



IS THE FRENCH BILL HATE SPEECH REGULATION?

It is presumed by its advocates that the bill for the criminalization of the denial of the 'Armenian Genocide' introduced to the French Assemblée Nationale is intending to approximate the French criminal law provisions as required by the EU Framework decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. This decision followed the Framework decision on Racism and Xenophobia adopted on April 19, 2007 by the Justice and Home Affairs Council of the European Union Decision. This common framework decision that requires European states to legislate against racism in general, encompassing Holocaust denial has been the subject of negotiation since 2001 and was finally adopted during the German Presidency in 2007.

¹ http://www.tepav.org.tr/en/ekibimiz/s/1133/Burcu+Gultekin+Punsmann_+PhD

Pure content based hate speech regulation is a controversial issue: disagreements exist on when and how governments should regulate it. There is a debate in democratic societies on whether the fundamental right to free speech must be curtailed with respect to hate speech in order to protect the group and the individual dignity of minority groups. According to the EU, the approximation of the national criminal law provisions should help to combat racist and xenophobic offenses more effectively by promoting a full and effective judicial cooperation between Member States.

It is doubtful whether the criminalization of the denial of the 'Armenian Genocide' will help to reduce racial, religious, ethnic hatred in French society. The Framework decision is pervasively used as a pretext for a new attempt to rise to 1915 events to the status of the Holocaust.

The Framework decision directly refers to the crimes of genocide committed against the Jews during World War II and mandates that speech acts that deny, minimize or trivialize the Holocaust - crimes defined by the Tribunal of Nüremberg article 6 of the Charter of the International Military Tribunal, London Agreement of 1945 - be criminalized and punished. The text mentions in general crimes of genocide, crimes against humanity and war crimes as defined in the Statute of the International Criminal Court, and put emphasis on crimes established by a final decision of a national court of a Member State and/or an international court or by a final decision of an international court only. There is no reference to genocides which have been recognized by a legislative body of a Member States.

The law stating that '*France is publicly recognizing the Armenian genocide of 1915*' adopted on 29 January 2001 doesn't have any effect in terms of criminal law. Those speaking on behalf of the Armenian community in France have been trying, to no avail, to extend directly or indirectly the scope of the Gayssot Law to the 1915 massacres. The Gayssot Law enacted in 13 July 1990 makes it an offense in France to question the existence or size of the category of crimes against humanity committed against the Jews in World War II. A first attempt took place in 2003, on 12 October 2006 the Assemblée Nationale voted the law but it has never been brought on the agenda of the Senate, more recently the Senate rejected on 4 May 2011 a similar bill.

Armenians in France are perfectly well integrated in the French society and are not facing any form of discrimination comparable to what resulted from antisemitism. Advocates of the law proposal argue that the French State has the duty to protect French citizens of Armenian descent against the presumed moral aggression stemming from the negationist propaganda of the Turkish State conducted on the French soil. It is generally questionable whether a legislative body should be allowed to look beyond the walls of its own society when determining which crimes are so monstrous that speech content regulation is warranted. The focus should be on the historical accounts of ethnic, racial and religious violence, genocide and discriminatory practices that have occurred within the jurisdiction of the state in which the legislative body operates and determine whether the historical record demonstrates a need for a regulation of

this kind. Holocaust is an act of mass murder that had wide impact in Germany and the rest of Europe. On the European continent, a society's treatment of its Jews has become a paradigm for how it will treat all minorities.

The text, even if adopted by the Assemblée Nationale will probably be once more rejected by the Senate. The attempt in 2006 led a group of fifty six Professors of Law at French universities to question seriously the constitutionality of memorial laws which infringe on the freedom of expression, of conducting historical research and being based on a community based approach violate the principles of equality as defined in the French Constitution.

Furthermore such kind of legislation impedes the process by which history is recorded by a society and undermines the strength of the evidence in the historical record. Renowned historian Pierre Vidal-Naquet, who lost his parents in Auschwitz and the French holocaust survivor politician and lawyer Simone Veil both, opposed the Gaysot Law. Back in 2006 Hrant Dink opposed the law proposal brought to the French Parliament and publicly said he would be the first to go and deny it on the French soil.

A robust debate about what really happened in 1915 is warranted. The officialization of history blurs the evidence of the facticity of the accounts: freedom of speech has to be encouraged and research in history emancipated from politics. It should make much more sense from a French Armenian perspective to bring the issue of the regulation of hate speech on the agenda of the Turkish government.