

# HOLOCAUST DENIAL PUNISHED, NOT ARMENIAN GENOCIDE?

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It is now common knowledge that in 2005, Doğu Perinçek traveled to Switzerland, which has officially recognized the Armenian Genocide and passed a law criminalizing its denial, in order to issue declarations in Bern and Lausanne where he impugned the Armenian Genocide as a fabrication. In 2007, Perinçek was found guilty of deliberately violating national law and convicted by the court of Lausanne. Upon Perinçek's appeal, the European Court of Human Rights ruled in his favor in 2008 and found that the court of Lausanne had violated the freedom of expression principle enshrined in the European Convention of Human Rights, article 10.

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issue declarations in Bern and Lausanne where he impugned the Armenian Genocide as a fabrication. In 2007, Perinçek was found guilty of deliberately violating national law and convicted by the court of Lausanne. Upon Perinçek's appeal, the European Court of Human Rights ruled in his favor in 2008 and found that the court of Lausanne had violated the freedom of expression principle enshrined in the European Convention of Human Rights, article 10.

The Human Rights Association sent a letter to the Swiss Federal Office of Justice in 2014, demonstrating in detail how the denial of the Armenian Genocide incites hostility toward Armenians and imploring Switzerland to appeal the ECHR decision. Switzerland's subsequent appeal and request for retrial were accepted in June 2014.

The first hearing of the said retrial will take place on January 28, 2015.

The Human Rights Association from Turkey joined The Center for Truth Justice Memory and the Toronto-based International Institute for Genocide & Human Rights Studies to appeal to the ECHR in July to present a Third Party Opinion File, i.e., to be accepted as intervening party. The ECHR approved this request by the three human rights organizations.

We have explained in this file that the denial of the Armenian Genocide provokes ethnic hatred in Turkey and encourages anti-Armenian elements. Neither the ECHR ruling and nor the file we have presented as third party concerns itself with the historical reality of the 1915-1917 massacres or their precise legal definition. The crux of the issue lies in the fact that Perinçek's declarations are conducive to racism and discrimination. In this sense, the retrial in the Grand Chamber carries special significance as a precedent in addressing denial, minimization, and justification in a context outside of the Holocaust.

The ECHR decision had restricted denialism and discrimination to their effect on Swiss Armenians and disregarded Perinçek's leadership of the Talat Pasha Committee, as well as the fact that his refutations of the genocide as an international lie have direct bearing on the Armenians of Turkey even if they were pronounced in Lausanne. We have therefore argued in our file that Perinçek's declarations do not only concern the definition of events, but also commit the crime of discrimination; that the ruling must take into account Perinçek's position as a prominent politician from Turkey, the head of the Labor Party, and the leader of the Talat Pasha Committee—as well as that Committee's objectives and operations.

Yes, the act that was found criminal according to the Swiss law was committed on Swiss soil, but the Talat Pasha Committee and its leaders, including Perinçek, have been conducting operations in Turkey and targeting Turkish society. The recipient of their message—that those who listen to Armenians will be subject to intervention and retribution, even if they are at the other ends of the world—was Turkish society. The same Turkish society that is being targeted by this message has

been fueled by hostility toward Armenians and other non-Muslim peoples for generations. Anti-Armenian sentiments and thoughts have been exacerbated throughout Republican history by the constant dogma, mass media dissemination and educational indoctrination of the notion that the eradication of the Ottoman Armenian population and civilization is a lie.

Denialism does not simply consist of declarations along the lines of "no genocide has taken place." Denialism requires the justification of the irreversible and inexpiable eradication of a people: The notion that "it is Armenians who are responsible for the events," namely that Armenians had deserved eradication, that they had "stabbed Turks in the back" and collaborated with the enemy, has always been and is still perpetually reiterated in classrooms, university conferences, TV series and programs, and books.

Hostility toward Armenians is not confined to mere words but also takes lives. In this context of discrimination and ethnic hatred, Armenians were attacked and Hrant Dink, the founder and director of *Agos*, was the victim of an assassination whose perpetrators have yet to be brought to justice. Armenian private Sevag Şahin Balıkçı was shot dead in 2011 by another soldier in Batman, where he was on military duty, specifically on the day of April 24, the universal commemoration day marking the beginning of the Armenian Genocide. Court proceedings have met with significant public distrust, while the press has indicated that commanders pressured privates to testify that the incident was "an accident." Furthermore, the "Hodjali Protests" of February 27, 2012, which took place in the central Taksim square and featured as a speaker the Minister of Internal Affairs, displayed banners proclaiming "You Are All Armenians, You Are All Bastards." Within the span of two months from 2012 to 2013, the Samatya district of Istanbul, which is densely populated by Armenians, saw similar and successive attacks on elderly Armenian women—among them the murder victim Maritsa Küçük, whose bones were smashed and entire body relentlessly stabbed. And on February 23, 2014, banners saying "Long Live *Oğün Samasts*, Damned be *Hrant Dinks*" were displayed, unprohibited, in front of the newspaper *Agos*.

In sum, genocide denial is the chief, most fundamental basis for the state-sanctioned threat to existence under which Armenians continue to live in Turkey.

As two human rights associations that have witnessed first-hand and up close the provocation of ethnic hatred by anti-Armenian acts and declarations, we, the Human Rights Association and the Center for Truth Justice Memory, consider it our natural duty, as per our *raison d'être* and field of operation, to present our observations to the European Court of Human Rights in order to contribute to the making of a fair and just decision.

Finally, we insist yet again: Denial causes hatred and hatred kills. We defend the inalienability of the right to live in safety, unafraid of tomorrow, and hope that the European Court of Human Rights will, in the name of the universal law of human rights, obstruct discourses that incite acts in violation of this inalienable right.

## **Amal Clooney Takes on Armenian Case**

**Kamo Mailyan**, Toronto, 14 January 2015

Amal Clooney, a prominent international and human rights expert, George Clooney's wife, has taken on the protection of the Armenian side in the "case of Doğu Perinçek," The Telegraph reports.

Doğu Perinçek, a representative of the Left-wing Turkish Workers' Party, was found guilty by the Swiss court during a visit to Switzerland in 2008 for denying the fact of the Armenian Genocide 1915, perpetrated by the government of Ottoman Empire with a plan of exterminating the whole Armenian race (as it was later described by New York Times). During his visit to Switzerland, Doğu Perinçek called the Armenian Genocide 1915 "an international lie" and was fined by the Swiss court for denial.

Doğu Perinçek appealed the Swiss court's decision to the European Court of Human Rights (ECHR), which ruled that the Swiss court had violated the right of free expression.

The ECHR's ruling is challenged by the Armenian party. The case will be heard in Strasbourg by ECHR. The first hearing is scheduled on January 28.

Amal Clooney will work in a team with Geoffrey Robertson, who wrote a book called "An Inconvenient Genocide: Who Now Remembers the Armenians?" Amal Clooney has been involved in high profile international cases, some of which include representation of the Wikileaks' founder Julian Assange, as well as Yulia Timoshenko of Ukraine.

Among questions to be asked to the ECHR should be whether its decision is not a dual standard. If the ECHR determines and reaffirms that the Swiss Courts' decisions have limited the right of free expression, this will result in a strong case law and precedent that can be used to combat strict limitation on freedom of expression by the Turkish government through its Article 301, which limits not only recognition of the Armenian genocide by individuals inside Turkey but has even strictly controlled public opinion in relation to this matter (however, it cannot stop future criminalization and punishment for genocide denial).



In fact, Doğu Perinçek can be found guilty for perpetrating/an attempt of genocide through denial. The Genocide Watch establishes that the 8 stages of genocide, commonly adopted and used by scholars and historians, include: 1. Classification (of culture as "them and us"); 2. Symbolization (giving names to a national group such as the "Jews" or "Gypsies"); 3. Dehumanization (when one group denies the humanity of another); 4. Organization (planned by a party such as a state); 5. Polarization (extremists drive the groups apart); 6. Preparation (victims are identified based on their religious or ethnic identity); 7. Extermination (massacres start and turn into a mass killing legally called a "genocide"); and 8. DENIAL (which is a stage that always follows a genocide).

According to the classification above, Doğu Perinçek committed a genocide / genocidal act through

denial.

Another precedent the ECHR shall take into account is the fact that negating the Holocaust, a horrible crime against humanity and a genocide that followed the first genocide of the 20<sup>th</sup> century (the Armenian Genocide 1915) and took the lives of six million Jews, is a punishable offense in many countries. The ECHR should be prepared to answer the question what makes the Armenian case different. Is there any step out of the eight steps of genocide described above that does not exist in the Armenian case? Or, maybe because we are "ARMENIANS"?

Nowadays different pro-government groups in Turkey are discussing the possibility of granting diplomatic immunity to Doğu Perinçek, obviously understanding that this is a case that they are going to lose, and they will have to be prepared to protect their official.

Likewise, Turkey granted diplomatic immunity to Egemen Bagis, its EU Minister, to protect from potential liability stemming out of an investigation by Zurich prosecutors after genocide denial comments by Egemen Bagis at the World Economic Forum in Davos in January 2012, which were found as a violation by the anti-racism legislation of Switzerland.

The two cases are very similar, and a question the ECHR should be asked is how many more officials are going to be "saved" by Turkey through giving diplomatic immunity after a crime/violation is made, and whether it can be viewed as retrospective and be applied for the time when the real violation/crime was made.

## **CLOONEY GOES TO COURT FOR ARMENIA**

**Nora Koloyan-Keuhnelian**, Al-Ahram, Cairo, 5 February 2015

International human rights lawyer Amal Alamuddin Clooney and UK barrister Geoffrey Robertson appeared at the European Court of Human Rights (ECHR) in Strasbourg, France, last week. They were representing Armenia in the century-old dispute between Armenia and Turkey over the 1915 genocide committed by the Ottoman Turks against the Armenians, in which 1.5 million people died.

The case comes following an appeal by Switzerland to the ECHR after a previous ruling that the right of the leader of the Turkish Workers Party, Doğu Perinçek, to express his views had been violated by a Swiss court.

In 2007 Perinçek was sentenced to four months in prison after saying the Armenian Genocide was an "international lie" at a conference in Lausanne in 2005. Denial of the genocide is against Swiss law.

In 2008 Perinçek appealed to the ECHR, citing his right to freedom of expression, and in December 2013 the ECHR found in Perinçek's favour. Turkey and Armenia then became parties to the case, and the appeal against the 2013 decision began last week.

In her opening statement, Clooney said the judge's decision in the 2013 case was "simply wrong," but added that in bringing the appeal Armenia did not want to prohibit free speech. "Armenia is not here to argue against freedom of expression any more than Turkey is here to defend it. This court knows very well how disgraceful Turkey's record on freedom of expression is," she said.

As many observers have noted, Turkey's claim to defend free speech is ironic at best. In December, Turkish President Recep Tayyip Erdogan arrested opposition journalists and accused them of "forming a terrorist organisation" and "trying to seize control of the state."

Only last week, Turkish authorities arrested a former Miss Turkey for "insulting" Erdogan by quoting him in a poem published on social media. In September 2014, the US-based Human Rights Watch also said that Erdogan and the ruling Turkish Justice and Development Party were taking far-reaching steps to weaken the rule of law, control the media and clamp down on critics and protesters, stating that these "changes are really worrying."

Paparazzi who filled the courtroom for the appeal appeared to be more interested in the fact that one of the two lawyers is the wife of actor George Clooney than the case being heard.



#### **Lawyers Robertson and Clooney at the European Court of Human Rights in Strasbourg, France**

Aram Hamparian, executive director of the Armenian National Committee of America (ANCA), told Al-Ahram Weekly that the media storm in no way distracted from the importance of the case. "Armenians worldwide welcome Amal Clooney and Geoffrey Robertson's compelling presentation of the facts, the law and the morality of Armenia's case against the denial of the Armenian Genocide," he said.

Their stature as international human rights lawyers will help focus the world's attention on this still unpunished genocide, he said, bringing Turkey's denial campaign into the light of day and contributing to the growing international consensus that there must be resolution of the crime, Hamparian added.

Some observers say that the case may be understood to be about freedom of expression and that the judges may again decide against Switzerland, though this should in no way be seen as endorsing Turkey's views on the genocide.

Others say that denying the genocide should be understood as a hate crime under Swiss law in the same way that denying the Holocaust is a punishable offence in many countries. One judge at the court said that Perinçek's case remains strong because it turns on freedom of speech and not the genocide.

In his remarks to the court, Robertson described Perinçek as a "vexatious litigant pest" and he questioned why the court was "giving comfort to genocide deniers."

"What is really worrying are the vast errors of Chamber 2, which we urge the Grand Chamber to correct, in the fact that they promote the idea that the Holocaust is the only real genocide ... it is wrong to excuse or to minimise other mass murders on the grounds of racist religions because they had fewer victims or different methods of killing.

"What matters to Armenians, to Jews, to Bosnians and Cambodians, to Rwandan Tutsis and today to Yazidis is not the manner of their death or whether an international court has convicted the perpetrators, but the fact that they were targeted as unfit to live because they were Jews or Armenians or Yazidis.

"The reasoning in this judgement damages the vital human rights cause of genocide prevention ... That there is any doubt about the truth of the Armenian Genocide should not feature in its reasoning. It was not, as genocide deniers pretend, a tragedy. It was a crime, an international crime of genocide."

In the past many observers, including British prime minister Winston Churchill, described the events as the "Armenian Holocaust." Robertson recently published a book titled *An Inconvenient Genocide: Who Now Remembers the Armenians?* The book argues that the 1915 events constituted a crime against humanity, known today as genocide. Robertson will also be a speaker at an international conference marking the centenary of the Armenian Genocide in New York in March.

Diaspora Armenians are organizing events across the world to mark the centenary of the genocide in April. However, in what is being seen as a cynical move, Erdogan last month sent invitations to more than 100 international figures, including Armenian President Serj Sarkissian, asking them to participate in the centenary of the Battle of Gallipoli which will be marked in Turkey on the same day as the genocide centenary. The move is seen as an attempt to distract attention from the centenary of the genocide, which Turkey continues to deny.

Amal Alamuddin Clooney, 37, is the daughter of a Lebanese family. Her father is a Druze businessman who moved to London when Amal was a child, after the outbreak of the Lebanese Civil War. She has previously acted in other high-profile cases, including those involving former Libyan intelligence chief Abdallah Al-Senussi and WikiLeaks founder Julian Assange.

"The case of Doğu Perinçek shows that Turkey's walls of denial are crumbling and Ankara's obstruction of justice will be the next to fall," Hamparian told the Weekly.

