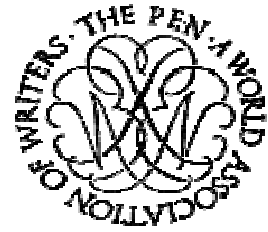


UNION INTERNATIONALE DES EDITEURS
INTERNATIONALE VERLEGER - UNION
INTERNATIONAL PUBLISHERS ASSOCIATION



Prime Minister Recep Tayyip Erdogan
Office of the Prime Minister
Basbakanlik
06573 Ankara
Turkey
Fax: +90 312 417 0476

Re: The necessary abolition of Article 301 TPC

Geneva, London, 24 November 2006

Dear Prime Minister,

ARTICLE 19, International PEN and the International Publishers Association (IPA) are writing to you with regard to Article 301 of Turkish Penal Code and in particular to express our concerns about its impact on the right to freedom of expression and, consequently, its consistency with international law. Article 301, on the denigration of Turkishness, the Republic, and the foundation and institutions of the State, was introduced with the legislative reforms of 1 June 2005 and replaced Article 159 of the old penal code.

The right to freedom of expression is guaranteed in Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR) and in Article 10 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR), treaties to which Turkey is a party. Consequently, the Turkish government has a legal obligation to respect this right.

Restrictions on freedom of expression are permitted, but they must meet three conditions: first, they must be provided by law; second, they must pursue a legitimate aim; and third, they must be “necessary in a democratic society” for the achievement of that aim.^[1] The first condition means not just that restrictions must be written down in a piece of legislation, but also that the law in question must be accessible and formulated with precision sufficient to enable citizens to regulate their conduct.^[2] The third condition means that there must be a “pressing social need” for a limitation.^[3] The reasons given by the State to justify the limitation must be “relevant and sufficient”; the State should use the least restrictive means available and the limitation must be proportionate to the aim pursued.^[4]

^[1] See Article 19(3) of the ICCPR and Article 10(2) of the ECHR.

^[2] See, for example, *Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49 (European Court of Human Rights).

^[3] See, for example, *Handyside v. the United Kingdom*, 7 December 1976, Application No. 5493/72, para. 48 (European Court of Human Rights).

^[4] See, for example, *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, paras. 39-40 (European Court of Human Rights).

The term ‘Turkishness’ is vague and gives opportunity for the arbitrary criminalisation of criticism. It does not meet the standard of clarity required by the first part of the three-part test above. Moreover, it is inherently illegitimate for the State to impose a blanket ban on discussion of historical matters, or individuals and institutions. Such laws are both unnecessary – since generic hate speech laws already prohibit incitement to hatred – and open to abuse to stifle legitimate historical debate and research. As such, Article 301 also fails the third part of the test – it is not necessary in a democratic society. Although the last paragraph of the Article states that ‘criticism shall not be considered a crime’, the distinction between criticism and denigration is problematic and experience shows that Article 301 is used to prosecute individuals who express opinions which diverge from official dogma regarding the history of the country, as well as certain ‘iconic’ individuals and institutions.

We also recall that according to the jurisprudence of the European Court of Human Rights, the limits of acceptable criticism are broader as regards politicians than private individuals^[5] and the authorities of a democratic state must accept criticism even if provocative or insulting.^[6] Furthermore, Recommendation 1589 (2003)1 of the Parliamentary Assembly of the Council of Europe urges states inter alia to “abolish legislation that makes journalistic freedom of expression subject to criminal prosecution”; “to stop immediately all forms of legal and economic harassment of dissenting media” and “to incorporate the case-law of the European Court of Human Rights in the field of freedom of expression into their domestic legislation and ensure the relevant training of judges”.

In conclusion, we believe Article 301 of the Penal Code cannot be reconciled with Turkey’s obligations under international law, and should consequently be abolished. Our common stance vis-à-vis Article 301 is further explained in our joint resolution herewith attached.



Agnès Callamard
Executive Director
ARTICLE 19



Ana Maria Cabanellas
President
International Publishers
Association (IPA)



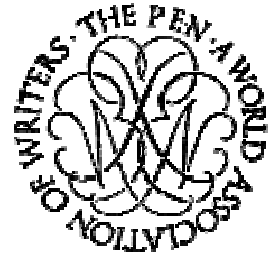
Jiri Grusa
President
International
PEN

CC:

Mr. Abdullah Gül, Foreign Minister and State Minister for Human Rights
Mr. Olli Rehn, EU Enlargement Commissioner
Mr. Elmar Brok, President, European Parliament Foreign Affairs Commission

^[5] See, for example, *Castells v. Spain*, 23 April 1992, Application No. 11798/85, para. 46 (European Court of Human Rights).

^[6] *Özgür Gündem v. Turkey*, 16 March 2000, Application No. 23144/93, para. 60 (European Court of Human Rights).



Geneva, London 24 November 2006

- Observing that Article 301 of the new Turkish Penal Code is used to suppress the right to freedom of expression as spelled out in the UN International Covenant Civil and Political Rights (ICCPR), and the European Convention on Human Rights (ECHR), to which Turkey is a party.
- Considering that defamation and/or insult laws cannot be justified if their purpose or effect is to protect the “reputations” of entities other than those which have the right to sue and to be sued.
- Supporting the ECHR caselaw according to which defamation laws cannot be justified if their effect or purpose is to prevent legitimate criticism of officials or the exposure of official wrongdoing or corruption

IPA, ARTICLE 19, and International PEN urge the Turkish authorities to:

1. Abolish Article 301 of the Penal Code entirely;
2. Remove once and for all any articles that can be used to suppress the rights as enshrined under Article 19 of the ICCPR and Article 10 of the ECHR.

This resolution was adopted by ARTICLE 19, International PEN and the International Publishers Association (IPA) on 24 November 2006.

ARTICLE 19
6-8 Amwell Street
London EC1R 1UQ
United Kingdom
Tel: +44 20 7278 9292
Fax: +44 20 7278 7660
Website: www.article19.org

International PEN
Brownlow House
50/51 High Holborn
London WC1V 6ER
United Kingdom
Tel: + 44 20 7405 0338
Fax: + 44 20 7405 0339
Website: www.internationalpen.org.uk

International Publishers Association (IPA)
3, avenue. de Miremont
CH - 1206 Geneva
Tel: + 41 22 346 30 18
Fax: + 41 22 347 57 17
Website: www.ipa-UIE.org