

Statement

# France: Senate must reject Armenian Genocide law



## ARTICLE 19

19 Jan 2012

**The adoption of a law criminalising any denial of the 1915 Armenian genocide would be in conflict with France's obligation to respect the right to freedom of expression under international law. ARTICLE 19 calls on the Senate to reject the draft law.**

On 22 December 2011, the National Assembly, France's lower house of parliament, approved a draft law criminalising public denials of the genocide committed by Ottoman Turks against ethnic Armenians a century ago during and after World War I. The draft Law provides for a one-year prison sanction and a 45,000 Euro (58,000 USD) fine.

Genocide-denial laws, including the draft Law, are unnecessary interference by the state with the right to freedom of expression and information, in violation of international standards.

ARTICLE 19 is concerned that by passing the draft Law the French State will elevate history to ideology and assign state institutions with the task of promoting and defending one particular view of historical facts. As repugnant as the atrocities against ethnic Armenians were, it is undesirable for States to interfere with the right to know and the search for historical truth, especially when those events took place in another country. One of the longest-lasting arguments in defence of the right to freedom of expression is based on the importance of open discussion and the discovery of truth, including the truth about historical personalities and events. In the case of *Chauvy v. France*,<sup>[1]</sup> concerning the conviction of the applicant for defamation in relation to statements in a book in which he questioned the "official version" of the history of the French resistance during the Second World War, the European Court of Human Rights (ECtHR) stated that "it is an integral part of freedom of expression to seek historical truth" and has recognised the right of individuals to be informed of the circumstances of historical events.

Imposing criminal sanctions for denial of the genocide committed against ethnic Armenians is anti-democratic. Prohibiting false arguments inevitably affects historical debate as well as the ability of historians to establish the truth. Such prohibition presumes that States are better placed than historians to discover the truth, as well as an 'assumption of infallibility' on the part of States. As academic communities have their own procedures in place to establish the truth, for example via peer review of articles or books submitted for publication, there is no need for State

control over academic expression. Therefore States should refrain from interference with debates relating to historical events and personalities.

ARTICLE 19 considers that the draft Law is not necessary in a democratic society. Holding someone criminally liable for denials of historical events as well as imposing prison sanctions and severe fines amount to restriction of the right to freedom of expression. Both the International Covenant on Civil and Political Rights and the European Convention on Human Rights provide that interferences with freedom of expression are legitimate only if they: (a) are prescribed by law; (b) pursue a legitimate aim; and (c) are “necessary in a democratic society.” The adoption of a law of this kind is not necessary because there is no pressing social need for the limitation of views on political events that took place a century ago. In the case of *Lehideux and Isorni v. France*, concerning the convictions of the applicants for publicly defending crimes of collaboration with the enemy by means of an advertisement promoting Marshal Petain’s achievements, the ECtHR recognised that certain historical facts may be regarded as a “painful page” of history, which may justify restrictions on expression to protect the rights of others, as in the case in question. However, the ECtHR observed that as time goes by, public concerns diminish. In view of the fact that the authors discussed events that took place forty years ago, the ECtHR stated:

“Even though remarks like those the applicants made are always likely to reopen the controversy and bring back memories of past sufferings, the lapse of time makes it inappropriate to deal with such remarks, forty years on, with the same severity as ten or twenty years previously. That forms part of the efforts that every country must make to debate its own history openly and dispassionately.”

Moreover, due to its essential role for democracy, international law particularly safeguards expression concerning matters of public interest. The ECtHR has repeatedly stated that: “there is little scope under Article 10(2) for restrictions on political speech or on debate of matters of public interest.”<sup>[ii]</sup> Accordingly, it has established that “*very strong reasons* are required to justify restrictions on political speech” [emphasis added].<sup>[iii]</sup> The ECtHR has recognised that debates on historical issues justify higher protection with respect to the right to freedom of expression as they relate to matters of general interest.

The nature and severity of the penalties envisaged in the draft Law are severe, and if applied they can lead to violation of the right to freedom of expression. When restricting the right to freedom of expression, states should use the least restrictive means available,<sup>[iv]</sup> and the limitation must be proportionate to the aim pursued.<sup>[v]</sup> Imprisonment and high fines would have a chilling effect on everyone who disagrees with the officially-endorsed version of history. Laws on genocide-denial are unnecessary in democratic societies such as in France, since the Freedom of the Press Act 1881 already punishes incitement to hatred.

ARTICLE 19 calls upon the Senate to reject the draft Law.

### **For more information**

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For the ARTICLE 19's position on earlier version of the French genocide law in 2006, passed by the French National Assembly in 2006 but later rejected by the Senate, see *French should scrap Armenian Genocide Law*, at <http://www.article19.org/data/files/pdfs/press/france-armenian-genocide-bill.pdf>.

For ARTICLE 19's position on other defamation of history laws, see the Memorandum on the Russian Draft Federal Law "On Combating the Rehabilitation of Nazism, Nazi Criminals or their Collaborators in the Newly Independent States Created on the Territory of Former Union of Soviet Socialist Republics" at <http://www.article19.org/data/files/pdfs/analysis/russia-memorandum-on-the-draft-federal-law-on-combating-the-rehabilitation-o.pdf>

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[i] *Chauvy and Others v. France*, 29 September 2004, Application No. 64915/01 (European Court of Human Rights).

[ii] *Surek v. Turkey (No. 4)*, Judgement of 8 July 1999, Application No. 24762/94, *para. 57* (European Court of Human Rights).

[iii] *Feldek v Slovakia*, Judgment of 12 July 2001, Application No. 29032/95 (European Court of Human Rights).

[iv] UN Human Rights Committee, General Comment No. 27 (1999), para 14.

[v] See, *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, paras. 39-40 (European Court of Human Rights).