

**TURKEY**  
**-Between East & West-**  
**FREEDOM of EXPRESSION?**  
**JEIN!(\*)**

(\*) In German, “Ja” means “Yes” and “Nein” means “No”. “Jein” is a mixture of “yes and no”.

## **Contents**

<b>Preface.....</b>	<b>3</b>
<b>TURKEY TODAY.....</b>	<b>5</b>
<b>TPC 125/3 FILE (Defamation against a public official owing to his function) .....</b>	<b>9</b>
<b>TPC 215 FILE (Crime of Praising Crime and Criminal) .....</b>	<b>17</b>
<b>TPC 216 FILE (Crime of inciting a part of the population to breed hatred and hostility against another part, and denigration) .....</b>	<b>29</b>
<b>TPC 222 FILE (Crime of violating the Laws on Wearing Hat and Turkish Letters) .....</b>	<b>41</b>
<b>TPC 288 FILE (Crime of attempting to influence the outcome of an ongoing trial) .....</b>	<b>51</b>
<b>TPC 301 FILE (Insulting Turkishness, the Republic, the organs and institution of the State) .....</b>	<b>61</b>
<b>TPC 318 FILE (The crime of alienating the people from Military Service) .....</b>	<b>71</b>
<b>ATL 6 and 7/2 FILE (Crime of Disclosing and Publishing) .....</b>	<b>81</b>
<b>ATA/1 FILE (Crime of publicly defaming or cursing the memory of Ataturk) .....</b>	<b>93</b>

## **Preface:**

Drinking whisky is an indicator of wealth in Turkey. Some people used to fill empty whisky bottles with tea and place them to a visible point in their living rooms to show off. The progress in Turkey on freedom of expression reminds me of those “whis-tea” bottles. Outlook is fine, but it is not whisky indeed what’s in it. Despite the probable progress in its quality, it is still “tea”.

In the past -thanks to article 162 of the former Penal Code- one could be tried due to some ideas which they did not share. Author Muzaffer İlhan Erdost was sentenced due to Anti-Terror Law, because of some paragraphs in his book titled “Three Sivas”, which he had copied just to criticize.

Daily Cumhuriyet was banned because of republishing some documents of IBDA-C, an Islamist extremist group which totally contradicts with Cumhuriyet’s political line. But those documents, which the prosecutor would never be able to access, were used to collapse IBDA-C. Article 162 does not exist anymore in the new Penal Code, but many others still survive to prohibit freedom of expression.

EU process forced Turkey to take some steps for freedom of expression. The most important change was the new Penal Code in 2005. Despite its democratic outlook, the new code kept most of the old definitions of crime which could be used to prohibit freedom of expression. While some of them might be kept, because it was not their content but wrong implementation which made them a problem; some others were impossible to be corrected, should simply be thrown to the garbage. For example, articles to sentence “insulting a state official” (TPC 125), “incitement to commit a crime” (TPC 124), “praise of crimes and the offender” (TPC 215), “inciting the population to breed enmity or hatred or denigration” (TPC 216), “incitement to disobey the law” (TPC 217), “trying to influence the

judges or prosecutors” (277) have correct contents, but problems come out of wrong implementation. Articles 288 (Attempt to Influence Fair Trial), 301 (insulting Turkish nation, military or security), 318 (discouraging people from military service) are serious threats for freedom of expression and must be directly abolished.

On the other hand, the global paranoia after 9/11 has helped Turkish state a lot. The “Patriot Act” in USA and similar practices in Britain and other western countries gave the state officials the opportunity to say: “At last they could understand what we suffer for long years!”. In 2006, the Anti-Terror law was amended. Articles threatening freedom of expression were added again.

With this small book, we try to draw you a simple picture of freedom of expression in Turkey today, not in words or sentences only, but with the help of live testimonies of victims or witnesses in the DVD attached. We hope it works.

With best wishes,

Zafer Gökdemir – Lawyer

# TURKEY TODAY

Turkey, a land of 777.000 km<sup>2</sup>, population over 72 millions...

A bridge between East and West, a bridge between Christian world and Islam.

Not too young in democracy. Multi-parties system since 1946 but with regular military interventions... in 1960, 71, 80, 97 -a post-modern one- and an attempt in 2007 an electronic try which gave no result. At the moment some former high rank generals are being tried for attempting to a military takeover. But the actual constitution is still the one which was drawn up by five generals in 1982.

The Kurdish armed struggle by guerrilla organization PKK which started in 1984 has been the main excuse of prohibitions on freedoms. Another important taboo is the official denial of some historical events, mainly the Armenian massacre in 1915.

Turkey is one of the most long-standing candidates for EU membership, since its first application was in 1961, but still waiting at the door. One obstacle in its path is the “Cyprus problem”.

A moderate Islamic party, the Justice and Development party (AKP) has been governing since 2002... if we can actually use the verb “govern” for any elected government in Turkey!

At the beginning the AKP and Prime Minister Erdogan seemed to be making serious efforts to change Turkey. But THE STATE resisted as usual and he had to take many steps back. One should always keep in mind that there is a sharp distinction between government and state in Turkey, if we are to understand developments and solve the puzzle of what is going on. This is particularly true when considering freedom of expression issues.

In 2004 we conducted a research to bring together the articles in Turkish legislation, governmental decrees and administrative statements which restrict freedom of expression. I'm afraid to say that the product is a book that is 2300 pages long! Anti-democratic practices have tangled the whole of our society in a spider's web and their influence is felt at all levels.

It is a discouraging fact that most judges feel they must act like prosecutors, prosecutors like policemen, and policemen like militants of a totalitarian party. According to a very interesting research made by TESEV (Turkish Foundation of Social and Economic Researches), most of the prosecutors and judges feel themselves responsible to protect the State, not the "State of Law" and they think that when something threatens the existence of the state, all the freedoms may be limited or prohibited.

The response to demonstrations shows clearly why, in spite of all the recent reforms, it is so difficult for us to feel that things have really changed: the constitution and the law on demonstrations and public meetings start with the same phrase: "Everybody has the right to assembly and peacefully demonstrate, without prior permission." But the ordinary Turkish citizen still thinks that they need the local governor to authorize their demonstration... and in practice, they are right, because almost every day they witness on their TV screens violent police attacks on public protests, no matter how peaceful they may be. TRT, the State TV, says: "Police intervened to halt an unpermitted demonstration."

No, we are fully justified in saying that "THE STATE" resists democratization.

But what is "THE STATE?"

## **ABOUT THE STATE AND THE GOVERNMENT**

In Turkey the STATE is a sort of oligarchy of military and civilian bureaucracy, which has become very well organized, particularly since the military coup in 1980.

In the middle, stands the military that has a word to say in every issue and always the last word. For long years, the State Security Council was at the top, which was an advisory council whose “advices” have never been rejected by any government since its establishment in 1961. But the SSC has forced governments to resign from time to time and always succeeded. It is still an effective council where the government and military bargain and try to achieve consensus.

Then comes the top administration of the judicial wing – the high court judges. They started to play the triggering role after the military had to take some steps back following the great loss on 2007 general elections. The Constitutional Court gave the strangest decision about the minimum number of present deputies at the parliament in order to start the Presidential election discussions as 367. Then came the case opened by the chief prosecutor of the Appeal Court against the governing Ak Party with demand of closure. The most actual attach from the judiciary is the decision of Sincan first instant court, that some DTP (Pro Kurdish party) deputies in the parliament should be questioned by the prosecutor, discarding their immunity.

And then comes YÖK, the Higher Education Council, a central authority which controls all universities, on which sits a representative appointed by the military (always a serving or retired soldier).

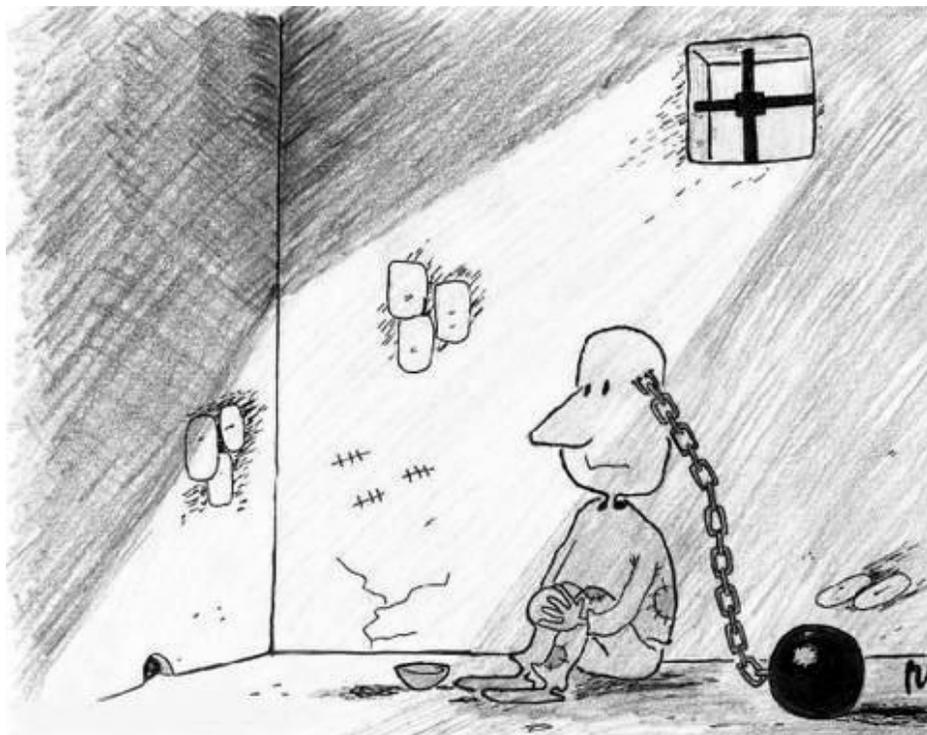
And then the RTÜK High Council for Radio and TV, which controls broadcasting, and has the right to stop transmissions temporarily or permanently, on which sits also a representative appointed by the military (always a serving or retired soldier).

The Turkish media does its best, but it is largely owned by huge conglomerates that depend on the goodwill of the state for their commercial well-being. The media will not take the lead in calling for freedom of expression, even for its own right to freedom of information, if it harms the economic interests of the monopoly holding and its relations with the state.

One of the most important factors in Turkey is the Kurdish problem. Although Kurds were persuaded to fight alongside Turks for independence of the country after the First World War, the territory where they lived through centuries was divided into four at the Treaty of Lausanne. Their disappointment continued with the change in Turkish State policy to one of assimilation in 1925. The state managed to repress several revolts in the east with blood and fire, the state's fear for its own sovereignty persists. The state banned Kurdish language and culture, and denied even the existence of Kurds. It was a crime to use the words Kurd and Kurdistan, and towards the end of his life our most celebrated humorist Aziz Nesin was repeatedly tried at the SSC for this breaking this taboo.

When the Kurdistan Workers' Party, the PKK, started armed activities in 1984 it was the start of an undeclared war – so called “low intensity armed conflict” – that still goes on- cost the lives of nearly 40,000 on both sides, including civilians. The army burned and emptied 3,600 villages – draining the sea to kill the fish - and four million Kurdish farmers were forcibly displaced. Now they live in the outskirts of the big cities in conditions of real hardship. Diyarbakir's population before this war was 450,000 – now it is 1.5 million.

There has been an unexpected progress this year, by opening a new TV channel at the official broadcast (TRT-6) and both the prime minister and the President speak of a “historical chance” to solve this problem, but the content is still unknown.



# TPC 125/3

## FILE

**Defamation against a public official owing to his function (!?)**

## **The story of TPC 125/3**

Statue 765 former Turkish Penal Code distinguished the crimes of defamation and cursing. Different articles defined those two crimes. The new Penal Code that entered into force in June 2005 removed the distinction merging the two in one article. Defamation and cursing had been described in detail in articles 480 and 490 of the former law. The new law included these offences under the heading of ‘Crimes against Dignity’ as ‘defamation’ under articles 125 and 131.

The part of the present law, which causes problems for freedom of expression, “insulting a public official due to his public position or the service he provides”, was in a completely different section in the former law. 1926-dated old Penal Code defined this specific form of insult under the section of ‘Crimes against people with an official status’. Articles 266, 267, 268 269 and 207 described in detail the crime of insult to a public servant. Depending on the official’s position in the hierarchy, penalties increased; insult not owing to the public status or function was punished under the same articles as well. In addition, the demand of the accused party for the accusers to prove the offence was not permitted. “Don’t touch my official” mentality that was inherited from the Ottomans could be seen in the TPC.

A small residue of it was left in 2005 dated Turkish Penal Code, which caused a bigger impact than its size. Paragraph 3 of the new TPC article 125 on ‘defamation’ states that if the offence of defamation is committed against a public official or a person performing a public service and the allegation is connected with his public status or the public service he provides; due to expression, changing, efforts for expansion of one’s religious, political, social, philosophical beliefs, thoughts and opinions, one’s compliance with the rules and prohibitions of his religion; and through mentioning the

holly values of the religion the person is a member of, the minimum length of the penalty cannot be less than one year. Thus the law carries heavier penalties for such specific cases of defamation.

A complaint is needed to launch an investigation on the simple form of the crime of defamation while in the specific cases mentioned in article 125/3 public prosecutor is supposed to launch an investigation on spotting such crime. Paragraph 5 defines the cases where a board of officials is targeted.

### **What is TPC 125/3 good for?**



Those who make the laws in Turkey have always favoured the State organs and the individuals who represent or facilitate them. Both the judiciary and the government often expressed that the new law was not a production of that mentality. However, it can be traced in the new law. The new TPC 125/3 is a product of that mentality of ‘a sacred State’. Although shortened and narrowed it is still used against freedom of expression with the help of the implementers.

Recent cases against cartoonist have been filed under TPC 125/3. Some even led to condemnations. Cases of 125/3 show us better how the article is put in use:

### Some cases:



British collage artist Michael Dickinson exhibited his work in March 2006 in The Peace Tent in Kadıköy Ferry port. One of his works showed PM Recep Tayyip Erdoğan as a dog while the former US President Bush pins a badge on him. Police officers in civilian suit saw the piece and arrested Erkan Kara, a member of the Peace and Justice Coalition who had organised the event.

Kara was charged with ‘defamation to Prime Minister in his absence owing to his position and duty’ with a possible prison sentence of 3 years. Michael Dickinson applied to Kadıköy Prosecution Office and reported himself as responsible from the work. An investigation was filed but consequently closed down.



Dickinson prepared a second collage work showing the Prime Minister as a dog and held it up during the trial of Erkan Kara. Dickinson was then charged under TPC article 125/3.



A cartoonist Muhammet Şengöz was charged under article 125/3 for his cartoon ‘who is next?’ published in ‘Özgür Kocaeli’ local newspaper. The cartoon depicted Kocaeli mayor İbrahim

Karaosmanođlu standing behind a citizen whose pants are down and says "who is next mayor" referring to Mayor's billboard ads where he lists the services he provided while a citizen asks "what is next ". The court gave Őengöz 11 months and 20 days prison sentence and commuted it to a fine of 7.000 Lira.

The case was filed on the complaint of the district administrator of MuŐ's Bulanık town, Aytaç Akgöl. Akgöl complained about an article Mađden wrote in Aktüel magazine's issue 30. The name of the article is "(Silly) Woman eats other woman".

Mađden was condemned for the following part of her article "...*One of the people I met there... Administrator of Yüksekova is a complete "nutcase". One can hate the people "outside" so much, alienating them, excluding them... them!...; someone said to us: "You know the administrator you met yesterday? She is Kurds too. She is a Kurd from Erzurum."* As a Turk as white as snow I could not believe it. Naive screams of "impossible" etc... Then an experience brother among us said: *Don't be surprised: traitor of Kurds is a nasty one!*". Magden was found guilty of defamation Akgöl and was given one year and two months prison sentence. Her sentence was then postponed due to her clear criminal record.



A cartoonist of "Yeni Asya" newspaper İbrahim Özdebağak was charged with "insult through publication" under article 125 of TPC over a cartoon published on 19 March 2008. Bakırköy Chief Public Prosecution's indictment claimed that the cartoon published on the front page was an insult to the chief prosecutor of High Court Abdurrahman Yalçınkaya. The cartoon showed an owl on a branch wearing a gown and screaming "Huguk! Huguk! Huguk!

Huguk!" (Hukuk means law in Turkish.) The cartoon criticised the closure case against AKP. Özdabak was acquitted.

Students of Kocaeli University Özgürcan Ortaköy, Deniz Biçer, Barış Önder, Özgün İncedere, Can Turan, Çilem Koçak, Yaşar Seğmen and Mehmet Göktepe were put on trial charged with defamation for protesting the head of Universities Higher Board (YOK) Yusuf Ziya Özcan who visited the University on 4 March 2008. Students marched to AKP city office carrying banners and posters, chanted slogans *"Trial is not enough hang us, AKP get out universities are ours, Buy Tayyib Get Yusuf Ziya free."* Trial continues.

Lawyer Omer Kavili is charged with "insulting a board of public officials" TPC 125/3. Kavili was the lawyer of Cemil Altınbilek at a trial at Kadıköy Criminal Court of First Instance Num.1 on 24 October 2007. Kavili argued that his defence rights were violated at the hearing. The indictment claimed that Kavili marched to the platform making threatening gestures, shouted at the judges and left the courtroom with other lawyers. The indictment stated Kavili insulted the judges by saying things such as *"...You started the hearing before 10:00 am, and while getting the names of lawyers who were present at court you told my colleague to stand up. How dare you get my colleague stand up? In that case ask Mr Prosecutor too to stand up!"*

*"Turkish Republic is ruled by laws."*

*"...We want our words to be written in the records correctly since we noticed that our words are recorded differently."*

*"...Hearing is handled in violation of rules and laws. Laws are being walked over. We are leaving the hearing since the rules of trial have been violated and we consider it as a violation of the right to have a fair trial."*

## Conclusion

Limits of criticism should be extended when artistic and political freedom of expression is used against the government, bureaucrats or the judiciary. Control over those who hold the power and a pluralist democracy can only function in that way. These people should be closely monitored by the media and the public, and not only by the judiciary. Limits of freedom of expression of writers and cartoonist would be extended to accommodate a degree of exaggeration or provocation as long as supported by objective reasoning. These are all requirements of a democratic society. However as examples show, article 125/3 of TPC is one of the articles that damage both the democracy and the control. If we take into account the wish of implementers to remain on the side of the power, it is used as an example of intolerance. For these reasons, TPC 125/3 should stop defining defamation to public officials as a special case of defamation with heavier penalties and public officials too ought to file a complaint if they want some action to be investigated.



## Related Law articles

### **Defamation**

#### **The new TPC 125**

(1) A person who makes an allegation of an act or concrete fact about another person's honour, reputation, dignity or prestige shall be sentenced to imprisonment for a term of three months to two years or a judicial fine will be imposed. In order to punish the insults in the absence of the victim the act should have been witnessed by at least three persons.

(2) If the act is committed by means of a voiced, written or visual message addressing the victim, the perpetrator shall be sentenced to the penalties set out above.

(3) If the offence of defamation is committed:

a) Against a public official or a person performing a public service and the allegation is connected with his public status or the public service he provides

b) due to expression, changing, efforts for expansion of one's religious, political, social, philosophical beliefs, thoughts and opinions, one's compliance with the rules and prohibitions of his religion,

c) Through mentioning the holy values of the religion the person is a member of, the minimum length of the penalty cannot be less than one year.

(4) Where the defamation is committed explicitly, the penalty shall be increased by one sixth; if it is committed through the press and media, then the penalty shall be increased by one third.

(5) If the defamation targets a board of public officials owing to their duty it shall be considered as committed against the members of the board.

# TPC 215

## FILE

Crime (!) of Praising Crime and Criminal



## **The story of TPC 215**

Laws criminalising the act of praising crime and criminal have always found a place in penal codes all through the history of the Republic. 1926-dated former Turkish Penal Code Num. 765 covered it under article 312, which gathered various crimes in one article. This old article 312 carried sentences for the crimes of ‘praising crime and criminal’, ‘inciting people to disobey the laws’, ‘inciting people to breed hatred and hostility’ and ‘denigrating a section of the population’.

The new Penal Code passed through the Parliament on 26 September 2004 and entered into force on 1 June 2005. The new Penal Code formulated the crimes (defined in the former article 312) under different articles. ‘Praising crime and criminal’ was arranged under article 215. The most important change was that along with ‘praising a committed crime’, ‘praising someone owing to a crime the person has committed’ was made criminal too. This new crime has caused serious violations of freedom of expression and it still does. In the former TPC article 312/1, it was not clear if the crime, which the accused praises, had to be a committed crime or not. The new law clarified it as ‘praising a committed crime’. The length of prison sentences was amended too. There is no lower limit and the upper limit is 2 years in the new version.

## **What is TPC 215 good for?**

The crime of “praising crime and criminal” replaced the crime of “openly praising crime” and the new version entered into our lives in 2005 despite warnings that the new Penal Code would turn into a nightmare. Added with the interventionist attitude of the judiciary

against freedoms, sentences were given that were difficult to justify in the logic of law.

If an expression of opinion contains “praise” or not is subjective, hence this law turned upside down one of the most fundamental principles of penal law, ‘principle of lawfulness’. The article, which could be interpreted in a democratic way in countries with established democracies, was turned into an arm against freedom of expression in Turkey.

Some examples of this article in use against the dissidents are enough to reveal the dangers:

### **Drama of a mother**



Ertuğrul Karakaya was graduated from Darüşşafaka High School and sat university entrance exams. In 1975, he enrolled to the Engineering Faculty of Middle Eastern Technical University (METU). Karakaya became an executive member of METU’s Student Council (SC) an organisation, which had been set up by the university’s board of trustees, legal and respected. Let us hear the rest from his mother Ayşe Karakaya:

*"It was his first year. They said that the classes could not begin due to some boycotts. Ertuğrul was waiting in Ankara for the classes to begin. One day my husband came and said*

*'We are going to Ankara, get ready'. He had a long face but I did not understand why? I found out when we arrived in Ankara. It turned out that a gendarme shot at my son from a distance of three steps, at the gates of the campus. He shot him on his back. They told us 'your son was a terrorist; he was captured dead in a shootout'. Would a man in an armed fight be shot on the back? Whatever; we put my son in a coffin and brought him home to Salihli. There may have been 30 thousand people there when we buried him. They said 'demand compensation you will win' I refused. Could there be a price for my Ertuğrul's life?"*

Thirty thousand people who attended Ertuğrul's funeral in the summer of 1977 chanted *"Revolutionary martyrs are with us, "Ertuğrul lives in our struggle, struggle continues, revolutionary youth is on your path"*. Ertugrul's mother Ayşe, who is blind, has kept visiting her son's graveyard at every 8 June since then. His friends have gathered at his grave and chanted slogans every year: *"Ertuğrul lives with us, struggle continues!"*

Salihli Public Prosecutor Seyfullah Öselmiş filed a case in 2006 against Karakaya family and his friends who have commemorated him at every 8 June for 28 years 2006. The indictment argued that mother Ayşe, nephews Nurşen and Ayşen, brother Erol and 17 others violated article 215 of TCK (praising crime and criminal).

## **I am not going to buy my freedom with money**



Mahmut Alınak

Lawyer Mahmut Alınak was elected in 1987 as a SHP (Social Democratic Party) MP for Kars. In 1991 elections he entered Parliament as a Şırnak MP of HEP (People's Labour Party)-SHP election alliance set up to get around the election barrage. The following day he was attacked in the Parliament for telling the General Assembly *“two young men from the same family lost their lives in the war, one was a soldier and the other was a guerrilla. Let us end this feud”*. Alınak became a member of DEP (Democracy Party) when HEP was closed down by the Court of Constitution. Alınak was prosecuted in March 1994 along with DEP President Hatip Dicle and MPs Leyla Zana, Orhan Doğan, Ahmet Türk, Sırrı Sakık. In December 1994, the MPs were given a total of 89 years and six months prison sentence for *“membership of an illegal organisation”*. Mahmut Alınak and Sırrı Sakık were released since the time they had been in prison had already served their term.

Alınak faced two cases for asking the council to re-name some streets and parks in Kars after three people: Deniz Gezmiş was a revolutionary youth leader of 68 generation who was executed on 6 May 1972. Vedat Aydın was Diyarbakır city chair of HEP, he was murdered. Musa Anter was a Kurdish intellectual whose murder by state forces was admitted in Susurluk report. Alınak was also charged for demanding the improvement in Abdullah Ocalan's prison conditions. He was charged with *“praising crime and criminal”* (TPC 215). Kars Criminal Court of Peace condemned him in both cases. The court commuted the prison sentences to fines but Alınak refused to pay. Alınak said *“Going to jail is a duty in Turkey. I have decided with my free will to go to jail in order to protest unlawfulness, expose antidemocratic measures against freedom of expression and to*

*contribute to democracy."* Alınak turned himself in on 12 august 2008 and stayed in prison for 50 days. Alınak became the first person who went to jail under article 215 of TPC.



Musa Anter stayed in prison for "making propaganda for Kurdistan". He was shot dead in Diyarbakır in 1992. Deniz Gezmiş and his friends were found guilty of violating the Constitution in THKO trial and were executed in 1972. It is criminal to ask the authorities to name streets after any of them.



Following the military takeover in 1960, Prime Minister of the time Adnan Menderes and President Celal Bayar were found guilty of violating the Constitution and were condemned to capital punishment. Menderes was hanged while Bayar was given life sentence due to old age. İzmir airport is named after Menderes; university in Manisa is named after Bayar.

## Deniz, Mahir, Ulaş



### The Federation of 78s'

30 people, all members of The Federation of Revolutionary '78 Generation held a

gathering on 6 May 2007 in Tokat's Kızıldere village to commemorate the revolutionary youth leaders of 1968 Deniz Gezmiş, Mahir Çayan and Ulaş Bardakçı. A case was filed in Ankara High Criminal Court Num.11 charging all with "praising crime and criminal in line with the objectives of a terrorist organisation'. The court first condemned each to six months prison sentence on 11 September 2008, then postponed the announcing of the judgement about 26 people. That meant that if these 26 people were to take part in a similar commemoration in the following five years their current sentences would be executed as well.

The Court decision showed that chanting slogans like '*Deniz, Mahir, Ulaş Fight until Victory*' during a press gathering, and commemorating the leaders of Peoples' Liberation Front of Turkey (THKO) 36 years later, which is still "a terrorist organisation" in the records of the security forces decades after its dissolution, were violations of article 215 of TPC.

## Cases of Mr Ocalan

From 2005 onwards under the new TPC people were charged with "praising crime and criminal" for referring to PKK leader Abdullah Ocalan as 'the leader of Kurdish People' or as a 'Mr'. First, some Kurdish politicians were charged for referring to Ocalan as 'Mr Öcalan', leading to some condemnations. Even the Prime Minister Recep Tayyip Erdoğan was investigated under TPC 215 for saying, "*Mr Ocalan is not in prison for his ideas but for the lives he has*

*taken, whereas I was in prison because of my ideas. There is a huge difference between us”* during a radio program broadcasted in Australia. The investigation did not lead to a case. This incident exposed the obsession of the judiciary with the term “Mr Ocalan” since PM Erdoğan explicitly accused Ocalan as a murderer in his speech yet could not escape investigation merely for referring him as a “Mr.” That obsession led to the increase of “Mr Ocalan” cases in 2006 and 2007. According to the numbers given by Minister of Justice Mehmet Ali Şahin when he answered a question in the Parliament: In 2006 and 2007 a total of 7884 people have stood trial for referring Abdullah Ocalan as “Mr.” 949 people have received sentences, 773 were acquitted, and over 6 thousand trials continue. The biggest civil disobedience action in Turkey was launched on 23 May 2008 in Diyarbakır. On the forty-eighth day of the campaign 36 thousand people had reported crime about themselves, declaring they used the term 'Mr Öcalan', 459 were arrested and investigations have been filed against 1350.

## **Conclusion**

A mother commemorating her son at his graveyard, members of '78 generation who commemorated Deniz Gezmiş, Mahir Çayan and Ulaş Bardakçı the revolutionary youth leaders of 68 who have become legendary figures, and again a politician who wanted some streets to be named after Deniz Gezmiş, Vedat Aydın, Musa Anter, and finally thousands of people who said ‘Mr Ocalan’... These are few examples out of thousands of more.

That is what article TPC 215 has been good for so far. In other words, it gives prosecutors an arbitrary power to file investigations and judges an arbitrary power to condemn. For all these reasons, article 215, which directly threatens freedom of expression and has become a wild tool of punishment in the hands of Turkish judiciary, should be completely removed from the Penal Law.

## TPC 215 victims at first thought:

Hasan Bayar (Journalist)  
Ali Gürbüz (Journalist)  
Birgül Özbarış (Journalist)  
Ahmet Sami Belek (Journalist)  
Şahin Bayar (Journalist)  
Ayşe Karakaya and 19 people  
Aydın Budak (Politician)  
Enis Mazhar Taylan (Journalist)  
Mehmet Mehdi Zana (Journalist)  
Hüseyin Beyaz (Journalist)

Cemal Doğan (Journalist)  
Hasan Sönmez (Journalist)  
İlhan Yeşil (Journalist)  
Ethem Dinçer (Journalist)  
Hüseyin Bektaşoğlu (Politician)  
Mahmut Alınak (Politician)  
Hüseyin Aykol (Journalist)  
Ali Turgay (Journalist)  
Ethem Açıkalmın (Journalist)  
Mustafa Bağcıçek (Journalist)



## What have these people done?

### **Aydın Budak**

Cizre Mayor Aydın Budak stands trial over a speech he made at Newroz celebrations. He is charged with “praising crime and criminal” and “inciting hatred and hostility among the people”. Cizre prosecution office’s indictment stated that Budak said in Kurdish “Hello İmralı, Have a happy Newroz” celebrating Ocalan’s Newroz.

### **Hasan Bayar, Ali Gürbüz, Birgül Özbarış**

A case has been opened over an article written by Birgül Özbarış and published in “Ülkede Özgür Gündem” daily paper; article was entitled “Kurds warned the state about Öcalan’s death fast: we will go on the death fast too.”

### **Enis Mazhar Taylan, Mehmet Mehdi Zana**

The case is against Enis Mazhar Tayman, a reporter of “Tempo” magazine over an interview he made with the former mayor of Diyarbakır Mehdi Zana. Prosecution argued that Kurds and Turks were mentioned as separate entities and the South East region was referred as Kurdistan in the interview.

### **Ethem Dincer**

The case is over a demonstration held by a group of 60 people, members of 78’ generation Solidarity Association in Mersin. The group demanded the trial of those responsible for Kızıldere massacre. The chair Ethem Dinçer was charged over the slogans “Kızıldere is not an end, the fight goes on. Murderers will give account”.

### **Ahmet Sami Belek, Şahin Bayar**

The case is over news reports published in Evrensel newspaper on 18 November 2005. The reports are entitled “If Susurluk Could be Solved Şemdinli Would not have Happened”, “People Saw it Off” and “The Press Release on Şemdinli by DİSK, Hak-İŞ, Kesk, Memur Sen, TMMOB, TTB and Turkish Dentists Union”.

**Ethem Açıkalın, Hüseyin Beyaz,  
Mustafa Bağcıççek, Cemal Doğan,  
Hasan Sönmez, İlhan Yeşil**

The case is against the executive members of Adana Human Rights Association (HRA) over their statement demanding the prosecution of those in charge of the military operation against F type prison resistance.

**Mahmut Alınak**

Kars city chair of DTP Mahmut Alınak stands trial over an application he made to Kars Council asking them to rename some streets after Deniz Gezmiş, Musa Anter and Vedat Aydın.

Mahmut Alınak was also charged for his speech he made on 4 June 2007 at a panel discussion organised by Caucasus University Student Union.

Mahmut Alınak talked to ROJ TV on 26 June 2007 and said, "As long as the crux in İmralı works, as long as Öcalan is on the crux, that prison is there..., " Alınak is charged with praising Abdullah Öcalan."

**Hüseyin Aykol, Ali Turgay**

The license owner and responsible editor of "YedinciGün" weekly Ali Turgay and editor in chief Hüseyin Aykol are on trial over an article published on 10-16 November 2007 issue, where Abdullah Öcalan was referred as "Kurdish Popular Leader." Aykol and Turgay are charged with "praising crime and criminal, making propaganda for a terrorist organisation and publishing its material."

**Hüseyin Bektaşoğlu**

The case is against DTP Erzincan city chair Hüseyin Bektaşoğlu over him saying "Mr Öcalan" in a speech during 21 March 2007 Newruz celebrations.

## Related Laws

### Former TPC 312

A person who:

Publicly praises a crime or says publicly that he views a crime positively, or instigates people to break the law shall be punished with a prison sentence from 6 months for up to 2 years.

Publicly incites a part of the people to breed hatred or hostility against another part of the people on grounds of social class, race, religion, religious order or region in a way dangerous for public order shall be punished with a prison sentence of between 1 year and 3 years.

Insults a part of the people in a humiliating manner or in a way to damage human dignity, shall be punished in the same way as in paragraph one.

If the offence stated in paragraph 3 is committed by the means or in the ways stated in article 311 the sentence shall be doubled.

### Praising crime and criminal

**The new TPC 215.** A person explicitly praising a committed crime or a person owing to the crime he has committed shall be imposed a penalty of imprisonment for a term of up to two years.

### Common article

**The new TPC 218.** If the offences described in the above articles are committed by the means of press and media, the sentence shall be increased by half.



# **TPC 216**

## **FILE**

**Crime(?!) of inciting a part of the population to breed hatred and hostility against another part, and denigration**

## **The Story of TPC article 216**

1926-dated old Penal Code Num.765 had article 312 which defined numerous crimes in the same article. That article included the crimes of ‘praising crime and criminal’, ‘inciting people to break the laws’, ‘inciting a part of the population to breed hatred and hostility against another part’ and ‘denigrating a part of the population’.

Cases under former TPC article 312 were heard by Primary Criminal Courts. In 1981, 12 September Junta regime amended the article and split it into two. First paragraph of the law punished ‘praising crime’ and the second paragraph punished ‘inciting a part of the population to breed hatred and hostility against another part, or denigrating’. Military regime transferred the cases under the second paragraph of article 312 to State Security Courts, and removed the part of the paragraph two, which said that the act had to be “committed in a way dangerous for public order”. It also stated that if the incitement were committed “in a way dangerous for public order” sentence would be increased by one third.

Convicts of article 312/2 were barred from being members to any associations, they had to leave if they were already members. (For example Akın Birdal had to leave the position of Human Rights Association Presidency, Murat Bozlak had to leave HADEP (People’s Democracy Party) Presidency). Convicts under article 312/2 could not become members or executives of political parties, candidates for MP, Mayor, or Council member. They had to quit if they were in any of those positions. (For example R. Tayyip Erdoğan, Şükrü Karatepe)

In 2002, a mini reform package including articles 312 and 159 of TPC was approved by the Parliament. Coalition partners ANAP

(Motherland Party) and DSP (Democratic Left Party) voted for the reforms along with the opposition while the third partner of the coalition government MHP (Nationalist Movement Party) voted against it. The old article carried both prison sentence and fine while the new article imposed prison sentence only. The new article reintroduced the part “the act committed in a way dangerous for public order” and removed the part, which carried heavier sentences for when the act was committed in a dangerous way. It was a return to the version before 12 September 1980 military takeover.

In June 2005, the new TPC Num.5237 entered into force. Former article 312 was regulated in article 216 of the new law. The new law stated that “danger” was an element of the crime and not “a possibility of danger” as it used to be in the former law. However, that emphasis did not work in practice. Regarding the crime defined in the second paragraph of article 216, what became important was whether the act of “denigration” was committed explicitly or not. The second paragraph of article 216 differed from the third paragraph of 312. The new law stated when it would be crime to denigrate a section of the society (when done on the grounds of social class, race, religion, religious order, gender or regional difference). Although paragraph 3 of article 312 had carried a prison sentence of ‘6 months to 2 years’, paragraph 2 of article 216 carried a prison sentence of 6 months to 1 year, reducing the upper limit of the prison sentence. The part of former TPC article 312/3 that mentioned ‘damaging human dignity’ was removed.

## What is TPC article 216 good for?



The new version of the article contains three types of crime and defines each in a different paragraph:

- 1- Inciting a part of the population to breed hatred and hostility against another part,
- 2- Openly denigrating a part of the population
- 3- Openly denigrating the religious values of a part of the population

Crime of inciting people to breed hatred and hostility or denigrating is defined as “crimes of endangerment” in the Penal Law. That means the act of incitement (causing danger) constitutes a crime.

This article is different from the crimes of ‘insulting Turkishness, Republic, institutions and organs of the state’ (TPC 301), and ‘alienating people from military service’ (TPC 318) which destroy freedom of expression.

Yes, TPC 216 was designed to limit freedom of expression, but international standards were taken into consideration. Although it has shortcomings, still the latest version of the law is the best of all versions so far in terms of freedoms and democracy.

Let us see the problems of TPC 216 regarding freedom of expression and the ways article 216 has been interpreted by judiciary:

## Flaws of article 216

### Lawfulness

We have noted above that the criterion of “committing the crime in a way which might be dangerous” was removed by 12 September 1980 military regime. It was made a reason for heavier sentences, and then was reintroduced in 2002. That was a positive development but first the prosecutors and then the judges and the High Court interpreted the ambiguity of that term (violation of the principle of lawfulness) in way against freedom of expression and that opened the way for a very wide range of application for the article.

In 2005, amendments clarified the elements of crime at least in the first paragraph. American Federal High Court’s Notion of ‘close and open danger’ was borrowed and the danger itself was made an element of crime instead of the possibility of danger. In the first paragraph, the elements of crime were defined clearly in a way to eliminate any hesitation on the part of judges. However, the second paragraph was written as “*A person who publicly denigrates a part of the population on grounds of social class, race, religion, religious order, gender or regional difference shall be punished with a prison sentence of 6 months to 1 year*”. The criterion of “open and close danger” was not mentioned at all, the abstractness hence the violation of the principle of lawfulness persisted. Moreover the third paragraph which defined the crime of denigrating religious values, added “in case the act is likely to disrupt public peace” as an element of crime, preserving the previous abstract definition.

## **Two laws for one crime**

If we leave aside the possibility that a part of the population may find a public statement normal while another part may find it denigrating, TPC 216/3 (Denigrating religious values) was already defined in paragraph 3/b of article 125 of the same law as reason for heavier sentences for the crime of defamation. Article 125 paragraph 3/b states *“If the offence of defamation is committed due to expression, changing, efforts for expansion of one’s religious, political, social, philosophical beliefs, thoughts and opinions, one’s compliance with the rules and prohibitions of his religion the minimum length of the penalty cannot be less than one year.”* Therefore, there was no sense in introducing a secondary protection for religious values in article 216.

## **Protected sections of the society**

The new TPC article 216 states “a part of the population having different characteristics regarding social class, race, religion, religious order or region” mentioning the groups who are under the protection of law. This article does not protect homosexuals, atheist or Communist in its present form. The second paragraph of the article says “gender” but it is obvious that it only denotes to men and women. The term of “sexual orientation” should be added to the law. Moreover, ‘political or philosophical views’ should be added to both paragraphs of the article. The article in its present form is below international standards and against the principle of equality in the Constitution. Besides the phrase “or a similar situation” should be added to the law just as The European Human Rights Convention and UN Political and Civil Rights Convention to which Turkey is a party, since a new status may come into being.

## Problems in implementation

Problems caused by TPC 216 regarding freedom of expression stem from the way it is implemented. A prosecutor first needs to see if there is incitement to hatred and hostility in a written article or speech. If the prosecutor believes that there is then he/she needs to see if it disrupted the public order or not. Of course, a judge needs to rule depending on the same criterion. However, in the implementation this article has been used against dissidents, and without taking into consideration the criterion. The article is used for punishing those who do not agree with the system instead of protecting groups in the society and preventing confrontation. Two examples will clarify how the article 216 is interpreted by judiciary:

**1-** Işın Erşen a columnist of a local newspaper “Bolu Express” gave a list of DTP MPs and Mayors in his column in October 2007, and issued a call to "murder one for every soldier who is killed". Erşen wrote in his column,

*"Great Turkish Nation, you have your enemy in front of you. All of them will become the target of 'civilian patriotic' elements from now on, as enemies of Turks unless they declare 'PKK is a separatist terrorist organisation and its members are traitors'. It is necessary to clean off few viruses and then say "from now on, one from us five from you, do you want to stop or carry on?" instead of chasing about terrorist in the mountains setting up ambushes. Patriotic elements that can say that and do that will appear surely. Public desire is intensely in that direction. Now it has become the wish of the majority of the population that for each security officer who becomes Martha, one of them should share the same fate. It is time if not too late to cut off the limb with gangrene."*

Erşen's action was considered as “freedom of expression” by the prosecutor and the proceedings were dropped. Maybe the prosecutor did not see any close and open danger and that was why he decided so. However if that action did not lead to a case, then why did the action below did?

**2-** Editor of Radio “Dünya” (World) Mehmet Arslan broadcasted a Kurdish song “Keçe Kurdan” in November 2007. Translation of the lyrics is below:

*"Girls get up make your voice heard by the world  
Tough things too wait for you up there  
Since women are at the front and they study  
Now that pen has replaced the sword*

*Girls we want you to come to the light with us  
Girls we want you to come with us to fight  
Yes, we are Kurdish girls  
We are lionesses and the hope of men  
We are the roses of Kurds  
We rebelled because of the ignorant*

*Raise your head up Kurdish girl  
My heart melts away  
Where is home where is freedom  
Where is the mother of us, orphans."*

Arslan was charged under article 216 of TPC for broadcasting this song. Turkish pop star Ajda Pekkan sang the same song on stage with Kurdish musician Aynur Doğan which was welcomed as a gesture of tolerance.

These two examples show clearly that as long as judges and prosecutors do not support democracy, it cannot be established in this country and the freedom of expression cannot be fully used no matter how good the laws are.

## TPC 216 victims at first thought

Baskın Oran (Academician)

İbrahim Özden Kaboğlu (Academician)

Hasip Kaplan (Politician)

Osman Baydemir (Politician)

Ethem Dinçer (Activist)

Aydın Budak (Politician)

Hilmi Aydoğdu (Politician)

Hamza Türkmən (Writer)

Mehmet Pamak (Writer)

Ömer Aybar (Journalist)

Gülcan Bahtiyar (Journalist)

Leyla Zana (Politician)

Murat Yitik (Politician)

Mehmet Nuri Güneş (Politician)

Temel Demirer (Writer)

Erol Karaarslan (Publisher)

Mehmet Arslan (Radio Broadcaster)

Deniz Tursun (Journalist)



## What have these people done?

### **Baskın Oran, İbrahim Özden Kaboğlu**

Prime Ministry Human Rights Advisory Board (BİHDK) members Professor İbrahim Kaboğlu and Professor Baskın Oran stood trial over “The Minority Report” prepared by a the Sub-Commission on Minority Rights. The report had suggested a supra identity for all groups living in Turkey.

### **Osman Baydemir**

Diyarbakır Mayor was charged for what he told a magazine “Tempo” about the isolation of PKK leader Abdullah Ocalan.

### **Hasip Kaplan**

Lawyer Hasip Kaplan stood trial for his comments at a TV program “Alternative” on Flash TV channel.

### **Hilmi Aydoğdu**

'DTP Diyarbakır city chairman was arrested and charged for saying 'We consider an attack on Kirkuk as an attack on Diyarbakır'. Hilmi Aydoğdu was charged with openly inciting people to breed hatred and hostility. Prosecution wanted him to be imprisoned for up to 3 years.

### **Leyla Zana, Murat Yitik, Mehmet Nuri Güneş**

Former DEP MP Leyla Zana was charged for saying “set up a Kurdish federal regional system” at a DTP rally in Iğdır. Zana is charged under TPC article 216 “inciting hatred and hostility among the people” and was asked to be imprisoned for between 1 and 3 years. DTP Iğdır city chair Murat Yikit and former DTP city chair Mehmet Nuri Güneş who attended the same rally were charged with “violating the elections law” (prison sentence between 6 months and 1 year).

### **Temel Demirer**

A case was filed against writer Temel Demirer over saying “There was an Armenian Massacre in this country” as he addressed a crowd protesting the murder of Hrant Dink, on 26 January 2007 in Ankara. Ankara Security Centre filed the complaint. Demirer is charged with “inciting hatred and hostility among the people” and “insulting Turkish Republic”.

**Erol Karaaslan**

The owner of Kuzey (North) Publishing House Erol Karaaslan stood trial for publishing Richard Dawkins's book "The God Delusion." Karaaslan was charged with "inciting hatred and hostility among the people and denigration" under article 216 of TPC. Ali Bukağılı is the complainant. The indictment wrote "Author Richard Dawkins insulted Allah, our religion, Christianity and Judaism. Publication of the book should be stopped and distribution should be banned. Those responsible should be punished under TPC 216/1 and TPC 216/3."

**Mehmet Arslan**

Editor of a local radio station "Radio Dünya" was charged for the lyrics of a Kurdish song "Kece Kurdan" broadcasted on 13.11.2007 and the lyrics of another Kurdish song "Mihemedo" by Şivan Perwer on 16 October 2007. Arslan was charged with inciting hatred and hostility among the people".

**Ethem Dinçer**

Mersin Public Prosecutor opened this case against Ethem Dinçer, the president of Mersin '78 Generation Association, over a press statement to get the file of 1977 Mayday Massacre reopened. Dinçer is charged with "inciting hatred and hostility among the people" and "insulting Turkish Republic government and its organs and institutions".

**Aydın Budak**

Cizre mayor Aydın Budak stands trial over a speech he made at Newroz celebrations. He is charged with "inciting hatred and hostility among the people" and "praising crime and criminal". Cizre prosecution office's indictment argued that Budak said "Hello İmralı, Happy Newroz" celebrating Ocalan's Newroz. The indictment also noted that an examination of the whole text of his speech, considering Budak's position and the crowd he addressed, it was not possible to view his words in the limits of freedom of expression.

**Hamza Türkmen,  
Mehmet Pamak**

The case is against the writer of a book "Kemalism, Secularism and Martyrdom" and its publisher Hamza Türkmen. They are charged with "inciting hatred and hostility among the people" under article 216 of TPC.

## Related Laws

### **Former TPC article 312**

A person who:

Publicly praises a crime or says publicly that he views a crime positively, or instigates people to break the law shall be punished with a prison sentence from 6 months for up to 2 years.

Publicly incites a part of the people to breed hatred or hostility against another part of the people on grounds of social class, race, religion, religious order or region in a way dangerous for public order shall be punished with a prison sentence of between 1 year and 3 years.

Insults a part of the people in a humiliating manner or in a way to damage human dignity, shall be punished in the same way as in paragraph one.

If the offence stated in paragraph 3 is committed by the means or in the ways stated in article 311 the sentence shall be doubled.

### **Inciting people to breed hatred and hostility, or denigrating**

#### **The new TPC article 216**

A person who openly incites a part of the population to breed hatred and hostility against another part based on social class, race, religion, sect or regional difference in a manner which might constitute a clear and imminent danger to public order, shall be sentenced to imprisonment for a term of one to three years.

A person who openly denigrates a part of the population on grounds of social class, race, religion, sect, gender or regional differences shall be sentenced to imprisonment for a term of six months to one year.

A person who openly denigrates the religious values of a part of the population shall be sentenced to imprisonment for a term of six months to one year in case the act is likely to disrupt public peace.

### **Common article**

**The new TPC 218.** If the offences described in the above articles are committed by the means of press and media, the punishment shall be increased by half.



# **TPC 222**

## **FILE**

**Crime of violating the Laws on Wearing Hat and Turkish Letters (!?)**

## **The story of TPC article 222**

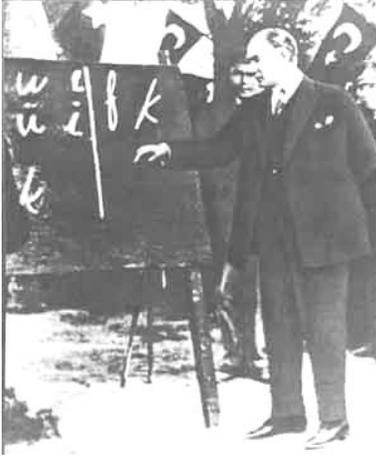
In the former Turkish Penal Code, there was a distinction between crimes and minor offences. Former TPC article 526 under the title of minor offences punished the violations of “Law on Wearing Hats” (numbered 671 and dated 25 November 1925) and “The Law on the Introduction and the Use of Turkish Letters” (numbered 1353 and dated 1 November 1928). The first paragraph of former TPC 526 punished disobeying orders of the authorities and the second paragraph punished the actions against the above mentioned laws. It said that those who acted against the mentioned laws would be punished with a prison sentence of two to six months or a fine of one thousand to five thousand liras.

The new TPC did not distinguish crimes and minor offences. The first draft of TPC defined the act as crime under article 222, which had been a minor offence in the former law; and increased the penalty. The draft carried prison sentence from 3 months to one year. However, it was withdrawn as the opposition objected to it. The new TPC 222 carried the same prison sentences of two to six months while the fines were removed. This was the only change regarding this crime during 2005 amendments.

It again referred to various laws by their names. Hence, abstract crime definitions continued to be contrary to the principles of “lawfulness” and “specificity”.

## What is TPC 222 good for?

Transformation from the Ottoman state to Turkish Republic took place suddenly and through a takeover from above as exactly Mustafa



Kemal Ataturk planned it to be. That takeover anticipated serious political, social and economic changes.

In the founding period of the Republic amendments were made regarding wearing of hats, dress codes, letters and alphabet, international measurements, removal of epithets and titles, surnames etc. Sentences were imposed on acts against those amendments, which were made 80 years ago; however, the sentences have been preserved until today.

Naturally, life itself violated the strict rules introduced 80 years ago to create a new society. Most of those rules became inapplicable and the penal law articles on the violations of those now outdated rules became void. However, judiciary began using these laws as an instrument of punishing people arbitrarily. Thus, rules introduced 80 years ago to set up a new state were used to introduce new bans.

That is what is problematic about TPC 222 in terms of freedom of expression. Eighty years old Law on the Introduction and Use of Turkish Letters becomes a pretext to ban Kurdish. Article two of the Law on Turkish Letters says *“From the date that this law is published it is compulsory to admit and proceed the documents written in Turkish letters in all public offices and institutions, in all companies, societies and private institutions”* hence banning the use of any letters which do not exist in Turkish alphabet. That has become obsolete today. However, 1928 dated Law on Turkish Letters has become the

rising star of the judiciary who insisted in using this law. Judiciary tried and even punished people for sending the Prime Minister a letter in Kurdish, making a defence statement in Kurdish in a court, using the letter ‘W’ in the column of a newspaper, publishing stories in Kurdish, sending a postcard in Kurdish etc. These examples make one think that the purpose of the judiciary is not distributing justice but punishing people who think, speak and write in a different language. Letters W, Q, X of the Kurdish alphabet have become reasons for trials while Akbank’s ‘Axess’ credit card, ‘Taxim Hill’ hotel, ‘BiletX’ ticket agency never faced any charges under article 222. According to article 1 of the Law on Wearing Hat, all MPs and public officials have to wear hats. TPC 22 punishes those who do not. However, the public servants or officials who do not wear hats have never been prosecuted!

This utterly subjective attitude of the judiciary is purely political. Preservation of these two outdated laws added with the mentality of denial of Kurdish language and culture gave way to the prosecution of people for using Kurdish under article 222 of TPC.

Ban on “the ethnic language” goes back to 1920s in Turkey and it was consolidated after 1980 military coup with the slogan “Speak Turkish Speak a lot”. A short background of the ban on language in Turkey would demonstrate the approach of the judiciary more clearly:

## **How was the ban on language introduced in Turkey, and how it works today?**

### **The Ban came with 12 September regime**

12 September 1980 military coup was culminated in the 1982 Constitution. Article 26 (*No language banned by the law can be used*



*in the expression or dissemination of ideas*) and article 28 (*No language banned by the law can be used in publishing*) were embodied in the Law Num 2932 which was made by the junta one year later. Law 2932 on “*The use of Languages other than Turkish*” has become a concrete example of how

trying to protect the “indivisibility of a nation” in the context of languages would cripple democracies. Article 2 of the law banned Kurdish: “*Expressing and disseminating ideas in a language other than the first official languages of the states recognised by Turkish state is banned* (At the time Kurdish was the second official language in Iraq.); article 3 said “*the mother tongue of the citizens of Turkish State is Turkish*” giving the impression that millions lived in Turkey without knowing their mother tongue. The law was a genius way of banning a language without even pronouncing its name. The existence of the nation was denied at the time, naturally the existence of its language was denied too. This law was abolished in 1991. Articles 26 and 28 of the Constitution were removed in October 2001. However, article 42 reflecting the mentality that the mother tongue of all citizens was Turkish (*No other language other than Turkish, can be taught to Turkish citizens as mother tongue in schools and all education institutions*) is still in force.

### **You cannot name your kid as you like**

Article 16 of the Statue 1587 on Registration of Births (... *However,..., names improper for our national culture ... cannot be used*) prevented parents from naming their children as they wanted. Article 16 of this 1972 dated law was amended under the sixth EU harmonisation package introduced in June 2003. The new article said “*but immoral names or names which would offend the public cannot be used*”. However, despite the fact that it does not exist in the EU harmonisation laws, and thanks to the Reforms Monitoring Group’s

imposing the condition of “*being written as in Turkish alphabet*”, and under a directive sent by the Home Ministry to the Governors, picking names which contain letters such as Q, W and X are still prevented.

## **Language ban in Politics**

Article 43/3 of the present Law on Political Parties reads “*Candidate nominees cannot make nationwide, region wide or profession wide promises outside the decisions of their party program, the decisions of the executive boards of their party and the decisions of their party conference and they cannot use any other language than Turkish in speaking or in writing.*” Article 81 of the same law reads “*They cannot use any language other than Turkish in writing or publishing their constitution and program, in their congresses, in outdoor or indoor meetings, rallies, in propaganda; they cannot use or distribute placards, banners, albums, audio or visual boards, pamphlets or declarations in any language other than Turkish; they cannot remain apathetic if others do such actions. However it is possible to get a party’s constitutions or program translated into foreign languages except the ones banned by the law.*” This law shows that the ban on languages prevail in political activities.

## **Ban Language is against International Laws, because:**

The constitution, Penal Code, the Law on Political Parties and the Law on Turkish Letters still harbour language ban in various forms. Article 90/5 of the Constitution states clearly that when the provisions of an International Covenant is in conflict with the national law, the international law overrules. Turkey is a state party to both the Treaty of Lausanne and UN Covenant of Political and Civil Rights. Article 39 of the Lausanne Treaty and article 27 of UN Covenant of Political and Civil Rights state that all ethnic groups have the right to use their language in all fields:

## **UN Covenant on Political and Civil Rights**

### **Protection of minorities**

**Article 27-** In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

## **Treaty of Lausanne**

**Article 39/4-**No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings.

**Article 39/5-** Notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts.

## **Conclusion**

Even the Lausanne Treaty, one of the most eminent international treaties in Turkey includes freedom of languages while the ban on language in both political and social life continues (especially for Kurdish). Such bans that have become obsolete are still being implemented by the persistent attitude of prosecutors and judges, damaging democracy and freedoms.

Preservation of 80 years old rules as dogmas gives the judiciary an open check to punish whomever they wish. Moreover, the judiciary who lack the tradition of examining the conflict or crime in depth instead make use of punishment.

Thus, the Law on Wearing Hat, the Law on the Introduction and use of Turkish Letters and TPC 222, which punishes the actions against those laws, should be removed in order to conform to the obligations of international laws as well as a contemporary life and pluralism.

## TPC 222 victims at first thought:

Mahmut Alnak (Politician)  
Mehdi Tanrikulu (Publisher)  
Kıyasettin Aslan (Trade  
Unionist)  
Osman Baydemir (Politician)

Abdullah Demirbaş (Politician)  
Zülfü Atlı (Local Government)  
Mehmet Denli (Local Government)  
Zülküf Karatekin (Politician)



## What have they done?

### **Mehdi Tanrikulu**

Owner of Tevn Publishers Tanrikulu uses Kurdish while he is in court on trial. Istanbul Public prosecutor Nazmi Okumuş reported crime about him. He was charged with violating the law on Turkish Letters for a letter he sent to the Prosecutors and Judges Higher Board. The letter was in Kurdish. The judge ruled “it has been decided to punish the accused with the upper limit of the sentence owing to his insistence in committing crime and past convictions.” Tanrikulu was given 6 months prison sentence, which was reduced to five months. The same judge also reported crime about him to Istanbul Prosecution office over an application letter Alınak submitted to the court. It was in Kurdish.

### **Mahmut Alınak**

Former DEP MP and DTP’s Kars city chair Alınak was charged with violating the Law on Turkish Letters for writing a letter in Kurdish to Prime Minister Erdoğan about the problems of the city. This case was listed among 141 reasons in the indictment of the High Court prosecution office, which demanded the closure of DTP.

### **Osman Baydemir, Abdullah Demirbaş, Zülfü Atlı, Mehmet Denli**

Diyarbakır mayor Baydemir, Diyarbakır Council’s head of Administration of Accountancy Department Zülfü Atlı, Head of Culture and Tourism Department Mehmet Denli and former mayor of Sur, Abdullah Demirbaş are charged with “violating the law on the introduction and the use of Turkish Letters” and “misconduct in office” over a story book in Turkish and Kurdish and a leaflet for organ donors.

### **Kıyasettin Aslan**

The case was filed against Kıyasettin Aslan in Kilis Criminal Court of Peace, Siirt City representative of Office Workers Union, over him using the letter “w” in his articles published in Huduteli and Kent newspapers. Aslan was asked to be imprisoned for between 1 and 3 years. The indictment claimed that Aslan violated the Law on the Use of Turkish Letters in his articles about Newroz 2007 celebrations.

### **Zülküf Karatekin**

Diyarbakır Kayapınar Mayor Zülküf Karatekin was charged under TPC 222 because of billboard posters celebrating a festival in Turkish and Kurdish ‘Sersala we piroz be’ (Have a happy Festival).

## **Related laws**

### **Hats and Turkish Letters**

#### **TPC Article 222**

A person who violates the bans set by The Law on Wearing Hat dated 25.11.1925 and numbered 671, and Law on the Introduction and Use of Turkish Letters dated 1.11.1928 and numbered 1353 shall be punished with prison sentence for a term of two months to six months.

### **Law on Wearing Hat**

#### **Article 1**

Members of Turkish Grand National Assembly and all officials, civil servants and employees of general and local governments have to wear the hat acquired by the Turkish Nation. The common headwear of Turkish nation is hat and violating acts are banned.

### **Law on the Introduction and Use of Turkish Letters**

#### **Article 2**

From the date that this law is published, it is compulsory to admit and proceed the documents written in Turkish letters in all public offices and institutions, in all companies, societies and private institutions.



# **TPC 288**

## **FILE**

**Crime(?) of attempting to influence  
the outcome of an ongoing trial**

## **The story of TPC article 288**

AKP government prepared a draft Penal Law in 2002, in the framework of “legal reforms” promised to the European Union. The draft was made public in 2003.

The new Penal Code Num.5237 was approved by Turkish Grand National Assembly on 26 September 2004 and entered into force on 1 June 2005. As public opinion focused on the debate ‘whether adultery should be criminal or not’ a series of articles ‘insulting Turkishness, Republic, the institutions and the organs of the state’ (TPC 301), ‘alienating the people from military service’ (TPC 318), ‘Attempting to influence the outcome of a trial’ (TPC 288) etc. have been passed silently. The new TPC article 288 introduced sentences for ‘Attempting to influence the outcome of an ongoing trial’ and carried heavier sentences if the crime was committed by the means of press and media. A “Law amending Turkish Penal Code” was passed three days before the new TPC entered into force, and removed the heavier sentences for “when the crime is committed by the means of press and media”.

***““Media merit special protection... because of its vital role of ‘public watchdog’” (EHRC, Castells – Spain case)***

TPC 288 served to the prosecution of many journalists, condemnation of some, imprisoning of one (Hacı Boğatekin) and to laying the basis for the murder of one (Hrant Dink).

People have been prosecuted under article 288 for commenting on a trial, which they thought, was against freedom of expression, reporting an unlawful arrest, or reporting covered up facts etc.

## What is TPC 288 good for?

### Independent Judiciary

The preamble explains the reason of introduction of the article as providing the right to have a fair trial and protecting the independence of the courts. However if we look at the essence of the article and its implementation, it is clear that it serves to protecting the courts, a flawed legal system and the system as a whole against those who demand fair trials. Many crimes from corruption to murder can be covered up under the shield of this article. Let us look at the defects of the article 288:

The article aims to protect the independence of the judiciary, yet the major source of threat for judicial independence is the official hierarchy. Ordinary individuals do not have the power to impair courts' independence, but the officials representing the state organs do. It is not plausible to think that the journalist, writers or cartoonists following, commenting or criticising an investigation or a case or a court ruling can harm the independence of a court. On the contrary, criticisms on legal proceedings contribute to the publicity of the trials. Informing the public on judicial processes encourages judiciary to be attentive, hence contributing to the production of objective rulings, which would convince most people

Let us have a look at few recent examples:

Three people who bombed a bookshop in Şemdinli in November 2005 were caught by local people while trying to run away. The Commander of the Land Forces of the time Yaşar Büyükanıt said about the suspects *"I know them they are good boys"*, prosecutor Ferhat Sarıkaya who attempted to prosecute Büyükanıt was banned from profession; Büyükanıt became the

chief of staff after that and said “*Şemdinli case is a legal scandal, keeping them on remand is a scandal*”, no legal steps taken against him.

Another example is the confessions of a retired Brigadier General Altay Tokat who revealed that when he was in charge he got his soldiers to place bombs around the houses of judges and prosecutors: “*We got few bombs exploded near their houses to keep them in line*”, no legal steps taken against him. CHP leader Deniz Baykal stated before the ruling of the Supreme Court about “367” quorum, “*If the Court of Constitution rules that '367 is not necessary' that would lead Turkey to a dangerous confrontation*”. A Brigadier General visited the retired Generals who were in prison as suspects of Ergenekon case. The general explained his visit as a humanitarian visit but made it public that it was an official visit, sending a message to the judiciary... These are the real examples of ‘Influencing the judiciary’...

## **Judges**

On the other hand, presuming that judges are weak persons who can be influenced by criticism and comments, and that they can make judgements which they do not in fact believe, can become a subject matter of another legal monster, the article 301. For article 301 of TPC carries sentences for those who insult judiciary.

## **Basic Principles of Law**

TPC 288 is also turning the universal principles of criminal law upside down. There is a common offence in all penal law systems: ‘attempt to commit crime’. Attempting to commit an act deemed criminal by law is an offence in itself. For example, murder is a crime, and attempting to murder is a crime too. Lawmakers did not make ‘influencing the judiciary’ a crime, while ‘attempting to influence the judiciary’ is a crime. Under the principle of ‘no crime without law’, if ‘influencing the judiciary’ is not a crime, how can ‘attempting to influence the judiciary’ be a crime? So if

someone proves in a case that she/he did not attempt to influence the outcome of a trial but did actually influence it, would she/he be acquitted? There is one explanation for that: The lawmaker did not define ‘influencing the judiciary’ as a crime because they presumed that it was not possible to ‘influence the judiciary’. However, they missed the universal legal rules.

## **UN Political and Civil Rights Covenant, EHRC**

Article 288 of TPC should be assessed in the light of international legal norms.

In 2004, Turkey has taken a huge step towards the implementation and interpretation of international legal norms by adding to article 90 of the Constitution a section which stated *“In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.”* In addition, article 27 of Vienna Convention on the Law of Treaties states *“A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”* Thus, both the Constitution and the international norms say that the state organs have to fulfil the international obligations of the state.

Turkey ratified European Human Rights Convention (EHRC) on 18 May 1954. EHRC had been agreed on by the members of European Council in order collectively secure the rights declared in the Universal Human Rights Declaration. Turkey recognised the right to individual application to European Human Rights Court on 28 January 1987. Article 10 of EHRC just like the article 19 of UN Political and Civil Rights Covenant (UNPCRC), signed in 2000 and ratified in 2003, protects the right of ‘freedom of expression’. Last paragraphs of these two similar articles set the criterion of limiting this right.

According to the international agreements, restriction on the right of freedom of expression is possible for protecting the rights of other individuals or the collective interests of a society. However, such restrictions should not lead to consequences, which prevent the use of the right. Moreover, the restrictions have to be legal; they should only serve the purposes stated in article 19 of (UNPCRC) or article 10 of EHRC. Again, the restrictions on freedom of expression have to be examined closely, and be based on plausible reasons whereas this rule in Turkish Penal Code is not ‘necessary’, ‘reasonable’ or ‘proportionate’. Although the preamble of the article states its purpose as “...*saving the judiciary from the influence of ‘gate holders’ of public opinion and allow them to work in peace*”, the article is in violation of article 19 of UNPCRC and article 10 of EHRC. The article is open to interpretation and it especially gives way to the prosecution of journalists. If control over mass media begins damaging freedom of expression, then the freedom of expression of everyone gets restricted.

## **Conclusion**

There are unbreakable ties between the judicial system and politics. Since the court rulings are based on laws and the laws are made by politicians, each law is a product of a political preference. Discretion of judges can be viewed similarly. When their preferences are not liked, controversy breaks out. That is perfectly normal. For example if a condemnation is made in the trial of Bülent Ersoy, article 318 of TPC (alienating the people from military service) will be criticised on the basis of the ruling of Bakırköy Criminal Court of First Instance. Judge decisions are not sacred. Judges too can make mistakes and their decisions affect the whole society, hence their decisions should be freely criticised as long as it does not insult them. The lawmakers should produce laws freeing judicial organs from the sphere of influence of the executive, the army and the other state organs, instead of punishing criticism.

## TPC 288 victims at first thought:

Erol Katırcıođlu (Journalist)  
Murat Belge (Journalist)  
Haluk Şahin (Journalist)  
İsmet Berkan (Journalist)  
Hasan Cemal (Journalist)  
Murat Yetkin (Journalist)  
Hrant Dink (Journalist)  
Arat Dink (Journalist)  
Serkis Seropyan (Journalist)  
Aydın Engin (Journalist)  
Faruk Çakır (Journalist)  
Perihan Mađden (Journalist)

Saadet Becerikli (HRA executive)  
Mehmet Şat (Teachers Union executive)  
Sedat Özevin (Lawyer)  
Ahmet Sevim (Mazlumder - HR)  
Bengi Yıldız (DTP Batman MP)  
Tahir Elçi (Lawyer)  
Mustafa Kemal Çelik (Journalist)  
Mehmet Reşat Yiğiz (Journalist)  
Aytekin Dal (Journalist)  
Mehmet Sadık Aksoy (Journalist)  
Hacı Boğatekin (Journalist)  
Cumali Badur (Journalist)



## What have these people done?

### **Faruk akır**

Journalist Faruk akır was charged for claiming that Alparslan Arslan who staged an armed attack on Administrative High Court members in May 2006, was a member of "a coalition of Kemalists, left and nationalist" and that some retired military officers incited the attack. Faruk akır was asked to be imprisoned for 6.5 years.

### **Murat Yetkin**

Journalist Murat Yetkin of Radikal newspaper stands trial for his comment entitled "Turkey will be put on trial in Orhan Pamuk case".

### **Hrant Dink, Arat Dink, Sarkis Seropyan, Aydın Engin**

A case was opened against the chief editor of Agos newspaper Hrant Dink, and the responsible editors Arat Dink and Sarkis Seropyan over the report entitled "Will this criminal clause provide democracy" about Hrant Dink's conviction over his article published in Agos on 7 October 2005. Aydın Engin also commented on the conviction in his article "Judiciary should be touched" published in his column.

### **Tahir Elçi**

Kaymaz family's lawyer Tahir Elçi is charged with "attempting to influence the outcome of a trial" for a press statement he made. Ahmet Kaymaz and his 12 year old son Uğur were killed by police in Mardin Kızıltepe. Elçi said "we have not seen a fair attitude from the judges. We want an unbiased trial we want justice."

### **Mustafa Kemal elik, Mehmet Reşat Yiğiz, Aytekin Dal, Mehmet Sadık Aksoy**

Four journalist were charged for reporting the killing of three people in Batman's Kozluk district including 11 years old Mizgin Özbek as security forces opened fire on a private car. The journalists were charged with "insulting military forces" and "attempting to influence the outcome of an ongoing trial".

**Perihan Mağden**

Magden was charged over her article entitled “Who is Pınar Selek” in “Yeni Atuel” magazine. Mağden criticised the eight year long trial about an explosion in a historical market place, where Selek is charged.

**Serkis Seropyan, Aris Nalçı**

After the condemnation of former editor of weekly Agos Arat Dink and licence owner Serkis Seropyan under article 301 of TPC, Şişli Public Prosecution filed a case over an article entitled “wise board”. Arat Dink and Serkis Seropyan have been charged with “attempting to influence the outcome of a trial” in an article published in Agos on 9 November 2007. The article was written after Arat Dink and Seropyan were condemned to 1 year prison sentence each.

**Saadet Becerikli, Mehmet Şat, Sedat Özevin, Ahmet Sevim, Bengi Yıldız**

The case was opened against HRA, Mazlumder and Bar Association executive members who drew a report over the death of Mizgin Özbek aged 11 due to the fire of security forces in Batman on 5 September 2006. The report said that the fact that Mizgin was killed and his mother Saniye Özbek and his brother were injured indicated that the right of Mizgin and his family to live was not protected.

**İsmet Berkan, Murat Belge, Erol Katırcı, Haluk Şahin, Hasan Cemal**

An association named Lawyers Union had Armenian Conference cancelled by a court decision and Radikal daily’s chief editor İsmet Berkan, journalists Erol Katırcıoğlu, Murat Belge, Haluk Şahin and Milliyet’s Hasan Cemal criticised the decision to cancel the conference in their columns. They were charged with “attempting to influence the outcome of an ongoing trial” and “insulting the judicial organs of the state”.

## Related Law Articles

### **Influencing persons exercising judicial duty**

**TPC 277.** Those who order, exert pressure or apply influence on, or attempt to influence in any way unlawfully the persons exercising judicial duty, in favour or against one or more parties of a trial, the accused or interveners or the victims, shall be punished with a prison sentence of between two years and four years. If the attempt does not exceed the degree of making favours, the punishment shall be a prison sentence of six months to two years.

### **Attempting to influence a fair trial**

**TPC 288.** Those who make public statements verbally or in writing, with the intention of influencing the prosecutor, the judge, the court, the experts or the witnesses, before an investigation or a court case comes to an end with a final ruling shall be punished with a prison sentence of six months to three years.

### **Influencing the outcome of a trial**

**Press Law article 19.** Those who publishes the contents of proceedings by Public prosecutor, judge or court or other official documents related to the investigation during the time between the beginning of the preliminary investigation and the decision to close down the investigation or the opening of a public trial, shall be condemned to pay a fine from 2 billion lira to fifty billion lira. The fine cannot be less than ten billion lira for regional periodicals and cannot be less than twenty billion lira for national periodicals.

Those who publish opinion on the court proceedings of an ongoing trial before it is finalised will be punished under the first paragraph.

### **Violating the confidentiality**

#### **TPC 285.**

**Article 4.** Those who broadcast or publish the pictures of people in a way to brand them as guilty during the phases of a legal investigation or a public case shall be condemned to a prison sentence of six months to two years.



# TPC 301

## FILE

**Insulting Turkishness, the Republic, the organs and institution of the State (!?)**

## The Story of 301

Turkish Penal Code which has been based on the fascist Italian Penal Code entered into force in 1926. “Turkishness, Turkish Nation, Turkish State, Turkish Parliament, Government, Judicial System, Army and Security Forces” were protected by article 159 of TPC. In 1936 denigrating the Republic was included in the article and the penalties were increased when the offence was committed abroad by a Turkish citizen. In 1946 the rule of getting permission from Ministry of Justice for launching a proceeding was introduced. In 2002, a sentence ‘criticism shall not be punished’ was added to the article. This last amendment was made as part of the ‘integration laws.’ Preparations for a new TPC began, and the new law entered into force in 2005. The public debate focused on the discussion of “whether or not the adultery should be a crime” missed the articles blocking freedom of expression. One of them was TPC 301 the modernised version of the old TPC 159. The new article was much easier to apply. The rule of “getting permission from the Ministry of Justice” was removed and the terms ‘looking down on and mocking’ was replaced with ‘denigrating.’

The government responded to the warnings of the EU, NGOs, lawyers and intellectuals by saying ‘let us see the implementation’:

- According to the Ministry’s figures in 2006 and in the first quarter of 2007, article 301 took 2 thousand 722 victims (14 of whom are children).
- Racist groups demonstrated outside courts, and attacked and attempted to lynch 301 victims.
- Tens of people were condemned under article 301. Most cases led to acquittals, however dragging people to courts for expressing opinion was punishing in itself.
- And finally article 301 became a murderer! Two cases were filed against Journalist Hrant Dink under 301, for expressing his ideas. The cases turned Dink into a target board for the racists. Dink was shot dead outside the newspaper office.

This article, the product of a totalitarian mentality of sanctifying the state and denying the individual was as 159 and has been as 301 against those who think and express their opinion. The government wants to make changes to this article which has been changed and applied for 80 years, which reminds us the words of Prince Lanpedusa of Sicily ‘It was necessary to change everything in order to change nothing.’

### **What are the main points of those who defend the article?**

1. Anyone can swear at the state and the nation. Should they be allowed to do that?
2. The western countries have similar articles too.
3. The article does not punish ‘criticism’. Look at the last sentence added to the article.
4. Abolishing it would not be a solution since there are certain institutional sensitivities. Let us solve it through amending it.
5. Outside pressure is high. We can not let them say, “They abolished it because the EU put pressure.”
6. If we amend it then they will say amend article 305, 318, 216, or 288, there is no end to it.

#### **Let us answer one by one:**

1. There are other articles preventing insult and they are adequate. (For example TPC article 216 -former 312- define ‘inciting a section of the society against another section’ as a crime, it can be a necessary and useful article if the problems in the text are removed and the article is used in the correct way. However that article is also used against Kurdish not against those who insult Armenians.) Moreover, so what if an individual swears at the mighty state? It can be a subject

to a court case when an adult insults at another adult. However, what would you say if an adult broke the head of a kid because the kid swore at him? The punishment of insulting the state should not be imprisoned, but being reproached and not being taken seriously by the society.

2. If the western democracies still have similar articles, it is a shame on them. Let us set an example. It is true that similar articles exist in few countries, but those articles are the relics from the times of totalitarian regimes, those countries are not even thinking about using those articles against their writers and journalists. Nobody has ever thought of trying Nobel prize winner author Günter Grass who said “he was shamed to be a German” and moved to another country.

3. Yes there is a sentence at the end, which says “criticisms” would be outside the scope of the law, but what is it good for? Prosecutors and judges set the limits of criticism according to the limits of their own minds, and when any of them decides “This exceeds the limits of criticism” that is it. Elif Şafak stood trial over the words of a fiction character. Orhan Pamuk got almost lynched, Hrant Dink was lynched. All of that happened during the period of article 301. Who has been protected by the last sentence?

4. What does “certain institutional sensitivities” mean? Let us speak clearly. The army is at the top of the list of those who resist the amendment of article 301. Many cases against journalists and writers have been filed on the complaints of the Office of the General Chief of Staff anyway. Is the Office of the General Chief of Staff under or above the Office of the Prime Minister? Is not the Turkish Parliament above all of them? So the law makers will want to abolish an article but will not be able to do it? How can we accept such a regime as a democracy?

5. The mentality of “*we can not let them think we did it because so and so put pressure*” can work wonders. What if The Association for Kemalist Thinking noticed that and holds mass “Respect head scarf” rallies to create pressure against the ban on “the head scarf”? If this article had been removed when the new TPC was prepared, there would have been neither so many scandals nor any pressure from the EU. (Orhan Pamuk would be in Turkey and Hrant Dink would be alive.)

6. Of course they will, we will, let us say it now. Abolish article 299 and 300 too. (301’s siblings) Abolish 305 and 318 too, amend 216 and 288 ... etc. etc... Abolish Anti-Terror Law, you promised that while making the new TPC anyway. Abolish, amend, change all antidemocratic laws and articles; the Constitution, the Elections Law, Law on Political Parties, The Law on Internet, Pres Law, Penal Procedural Law, Penal Execution Law... We will continue saying and demanding these until Turkey, which is not even ruled by the superiority of the codes becomes a country, which is ruled by the superiority of the law.

**What will it change to bring the obligation of  
“Permission of the Minister of Justice” in order to open  
a 301 case?**

Nothing, but trying to sweep the dust under the carpet. It will mean more than destroying some part while trying to fix another, it will be violating a principal of law on a larger scale. Since it means to extend the effect of the ancient “Procedural Law for Trying State Officials”, inherited from Ottoman Empire, and promote it.

It is the duty of any prosecutor to start an investigation wherever he/she witnesses a crime. Looks like saying “*My God! This man is a murderer, but he is the good fellow of the Landlord. I cannot do*

*anything without his permission...*” It may be reasonable in a feudal system, but a great shame in a republic.

Still our legislations preserve it. In the same way, can we think of *“getting permission from the officer in order to try a soldier, or from the Agricultural Guild to try a greengrocer?..”* Weren’t we “a united mass without any privileges, any classes”? (A well-known sentence of Atatürk)

This paragraph which exists in the draft –but has nothing to do with law- must be generated from an idea such as *“If the prosecutors attempt to open such problematic cases, then Mr. Mehmet Ali Şahin will not permit it and we will get rid of a scandal.”* Such a measure may seem to work in short term but what is its guarantee? Do we know how another President would interpret it in a similar case?

### **So what does article 301 serve, why has it been made?**



The reason of existence of this law is not more than preventing criticism against the state, preventing uncovering of murders, corruption, and unlawful actions.

Opposing chauvinism imposed on the society, daring to criticise official history becomes “insulting Turkishness.” (Orhan Pamuk, Hrant Dink)

Trying to uncover the unlawful actions of security forces becomes “insulting the security forces of the state.” (Eren Keskin, Erol Özkoray)

Criticising the corruption and unlawful actions among the judiciary becomes “insulting the judiciary” (Prof. Baskın Oran, Prof. İbrahim Kaboğlu)... and it goes on.

Do you think we are exaggerating?

## TPC 301 victims at first thought

Abdurrahman Dilipak (Journalist)  
Ahmet Önal (Publisher)  
Baskın Oran (Academic)  
Burak Bekdil (Journalist)  
Celal Başlangıç (Journalist)  
Cüneyt Arcayürek (Journalist)  
Temel Demirer (Writer)  
Elif Şafak (Writer)  
Emin Karaca (Writer)  
Ercan Kanar (Lawyer)  
Eren Keskin (Lawyer)  
Erol Katircioğlu (Academic)  
Erol Özkoray (Journalist)  
Faruk Çakır (Journalist)  
Fatih Taş (Publisher)  
Ferhat Tunç (Musician)  
Fikret Başkaya (Academician)

Haluk Şahin (Academician)  
Hasan Cemal (Journalist)  
Hrant Dink (Journalist)  
İbrahim Kaboğlu (Academician)  
İsmail Beşikçi (Sociologist)  
İsmet Berkan (Journalist)  
Mehmet Emin Sert (Publisher)  
Mehmet Pamak (Writer)  
Murat Belge (Academician)  
Murat Papuç (Retired officer)  
Münir Ceylan (Trade Unionist)  
Orhan Pamuk (Writer)  
Ragıp Zarakolu (Publisher)  
Sinan Kara (Journalist)  
Şanar Yurdatapan (Musician)  
Tuncay Özkan (Journalist)  
Zülcüf Kışanak (Journalist)



## What have they done?

### **Orhan Pamuk**

Writer Orhan Pamuk has been charged for saying, "We have killed 30 thousand Kurds and 1 million Armenian."

### **Hrant Dink**

Dink wrote in a series of articles in AGOS newspaper that the fresh blood existed in the veins the Armenian would set up with Armenia, which would replace the poisoned one he has with Turks. However, he was condemned for insulting Turkishness and the High Court approved his sentence.

### **Fikret Başkaya**

He wrote in his book "Essays against the Current", that torture was not unique to military periods in Turkey and the state was a torturer.

### **Fatih Taş**

Owner of Aram Publishing House Fatih Taş was charged for publishing John Tirman's book "Spoils of War: Human Cost of American Arms Trade".

### **Eren Keskin**

She was charged for what she told Der Tagesspiegel newspaper in Germany. She said that the attack on the high court did not aim disrupting the order and on the contrary its aim was strengthening the secularist and militarist regime, in Turkey no government had any power, and Turkey was govern by the army on the basis of "National Politics Document".

### **Baskın Oran and İbrahim Özden Kaboğlu**

Prime Ministry Human Rights Advisory Board former head Kaboğlu and commission member Oran were charged because the minority report they wrote suggested a supra identity for all ethnic groups as "from Turkey."

### **Elif Şafak**

Şafak was charged for a character in her fiction 'Father and offspring' talked about Armenian genocide.

### **Abdurrahman Dilipak**

Columnist of "Anadolu'da Vakit" daily was charged over his article 'If we cannot trust the judiciary!'

**Temel Demirer**

Demirer addressed a crowd of 800 people on 20 January 2007 protesting the murder of Hrant Dink and said "Armenian Genocide did take place in this country".

**Ferhat Tunç**

Musician Tunç was charged for his column in "Özgür Gündem" daily entitled "A Revolutionary Leyla and a Song".

**Ahmet Şık and Lale Sarıbrahimoğlu**

Reporter of Nokta magazine, which was forced to shut down in April 2007 Ahmet Şık, interviewed security expert Lale Sarıbrahimoğlu. Published on 8 February and entitled "Army should withdraw hand from internal security".

**Ragıp Zarakolu**

He published Dora Sakayan's book "Garebet Haçeryan's Izmir Journal". He is the owner of Belge Publishers.

**Kıyasettin Aslan**

Kilis city representative of Office Workers union Kıyasettin Aslan was charged for his article "Landmines" published in a local paper. Aslan wrote that the landmines laid by Turkey led to the killing and injury of women and children.

**Abdullah Kaya**

Abdullah Kaya talked on Tehran Kurdish Television and said "genocide of Armenians happened. It seems that the Turkish state hides its massacres and claims to be as white as milk, but it does not wash, everybody knows."

**Ethem Açıkalın**

Human Rights Association Adana branch secretary Açıkalın made a press statement on 16 August 2006 and demanded that the killers of 16 year old Feyzi Abik are found out. Abik was shot dead on 14 August 2006 in Adana.

**Murat Papuç**

Retired officer Papuç was charged because of his book "Leaving the watch of the bank with wet paint".

## Related Laws

### **TPC article 159**

Those who

- (1) Publicly insult Turkishness, the Republic, The Grand National Assembly of Turkey, the government, the ministries, the military or the security forces of the State or the judicial institutions shall be punished with a prison sentence of between 6 months up to 3 years.
- (2) In the committal of the offences stated in paragraph one of this article, even when the addressee is not explicitly named yet there is conclusive presumption, then the violation is considered to have taken place explicitly.
- (3) Publicly swear at the Laws of Turkish Republic or the decisions of The Grand National Assembly of Turkey shall be punished with a prison sentence of between 15 days up to 6 months.
- (4) If insulting Turkishness committed by a Turkish citizen in another country the punishment shall be increased by one-third up to half.
- (5) Expression of thought without the intention of insult or swearing and only with the intention of criticism shall not need punishing.

### **Present Turkish Penal Code article 301**

Those who

- (1) Publicly insult Turkishness, the Republic or the Grand National Assembly of Turkey shall be punished with a prison sentence of between 6 months up to 3 years.
- (2) Publicly insult the Government of Turkish Republic, the judicial institutions, military or security organizations of the state shall be sentenced with a prison sentence of between 6 months up to 2 years.
- (3) If insulting Turkishness is committed by a Turkish citizen in another country, the punishment shall be increased by one third.
- (4) Expression of thought with the purpose of criticism shall not need punishing.

### **Proposed Amended TPC 301**

Those who

- (1) Publicly insult Turkish Nation, the State of Turkish Republic, Grand National Assembly of Turkey, the Government of Turkish Republic and the judicial institutions of the state shall be punished with a prison sentence of between 6 months up to 2 years.
- (2) Publicly insult the military or security organizations of the state shall be sentenced under paragraph one.
- (3) Expression of thought with the purpose of criticism shall not constitute a crime.
- (4) Launching legal proceeding for this crime is subject to the permission of the President.



# TPC 318

## FILE

**The crime (!) of alienating the people from Military Service**

## **The story of 318**

Under the title of ‘Crimes against National Defence’, the crime of ‘Alienating the people from Military Service’ (TPC 155) was imported to Turkey along with many new definitions of crime from the translation of 1889 dated Italian Zanardi Law which had been amended and made even harsher under Mussolini. 1926 dated and 765 numbered Turkish Penal Code introduced the new laws.

In 2005 as statue 5237, the new TPC passed former article 155 became article 318. The new law doubled the sentences when it is committed through press and media. Anti-terror Law (ATL) which entered into force in June 2006 defined it as a “terrorist crime” when it is committed “as part of the activities of a terrorist organisation”. Thus lower and upper limits for prison sentences were increased and now suspects could be tried by High Criminal Courts with Special Powers, a replacement of former State Security Courts.

In the late nineteenth century Italy, men were not keen on joining the army. There was an average of 10% desertion in the Ottoman army during the WWI just like the other European armies. Conscientious objection became a political issue. Beside the religious conscientious objectors (such as Quakers, Anabaptists) political objectors appeared (anarchists and socialist). In the beginning of the twentieth century despite the secularisation of conscience, major European states refused the rights of political conscientious objectors because of the need for human resources in wars. Hence, the crime of ‘alienating the people from military service’ was defined.

In Turkey there was a need to repress those who were reluctant to join the army for the success of the revolution from above which began with the founding of the Republic. The world has been globalised over the last century, major transformation has taken place in every domain

of life. Especially in 1960s people everywhere began questioning conscription. Unfortunately in Turkey criticising the numerous military takeovers is still a taboo today, let alone criticising the militaristic mentality which has become intrinsic in every walk of life:

- Conscientious objectors face endless prison sentences in Turkey.
- People who declare conscientious objection, criticise militarism and say *“I would not send my son to army if I had one”*, or *“Do not become a soldier, conscientious objection is a human right”* may find themselves in the court facing a possible prison sentence for up to 4.5 years.

### **What is article 318 good for?**



Following the atomic bombs on Nagazaki and Hiroshima which ended the WWII it became clear that the armies of the advanced countries did not need such society wide human resources. New technologies led states to recalculate their loss and gain, which resulted in many western states moving to professional armies and recognising public service as a substitute for conscription. Opting for professional armies accelerated and became common in recent years while Turkey still insists in

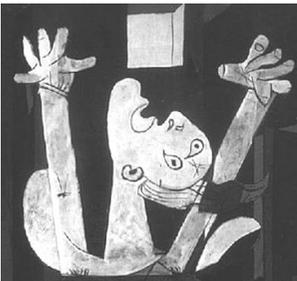
conscription and punishes any attempt to discourage people from military service.

## **‘Everything is for the Motherland’, well, what is the motherland for?...**

From the start the basis of the crime of “alienating from military service” has been the myth that everything was for the motherland. The root of the myth of a sacred State is the fact that the states cannot maintain their sovereignty without the threat of an outside attack, and the power of being able to rally their citizens and order them to die and kill. The justification means internalising a culture of war. Sanctification of militarism at every other second in Turkey, constant praising of dying and killing in the name of motherland as the highest virtues show how deep the militarist culture has become.

Means of silencing those who disagree are available. That is what article 318 is good for. Apart from the declarations of conscientious objection, anti-militarist or anti-war declarations and all kinds of criticism about the army might be punished under this article.

## **Lawfulness**



Legitimacy of limiting a freedom is based on its lawfulness. Lawfulness requires the limitations to be based on laws and also the laws to be clear, understandable and accessible. The laws need to have clear and disambiguous rules.

However the expression of “alienating the people from military service” in article 318 of TPC is very ambiguous.

What does `alienating the people from military service` means? How do you measure it? How can one identify how many people and to what extend has been alienated from military service? What is its secret? Where does alienation start? Where does incitement end and become treason? For example does suggesting that “*People who do not want to carry gun during military service should be employed for planting trees, or teaching etc.*” alienate people? Do the authorities who regulate ‘paying instead of serving’ alienate the ones who do not pay? Does the danger of alienation apply to youngsters who have not done their conscript service? If a seventy years old man says to a young man who has not done his service “*I had a hard time during military service, there were times we could not sleep for days*” is that alienating him? Or does he have to finish the sentence by saying “*It does not matter if I do not sleep for forty days, may my life be sacrificed for the motherland*”?

Article 318 of TPC does not answer these questions. The article is written in a language that can be interpreted arbitrarily and it gives way in practice just as its predecessor article 155 to the violations of freedom of expression (despite the international laws).

## **TPC 318 and superior norms**

### **TPC 318 is against the Constitution**

Article 318 states: 1) Those who commit activities, encourages, inspires the people, or makes propaganda in a way to alienate them from military service shall be punished with a prison sentence of 6 months to 2 years. 2) If the act is committed through the medium of the press and media the penalty shall be increased by half. Anti-Terror

Law article 4 defines it as a terrorist crime when “committed as part of the activities of a terrorist organisation”.

However, article 25 of the Constitution secures the right to have ideas and opinion, article 26 secures the right to express and disseminate those ideas and opinion. Freedoms secured by the constitution includes the acts which are banned by article 318 of TPC.

Restricting freedom of expression is possible under the circumstances defined by articles 13 and 26 of the Constitution. However, article 318 does not conform to such circumstances and defines “teaching, encouraging and making propaganda in a way to alienate from military service” as “crime”, which is in violation of the principle of ‘the rule of law’.

### **TPC 318 is against International Law**

Article 90/5 of the Constitution states clearly that when the provisions of an international convention is in conflict with a domestic law article, articles of international convention overrule. Article 9 of The European Convention of Human Rights, article 18 of Human Rights Universal Declaration and article 18 of Personal and Political Rights Convention all state that everyone has the right to have freedom of thought and expression. These conventions are accepted by Turkey and Turkey has the obligation to act accordingly, and comply with the decisions of European Court of Human Rights. Turkey violates those conventions by implementing article 318.

*“Freedom of expression is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.*

*Such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’”.*

*(European Court of Human Rights Judgement: ‘Handyside v. UK, 1976)*



## What have they done?

### **Doğan Özkan**

An activist in the Conscientious Objection Commission of Human Rights Association (HRA) Istanbul Branch, Doğan Özkan was charged with “alienating the people from military service” after reading out a HRA press statement outside Selimiye Barracks on 12 December 2004, during “Human Rights Week”. Üsküdar Criminal Court of Peace Num1 condemned him to 5 months prison sentence on 20 September 2006. Court commuted the sentence to 3 thousand lira fine.

### **Yasin Yetişgen**

A case was filed against the responsible editor "Çoban Ateşi" weekly Yasin Yetişgen over an article by Berkant Coşkun “Mum don't send me to army” published on 8 November 2007. Yetişgen was charged with "alienating the people from military service and insulting the memory of Atatürk".

### **Perihan Mağden**

Author Perihan Mağden was charged with “alienating the people from military service” in an article “conscientious objection is a human right”, published in “Yeni Aktüel” magazine on 27 December 2005. Prosecution asked the court to imprison her for three years. Mağden was heckled and insulted in the justice hall by a group, the relatives of marthas. The group shouted at Magden "Concubine", "puppet", "Go to Israel", "PKK member". At the second hearing on 27 July 2006 judge stated that Magden's action was in the limits of expressing opinion, and acquitted her.

### **Birgül Özbarış**

Seven Cases were filed against Birgül Özbarış, reporter of “Gündem” daily over her series of articles in 2005 and 2006 ‘Neither Conscription nor War’, an article ‘Turkey's Role’, a newsreport ‘Anti-war gathering’, an interview ‘Message from Conscientious Objectors’, a newsreport ‘Conscientious Objectors Want Conscript army to be discussed in EU Talks’, and newsreports ‘Do Not Point a Gun’ and ‘Conscientious Objector Savda: Don't Join the Army’. She was charged under TPC article 318. Prosecution asked the court to imprison her for 21 years in total.

### **Ragıp Zarakolu, Cevat Düşün**

Chief editor of “Alternatif” newspaper Zarakolu and responsible editor Cevat Düşün face charges under article 318 because of an article entitled “I refuse to become a Turkish soldier”.

**Halil Savda**

Halil Savda was released from prison on 18.11.2004. He was in prison for 'membership to an illegal organisation'. He declared his conscientious objection on his release. From then on he was kept going between military court and military unit, charged with "disobeying orders with the intention of avoiding military service" until 2006 when Savda was charged under article 318 after reading out a press statement where he said "I do not want to take part in the operations in Lebanon which will hurt civilians" and he declared support for Israeli conscientious objectors Amir Paster and Itzik Shabbat. Savda is prosecuted for that statement as well as not serving.

**İsmail Gökhan Gençay, İbrahim Çeşmecioğlu**

Gökhan Gençay the editor of Birgün daily's weekend supplement and İbrahim Çeşmecioğlu the responsible editor are charged over an interview with a conscientious objector Erkan Bolot, entitled "Let us dry out the human resource of wars" published on 10 October 2005.

**Serpil Köksal, İbrahim Kızırtıcı, Ş.Murat Düşen**

Serpil Köksal of Conscientious Objection Working Group made a press statement demanding the recognition of the right to conscientious objection and Halil Savda's immediate release on 12 April 2007, İbrahim Kızırtıcı and Şevket Murat were at the press gathering, Murat was claimed to have held a placard 'Don't Be A Soldier'. The three were arrested . A case was opened against them under 318 following a complaint by Ankara Security Department.

**Yıldırım Türker**

A case was filed under article 318 against the writer of "Radikal" daily Yıldırım Türker over an article "Conscientious Objection Conference" published on 29 January 2007, in Bağcılar Criminal Court of First Instance Num.2. High Court is waited to determine the court with jurisdiction over the case.

**Bülent Ersoy**

Bakırköy Public Prosecution filed a case against singer Ersoy for saying during A TV show 'I would not send him to army if I had a son'. Bülent Ersoy has been acquitted.

**Ahmet Karayay**

Karayay read out his declaration of conscientious objection in Abakar's Kızılay square and was charged with "alienating the people from military service".

## **Related laws**

### **Crimes against the forces of the state**

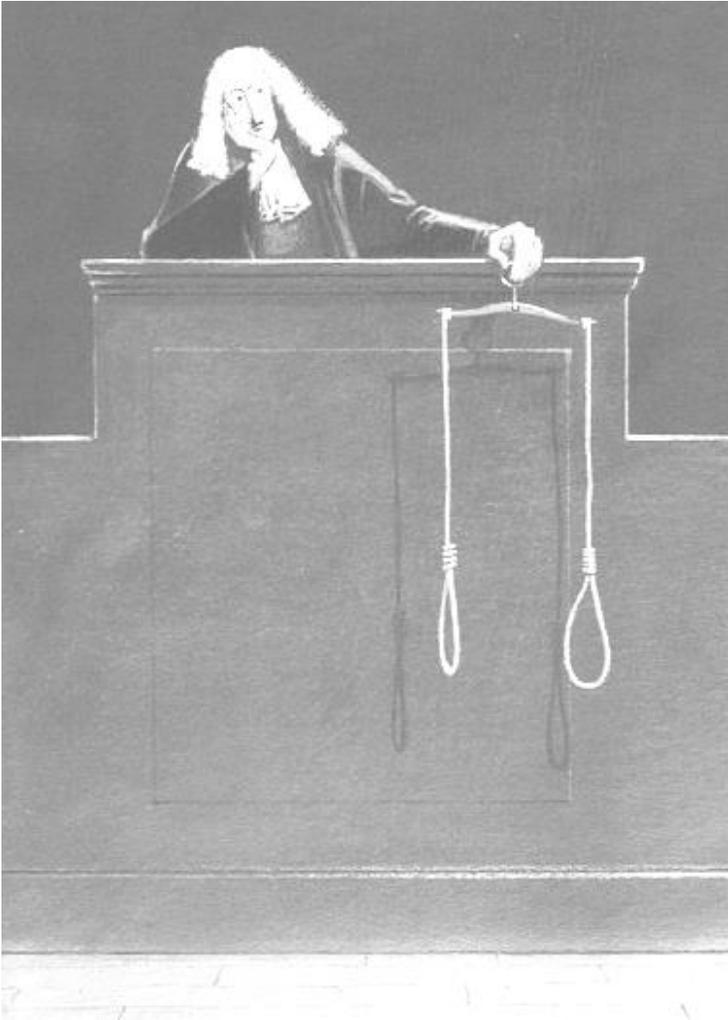
#### **Former TPC article 155**

Those who encourage people to break the law, teach or publish articles in a way to constitute danger to national security or alienate people from military service, or make a public speech in the same way will be punished with a prison sentence of between two months and two years and a fine of between 25 lira and 200 lira.

### **Alienating the people from military service**

#### **New TPC article 318**

- 1) Those who commit activities, encourages or inspires the people or makes propaganda in a way to alienate them from military service shall be punished with a prison sentence of from 6 months up to 2 years.
- 2) If the act is committed through the medium of the press and media, the penalty shall be increased by half.



# **ATL 6 and 7/2 FILE**

**Crime(?!) of Disclosing and Publishing**

## **The story of ATL 6 and 7/2**

Anti-Terror Law entered into force in April 1991 and was initiated by President Turgut Özal. At the same time TGNA (Turkish Grand National Assembly) abolished 1926 dated Law on Treason and articles 140, 141, 142 and 163 of the former TPC which had been problematic in terms of freedom of expression.

ATL remained intact until 2003. In June 2003 the sixth Harmonisation Package of the European Union was accepted by TGNA. The package amended ATL and re-defined the crime of terrorism. ‘The use of force and violence, methods of intimidation and terrorisation’ were made elements of the crime. Moreover article 8 (separatism) which had generated a serious threat to freedom of expression was abolished, it was made possible to publish in languages and dialects other than Turkish.

The breeze of freedom generated by positive amendments did not last long. 11 September 2001 attacks in New York and the declaration of war on the part of the US government against terrorism, the bombing of Afghanistan and the occupation of Iraq gave way to the formation of a new law of terrorism and hostility on a global level. “Bush concept” after 9/11 produced *Patriot Act* in the US and elsewhere appeared as legal amendments which sidelined the basic principles and gains of human rights law. These new laws were based on the mentality that ‘every means is possible to fight terrorism’. That notion was embodied in Turkey in the amendments in Num. 3713 Anti-Terror Law dated 29 June 2006.

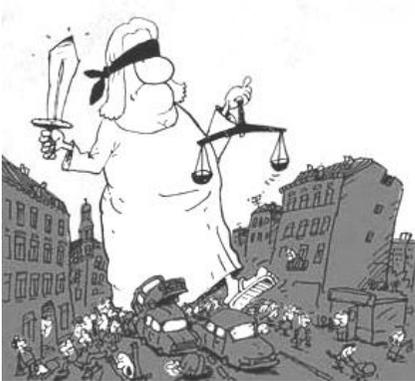
ATL 6 got its share from the amendments. Pre-2006 version fined persons who published the statements and declarations of terrorist organisations, while the new article carried prison sentence. A similar amendment was made for the act of disclosing or publishing the identities of

informants. What was worse was a new paragraph that was added to the article: *“In the cases of open incitement to commit crime in the frame of activities of a terrorist organisation, praising of a committed crime and a criminal or making propaganda for a terrorist organisation; the publication of periodicals can be stopped for 15 days or for up to 1 month by the order of a judge or by the order of a public prosecutor when delay is unfavourable”*. This paragraph allowed for an unchecked intervention to freedom of press.

ATL 7/2 was also ammended under the new notion of “war on terror”. The boundaries of expressing opinion had been drawn by the second paragraph of article 7 of Num.3713 ATL, which was amended in 2003: *“... A person who makes propaganda in a way to incite applying violence or other methods of terror shall be separately punished with a prison sentence for between one year and five years and a fine between 500 thousand lira and one million lira even if his act constitutes a separate crime”*. In line with the definition of crime of terrorism in the article one, limits of freedom of expressing and spreading opinion was set on the line of “inciting to apply violence or other terrorist methods”. However 2006 amendments removed notions of “violence and other terrorist methods” which were rather spesific and objectively definable. The new text of the article said *“A person who makes propaganda of a terrorist organisation or its purposes shall be punished with a prison sentence of one to three years”*. This was much more ambigious and obscure. Thus actions which aim to cause uncertainty was defined with uncertain notions, sacrificing the principle of lawfulness for the sake of “fight fire with fire” mentality.

## What is ATL 6 good for?

### The First Paragraph



The article bans disclosing the plans of terrorist organisations to committ crime against persons, in a way to make it clear who the persons maybe. The article also generated a new type of crime ‘disclosing identity, making someone target’. However disclosing the plans of terrorist organisations to committ crime may prevent it from happening.

Regarding the part “exposing people as target” the article does not discriminate if the said people suffered any harm as a consequence or if there had been any intention to cause them harm. The act of reporting is deemed criminal which is a blow to freedom of press.

### The Second Paragraph

This article punishes the act of publishing the statements and declarations of a terrorist organisation. Even if the person who published the said statement criticised it, made it clear that he/she did not agree, he/she shall be punished according to this article. This article hence does not look for specific intention and can hold people responsible for the actions of others. Thus it is against the principle of personal responsibility stated in the article 38 of the Constitution. It violates freedom of expression and press.



### **The Fourth Paragraph**

The fourth paragraph of the article which was amended in 2006 imposes a penalty of fine from the equivalent of thousand days to ten thousand days for the editors in charge or the owners of the publications, which publish the statement of a terrorist organisation.

### **The Fifth Paragraph**

In a law which does not have a clear definition of terrorism this paragraph can easily be used to silence press and media organisations.

## **What is ATL 7/2 good for?**

Let us have a look at the rights restrictions under article ATL 7/2 one by one:

### **Specificity**

The statement of ‘making propaganda of a terrorist organisation’ is against the principle of “specificity/clarity” one of the most basic rules of Penal Law. It is a very ambiguous statement in its present form. It gives way to arbitrary implementation.

Moreover as a rule accepted both in Turkey and on international level, you can only punish propaganda of terror if it “calls for violence”. In order the law to be clear, reasonable and proportionate this notion has to be taken back into the law.

## **Proportionality**

ATL 7/2 carries a prison sentence for up to 7.5 years for the act of propaganda which has no clear boundaries. Hence it does not conform to the rule of proportionality.

## **Legitimate purpose**



Carrying the emblem or the signs of a terrorist organisation in a way to demonstrate that s/he is a member or supporter of the organisation, wearing clothes that remind the uniforms on which such emblems and signs are placed, or covering the face partly or completely at demonstrations and rallies which have been turned into a propaganda for a terrorist organisation is criminal. The paragraph criminalises carrying posters, banners, placards, pictures, signboards, equipments and materials,

chanting slogans or using audio devices for the purposes of the organisation.

Listing actions like these as criminal goes beyond the purpose of the article and becomes contrary to the essence of being human, it does not serve any legitimate purpose. And it is also dangerous in terms of prosecution of children. Including such actions in ATL is denying the right of assembly and the culture of opposition.

## Conclusion



Types of crime stated in above articles lack the elements of general theory of crime and it does not conform with general rule of penal liability. Hence it damages basic principles of penal procedural law. A clear definition of “terror” is needed in order to raise the article to the standards of international norms of freedom of expression. While making that definition, ‘political cause’ has to be underlined, and the decision of which organisation is terrorist should not be left to the arbitration of the establishment as the current article does.

## ATL 6 and 7/2 victims at first thought:

Mehdi Tanrikulu (Publisher)  
Vedat Kurşun (Journalist)  
Ali Kırca (Journalist)  
Muhittin Eryılmaz (Imam)  
Yılmaz Çelik (Hizb-ut Tahrir  
spokesperson)  
Children from Amed Choir  
Temel Demirer (Writer)  
Hacı Boğatekin (Journalist)  
Hasan Sağlam (Singer)

Hüseyin Aykol (Journalist)  
Ali Turgay (Journalist)  
Bedri Fırat (Politician)  
Ömer Demir (Poet)  
Aydın Budak (Politician)  
Ferhat Tunç (Singer)  
Mehmet Salih Yıldız (Politician)  
Mehmet Desde (worker)  
Mehmet Bakır (worker)



## What have these people done?

### **Mehdi Tanrıkulu**

The owner of Tevn Publishing House Mehdi Tanrıkulu is charged with “helping and making propaganda for a terrorist organisation” under articles 7/2 and 6/2 of Anti-Terror Law, for publishing the book “The Role of PKK in Kurdish Liberation Movement” written by Dr. Ergün Sönmez. Tanrıkulu wanted to communicate with the court through a translator.

### **Ferhat Tunç**

Musician Ferhat Tunç stood trial over his remarks during a concert in Alanya on 22 July 2006 where Tunç mentioned Kurdish issue and demanded a peaceful solution. Tunç is charged under ATL article 7/2. The indictment quotes Tunç saying “Each killed guerilla is a son of this country too. I feel sorry for each killed soldier and also for each guerilla... I am the voice of those in this country who are made the others. A democratic country means equality. These meaningless fight needs to be over”. Tunç was charged with “making PKK propaganda to people who went to a concert for entertainment”.

### **Vedat Kurşun**

Vedat Kursun the responsible editor of Kurdish journal Azadiya Welat (Free World) has been charged with “making propaganda for a terrorist organization” (Article 6 of ATL) and “giving directives for action on behalf of PKK through press” (Article 7 of ATL). Kursun went to make a deposition on 5 February 2008 and was arrested due to strong suspicion. He is still in Diyarbakır D Type Prison.

### **Ertuğrul Mavioğlu, Ali Kirca**

A journalist and writer Ertugrul Mavioglu and ATV’s presenter Ali Kirca stand trial for Mavioglu’s comments at a live program ‘Siyaset Meydani’ (Arena of Politics) on the state of the judiciary after 1980 military coup.

**Muhittin Eryılmaz**

Imam Muhittin Eryılmaz addressed a public rally of Democratic Society Party (DTP) in Diyarbakır on 25 March 2008, holding Koran in his hand where he protested the cross border military operations. Retired imam Eryılmaz calling onto PM Erdoğan said "If Erdoğan is a Muslim he should not violate human rights, Turkish army should not kill their brothers." He is charged with "making propaganda for a terrorist organisation."

**Hüseyin Aykol, Ali Turgay**

The license owner and responsible editor of "YedinciGün" weekly Ali Turgay and editor in chief Hüseyin Aykol are on trial over an article published on 10-16 November 2007 issue, where Abdullah Öcalan was referred as "Kurdish Popular Leader." Aykol and Turgay are charged with "praising crime and criminal, making propaganda for a terrorist organisation and publishing its material."

**Bedri Fırat**

He stood trial for referring Abdullah Öcalan as "Mr." in an interview published Tercüman daily paper.

**Ömer Demir**

Ömer Demir faced this case for a poem he read out in the city stadium in Hakkari.

**Yılmaz Çelik**

The case was opened against Yılmaz Çelik, Hizb-ut Tahrir's Turkey representative with the charge of "being an executive member of a terrorist organisation". Despite the fact that in the records of the security department there has not been any violent act by the organisation, prosecution defined the organisation as a terrorist group. Çelik's sending postcards to some people with that signature during Ramadan was one of the justifications of the charge.

**Aydın Budak**

Budak's speeches during Newroz celebrations are already subject matter of a court case but a second case was filed in Diyarbakır over the same statements. The indictment wrote "making propaganda for the organisation and its objective by portraying Abdullah Öcalan as reflecting the political will of our citizens with Kurdish origin."

## **Related Law Articles**

### **The latest version of the article**

#### **Disclosing and publishing**

##### **ATL Article 6**

A person who discloses that terrorist organisations target certain people with or without mentioning their identities and names but in way to make it obvious who they are, or discloses or publishes the identities of public officials who have fought terrorism, or exposes the public officials as target shall be punished with a fine of five million Lira to ten million Lira.

A person who publishes and spreads the statements of a terrorist organisation shall be given a prison sentence of between one year and three years.

A person who exposes or publishes the identity of informants in violation of article 14 of this law shall be punished with a prison sentence of between one year and three years.

When the above stated crime committed by means of press and media, the owners and responsible editors of press and media groups who have not participated in the committing of the crime shall be given a fine between equivalent of one thousand days and ten thousand days. For those responsible for the publishing the upper limit of this sentence is five thousand days.

In the cases of open incitement to commit crime in the frame of activities of the terrorist organisation, praising of committed crime and criminals or carrying propaganda for a terrorist organisation, publication of periodicals can be stopped for 15 days or for up to 1 month by the order of a judge or by the order of a public prosecutor when delay is unfavourable. Public prosecutor submits such decision to a judge in 24 hours. If a judge does not approve it in 48 hours, the decision becomes void.

**Making propaganda of a terrorist organisation**  
**Latest version of ATL 7/2**

A person who makes the propaganda of a terrorist organisation or its purposes shall be punished with a prison sentence of one to three years. Where such crime is committed via press or media, the penalty shall be increased by half. In addition, a judicial fine of one thousand to 10 thousand days shall be imposed in respect of the owners of such press and media organs. The upper threshold of this punishment shall be 5 thousand days for the chief editors. The below stated acts shall also be punished according to the provisions of this paragraph:

- a) Carrying the emblem or the signs of the terrorist organisation in a way to demonstrate that s/he is a member or supporter of the organisation, wearing clothes that remind the uniforms on which such emblems and signs are placed, or covering the face partly or completely during demonstrations and rallies in order to conceal one's identity,
- b) Carrying posters, banners, placards, pictures, signboards, equipments and materials, chanting slogans or using audio devices for the purposes of the organisation,

From the newspaper of 'Hakimiyeti Milliye':

The rooster crowed the case is over!...

(Ataturk is on top, Yunus Nadi is running away, and lawyer Haydar Rifat is in the grip)



# ATA/1

## FILE

**Crime(?!) of publicly defaming or cursing the memory of Ataturk**

## The story of ATA/1



The six arrows of CHP emblem (Republic and Peoples' Party) entered into the Constitution in 1937. Democrat Party (DP) who was elected after 1950 did not remove the six arrows from the Constitution and emphasised its loyalty to Kemalism at every possible occasion. DP government even issued a directive repeating that the government was in the footsteps of Ataturk, which was published in the official gazette. DP government declared in another directive published in the end of December 1950 that only Ataturk's pictures would be put up in

official rooms and not other people's i.e. İsmet İnönü's. That move was met with attacks on Ataturk busts and statues by the members of Ticani order. 26 April 1950 dated "Zafer" newspaper reported that the Sheikh of Ticani order Kemal Pilavoğlu and his followers joined CHP under the approval of İsmet İnönü, and the members of the order organised propaganda meetings in villages recruiting peasant to CHP. Ticani order and CHP were close at the time.

As attacks intensified DP government decided to pass a law to intimidate the inciters of such actions. The draft law they prepared was entitled "Law on Crimes against Ataturk". However, DP MPs opposed the draft before anyone else. The reason of opposition was that 1924 Constitution clearly banned any laws that would benefit individuals. Thus making a law about one person would be against the Constitution. The draft law was put to vote in the Parliament on 7 May 1951, and was rejected by 146 vote against and 141. In search of a sound legal rationale, the discredited DP MPs knocked the door of

Professor Ernst Hirsch who was a member of staff in Ankara University's Faculty of Law.

Hirsch led the way for a law about the admiration and respect feelings of living humans, instead of a flawed law about one person and a deceased one. Now the draft became "A person who openly insults or curses the memory of Atatürk; or damages, breaks or fouls the sculptures, busts and monuments which represent Atatürk shall be punished" and it was passed through the Parliament on 25 July 1951. It was published in the official gazette on 31 July 1951, entering into force. The law has reached our day unchanged.

Celal Bayar who initiated the law explained to a journalist, Erkin Umsan why he thought the law was needed:

*"During the first year of our government, members of a religious order led by someone called Kemal Pilavoğlu used to attack Atatürk statues. Government took necessary measures against them. However a series of attacks generated tension in the society. Sheikh Pilavoğlu and 26 followers were arrested. At the same time an illegal Communist Party was captured and 188 members were arrested. These showed that extremist tendencies had flourished in the free atmosphere of democracy. It was necessary to protect the society from extremist tendencies. Hence it was necessary to introduce heavier sentences for leftwing and rightwing tendencies, and make a law to protect Atatürk from those who would act against him... The opposition party set up by Atatürk opposed that. Some DP MPs also opposed it and prevented it... Negotiations lasted for months. People who attacked 17 statues of Atatürk in the same night have since disappeared."*

## What is ATA/1 good for?

A work by cartoonist Ahmet Rifki (1922)

Rifki criticises Ataturk's famous saying  
"The peasants are the  
masters of our nation"



**A claim:** "Masters of Turkey are the peasants" (From the oration of Ataturk)

**Peasant:** "If only they attended the plough and yoke so we could enjoy being the masters"

The story of the law shows that the Law on Crimes Committed against Ataturk was needed to address the problems of the time and it was based on the legal mentality of its time. The law has only five articles and was originally produced to prevent the actions of a religious order. However, today it is used against writers, academics, journalists and researchers who attempt to break the myth of Ataturk. Who would ever think that one day this law would hinder a freedom unknown in Turkey at the time?

We have to accept that the perception of Ataturk at the time of the making of the Law was different. It seems that over time the perception of Ataturk has become more mystified and saintly. Partly because almost every political tendency in Turkish politics have since declared that they followed Ataturk's ideas.

Hence the notion of Atatürk has become sacred as it has been repeated constantly. The increase in its level of sacredness directly influenced the legislation, execution and judiciary. Atatürk's human side has been forgotten over time and he has been turned into a half-god figure. That myth has rooted itself so deeply in the minds of the judiciary that it gained priority over freedom of expression.

The law is also below contemporary legal techniques and principles. Although the law says 'defaming the memory of Atatürk' to underline that it is not a law about one individual, the implementers punish defaming Atatürk. Hence the implementers punish the act of defaming someone who does not exist and the myth prevents people from questioning this. Besides, 'the memory of Atatürk' is an ambiguous notion. This law does not have one of most basic characteristics of penal provisions, 'clarity/specificity'. Clarity means that the laws carry clear and open rules without ambiguity. The way the law was written makes it open to different interpretation of people with different views hence creating a danger regarding freedom of expression.

The second paragraph of first article states 'A prison sentence of one to five years shall be given to anyone who destroys, breaks, ruins, or defaces a statue, bust, or monuments representing Atatürk or the grave of Atatürk.' Here the punishment is not in proportion to the crime. For example some who throws the package of the fastfood on the floor in Anıtkabir (Ataturk's mouseloum) maybe put on trial facing a sentence for up to 5 years.

## Victims of ATA/1 at first thought:

Ahmet Önal (Publisher)  
Hüseyin Beysülen (Writer)  
Necdet Tatlıcan (Journalist)  
İpek Çalışlar (Writer)  
Atilla Yayla (Academician)  
Hakan Albayrak (Journalist)  
Yasin Yetişgen (Journalist)

Ragıp Zarakolu (Publisher)  
Mehmet Ali Varış (Publisher)  
Zehra Çomaklı (Activist)  
Fatih Taş (Publisher)  
Aysel Yıldırım (Translator)  
Lütfü Taylan Tosun (Translator)  
Seyfi Öngider (Writer)



## What have these people done?

### **Yasin Yetişgen**

Gaziantep Public Prosecution Office wrote an indictment against Yasin Yetişgen the responsible editor of local “Çoban Ateşi” newspaper over an article “Mum don’t send me to army” written by Berkant Coşkun, published on 8 November 2007. Yetişgen is charged with “alienating the people from military service and insulting the memory of Atatürk”. Yetişgen is charged over the parts of the article which reads: “If today’s Kurdish movement is called a terrorist movement then Mustafa Kemal’s movement would not be immune from the same definition. The only difference is that Mustafa Kemal was not arrested.”

### **Ragıp Zarakolu**

Owner of Belge Publishing House stood trial for publishing George Jerjian's book “Truth Will Set Us Free”.

### **Necdet Tatlıcan, İpek Çalışlar**

Author İpek Çalışlar was charged with defaming Atatürk and violating the Law on Crimes against Atatürk in her book 'Ms Latife' (prison sentence for up to 4.5 years.) Bağcılar Public Prosecution presented a section of the book where Çalışlar writes about 'Topal Osman besieging Çankaya residence to assassinate Atatürk.

### **Fatih Taş, Aysel Yıldırım, Lütfü Taylan Tosun**

Owner of Aram Publishers Fatih Taş was charged for publishing John Tirman's "Spoils of War: Human Cost of American Arms Trade". Translators of the book Aysel Yıldırım and Lütfü Taylan Tosun were later on included in the trial.

### **Zehra Çomaklı**

Member of Özgür-Der Zehra Çomaklı stood trial for her address at a meeting “Songs against War” organised by The Coalition to Stop the War in Iraq.

### **Mehmet Ali Varış**

Owner of Tohum Publishing House Mehmet Ali Varış was charged for publishing a book "Kemalism the Sitting Man". He has also cases over two other books "Anatolia from monoculture to multiculturalism" and "Koçgiri".

## Related law articles

### Law on Crimes Committed against Atatürk

**Article 1** - Those who publicly defame or curse the memory of Atatürk shall be punished with a prison sentence of one to three years. A prison sentence of between one and five years shall be imposed on anyone who destroys, breaks, ruins, or defaces a statue, bust, or monuments representing Atatürk or the grave of Atatürk. Anyone who encourages others to commit the crimes outlined in the paragraphs above will be punished as if committed the crime.

**Article 2** –Crimes stated in article one if committed collectively by two or more people, in public spaces or by the means of press, sentences shall be increased by half.

If crimes stated in the second paragraph of first article committed or attempted by using force, the sentence shall be doubled.

**Article 3** – Public Prosecutors proceed on such crimes on their own initiative, without the need for a complaint.

**Article 4** – This law enters into force on the date it is published.

**Article 5** – Ministry of Justice executes this law.