

Europe/Ex-USSR - Turkey

Genocide denial

After victory for free speech in France, Turkey's turn next?

29 February 2012

Reporters Without Borders hails [yesterday's ruling by the Constitutional Council](#) that a proposed law punishing the “denial of legally recognized genocides” is unconstitutional. It had been on the verge of being signed into law by President Sarkozy.

“We are pleased that freedom of expression has not been sacrificed to a cause, no matter how just the cause may be,” Reporters Without Borders said. “The dangerous breach opened by this law has been closed for the time being but it has already damaged the credibility of the democratic values defended by France and those who defend human rights and the Armenian cause in Turkey.

“We urge France's politicians to renounce any intention of drafting an amended version of this law. Any thought of using legislation to establish an official history of past events should be ruled out for good after this precedent.

“The Turkish authorities must now face their responsibilities. In the name of free speech, they have for weeks been condemning the French parliament's meddling in history. Now they must prove that their comments were not just tailored to the circumstances by allowing Turkish citizens to mention the Armenian genocide without fear of being prosecuted.

“Consistency requires that, at the very least, they immediately decriminalize two offences, insulting the Turkish nation (article 301 of the criminal code) and insulting the memory of Mustafa Kemal Atatürk (Law 5816 of 25 July 1951).

“This decision does not exempt Turkey from finally confronting its own history; quite the contrary. Now that Ankara no longer has the excuse of ‘foreign meddling,’ it must remove the straightjacket of official history from the Turkish republic, open a debate about the fate of Turkey's minorities and end the [growing criminalization of journalistic activities](#).”

Reporters Without Borders had written to France's parliamentarians on 25 January urging them to ask the Constitutional Council to determine whether the proposed law was constitutional (see below). Inciting “discrimination, hatred or violence” continues to be punishable in France under [article 24 of its 1881 press law](#).

26.01.2012 - Parliamentarians urged to refer genocide denial law to Constitutional Council

Dear Parliamentarians,

Reporters Without Borders would like to [reiterate](#) to you its concerns about the proposed law aimed at combating “denial of legally recognized genocides,” which the Senate has just approved.

The substance of this law has been much debated but there are grounds for questioning its constitutionality as well. The exchanges between the law’s supporters and opponents, involving leading figures and going to the very heart of our fundamental rights, have been so heated that even its supporters must realize that the Constitutional Council’s opinion is indispensable. We therefore urge you to demand its referral to the Council.

There are four key aspects of the law that disturb us: a conflict with the principle of the right to free expression, a lack of proportionality between the offence and penalty, a violation of parliament’s competence and a lack of clarity in the wording.

We fully share the desire for justice expressed by our friends who have campaigned for this law’s adoption and we fully understand the grief of victims’ descendants. Combating genocide denial and the hatred it fuels are obviously necessary and praiseworthy goals. But we must stress that they cannot be achieved at the price of violating the constitutional principle of free expression. Turning historical fact into an unassailable dogma imposed by the state opens the door to dangerous excesses. This is precisely what the Turkish authorities do when they punish those who refer to the existence of the 1915 Armenian genocide.

What safeguards protect us from future excesses? Many genocides clamour for attention and if legislators “recognize” a dozen of them tomorrow, historical research will be turned into a minefield. Is genocide denial in the process of becoming “the new blasphemy,” [as the jurist Henri Leclerc said](#) ?

Contrary to another constitutional principle, the penalties envisaged by this law are neither necessary nor proportionate. Envisaging a prison sentence for abusing freedom of expression contravenes the European Convention on Human Rights, the principles of the Organization for Security and Cooperation in Europe and other international obligations.

There is another issue that justifies submitting this law to the Constitutional Council. As one of the Council’s previous presidents, Robert Badinter, [said](#) : “The French Parliament has not been empowered by the Constitution to determine historical fact.” Are parliamentarians really doing the job they are supposed to do when they try to issue judgments on world history? Does this comply with the principle of separation of powers?

Finally, we note the arguments of the parliamentarian who said judges should be allowed to distinguish between genocide denial that is a deliberate action bordering on incitement of hatred and genocide denial that simply stems from ignorance and propaganda. This is an important distinction. But these nuances have unfortunately not been reflected in a clear and precise way in the law.

How is a journalist, blogger or historian to decide when a comment begins to constitute the “outrageous denial or minimization” that is punishable under this law? A law’s clarity is a quality cherished by the Constitution because it makes its implementation predictable. If a judge is not limited to strict interpretation of the law, he has a degree of leeway bordering on the arbitrary, especially on an issue in which there could be considerable social pressure.

Just as democracy cannot be imposed at gunpoint, so an evolution in attitudes and national reconciliation cannot be imposed by a repressive and draconian law, especially one adopted in another country.

I thank you in advance for the attention you give to our request.

Sincerely,

Jean-François Julliard Reporters Without Borders secretary-general
