

**AMNESTY INTERNATIONAL****Public Statement**

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**Turkey: Article 301 is a threat to freedom of expression and must be repealed now!**

Amnesty International is extremely concerned at the frequent use of Article 301 of the Turkish Penal Code (TPC) to prosecute human rights defenders, journalists and other members of civil society peacefully expressing their dissenting opinion. Article 301, on the denigration of Turkishness, the Republic, and the foundation and institutions of the State, was introduced with the legislative reforms of 1 June 2005 and replaced Article 159 of the old penal code. Amnesty International repeatedly opposed the use of Article 159 to prosecute non-violent critical opinion and called on the Turkish authorities to abolish the article.

The organization is now concerned that the wide and vague terms of Article 301 mean that it too can be applied arbitrarily to criminalize a huge range of critical opinions. It states that:

1. *Public denigration of Turkishness, the Republic or the Grand National Assembly of Turkey shall be punishable by imprisonment of between six months and three years.*
2. *Public denigration of the Government of the Republic of Turkey, the judicial institutions of the State, the military or security structures shall be punishable by imprisonment of between six months and two years.*
3. *In cases where denigration of Turkishness is committed by a Turkish citizen in another country the punishment shall be increased by one third.*
4. *Expressions of thought intended to criticize shall not constitute a crime.*

The final qualification of the article in paragraph 4 suggests that expressions amounting to "criticism" rather than "public denigration" are not punishable. Amnesty International considers that the attempt to draw a distinction between criticism and denigration is highly problematic. The lack of legal certainty of the crime will lead to arbitrary interpretation by prosecutors and judges. Even the Turkish Minister of Justice himself, Cemil Cicek, has reportedly stated that "the whole issue comes down to how the laws are interpreted".

Amnesty International believes that Article 301 poses a direct threat to freedom of expression, as enshrined in Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Turkey is a State Party to both conventions and therefore the Turkish government has a legal obligation to uphold this freedom. Nevertheless Amnesty International receives a steady flow of cases opened against individuals under Article 301, for expressing a wide variety of opinions. Some of these cases are outlined below. The organization hopes that the international attention focused on the novelist Orhan Pamuk's case will also cast light on the cases of lesser known individuals prosecuted under the same legislation.

With regard to the concerns above, Amnesty International notes also the jurisprudence of the European Court of Human Rights, which states that the limits of acceptable criticism are broader as regards politicians than private individuals (*Lingens v Austria*, 1986); are wider with regard to government (*Castells v Spain*, 1992); and that the authorities of a democratic state must accept criticism even if provocative or insulting (*Ozgur Gundem v Turkey*, 2000). In addition, the law has to be accessible and formulated with precision sufficient for the citizen to regulate their conduct (*Sunday Times v the United Kingdom*, 1998). Furthermore, Amnesty International notes Recommendation 1589 (2003)1 of the Parliamentary Assembly of the Council of Europe, which urges states *inter alia* to "abolish legislation that makes journalistic freedom of expression subject to criminal prosecution"; "to stop immediately all forms of legal and economic harassment of dissenting media" and "to incorporate the case-law of the European Court of Human Rights in the field of freedom of expression into their domestic legislation and ensure the relevant training of judges".

**Cases opened under Article 301**

**Orhan Pamuk** is an internationally-known Turkish author whose novels, including *Snow* and *My Name is Red*, have been translated into many languages and have received wide critical acclaim. He is facing charges under Article 301 for comments he made during an interview he gave to a Swiss newspaper (Tages Anzeiger) on 5 February 2005. In the interview, Orhan Pamuk stated, "30,000 Kurds and a million Armenians were murdered. Hardly anyone dares mention it, so I do. And that's why I'm hated". The first hearing of his case will take place in the Sisli Court of First Instance No. 2 in Istanbul on 16 December 2005.

**Hrant Dink** is a journalist and the editor of the Armenian-language weekly newspaper *Agos*, which is published in Istanbul. On 7 October 2005, Hrant Dink was given a six-month suspended prison sentence by the Sisli Court of First Instance No. 2 in Istanbul for "denigrating Turkishness" in an article he wrote on Armenian identity. According to the prosecutor in the case, Hrant Dink had written his article with the intention of denigrating Turkish national identity. The court suspended the sentence as the journalist had no previous convictions, on condition that he does not repeat the offence. Hrant Dink is currently appealing the decision. However, he is also being prosecuted under Article 301 for another offence (see below). Should he be imprisoned, Amnesty International would consider him to be a prisoner of conscience.

**Sehmus Ulek** is the Vice-President of the Turkish human rights NGO Mazlum Der. On 28 April 2005 the Sanliurfa Court of First Instance No. 3 started hearing a case against him and **Hrant Dink**, under Article 159 of the old TPC (now Article 301) for speeches they made during a conference organized by Mazlum Der's Urfa branch on 14 December 2002 entitled "Global Security, Terror and Human Rights, Multi-culturalism, Minorities and Human Rights". Sehmus Ulek referred in his speech to the nation-building project of the Turkish Republic as it had affected, in particular, the southeastern area of the country; Hrant Dink discussed his own relationship to official conceptions of Turkish identity. The next hearing of the case will take place on 9 February 2006.

A trial began in May 2005 at the Beyoglu Court of First Instance No. 2 in Istanbul against publisher **Ragip Zarakolu** for his publication of a Turkish translation of a book by Dora Sakayan entitled *Experiences of an Armenian Doctor: Garabet Hacheryan's Izmir Journal (Bir Ermeni Doktorun Yasadıkları: Garabet Haceryan'ın İzmir Güncesi*; Istanbul: Belge 2005). Ragip Zarakolu had been charged under Article 159 of the TPC for "denigrating Turkishness and the security forces", and then under Article 301 after the new TPC came into effect. Another case had been opened against him in March, in which Ragip Zarakolu was charged with "denigrating the state and the republic" under Article 159 (also converted to Article 301) and "insulting Atatürk's memory" under Law No 5816 for publishing a Turkish translation of a book by George Jerjian entitled *The Truth Will Set Us Free: Armenians and Turks Reconciled (Gerçek bizi Ozgur Kalıcak*; Istanbul: Belge 2004).