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Public Statement

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Turkey: Article 301 is a threat to freedom of expression and must be repealed now!

Amnesty International is extremely concerned at the frequent use of Article 301 of the Turkish Penal Code (TPC) to prosecute human rights defenders, journalists and other members of civil society peacefully expressing their dissenting opinion. Article 301, on the denigration of Turkishness, the Republic, and the foundation and institutions of the State, was introduced with the legislative reforms of 1 June 2005 and replaced Article 159 of the old penal code. Amnesty International repeatedly opposed the use of Article 159 to prosecute non-violent critical opinion and called on the Turkish authorities to abolish the article.
The organization is now concerned that the wide and vague terms of Article 301 mean that it too can be applied arbitrarily to criminalize a huge range of critical opinions. It states that:

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

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

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

With regard to the concerns above, Amnesty International notes also the jurisprudence of the European Court of Human Rights, which states that the limits of acceptable criticism are broader as regards politicians than private individuals (*Lingens v Austria,* 1986); are wider with regard to government (*Castells v Spain,* 1992); and that the authorities of a democratic state must accept criticism even if provocative or insulting

(*Ozgur Gundem v Turkey,* 2000). In addition, the law has to be accessible and formulated with precision sufficient for the citizen to regulate their conduct (*Sunday Times v the United Kingdom,* 1998). Furthermore, Amnesty International notes Recommendation 1589 (2003)1 of the Parliamentary Assembly of the Council of Europe, which urges states *inter alia* to "abolish legislation that makes journalistic freedom of expression subject to criminal prosecution"; "to stop immediately all forms of legal and economic harassment of dissenting media" and "to incorporate the case-law of the European Court of Human Rights in the field of freedom of expression into their domestic legislation and ensure the relevant training of judges".

Cases opened under Article 301

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

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

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

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

Fatih Tas is a 26-year-old student of Communications and Journalism at Istanbul University and the owner of Aram publishing house. He is currently being tried under Article 301 because he published a Turkish translation of a book by the American academic John Tirman, entitled *Savas Ganimetleri: Amerikan Silah Ticaretinin Insan Bedeli* (Istanbul: Aram, 2005) (*The Spoils of War: the Human Cost of America's Arms Trade*), that reportedly includes a map depicting a large section of Turkey as traditionally Kurdish and alleges that the Turkish military perpetrated a number of human rights abuses in the south-east of the country during the 1980s and 1990s. Fatih Tas argues that the book contains nothing that has not previously been discussed in the Turkish Parliament or media, and was not intended to insult Turkey or

Turkishness. The prosecutor reportedly demanded that each “insult” in the book should be tried as a separate charge and called for Fatih Tas to be given a prison sentence of ten and a half years. The next hearing of his case will take place on 2 December 2005 at the Court of First Instance No.2 in Istanbul. In relation to other statements made in the book, Fatih Tas also faces charges under Articles 1/1 and 2 of Law 5816, which prohibits publicly insulting the memory of Ataturk.

Murat Pabuc was a lieutenant in the Turkish army who retired on grounds of disability. Whilst still serving, he witnessed the massive earthquake that hit Turkey in August 1999, as well as the institutional corruption that he alleges followed it. He became disillusioned with his military duties, seeing soldiers as being alienated from ordinary people, and began to refuse orders. He eventually began undergoing psychiatric treatment. In June 2005 he published his book *Boyali Bank Nobetini Terk Etmek* The literal translation of this title is “Abandoning the Duty of the Painted Bench”. It alludes to a Turkish anecdote which portrays a pastiche of a soldier following orders unquestioningly. He believes that this was the only way for him to express what he had experienced in the army. As a result he is facing a trial for “public denigration of the military” under Article 301.

Birol Duru is a journalist. On 17 November 2005 he was charged with “denigrating the security forces” under Article 301 because he published on the Dicle news agency a press release from the Human Rights Association (IHD) Bingol branch which stated that the security forces were burning forests in Bingol and Tunceli. The president of IHD’s Bingol branch, **Ridvan Kizgin**, is also charged under other legislation for the contents of the press release. Ridvan Kizgin has had over 47 cases opened against him since 2001, and Amnesty International is currently running a web action
http://web.amnesty.org/pages/tur-161105-action-eng
for him as part of its ongoing campaigning work on human rights defenders in Turkey and Eurasia. Birol Duru is due to be sentenced on 8 December 2005.

Amnesty International welcomes many of the changes introduced by the legislative reforms that came into force on 1 June 2005. However, the organization believes that the breadth and frequency of the cases cited above illustrates the threat that Article 301 poses to the principle of freedom of expression and calls for it to be repealed. Human rights activists, writers, publishers -- in fact potentially anybody -- who express views which run counter to “official history” or the dominant ideology may find themselves prosecuted. That such prosecutions rarely end in imprisonment and more often in fines or acquittal or the dropping of charges is small consolation. The initiation of these legal proceedings is a way of trying to silence opposition voices and should be addressed immediately. Amnesty international considers Article 301 to be at odds with Turkey’s international legal obligations, and therefore calls on the Turkish authorities to terminate without delay all prosecutions against individuals under it, and to abolish the article in its entirety.