PERİNÇEK v. SWITZERLAND CASE (ECHR, 17 DECEMBER 2013)

(*PERİNÇEK* v. *SWITZERLAND* DAVASI
(AİHM, 17 ARALIK 2013)

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Abstract: *This article focuses on the legal basis of the ECHR Perinçek v. Switzerland case and especially on the likelihood of the case being referred to the Grand Chamber of the Court. It first elaborates on the details of the Perinçek v. Switzerland case, and gives explanations on the Swiss laws used to prosecute Perinçek, and the European Convention on Human Rights through which the ECHR come to a judgment. The article then elaborates on the process that can lead to a case being referred the Grand Chamber. It indicates that the panel of judges that decides on referrals convenes only a few times a year, meaning that the referral process will take time. It indicates that the referral average in the Court is only around 5%, and that referrals are usually made when a case is deemed to be exceptional. In terms of the Perinçek v. Switzerland case, the article points out that the case being referred to the Grand Chamber depends on whether the panel of five judges deems it to be exceptional in the sense of it being a high profile case or a case with a serious issue of general importance. As such, the article advises the Turkish government that intervened as a third party to thoroughly prepare its legal arguments and consider all possibilities in preparation for a possible reexamination of the case.*

Keywords: *European Court of Human Rights, ECHR, European Convention on Human Rights, the Convention, Grand Chamber, Perinçek v. Switzerland, genocide, Switzerland, Turkey*

Öz: *Bu makale AİHM Perinçek İsviçre'ye Karşı davasının yasal dayanaklarına ve özellikle de bu davanın Mahkeme'nin Büyük Dairesi'ne gönderilmesi olasılığına odaklanmaktadır. Makale ilk olarak Perinçek İsviçre'ye Karşı detaylarına girmekte, Perinçek'i yargılamak için kullanılan İsviçre yasaları ve AİHM'in dava konusunda karar vermek için kullandığı Avrupa İnsan Hakları Sözleşmesi'ni açıklamaktadır. Bundan sonra ise davanın Büyük Daire'ye gönderilmesiyle ilgili? süreci detaylandırmaktadır. Davanın Büyük*

Daire'ye gönderilip gönderilmeyeceğine karar veren hâkim kurulunun senede birkaç defa toplandığını ve bu yüzden bu sürecin zaman alacağını belirtmektedir. Makale, Mahkeme'de davaların gönderilme oranının sadece yaklaşık %5 olduğunu ve göndermelerin genelde davanın istisnai bir durum teşkil ettiğine kanaat getirildiğinde gerçekleştiğini belirtmektedir. Perinçek İsviçre'ye Karşı davasına gelindiğinde ise, gönderme kararının davanın istisnai bir durum teşkil edip etmediği kanaatine, yani davanın yüksek profilli veya genel önemde ciddi bir sorunu temsil etmesi yönünde alınabilecek karara bağlı olduğunu belirtilmektedir. Bu sebeple makale, davanın gönderilme olasılığı çerçevesinde davaya müdahil olan Türkiye'ye hukuki argümanlarını titizlikle hazırlamasını ve her türlü olasılığı göz önünde bulundurması tavsiyesinde bulunmaktadır.

Anahtar kelimeler: *Avrupa İnsan Hakları Mahkemesi, AİHM, Avrupa İnsan Hakları Sözleşmesi, Sözleşme, Büyük Daire, Perinçek-İsviçre davası, soykırım, İsviçre, Türkiye*

INTRODUCTION:

On 15 July 2005, the Association of Switzerland-Armenia sued Doğu Perinçek due to his first speech on the grounds that he publicly denied that the Ottoman Empire had committed genocide against the Armenian people in 1915 in a number of conferences on 7 May 2005 in Lausanne, on 22 July 2005 in Opfikon and on 18 September 2005 in Köniz.

The Lausanne Police Court handled the case as criminal court of first instance. On 9 March 2005, the court found Perinçek guilty of racial discrimination in accordance with Article 261bis paragraph 4 of the Swiss Criminal Code.

Perinçek lodged an appeal to the Criminal Cassation Division of the Vaud Cantonal Court. The Vaud Cantonal Court rejected this appeal and confirmed the verdict of the court of the first instance.

Following this ruling by the Vaud Cantonal Court, Perinçek then appealed his case to the Federal Tribunal, the highest court in Switzerland, for reconsideration and his conviction to be lifted. The Federal Tribunal has rejected this appeal on 12 December 2007.

Perinçek, upon the Swiss verdict becoming final, has applied to the European Court of Human Rights (ECHR) in accordance with Article 34 of the European Convention on Human Rights ("the Convention", from hereon) on 19 June 2006. The Turkish Government has exercised its right to intervene as a third party in accordance with Article 36 Subclause 1 of the Convention, and presented its opinion to the ECHR on 15 September 2011. A seven member chamber of the ECHR has reached a judgment on 17 December 2013.

For the judgment of the ECHR Chamber to become final, one of the conditions mentioned in Article 44 paragraph 2 of the Convention should be met. One of these conditions is that the case must be referred to the Grand Chamber within the three months after the judgment. The Convention Article 43 titled "Referral to the Grand Chamber" anticipates that within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases; request that the case be referred to the Grand Chamber. Switzerland has requested that the Perinçek case to be referred to the Grand Chamber on 17 March 2014. The Switzerland Federal Department of Justice and Police has justified the reason for referral in order to "to clarify the scope available to Swiss authorities" in applying Swiss criminal law to combat racism.

In view of these developments, the first section of our study shall summarize

the stance of the Swiss judicial bodies with regard to the Perinçek Case and their verdicts. The second section of our study shall summarize the judgment of the Chamber of the ECHR that handled the case is going to be summarized. The third section of our study shall assess future prospective developments by taking into consideration the Swiss verdicts and ECHR Chamber judgment.

SECTION I: THE PERİNÇEK CASE BEFORE SWISS JUDICIAL BODIES

The Lausanne Police Court had handled the case in accordance with Article 261bis paragraph 4 of Swiss Criminal Code. The aforementioned article penalizes racial discrimination, and is translated to English as follows;

> *"Any person who publicly incites hatred or discrimination against a person or a group of persons on the grounds of their race, ethnic origin or religion, any person who publicly disseminates ideologies that have as their object the systematic denigration or defamation of the members of a race, ethnic group or religion, any person who with the same objective organises, encourages or participates in propaganda campaigns, any person who publicly denigrates or discriminates against another or a group of persons on the grounds of their race, ethnic origin or religion in a manner that violates human dignity, whether verbally, in writing or pictorially, by using gestures, through acts of aggression or by other means, or any person who on any of these grounds denies, trivialises or seeks justification for genocide or other crimes against humanity, any person who refuses to provide a service to another on the grounds of that person's race, ethnic origin or religion when that service is intended to be provided to the general public, is liable to a custodial sentence not exceeding three years or to a monetary penalty."*

The Lausanne Police Court has convicted Perinçek by taking note of the Swiss public opinion and identifying the Armenian Genocide as a generally confirmed fact. The court has ordered Perinçek to serve 90 days in prison and fined him 100 Swiss Francs and with 2 years suspension of the sentence 3000 Swiss Francs fine and 1000 Swiss Francs to be paid in compensation to Switzerland-Armenia Association. The court in its verdict found Perinçek guilty in accordance with Article 261bis paragraph 4 of the Swiss Criminal Code. The court attributes the recognition of the Armenian Genocide to Switzerland's cantonal and federal parliamentary acts, judicial publications and various edicts of the Switzerland political offices along with some members of the European Council Parliamentary Assembly and the European Parliament recognizing the Armenian Genocide. The court also is of the opinion that Perinçek had acted on racist purposes and his conduct does not originate from a historical debate.

Against the Lausanne Police Court verdict, Perinçek applied to the Vaud Cantonal Court and requested that the judgment be nullified. Perinçek also requested the court that a complimentary inquiry to be made about the historical data and the positions of historians on the Armenian question.

On 13 June 2007, Vaud Cantonal Court rejected Perinçek's request. According to the Cantonal Court, during the acceptance of Article 261bis paragraph 4, like the Holocaust, the Armenian Genocide is recognized as a historic fact. Consequently, the Court does not require the works of historians to verify its existence. The court also acknowledges that Perinçek only rejects the notion of genocide and he does not mention the existence of the manslaughter of Armenians and their displacement.

Upon Vaud Cantonal Court's rejection of his request, Perinçek appealed to Switzerland Federal Tribunal for revision of the judgment and lifting of the sentence. In his appeal, Perinçek emphasized that, in order for Article 261bis to be applied to him and his fundamental rights to be violated, the material data for describing the events of 1915 as genocide were not sufficiently investigated. The Swiss Federal Tribunal has also rejected Perinçek's appeal on December 12th, 2007. According to the Federal Tribunal, Article 261bis paragraph 4, penalizes hatred or discrimination against a person or a group of persons on the grounds of their race, ethnic origin or religion or any person who on any of these grounds denies, trivializes or seeks justification for genocide or other crimes against humanity; and leaves no genocide including the Armenian Genocide outside its scope. The aforementioned tribunal, by investigating the protocols and reasons while adjudicating on this Article concludes that this Article does not only cover Nazi crimes but the denial of other genocide crimes.

Along with this, the Federal Tribunal, despite the nature of the term genocide in Article 261bis, accepts that in reality the term is handled on the basis of the Holocaust and the Armenian Genocide was not distinctively handled excluding when two members of parliament took the floor. In this context; it is pointed out that; because of the Holocaust's clear emergence and acceptance both in Swiss judicial opinion and doctrine, the courts do not require the expertise of historians. Thus, the Court evaluates that it should be known whether consensus is reached or not with regard to the events that Perinçek denies. In this context, for the Court the question should be whether the public and community of historians characterize the events of 1915 as genocide or not. It should not be whether or not the manslaughter and deportations attributed to the Ottoman Empire should be characterized as genocide. The Federal Court, in its ultimate assessment, concludes that the retroactive judicial decisions do not make history but they determine whether genocide

was recognized or not. Hereby, it rules that the previous court's decision on this matter is binding for the Federal Court.

The Federal Court in this context indicates that Perinçek could not show any concrete evidence against the findings of the Lausanne Police Court. The Court points out that Perincek's argument that a number of states refuse to recognize the existence of the Armenian Genocide may originate from political reasons and this claim would not negate the consensus within the scientific community. On Perinçek's justification that on 2009, Switzerland by adopting that a commission of historians to be formed between Turkey and Armenia, implicitly accepted that the existence of genocide was not determined, the Federal Court indicated that the Federal Council had taken this decision in order to induce Turkey to partake in a collective memory study related to its history. The court has the opinion that, this event, especially in the scientific community, does not appear to hold sufficient doubt about genocide. The Federal Court, thus, underlines that Perinçek's argument that the Lausanne Police Court has given an arbitrary decision is not justified and the Cantonal Court has not rightfully entered into a historical-judicial examination.

The Federal Court indicates that article 261bis paragraph 4 looks for intentional conduct and that this conduct should be originating from racial discrimination. The Federal Court, stresses on Perinçek's statement about him being a doctor of law and that he would not change his stance even if an unbiased commission certainly proves the existence of the Armenian genocide before the Cantonal Court, accepts that Perinçek has acted deliberately. The Federal Court, joining the Cantonal Court, accepts that Perinçek's allegations that the Armenians are the assailants of the Turkish people and referring to his membership to Talat Pasha Committee, holds that he has acted on racist and nationalist reasons and his attitude do not originate from historical debates. For the Court, the Armenians being pointed out as assailants is especially debilitative to members of that community and bears racist qualities apart from nationalism.

Also, in its interpretation of Article 261bis paragraph 4, the Federal Court takes into account the 10th Article of the Convention. However, by taking the 10th Article of the Convention into account, the Court has ruled that Perinçek knew he violated Swiss laws by denial of genocide, which he dubbed as an "international lie". The Court in this context concludes that defect of unforeseeability of the law in support of Perinçek is out of question. In this way, the Court concludes that Perinçek with his "provocateur" stance attempted to influence the Swiss judiciary in the direction of his own views

on an issue which is central to the members of the Armenian community. For the Court, Perinçek's conviction harbors the purpose of defending the honor of the Armenian community. For the court, also, the punishing of genocide denial constitutes the measure of preventing genocides in accordance with 1948 Convention on the Prevention and Punishment of the Crime of Genocide. According to the Federal Court, Perinçek by means of not denying massacres and deportation, even though the mentioned acts are not characterized as genocide, constitutes crimes against humanity and is taken within the scope of Article 261bis.

The Swiss Federal Court indicates that when Swiss national law is examined, it accepts the crime of genocide in Article 264. On the other hand, the Court referring to Swiss judicial opinion, on 14 September 2001 the Berne-Laupen Court has absolved Turkish citizens of genocide denial on the absence of intention of discrimination and this verdict was approved by Berne Cantonal Court and by the Federal Court on 7 November 2002.

The Swiss Federal Court, later, continues with the assessment of international law and its enforcement. The Court assesses the various conventions and practices starting with the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. The Federal Court, secondly, states that the status of the International Military Tribunal is an Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis (London Charter of 8 August 1945), on its 6th Article, crimes against peace, war crimes and crimes against humanity are punished. The Court, thirdly, states that The Rome Statute of the International Criminal Court 5th Article counts genocide, crimes against peace, war crimes and crimes against humanity in its jurisdiction and that it gives the definitions of genocide in Article 6 and crimes against humanity in Article 7. The Federal Court, fourthly, underlines that for the crime of genocide to occur, *dolus specialis* of extermination of a national, ethnic, racial or religious group should be present as the 2 September 1998 dated Akayesu Case decision of the International Criminal Tribunal for Rwanda indicates. The Federal Court indicates that the Rwanda Tribunal also explains the differences of the crime of genocide from crimes against humanity and war crimes, and that the same action may provide legal basis for more than one crime.

The Swiss Federal Court continues its evaluation of international law enforcement, fifthly with the 26 February 2007 decision of the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro). The Federal Court informs that the Council put emphasis on the clear existence of intention to exterminate and, as understood from the Kupreskic decision of the Former

Yugoslavia Criminal Tribunal, this intention and other conditions separates genocide from crimes against humanity.

The Swiss Federal Court, sixthly, refers to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) dated 21 December 1965 which Switzerland ratified on 1994, states that Article 2 and 3 of the mentioned convention forbids racial discrimination.

The Swiss Federal Court, seventhly, refers to the International Covenant on Civil and Political Rights (ICCPR) dated 6 December 1966, which Switzerland ratified in 1992. Article 19 of the mentioned covenant grants freedom of expression, but its paragraph 3 accepts that legal exceptions could be brought to this freedom. The first exception is the need of showing respect to other people's rights and reputation. The second group of exception is the protection of national security, public safety, public health, or public decency. Two bans are brought with Article 20 of the abovementioned covenant. The first of which is the prohibition of war propaganda, the second is the prohibition national, racial or religious hate speech advocating discrimination, enmity or violence.

The Swiss Federal Court, again, refers to the UN Human Rights Committee's General Observation No. 34 on UN's aforementioned Civil and Political Rights Covenant Article 19 that was issued in its 102nd term in 2011, reminds that freedom of thought should be protected; limiting of this is not accepted; all opinions -regardless of its content- are protected; the punishing of thought and various oppressions on this matter is against Article 19 paragraph 1. The aforementioned Committee, in its observation, in accordance with Article 19 paragraph 2 of the Covenant, the freedom of expression is completely free other than the exceptions in paragraph 3 and bans in Article 20. The Committee, in its aforementioned opinion, indicates that the precaution related to exceptions mentioned in Article 19 paragraph 3 should be approached with caution.

The Swiss Federal Court, later in its decision, indicates that on the problem of penal sanction of statements about historical data, the UN Human Rights Committee finds that aforementioned penal sanctions are against Civil and Political Rights Convention and that the Convention does not sanction general bans and bans other than the ones indicated in Article 20 paragraph 3 cannot be issued.

The Swiss Federal Court, henceforward, reminds that the Committee of Ministers of the Council of Europe on 30 October 1997, with its 97/20 "Hate Speech" decision recommends the member states to fight against hate speech,

to ratify the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and to update national legislation and practices accordingly. Hereby, the Federal Court indicates that about twenty European Council Parliamentary Assembly members with a communiqué dated 24 April 2013 has recognized the Armenian Genocide.

The Swiss Federal Court, after analyzing the situation on crimes against humanity and genocide denial in terms of international law and practice, goes on to examine 14 European states and USA and Canada's national legislation and practices. For that purpose, the Federal Court which consults a report Swiss Institute of Comparative Law dated 19 December 2006 concludes that in the aforementioned countries the situation is very problematic. In this context, the Court while determining that Spain, France and Luxembourg have a strong stance in banning genocide denial only Spain and Luxembourg strongly punishes genocide denial. On the other hand the Court points out that states like Germany, Austria and Belgium only criminalizes the denial of acts during the Second World War and adds France to this list. The Court also indicates that in countries like The Netherlands and Canada, while laws do not include special provisions; the courts criminalize the denial of such acts based on some judgments. The Court, while indicating that the US is more flexible, goes on to indicate that it may punish such denials on some conditions by loss-recovery. On the other hand the Federal Court indicates that countries like Italy, Norway, Denmark and Sweden may criminalize hate associated denials in accordance with more flexible judgments. The Court on the contrary indicates that England and Ireland makes no mention of denial crime.

The Swiss Federal Court, after the report of the Swiss Institute of Comparative Law, indicates that some developments are encountered in France and Spain. France, after recognizing the Armenian Genocide in 1915 by law on 20 January 2001, on 23 January 2012 the Assemblée Nationale with a new law it accepted, has criminalized the praising, denial or foully banalizing war crimes, but this law has been found adverse to the constitution and thus overturned by the Constitutional Council of France. The Constitutional Council found the aforementioned ban to be against freedom of thought and speech in essence. In Spain, a decision of the Constitutional Court dated 7 November 2007 has separated denial of genocide by opinion and justification of genocide and provocation against another group from each other and criminalized the latter and has taken the first as part of freedom of thought. Luxembourg is the one which punishes genocide denial as a whole and the Swiss Institute of Comparative Law has inspired from the Luxembourg example and the Swiss Federal Court has taken this into account.

SECTION II: THE CASE BEFORE ECHR AND THE EVALUATION OF THE ECHR

Against the decisions of the Swiss national courts and their justifications, Perinçek applied to the ECHR asserting that Switzerland has acted against the freedom of expression principle in accordance with article 10 of the Convention. According to Perinçek, while Article 261bis paragraph 4 of Swiss Criminal Code does not possess adequate prévisibilité (foreseeability), the conviction is not supported by a legitimate reason. In this framework, Perinçek indicates that it is not necessary to restrict freedom of expression in a democratic society.

The problem is about the Swiss Government being incongruous with Perinçek's speech, which surpasses freedom of thought and expression and the rights and liberties which are protected by the Convention.

Upon the opposition of the Swiss Government to Perinçek's claim, the ECHR firstly evaluated whether Perinçek's appeal was admissible. To this end, the first consideration of the ECHR was on; even though Switzerland does not put forward this argument, by handling the issue *ex officio*, in accordance with Article 17 of ECHR, Perinçek's statements prompts an abuse of rights (abus de droit) through surpassing freedom of expression.

The problem is about the Swiss Government being incongruous with Perinçek's speech, which surpasses freedom of thought and expression and the rights and liberties which are protected by the Convention. In this framework, the ECHR in accordance with the Lawless Case[1], Garaudy Case[2], Norwood Case[3] and the Ivanov Case[4]; which form the basis of the ECHR court practices, and in accordance with freedom of expression regulated by article 10 of the Convention, concludes that Switzerland acted against the Convention's word and essence. The ECHR, also based on Jersild Case[5] judgment, indicates that the intention is to combat against all kinds of racial discrimination and indicates that it does not certainly contain violence. For the European Court of Human Rights, insulting a group or mocking this group or promoting discrimination is enough.

1 1 July 1961, Series A, n.3, parag.7

2 No. 65831/01, ECHR, 2003-IX

3 No. 23131/03, 16 November 2004

4 No. 35222/04, 20 February 2007

5 23 September 1994, Series A, n. 298, parag. 30

The ECHR, in accordance with its aforementioned court practices, ruled that Perinçek's statements should be investigated in accordance with the Article 17 to determine whether they fall within the protection of freedom of expression provided for Article 10 in the Convention. The ECHR hereby underlines that in its capacity as intervenor; the Turkish Government on the grounds that the Swiss Government's not being based on Article 17, asserts that the Court should not consider the aforementioned article as the inadmissibility of the appeal.

The ECHR on its assessment concerning the statements of Perinçek found some of them and especially the phrase "international lie" as provocative, hurtful, shocking and disturbing, but stated that such comments are also protected in accordance with Article 10 of the Convention. The court also underlines that Perinçek does not deny manslaughter and deportation and only opposes the legal characterization of the events as genocide. The ECHR in this context indicated that what should be clarified is whether Perinçek's statements are tolerable or not and in accordance with Article 17, and whether they provoke grudge and violence. The Court concludes that Perinçek's statements in accordance with the events of 1915 should not be characterized as genocide do not provoke grudge against Armenian people. The Court also indicates that Perinçek has not been put on trial because of Swiss Criminal Code Article 261bis where hate crimes are listed as separate crimes and consequently ruled that Perinçek has remained within the boundaries of freedom of expression. For the ECHR, ultimately Perinçek has not been involved in an expression that exceeds article 10 and can be included in accordance with Article 17 and his appeal is thus acceptable.

Regarding the compendium, the ECHR thinks that Switzerland's verdict of conviction should be taken into consideration as violation of freedom of expression. According to the Court for such an intervention be not contradicting with Article 10, it must fulfill the conditions specified in paragraph 2. In this context, it is imperative to know that the intervention be "foreseen by law" and one or more of the legal purposes in accordance with the paragraph are aimed and these purposes should be "realized in a democratic society".

Perinçek on the constitution of crime foreseen by law, Swiss Criminal Code Article 261bis paragraph 4 mentions a total denial of genocide and the Armenian genocide is not specifically characterized; the Berne-Laupen Court has not given verdict of conviction on different acts of similar nature and the aforementioned ruling was criticized by a former member of the Swiss Government and ergo the condition has not been fulfilled. Against this, the

Swiss Government has indicated that during the discussion of the law in the Parliament, the rapporteur of the Commission has indicated that this law also includes the Armenian Genocide. The Swiss Government also announce that when Switzerland ratified The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1965, Switzerland has stated that by law it will prevent any nationalist, racist or religious hatred foreseen by Article 20 paragraph 2. Again, Switzerland indicates that it complies with the restrictions brought by the European Council Committee of Ministers communiqué dated 30 October 1997. On the other hand, Switzerland puts forth that more than 20 countries parliaments have recognized the events of 1915-1917 as genocide and the European Parliament called on Turkey to recognize the Armenian Genocide in 15 November 2000. The Swiss Government, in light of all this data and in accordance with Article 261bis, argues that Perinçek needed to foresee that his actions would have brought conviction in Switzerland and that the Swiss law is adequately clear. According to the Swiss Government, even though the characterization of genocide is not valid, 261bis contains all kinds of crimes against humanity and Perinçek's statements fall under this scope.

The Turkish Government, while using its right to intervene as a third party, put forth the argument that Perinçek's conviction predicated on the consensus in Swiss public opinion is not something that is foreseeable.

While considering the arguments put forth by both sides, the ECHR, reminding its judicial opinion ruled that the condition of being "foreseen by law" is not only limited by finding a base in domestic law, the quality of the relevant law is also included, and so the law should be open and its outcome should be foreseeable by both parties. However, according to the Court, this foreseeability does not have the requirement of giving an exact conclusion. On the application of the aforementioned data to the case at hand, Perinçek asserts that Article 261bis does not contain the necessary clarity and foreseeability. The ECHR, while accepting that the wording of the Swiss law uses the term "(a) genocide", doubt can arise on the issue of the demanded clarity in the Convention Article 10 paragraph 2, Perinçek as being a Doctor of Law and a politician, would have foreseen the criminal sanction while presenting the Armenian genocide as "international law". As a result the European Court of Human Rights ruled that Switzerland's actions are suitable for the Convention Article 10 paragraph 2 which demands "foreseeable by law" condition.

The second condition demanded by the aforementioned Article 10 paragraph 2; the issue of conviction being realized by legal means, the Swiss Government advocates that the verdict of conviction is especially aims to

protect others' reputation and rights. In this context, the Swiss Government asserts that Perinçek's characterization of the Armenians as tools of the Imperialist powers and Turks defending their homeland hurts the honor of the victims and at the same time, declare that it fulfills the condition of defending order demanded by Article 10 paragraph 2. The intervenor Turkish Government, on the other hand, indicates that the conviction does not carry any legal means and Switzerland cannot prove that it eliminates any special and concrete danger to public safety. Before all these allegations the ECHR rules that the conviction is given to protect the rights of another by protecting the honor of the Armenians, on the other hand it cannot be proven that Perinçek's statements severely threatens the public order.

During the evaluation of the third condition within the framework of the aforementioned Article 10 paragraph 2; punishment as precaution is a "necessary in a democratic society", Perinçek puts forth that restriction of freedom of expression is not proportionate with preventing racial discrimination and xenophobia and according to the sixth article of the 1948 Genocide Convention, if there is (a) genocide, it has to be determined by a court. Perinçek also declared that his conviction does not answer a public necessity, and if his conviction is realized for the honor of the Armenian society, it would dishonor the Turkish society which denies the Armenian genocide. Perinçek also rejects his statements being characterized as nationalist and racist by Swiss courts and states that his argument only emanates from the legal characterization of the 1948 Convention. On the other hand Perinçek, according to the court practices of the European Court of Human Rights, on the issue of punishing the denial of the Holocaust; puts forth that Holocaust has been characterized as a crime against humanity by the Nuremberg Tribunal and the historical data is clearly established and thus it constitutes a different case. Perinçek, on the issue of the Swiss Court attributing its ruling on a consensus within the Swiss public, points out that there isn't such a consensus on the issue and in this framework, points out that in two non-promulgated protocols signed on 10 October 2009 between Turkey and Armenia on the creation of an intergovernmental commission to investigate the events of 1915 is an evidence of the aforementioned historical events not being clearly presented.

Before all these allegations the ECHR rules that the conviction is given to protect the rights of another by protecting the honor of the Armenians, on the other hand it cannot be proven that Perinçek's statements severely threatens the public order.

Again, Perinçek remarks that genocide is a well-defined international crime in Article 2 of the 1948 Convention and an intention to wholly or partially

exterminate (*dolus specialis*) an ethnic, racial or a religious group is needed to point out is existence. Perinçek, hereby underlines that the International Court of Justice's decision of The Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) on 26 February 2007 defines the crime of genocide and while deportation of a population from one place to another could be counted as a war crime or a crime against humanity, it does not necessarily carry the components constituting the crime of genocide. According to the ICJ, the side which alleges the crime of genocide must present it with its evidence.

Perinçek on the other hand announces that the Bernard Accoyer, Rapporteur of the French Parliament during the works on incriminating the denial of the Armenian genocide, stated that the assessment of historical events is not the duty of the legislative branch and the legislation cannot replace courts and this remark has been shared by former head of the French Constitutional Council Robert Badinter. Perinçek again reminds Prof. Stefan Yerasimos's notion of separating law from history and while the first has the mission of proving and judging, the second has the aim of explaining without holding any standard of judgment. For these reasons Perinçek advocates that peoples personal believes should not be uniformed and that his statements are not against Article 10 of the Convention.

On the aforementioned third condition, the Swiss Government states that its national courts have emphasized on Perinçek denying or belittling the events of 1915-1917 and that the court decisions are based on the opinions or reports of specialists. The Swiss Government also argues that the courts have emphasized on a large scientific consensus on the issue. According to the Swiss Government, Perinçek's description of the Armenians as the assailants of the Turkish people and addressing the Armenian Genocide issue as an "international lie" shows that Perinçek acts on racist and nationalist motives. The Swiss Government also indicates that the court of first instance has acknowledged Perinçek as a supporter of Talat Pasha who has been accepted as the leading perpetrator of the Armenian Genocide. The Swiss Government also underlines Perinçek's statement that even though he was disproven in an unbiased commission, he would not change his views on this event not being a genocide does not look like a study to question the history. In the light of these data, the Swiss Government argues that its national courts did not overstep the boundaries of the tenth article of the Convention.

The Turkish Government as the intervenor of the case, pointed out that Perinçek did not deny the manslaughter and the deportation of 1915, he only rejected the characterization of genocide within the framework of international

law and Swiss law, and that there is a clear distinction between its legal characterization and "clearly established historical events". The Turkish Government also stated that that a precaution of punishment is not necessary in a democratic society and that many people do not believe the events of 1915 events as genocide. The Turkish government gives the example of the British Government's answer in a parliamentary session in 8 March 2008. The Turkish Government also indicates that no other country in European Council other than Switzerland has ruled for a criminal sentence and other than Switzerland, Luxembourg and Spain, no country has laws which foresees the punishing of denial of genocide. For the Turkish Government all these data demonstrate that there is no mandatory social need for incrimination. According to the Turkish Government the Perinçek ruling of Switzerland is not proportionate with the pursued aim; because Perinçek's statements are not embracing violence and hatred. Hence, according to the Turkish Government, there is no contradiction with Perinçek's statements and the tenth article of the ECHR.

The evaluation of the European Court of Human Rights after hearing the comments of all sides is summarized as follows:

According to the ECHR, on the implementation of the general principles in order to elaborate the need of restraining freedom of expression, the Stroll Case[6] has been summarized, repeated by the Mouvement raélien Suisse case[7] and the Animal Defenders International Case[8]. In a nutshell, firstly, freedom of expression is one of the foundations of a democratic society and the Convention's tenth Article paragraph 2 creates exceptions and it is valid not only the non-violent or unimportant information and comments but also hurtful, shocking or disturbing information and comments. In this framework the exceptions should be narrowly interpreted. Secondly, the application of the exceptions should rely on a "pressing social need". In this framework the European Court of Human Rights checks whether the restrictions brought by Article 10 are in accordance with the freedom of expression. Thirdly, the ECHR, does not replace the national courts during this duty of supervision, it only investigates their rulings within the framework of Article 10 and evaluates whether the measures are taken "in accordance with legitimate purposes".

According to the ECHR, the aforementioned within the framework of the basic principles while investigating historical problems, within the

6 No. 69698/01, ECHR, 2007-V, parag. 101

7 No. 16354/06, ECHR, 2007-V, parag. 48

8 No. 48876/08, 22 April 2013, parag. 100

investigation of the historical fact as a part of the freedom of expression, the Court cannot arbitrate in the debates between historians, it can only evaluate whether the precautions are taken in accordance with the pursued goal. The ECHR reminds that in this framework; statements of political or of general interest are not to be subjected to restriction of freedom of expression. Again, according to the ECHR, the tenth article protects data and statements on the "grey areas" in historical debates. For the Court, it has been seen that historical events are not evaluated with the same sternness after years pass by.

The ECHR later demonstrates that in its precedence concerning the applications brought against Turkey on the issues of hate speech, praising of violence and the Armenian question. In this framework the ECHR refers to the Erdoğdu and İnce Case[9] the ruling of the Istanbul Court on the basis of separatist propaganda in Kurdish issue has been found against the principle of freedom of speech since it is of non-violent nature and the statements have an analytic nature. The second case referred to by the ECHR is the Gündüz Case[10]. The ruling in this case has also been found against the Convention because of the Turkish court convicting the defendant because of its non-violent assembly. The third case the European Court of Human Rights refers to is the Erbakan Case[11]. Erbakan's being put on trial on the grounds that he calls for hate and religious intolerance has been found against the Convention because even though the ECHR calls for the politicians to refrain from using intolerant statements, the intervention to freedom of speech is found not sufficient with regard to "necessary in a democratic society". The fourth case the European Court of Human Rights refers to is the Dink Case[12]. The statements of Turkish citizen of Armenian descent Hrant Dink - who has been found guilty of denigrating Turkishness by Turkish courts with his statement that "the Armenian's perception of the Turk is a "poison" and Armenians constantly refer to themselves as the "victim" and constantly pushing the Turks to recognize the events of 1915 as genocide is an obstacle on the way to form an identity on healthy foundations" - has been found by the ECHR as bearing no hate speech and therefore is not against the Convention. The ECHR in this case could not detect an aim to degrade Turkishness and also ruled that his conviction is not the outcome of "pressing social need". The fifth case the ECHR refers to is the Cox Case[13]. While he was teaching in Turkish Universities, Cox, who has been deported from Turkey because of his statements "Turks have assimilated the Kurds" and "Deported the

9 No. 48876/08 and No. 25068/94, ECHR, 199-IV

10 No. 35071/97, ECHR, 2003-IX

11 No. 59405, 6 July 2006

12 Nos: 2668/07, 6102/08, 30079/08, 7072/09, 7124/09, 14 September 2010

13 No. 2933/20 May 2010

Armenians from the country and massacred them" has applied to Turkish courts but his case was dismissed. The ECHR has ruled that there is no way to determine that Cox's statements are against the national security of Turkey and the restriction of Cox's freedom of expression is not adequately supported.

On the application of the principles that it has accepted in its precedence including the applications brought against Turkey, the ECHR firstly declares cannot rule on whether the manslaughter and deportations of 1915 could be legally defined as genocide within the framework of Swiss Criminal Code Article 261bis paragraph 4. The ECHR, hereby, reminds that the enforcement of national law first is the duty of the national offices and especially to the courts and the duty of the ECHR is only to control the rulings of the courts in accordance with Article 10 of the Convention. Control of the rulings of the national courts to that end too is of the opinion that Perinçek's conviction is emerged out of a "pressing social need". The ECHR, with this aim points out that the balance between defending of the victims' families and relatives' honors and the freedom of expression of the applicant must be preserved. Within this framework, for the ECHR, especially the rate of accordance of the intervention and the reasons for the punishment the national offices foresee should be examined.

While the Swiss Federal Court accepts that there is no consensus within the public on the legal evaluation of the events and Perinçek and the Turkish Government's assessment that a "consensus" cannot be mentioned, the ECHR shares this opinion. This is so because according to the ECHR there is no consensus neither in Switzerland nor in the World

The ECHR, in the light of these mentioned principles, underlines that the characterization of the events of 1915 as "genocide" stirs great attention from the public with no obligations and hinted that Perinçek has acted within this scope and by keeping in mind Perinçek's credentials as a lawyer and a politician and the topics of the meetings that the statements were issued (1923 Treaty of Lausanne), evaluates that his statements are of a historical, juridical and political in their nature. Within this framework, especially because of the attention the topic gets from the public, the ECHR ruled that the margin of assessment of the national courts on Perinçek's statements is narrow.

Later on, concerning the Swiss courts' basic justification that there is a consensus within the public and especially within the scientific community on the evaluation of the events, the European Court of Human Rights, while

accepting that the primary assessment has been made by national courts, declared that the notion of "consensus" should be evaluated. While the Swiss Federal Court accepts that there is no consensus within the public on the legal evaluation of the events and Perinçek and the Turkish Government's assessment that a "consensus" cannot be mentioned, the ECHR shares this opinion. This is so because according to the ECHR there is no consensus neither in Switzerland nor in the World (recalling that out of 190 states only 20 states share the opinion that there was a genocide).

In its assessment the ECHR informs that "genocide" is a well-defined term, and (in accordance with Article 2 of the 1948 Convention) and that states and persons (especially in accordance with Article 5 of the Rome Convention) are held responsible. The Court recognizes that the Court practices of the ICJ and International Criminal Tribunal of Rwanda that are seeking the intent of extermination (*dolus specialis*) for the crime of genocide to be realized and that this is very hard to prove. For the European Court of Human Rights is of the opinion that the justification of the presence of a "general consensus" by the Swiss courts for Perinçek's verdict of conviction is not fully realized.

On the other hand the ECHR also carries the opinion that the presence of a "general consensus" about the events is also doubtful. For the Court, as could be understood from the Spanish Constitutional Court's decision in 2007, the historic studies are debatable and cannot reach clear and objective facts. For the ECHR the issue of the Armenian Genocide demonstrates differences from the denial of the Holocaust; the Jewish genocide. For example, as can be seen from the Robert Faurisson case, according to the United Nations Human Rights Committee resolution on 8 November 1996 there are three differences. Firstly, on the Holocaust, while there is no legal characterization denial, the factuality of the events was not also denied. Secondly, the conviction of the Nazis was relied on the Status of the Nuremberg International Military Tribunal. Thirdly, historical events were assessed by an international court. However, in the Perinçek case, such data cannot be encountered and thus the European Court of Human Rights evaluates with doubt the procedure followed by the Swiss national courts.

Again the ECHR declares that it shares the Turkish Government's assessment that Holocaust denial is the driving force of anti-Semitism (hatred of Jews) and Perinçek's statements do not carry a characteristic of instigating hate or violence. Thus in the eyes of the ECHR the denial of the characterization of the events of 1915 as genocide does not share the same reflections with the denial of the Holocaust. The ECHR also acknowledges that among 16 European states none other than Luxembourg and Spain punish the crime of genocide without limiting themselves to the crimes of the Nazies. For the

ECHR this shows that there is a greater need of consensus compared to these other countries, which was not accomplished. The ECHR again quotes the ruling of the Spanish Constitutional Court's ruling of a simple denial of genocide cannot be counted towards prompting of violence and that the conclusions given free from standard of judgment on the existence of the event can be included in the scientific freedom of the publication. The ECHR reminds that the French Constitutional Council's stance that it would be against the freedom of expression and freedom of opinion to punish the denial of genocide by law, and this is especially against the freedom of speech and freedom of opinion in democracies. For the ECHR, as the decision of the French Constitutional Council demonstrates, there is no contradiction between the formal recognition of some events as genocide and the punishing of people who do not accept this formal opinion. Because, the majority of the states recognizing the Armenian genocide did not find it necessary to implement a penal law in accordance with the aim of preserving the freedom of expression of minorities on issues which cannot be fully proven. On the other hand, the ECHR reminds Resolution 34 of the United Nations Human Rights Committee dated 2011 and that the Civil and Political Rights Convention did not sanction the penalization of opinions on historical events. In addition, the ECHR reminds that the Perinçek ruling is the first ruling to punish on the issue of the Armenian genocide and in 2001 the Berne-Laupen Court has ruled that the accused did not carry the intention of discrimination. In the light of these data, the ECHR states that it finds it doubtful that the verdict of conviction of Perinçek has emerged from a "pressing need".

The European Court of Human Rights lastly rules that the weight and the character of the sanctions should be examined with reference to the proportionality of the intervention. The Court points out that within this framework these kinds of sanctions could be dissuasive without adding to the problems of public debates on the interests of the community.

In the light of all these aforementioned data, the European Court of Human Rights concludes that all the reasons put forth by the Swiss authorities are pertinent and they are generally not sufficient. The Court especially stresses that the conviction of Perinçek cannot be demonstrated as satisfying an obligatory need of a democratic society and that the Swiss judiciary which possessed a narrow margin of appreciation has overstepped its boundaries thus violated Article 10 of the ECHR. The competent Chamber of the European Court of Human Rights in its judgment, rules by five to two votes that Article 10 of the ECHR has been violated on the cause of action.

Italian judge Raimondi's and Hungarian judge Sajo's personal opinions were suffixed to the ruling of the European Court of Human Rights as consenting

opinion, which in international judicial law is allowed to be added by judges that agree with the final outcome of the ruling but not agreeing with all the justifications. The "partially" common opposing views of Montenegrin judge Vucinic and Portuguese judge Pinto, who have voted against the decision of the European Court of Human Rights, have also been added to the resolution text as "opposing views" as is called in international juridical law.

Judges Raimondi and Sajo, in their common personal opinions[14], briefly, indicated that they are morally in need of making a statement. The aforementioned judges underlined that the wounds opened by Meds Yeghern ("the great calamity", in Armenian) should not be forgotten and recognize that its effects are still felt by fifth generation Armenians. However the aforementioned judges, in sum, stated that genocide must be properly determined with regard to legal certainty on the issue of freedom of expression, and that Switzerland has not done so for the Armenian Genocide. Hence, the judges concluded that the Swiss Federal Court has acted too broadly on this issue, thus by acting this way, the Swiss law does not recognize any exceptions or pardons for scientific studies or artistic activities. So, this shows that statements by Perinçek, who believes that there are some exceptions, cannot be punished in this case. As a matter of fact, in a similar case the suspects were set free. The judges, in consideration of the Perinçek verdict, has taken it positively that the verdict was set forth by a law, however, they stated that it was not sufficient that the Court took this as a benchmark, and that perhaps respecting the memory of the dead is not more important than the statements made in context of historical research by a living person. In other words, the judges point out that it would be appropriate to include the intendment of the law in the assessment. The aforementioned judges also find it surprising that the Swiss Court stated that the justification of protecting the honor of the Armenian society was an attack on some people's personalities and inform that this is a matter of debate. The judges indicate that disrespectful and even pushing remarks cannot belittle a group of people and such remarks cannot be punishable unless they encourage people for hatred and violence; and none of these components are present in this case.

The judges indicate that disrespectful and even pushing remarks cannot belittle a group of people and such remarks cannot be punishable unless they encourage people for hatred and violence; and none of these components are present in this case.

On the other hand, the judges demonstrate that on the Perinçek case, the Swiss courts have taken racial discrimination as the basis that denial of the legal

14 See. Ruling Appendix, pp. 55-61

characterization of an act undertaken against a community is considered as racist or racial discriminative and such an unconditional accusation disables the consideration of freedom of expression in law. The judges, in the last instance, conclude that the punishment given to Perinçek's statements is disproportionate.

With regard to Judge Vucinic and Judge Pinto's "partially" dissenting-views[15]; these judges indicate that Perinçek case has brought two fundamental judicial problems that the European Court of Human Rights has never handled before. These two problems are; i) international recognition of the Armenian Genocide; ii) punishment of the denial of this genocide. For the aforementioned judges, problems as large as this require the judgment of the Grand Chamber. But within the scope of the undertaken Small Chamber decision, the judges find that there is no contradiction with Article 10 of the Convention.

According to judges Vucinic and Pinto, Switzerland is not alone in the international recognition of the Armenian genocide. According to them, the Armenian genocide has been recognized by the Turkish state itself, modern important people, institutions, governments, international organizations, national or regional authorities and national courts from all corners of the world.

According to the aforementioned judges, the Turkish state, shortly after the massacres, put the ministers and notables of the Committee of Union and Progress including Talat Pasha, Enver Pasha, Cemal Pasha, and Mr. Nazım on trial in accordance with the Ottoman penal code. The court sentenced many people to death on 5 July 1919 for crimes including the "massacre" of Armenians and stated that the "Massacres and ravaging of Armenians has originated from the decision of the Central Committee of the CUP" (16). The judges state that the trials and punishing of the perpetrators of the actions against the Armenians in Yozgat, Trabzon, Büyük Dere, Urfa, Erzincan and alike between 1919 and 1920 presents the second group of national court rulings which, in their view, demonstrates that the Turkish state recognizes the Armenian genocide. The aforementioned judges also indicate that with regard to the Joint Declaration of France, England and Russia on 15 May 1915, the Joint Declaration of the American Senate and the House of Representatives dated 9 February 1916 and the overturned Treaty of Sevres dated 10 August 1920, that the practice law has accepted that the committing of an illegal act requires the criminal liability of persons. The judges also indicate that although in the Treaty of Lausanne the criminal liability of

15 See Ruling Appendix, pp. 62-80

persons was not accepted, the signatories of the Treaty of Sevres—in accordance with the Joint Declaration of France, England and Russia dated 15 May 1915- has accepted that these massacres were committed in line with the state policy of the Ottoman Empire. The Judges indicate that Article 230 of the Treaty of Sevres is the precursor of the status of the Nuremberg and Tokyo tribunals on the issue of "crimes against humanity". On the other hand, the aforementioned judges, approach the Declaration and Protocol of Amnesty, which is a part of the Treaty of Lausanne, as a declaration of amnesty by the Turkish and Greek governments on crimes which are tied to the political events between 1 August 1914 and 20 November 1922 and interpret the event as such. According to them, Article III of the Declaration does not cover the Armenian "massacre" financially or materially. According to the Judges, under any circumstances, the "crimes against humanity and civilization", as indicated by the Joint Declaration of 15 May 1915, cannot be forgiven while taking into account the binding and inarguable nature of genocide and crimes against humanity in precedent law and treaty law. The judges as its legal basis show the 1998 International Criminal Tribunal's Article 29, 1974 European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes and the UN General Assembly resolution dated 16 December 2005 "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" paragraph 6.

The aforementioned judges, again, indicate that the Armenian genocide has been recognized by many international organizations but lists them without making a distinction between intergovernmental organizations and non-governmental organizations. The rulings of the intergovernmental international organizations which recognize the Armenian genocide are as follows: Parliamentary Assembly of the Council of Europe (personal participation of a number of parliamentarians: 24 April 1998-51 people-, 24 April 2001 -63 people-, 24 April 2013 -26 people); European Parliament (18 June 1987, 15 November 2000, 28 February 2002, 28 September 2005); Latin American States Organization (Southern Common Market) MERCOSUR Parliamentary decision (14 November 2007). In addition, NGOs which recognize the Armenian genocide are as follows: International Center for Transitional Justice, Young Men's Christian Association-EU; Human Rights League; Association of Genocide Scholars; Kurdish Parliament in Exile; Union of American Hebrew Congregations; Churches Ecumenical Councils. In addition, the aforementioned Judges have added the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities report dated 2 July 1985 and UN War Crimes Commission report dated 28 May 1948. The dissenting judges also state that the Armenian genocide has

been recognized by many national courts in many countries. The judges, in this framework, indicate that some American courts have ruled that there is no US federal policy against the use of "Armenian Genocide", provided the examples of a Paris court that have convicted Prof. Bernard Lewis on 1 June 1995 and a Berlin tribunal that has set Armenian Soghomon Tehlirian, an Armenian who killed Talat Pasha on 3 June 1921, free on the basis of "temporary madness due to trauma of massacre".

The dissenting judges indicate that the Armenian genocide is recognized by many states. The judges state these states as follows: Germany (15 June 2005 Parliament decision); Argentina (18 March 2004 and 15 January 2007 laws); Belgium (26 March 1998 Senate decision); Canada (13 June 2002 Senate, 23 April 1996 and 21 April 2004 House of Commons Decisions); Chile (5 June 2007 Senate decision); "Cyprus" (24 April 1975, 29 April 1982 and 19 April 1990 House of Representatives decisions); USA (9 April 1975, 12 September 1984 and 11 June 1996 House of Representatives decisions); France (29 January 2001 law); Greece (25 April 1996 Parliament decision); Italy (16 November 2000 Chamber of Deputies decision); Lebanon (11 May 2000 Parliament decision and 3 April 1997 Chamber of Deputies decision); Lithuania (15 December 2005 Parliament decision); The Netherlands (21 December 2004 Parliamentary decision); Poland (19 April 2005 Parliamentary decision); Russia (14 April 1995 Duma decision); Slovakia (30 November 2004 decision); Sweden (11 March 2010 Parliament decision); Uruguay (20 April 1965 Senate and House of Representatives decision and 26 March 2004 law); The Vatican (10 January 2000, common declaration of the Pope and Catholicos Karekin II); Venezuela (14 July 2005 National Assembly decision). The aforementioned judges state the following as regional governments and autonomous communities which recognize the Armenian genocide: 43 States of USA, the Basque Country, Catalonia, Balearic Islands, Wales, Scotland, Northern Ireland, New South Wales (Australia).[16]

In the presence of the aforementioned data, the dissenting judges underline that the Armenian genocide is recognized by the international community and the Turkish state, and are convinced that the intervention by Switzerland with regard to Perinçek's freedom of expression, an issue of which the existence has been proved sufficiently, is in accordance with the law. According to the Judges, Article 261bis, paragraph 4 of Swiss Criminal Code is in accordance with the principle of lawfulness as the expression "genocide and crimes against humanity" is referring to crimes defined both in Swiss Criminal Code and international law especially in the Genocide Convention and International Criminal Tribunal Status. For the Judges, Article 261bis paragraph 4 limits

16 On this referal, the aforemnetioned judges inform that what must be conculted are the documents collected by Vahakn Dadrian.

the definition of the punishable act by attributing intentions of racial discrimination.

The aforementioned judges, inform that the criminalization of denial of genocide is in accordance with the principle of proportionality. In fact, besides the intervention to freedom of expression to be legal, the judges recall that two standards need to be met; one of these standards is the necessity of intervention and the other is the intervention being in accordance with the aim. The European Court of Justice seeks the applicability of these standards separately; for the first standard the appropriateness and sufficiency of the precaution need to be met, whereas for the second standard the need for meeting a communal necessity is sought. The aforementioned judges, believe, with regard to the issue of the narrow margin of appreciation of the state, that the margin of appreciation of the state should be larger regarding the tragic events of human history. As a matter of fact, in their view, criminalization of denial of genocide is compatible with freedom of speech and is favorable for by the European order of protecting human rights. They believe that the signatory states of the Convention must prohibit racism, xenophobia and the lack of ethnic tolerance. This is a requirement of practice law and no national or international law would be able oppose it. The judges can only provide the Convention on Cybercrime, which has entered into force within the European Council but has not yet been ratified by Turkey, as the basis for their argument. The Judges further provide the European Council Framework decision on combating racism and xenophobia numbered 2008/913/JHA which bans praising of genocide and crimes against humanity, denial of genocide and banalizing of genocide to their case. According to the aforementioned judges, the European order criminalizes the denial of genocide with regard to protecting human rights on these accounts: i) The International Military Tribunal formed by the 1945 London Charter decision; ii) Any international court decision; iii) The decision of the state tribunals where genocide is realized or denied; iv) recognition of genocide by constitutional bodies like President, Parliament or Government. The judges further add number v being any state where there is a public consensus on that genocide was committed.

According to the aforementioned judges, the distinction between denial of genocide which is recognized by the Spanish Constitutional and belittling of genocide, which is against the constitution, or its justification cannot be accepted since it is against the Convention of Cybercrimes Additional Protocol and the Council of the European Union's 2008/913/JHA Framework decision. Hence, denial or justification of genocide harms the families of the victims the same way. Such an act being covered behind the mask of scientific research or briefing would prompt ill-intentioned people to take advantage of these.

The dissenting judges later on handle the issue of the need of criminalizing genocide denial and they object to the view that existence of a law is needed in order to define the crime of genocide. According to them, within the framework of this view, these laws would have no effect in the presence of the fact that historical events should be left to historians. Due to all these reasons, for the aforementioned judges, denial of genocide brings the need of a state policy and the states must do what is necessary in accordance with the first article of the Genocide Convention and the 26 January 2007 dated resolution of the United Nations General Assembly.

The aforementioned judges, as stated in the European Court of Human Rights's Garaudy Case, accept that accusing the victims of distortion of history is "the strictest form of racial belittling for them and it is an incentive to hatred" and they take this in context of disturbing public peace. According to the judges, this is true not only for Jews but also for Armenians.

Lastly, the dissenting judges point to the application of European norms in the developments of the case and they believe that the presence of *actus reus* and *mens rea* are proven. In this framework, the judges put emphasis on Perinçek's statement that the Armenian genocide is an "international lie" and that he adopts the views of Talat Pasha; and acknowledge that these statements point to the lack of tolerance against "an easily hurt minority" and severely encourage hatred. Concerning the second component, the judges demonstrate that the Swiss courts have determined that Perinçek has acted with racist and nationalist aims. The judges hereby put forth that determining of the aim of the accused is a fact and this can only be determined in a domestic court.

In light of all these, according to the dissenting judges, in the Perinçek Case, the verdict fits the limitation foreseen by Article 10 paragraph 2 of the ECHR within the framework of authenticity of the events determined by Swiss courts, the legality of the laws regulating the denial of genocide and its proportionality to the aim, and according to the principles accepted in Europe firstly by the Council of Europe and the European Union. The judges conclude that Perinçek's conviction is not against Article 10 of the ECHR and that they have not forgotten the Armenian genocide which is evaluated as "forgotten genocide" of the early 20th century.

SECTION III: POSSIBLE DEVELOPMENTS OF THE PERİNÇEK CASE

In accordance with Article 43 paragraph 1 of the Convention, Switzerland asked the Perinçek case to be referred to the Grand Chamber. In this

framework, primarily the question is whether the Grand Chamber would examine the case. Hence, in Article 43 paragraph 1, request of referral of the case to the Grand Chamber by either side can only be done in "exceptional cases".

In such a case, in accordance with Article 43 paragraph 2, whether an "exceptional case" is present or not would be determined by a five judge panel formed within the Grand Chamber. The aforementioned panel, again in accordance with Article 43 paragraph 2, would accept the case to be sent to the Grand Chamber "if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto or a serious issue of general importance".

Before examining whether or not the Perinçek Case will be sent to the Grand Chamber by the five judges, we will present general information on how this panel of judges operates and the number of cases sent to the Grand Chamber as it would shed light to our assessment of examining the case at hand. ;

Firstly, the five judge panel is formed among the 17 judges who are elected to the Grand Chamber. The aforementioned panel is not continuously in session, but they gather with 8-9 week periods and investigate 45 to 60 requests each time[17]. The panel does not gather for more than 6 times a year[18]. Thus, it would take a few months for the panel to gather and come to a decision on the Perinçek case.

When the rate of cases sent to the Grand Chamber by the five judge panel is investigated, from the when Protocol 11 came into force on 1 November 1998, within the framework of the method that is followed, the aforementioned panel has investigated 2129 requests until October 2011; and from these, only 110 requests had been sent to the Grand Chamber[19]. This ratio constitutes 5.16 percent of the total requests[20]. This data shows that the panel indeed refers the cases to the Grand Chamber only on "exceptional cases" as stated in the Article 43 of the Convention.

In order to determine whether the Perinçek Case would be sent to the Grand Chamber, the situation must be investigated in accordance within the framework of the conditions set by Article 43 paragraph 2 of the Convention. According to a European Court of Human Rights document, which

17 ECHR, The general practice followed by the Panel of the Granc Chamber when Decideng on request for referral in accordance with article 43 of the Convention, October 2011, p.13

18 Ibid.

19 Ibid.

20 Ibid.

investigates the practices in the name of the European Court of Human Rights and the aforementioned panel, the cases which have been sent to the Grand Chamber are as follows; i) Cases affecting or changing the established court practices; ii) Cases suitable for enhancing court practices; iii) Cases where the principles of the established court practices need to be clarified; iv) Cases where the enhancing of the court practices decided by the panel to be reassessed by the Grand Chamber; v) Cases related with "new" issues; vi) Cases which put forward "a serious problem of general importance"; vii) "High profile" cases which includes serious problems for the states[21]. Out of the types of cases which are sent to the Grand Chamber by the panel, the first five are about the cases that "raise a serious question affecting the interpretation or application of the Convention or the Protocols" specified in Article 43. On the other hand the last two types of cases are about cases with "serious issue of general importance".

In the light of the practices of the five judge panel, referring of the Perinçek Case to the Grand Chamber should be investigated along the lines of the first five types of cases. While the final decision on this issue belongs to the panel, it doesn't seem possible that the seven judge chamber decision on the Perinçek case is of the nature that would raise a serious question affecting the interpretation or application of the Convention or the Protocols. Because the Chamber of the European Court of Human Rights have controlled their decision firmly and primarily, even though the Swiss Government did not request it, it evaluated Perinçek's appeal in accordance with article 17 of the ECHR on whether it possesses an abuse of right (abus de droit). The relevant Chamber of the European Court of Human Rights have seriously evaluated Perinçek's statements comparatively with the Lawless Case, Garaudy Case, Norwood Case, Ivanov case and the Jersild Case in order to determine whether they possess an abuse of right and it decided that it is not the case. Here, the European Court of Human Rights has acted within the framework of its established court practices.

Regarding the assessment of the relevant Chamber of the European Court of Human Rights on the cause of action, the Court handles the case within the framework of its established court practices. In fact, the relevant Chamber indicates that the conditions set in Article 10 paragraph 2 of the Convention must be met in order for the conviction of Perinçek by Switzerland not to contradict freedom of expression. The relevant Chamber, within this framework, resorted to investigate Swiss Criminal Code Article 261bis, paragraph 4 in order to determine whether this fulfills the condition that indicates for the states constitute a crime and punish the crime must be

21 Ibid, pp. 6-11

foreseen by law. Even though the aforementioned ruling of the Swiss Criminal Code does not openly mention the Armenian genocide, the Court found that Switzerland had fulfilled this condition on the *prévisibilité* of punishment.

The second condition for the exception investigated by the relevant Chamber of the European Court of Human Rights is about determining whether the Swiss courts have given the verdict on legitimate purposes. On this issue, the Swiss Government indicated in its defense that the national courts pursue the legitimate aim of protecting another's rights and reputation. The Swiss Government especially stresses that Perinçek's characterization of the Armenians as pawn of the imperialist powers dishonors the Armenians and thus threatens to heavily disrupt the public order. The European Court of Human Rights accepts on investigation of this issue that the Swiss Courts have acted in order to protect the honor of the Armenians, however, rules that Switzerland has not adequately demonstrated that Perinçek's statements pose a great threat to public order.

The third condition of exception investigated by the relevant Chamber of the European Court of Human Rights with regard to the cause of action is on the point of determining whether the punishing of Perinçek by Swiss Courts is a "necessity in a democratic society". In the presence of the Swiss Government's claims that its national courts have found Perinçek guilty because of his denial or belittling of the events of 1915-1917, and that, however, the presence of a wide scientific consensus on the issue has been determined, together with the claims that Perinçek has acted on racist and nationalist motives, the European Court of Human Rights have evaluated the issue again in accordance with its established court practices. In this framework, the European Court of Human Rights consults to the principles accepted on the issue of using freedom of speech primarily in the Stroll Case decision, Mouvement raélien Suisse Case and Animal Defender International Case. According to the court practices of the European Court of Human Rights, freedom of expression is a foundation of the democratic society and this principle is also valid for hurtful, shocking or concerning information or statements. Also, for the European Court of Human Rights, the decision must rely on "a pressing social need". In this framework, according to the European Court of Human Rights, it does not replace national courts, it only investigates whether the decision of the national courts are in accordance with the tenth article of the Convention. During its supervision duty, the Court evaluates whether the given punishments by national courts are "proportionate with the legitimate purpose followed". The relevant Chamber of the European Court of Human Rights, within the framework of these general principles, recalls that it does not arbitrate between historians while investigating historical problems, and that statements of political or general interest nature are not

included in the scope of the tenth article which regulates restrictions on freedom of expression.

The relevant Chamber of the European Court of Human Rights revealed that on the Perinçek Case, the freedom of expression does not include hate speech or praising of violence, and have explained its court practices in these issues by giving examples of cases filed against Turkey.

In this framework, with regard to **the Erdoğdu and Ince Case, the Gündüz Case, the Erbakan Case, the Dink Case** and **the Cox Case**; the relevant Chamber of the European Court of Human Rights did not approve the restriction of these peoples' freedom of expression on the basis that these cases do not call for violence, that freedom of expression is "essential in a democratic society" and that conviction is not "a pressing social need".

The relevant Chamber of the European Court of Human Rights indicates that in the application of its principles accepted in the aforementioned court practices in the Perinçek Case, its mission is neither to determine the trueness of the 1915 manslaughter and deportation events nor to find out whether these events are legally characterized as "genocide" in accordance with the Swiss Criminal Code. The Court indicates that its duty is to oversee the case in accordance with Article 10 of the Convention, and that Perinçek's statements, when investigated in its whole context, has the attributes of being historical, judicial and political. With regard to the debate on the existence of a consensus in the scientific society as to define the events of 1915 as genocide, the Court argues that there is no consensus in the world on this issue as only 20 out of 190 states including Switzerland, officially recognized the "genocide". In addition, the Court stresses that genocide is a well-defined term and for the existence of the crime, *dolus specialis* of exterminating a community is needed, and concludes that Switzerland's reliance of Perinçek's conviction to general consensus do not fulfill this examination. On the other hand, the Court indicates that the Armenian genocide cannot be compared to the Holocaust; because in the case of the Holocaust neither the events nor the judicial qualities of the events were rejected. Yet, the Holocaust is based on the Status of the Nuremberg International Military Tribunal and this international tribunal assessed the situation. However, the same parameters cannot be observed in the Perinçek Case. Meanwhile, recalling that since the Berne-Laupen Court had ruled that there was no racial discrimination on a similar case on the issue of the Armenian Genocide in 2001, the relevant Chamber of the European Court of Human Rights has stated that it is doubtful that the conviction of Perinçek by Swiss courts is a "pressing social need". The relevant chamber of the European Court of Human Rights found the sanctions heavy and the intervention disproportionate. Stating that Perinçek's conviction

does not satisfy a "pressing social need", the Court points out that Article 10 of the Convention is violated. The Perinçek ruling of the relevant Chamber of the European Court of Human Rights, when investigated in the framework of the aforementioned summarized basic principles and of the approach of the Court, it appears that the European Court of Human Rights have followed the established court practices and that it is not probable that the five judge panel will refer the case to the Grand Chamber with the justification that it effected or changed the established court practices.

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The possibility of the Perinçek ruling being referred to the Grand Chamber in order to enhance court practices seems weak. This is because the Chamber has thoroughly evaluated the court practices of the European Court of Human Rights. It has tied the issue of punishment on the issue of freedom of expression to the "necessary in a democratic society" condition, and by searching for the inclusion of racism and discrimination in the statement; it has indicated that statements historical, juridical and political in nature cannot be automatically evaluated within this characteristic. As such, this ruling does not present a reform in the issue of freedom of speech.

The possibility of the Perinçek ruling being referred to the Grand Chamber in order to clarify the principles of established court practices also seems weak. This is because these kinds of referrals depend on the assumption that some fundamental principles are not clear. Conversely, regarding the Perinçek Case, the referent principles of the relevant Chamber of the ECHR have been repeatedly evaluated and it seems that no further elaboration is needed.

The possibility of the Perinçek ruling of the being referred to the Grand Chamber by the panel of five judges for reevaluation seems in essence to be nonexistent. This is because, in order for such a referral to occur, firstly the seven judges Chamber must be able to improve court practices of the ECHR or come up with some kind of juridical innovation. However, the Perinçek ruling of the relevant Chamber, as reported in the summary of the ruling, have been reached by applying the principles of the established court principles and no improvements have been made.

The possibility of the Perinçek ruling being referred to the Grand Chamber by the panel of five judges due to it being a "new" problem does not, again, seem like a real possibility. This is because, even if the newness component

is deemed to be the introduction of the issue of the "Armenian genocide" to the ECHR, in essence the presence of the Court rulings on the issue of the Holocaust makes it in its essence not new. Furthermore, since the essence of the Perinçek Case is about freedom of expression, the "Armenian genocide" problem does not seem to add a new feature to established court practices.

With regard to the Perinçek ruling being referred to the Grand Chamber by the panel of five judges due to the case putting forth "a serious issue of general importance" (as is mentioned in Article 43 paragraph 2 of the Convention); however, the ECHR practices, as mentioned before, put forth that this could be a relevant point for cases that either put forward "a serious problem of general importance" or include "high profile" issues for the states.

The possibility of the Perinçek ruling being referred to the Grand Chamber by the panel of five judges on the basis of the case putting forward "a serious issue of general importance" does not seem like a weak possibility. This is because even though only Luxembourg and Spain foresee the sanctioning of general denial of genocide, recognition of the "Armenian genocide" by some European states would result in important juridical and political effect to the ruling of the ECHR. In fact, the note presented by the French Association of Armenian Lawyers and Jurists (AFAJA-L'association Française des Avocats et Juristes Arméniens) to the Swiss Ambassador on 21 January 2014 points out that the Perinçek Case is the concern of the international society, the member states of the Council of Europe, and the European civil society, and that Switzerland must ask for the referral of the case to the Grand Chamber. The aforementioned association holds the opinion that the essence of the problem is relevant with the principle and the scope of the punishment genocide denial and crimes against humanity. Along with the allegations of the aforementioned association, there is no doubt that some institutions of the Armenian Diaspora would carry similar opinions and proposals to the five judge panel. Other than the Armenian institutions, according to Montenegrin judge Vucinic and the Portuguese judge Pinto who have added their dissenting opinions to the ruling, the case would require the decision of the Grand Chamber. The aforementioned judges indicate that the Perinçek case has brought forward two issues that the European Court of Human Rights have never handled; the first being the international recognition of the Armenian genocide and the second being the punishing of the denial of this genocide.

The possibility of the Perinçek ruling being referred to the Grand Chamber by the panel of five judges on the basis of the case involving "high profile" problems, again, does not seem like a weak possibility. It is noteworthy that the ECHR document of practices indicates that cases of this nature are related to historical, geopolitical or religious problems or are related to events or

crimes which get media attention[22]. If the five judge panel acts on this understanding, there is a possibility that the Perinçek Case will be referred to the Grand Chamber.

Within the framework of the assessment on the possibilities of the Perinçek Case being referred to the Grand Chamber; while the case being referred on grounds of posing "a serious problem to the interpretation and the implementation of the Convention and Protocols" (as indicated in Article 43 paragraph 2) is a low possibility, the same cannot be said for the case being referred in accordance with the principle of "a serious problem of general importance". Therefore, in accordance with the court practices of the ECHR, the Turkish side must be ready for every possibility. Within this framework, the Turkish side must hastily prepare their legal arguments against referral of the case to the Grand Chamber and make the five judge panel aware of their opinions.

A new judicial proceeding would begin if the panel of five judges decides to refer the Perinçek Case to the Grand Chamber. The Grand Chamber is bound neither by the ruling of the Chamber of seven judges nor by the referral of the panel of five judges. In accordance with the wording and the essence of Article 43, the Grand Chamber has the authority to reevaluate the entirety of the case without being bound by the ruling of the previous Chamber. Within this framework, the Grand Chamber has the authority to handle the case not only in terms of its essence but also in terms of its admissibility (recevabilité)[23]. Thus the Grand Chamber holds the right to reassess all new data on the case and consider any evaluation not found worthy by the previous chamber, and if deems suitable has the right to delete the case from the register or determine a friendly settlement[24].

The Grand Chamber, in accordance with its aforementioned authority, may also investigate the problem of admissibility[25]. On this issue, in accordance with Article 35 paragraph 4 of the Convention which states that "the Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings" the doctrine holds no doubt of the authority of the Grand Chamber[26]. Within this Framework, if the Grand Chamber rehandles the case, the Turkish side has to keep into account and must be ready for the discussion of admissibility of Perinçek's appeal to the ECHR Rights and it would be in order to prepare for the case from this angle as well.

22 See, Ibid, p. 10-11

23 See. Frederic Sudre, *Droit europeen et international des droits de l'homme*, Paris, PUF, 9 eme ed., 2008, p. 721

24 Ibid. Pp. 721-722

25 Ibid, pp. 701

26 Ibid.

On the other hand, in accordance with Article 35 of the Convention, the evaluation of admissibility of personal appeals are regulated; with regard to state appeals; Article 32 paragraph 2 of the Convention states "In the event of dispute as to whether the Court has jurisdiction, the Court shall decide", therefore objecting to the authority of the Court also seems possible. Keeping in mind that Switzerland's appeal of referring the Perinçek Case to the Grand Chamber is in accordance with asking for guidance on how the terms of the Swiss Criminal Code 261bis paragraph 4 are to be applied, the Turkish side may argue that Switzerland's application only calls for delivering an opinion rather than reevaluating the whole case. Such an appeal for delivering an opinion belongs to the Committee of Ministers in accordance with the Article 47 of the Convention, furthermore it cannot even be asked by the Committee of Ministers on topics like freedom of expression which is a part of the first section of the Convention. The cause of action of the Perinçek Case is about Perinçek's conviction by Swiss courts, the Grand Chamber only has the authority on deciding whether Perinçek's conviction by Swiss courts is in accordance with the Convention with regard to its essence and does not hold the duty or authority to decide on how Switzerland is going to apply any Article of law. Therefore, asking for the rejection Switzerland's application in accordance with the non-competence of the Court is not against reason. It would be in order for the Turkish side to thoroughly analyze this point as well.

One other problem we encounter while the Perinçek Case is heard in the Grand Chamber is the intervention of third persons to the case. In accordance with Article 36 paragraph 1, in all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings. Hence, just like Turkey intervened to Perinçek Case before the seven judge Chamber; it declared that it would intervene before the Grand Chamber. It seems imperative for Turkey to continue this stance when taking the issues of the Armenian question and their scope in mind.

However, the Turkish side may encounter a new problem if it intervened before the Grand Chamber. Because Article 36 paragraph 2 of the Convention that regulates the intervention to cases, the President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings. This invitation can be realized as presenting opinion in writing or the option of becoming a party in the hearings. Such an opportunity may prompt the interest of the Convention signatory states -primarily Armenia- who recognize, condemn and sanction the Armenian genocide.

Hence, the call for intervention and authority in this case belongs to the President of the Grand Chamber, the Turkish side must formulate a policy on this issue. If the President calls for intervention by third states, the Turkish Government would legally be against a "front expansion", while having to firmly formulate its political strategy. Because, it is certain that if the case is referred to the Grand Chamber, Turkey would face a grand propaganda of "Armenian Genocide". Therefore the Turkish Government, if it may, predetermines its stance on whether the hearing would proceed and also must take precautions against the Armenian propaganda before or outside of the European Court of Human Rights.

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In the case of the Grand Chamber moves to the merits of the Perinçek Case, the arguments used before the seven judges Chamber are, naturally, going to be used before the Grand Chamber by the sides. However differences brought by one side would also bring differences to the arguments of the other sides. By this way, the third states who adopt the thesis of "Armenian genocide" are called upon to intervene by the President of the Grand Chamber, the case may be pulled to the discussion of the Armenian question rather than the question of freedom of speech. As a matter of fact, such an intention can be observed in the opinions of the dissenting judges in the first Chamber ruling. The two problems given by the aforementioned two judges that have never been discussed before in the ECHR -the international recognition of Armenian genocide and the punishing of genocide denial- could be enhanced before the Grand Chamber.

One of the arguments presented by the dissenting judges; that the Armenian Genocide is recognized by the Turkish state itself is most probably going to be more enhanced and brought before the Grand Chamber. The aforementioned judges claim that the Ottoman State courts have punished some Turkish authorities and alleged criminals (by sentencing that range all the way to death penalty in terms of severity) means that the Turkish state recognizes the Armenian genocide. This claim can be easily countered on both factual and legal grounds. This is because, first of all, the Ottoman courts did not put the alleged criminals on trial in accordance with "genocide" but in

accordance with crimes like massacres or murder or other crimes. This is so because the term genocide, which was first used by Lemkin in 1944, is absent from law during 1915 and the 1920's. However, one general principle of law is that "there is no crime or punishment without law". Consequently, the crime of genocide which was accepted during the 1940's did not exist at that time. The second legal flaw in the claim of the dissenting judges is that the aforementioned actions against law has been committed within the context of the Ottoman State and does not bind the Turkish Republic State which is the successor to the Ottoman State. Likewise, as Prof. Charles Rousseu puts it on the issue of states being successors, even though many states are successors to the predecessor state, international law does not accept acts and procedures against law *(actes illicites)* committed by the predecessor state being attributed to the successor state[27].

The dissenting judges on Perinçek Case, by also referring to the Joint Declaration of France, Britain and Russia dated 15 May 1915 that condemns the actions against Armenians, to the US Senate and House of Representatives Joint Declaration dated 9 February 1916 and most interestingly to the Treaty of Sevres dated 10 August 1920 that has never entered into force, allege that these legally bind the international law on the issue of genocide. Without going into details, it is sufficient to indicate that Turkey is in no way legally bound by these aforementioned actions because they are not legally binding. According to the aforementioned judges, even the clauses of the Treaty of Lausanne which have been previously summarized and which will not be elaborated again, drag Turkey to into a responsibility on the Armenian question. These kinds of arguments must be seriously answered by the Turkish side.

The dissenting judges, again, advocate for the validity of the Armenian genocide through the "Armenian Genocide" decisions of various international organizations, which also have been previously summarized. On the other hand, the judges advocate that the national juridical bodies or the parliaments of states mentioned in the dissenting view summary have recognized the "Armenian Genocide" and that some punish its denial, and as such they advocate that international society recognizes this genocide. With regard to freedom of expression, therefore, the dissenting judges argue that Switzerland's move to punish Perinçek is not against the law. When appearing before the Grand Chamber, the Turkish side must prepare accordingly with all these possibilities in mind and must prearrange its appropriate arguments.

27 Rousseau, Charles. *Droit international public*. Tome III, Paris: Sirey, 1977, pp. 504-511

CONCLUSION:

The Perinçek case, which could only be handled from one perspective within the scope of one article, and its possible developments will result in the discussion of the Armenian Genocide from all angles both before the European Court of Human Rights and the international society. On this opportunity, it is imperative that, primarily the Turkish Foreign Ministry and all Turkish authorities need to be prepared on the issue of the Armenian genocide from historical, legal, political perspectives, and must be aware of the procedures to be followed. It should be kept in mind that there is a great possibility that the Perinçek Case hearing could take place in the Grand Chamber in 2015, which is the centennial of the events of 1915.

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