The Process and Problems of Redefining Turkishness: Article 301 and Turkish Identity

Josh Cook
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Introduction

Many traditional countries of the developing democratic world face serious obstacles in learning to tolerate critics and dissent. One particularly interesting problem pertains to "insult laws" and their implication for dissent in democracies. Insult laws protect the honor and dignity of government officials and national identity. Learning to adjust how these laws are interpreted to accommodate a democratic framework can be a difficult and even painful process for governments and public citizens. A growing trend among European democracies is to relax the enforcement of insult laws rather than completely revoking them. Changing the enforcement of insult laws is one way government officials acclimate their country to unregulated speech and criticism. The democratization of insult laws can have serious cultural implications.

Turkey reflects the unique national experience of a country in a transitional period grappling between tradition and democracy. Because of the historical foundations of modern Turkey, nationalism remains a fundamental part of Turkish culture and politics. Debate over the definition of Turkish identity intensified with Turkey's recent bid for entrance admission into the European Union (EU). At the center of the discussion is Article 301 of the Turkish penal code, which prohibits the denigration of "Turkishness." The EU requires either the removal or amendment of Article 301 for Turkish admission.

This paper will discuss the democratization of Article 301. Beginning with a brief introduction to the history of modern Turkey and the significance nationalism has on the country's constitution and laws, the section will preface how Turkishness has been defined and why it is protected in Turkey. I next present an overview of three pivotal cases related to the Armenian massacres that will survey the implementation of Article 301 and mark the progress Turkey has made, along with the progress it has yet to make, towards EU admission. Turkey will adjust the enforcement of Article
301 to comply with EU requirements. In order to do this, Turkey will have to redefine Turkish identity to accept ethnic minorities and dissenting opinion on the Armenian massacres. Because of Turkey's long-standing history of nationalism, Turkey will retain Article 301 and follow the pattern of other European countries to relax the enforcement of insult laws instead of revoking them. In a broader sense, this thesis's analysis of Article 301 will explain the process and cultural implications associated with democratizing insult laws.

**Insult Laws**

Insult laws "provide that it is a criminal offense, punishable by imprisonment and/or fines, to insult or defame the nation itself, the head of state, a variety of state institutions and bodies, foreign heads of state and diplomats, and public officials while they are exercising official functions or because of those functions" (Walden, 17). The form, function, and severity of punishment of these laws vary among countries depending on how a government interprets what the law protects and why it needs to be protected. Theoretically, the purpose of insult laws is to protect national pride, maintain peace, and promote unity. In practice, however, insult laws can be used "to stifle and punish political discussion and dissent, editorial comment and criticism, [or] satire and news that the government would rather hide from the public" (Walden, 7). Despite the repressive nature of insult laws, over one hundred states in the world have some variation of insult laws in place.

**The Origins and Justifications of Insult Laws**

The origin of insult laws may be traced to the concept of the divine right of kings (Walden, 1). This doctrine submits that sovereign rulers were ordained by God. Because a king was in power by divine appointment, criticizing him was intrinsically tied to insulting God. Questioning the king's authority was essentially questioning the wisdom and power of God in choosing that king and, in a sense, constituted a form of blasphemy. Consequently, under the façade of religiosity, kings protected themselves from critics and maintained a hold on power. The tradition of the divine right of kings has faded with the notion of democratic elections and the people's power to choose their leader, but evidence of the divine right of kings still appears in Western democracies. Instead of protecting kings, insult laws have come to protect presidents and national identity. Divine ordination and blasphemy have been replaced by national unity and public peace for grounds to regulate free speech and criticism. Just as speech regulations associated with the divine right of kings were used to suppress opposition, insult laws continue to be used as a tool to regulate free speech.

**Introduction to Turkey**

Turkey's historical roots of nationalism make it a particularly interesting candidate to evaluate how a country deals with implementing free speech. Understanding the unique sense of nationalism related to Article 301 of the Turkish Penal Code will explain why preserving "Turkishness" is such a fundamental part of Turkish society.
Based on current events and issues associated with Article 301, I predict Turkey will follow the trend of other European democracies in relaxing the enforcement of insult laws while retaining them in their law codes. The process of redefining Turkish identity as Turkey adopts principles of free speech demonstrates the cultural repercussions instituting free speech can have on a country. It also outlines the general pattern other countries follow as they democratize insult laws.

The historical, cultural, and ideological background of Turkey gives Turkish laws that protect national identity permanence that will be retained unless the government is forced to revoke them. As Turkey prepares to meet EU admission requirements, the government is essentially being forced to redefine "Turkishness." Implementation or perhaps exploitation of Turkey's Article 301 has been the work of ultra-nationalists who utilize the law as a means of stifling free speech in an attempt to prevent Turkey from becoming a part of the EU. Ultra-nationalists feel EU admission would desecrate Turkish identity because it would make Turks "European" instead of "Turkish." With the recent arrest of leading members of an active ultra-nationalist group, combined with amendments made to law, government leaders likely will turn a blind eye to minor discussion of the Armenian massacres which has previously been considered to be a violation of Article 301. Motivation for this new approach to interpreting 301 will be to gain entrance into the EU; but in the process, Turkey will likely adopt a freer press system and a new interpretation of Turkish identity. Evaluating the democratization of Article 301 will illustrate the complex cultural and political ramifications involved in reforming insult laws.

**Contemporary Turkey**

Once the stronghold and capital of the Ottoman Empire, Turkey has recently worked itself back into the international spotlight. As the northern neighbor to Iraq, Turkey is a critical ally for the U.S. "war on terror." The country's profile of a secularized government with a predominantly Islamic population and its strategic location in the hotbed of the Middle East make Turkey a controversial candidate for the EU. Talks of Turkish admission have attracted the interest of nations around the world. Turkey would represent the first predominantly Muslim country to become a member of the EU, which would make Turkey a significant ally for European countries. The EU has expressed particular concern over Turkey's controversial Penal Code 301, which makes it a crime to "insult Turkishness." Implementation of this law has had a major stifling effect on the freedom of speech in Turkey, especially as it relates to the Armenian massacres that occurred just before the founding of Modern Turkey.

Accordingly, over sixty violations of Article 301 have been filed. Most complaints have been the work of ultra-nationalists with the exception of some government-initiated court cases. Although many of these cases have been acquitted, the fact that people are being tried for breaking a law that is so subjectively interpreted raises concern. Among those tried have been several prominent Turkish authors and writers, such as Orhan Pamuk, Hrant Dink, and Elif Shafak, who have made some type of comment relating to the Armenian massacres. In response to pressure from the EU,
the Turkish Parliament has considered revamping or possibly eliminating the law altogether. Minor changes were made to the law rewording some key terms and transactional procedures, but they have happened so recently that enforcement of such laws has yet to be evaluated. In the past, ambiguity of the term “Turkishness” and conflict over Turkey’s aspirations for EU entrance has transformed the law into an important political device for public citizens, politicians, and lawyers to push agendas and test freedom of speech in Turkey. In the future, Turkey will change the way Turkish identity is defined and alleviate the enforcement of Article 301.

**History of Turkey and Kemalist Ideology**

To better understand the current circumstances of Article 301, it will be useful to discuss the impact and influence of Turkey’s history on its culture. The Turkish Republic rose out of the ashes of the Ottoman Empire following World War I. Officially founded by military leader Kemal Mustafa in 1923, the Turkish Republic was built on principles of a democratic state (Repucci, 2). Mustafa, who came to be known as “Atatürk” (an honorary title meaning “father of Turkey”), asserted control of the region after entente-inspired Grecian troops invaded parts of western Anatolia (modern-day Turkey) (Repucci, 2). In an attempt to preserve the area from being divided into smaller regions and risk being governed by Western powers, Atatürk united peoples of different cultures, languages, and religions into a new and modernized nation (Repucci, 2). This country eventually came to be known as the Republic of Turkey. Atatürk’s philosophies for the creation of this modern nation are summarized by the term “Kemalist ideology,” based on Kemal Mustafa’s first name and on his writings (Cagaptay, 86). The principles outlined by Kemalist ideology define basic characteristics of the Turkish republic. Two foundational tenets of Kemalist ideology that have had particularly lasting influence on Turkish culture and politics are “revolutionism” and “nationalism.”

**Revolutionism**

Revolutionism is a term that calls for the modernization or secularization of the State. Atatürk implemented a series of religious reforms that banned external signs of religion, such as the fez and headscarf, and he oversaw the Romanization of the Turkish alphabet. He also designated Turkey a secularized republic and commissioned the military to intervene anytime the government attempted to return to Islamic rule. During the course of Turkey’s history, the military has officially intervened four times, the most recent of these being a military coup in 1980 (Repucci, 2). Following the coup, a military-drafted constitution was adopted and implemented in 1982 (Aydin, 12/10/07). This constitution is the one currently in use. Secularism has been a major issue in Turkish politics. Due to a strong Islamic presence in the country and the great reverence given to the revolutionary legacy of Atatürk’s modern state, Turks have struggled to maintain a secular government. The unique construct of an Islamic nation founded on principles of a secularized state makes it an unprecedented candidate for entrance into the EU.
Nationalism

Another foundational contribution of Atatürk is Turkish nationalism. Atatürk sought to establish a Turkish national identity that did not exist under Ottoman rule. According to Kemalist ideology, nationalism entails the formation of a unified state within a geographic region that encompasses peoples of various cultures, religions, and languages. Turkish scholar Soner Cagaptay claims two methods were used to establish “Turkish National Identity” otherwise known as “Turkishness.” These methods were to establish a government-sponsored official version of Turkish history and to enforce a unified national language (Turkish) to be accepted and spoken by all people, including minorities and ethnicities (Cagaptay, 88). Both of these methods purposely blurred ethnic identity and controversial periods of history that would lead to divisions in Turkish society. Ironically, the repercussions of nationalism on ethnic identity and diversity in Turkey have led to more confusion than resolution. Turkish citizens were forced to accept versions of history with which they may not have agreed; in addition, they were forced to learn and speak Turkish, even though they were taught different languages and cultures at home. The struggle for the recognition of ethnic minorities is a major aspect of the debate over Article 301. The suppression of divisions among Turkish society is a tradition that began with Atatürk and continues today.

Role of the Media in Establishing the Republic of Turkey

Atatürk and his successors saw the media as powerful means of implementing Kemalist ideology. The government utilized state-sponsored newspapers, radio broadcasts, and eventually television broadcasts to promote and develop the Turkish Republic (Ogan, 511-13). Motivated by fear of the dissolution of the republic, Atatürk went to great measures to preserve and enforce national unity. He perceived the media to be both a tool to promote Kemalist ideology as well as a threat to developing national unity, so he held on to censorship laws that were established during the Ottoman Empire (Ogan, 511). The establishment of national identity and promotion of unity were justifications for regulating free speech.

Nationalism in Turkish Law

Kemalist ideology is deeply engrained in the politics and culture of Turkey. The constitution of the Republic of Turkey shows great reverence toward the doctrine of Atatürk’s philosophies of Turkish nationalism and revolutionism. The preservation of the “eternal existence” and “indivisibility” of the Turkish Republic is attributed to principles outlined by Atatürk, Turkey’s “immortal leader.” Unity, peace, and a guarantee of human rights are significant subject matters of the constitution. These points clarify how Article 301 is justified in Turkey. Excerpts from the constitution may enhance understanding of Article 301. The preamble of this constitution reads:

In line with the concept of nationalism and the reforms and principles introduced by the founder of the Republic of Turkey, Atatürk, the immortal leader and the unrivalled hero, this Constitution, which affirms the eternal existence
of the Turkish nation and motherland and the indivisible unity of the Turkish state, embodies
The recognition that no protection shall be accorded to an activity contrary to Turkish national interests, the principle of the indivisibility of the existence of Turkey with its state and territory, Turkish historical and moral values or the nationalism, principles, reforms and modernism of Atatürk...
The recognition that all Turkish citizens are united in national honour and pride, in national joy and grief, in their rights and duties regarding national existence . . .

Article II qualifies Turkey as a democracy. The Article states:
The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble ("The Constitution of the Republic of Turkey").

Throughout both the Preamble and Articles of the constitution, themes of national unity, respect for Atatürk, and preservation of Turkish identity are stressed. Ironically, Article 2 defines the Turkish nation as a republic and a democratic state, but principles of nationalism and unity have disturbed the complete realization of a democratic press.

Later in the constitution, sections 7 and 8 are entitled "Freedom of Thought and Opinion" and "Freedom of Expression and Dissemination of Thought." Although these sections designate free thought and expression as constitutional rights of the country's citizens, the prohibition of speech that may disrupt peace or safety is permissible. These guidelines are similar to Article 10 of the European Council, which defines speech that threatens peace as justifiable grounds for regulation. The sections on free speech and expression of the Turkish constitution read as follows:

VII. Freedom of Thought and Opinion
ARTICLE 25.
Everyone has the right to freedom of thought and opinion. No one shall be compelled to reveal his thoughts and opinions for any reason or purpose, nor shall anyone be blamed or accused on account of his thoughts and opinions.

VIII. Freedom of Expression and Dissemination of Thought
ARTICLE 26. (As amended on 17 October 2001)
Everyone has the right to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, and similar means to a system of licensing.
The exercise of these freedoms may be restricted for the purposes of protecting national security, public order and public safety, the basic characteristics
of the Republic and safeguarding the indivisible integrity of the State with its
territory and nation, preventing crime, punishing offenders, withholding in-
formation duly classified as a state secret, protecting the reputation and rights
and private and family life of others, or protecting professional secrets as pre-
scribed by law, or ensuring the proper functioning of the judiciary.

The formalities, conditions and procedures to be applied in exercising the right
to expression and dissemination of thought shall be prescribed by law
("The Constitution of the Republic of Turkey").

Freedom to express thought and opinion are fundamental rights guaranteed to every-
one according to the constitution. However, the final two paragraphs of the constitution
note that:

[the exercise of these freedoms may be restricted for the purposes of protecting
national security, public order and public safety, the basic characteristics of the
Republic and safeguarding the indivisible integrity of the State with its territory
and nation.

This important stipulation is critical for understanding the current status and
interpretation of Article 301 in Turkey. Free expression is guaranteed constitution-
ally, but so is the regulation of certain speech. The interpretation of what speech
is justifiably regulated is so subjective that it has led to many problems associated
with Article 301. Democratic institutions such as the European Council also have a
similar double standard. Some rationale for preserving the right to prohibit speech
on certain topics is especially important to countries born out of conflict or ethnic
tensions. In the case of Turkey, perhaps during the early years of the country, some
speech regulation may have been necessary to secure the preservation of the unity
of the state. The interpretation of what constitutes a threat to national security or
public safety is one of the paradoxes of free speech. Governments have to be willing
to accept criticism and dissent for what constitutes appropriate grounds for regulat-
ing free speech.

Because of the justifications for regulating speech listed in Turkey's constitution,
the country has insult laws preserving national identity, and these laws have been
used to stifle free speech. The government, ultra-nationalists, and ethnic minorities
have struggled over what Turkish identity is and how to protect it. The embodiment
of this battle has revolved around Article 301.

Evolution of Article 301

The evolution of Article 301 began even before the Turkish Republic was estab-
lished, with the insult laws of the Ottoman Empire and the early press regulations of
Atatürk. Exactly when the law was first officially composed in the form it is now seen
is not as important as what is said and how it has been applied in the last ten years or
so. The progenitor of Article 301 was Article 159. This version of the law read:

Whoever overtly insults or vilifies the Turkish nation, the Republic, the Grand
National Assembly, or the moral personality of the Government or the military
or security forces of the State or the moral personality of the Government of judicial authorities, or overtly engages in aggressive acts that arouse suspicion about the legitimacy of the Grand National Assembly, shall be punished by one to six years imprisonment (Walden, 45).

The phrase whoever "vilifies" the "Turkish nation" may be interpreted to mean that claiming the Ottomans (Turkish ancestors) were capable of genocide constituted a crime. Because the law did not explicitly define what the terms "vilify" or "Turkish nation" encompass, there is room for interpretation. If calling the progenitors of the Turkish nation murderers was interpreted as an insult or vilification to the modern republic, then calling the Armenian massacres genocide could be considered illegal. However, the law did not define that, so being tried by it would be very subjective. An interesting note is that the republic was not established until after the Armenian massacres took place.

2005 Version of Article 301

On 25 June 2005, Article 159 was replaced by Article 301 as part of a package of legislative reforms aimed at satisfying EU admission requirements. At that time, the phrase "Turkishness" replaced "Turkish nation," and the prison sentence was reduced (Fowler, 12/10/07). An increased penalty for perpetrators outside of Turkey and an allowance for the expression of thought intended to criticize were also made. The expression of thought intended to criticize and intentional denigration were never successfully clarified or implemented in court cases. The court cases evaluated in this policy analysis will utilize the grounds of the 2005 version of Article 301, which reads:

Whoever publicly denigrates Turkishness, the Republic or the Grand National Assembly of Turkey, shall be punishable by imprisonment of between six months and three years. Whoever publicly denigrates the Government of the Republic of Turkey, the judicial institutions of the State, the military or security organizations shall be punishable by imprisonment of between six months and two years. In cases where denigration of Turkishness is committed by a Turkish citizen in another country the punishment shall be increased by one third. Expressions of thought intended to criticize shall not constitute a crime ("Repeal Article 301," 12/10/07).

Although some changes were made to the law, subjective terminology still gave way to open interpretation of the terms "Turkishness" and "denigrate." The government and ultra-nationalists could still interpret the law to encompass debate over the Armenian massacres as "denigrating Turkishness."

2008 Version of Article 301

Because of continuing controversy surrounding Article 301, the Grand National Assembly of Turkey submitted amendments to Article 301 that were approved by President Abdullah Gül on 8 May 2008, and posted on the Official Record ("President Gul," 5/9/08). Amendments to the bill included changing "Turkishness" to "Turkish nation," the "Republic" to the "Republic of Turkey" and reducing the maximum prison
sentence for denigrating the "Turkish nation" from three to two years. The increased punishment for out-of-state offenders was also eliminated, and complaints submitted to the justice department now require approval by the Minister of Justice before a case may be launched under Article 301 ("President Gul," 5/9/08).

How the changes will affect the implementation of Article 301 will determine whether or not amendments to the law will suffice for EU admission requirements. The EU requires applicant countries to establish "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities" ("About EUTCC", 5/23/08). Based on trends in other aspiring European democracies, Turkey will reevaluate how the law is enforced rather than revoke Article 301 in order to comply with EU requirements. The risk associated with these revisions is that subjective terminology is still part of the law. That is why this policy will require Turkish officials to redefine Turkish identity and how it can be insulted.

Implementation of the Article 301

The cases related to Article 301 evaluated in this policy analysis will draw upon the interpretation of Article 159 and the 2005 version of Article 301. Part of the scope of this thesis will be to predict the future implementation of the new version of Article 301. Discussing the past application of Article 159 and Article 301 will be important for understanding the cultural ramifications of the law. The judicial system of Turkey employs a complex mixture of Eastern and Western culture that may most closely be defined as a civil law code. A civil law code means court rulings are not used as precedent for other court decisions. Therefore judges hear cases based on their application of a certain law to a specific case. Because of a lack of recorded and published court rulings, an exhaustive evaluation of how Turkish courts have interpreted Article 301 is difficult to compile.

Interpretation of Article 301

As of December 2007, more than sixty journalists, authors, and intellectuals have been tried under Article 159 or Article 301 but few have been convicted (Fowler, 12/10/07). Inconveniences associated with court proceedings can still have a stifling effect on free speech. Most cases related to Article 301 involve discussion of controversial subjects involving minority groups ("Repeal Article 301," 12/10/07). This thesis is specifically focused on problems related to discussion of the Armenian massacres. Before discussing the circumstances of several prominent figures and significant events related to Article 301, a brief summary of the Armenian massacres and the basic arguments surrounding the debate will be advantageous to understanding the interpretation and enforcement of Article 301 in Turkey.

The Armenian Massacres Debate

During the declining years of the Ottoman Empire in 1915, the "Committee of Union and Progress" (CUP) masterminded the relocation of the entire ethnic Armenian population of eastern Anatolia. One reason for the relocation may have been due to an Armenian uprising in Van. In an attempt to prevent further uprisings, the
Ottoman government relocated Armenians. Discussions in Turkish society have raged over whether or not additional secret orders were given to exterminate as many Armenians as possible during the deportation processes (Clark, 1). Indisputable is the fact that many died during the relocation. The official history sponsored by Atatürk blames war and political instability as reasons for so many deaths. Despite the official history, Ottomans held several large trials investigating genocide and ultimately hung Mehmed Kemal, a local governor of the Ankara district, for mass killings of Armenians; this execution attempted to appease British determination to punish supposed perpetrators. Soon thereafter, Atatürk seized control and eventually developed the Republic of Turkey, which was a separate and revolutionary entity from the Ottoman Empire.

Atatürk imposed a number of radical changes and modern movements in Turkey and also stressed Turkish pride and nationalism with Ottoman heritage as a part of that. Suppression of Armenian identity was a part of developing Turkish National Identity for people living within the borders of the new republic. Atatürk stressed that being Turkish is more important than ethnic or religious differences. He also commissioned an official history of Turkey that blames the death of so many Armenians on the chaos and confusion of times of war, perhaps in an effort to prevent divisions and ill-feelings within the republic. Disputation over what actually happened during the Armenian massacres has been a sensitive issue in Turkish society ever since. Debate and discussion of the issue have been suppressed because of the potential threat it is to uniting and establishing Turkish National Identity.

Recently, the debate has been rekindled as Turkey has made steps towards EU membership. Other countries have also decided to voice their opinion on the subject through legislation, which has heightened international tension and mounted external pressure on Turkish authorities to allow dissenting opinion on the subject (Clark, 1). Some suspect Armenian activists are pressuring foreign governments and parliaments to officially recognize an “Armenian genocide” in hopes that the Turkish Parliament will change its position (Clark, 1). On the other hand, Turkish nationalists consider statements of recognition of an “Armenian Genocide” an insult to “Turkishness” and have filed complaints of violations of Article 301 for any discussions related to the topic. Several Armenian and Turkish writers have been prosecuted under Article 301 for discussing the massacres in public venues or published materials. Their cases highlight important cultural and political aspects associated with the Armenian massacre debates.

**Implementation of Article 301**

*Orhan Pamuk*

The most prominent figure tried for violating Article 301 is 2006 Nobel Peace Prize winner, Orhan Pamuk. A state prosecutor brought charges against Pamuk in 2005 for his comments related to the Armenian massacres during an interview with a Swiss newspaper *Der Tagesanzeiger* (“Repeal Article 301,” 12/10/07). In response to the case, Pamuk said “thirty thousand Kurds and a million Armenians were mur-
dered. Hardly anyone dares mentioning it, so I do. And that’s why I am hated” (“Repeal Article 301,” 12/10/07). His renown as an acclaimed novelist and pressure from international human rights organizations led to Pamuk’s acquittal. Although Pamuk was ultimately exonerated, he still endured the financial burdens and time constrictions of a trial in court.

Some argue that he was also indirectly made a target for ultra-nationalist verbal and physical abuse due to the public attention drawn to the case. During the first case brought against Pamuk, he was physically attacked. Throughout the trial, tabloid newspapers called him a traitor to his national identity (“Repeal Article 301,” 12/10/07). Inconveniences such as these have been common among most trials related to Article 301. Even those not convicted are still estranged by public newspapers and nationalist supporters. The threat of these hardships suppresses others from speaking out on the Armenian massacres. Therefore, those initiating these cases, whether they are government officials or ultra-nationalists, have seriously stifled free speech even without convicting anyone. The international prestige of Pamuk served an important role in bringing Article 301 to the forefront of EU concerns and to the attention of the rest of the world. Increased pressure by human rights groups and surrounding countries led to closer surveillance of the ramifications Article 301 has on stifling free speech.

**Hrant Dink**

Another pivotal case involved the late Hrant Dink, journalist and editor of the Armenian-language weekly newspaper *Agos*. Dink stated, at a 2005 conference in Urfa, “I am not a Turk, but an Armenian of Turkey” led to a prison sentence for violating what was then Article 159 (Freely, 2). Although the prison sentence was dismissed, a second suit was filed against him for a series of articles he wrote on Armenian identity, which reportedly “encouraged Armenians of the Diaspora to abandon their blanket hatred of ‘the Turk’” (Freely, 2). Similar to Pamuk, media coverage of these trials brought national attention to Dink and ultra-nationalists targeted him as an enemy to Turkish nationalism.

In January 2007, Dink was shot and killed in front of his news office by Ogun Samast, a seventeen-year-old, self-proclaimed “Turkish nationalist” (Freely, 2). Some suspect that Samast was merely a tool of higher-up ultra-nationalists who paid him to kill Dink because of his “troublesome” writings. Others blame Article 301 for Dink’s death because of the national attention his court cases brought him which made him a target of ultra-nationalists. A crowd of an estimated 100 thousand mourners gathered at Dink’s funeral, some carrying signs saying “Murderous 301” and “We are all Hrant, we are all Armenians” (Freely, 2). Debate over the circumstances surrounding Dink’s death still continue, but his murder raised concern for those seeking to speak out on Armenian issues. Soon after Dink’s death, Orhan Pamuk quietly left the country and Hrant Dink was acquitted posthumously on 14 June 2007.

**Elif Shafak**

The cases discussed thus far have involved public statements and written articles. The trial of novelist and university professor Elif Shafak presents another dimension
of the discussion of Article 301. Shafak's best selling novel, The Bastard of Istanbul, served as grounds for prosecution for a remark made by one of her characters (Fowler, 12/10/07). The specific remark is made by a man of Armenian descent who worries out loud about which version of history his niece will accept as she is raised by her Turkish stepfather—history told by the Turkish government or oral traditions of Armenian ancestors (Fowler, 12/10/07). The character lamented, "I am the grandchild of genocide survivors who lost all their relatives to the hands of the Turkish butchers in 1915, but I myself have been brainwashed to deny the genocide because I was raised by some Turk named Mustapha!" The first time the case was tried, the prosecution dismissed it on the grounds that her work was fiction. The trial was later reheard by a higher court, and she was acquitted.

Shafak's book deals with intriguing cultural ramifications of the Turkish nationalism. The discrepancies of official history and Armenian tradition are expressed by her fictional characters. Anguish experienced by those of Armenian dissent is real. However, on the grounds that the fictional characters were expressing the difficulties of negotiating ethnic identity crisis the case was dismissed. If the case had involved "real" people saying similar things, the verdict of the case might have been different. Ultra-nationalists claim that acknowledging such cultural and ethnic divisions disturbs public unity and therefore "denigrates" Turkish identity. Viewing the acknowledgment of ethnic differences as a threat to national unity is the traditional way of seeing minorities. The traditional approach to handling minorities in Turkey is to ignore cultural and historical differences for the preservation of the Turkish Republic. That Shafak was acquitted displays some reservation on the part of the government to stifle free speech. But the fact that the case was dismissed on the grounds the work was fiction shows Turkey has yet to accept that divisions within the country are a reality.

Discussion of the Armenian Massacres at a University

Another significant development in Turkey's progression toward freer speech was marked by a conference on the Armenian massacres held in Istanbul. Holding the conference was revolutionary in and of itself. A formal gathering seeking discussion of the massacres at a public venue in Istanbul was monumental in testing the limitations of free speech in Turkey. The conference was scheduled to be held at Bogazici University in Istanbul in September 2005, but due to political pressure instigated by ultra-nationalists, Bogazici and Sabanci Universities were barred from hosting the conference until information being disseminated at the conference and the credentials of the speakers and the financial sponsors could be collected (Grigoriadis, 16). In response to the ultra-nationalist requests, conference organizers moved the venue to Bilgi University without any further disruption or complication.

That the conference was postponed showed the lack of complete press freedom in Turkey. The conference was shifted and forced to be held at a private university instead of a state-sponsored school so as to alienate the discussion from state-associated institutions. Government interruption of the conference illustrates government disapproval of public conversation on the subject. However, because the conference did
take place in Istanbul, even after various complications and opposition to the conference arose from ultra-nationalists, does show some progression toward free speech. This academic conference represented an important movement by Turkish society toward the acceptance of public dialogue on the Armenian massacres.

Analysis of Court Cases

Although the government may have been responsible for enforcing many of these cases, most complaints related to Article 301 have been filed by Kemal Kerincsiz, a lawyer and member of the Greater Jurists Union. Kerincsiz considers himself a nationalist who is simply trying to preserve national unity and pride from “Western imperialism and global forces that want to dismember and destroy [Turkey]” (“Waving Atatürk’s Flag,” 12/11/07). Kerincsiz’s ultra-nationalist beliefs are exactly why he has instigated so many court cases, all with the intention of preserving Turkishness. Kerincsiz explained that his reasoning for filing a complaint against the conference was that “the real aim of [the] conference was not academic but to push Turkey into chaos, break it up and create a (greater) Armenia” (Grigoriadis, 16).

Viewing discussion of the Armenian massacres as an attempt to divide and destroy the Turkish republic represents the ultra-nationalist interpretation of Turkish identity. The irony of Kerincsiz’s complaint about the conference is that it could very well be turned on its head and argued that ultra-nationalists are the ones trying to create chaos. Some argue that ultra-nationalists feel that if they can instigate or at least project the image of chaos to the international arena, Turkey could be prevented from becoming a member of the EU. Ultra-nationalists disfavor EU membership, because it would make Turkey European instead of Turkish, thereby destroying Turkishness. Filing complaints and stifling speech on the massacres, which has the potential to lead to violence and disturbances, accomplishes the ultra-national goal of preserving Turkishness.

This theory is exemplified by the case of Hrant Dink. The crowds carrying signs at Dink’s funeral accusing Article 301 of murdering Dink posed a provocative point. The role that 301 played in killing him may not be entirely provable because the events surrounding his death are unsure. However, it may be argued that Article 301 could have encouraged Dink’s death. The law may have amplified media attention given to Dink’s inflammatory writings and marked him as an ideal target for ultra-nationalists. Killing Dink, who had received substantial media attention already, would accomplish several advances for the ultra-nationalist cause at one time. Assassinating Dink could project an image of chaos in Turkey to the international community, which could complicate Turkey’s EU bid. It also would stop his inflammatory writings and discourage other people from speaking out on the subject.

Regardless of who was behind Dink’s assassination and what their motivations for killing him were, Dink was killed. His death stopped his writings, which scared others from discussing the massacres and projected an image of turmoil in Turkey. Ultra-nationalists were well aware of Dink’s writings, and he was likely killed because of what he said and represented. Attributing his assassination to 301 is difficult.
to prove even though there is a reasonable association. The cases of Hrant Dink and Orhan Pamuk represent how speech can translate into physical violence. For some, Dink is a martyr for the Armenian cause as well as for free speech; for others, he is seen as a rebel and traitor to his country. The opposition and polarization over the debate seem to be only further exaggerating or magnifying divisions in the country.

Ironically, the justification for having insult laws such as Article 301 is to preserve Turkishness, which as outlined in the constitution of the Republic of Turkey is related to national unity and public peace. The cases of Hrant Dink and Orhan Pamuk highlight the paradox of Article 301. The law that is supposed to protect national identity is failing to preserve unity and peace. In some respects, it may even be exaggerating divisions and violence among nationalists and ethnic minorities by bringing so much attention to the issue as speech is regulated. Article 301 has functioned as a means of reopening and redefining ethnic and historical differences among citizens of Turkey that have been ignored since the origination of the Republic of Turkey. The cultural divisions caused by debate over the Armenian issues are described by the characters in The Bastard of Istanbul. In the novel, a grandfather worries about what history his niece will be taught.

That Shafak was acquitted shows some governmental progression in recognizing differences and problems. But the reason for her acquittal shows a reluctance to embrace the reality of divisions in Turkish society related to the massacres. Shafak's case illustrates the progression Turkey has made as well as the progression it will need to make to eventually allow open discussion of the Armenian massacre. For this to happen, Turkishness will have to be redefined to include the recognition of ethnic minorities and the embracement of debate over the Armenian massacres. That a conference on the massacres was held in Istanbul shows some progression towards acceptance of democratic principles.

Recent Developments

Ergenekon Investigation

Earlier this year, more developments were made toward the greater free speech in Turkey. In January 2008, Kemal Kerincsiz was taken into custody for "alleged links to a weapons cache found in Umranı, Istanbul" in June 2007 ("Ergenekon arrests broaden," 3/22/08). Kerincsiz is found to have ties to an ultra-nationalist criminal gang known as Ergenekon. As the force behind most 301 cases, his absence could have dramatic effects on the future implementation of Article 301 and the admission of Turkey into the EU. More than thirty other prominent retired military generals, politicians, and reporters are now being investigated for being a part of Ergenekon ("Ergenekon arrests broaden," 3/22/08). The group has been linked to the murder of Armenian journalist Hrant Dink and is being investigated for planning the assassinations of several senior Kurdish politicians, as well as Nobel Prize winner Orhan Pamuk. The case against members of Ergenekon was in the court system during the same time that parliament was deciding whether to amend or revoke Article 301.
2008 Amendments to Article 301

The Turkish Parliament recently decided to amend several parts of Article 301. Changes to the law were well received by the EU, but nationalist Turks vehemently opposed the new bill. Soon after the bill was approved, the Republican People's Party (CHP) threatened to challenge the amendments by bringing them to constitutional court ("CHP to not back," 5/13/08). Although the CHP relinquished aspirations for contestation, factions divided over the amendments to Article 301 show a reluctance to let go of the power to regulate free speech. Differing opinions in the government also demonstrates variance in interpreting Turkishness and how it can be insulted.

Others have disapproved the amendments to 301 for different reasons. Holly Cartner, director of Human Rights Watch for Europe and central Asia argued:

Article 301 should have been abolished a long time ago. The revisions proposed by the government will not change the fundamental flaws in the law. The government’s half-hearted revision is a real disappointment. The government has missed an important opportunity to reinvigorate the reform process and underscore its commitment to free speech (Human Rights World Wide).

Although the government avoided completely revoking Article 301, the changes made to Article 301 combined with the arrests of leading ultra-nationalists could lead to a redefining of the interpretation of desecrating Turkishness. This could be a pivotal step for Turkey to be better prepared to embrace greater free speech.

As noted earlier, part of the recent reforms to Article 301 is that suits must be filed by permission of the Minister of Justice, which makes it more difficult to file suits and could lead to fewer cases. With the arrest of Kerincsiz and investigation of Ergenekon, the main force behind most 301 cases is at least temporarily detained. The relaxation of the enforcement of Article 301 is very feasible. Another influencing factor is that the Turkish government has a vested economic and political interest for EU membership. Some in Turkey see these events as opening a window for Turkey to satisfy EU admissions without completely revoking Article 301. The effect of this process would be a redefining of Turkishness, progression towards free speech and acknowledgement of ethnic and cultural divisions. Retaining insult laws while adjusting the enforcement of them is a similar pattern followed by western European countries.

In November 2007, commissioner for enlargement of the UN, Olli Rehn, said:

The EU should not open accession talks with Turkey on the key policy area of justice and human rights until Ankara had repealed or amended the infamous Article 301 of the Turkish Penal Code that is used to prosecute individuals, especially journalists and intellectuals, for ‘insulting Turkishness ("Article 301 new benchmark," 11/7/07).

Turkey has since made amendments to Article 301 to comply with EU demands. These changes were commended by EU officials in April, but complete approval is pending a more complete understanding of how Turkey intends to implement of the law. Turkey therefore will have to revamp the way Article 301 is enforced, how Turk-
ish identity is interpreted, and the degree of discussion that is allowed concerning the Armenian massacres.

Although reforming the way Article 301 is enforced and redefining how Turkish identity is interpreted has the potential to improve the climate of free speech in Turkey, some negative consequences to this approach may arise. Turkish society may not be as accepting of a liberalized interpretation of Article 301, which could result in greater confrontations between ultra-nationalists and those speaking out about the Armenian massacres. If ultra-nationalists are not able to squelch via legal recourse what they consider inflammatory discussion, they may resort to violence to silence public commentary on the massacres.

Predictions and Conclusions

With the revisions of Article 301 and the detainment of ultra-nationalists such as Kemal Kerincisiz, I submit Turkey will relax the enforcement of Article 301 instead of revoke the law. A strong tradition of nationalism and the precedent of other countries justify Turkey in holding onto Article 301. Keeping the law, however, will require Turkish officials to redefine how Article 301 is interpreted and Turkish identity is defined. Gradually Turkish society will become more accepting of discussion on the Armenian massacre and the recognition of ethnic minorities. Through this process, Turkey's identity will be redefined to accept cultural and ethnic differences that have previously been ignored. Although the divisions over the Armenian massacres may not be immediately recognized, circumstances related to EU aspirations will force Turkey to greater acceptance of dissenting opinions. The process of democratization in Turkey has had serious implications for the scope of Article 301 and on Turkish national identity.

The process of redefining Turkishness is a phenomenon that may be applied to understanding problems and issues related to the democratization of other insult laws as well. The experience of Turkey demonstrates the complicated process reforming insult laws can have in a country. Just as Turkey's journey toward embracing free speech and open criticism is gradual and complicated, so is the case with other European countries. Exceptions for regulating speech described in democratic principles allow countries to retain insult laws if they are enforced differently. As aspiring democracies reevaluate how insult laws are interpreted, they can advance towards free speech. Governments cultivate an environment of free speech by how insult laws are enforced and interpreted. This requires the negotiation of speech regulations and embracing dissent. As countries learn to enforce insult laws differently, they will be more susceptible to embracing criticism and dissent.

Questions for Further Research

Based on research conducted on this topic, I have realized that there are many more interesting aspects of the topic that have yet to be discussed or evaluated. The future of Turkey as it seeks admission into the European Union and how government officials will interpret Article 301 will be interesting to watch.

1. Will the EU accept changes made to the Article 301 as sufficient for satisfying free speech requirements? Will Turkey comply with other stipulations of EU ad-
mission? Could these deter Turkey from becoming a member of the EU?
2. What will happen if Turkey is rejected for EU admission? Will Turkey change its enforcement of Article 301 if it ceases to pursue EU admission? Will it change its policy after becoming a member of the EU?
3. What will come of Kemal Kerincsiz and Ergenekon? Are there other ultranationalists groups willing to take such an aggressive role as Kerincsiz has with filing complaints of violating Article 301? How will the Minister of Justice choose to interpret and enforce Article 301?

REFERENCES


