kurtaran, a police officer who posed with Samasat behind a Turkish flag after the assassination, was promoted to a public security deputy manager position in the province of Malatya.<sup>95</sup> Additionally, Ali Fuat Yilmazer and Ahmet İlhan Güler, who were accused of negligence during the preliminary preparations for Dink’s assassination investigations, were promoted to the post of a first class police director.<sup>96</sup> Dink’s lawyers appealed the court decision that acquitted 19 suspects for plotting his murder. In its final ruling, an Istanbul court ruled that there was

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<sup>92</sup> Benjamin Harvey, “Mass Protest at Editor’s Funeral,” *The Guardian*, January 24, 2007. <http://www.guardian.co.uk/media/2007/jan/24/pressandpublishing.turkey>.

<sup>93</sup> Pelin Turgut, “The Murder of Hrant Dink: A Turkish Court Denies a Wider Conspiracy,” *Time*, January 18, 2012. <http://www.time.com/time/world/article/0,8599,2104666,00.html>.

<sup>94</sup> “Turkey: Court Protects Journalist’s Killers,” *Human Rights Watch*, January 18, 2012. <http://www.hrw.org/news/2012/01/18/turkey-court-protects-journalist-s-killers>.

<sup>95</sup> “Policemen who Posed with Dink Assassin Promoted,” *Asbarez*, March 19, 2012. <http://asbarez.com/101765/policeman-who-posed-with-dink-assassin-promoted/>.

<sup>96</sup> “Another Officer Implicated in Dink Case is Promoted,” *Asbarez*, May 15, 2012. <http://asbarez.com/103013/another-officer-implicated-in-dink-case-is-promoted/>.

no evidence indicating the existence of a terrorist organization behind the assassination.<sup>97</sup> Due to a lack of evidence the court found that those responsible for the crime were acting independently.

Dink's murder contributed to the legislative amendments in 2008, but as discussed previously, the reforms did not improve human rights in Turkey. In 2010, in the case of *Dink v. Turkey*, the European Court of Human Rights (ECHR) ruled against Turkey, stating that the Turkish authorities failed to protect Dink's life, failed to investigate his murder, and failed to uphold his right to freedom of expression.<sup>98</sup> It is believed that Dink's murder was politically and ethnically motivated. The media played a part in his murder because it portrayed him as a traitor and gave a voice to ultra-nationalists during the coverage of Article 301 prosecutions. The media presented Dink and Pamuk as scholars who sold their country to Europe for their personal gain.<sup>99</sup> Dink and others who wrote about the Armenian Genocide were also accused of encouraging France to pass a law criminalizing genocide denial. The international community condemned the Turkish government for allowing such a hate crime to occur and for limiting freedom of expression. As Turkey was preparing for legislative reforms in 2008, it seemed as if positive change was near, but in actuality, freedom of speech remained constrained and new cases were brought against intellectuals for insulting Turkishness.

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<sup>97</sup> "Court's Final Ruling Says 'No Organization' Behind Dink Murder," *Asbarez*, February 23, 2012. <http://asbarez.com/101154/court%E2%80%99s-final-ruling-says-%E2%80%98no-organization%E2%80%99-behind-dink-murder%E2%80%99/>.

<sup>98</sup> "Affaire Dink c. Turquie," *European Court of Human Rights*, September 14, 2009. [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{\"dmdocnumber\":\[\"873669\"\],\"itemid\":\[\"001-100383\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{\).

<sup>99</sup> Freely, 27.



### Altuğ Taner Akçam

Altuğ Taner Akçam is one the first Turkish scholars to discuss and write about the Armenian Genocide. In January 2007, he was subject of a criminal probe by the Şişli Office of the Public Prosecutor for criticizing the prosecution of Hrant Dink in an editorial, but charges were later dropped. The sentence, “I believe that what happened between 1915 and 1917 was a holocaust,” from his article in *Agos*, opened an investigation against Akçam.<sup>100</sup> The prosecutor concluded that his statement was protected under Article 10 of the European Convention on Human Rights, and thus, it did not insult Turkishness. Although the Turkish government assured that Akçam would not face further prosecution after the 2008 legislative changes and that he would be allowed to conduct research in the State Archives, Akçam himself claimed the contrary. He alleged that the public thought of him as a traitor; he faced public persecution and became a target of death threats from Turkish ultranationalists for writing about the genocide.<sup>101</sup>

Despite two other complaints filed against Taner Akçam by extremists in October 2007, the Şişli Public Investigator issued a decision of non-prosecution.<sup>102</sup> Nonetheless, Akçam, in fear for his life, stopped writing about the Armenian Genocide. Relying on Article 10 of the European Convention, he submitted a case in the European Court of Human Rights (ECHR) to prove that his right to freedom of expression was violated by the government.

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<sup>100</sup> “AGOS Columnist Found Innocent,” *Hürriyet*, March 31, 2007. <http://www.hurriyetdailynews.com/agos-columnist-found-innocent.aspx?pageID=438&n=agos-columnist-found-innocent-2007-03-31>.

<sup>101</sup> “Taner Akçam Wins Free-speech Case in European Court,” *Organization of Istanbul Armenians*, November 1, 2011. <http://www.oia.net/news/article.asp?aid=668>.

<sup>102</sup> “Case of Altuğ Taner Akçam v. Turkey,” *European Court of Human Rights*, (October 25, 2011): 3.

As evidence that Article 301 was a threat to human rights, Akçam provided statistics from the Media Monitoring Desk of the Independent Communications Network, which showed that from July to September 2008, 116 people were prosecuted for their writings, 77 of whom were journalists. Akçam claimed that his life was in danger. The criminal proceedings against him had turned into a harassment campaign and the media portrayed him as a “German spy.”<sup>103</sup> He alleged that the government could not guarantee his safety and give assurance that he would not face another trial for his work and his views in the future.

A verdict was reached in the *Taner Akçam v. Turkey* case in October 2011. The ECHR unanimously ruled that the recognition of the Armenian Genocide could not be criminalized in Turkey because it was in violation of Article 10 of the European Convention on Human Rights.<sup>104</sup> Additionally, the court found:

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 Akçam was real. The measures adopted to provide safeguards against arbitrary or unjustified prosecutions under Article 301 had not been sufficient.<sup>105</sup>

The Turkish government’s argument against the *Akçam v. Turkey* case was that the 2008 penal code amendments requiring the permission of the Ministry of Justice to

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<sup>103</sup> “Turkish Law Means History Professor Lives in Constant Fear of Prosecution for his Views on the Events of 1915 Concerning the Armenian Population,” *Registrar of the European Court of Human Rights*, October 25, 2011:2. [http://www.concernedhistorians.org/content\\_files/file/LE/229.pdf](http://www.concernedhistorians.org/content_files/file/LE/229.pdf).

<sup>104</sup> “Human Rights Court Rules Turkey Cannot Criminalize Genocide Recognition,” *Asbarez*, October 25, 2011. <http://asbarez.com/98857/human-rights-court-rules-turkey-cannot-criminalize-genocide-recognition/>.

<sup>105</sup> *Registrar of the European Court of Human Rights*, 3.

carry out a prosecution prevented the misapplication of Article 301.<sup>106</sup> The ECHR dismissed this claim, reasoning that if in the future the government decides to change its policy, the provision may be applied in similar cases. Even though the court ruled in favor of Akçam, this did not affect freedom of speech laws in Turkey, as more journalists were incarcerated for expressing their opinion on topics deemed “unfavorable” by the government.

In an interview with *Le Monde* newspaper in January 2012, Akçam addressed Turkish leadership’s denial of the Armenian Genocide. Discussing his work, he said:

My international colleagues speak of my “courage” to pursue this subject in the face of “threats and dangers” from Turkey. However, that has never really been my problem. My biggest challenge was loneliness. I have had a hard time trying to explain the significance of 1915 events to my closest friends in Turkey.<sup>107</sup>

Although he knew about the consequences writing about the genocide posed, Akçam wanted to educate the public. He was able to make his colleagues interested in the subject and inspired other scholars to challenge the status quo and address issues that were considered taboo. The ECHR ruling proved that Turkey had no right to limit people’s freedoms and gave voice to those who had been silenced by the government.

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<sup>106</sup> Orhan Kemal Cengiz, “Taner Akçam v. Turkey,” *Today’s Zaman*, October 25, 2011. <http://www.todayszaman.com/columnist-260956-taner-akcam-v-turkey.html>.

<sup>107</sup> “Akçam: La Négation du Genocide est une Industrie,” *Le Monde*, January 20, 2012. <http://istanbul.blog.lemonde.fr/2012/01/20/taner-akcam-la-negation-du-genocide-est-une-industrie/>.

## Ragip Zarakolu

Ragip Zarakolu has become a symbol for freedom of expression and freedom of press in Turkey and is an internationally-recognized defender of human rights. He is the founder of Belge Publishing House, which has published numerous books on controversial issues in Turkey, such as the Armenian and Kurdish questions. This has led to Zarakolu's prosecution under Article 301 numerous times. In 2005, he was indicted for publishing Dora Sakayan's book *An Armenian Doctor in Turkey: Garabed Hatcherian: My Smyrna Ordeal of 1922*, which was perceived to have insulted the army and Turkishness. He was acquitted in this case, but was found guilty in another case; Zarakolu was accused of offending the Turkish state for publishing George Jerjian's book *The Truth Will Liberate Us*, which is about the mass deportations of Armenians. In June 2008, he was sentenced to five months in prison for translating and publishing Jerjian's book, but the judge ordered him to pay a fine instead of facing imprisonment due to good behavior.<sup>108</sup> This, however, was not the last time he was indicted for exercising his right to free speech and standing up for human rights.

In 2009, Mehmet Güler and Ragip Zarakolu stood trial for the publication of Güler's book *More Difficult Decisions than Death*, which according to the prosecutor evoked sympathy for the Kurdistan Workers' Party (PKK). In June 2010, Zarakolu was acquitted, but Mehmet Güler was sentenced to fifteen months in prison.<sup>109</sup> In March 2011, following the publication of Mehmet Güler's book *The KCK File/The Global State and Kurds without a State*, both scholars faced prosecution for their work once again. The

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<sup>108</sup> Robert Tait, "Turkish Publisher Convicted Over Armenian Genocide Claims," *The Guardian*, June 19, 2008. <http://www.guardian.co.uk/world/2008/jun/19/turkey.humanrights>.

<sup>109</sup> "Publisher Ragip Zarakolu Acquitted - Writer Mehmet Güler Sentenced to 15 months," *PEN American Center*, June 11, 2010. <http://www.pen.org/viewmedia.php/prmMID/5101/prmID/1692>.

book was immediately banned after its publication. Zarakolu was convicted under Article 7/2 of the Anti-Terror Law of spreading propaganda in support of the PKK. In this case, the Istanbul 10<sup>th</sup> High Criminal Court sentenced Güler to a fifteen-month suspended prison sentence and ordered a monetary fine for Zarakolu.<sup>110</sup> All these trials led to a bigger case against PKK sympathizers.

In October 2011, Zarakolu and 41 other individuals, including Professor Büşra Ersanli, were arrested as part of a government crackdown on people involved with pro-Kurdish Peace and Democracy Party and the Kurdish Communities Union (KCK). The KCK is believed to be an executive organ of the PKK.<sup>111</sup> Emma Sinclair-Webb, a Turkey researcher at Human Rights Watch said, “The arrests of Ragip Zarakolu and Büşra Ersanli represent a new low in the misuse of terrorism laws to crush freedom of expression and association in Turkey.”<sup>112</sup> The arrests sparked international outrage yet again against Turkey’s violation of human rights, and the European community demanded Zarakolu’s immediate release.

The arrests took place under the Anti-Terror Law, which accused the detained individuals in aiding a terrorist organization. During a raid of Zarakolu’s house, police found no evidence linking him to such an organization, but they confiscated books on the Armenian Genocide as part of “evidence of crime.”<sup>113</sup> In February, Zarakolu was

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<sup>110</sup> “Turkey: Publisher Ragip Zarakolu Back on Trial Again, Alongside Mehmet Güler,” *Human Rights House*, July 29, 2010. <http://humanrightshouse.org/Articles/14754.html>.

<sup>111</sup> Ozgur Ogret, “KCK Trial at an Impasse,” *Southeast European Times*, August 29, 2012. [http://setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/articles/2011/08/29/reportage-01](http://setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/articles/2011/08/29/reportage-01).

<sup>112</sup> “Turkey: Arrests Expose Flawed Justice System,” *Human Rights Watch*, November 1, 2011. <http://www.hrw.org/news/2011/11/01/turkey-arrests-expose-flawed-justice-system>.

<sup>113</sup> “Zarakolu’s Genocide Books Confiscated as ‘Evidence,’” *Asbarez*, November 3, 2011. <http://asbarez.com/99080/zarakolu%E2%80%99s-genocide-books-confiscated-as-%E2%80%98evidence%E2%80%99/>.

nominated for the 2012 Nobel Peace Prize, and about a month after this announcement he was released from prison pending trial.

After his release, Ragip Zarakolu was quoted saying, “I feel like I was used. I think my arrest was a conspiracy. The state just wanted to give the impression that it had accepted its mistakes. This hurts me.”<sup>114</sup> The international community’s attention to this case and other human rights abuses in Turkey decreased immediately after Zarakolu’s release from prison. Perhaps the Turkish authorities decided to free Zarakolu because his case was starting to resemble that of Orhan Pamuk’s. Even though other scholars, including Ragip’s son, remained imprisoned, public interest in the Kurdish terrorism trials diminished.

The first hearing of the Kurdish Communities Union (KCK) trial began in July 2012 at the 15<sup>th</sup> High Criminal Court in the Silivri district of Istanbul. More than two hundred individuals, including Zarakolu and Professor Ersanli, stood trial in a 2401 page long indictment. During the first hearing, the defense lawyers demanded the court to allow the prisoners to plea in their native language. The Chief Justice rejected this, and the lawyers responded by walking out of the courtroom in objection.<sup>115</sup> At the next court hearing in October 2012, the judge ordered gendarmerie troops to escort a defense lawyer out of the courthouse by force for “violating the integrity of the hearing.” The lawyer had asked the judge to grant the defendants the right to speak about the hunger strikes of

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<sup>114</sup> Vercihan Ziflioğlu, “Journalists Tried in Fresh Wave of KCK Case Today,” *Hürriyet*, September 20, 2012. <http://www.hurriyetdailynews.com/journalists-tried-in-fresh-wave-of-kck-case-today.aspx?pageID=238&nID=29747&NewsCatID=339>.

<sup>115</sup> Nilay Vardar, “Lawyers Storm Out of the Courtroom in Landmark KCK Case,” *Bianet*, July 2, 2012. <http://bianet.org/english/freedom-of-expression/139482-lawyers-storm-out-of-the-courtroom-in-landmark-kck-case>.

jailed Kurdish militants that were underway.<sup>116</sup> Additionally, the question of using Kurdish in court was raised again, but the judge rejected the request based on the fact that all of the defendants spoke Turkish.<sup>117</sup> The hearing ended with defendant lawyers presenting their pleas in writing. The KCK trial will resume in January 2013.

Zarakolu is one of the numerous casualties of Article 301 and the Anti-Terror Law. According to 2011-2012 World Press Freedom Report of Reporters without Borders (RSF) Organization, Turkey placed 148<sup>th</sup> among 179 countries, making it one of the lowest ranked European countries.<sup>118</sup> The Turkish government continues to deny its citizens the right to express themselves freely despite its portrayal as a regional model. Since 2010, Turkey has especially used the Anti-Terror Law to imprison journalists and human rights activists. Zarakolu's trial is still pending, and if found guilty, he could face up to fifteen years in prison.

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<sup>116</sup> Çiçek Tahaoğlu, "Defendant Lawyers Forcibly Expelled Out of Courtroom," *Bianet*, October 2, 2012. <http://bianet.org/english/human-rights/141188-defendant-lawyers-forcibly-expelled-out-of-courtroom>.

<sup>117</sup> Tony Fisher, "KCK Lawyers' Trial: Report by Tony Fisher," *Peace in Kurdistan*, November 8, 2012. <http://peaceinkurdistancampaign.wordpress.com/2012/11/08/kck-lawyers-trial-report-by-tony-fisher/>.

<sup>118</sup> Press Freedom Index 2011/2012, *Reporters Without Border*. <http://en.rsf.org/press-freedom-index-2011-2012.1043.html>.

**Part V: Reflections, Discussion, Analysis**  
**Politics of Free Speech in Turkey**

The Republic of Turkey was established based on the Kemalist ideology of nationalism, secularism, populism, republicanism, statism, and revolutionism; state interest was protected under all circumstances, and a unified national image was created to ensure the survival of the republic.<sup>119</sup> The Ottoman Empire lacked unity, which eventually led to its demise in the early twentieth century. Strong nationalist sentiments not only led to uprisings in the Balkans but also to the Young Turk Revolution in 1908. Those who came to power after the revolution had close connections with the military, and secret societies were set up to ensure the Turkish state's independence and continuity. Those secret societies are believed to have survived to this day and be the real drive behind the Turkish state's social, economic, and political structures.<sup>120</sup> The military institution, which has enjoyed an immense amount of power for decades, has intervened in Turkish politics numerous times to correct the mistakes of a civilian government and to align the republic with the Kemalist constitutional order. In order to protect state interests and ensure the continuity of Mustafa Kemal's ideas, the military has seized power in 1960, 1971, 1980, and most recently presented a military memorandum in 1997. Each time, the military regime has restricted freedoms to Turkish citizens by enacting new laws and drafting a new constitution.<sup>121</sup> Although the current AKP government reforms have curtailed the role of the military, the deep state, which allegedly is a secret military

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<sup>119</sup> Tate, 192.

<sup>120</sup> Patton, 46.

<sup>121</sup> Gerassimos Karabelias, "The Evolution of Civil-military Relations in Post-war Turkey, 1980-95," *Middle Eastern Studies*, Vol. 35, No. 4, (December 2006): 132.



network that acts parallel to the Turkish civilian government, is still present and powerful.

Although further evidence is required to prove the presence of the deep state in state affairs, its existence has been acknowledged by many prominent members of Turkey's political system. The meaning of the term 'deep state' is somewhat elusive, but Former Prime Minister Süleyman Demirel stated in 2005 that the deep state was the military and the state itself.<sup>122</sup> It is not only found in the military institution but has spilled into multiple facets of the state machinery, creating a state within the state. The Ottoman military corps became the basis for the modern Turkish Armed Forces when the Republic of Turkey was established.<sup>123</sup> Mustafa Kemal Atatürk, who was a military officer himself, used the military to strengthen the newfound republic. The officer corps assumed an important role, but at the same time, Mustafa Kemal created barriers to military's direct involvement in the country's everyday political life.

In 1950, the Democratic Party (DP) came to power and introduced new social and economic policies that weakened the political power and the social status of the armed forces. Consequently, a coup was staged in 1960 by the military. It established a new regime, drafting a new Constitution, creating a Senate, and founding the National Security Council (NSC), which would craft the national security policy and serve as an advisory body to the Council of Ministers. Through the NSC, the military had a legal right to intervene in the country's political and economic affairs. Another coup followed in 1971, which was an attempt by the military to prevent radical officers from

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<sup>122</sup> Ryan Gingeras, "In the Hunt for the "Sultans of Smack:" Dope, Gangsters and the Construction of the Turkish Deep State," *Middle East Journal*, Vol. 65, No. 3, (Summer 2011): 439.

<sup>123</sup> Karabelias, 132.

gaining power.<sup>124</sup> This coup strengthened the political authority of the military even more; however, it gave back the power to a civilian government and created a system that would allow the development of small parties.

By 1980, Turkey was facing socio-economic problems. The military was able to step in once again and create a new regime, becoming the only legal and political ruler of Turkey from 1980 to 1983. This time around, it introduced a new constitution that would ensure that its work would not be destroyed once control of the state was transferred to a civilian government. The Senate was abolished, the Grand National Assembly's membership reduced, and the president's power was increased under the new constitution. The NSC's power was enhanced, and based on Constitutional Article 118, the Council of Ministers would have to take into consideration the opinion of the NSC in making decisions regarding "the preservation of the existence and independence of the state, the integrity and indivisibility of the country and the peace and security of the society."<sup>125</sup>

The deep state has continuously fought against "enemies" of the nation that have threatened the stability of the country, and in the process, it has weakened political institutions.<sup>126</sup> Every time there has been an attempt to change Turkey, democratize the country, and allow diversity and transparency, the military has intervened. The most recent resistance against change took place in February 1997. The Turkish military's power rose sharply, and the Turkish Armed Forces, using constitutional structures,

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<sup>124</sup> Karabelias, 134.

<sup>125</sup> Karabelias, 136.

<sup>126</sup> Merve Kavakci, "Turkey's Test with Its Deep State," *Mediterranean Quarterly*, Vol. 20, No. 4, (2009): 85.

became engaged in politics at the micro and macro levels.<sup>127</sup> This further affected those who spoke against the government.

Kemalists, who want to preserve the existing state of affairs and maintain a unified national identity, see those who refuse to conform to their norms as secessionists.<sup>128</sup> In particular, those who speak about the role of the military are silenced, and scholars and human rights activists that speak about the Armenian and Kurdish issues become the enemy of the deep state. Hrant Dink was one of those casualties. His murder was associated with Turkish nationalism, but in reality those responsible for his assassination were traced back to the military, and thus, the deep state. Numerous others have been kidnapped and assassinated because of their views and the expression of their thoughts. In the last thirty years, approximately 17,500 have fallen victim to their ideas and ideologies that did not line up with those of the deep state.<sup>129</sup>

The current AKP government, ever since coming into power in 2002, has been actively carrying out constitutional and legislative reforms, which although have not improved human rights in Turkey, nonetheless have attempted to grant fundamental rights and liberties to Turkish citizens and have curtailed privileges enjoyed by the military. In 2007, the AKP government opened prosecutions of military personnel and enacted constitutional amendments to end the dual judiciary system; thus, civilians cannot be tried before military courts, as was the case before the amendment. However,

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<sup>127</sup> Ümit Cizre, "Demythologizing the National Security Concept: The Case of Turkey," *Middle East Journal*, Vol. 57, No. 2, (Spring 2003): 216.

<sup>128</sup> Nora Onar, "Kemalists, Islamists, and Liberals: Shifting Patterns of Confrontation and Consensus, 200-06," *Turkish Studies*, Vol. 8, No. 2, (June 2007): 275.

<sup>129</sup> Kavakci, 89.

the armed forces still have their hand in civilian courts, as neither the Military High Administrative Court nor the Military Supreme Court has been abolished.<sup>130</sup>

In spite of all the attempts to limit the role of the armed forces, “the military’s political influence in Turkey is due less to legal regulations than to historical, sociological, and political factors.”<sup>131</sup> The armed forces in Turkey have been part of the political process since Ottoman times, and with the extermination of Armenians and the exodus of Greeks from Turkey in the early twentieth century, the military was the only remaining body that could modernize Turkey and ensure its survival. Additionally, whenever its power has been in jeopardy, the military has staged coups to protect its place in Turkish politics. Thus, even if the current government carries out reforms to limit the power of the armed forces, the deep state’s network is interwoven in the very identity of the republic; hence, it is inseparable.

Despite trying to modernize Turkey and bring its legislation in line with that of the European Union, it appears that the Turkish government is pushing forward the agenda of the deep state by not allowing certain freedoms to its citizens. One of the reasons that the authorities have refused to grant freedom of speech has to do with national elections; the AKP government wants to hold on to power, and if Article 301 is abolished, people will start asking questions and challenge the current regime.<sup>132</sup> However, as discussed previously, the main reason for the suppression of this right has to do with Turkey not willing to open public debate about the Armenian and Kurdish issues and to keep its territory and homogeneous image in the eyes of the European Union.

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<sup>130</sup> Özgür Aşık, “Legal Reforms in Turkey: Ambitious and Controversial,” *Turkish Policy Quarterly*, Vol. 11, No. 1, (Spring 2012): 149.

<sup>131</sup> Ergun Özbudun, “Democratization Reforms in Turkey, 1993-2004,” *Turkish Studies*, Vol. 8, No. 2, (June 2007): 195.

<sup>132</sup> Onar (2007), 282.

The Turkish government continued its reforms for EU accession in 2012 after strong criticism from the European Union and Council of Europe. The European Commission expressed concern in its October 2011 progress report regarding the status of human rights in Turkey. A new legal reform package was introduced in February 2012, which according to the Human Rights Watch “left key problems with free speech.”<sup>133</sup> The reforms did not affect terrorism laws and the Turkish government’s arbitrary restriction on free speech. Journalists and editors arrested for their alleged connection to armed groups would still have to face the maximum prison sentence of five years.

A third judicial reform package was adopted in July 2012 that lifted press restrictions on reporting criminal investigations, but some issues relating to Armenians and the military remained sensitive and censored. The European Commission’s 2012 Turkey Progress Report commended Turkey for progress made regarding legislation aimed at increasing gender equality and women’s rights; however, the Commission criticized Turkey’s human rights record. The increased imprisonment of journalists, editors, and media workers raised serious concerns. The Report states:

*Overall, the increase in violations of freedom of expression raises serious concerns, and freedom of the media was further restricted in practice. The legal framework, especially as regards organized crime and terrorism, and its interpretation by the courts, leads to abuses. Together with pressure on the press by state officials and the firing of critical journalists, this situation has led to widespread self-censorship. Frequent website bans are a cause for serious concern and there is a need to revise the law on the internet.*<sup>134</sup>

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<sup>133</sup> “Turkey: Draft Reform Law Falls Short,” *Human Rights Watch*, February 13, 2012. <http://www.hrw.org/news/2012/02/13/turkey-draft-reform-law-falls-short>.

<sup>134</sup> “Turkey 2012 Progress Report,” *European Commission*, (October 2012): 22.

Although the Report mentions that few cases have been brought forth on the basis of Article 301 in the last year, other laws have been used to suppress free speech. Those who participate in demonstrations demanding Kurdish rights are often convicted under Article 7 of the Anti-Terror Law (making propaganda for a terrorist organization).<sup>135</sup> This law, combined with Articles 220 and 314 of the Turkish Penal Code, can lead to a criminal case for membership in a terrorist organization.<sup>136</sup> This clearly indicates that despite reforms, the Turkish government is unwilling to lift the ban on freedom of expression.

President Abdullah Gül, just days before the release of the European Commission's annual progress report, called on the Turkish Parliament to prioritize EU harmonization law reforms. Additionally, Prime Minister Erdoğan's Justice and Development Party (AKP) is drafting a new constitution to replace the one drafted by the military regime in 1982.<sup>137</sup> Even if the AKP government shows willingness to continue bringing Turkish laws in line with the EU *acquis*, it is unlikely that future reforms and the new constitution will lift the ban on free speech. Erdoğan's government has moved away from Mustafa Kemal's pro-Western ideas and has entered an anti-Western era. It has sidelined the anti-Islamist forces and neutralized the power of the military. It appears that Turkey is no longer a country that wishes to democratize and Westernized. Rather, it

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<sup>135</sup> "Protesting as a Terrorist Offense: The Arbitrary Use of Terrorism Laws to Prosecute and Incarcerate Demonstrators in Turkey," *Human Rights Watch*, (November 2010): 25.

<sup>136</sup> *European Commission*, 22.

<sup>137</sup> "Turkish President Calls for Adopting EU Reforms, Asks for New Constitution," *Today's Zaman*, October 1, 2012. <http://www.todayszaman.com/news-293917-turkish-president-calls-for-adopting-eu-reforms-asks-for-new-constitution.html>.

wants to strengthen ties with the Middle East and regain the “power and prestige” of the Ottoman Empire.<sup>138</sup>

Although Erdoğan has stated that the era of coups has ended, there is still a possibility that the military, which does not wish to see change in Turkey and adheres to Mustafa Kemal Atatürk's vision of the country, could revert to power and overthrow the AKP government.<sup>139</sup> Overall, in order to have substantial change in Turkey, the public has to be educated about the deep state and demand the current government to have a truly democratic constitution and look to the West for inspiration. Turkey has the potential to become a superpower, but it cannot halt reforms aimed at improving human rights.

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<sup>138</sup> Daniel Pipes, “Turkey’s Islamist Turn, 10 Years Later,” *The Wall Street Journal*, November 12, 2012. [http://online.wsj.com/article/SB10001424052970203335504578089104230431168.html?mod=googlenews\\_wsj](http://online.wsj.com/article/SB10001424052970203335504578089104230431168.html?mod=googlenews_wsj).

<sup>139</sup> Simon Tisdall, “Recep Tayyip Erdogan: Turkey’s Elected Sultan or an Islamic Democrat?” *The Guardian*, October 24, 2012. <http://www.guardian.co.uk/world/2012/oct/24/recep-tayyip-erdogan-turkey?newsfeed=true>.

## Politics of Free Speech in the Global Context

Freedom of speech is not an absolute right; however, everyone is entitled to it. All democratic regimes include a freedom of expression clause in their constitutions, but in practice, this right is suppressed time and time again. For example, freedom of speech in the United States is protected by the First Amendment in the US Constitution, but there are certain limitations to this right; speech is restricted when it can inflame crime, incite hate, and reveal military secrets that can jeopardize the national security of the country. However, in the US, unlike in Turkey, one will not be put in jail for writing about history and what happened to the Native Americans. Additionally, in the US, people can freely write about the Armenian Genocide without the fear that they will be prosecuted. On the other hand, Turkey has attempted numerous times to censor the US and the rest of the world when it came to the recognition of the Armenian Genocide.

Turkey has silenced the US government and has hindered the passage of a resolution formally recognizing the Armenian Genocide by the government. For several decades, the US Congress has unsuccessfully tried to adopt an official genocide recognition resolution, which has been blocked by the Turkish government. In 1999, the House of Representatives adopted H.Res.398 to the 106<sup>th</sup> Congress.<sup>140</sup> The bill was referred to the House Committee on International Relations and passed by a voice vote, but it was never put on the agenda for a full House vote. A similar attempt was made in

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<sup>140</sup> United States Training on and Commemoration of the Armenian Genocide Resolution, H.R.398, 106<sup>th</sup> Cong. (1999).



2005 with H. Res.316 to the 109<sup>th</sup> Congress.<sup>141</sup> Senator Durbin (D-Ill) introduced a similar resolution in the Senate. S.Res.320 had 34 co-sponsors, but no vote took place on the bill.<sup>142</sup> In 2007, yet another attempt was made by Rep. Adam Schiff (D-CA) in the House with H.Res106, which had 212 cosponsors, to officially recognize the Armenian Genocide. The US House Resolution 106 stated the following:

The House of Representatives--

(1) calls upon the President to ensure that the foreign policy of the United States reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian Genocide and the consequences of the failure to realize a just resolution; and

(2) calls upon the President in the President's annual message commemorating the Armenian Genocide issued on or about April 24, to accurately characterize the systematic and deliberate annihilation of 1,500,000 Armenians as genocide and to recall the proud history of United States intervention in opposition to the Armenian Genocide.<sup>143</sup>

This resolution was nonbinding and did not condemn Turkey's actions. It merely acknowledged the fact that 1.5 million Armenians perished during WWI and that the US was a champion in aiding the survivors of the genocide. Despite Turkish lobbyists' attempts to block the bill, the House Committee on Foreign Affairs passed it by a 27-21 vote and sent it for a full House vote. This resolution saw fierce opposition from the Republic of Turkey. Turkish President Abdullah Gül stated, "This unacceptable decision of the committee, like similar ones in the past, is not regarded by the Turkish

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<sup>141</sup> Affirmation of the United States Record on the Armenian Genocide Resolution, H.R. 316, 109<sup>th</sup> Cong. (2005).

<sup>142</sup> Calling on the President to ensure that the foreign policy of the United States reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian Genocide, S.Res.320, 109<sup>th</sup> Cong. (2005).

<sup>143</sup> Affirmation of the United States Record on the Armenian Genocide Resolution, H.R.106, 110<sup>th</sup> Cong. (2007).

people as valid or of any value."<sup>144</sup> Former President George W. Bush and former Secretary of State Condoleezza Rice urged Congress to stop the resolution from reaching a full House vote. President Bush stated that he would veto the bill if it reached his desk. The reasoning against the adoption of this proposed law was that it would damage relations with Turkey, and that the matter of genocide recognition would have to be left for historians to determine. Consequently, H.Res106 was never voted on by the House of Representatives.

The most recent attempt by the US Congress to pass a similar resolution took place in 2010. H.Res252 narrowly passed a House Committee on Foreign Affairs vote and was to be placed on the House calendar for a full vote.<sup>145</sup> However, as in the previous cases, this never took place. Turkey immediately recalled its Ambassador to the United States after the 23-22 vote in favor of the motion and threatened to cut all diplomatic ties with the US.<sup>146</sup> Turkish Foreign Minister Ahmet Davutoglu urged Secretary of State Hillary Clinton to hinder a full House vote on H.Res252, and the Obama administration's stance on the issue resembled that of President Bush. All measures were taken to avoid putting the resolution on Congress' agenda.

Turkey was successful yet again in blackmailing the US government. It is true that Turkey is a strong NATO partner, with the second largest military in the alliance. The Incirlik Air Base in southern Turkey has been crucial in the Iraq War, and Turkish troops have contributed to the coalition forces in Afghanistan. However, the US cannot

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<sup>144</sup> "Turkey Recalls Ambassador to US," *BBC News*, October 11, 2007.

<http://news.bbc.co.uk/2/hi/europe/7040366.stm>.

<sup>145</sup> Affirmation of the United States Record on the Armenian Genocide Resolution, H.Res.252, 111<sup>th</sup> Cong. (2009).

<sup>146</sup> Daniel Nasaw, "Turkey Recalls US Ambassador over Armenia Genocide Resolution," *The Guardian*, March 5, 2012. <http://www.guardian.co.uk/world/2010/mar/05/turkey-us-ambassador-armenia>.

allow Turkey to influence and intrude in its domestic and international affairs. If Turkey threatens to refuse American access to Incirlik Air Base, the US has other options in the area, such as its air base in Germany that allows for a quick access to the Middle East.<sup>147</sup> Cutting down diplomatic relations with the US will have a negative effect on Turkey, which will lose its main supplier of military equipment.

The US government has been supporting Turkey's campaign of genocide denial for years. In 2006, US Ambassador to Armenia John Evans was relieved of his post for unidentified reasons, but his termination came after statements he made confirming the Armenian Genocide. Additionally, as a Senator, President Barack Obama supported the passage of the Armenian Genocide bill and pledged to recognize it as president.<sup>148</sup> However, during his first visit to Turkey as president, he failed to use the word "genocide." Moreover, during his Armenian Remembrance Day address on April 24, 2009, President Obama once again let down his Armenian-American constituents and avoided the usage of the word "genocide." Year after year, President Obama has been calling the events of 1915 as "one of the worst atrocities of the 20<sup>th</sup> century," but he refuses to fulfill his campaign promise.<sup>149</sup> Thus, the US government has been censoring itself and has become another victim of Turkey's Article 301.

Europe, on the other hand, has put an external pressure on Turkey to recognize the Armenian Genocide. Most notably, France has been a champion of Armenian rights and

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<sup>147</sup> Michael Birnbaum, "German Town Fear Loss of U.S. Army Base," *The Washington Post*, March 27, 2012. [http://www.washingtonpost.com/world/german-town-fears-loss-of-us-army-base/2012/03/23/gIQAoNzzeS\\_story.html](http://www.washingtonpost.com/world/german-town-fears-loss-of-us-army-base/2012/03/23/gIQAoNzzeS_story.html).

<sup>148</sup> "Barak Obama Calls for Passage of Armenian Genocide Resolution," *Armenian National Committee of America*, January 20, 2008. [http://www.anca.org/press\\_releases/press\\_releases.php?prid=1365](http://www.anca.org/press_releases/press_releases.php?prid=1365).

<sup>149</sup> Office of the White House Press Secretary, "Statement by the President on Armenian Remembrance Day," *White House Press Release* (April 24, 2012).

has criticized Turkey for its denial of the massacre. In 1998, the French National Assembly formally recognized the events of 1915 as genocide, which became law in 2001.<sup>150</sup> This was complemented by a French National Assembly bill in 2006, which would punish anyone who denied the mass extermination of Armenians with up to five years in prison and a €45,000 fine. However, the measure never reached the Senate. In December 2011, the French National Assembly once again adopted a similar bill outlawing genocide denial, which included both the Armenian Genocide and the Holocaust. The Turkish government retaliated by cutting all economic, political, and military ties with France.<sup>151</sup> The Turkish ambassador was recalled to Ankara and France was banned from using Turkish military bases. Furthermore, Turkey accused France of committing genocide in Algeria during the war in the 1950s and 1960s. Despite the negative consequences France faced after the December vote, the French Senate adopted the bill in January 2012. However, a month later, the French Constitutional Court found the measure unconstitutional and an attack on freedom of expression.<sup>152</sup>

Some called the genocide denial law “France’s 301” because it had a similar effect as Article 301 of the Turkish Penal Code.<sup>153</sup> It constrained speech, but this was not the first time France or a European nation adopted a bill that criminalized genocide denial. A number of European countries have adopted laws that make the denial of the Holocaust illegal, and France is one of them. Thus, why did this particular bill garner so

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<sup>150</sup> “France Recognizes Armenian Genocide,” *BBC News*, May 29, 1998.

<http://news.bbc.co.uk/2/hi/102803.stm>.

<sup>151</sup> John Irish and Ibon Villeda, “France Passes Genocide Bill, Angry Turkey Cuts Ties,” *Reuters*, December 22, 2011. <http://www.reuters.com/article/2011/12/22/us-france-turkey-genocide-idUSTRE7BL1FB20111222>.

<sup>152</sup> Scott Sayare, “French Council Strikes Down Bill on Armenian Genocide Denial,” *New York Times*, February 28, 2012. <http://www.nytimes.com/2012/02/29/world/europe/french-bill-on-armenian-genocide-is-struck-down.html>.

<sup>153</sup> D. A. Açar and İ. Rüma, “External Pressure and Turkish Discourse on ‘Recognition of the Armenian Genocide’,” *Southeast European and Black Sea Studies*, Vol. 7, No. 3 (September 2007): 456.

much attention and criticism? The main reason is that the Holocaust has been recognized by Germany, whereas Turkey still denies the Armenian Genocide. It has directed its efforts into genocide denial and has threatened all governments that have attempted to recognize the Armenian Genocide officially, including the US, France, and even Sweden in 2010. Many in Turkey believe that the West uses genocide recognition as a political leverage, and Europe will never accept Turkey to the EU; the recognition is used to discourage Turkey from pursuing EU membership.<sup>154</sup>

The European Parliament recognized the 1915-1917 events as genocide in 1987, but it acknowledged that the present-day republic could not be held responsible for the crimes of the Ottoman Empire. Moreover, Article 3 of the resolution called on the Council to attain Turkish government's acknowledgement of the genocide.<sup>155</sup> Although genocide recognition is not a precondition for Turkish accession to the EU, the European Parliament has been encouraging Turkey to face its history and allow people to openly inquire about the fate of the Armenian population of the Ottoman Empire.<sup>156</sup>

Overall, Article 301 is not only a threat to Turkish citizens, but it is also affecting the global community. The punishment for foreign governments is not a prison sentence but has a similar effect. Turkey can sever diplomatic relations and cut down trade, hurting those who depend on it economically. However, without the US and Europe, Turkey will lose the power it has gained. Thus, the AKP government should acknowledge past history and follow a path of Westernization by implementing democratic reforms.

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<sup>154</sup> D. A. Açar and İ. Rüma, 453.

<sup>155</sup> Resolution on a Political Solution to the Armenian Question. Doc. A2-33/87, European Parliament (1987).

<sup>156</sup> Selçuk Gültaşlı, "EP President Schulz denies reports on 'genocide'," *Today's Zaman*, September 20, 2012. <http://www.todayszaman.com/news-292908-ep-president-schulz-denies-reports-on-genocide.html>.

## Conclusion and Recommendations

Freedom of expression is a global issue that has sprung up in various places for specific reasons. As understood from the Turkish case, the main goal of governments is to maintain power and territorial integrity. Consequently, some individual freedoms are denied and limited. This thesis addressed limitations on freedom of expression in Turkey to illustrate that this issue is affecting the global community as a whole. Turkey is not only censoring its own citizens but has also silenced foreign governments and is threatening human rights worldwide.

The Republic of Turkey has strived to become a regional power and serve as a link between the West and the East. It is also the first and only Muslim nation to be considered for European Union accession. Nevertheless, for the purpose of gaining the acceptance of Europe, Turkey needs to adopt EU's values and respect human rights. In order to do this, "Turkey must take a brave step and come to terms with its own irrefutable historical record."<sup>157</sup> Since the Republic of Turkey does not want to be reminded of its predecessor's mistakes and wrongdoings, it has adopted a policy of intolerance and strong nationalism.

To gain EU membership, it is imperative for Turkey to recognize minorities and allow an open discussion of the past. Without this, Turkey cannot be considered a true democracy and will never be accepted by the European community. Although the Turkish government has chosen to imprison those who address the Kurdish and Armenian issues rather than face the reality, the discourse on these topics is intensifying

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<sup>157</sup> Donald M. Payne, "Turkey's Path to Europe: Defense of Human Rights and Respect for International Obligations," *Mediterranean Quarterly*, (2010): 10.

and international pressure on Turkey to abolish controversial laws limiting freedoms continues.

Numerous times, Article 301 of the Turkish Penal Code and the Anti-Terror Law have been enacted to silence journalists for the non-violent expression of their opinions. In September 2012, Turkey arrested more than 40 Kurdish journalists for their alleged support of the PKK.<sup>158</sup> The government does not allow public discussion of Kurdish rights to self-determination and refuses to acknowledge the Armenian Genocide, and yet, Turkish Prime Minister Recep Tayyip Erdogan was quick to denounce the Syrian government's massacres of civilians as "attempted genocide."<sup>159</sup> Hypocrisy will not improve Turkey's image internationally. Only by accepting past mistakes, abolishing laws that suppress freedom of expression and minority rights, and curtailing the power of the military, Turkey will achieve its goal of becoming a regional power and even a global political leader.

The Turkish Republic might be on the right track, as in the last year, it has rekindled reforms and is drafting a new constitution. This could be an opportune moment for Turkey to improve its human rights record and become a true democracy. This study only provides data on the possible reasons for limited speech and the results. Future research in this field should focus on the new changes that take place in the next year and the challenges that Turkish society will face as a consequence. Additionally, the examination of the role of the military and its diminishing power will improve the study further.

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<sup>158</sup> Fazel Hawramy, "Turkey Would Rather Jail Journalists than Address the Kurdish Question," *The Guardian*, September 14, 2012. <http://www.guardian.co.uk/commentisfree/2012/sep/14/turkey-jail-journalists-kurdish-question>.

<sup>159</sup> Taner Akçam, "Turkey's Human Rights Hypocrisy," *New York Times*, July 19, 2012. <http://www.nytimes.com/2012/07/20/opinion/turkeys-human-rights-hypocrisy.html>.

## **Appendix Definition of Terms**

Copenhagen Political Criteria – rules a country needs to meet in order to be eligible to join the European Union.

Deep State – an alleged coalition within the Turkish political system generally comprised of individuals from the military, security forces, and intelligence agencies that carry their own political agenda and do not respond to the civilian government.

Hrant Dink – Turkish-Armenian editor of *Agos* newspaper, assassinated in Turkey for writing about the Armenian Genocide.

Mustafa Kemal Atatürk – the founder and the first President of the Republic of Turkey.

Orhan Pamuk – Turkish novelist and recipient of 2006 Nobel Prize in Literature. He was prosecuted under Article 301 for speaking about the Armenian and Kurdish issues.

Ragıp Zarakolu – Turkish publisher and human rights activist. He has faced prosecution for publishing about minority and human rights in Turkey.

Taner Akçam – Turkish historian prosecuted for publicly acknowledging the Armenian Genocide.

Treaty of Lausanne – a peace treaty signed on July 24, 1923 to end the war between Turkey and Europe. It established the current-day Turkish borders.

Treaty of Sèvres – a peace treaty signed between the Ottoman Empire and the Allied Powers at the end of World War I. If ratified, it would have partitioned the Ottoman territory and create an independent Armenia and Kurdistan. The treaty was rejected by Turkish nationalists.



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