Blog No: 25
19.11.2015

ECHR GRAND CHAMBER VERDICT OF OCTOBER 15, 2015: PROS & CONS*

*A comprehensive evaluation by **Ergün KIRLIKOVALI**,*

November 16, 2015

Abstract: *On October 15, 2015, Grand Chamber of the European Court of Human Rights (ECHR or "the Court") delivered its judgment in the case of Perinçek v. Switzerland,**[1]** application no. 27510/08 (the verdict"). By a majority, 17 judges held that there had been a violation of Article 10 (freedom of expression) of the European Convention on Human Rights,**[2]** perpetrated by Switzerland. By its criminal conviction of a Turkish politician (Perinçek) for publicly expressing his views on Swiss soil, regarding the "Turkish-Armenian Conflict," Switzerland breached Dr. Perinçek's right to free speech. Dr. Perinçek stated that the relocation policy concerning the Armenians in the Ottoman Empire in 1915 and massacres suffered by Armenians in 1915 and the following years had not amounted to genocide. The ruling is nothing less than a spectacular legal victory for Dr. Perinçek, Turkey, and Turks around the world, and a game-changer.*

Now that the initial feedback and reflexive reactions are over, perhaps we can take a more composed look at this milestone of a legal verdict. The verdict with its 300 paragraphs, conclusions, and dissenting opinions, each of which could easily inspire a long article like this, would perhaps be more suited for a book later on. I shall, therefore,

confine my analysis to the press release[3] issued by the Registrar of the Court, marked ECHR 325 (2015) and dated 15.10.2015, which is an excellent summation of the verdict. Still, there are so many aspects to consider that I decided to number and title each one of them for easier comprehension, quick reminders, and future reference. Let me start with house-keeping facts and then gradually move on to thought-provoking findings. I also took the liberty, for your enjoyment, to grade each fact and/or finding as pro or con for Armenians and/or Turks.

1) It is final

There are no more appeals or higher courts. This is it. Grand Chamber judgments are final (Article 44 of the European Convention on Human Rights). All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution.

(Grade: Good for Turks and others who are fed up with incessant Armenian propaganda)

2) It holds the lower court's ruling of December 17, 2013

The Grand Chamber of ECHR agrees with lower court and this is "the law of the land" now. As Americans like to put it, there is a new sheriff in town and he says disputing an opinion (such as the Armenian allegations of genocide) is an exercise of freedom of speech, which right is protected under Article 10 of the European Convention on Human Rights. It fine-tunes the "denial laws" and teaches Switzerland (and the rest of the world) that only "genocides supported by the verdict of a competent court" shall benefit from the protection afforded by the "denial laws." That is, while the Jewish Holocaust, Rwanda, and Srebrenica are protected because they are court-proven genocides, the Armenian claim of genocide is not protected because it remains an "opinion." Disputing an opinion is not hate speech, as Armenian lobbies insist; it is an exercise in freedom of speech.

(Grade: Bad for Armenians)

3) Civilized Dialogue

ECHR verdict checks a hundred years of Armenian arrogance, deception, and lawlessness, all masquerading as "sole and blameless victims" of a complex and tragic conflict, dubbed "genocide" in mid-1960s, i.e. 50 years after the event, purely for political reasons. In case you missed, the verdict also makes the way forward crystal clear: civilized dialogue based on facts, honesty, and fairness; not propaganda, censorship, bias, or bigotry. Now, we will be able to hear the other side of the story and get a fuller understanding of the complex history of 1915. We will be able to grieve for all human suffering jointly, without dividing and segregating the victims into camps based on their faith, ethnicity, race, language, or nationality. No more "selective morality" leaving out the archives showing

blatant Armenian complicity and guilt. No more ignoring Turkish and other Muslim suffering at the hands of Armenian revolutionaries, while exaggerating Armenian suffering by ridiculously manipulating demographic data in total disregard for even the most basic rules of mathematics. No more perception management by stereotyping, intimidating, silencing, and censoring. No more one-sided editorials in New York Times, Boston Globe, Los Angeles Times, Washington Post, and other big media; or passing political resolutions dictating a certain view on history, in defiance of critical thinking. No more glut of one-sided "academic" books ignoring half the story.

(Grade: Good for Turks, bad for Armenians)

4) "Dignity and identity of modern day Armenians"

ECHR press release says: "*Being aware of the great importance attributed by the Armenian community to the question whether those mass deportations and massacres were to be regarded as genocide, the European Court of Human Rights held that the dignity of the victims and the dignity and identity of modern day Armenians were protected by Article 8 (right to respect for private life) of the Convention*." This statement is in favor of Armenian community, although it seems to unfairly single out Armenian suffering while ignoring Turkish and other Muslim suffering. What about the "dignity and identity of modern day Turks and other Muslims", like my father's folks in the village of KIRLIKOVA and my mother's in Skopje, and millions of others in the Balkans and the Caucasus, who also suffered greatly from forced marches and starvation and epidemics and wars, at the same time period? What about the 518,000 Muslims, mostly Turkish, who met their tragic end at the hands of Armenian revolutionaries? This matter remains the crux of the "Turkish-Armenian Conflict."

(Grade: Good for Armenians)

5) "Protect(ing) the rights of the Armenian community"

ECHR press release says the judges strived to strike a balance between two Convention rights: freedom of expression and respect for private life. "*The Court concluded that it had not been necessary, in a democratic society, to subject Dr. Perinçek's to a criminal penalty in order to protect the rights of the Armenian community at stake in the case.*" One cannot help but ask whether the rights of the Armenian community really need protecting by such preferential treatment, bordering on religious discrimination. What about the rights of Muslims, mostly Turks, during WWI □□□ Azeris more recently, in 1992-1994 when they were expelled from their homes in Karabakh at gunpoint by Armenians? This language, it seems, needs work to include all deserving parties.

(Grade: Good for Armenians)

6) No more censorship hiding behind the false claims of hate speech

The Court finds that Dr. Perinçek's statements "*did not amount to a call for hatred or intolerance*." This ECHR decision is definitely a huge win for the contra-genocide scholars, as one of the major harassment techniques used by the Armenians has always been labeling responsible opposing views as "hate speech and intolerance." This way, the Armenians were able to censor dissent, cancel speaking engagements by well-informed critics of the Armenian claim of genocide, stop the publishing of scholarly books by university publishing houses, and/or smear the academic record of scholars. This door is closed now for Armenians.

(Grade: Bad for Armenians)

7) Dissenting speech does not justify a criminal law response

ECHR-Grand Chamber adds: " ☀*The context in which they were made had not caused heightened tensions in Switzerland and the statements could not be seen as affecting the dignity of the members of the Armenian community requiring a criminal law response in Switzerland* ☀∀ That means, now, the victims of Armenian intimidation will be able to seek legal redress and base their move on this very ECHR decision.

(Grade: negative for Armenians and Switzerland)

There was no international law obliging Switzerland to criminalize statements opposing the Armenian claims of genocide and the Swiss courts "*appeared to have censured Dr. Perinçek's simply for voicing an opinion that diverged from the established ones in Switzerland ; and the interference with his right to freedom of expression had taken the serious form of a criminal conviction.*" While Switzerland is rebuked and reprimanded severely here for needlessly censoring free speech, the message is to the entire world, especially those who seek proliferation of "denial laws" to control thought and speech, that censoring "*opinion that diverged from the established ones*" is not acceptable. This is a remarkable indirect warning to big media, especially the New York Times, the Los Angeles Times, the Boston Globe, and the Washington Post which are notorious for censoring responsible opposing views on the Turkish-Armenian Conflict.

(Grade: Good for Turks and friends)

8) An arduous legal odyssey that exculpates dissenters in one fell swoop

The applicant, 73-year-old Doğu Perinçek, is a Turkish national, an Ankara resident, holder of a doctor of laws degree, and chairs the Turkish Workers Party. In 2005 Dr. Perinçek's participated in three public events in Switzerland, in the course of which he expressed the view that the relocation and massacres suffered by the Armenians living in the Ottoman

Empire from 1915 onwards had not amounted to genocide. At a press conference held in May 2005 in Lausanne, Dr. Perinçek's stated that *the allegations of the Armenian genocide are an international lie ☀ (I)mperialists from the West and from Tsarist Russia were responsible for the situation boiling over between Muslims and Armenians. The Great Powers, which wanted to divide the Ottoman Empire, provoked a section of the Armenians, with whom we had lived in peace for centuries, and incited them to violence*. At a conference held in July 2005 in Opfikon to commemorate the Lausanne peace treaty of 1924, concluding the First World War for Turkey, Dr. Perinçek's stated that *the Armenian problem ... did not even exist*, and handed out written statements in which he rejected that the events of 1915 and the following years had constituted genocide. Lastly, at a rally of the Turkish Workers Party held in Köniz in September 2005, Dr. Perinçek's stated that *the Soviet archives confirm that at the time there were occurrences of ethnic conflict, slaughter and massacres between Armenians and Muslims. But Turkey was on the side of those defending their homeland and the Armenians were on the side of the imperialist powers and their instruments ... (T)here was no genocide of the Armenians in 1915.* This is more or less what we have been saying and writing for decades; only now, we have the stamp of approval by ECHR that our position is not hate speech and it is an exercise freedom of thought and expression.

(Grade: Good for Turks; bad for Armenians and other "thought police")

9) Delusional Armenian arrogance hits the wall of law… and reality

The Switzerland-Armenia Association (SAA) filed a criminal complaint against Dr. Perinçek on account of the statement made at the first event. The investigation was later expanded to cover the two other oral statements as well. On 9 March 2007 the Lausanne District Police Court found him guilty of the offence under Article 261 bis § 4 of the Swiss Criminal Code, holding in particular that his motives appeared to be racist and nationalistic and that his statements did not contribute to the historical debate. The court ordered him to pay 90 day-fines of 100 Swiss francs each, suspended for two years, a fine of 3,000 Swiss francs, which could be replaced by 30 days imprisonment, and 1,000 Swiss francs in compensation to the Switzerland-Armenia Association for non-pecuniary damage. Thanks to this ill-advised act of greed and arrogance by SAA, today we are enjoying the protection of our rights to freedom of speech, afforded by the verdict.

(Grade: Good for Turks; bad for Armenians)

10) Dr. Perinçek's appeals

He asks that the Swiss judgment be set aside and additional investigative measures taken to establish the state of research and the positions of historians on the events of 1915 and the following years. Here is how things develop after this point: The Criminal Cassation Division of the Vaud Cantonal Court (Switzerland) dismisses the appeal on 13 June 2007. The Swiss Federal Court dismisses a further appeal by Dr. Perinçek in its judgment of 12

December 2007. Dr. Perinçek protests that his criminal conviction and punishment for having spoken his mind had been in breach of his right to freedom of expression under Article 10. He also complains relying on Article 7 (no punishment without law), that the wording of Article 261 bis § 4 of the Swiss Criminal Code was too vague (for instance, it does not differentiate between fact and opinion; genocides supported by a court-verdict and opinions held by a segment of society). The application is lodged with the European Court of Human Rights on 10 June 2008. In a judgment of 17 December 2013 a Chamber of the Court holds, by five votes to two, that there had been a violation of Article 10 of the Convention by the Swiss courts. The Swiss Government, although promises the Turkish government not to pursue this matter any further, reneges on its promise and requests that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber), and on 2 June 2014 the panel of the Grand Chamber accepts that request. A Grand Chamber hearing is held on 28 January 2015.

(Grade: Bad for Swiss Government and Armenians, good for Turks)

11) Everyone gets in on the final act

In the Grand Chamber proceedings, third-party comments are received from: 11.1) the Turkish Government, who had exercised their right to intervene in the case (Article 36 § 1 of the Convention); 11.2) the Armenian and French Governments, who had been given leave to intervene in the written procedure (Article 36 § 2); 11.3) The Armenian Government are in addition given leave to take part in the hearing. 11.4) Non-governmental organizations and persons: (a) the Switzerland-Armenia Association; (b) the Federation of the Turkish Associations of French-speaking Switzerland; (c) the Coordinating Council of the Armenian Organizations in France (CCAF); (d) the Turkish Human Rights Association, the Truth Justice Memory Centre and the International Institute for Genocide and Human Rights Studies; (e) the International Federation for Human Rights (FIDH); (f) the International League against Racism and Anti-Semitism (LICRA); (g) the Centre for International Protection; and (h) a group of French and Belgian academics.

(Grade: Good for the truth)

12) Delicate language by ECHR about legal meaning of the term genocide

The Court states that "*it was not required to determine whether the massacres and mass deportations suffered by the Armenian people at the hands of the Ottoman Empire from 1915 onwards could be characterized as genocide within the meaning of that term under international law; unlike the international criminal courts, it had no authority to make legally binding pronouncements on this point.*" Please note, the UN Convention of 1948[4] requires that a competent court taken on a genocide case, go through due process, and prove "intent to destroy" before coming to a genocide verdict. So, ECHR-Grand Chamber is right in saying that it had no authority to make legally binding pronouncements on this point. Please also note that while the highest court in Europe respects the need for a

"competent court" to make a genocide decision, Armenian advocates and their supports have no need for law as they freely pass a judgment on 1915 events every day, calling it genocide. If they will decide on such controversies, then why do we need the International Court of Justice[5] established (ICJ) by the UN? Genocide proponents need to learn to respect law. I thank the court for teaching a lesson to the genocide-pushers in respecting legal definitions, competent courts, due process, proof of intent, and other legal aspects.

(Grade: Good for all)

13) ECHRs stance on Switzerland's violation of free speech

The court agrees that the Dr. Perinçek's conviction and punishment, together with the order to pay compensation to the SAA, had constituted an intrusion in the exercise of his right to freedom of expression under Article 10. The Court does not find that the interference is justifiable "*under Article 16 of the Convention, which provides that nothing in Article 10 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens. Article 16 had never been applied by the Court. It had to be borne in mind that clauses that permitted interference with Convention rights had to be interpreted restrictively. The Court found that Article 16 should be interpreted as only capable of authorizing restrictions on activities which directly affected the political process, which had not been the case here.*" Translation: If you believe the political activity of some will affect the entire political process negatively, then you can be justified in restricting them without worrying about their free speech rights. Switzerland, thus, tries to hide their blatant violation under Article 16, which the Court does not buy.

(Grade: Nice try, Switzerland, but you get an "F" in this test. Go study your laws harder and come back for a make-up test. Result: Bad for Switzerland and Armenians; good for Turks)

14) Could the Swiss Court's action be motivated by "prevention of disorder"?

The Grand Chamber agrees with the lower Chamber that the interference with Dr. Perinçek's free speech "*had been prescribed by law within the meaning of Article 10 § 2. The Court finds that Dr. Perinçek's could reasonably have foreseen that his statements might result in criminal liability under Swiss law. As regards the question whether the interference had pursued a legitimate aim, the Court was not satisfied that it had been necessary for the 'prevention of disorder'*." In other words, Swiss action is not justified on grounds that public disorder might erupt if Dr. Perinçek's free speech is not restricted and punished.

(Grade: Again, nice try, Switzerland, but you get another "F" in this test. Go study the laws harder and re-take this test)

15) Could the Swiss Court's action be motivated by protection of the rights of others "?

Like the lower Chamber, the Grand Chamber of the Court finds "*that the interference could be regarded as having been intended 'for the protection of the ... rights of others' within the meaning of Article 10 § 2.*" After all, the court declares, " *many of the descendants of the victims of the events of 1915 and the following years, especially in the Armenian diaspora, constructed their identity around the perception that their community had been the victim of genocide. The Court thus accepted that the interference with Mr Perinçek's rights had been intended to protect that identity and thus the dignity of present-day Armenians*." Translation: Because Armenians take the genocide claim seriously, maybe Dr. Perinçek's should have expected that his free speech would be restricted on Swiss soil, out of Switzerland's respect for Armenian dignity. I respectfully and strongly disagree with the Grand Chamber on this, because protests against some fanatic groups, even terrorist organizations, could be silenced under such an interpretation.

(Grade: Good for Armenians)

16) Had the interference been necessary in a democratic society under Article 10 § 2?

The Court clarifies that it was not required to determine whether the criminalization of the denial of genocide or other historical facts might in principle be justified. At this point, may I remind you the Appel de Blois[6] of 2007 when a group of prominent French historians led the world intellectuals and scholars in taking a stand against "memory laws" and "memory police".[7] The freedom of historical debate had come under serious attack □□□□□□□ by promoters of the alleged Armenian genocide who were intent on stifling free and open debate by forcing upon the public only a single version of partisan history and banning all responsible opposing views. The Court here is simply saying "*We were not asked if the memory laws are good or bad.*"

(Grade: Good for the truth)

17) ECHR narrows the task to a balancing act and focuses on it

The court says "*It was only in a position to review whether or not the application of Article 261 bis § 4 of the Swiss Criminal Code in Mr Perinçek's case had been in conformity with Article 10. In the light of the Courts case-law, the dignity of Armenians was protected under Article 8 of the Convention. The Court was thus faced with the need to strike a balance between two Convention* rights [EK's note: free speech versus dignity of victims] *, taking into account the specific circumstances of the case* [EK's note: Armenian identity, passion, and fanaticism] *and the proportionality between the means* used [EK's note: restricting free speech] *and the aim sought to be achieved* [EK's note: to prevent public

disorder]. *In examining the nature of Mr Perinçek's statements, the Court did not seek to establish whether they could properly be characterized as genocide denial or justification for the purposes of the Swiss Criminal Code. That question was for the Swiss courts to determine.*"

(Grade: Bad for Switzerland, good for the free speech, scholarship, and truth)

18) Perinçek attack was on "imperialists" and their tools, not Armenians loyal to their state

The Court decides that Perinçek had *not expressed contempt or hatred for the victims of the events of 1915, noting that Turks and Armenians had lived in peace for centuries. He had not called the Armenians liars, used abusive terms with respect to them, or attempted to stereotype them*." (But Armenians do defame and stereotype Turks all the time; Armenian literature is replete with degrading comments for Turks. The court needs to strike a balance here, too, in future). The Court says "*His strongly worded allegations had been directed against the imperialists* [EK's note: Mainly Russia, Britain, France, and the U.S.] *and their allegedly insidious designs with respect to the Ottoman Empire and Turkey*."

(Grade: Good for Turks; bad for Armenians)

19) The Court separates, again, court-proven Holocaust from popular-opinion of Genocide

Here is the exact language: "*While in cases concerning statements in relation to the Holocaust, the Court had for historical and contextual reasons invariably presumed that they could be seen as a form of incitement to racial hatred, it did not consider that the same could be done in this case. The context did not require automatically to presume that Mr Perinçek's statements relating to the 1915 events promoted a racist and antidemocratic agenda, and there was not enough evidence that this had been the case*." Furthermore, I have the benefit of another ECHR verdict on yet another Article 10 case, where ECHR punished a comedian for his statements on Jews and Holocaust. I am, of course, referring to the M'bala M'bala v. France[8] case decided on October 20, 2015. Thus, within a span of days, as if to drive the point home, the ECHR taught all of us an vital lesson that denying Holocaust is hate speech and punishable by the denial law, while disagreeing with the opinion of Armenians on genocide is an exercise of freedom of speech, therefore, not punishable by the same denial law. This stark contrast should be clear by now to even the most ardent supporter of Armenian claims.

(Grade: Good for Turks; bad for Armenians)

20) Dr. Perincek was a member of Talaat Pasha Committee (TPC); so what?

This statement by ECHR is another striking part of the landmark verdict. "*The Swiss courts had referred to the fact that he was a self-professed follower of Talaat Pasha, who was historically the initiator of the massacres of 1915.*" [EK's note: Please note; the second half of this statement happens to be presumptuous. First, massacres were not the work of the Ottoman government, even though some in government's employ may have been involved. To call them "Armenian massacres" is to ignore Armenian excesses committed by Armenian revolutionaries. The correct term should be "mutual massacres or "Turkish-Armenian irregular warfare", as they were, at least in part, due to retaliation motives perpetrated to exact revenge on the Armenians for previous Armenian cruelty on Muslims. Honesty, fairness, and balance are needed here. Second, *Talaat Pasha* initiated the TERESET □□□□□□ for "**Te**mporary **Reset**tlement" □□□□ homeland security reasons and as a wartime military measure, not massacres. There is extensive documentation in the Ottoman archives, which the genocide advocates conveniently ignore, that the Ottoman government tried its best to conduct an orderly TERESET] Back to the ECHR quote: "*However, the Swiss courts had not elaborated on this point, and there was no evidence that Mr Perinçek's membership in the so-called Talaat Pasha Committee had been driven by a wish to vilify the Armenians*." There it is, set in stone, that one's membership in the TPC is not grounds to automatically blame one for "vilifying Armenians", like the Armenian lobbyists almost always do. The witch hunt associated with TPC members, the stigma cultivated for membership in TPC, and all other similar intimidation tactics must be abandoned by the Armenian camp now or face the consequences in court to be humiliated with verdicts in support of freedom of speech.

(Grade: Good for Turks; bad for Armenians)

21) In the Courts opinion, Dr. Perinçek's statements are not hate speech

The Court decides that Dr. Perinçek's statements, "*read as a whole and taken in their immediate and wider context, could not be seen as a call for hatred, violence or intolerance towards the Armenians*." Given the public interest in this matter, the Court concluded, "*Mr Perinçek's statements were entitled to heightened protection under Article 10, and that the Swiss authorities had only had a limited room for maneuver (margin of appreciation) to interfere with them*." Translation: Swiss authorities must let the guy speak his mind on a matter of controversy that is also of public interest. The Swiss should not interfere with free speech on "the Turkish-Armenian conflict", especially in view of the historical experience of a Convention state concerned by a complaint under Article 10 was particularly relevant with regard to the Holocaust.

(Grade: Good for Turks; bad for Armenians)

22) "Holocaust denial, even if dressed up as impartial historical research, implies anti-Semitism

ECHR-Grand Chamber is, again, careful with the language: "*For the Court, the justification for making (Holocaust) denial a criminal offence lay in the fact that such denial, in the historical context of the States concerned, even if dressed up as impartial historical research, had to be considered as implying anti-democratic ideology and anti-Semitism. The Article 10 cases concerning Holocaust denial examined by the Court had been brought against Austria, Belgium, Germany and France. The Court considered that Holocaust denial was especially dangerous in States which had experienced the Nazi horrors* [EK's note: mainly Austria, Belgium, Germany, Holland, and France, although almost every state in Europe felt it to varying degrees] *and which could be regarded as having a special moral responsibility to distance themselves from the mass atrocities that they had perpetrated or abetted, by, among other things, outlawing their denial* [EK's note: This ECHR-language may need some work, as its reverse reading may suggest that Holocaust denial is not as dangerous in States which had not experienced the Nazi horrors].

(Grade: Good for Turks; bad for Armenians)

23) Swiss actions cannot be justified by the alleged situation of Armenians in Turkey

The Court does not mince words when it comes to possible excuses used for violating free speech rights in Switzerland. "*The Court did not consider that Mr Perinçek's criminal conviction in Switzerland could be justified by the situation in Turkey, whose Armenian minority was alleged to suffer from hostility and discrimination* [EK's note: Armenian citizens make up 0.1 percent of Turkey's population, but are represented disproportionately by 0.5 percent of the Turkish parliament. Compare this five-fold **inflated** representation Armenian-Turks to that of Turkish-Germans: 5 percent of Germany's population represented by 1.1 percent of Bundestag, i.e. five-fold **deflated** representation; or Turkish-Americans; 0.1 percent of US population represented by zero percent of the US Congress. The claim that Armenians suffer hostility and discrimination is not supported by facts on the ground]. "*When convicting him, the Swiss courts had not referred to the Turkish context. While the hostility of some ultranationalist circles in Turkey towards the Armenians in that country could not be denied,* [EK's note: Just like hostility of Nazis and other far-right Christian fundamentalists to Turks and other Muslims in Europe manifested as anti-Turkism □□□□□□□ to anti-Semitism □□□□□□□ Islamophobia] ☀ *Europe in particular in view of the assassination of the Turkish-Armenian writer and journalist Hrant Dink in January 2007, possibly on account of his views about the events of 1915 and the following years*, [EK's note: Overwhelming majority of Turks protested Dink's murder from president on down to Turkish citizen on the main street. Dink statement ignores Armenian terrorism from 1973 to 1994 which caused deaths of about 40 Turkish diplomats worldwide for which Armenians still show no noticeable or appreciable remorse] *... this could hardly be regarded as a result of Mr Perinçek's statements in Switzerland.*"

(Grade: Good for Turks; bad for Switzerland and Armenians)

24) The Court rejects 'Armenian sensitivity and dignity" arguments tabled by Switzerland

The Court rules against Switzerland on "Armenian sensitivity and dignity" issues: "*While the Court was aware of the immense importance attributed by the Armenian community to the question whether the tragic events of 1915 and the following years were to be regarded as genocide, it could not accept that Mr Perinçek's statements at issue had been so wounding to the dignity of the Armenians as to require criminal law measures in Switzerland*." [EK's note: While I accept that Armenians are sensitive about how 1915 events should be viewed, this sensitivity should not be allowed to blind all others to heretofore ignored and/or dismissed historical evidence that Armenians were engaged in armed and violent revolts (1862-1922), extremely bloody terrorism (1871-1922), and supreme treason as in joining invading enemy armies (1877-1922); and tortured and killed 518,000 Muslims, mostly Turks (1914-1922. "Turkish sensitivity and dignity" also must enter the picture for fairness and justice to be served].

(Grade: Good for Turks; bad for Switzerland and Armenians)

25) Dr. Perinçek's remarks describe, not defame or demonize, Armenians

Here is another critical assessment by the Court: [Dr. Perinçek] *had referred to Armenians as 'instruments' of the 'imperialist powers', which could be seen as offensive. However, as could be seen from the overall tenor of his remarks, he did not draw from that conclusion that they had deserved to be subjected to atrocities or annihilation. Coupled with the amount of time that had elapsed since the events, this led the Court to the conclusion that his statements could not be seen as having the significantly upsetting effect sought to be attributed to them.*"

(Grade: Good for Turks; bad for Switzerland and Armenians)

26) Denial laws are worded and applied differently across Europe, not single standard

This point should be well understood by those who stubbornly still promote proliferation of denial laws. If this Court finding is not sufficient for them to abandon their anti-free-speech agenda, then may I offer an excellent book by Guenter Lewy, *Outlawing Genocide Denial* (University Of Utah Press, 2014). "*The Court observed that there was a wide spectrum of positions among the member States as regards legislation on the denial of historical events, from those States which did not criminalize such denial at all to those which only criminalized denial of the Holocaust or the denial of Nazi and communist crimes, and those which criminalized the denial of any genocide. The Court, acknowledging this diversity, did not consider that the comparative law perspective should play a significant part in its assessment, given that there were other factors with a significant bearing on the breadth of the applicable room for maneuver. It was nevertheless clear that Switzerland, with its criminalization of the denial of any genocide*, [EK's note: whether a court-proven fact or a politically-motivated opinion] *without the requirement that it be carried out in a manner likely to incite violence or hatred, stood at one end of the comparative spectrum.*

(Grade: Good for Turks; bad for Switzerland and Armenians)

27) No international treaty forcing Switzerland to impose criminal penalties on genocide denial

The Court points out that there is no legal basis for the Swiss action: (*T)here were no international treaties in force with respect to Switzerland that required in clear and explicit language the imposition of criminal penalties on genocide denial as such. It was true that Article 261 bis § 4 of the Swiss Criminal Code had been enacted in connection with Switzerlands accession to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).**[9]** However, there was no indication that the clause which had served as the basis for Dr. Perinçek's conviction was specifically required under the CERD, or under other international law rules, whether treaty-based or customary*

."

(Grade: Good for Turks; bad for Switzerland and Armenians)

28) Criminal conviction of Dr. Perinçeks was one of the most serious forms of interference free speech

The Court compares Swiss action with other cases under Article 10 and notes that Switzerland may have gone too far. The Court finds that the interference with free speech had consisted of, for instance, a restriction on the dissemination of a publication. "*The very fact that Mr Perinçek's had been criminally convicted was significant in that it was one of the most serious forms of interference with the right to freedom of expression.*" This is a clear embarrassment for Switzerland for which they have no one but themselves to blame. The Swiss government had promised its Turkish counterpart that Switzerland would not appeal December 17, 2013 verdict by ECHR. But then, they surrendered to Armenian political pressure (and possibly their covert anti-Turkism and Islamophobia) and reneged on their word by filing the appeal. Look where this move got them; Switzerland not only lost face in the global arena, but also the trust of the Turkish government. How, do you think, would the latter behave if Switzerland "promised" to not do something else tomorrow? Trust is a slippery thing.

(Grade: Good for Turks; bad for Switzerland and Armenians)

29) A lesson by the Court to Switzerland in democracy

The Court's language is crystal clear: "*Based on all of the above factors, the Court concluded that it had not been necessary, in a democratic society, to subject Mr Perinçek's to a criminal penalty in order to protect the rights of the Armenian community at stake in this case. There had accordingly been a breach of Article 10 of the Convention. See paragraphs 255-57 of the judgment*."

(Grade: A severe embarrassment for Switzerland, due to bowing to the arrogance and greed of the Swiss-Armenians who sued Perinçek)

(Grade: Good for Turks; embarrassing for Switzerland and bad for Armenians)

30) Other articles: Article 17 of the Convention (prohibition of abuse of rights)

The Court joins the question whether to apply Article 17 of the Convention (prohibition of abuse of rights) to its examination of the merits of the complaint under Article 10. Article 17 allows the Court to reject an application if it judges that the applicant has relied on the provisions of the Convention to engage in an abuse of rights. "*It followed from the Courts finding under Article 10 that there were no grounds to apply Article 17.*" Nice try Switzerland, but that wily move did not work, either.

(Grade: Good for Turks; bad for Switzerland and Armenians)

31) Other articles: Article 7

Article 7 requires parties to undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the UN, the Universal Declaration of Human Rights, and the UN on the Elimination of All Forms of Racial Discrimination. Majority decision by the Court is, " ☀□□□ *the complaint under Article 7 amounted to a restatement of the claims under Article 10. There was therefore no need for a separate examination of that complaint.*" Another cunning move by Switzerland that fizzles out.

(Grade: Good for Turks; bad for Switzerland and Armenians)

32) Other articles: Article 41 (just satisfaction)

The Court holds, by a majority, "*that the finding of a violation of Article 10 constituted in itself sufficient just satisfaction for any non-pecuniary damage suffered by Mr Perinçek's. The Court further dismissed, unanimously, the remainder of his claim for just satisfaction.*"

(Grade: Bad for Turks; good for Switzerland and Armenians)

33) Dissenting opinions of the judges, for the record[10]

Joint dissenting opinion: Silvis, Casadevall, Berro, Kūris, De Gaetano, Sicilianos, and Spielmann;

Additional dissenting opinion: Silvis, Casadevall, Berro and Kūris;

Partly concurring/partly dissenting opinion: Nußberger.

(Grade: Bad for Turks; Good for Armenians)

Conclusion

Switzerland violated the right of an individuals freedom of speech, just because he disagreed with the widely held opinion on a controversial, much-debated subject. Swiss authorities misinterpreted and misapplied a denial law that was meant for "court-proven" cases of genocide, such as the Holocaust, Rwanda, and Srebrenica, not unproven and much-debated claims like the alleged Armenian Genocide. The latter is an opinion, not a court verdict. Expressing dissent on an opinion, therefore, is not punishable by law.

Future Trends

The Swiss authorities are looking at re-writing that denial law that has embarrassed them. German Parliament has shelved indefinitely the second reading of yet another alleged Armenian genocide resolution. Some Armenians are in denial, perhaps convinced by their perpetually losing attorneys, interpreting "the verdict" (October 15, 2015 verdict by the ECHR-Grand Chamber) as victory. But that is a harmless delusion. After all, sooner or later even they will see that the runaway freight train that is "the verdict" is about to hit them hard when the Turkish NGOs and individuals start suing the state and federal governments that took fraudulent Armenian claims at face value to pass one-sided resolutions, defaming Turks, Turkish history, and heritage. What I worry about are those die-hard fanatics who see this verdict as an encouragement to further violence and terrorism. At least one Armenian seems to write Armenians are left no chance but to resort back to terrorism. As you can see, progress, some good, some scary, is already happening and change seems irreversible and inevitable. 100 years of Armenian propaganda, ironically, imploded through the greedy and arrogant actions of Armenians themselves and in the much-ballyhooed centennial, no less, of an alleged genocide.

That said, I believe the world will be a better place with "the verdict", because people will finally be able to hear, freely, the other side of the story on the Turkish-Armenian conflict, which was, up to now, censored by Armenian intimidators and their supporters in media, academia, and politics. This is a good thing as more civilized dialogue will lead to more honest evaluations, rapprochement, peace, and eventually, closure. People like me, whose family's pain and suffering, from both paternal and maternal sides, are ignored, dismissed, or sometimes even ridiculed, will finally be able to tell their stories without the threat of intimidation, harassment, or terrorism. Books and articles will be published mentioning Armenian revolts, treason, terrorism, territorial demands in the 19th and 20th centuries. Turkish and other Muslim non-combatant civilians, to the tune of 518,000 between 1914-1918, who lost their lives at the hands of Armenian revolutionaries will be documented. Debates of 1915 events will gradually and correctly turn into evaluation of 1862-1922 time period, exposing Armenian war crimes and hate crimes. All primary sources, archives, and aspects will be honestly considered. Genocide claims based on misrepresented 1915 events will transform into "*an inter-communal warfare fought by Christian and Muslim irregulars*", against the backdrop of a raging world war, like 69

Historians[11] and experts on Turkish-Armenian conflict have declared in the New York Times and Washington Post on May 19, 1985.

For starters, here is single frame of a photo of Armenians cadets,[12] which refutes the entire Armenian narrative of "poor, starving, unarmed, peaceful Armenians" myth. Here, one can see the well trained and well-supplied Armenian soldiers, armed by Russian-made Mosin rifles, at an Armenian military Academy established in 1906 in Bulgaria. To counter the baseless Armenian claims of genocide, I was compelled to coin a new companion term back in 2003, ETHOCIDE, my humble gift to the English language (and its Turkish translation, AHLAKKIRIM, my modest contribution to the Turkish language) whose short definition is: "Systematic extermination of ethics via mass deception for political gain." All "ethocidal" behavior in future will be challenged under the light of "the verdict", which exposed the two soft bellies of the corrupt Armenian narrative: history and law.

Propaganda is finally out, truth and honesty are in, thanks to "the verdict" ☀ and Dr. Perincek.

**This article was first published on TurkishNY: http://www.turkishny.com/ergun-krlkoval/18-ergun-krlkoval/195402-echr-grand-chamber-verdict-of-october-15-2015-pros-ve-cons#.Vk7mXFXhCUk*

---

[1] Grand Chamber - Case of Perinçek v. Switzerland - Judgement, *European Court of Human Rights*, http://hudoc.echr.coe.int/eng?i=001-158235#{"itemid":["001-158235"]}

[2] European Convention on Human Rights, *European Court of Human Rights*, http://www.echr.coe.int/Documents/Convention_ENG.pdf

[3] Press Release - The Court delivers its Grand Chamber judgment in the case of Perinçek v. Switzerland, *European Court of Human Rights*, http://hudoc.echr.coe.int/app/conversion/pdf?library=ECHR&id=003-5199806-6438950&filename=Grand%20Chamber%20judgment%20Perincek%20v.%20Switzerland%20.pdf

[4] Convention on the Prevention and Punishment of the Crime of Genocide, *United Nations*, https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-I-1021-English.pdf

[5] *International Court of Justice* website: http://www.icj-cij.org/homepage/

[6] Pierre Nora, Statements of Liberté pour l'Histoire, january, 12, 2009, *LPH-asso.fr*, http://www.lph-asso.fr/index.php?option=com_content&view=article&id=45%3Acommuniques-de-liberte

pour-lhistoire-12-janvier-2009&catid=5%3Acommuniques&Itemid=15&lang=en

[7] Timothy Garton Ash, The freedom of historical debate is under attack by the memory police, *The Guardian*, http://www.theguardian.com/commentisfree/2008/oct/16/humanrights

[8] Cinquième Section Décision - Dieudonné Mbala Mbala contre La France, *European Court of Human Rights*, http://hudoc.echr.coe.int/eng?i=001-158752#{"itemid":["001-158752"]}

[9] International Convention on the Elimination of All Forms of Racial Discrimination, *The Office of the United Nations High Commissioner for Human Rights*, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx

[10] ECHR Registry Press release, non-binding to the Court; Decisions, judgments and further information about the Court can be found on www.echr.coe.int

[11] Statement of Sixty-nine U.S. Scholars, *TallArmenianTale.com*, http://www.tallarmeniantale.com/69histors.htm

[12] *Ethocide.com* website: http://www.ethocide.com/

About the author:

To cite this article: AVİM. 2026. "ECHR GRAND CHAMBER VERDICT OF OCTOBER 15, 2015 - PROS and CONS - Ergun KIRLIKOVALI." Center For Eurasian Studies (AVİM), Blog No.2015 / 25. November 19. Accessed November 20, 2026. https://avimbulten.org/public/Blog/ECHR-GRAND-CHAMBER-VERDICT-OF-OCTOBER-15-2015-PROS-and-CONS-Ergun-KIRLIKOVALI

Süleyman Nazif Sok. No: 12/B Daire 3-4 06550 Çankaya-ANKARA / TÜRKİYE
Tel: +90 (312) 438 50 23-24 • **Fax**: +90 (312) 438 50 26
@avimorgtr

https://www.facebook.com/avrasyaincelemelerimerkezi
E-Posta: info@avim.org.tr
http://avim.org.tr

© 2009-2025 Center for Eurasian Studies (AVİM) All Rights Reserved