

## To Blame Turkey for something which in actuality is an internal Problem of the EU.

The recent prosecutions of Orhan Pamuk, Elif Şafak, Hrant Dink, and some other well known Turkish intellectuals for their writings and interviews that strain the limits of legal censorship and cultural policing, had caused a massive criticism within the EU member states.

Recently, the cases against Turkish novelists Mr. Orhan Pamuk and Ms. Elif Şafak were dismissed by the court on legal technicalities. The Turkish journalist of Armenian origin Mr. Hrant Dink was sentenced with a six-month imprisonment in October 2005; this sentence was suspended, however he faced a new set of charges on 25 September 2006 according to a newspaper article. All have been accused of "insulting Turkishness" according to Turkish penal code, which declares that insulting Turkey and/or its institutions is a criminal act.

The trials in Turkey do not only expose political and cultural divisions within Turkey over nationalism, secularism, the understanding of the past and the shape of the future, but they also highlight an ongoing and in most cases unreported political campaign by a wide range of organisations such as the OSCE, the new "Human Rights Committee of the United Nations", "the European Court of Human Rights", and pressure-groups such as "Article 19", "the International Press Institute (IPI)", and "Reporters Without Borders" to persuade European states to repeal defamation laws in their own criminal codes. The above mentioned international organizations appealed the three international bodies concerned with the freedom of expression such as

- "the UN special rapporteur",
- "the OSCE representative on freedom of the media", and
- "the Organisation of American States special rapporteur on freedom of expression"

and requested them in joint declarations issued in 1999 and 2002 to enforce the removal of the defamation laws from the legislations of all European States.

The OSCE conference in 2003 "Ending the Chilling Effect: Working to Repeal Criminal Libel and Insult Laws", brought specific recommendations of various experts for governments, officials, and legislative and judicial bodies.

The Group "Article 19" hosted a workshop for European Unions justice ministers to convince to repeal the "defamation laws".

The so called "defamation laws" supposedly protect the "honour and dignity" of public officials and representatives of foreign countries, as well as of state symbols and institutions. Europe has inherited these laws from the Roman empire. During the "Feudal Era", to commit "lèse majesté"<sup>1</sup> was to insult the state itself which was symbolized in the Person of the "Head of the State". Over the centuries, an adapted, secularised version of insult laws worked their way into the legislations of all the European states.

Cases brought under these laws were often prosecuted alongside those of treason since the accused citizen has violated "his responsibility" to protect his country(the state and the head of the state) and its image image. Because of this interpretation, most insult laws came to include a provision that increases the punishment's terms if the insult is occurred abroad. Mr. Orhan Pamuk's potential sentence was increased because he had made his remarks in Switzerland.

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<sup>1</sup> Wikipe says that "Lèse majesté" (French expression, from the Latin "Laesa maiestas" or "Laesae maiestatis" (crimen), (crime of) injury to the Majesty; in English, also "lese majesty" or "leze majesty") is the crime of violating majesty, an offense against the dignity of a reigning sovereign or against a state. This was however first classified in Ancient Rome, as a criminal offense against the dignity of the Roman republic. In time, as the Emperor became identified with the Roman state (the empire never formally became a monarchy), it was essentially applied to offenses against his person.

European Union member-states insist that these defamation laws are rarely, if ever, used in the modern era although they still keep them as a kind of "sword of Damocles" for the possibility of using them if they are needed.

The existence of these laws demonstrate another fundamental gap between the established fifteen member-states and the ten which joined in May 2004. Many of the latter (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) routinely use criminal defamation laws to prosecute freedom of speech. According to Miklos Haraszti, the OSCE representative on freedom of the media they are used for jailing the journalists in central Asia and in eastern Europe.

OSCE's 2005 Libel and Insult Laws matrix showing the present situation, indicates that fifteen persons in Estonia and sixty-five in Hungary served prison sentences for defamation, libel, or insult in 2002-04. As being the most restricted country in European Union, in Poland, the number of persons accused under defamation laws increased from 6,272 in 2002 to 7,218 in 2003.

A clearer parallel to the Turkish cases is that of the Polish satirist, and editor of the satirical weekly "Nie", Jerzy Urban who was prosecuted for writing an article about Pope John Paul II with the title "Walking Sado-Masochism" faced jail sentence from three months to three years.

It is quite peculiar however, that in contrast to Turkey, these cases do not receive almost any publicity, nor have they were elevated as a deterrent for these countries' EU membership. The EU's asking Turkey to play by rules seems hypocritical since its own members break the very same rules. In reality, the approach of some EU members including Germany gives us the impression that the EU has a little interest in seeing Turkey join the EU, and are simply using the freedom-of-speech cases to undermine Turkey's credentials.

It seems that it is not the number of deficiencies in Turkey's record on free speech and human rights but the content of what's being restricted, is the EU's concern with Turkey, then the novelists Orhan Pamuk and Elif Şafak and the journalist Hrant Dink or the Historian Dr. Halil Berktaş were being accused by the public prosecutor for stating that a "genocide on Armenians" had occurred, thus they were insulting the Turkishness.

I personally, as a speaker, would be prosecuted here in Poland if I, here openly, deny the so called "Genocide on Armenians".

But the Irving-Pamuk "contradiction", when more closely inspected, reveals the more fundamental dilemma of free speech in a democracy that Europe is having problems with. The free speech undermines the actions to forbid what is commonly accepted as abhorrent.

To protect the history from scrutiny without restricting the free speech should be the collective approach among all members of the OSCE.

We have to win the case altogether.

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