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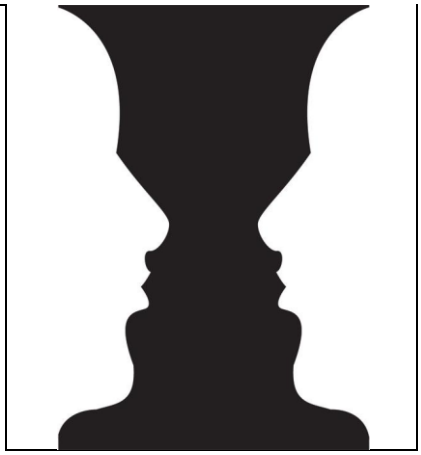

The ECtHR judgment on the Armenian Genocide: Freedom of expression vs. victims' right to memory

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Abstract
The article analyzes the European Court of Human Rights (ECtHR) judgment in Perinçek v. Switzerland, addressing the conflict between freedom of expression and the victims' right to memory, particularly in the context of the Armenian Genocide. The scope of the research is to explore how the ECtHR interprets freedom of speech in cases involving historical denialism and to assess the Court's application of human rights principles in genocide-related matters. The primary objective is to evaluate the Court's decision in balancing these rights and to highlight the implications of allowing the denial of the Armenian Genocide as protected speech under Article 10 of the European Convention on Human Rights. The research problem lies in the Court's inconsistent approach to historical atrocities, wherein Holocaust denial is treated as hate speech while Armenian Genocide denial is protected as free expression. The academic value of the paper lies in its interdisciplinary approach, blending legal analysis with sociological insights, to critique the ECtHR's judgment and its broader impact on international human rights law. The paper contributes to discussions on the role of memory in transitional justice and the ethical responsibility of international courts to protect historically marginalized communities. Ultimately, the article underscores the need for a more consistent legal framework to address genocide denial, ensuring both freedom of expression and the protection of victims' rights are appropriately balanced.

Keywords
Armenian Genocide; Crime against humanity; Freedom of expression; Right to memory;

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The Armenian Genocide as a crime against humanity

The most historically and psychologically significant event in Armenian history and the development of the Armenian collective identity was the Armenian Genocide of 1915 (Dagirmanjian, 2005, pp. 437–450). According to the University of Minnesota's Center for Holocaust and Genocide Studies, 2,133,190 Armenians lived in the Ottoman empire (modern-day Turkey) in 1914. By 1922, approximately 1,745,390 had been murdered by the Turkish government, leaving only 387,800 Armenians still alive. This mass slaughter of Armenians, which took place amid the chaos of World War I, was later dubbed the Armenian genocide (World Population Review, 2024).

The Armenia Genocide of 1915 completely altered the course of Armenian history as well as the geopolitical, economic, and ethnographic complexion of the Middle East. The lessons from these crimes remain compelling and need to be passed on to current and future generations. In many ways, the case of the Armenian Genocide has become the prototype of modern premeditated mass killings and their far-reaching consequence. The government of the Ottoman Empire, dominated by the Committee of Union and Progress or Young Turk Party, turned against a segment of its own populations (Totten, 2004, p. 95).

Prior to the genocide, the Ottoman Empire was experiencing significant internal strife, including the decline of its territorial control and rising nationalism among various ethnic groups. Armenians, a Christian minority in a predominantly Muslim empire, were viewed as a threat due to their demands for greater autonomy and perceived alliances with foreign powers, especially Russia. The Young Turk government (Committee of Union and Progress - CUP) saw the Armenian population as a potential fifth column, particularly during World War I. This context is explored by Vahakn N. Dadrian in *The History of the Armenian Genocide* (1995), where he traces the roots of anti-Armenian policies to Ottoman decline and political reforms that intensified ethnic divisions (Dadrian, 1995).

The Armenian genocide was organized and conducted by the ruling CUP (Committee of Union and Progress) government, which rose to power in Turkey in the 1900s and ruled the country from 1913-1918. The CUP's motives in conducting the Armenian Genocide are a matter of some debate to this day, and many scholars maintain that no single cause prompted it. However, the CUP's antagonistic feelings toward non-Muslim cultures—including not only the Christian and Catholic Armenians, but other Christian, Jewish, and Zionist peoples—is widely believed to have played a significant role (World Population Review, 2024).

Between 1915 and 1920, the Young Turks government of the Ottoman Empire orchestrated a planned, systematic massacre of 1.5 million Armenians (Dagirmanjian, 2005, pp. 437–450). Those massacres were perpetrated throughout different regions of the Ottoman Empire by the Young Turks Government which was in power at the time (Embassy of Armenia to Russian Federation, 2024). During the Armenian Genocide, there are documented several processes such as: mass arrests, the segregation of Armenians in the Turkish army into labor battalions before they were killed, and then the decree of deportation came after the Turkish armies had suffered major setbacks on the battlefield (Totten, 2004, p. 103).

The genocide officially began on April 24, 1915, with the arrest of Armenian intellectuals, politicians, and community leaders in Constantinople (modern-day Istanbul). This was a premeditated action by the CUP to decapitate the Armenian leadership and prevent organized resistance. Most of these individuals were later executed or died in custody (Hovannisian, 1992). Subsequently, Armenians worldwide commemorate the April 24th as a day that memorializes all the victims of the Armenian Genocide (Embassy of Armenia to Russian Federation, 2024). Richard Hovannisian documents this in his edited volume *The Armenian Genocide: History, Politics, Ethics* (1992) (Hovannisian, 1992), detailing how this symbolic act marked the start of the systematic annihilation of the Armenian community.

Following the arrest of Armenian leaders, the Ottoman government issued orders for the mass deportation of Armenians from their homes in eastern Anatolia to the deserts of modern-day Syria and Iraq. The deportations were framed as a "relocation" for security reasons during wartime, but in reality, they were designed to lead to the deaths of the Armenian population through exposure, starvation, and exhaustion. Many Armenians perished during these forced marches, while others were subjected to mass killings by Ottoman forces and local militias. This aspect is covered in detail by Taner Akçam in *A Shameful Act: The Armenian Genocide and the Question of Turkish Responsibility* (2006) (Akçam, 2006), where he uses Ottoman archives to show how these deportations were a key component of the genocide.

The second phase of the Armenian Genocide appeared with the conscription of some 60.000 Armenian men into the general Turkish army, who were later disarmed and killed by their Turkish fellowmen (Embassy of Armenia to Russian Federation, 2024). In addition to the deportations, large-scale massacres were carried out throughout the Ottoman Empire. Armenians were rounded up, taken to remote locations, and systematically executed. These killings were often carried out by special units of the Ottoman army, known as the Special Organization, as well as Kurdish and Turkish militias. Leo Kuper in *Genocide: Its Political Use in the Twentieth Century* (1981) discusses how these massacres were strategically implemented to exterminate the Armenian population, not just in the eastern provinces but across the empire (Kuper, 1981).

So, the third phase of the genocide comprised of massacres, deportations and death marches made up of women, children and the elderly into the Syrian deserts (Embassy of Armenia to Russian Federation, 2024). Armenians were sent to concentration camps in the Syrian desert, particularly around Deir ez-Zor. These camps became death zones where thousands of Armenians were left to die from disease, starvation, and executions. Vahakn Dadrian's work also delves into the establishment and function of these camps, highlighting the CUP's role in organizing the deportation and extermination process (Dadrian, 1995).

During those marches, hundreds of thousand were killed by Turkish soldiers, gendarmes and Kurdish or Circassian mobs. Others died because of famine, epidemic diseases and exposure to the elements. Thousands of women and children were raped. Tens of thousands were forcibly converted to Islam. Finally, the last phase of the Armenian genocide appeared with the total and utter denial by Turkish government of the mass

killings and elimination of the Armenian nation on its homeland (Embassy of Armenia to Russian Federation, 2024).

During the genocide, foreign diplomats and missionaries based in the Ottoman Empire, particularly from the United States and European nations, reported on the atrocities. U.S. Ambassador Henry Morgenthau played a significant role in documenting the events and trying to intervene diplomatically. These responses are explored in Samantha Power's *A Problem from Hell: America and the Age of Genocide* (2003), which discusses the failure of the international community to prevent or halt the genocide despite widespread knowledge of what was occurring (Power, 2003).

After World War I, the newly formed Turkish state denied the genocide, framing it as a consequence of wartime conditions rather than a deliberate policy of extermination. This denial continues to shape Turkish-Armenian relations and international politics surrounding the recognition of the genocide. Richard Hovannisian in *Denial of Genocide* (1999) explores the long-lasting effects of denial on both Armenian identity and the broader understanding of genocide in the 20th century (Hovannisian, 1999).

The number of victims of the Armenian Genocide is generally estimated at 1.5 million. This figure is widely accepted by most scholars and organizations dedicated to the study of genocide, although some sources estimate the number of victims to be slightly lower. Vahakn N. Dadrian in *The History of the Armenian Genocide* (1995) extensively examines archival material and concludes that approximately 1 to 1.5 million Armenians perished (Dadrian, 1995). Taner Akçam in *A Shameful Act: The Armenian Genocide and the Question of Turkish Responsibility* (2006) also supports the figure of 1.5 million, providing evidence from Ottoman documents and third-party reports that highlight the extent of the atrocities (Akçam, 2006). Ben Kiernan, in *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur* (2007), concurs with these estimates, emphasizing the systematic nature of the killings and the scale of the deportations (Kiernan, 2007). The International Association of Genocide Scholars (IAGS) (International Association of Genocide Scholars, 2024) has also confirmed that around 1.5 million Armenians were killed during the genocide. Those who were not killed outright were subjected to "death marches" and hard labor, where many were beaten and slowly starved. A large number of Armenians who survived, particularly women and children, were forcefully converted to Islam and integrated into Muslim society. The genocide also wiped out thousands of years of Armenian culture (World Population Review, 2024). The figure is based on a combination of Ottoman archives, diplomatic reports, and survivor testimonies, making it a widely accepted approximation despite occasional attempts at denial or revisionism.

The first international reaction to the violence resulted in a joint statement by France, Russia and Great Britain, in May 1915, where the Turkish atrocities directed against the Armenian people was defined as "new crime against humanity and civilization" agreeing that the Turkish government must be punished for committing such crimes (World Population Review, 2024).

All told, some 33 countries currently recognize the Armenian genocide. In addition, scholars believe that many other countries would likely recognize the genocide as well if not for political concerns. For instance, US presidents George W. Bush, Barack Obama, and

Donald Trump all declined the opportunity to formally recognize the Armenian genocide, claiming it would harm the country's relationship with Turkey. President Joe Biden eventually signed a resolution (which had passed the House 405–11 and the Senate unanimously in 2019) recognizing the Armenian genocide in 2021 (World Population Review, 2024).

On the other hand, the countries of Turkey and Azerbaijan reject the notion that the killings qualify as a genocide. The Turkish government, in particular, maintains that most Armenians were simply relocated rather than killed and that such actions were necessary to preserve the country because the Armenians were planning to revolt and secede. Most historians outside of Turkey rebuff this logic, pointing to additional mass killings of Armenians in 1894, 1895, 1896, 1909, and 1920-1923 (World Population Review, 2024).

There are currently 33 countries that recognize the Armenian Genocide, such as Argentina, Armenia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, Cyprus, Czech Republic, France, Germany, Greece, Italy, Latvia, Lebanon, Libya, Lithuania, Luxembourg, Netherlands, Paraguay, Poland, Portugal, Russia, Slovakia, Sweden, Switzerland, Syria, United States, Uruguay, Vatican City, and Venezuela (World Population Review, 2024).

Table 1. Countries that Recognize the Armenian Genocide

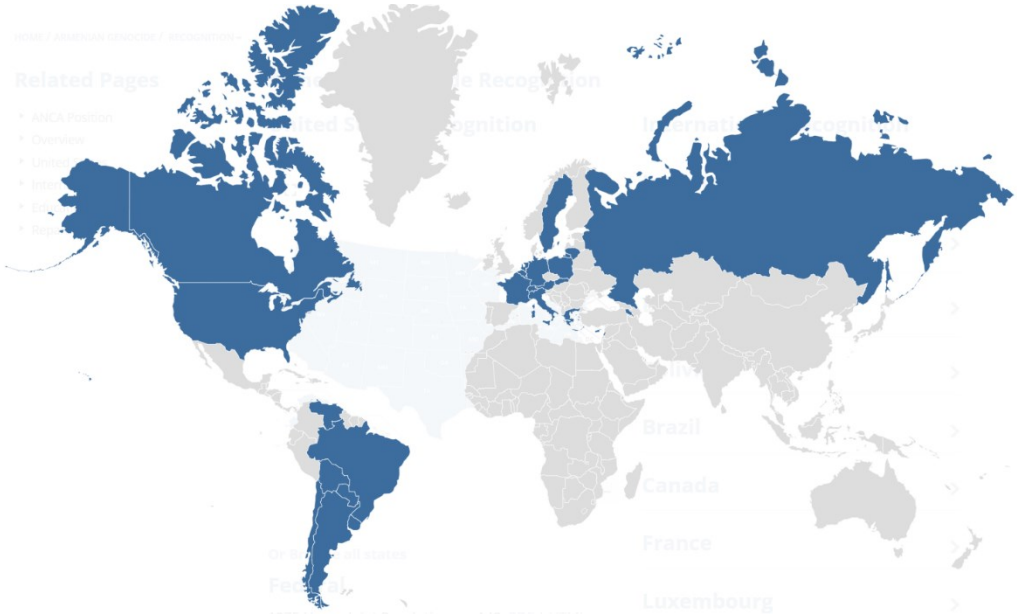
Argentina	1993, 2003, 2004, 2005, 2006, 2007, 2015
Armenia	1988
Austria	2015
Belgium	1998,2015
Bolivia	2014
Brazil,	2015
Bulgaria	2015
Canada	1996, 2002, 2004, 2006
Chile	2007, 2015
Cyprus	1975, 1982, 1990
Czech Republic	2017, 2020
France	1998, 2001
Germany	2005, 2016
Greece	1996
Italy	2000, 2019
Latvia	2021
Lebanon	1997, 2000
Libya	2019
Lithuania	2005
Luxembourg	2015
Netherlands	2004, 2015, 2018
Paraguay	2015
Poland	2005
Portugal	2019
Russia	1995, 2005, 2015
Slovakia	2004
Sweden	2010
Switzerland	2003
Syria	2020
United States	2019, 2021
Uruguay	1965, 2004, 2015
Vatican City	2000, 2015
Venezuela	2005

Source: World Population Review, 2024;

Armenian Genocide was recognized by the international organizations, such as The Elie Wiesel Foundation for Humanity (April 9, 2007), Human Rights Association of Turkey, Istanbul Branch (April 24, 2006), International Center for Transitional Justice Report Prepared for TARC (February 10, 2003), European Alliance of YMCAs (July 20, 2002), Council of Europe, Parliamentary Assembly, Declaration (April 24, 2001), Le Ligue des Droits de l'Homme (May 16, 1998), Council of Europe, Parliamentary Assembly, Declaration (April 24, 1998), The Association of Genocide Scholars (June 13, 1997), Parlamenta Kurdistane Li

Derveyi Welat (April 24, 1996), Union of American Hebrew Congregations (November 7, 1989), Permanent Peoples' Tribunal, Verdict of the Tribunal (April 16, 1984), World Council of Churches (August 10, 1983), UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (July 2, 1985), UN War Crimes Commission Report (May 28, 1948), UN General Assembly Resolution (December 9, 1948) (Embassy of Armenia to Russian Federation, 2024).

Figure 1. Territorial location of states, which recognize the Armenian genocide



The Armenian Genocide from a sociological and anthropological perspective

The Armenian Genocide, which took place during World War I (1915-1917), has been widely analyzed from various historical perspectives. Vahakn N. Dadrian's *The History of the Armenian Genocide* (1995) is one of the most comprehensive studies on the genocide, exploring the causes, events, and consequences from a historical perspective (Dadrian, 1995). Dadrian approaches the genocide as a product of ethnic conflict and a political tool used by the Ottoman government to eliminate its Armenian population. His work combines archival research and eyewitness accounts, making it a cornerstone of genocide studies. The anthropological perspective in Dadrian's analysis focuses on the cultural and ethnic dimensions that shaped the Armenian Genocide. Dadrian examines the historical tensions between Armenians and Turks, including the portrayal of Armenians as a disloyal minority. This analysis underscores the role of cultural narratives and stereotypes in justifying violence. The systematic destruction of Armenian cultural heritage—churches, schools, and historical landmarks—is discussed as a deliberate attempt to erase Armenian identity. This anthropological lens highlights genocide not only as physical extermination but also as cultural annihilation. Dadrian discusses the long-term consequences of the genocide,

including the diaspora's formation and the enduring trauma within Armenian communities. This perspective emphasizes the sociological repercussions of mass violence on identity, memory, and justice. Vahakn N. Dadrian's *The History of the Armenian Genocide* provides a groundbreaking synthesis of sociological and anthropological perspectives, offering a nuanced and comprehensive analysis of one of the 20th century's most significant atrocities. His interdisciplinary approach not only deepens the understanding of the genocide itsel, but also contributes to broader discussions on human rights, memory, and the sociocultural dynamics of violence.

Taner Akçam in *A Shameful Act: The Armenian Genocide and the Question of Turkish Responsibility* (2006) provides a critical examination of the Turkish state's responsibility for the genocide (Akçam, 2006). Akçam uses Ottoman documents to show the systematic planning of the genocide and how it was intertwined with the broader nationalist project of homogenizing the Turkish population. Akçam's work is vital for understanding the internal dynamics of the Ottoman state during the genocide. Akçam meticulously documents the role of the Ottoman government and its institutions in orchestrating the genocide, focusing on the bureaucratic and legal mechanisms that legitimized and executed the extermination of Armenians. He explores the rise of Turkish nationalism, highlighting how the pursuit of a homogenous Turkish identity under the Young Turks laid the ideological groundwork for genocide. This analysis situates the genocide within the broader sociopolitical context of nation-state formation. Akçam examines the complicity of local populations, detailing how societal structures and relationships were manipulated to facilitate violence against Armenians.

Richard Hovannisian has contributed extensively to the study of the Armenian Genocide, especially through edited volumes such as *The Armenian Genocide: History, Politics, Ethics* (1992). Hovannisian focuses on the denial of the genocide and its implications for Armenian identity and international recognition (Hovannisian, 1992). His work also considers the ethical dimensions of genocide denial and the broader historical context of genocides in the 20th century . The volume examines the role of the Ottoman Empire's political and institutional structures in planning and executing the genocide, highlighting systemic marginalization and the centralization of authority. Hovannisian emphasizes the long-term sociological consequences of the genocide, particularly the formation of the Armenian diaspora and the collective efforts to preserve Armenian identity and memory.

Leo Kuper in *Genocide: Its Political Use in the Twentieth Century* (1981) examines the Armenian Genocide as one of the first modern instances of genocide, setting a precedent for later atrocities (Kuper, 1981). Kuper's work emphasizes the political motivations behind the genocide and the failure of international institutions to prevent it. His analysis places the Armenian Genocide within the broader framework of genocide as a political tool. Kuper highlights the role of the state as the primary agent in orchestrating genocides, focusing on how centralized power and bureaucratic structures enable systematic mass violence. Kuper explores the targeted destruction of cultural and ethnic identities, framing genocide as not only physical extermination, but also the annihilation of collective identity. He delves

into the anthropological processes of dehumanization, detailing how perpetrators construct narratives that strip victims of their humanity to justify violence.

Ben Kiernan's *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur* (2007) includes a chapter on the Armenian Genocide, framing it within the larger history of genocidal acts (Kiernan, 2007). Kiernan highlights the racial and ethnic ideologies that fueled the genocide and explores how the Ottoman Empire's war-time context enabled such large-scale atrocities.

Samantha Power in *A Problem from Hell: America and the Age of Genocide* (2003) looks at the Armenian Genocide from the perspective of international intervention (or lack thereof). Power argues that the genocide is one of many examples in the 20th century where the international community failed to act to prevent mass atrocities (Power, 2003). Her work is important for understanding the global response to the genocide and the development of the concept of genocide as a crime.

Marc Nichanian's *The Spectral Nationality* (2006) offers a more theoretical and philosophical perspective on the genocide. While Nichanian's work is less of a historical account, it is significant for how it treats the Armenian Genocide as a foundational trauma for Armenian identity and memory (Nichanian, 2006). He examines the difficulty of narrating the genocide and how it has been represented in history and literature. Nichanian examines how the genocide fractured Armenian national identity, transforming it into a "spectral" or ghostly presence. This concept reflects the sociological impact of cultural annihilation and forced dispersion. Nichanian critiques the inadequacy of language and representation in conveying the horrors of genocide, emphasizing the anthropological challenge of articulating collective trauma. Nichanian's work blends sociology and anthropology with philosophy and literary theory, offering an innovative perspective on the genocide's cultural and psychological repercussions. His focus on memory, silence, and the spectral nature of identity challenges conventional narratives and deepens the discourse on genocide studies.

Helen Fein in *Genocide: A Sociological Perspective* (1993) contextualizes the Armenian Genocide within the broader field of genocide studies, focusing on the sociological conditions that make genocides possible (Fein, 1993). Fein's work underscores the role of state power and ideology in the execution of genocides, including the Armenian case. Fein identifies key societal factors that contribute to genocide, such as political instability, entrenched inequalities, and ethnic or religious divisions. She highlights how these conditions create a fertile environment for mass violence. The book explores the role of ideologies that define certain groups as "other" or "outsiders," justifying their exclusion, marginalization, and eventual destruction. Fein examines the cultural processes through which victim groups are dehumanized, reducing them to stereotypes that legitimize violence. Fein combines macro-level sociological analysis of structural and political conditions with anthropological insights into the cultural and psychological dimensions of genocide. This interdisciplinary approach provides a comprehensive understanding of how societal forces and human behavior converge to produce genocide.

Each of these works contributes to a deeper understanding of the Armenian Genocide by examining its causes, execution, and aftermath, and by placing it within the

larger history of genocides and mass atrocities in the 20th century. These studies highlight the importance of political, ethnic, and ideological factors, as well as the role of international recognition and denial in shaping the historical narrative of the genocide.

The Armenian Genocide created massive trauma for immediate survivors, devastating their ability to live a normal emotional life and encumbering them with sadness (Kalayjian & Weisberg, 2002). When the surviving Armenians dispersed to various countries, psychology was in its infancy; thus, few immediate survivors were able to process the trauma (Vollhadt & Bilewicz, 2013). Trauma can affect all members of a group with a strong collective identity, even if not all group members directly experienced the traumatic events. Therefore, subsequent generations of Armenians after the genocide have indicated experiencing intergenerational trauma (Kira, 2001, pp. 73-86).

Anthropologically speaking, the Armenian Genocide represents a catastrophic disruption of Armenian culture, traditions, and identity. Ethnic cleansing campaigns, like the Armenian Genocide, are often rooted in ideologies that dehumanize the target group, fostering an "us vs. them" mentality.

Anthropologists have primarily focused on the cultural trauma, memory, and identity formation that the Armenian Genocide has left in its wake. They examine how survivors and their descendants cope with the legacy of genocide and the ways in which culture and traditions adapt or survive following such a massive disruption. Anthropologists analyze how Armenian identity was systematically attacked and the rituals or symbols used to justify mass violence. Moreover, anthropological studies of survivors provide insight into how cultural memory and identity persist or transform through diaspora. Through rituals, oral histories, and communal practices, Armenians have preserved their cultural identity, despite the trauma of genocide.

We consider it appropriate to analyze some anthropological studies of the Armenian Genocide. The concept of "cultural trauma" is key in anthropology when analyzing the genocide. Cultural trauma occurs when a group experiences events so catastrophic that they fundamentally change the group's self-perception and identity. Anthropologists can explore how this trauma is passed down through generations, influencing contemporary Armenian diaspora communities. Studies may include how survivors' narratives shape collective memory and influence the identity of later generations. Jeffrey C. Alexander's (2004) framework of cultural trauma is often applied in analyzing the Armenian Genocide (Alexander et al., 2004). Alexander's concept explains how communities, like the Armenians, come to perceive events as traumatic and integrate them into their collective memory. In the case of the Armenians, the genocide is seen as a foundational trauma that continues to shape cultural identity, particularly in the diaspora. In his book *The Spectral Nationality: Passages of Freedom from Kant to Postcolonial Literatures of Liberation* (2006), Marc Nichanian explores how trauma impacts Armenian cultural memory and how this memory is transmitted across generations, often focusing on the silence and absence surrounding the event in Turkish narratives (Nichanian, 2006). The anthropology of memory investigates how Armenian survivors, and their descendants maintain a cultural identity while living in exile, often through oral histories, rituals, and commemorations.

The diaspora has become a central topic in the anthropological study of the Armenian Genocide. Khachig Tölölyan (1991) introduced the idea of "diasporic nationalism" in the context of the Armenian communities scattered globally after the genocide (Tölölyan, 1991). He examines how Armenians in the diaspora maintain connections to their homeland, their historical narrative of victimhood, and how the genocide informs both their sense of nationalism and identity in their host countries. Anthropological studies here explore the mechanisms of identity preservation through the transmission of collective memory, religious rituals, and the symbolic importance of genocide recognition.

At the same time, sociologists analyze the Armenian Genocide as a social process, focusing on the role of the state, societal structures, and social norms in facilitating large-scale violence. Genocide is often not a spontaneous event but a carefully organized process that involves bureaucratic planning, propaganda, and the mobilization of social institutions (such as the military, police, and even the educational system). In the case of the Armenian Genocide, the Young Turks government used nationalist ideologies to mobilize Turkish society against Armenians, portraying them as an existential threat. Sociologists study the way such ideologies manipulate fear and hatred, facilitating social conditions that make genocide possible. Leo Kuper (1981), in *Genocide: Its Political Use in the Twentieth Century*, provides an early sociological analysis that situates the Armenian Genocide as a deliberate attempt by the Ottoman Empire to reshape the ethnic makeup of its population (Kuper, 1981). He places the genocide within a broader framework of state-sponsored violence, discussing how nationalism, military strategy, and ethnic hatred combined to create the social conditions that led to the genocide. Vahakn N. Dadrian, a sociologist and historian, has made significant contributions to the sociological study of the Armenian Genocide. His works, including *The History of the Armenian Genocide* (1995), emphasize the role of the Ottoman state in orchestrating and executing the genocide (Dadrian, 1995). Dadrian's sociological approach explores how bureaucratic structures, such as the military and government institutions, facilitated the mass killings, often citing how the state used legal mechanisms to justify ethnic cleansing.

Dehumanization is a key concept in the sociology of genocide. Sociologists examine how Armenians were dehumanized through state propaganda that depicted them as traitors or enemies of the Ottoman Empire. The creation of an "enemy within" led to the breakdown of moral barriers against violence. This social psychology aspect reveals how ordinary people can be influenced to participate in mass killings when they view their victims as less than human. Helen Fein (1993), in Genocide: A Sociological Perspective (Fein, 1993), argues that dehumanization and the exclusion of Armenians from the Ottoman polity allowed ordinary people to participate in acts of extreme violence. Fein's analysis highlights how social hierarchies and legal frameworks supported these acts of extermination by erasing Armenians' political and social rights, effectively rendering them stateless. Roger Smith (1999), in his comparative study of genocides, draws parallels between the Armenian Genocide and other 20th-century genocides like the Holocaust and Rwanda (Smith, 1999). His sociological analysis focuses on group dynamics and social

stratification, identifying how the Ottoman regime exploited ethnic divisions and scapegoated the Armenian population to unify the Turkish majority.

Denial of the genocide has been a significant area of study in both anthropology and sociology. Richard Hovannisian, a leading scholar on the Armenian Genocide, has written extensively on the denial of the genocide, particularly in Turkey. In his edited volume *Denial of Genocide* (1999), he and other scholars examine the sociopolitical reasons behind genocide denial and how denial impacts both the victim group and the perpetrator society (Hovannisian, 1999). From a sociological perspective, denial can be seen as a continuation of the violence, preventing reconciliation and perpetuating ethnic divisions. Taner Akçam, a Turkish sociologist and historian, has also written critically on Turkey's denial of the Armenian Genocide. In *A Shameful Act* (2006), Akçam provides a sociological analysis of Turkish nationalism and how the denial of the genocide has become a cornerstone of modern Turkish identity (Akçam, 2006). His work explores how state-sponsored narratives are constructed and how these narratives are maintained through legal and educational frameworks, effectively silencing alternative histories.

In Turkey and Armenia, the memory of the genocide is highly contested. While Armenia and the Armenian diaspora recognize and commemorate the genocide, Turkey has long denied its occurrence. Anthropological and sociological perspectives focus on how nations construct historical narratives and how these narratives affect international relations and social healing. Researchers may also study the role of education, monuments, and public commemorations in shaping collective memory and fostering dialogue or, conversely, perpetuating conflict. By analyzing the Armenian Genocide through these anthropological and sociological lenses, scholars provide deeper insights into the nature of human violence, the resilience of cultural identity, and the social processes that enable such atrocities.

The Case Perinçek v. Switzerland

The Case Perinçek v. Switzerland was repeatedly analyzed by scholars from different state, being highlighted diverse perspectives, visions and legal impact of this decision to national legislation. Daniele L. in the article Disputing the Indisputable: Genocide Denial and Freedom of Expression in Perincek v. Switzerland (2016) explores the tension between freedom of expression and genocide denial laws as highlighted in Perinçek v. Switzerland. The paper discusses the ECtHR's controversial balancing act under Article 10 of the European Convention on Human Rights. Daniele examines the broader implications of allowing the denial of recognized genocides under free speech protections, questioning whether the judgment undermines the dignity of victims and historical truths. The researcher highlighted the necessity of balancing free speech with respect for historical memory of the victims of recognized genocides and analyzed the aspects related to legal and moral dimensions of genocide denial.

Wojcik, M. in his article *Navigating the Hierarchy of Memories: The ECtHR Judgment in Perinçek v Switzerland* (2020) discusses how the ECtHR ruling reflects a "hierarchy of memories," prioritizing freedom of expression over the collective recognition of historical

events. The author critiques the court's failure to address the unique sensitivities surrounding the Armenian genocide, highlighting inconsistencies in how genocide denial is treated across Europe. The article questions whether such decisions compromise collective memory and justice for historical atrocities. The author critics the court's avoidance of moral condemnation of these declarations and examines the decision's impact on memory politics and victims' narratives.

Nashalian's work *A Critique of Perincek v. Switzerland: Incorporating an International and Historical Context Is the More Prudent Approach to Genocide Denial Cases* (2018) highlights the lack of sufficient international and historical context of the ECtHR's decision. The author emphasizes the need for a more holistic approach to genocide denial cases, taking into account international human rights norms and historical precedents. Nashalian critiques the court's focus on the absence of incitement to violence, suggesting it failed to account for the harms caused by denialism. Researcher focus his analyses on the historical context in genocide denial laws, the moral implications of the international norms and criticism of the ECtHR's narrow interpretation of harm.

Italian researcher Daniele, L.. in his study *Negazionismo e libertà di espressione: dalla sentenza Perinçek c. Svizzera alla nuova aggravante prevista nell'ordinamento Italiano. Diritto Penale Contemporaneo* (2017) explores the connection between Perinçek v. Switzerland and recent developments in Italian criminal law regarding genocide denial. Daniele provides a comparative analysis of how European countries regulate denialism and how the ECtHR's judgment influenced Italy's legislative response. The paper argues for a delicate balance between freedom of expression and protecting historical truths. The author presents the comparative analysis of Italian and European legal frameworks regarding genocide denial.

Belavusau, U. in the article *Perinçek v. Switzerland (Eur. Ct. HR)* (2016) provides a comprehensive analysis of the legal reasoning in Perinçek v. Switzerland. The author situates the case within the broader context of ECtHR jurisprudence on freedom of expression and hate speech. The paper delves into the implications for states attempting to criminalize genocide denial and discusses the court's nuanced distinction between Holocaust denial and denial of other genocides. This study analyses the legal precedent in ECtHR case law and determines the distinctions between Holocaust denial and Armenian genocide denial. Researcher analyses the concepts such as free speech, historical truth, and state obligations.

Leotta, C. D. in his study *Criminalizing the Denial of 1915–1916 Armenian Massacres and the European Court of Human Rights: Perinçek v Switzerland. In The Armenian Massacres of 1915–1916 a Hundred Years Later* (2018) presents the legal and ethical challenges posed by the ECtHR's judgment, arguing that the decision weakens efforts to protect historical truth through criminal law. The analysis places the case within the ongoing debate on free speech and memory laws in Europe. The post important part of the research is based on the examination of ethical considerations of protecting historical events.

Makili-Aliyev, K.. in his article *Implications of the Perincek v. Switzerland Case on the So-Called Armenian «Genocide»* (2014) discusses the broader political and legal implications of the Perinçek case, particularly in the context of disputes over the recognition of the

Armenian genocide. The article emphasizes how the judgment reflects the ECtHR's reluctance to intervene in politically sensitive historical debates, setting a precedent for state discretion in addressing genocide denial. The main focus of the study is based on the analyses of the concept of state sovereignty in the context of historical debates and the ECtHR's role in balancing law and politics.

Armenian researcher İsviçre, P. V. in his study *Perinçek v. Switzerland judgement of the European Court of Human* focuses on the Armenian perspective of the Perinçek ruling. Author critiques the ECtHR's decision for failing to uphold the dignity of the victims of the 1915–1916 massacres. The article discusses the symbolic and emotional impact of genocide denial and examines whether free speech protections should extend to statements that deny historical atrocities. This research evaluates the symbolic and emotional impacts of this decision and the necessity to establish free speech limitations in sensitive historical contexts.

This study offers a novel contribution to the ongoing discourse on international human rights law by examining the Perinçek v. Switzerland case through a multidimensional lens. While much attention has been given to Holocaust denial within European legal frameworks, this study uniquely shifts focus to the denial of the Armenian Genocide, a topic that has received comparatively less academic scrutiny. It interrogates the ECtHR's legal reasoning and its broader implications for the victims' right to memory and international human rights law. The research bridges legal analysis and sociological perspectives, providing an integrated critique that moves beyond the purely legal framework. By incorporating concepts such as collective memory and ethical responsibility, it deepens the understanding of how the Court's decisions resonate within affected communities and international legal norms. The study identifies and critiques the inconsistency in the ECtHR's approach to genocide denial, specifically contrasting its treatment of Holocaust denial and Armenian Genocide denial. This comparative angle highlights the selective application of hate speech laws and the potential for bias in international judicial decisions. By critiquing the ECtHR's decision and proposing pathways toward a more balanced and coherent legal approach, the study has practical implications for policymakers, legal practitioners, and scholars. It provides a foundation for advocating reforms that address genocide denial while upholding human rights principles. Through its original focus, interdisciplinary approach, and critical analysis, the study enriches the academic conversation on freedom of expression, historical denialism, and the protection of victims' rights, making it a significant contribution to the fields of international law and human rights.

Case details

The applicant is a Doctor of Laws and the Chairman of the Turkish Workers' Party. In 2005 he participated in various conferences in Switzerland during which he publicly denied that the Ottoman Empire had perpetrated the crime of genocide against the Armenian people in 1915 and the following years. In particular, he described the idea of an Armenian genocide as an "international lie" (Information Note on the Court's case-law, 2013, p. 14).

In the course of that press conference, he made the following statement in Turkish.

> "Let me say to European public opinion from Berne and Lausanne: the allegations of the 'Armenian genocide' are an international lie. Can an international lie exist? Yes, once Hitler was the master of such lies; now it's the imperialists of the USA and EU! Documents from not only Turkish but also Russian archives refute these international liars. The documents show that imperialists from the West and from Tsarist Russia were responsible for the situation boiling over between Muslims and Armenians. The Great Powers, which wanted to divide the Ottoman Empire, provoked a section of the Armenians, with whom we had lived in peace for centuries, and incited them to violence. The Turks and Kurds defended their homeland from these attacks. It should not be forgotten that Hitler used the same methods – that is to say, exploiting ethnic groups and communities – to divide up countries for his own imperialistic designs, with peoples killing one another. The lie of the 'Armenian genocide' was first invented in 1915 by the imperialists of England, France and Tsarist Russia, who wanted to divide the Ottoman Empire during the First World War. As Chamberlain later admitted, this was war propaganda. ... The USA occupied and divided Iraq with the Gulf Wars between 1991 and 2003, creating a puppet State in the north. They then added the oilfields of Kirkuk to this State. Today, Turkey is required to act as the guardian of this puppet State. We are faced with imperialist encirclement. The lies about the 'Armenian genocide' and the pressure linked to the Aegean and Cyprus are interdependent and designed to divide us and take us hostage ... The fact that successive decisions have been taken that even refer to our liberation war as a 'crime of humanity' shows that the USA and EU have included the Armenian question among their strategies for Asia and the Middle East ... For their campaign of lies about the 'Armenian genocide', the USA and EU have manipulated people with Turkish identity cards. In particular, certain historians have been bought and journalists hired by the American and German secret services to be transported from one conference to another ... Don't believe the Hitler-style lies such as that of the 'Armenian genocide'. Seek the truth like Galileo, and stand up for it." (Information Note on the Court's case-law, 2013, p. 13)

This statement was followed by two other statements in which similar ideas were promoted, such as the Armenian Genocide did not actually exist being a propaganda invention.

These statements were made at public events in Switzerland. These speeches were directed at Switzerland's political elite to urge them to stop recognizing the Armenian genocide, promoting Turkey's official position that it does not recognize the genocide.

The purpose of the statements was clear, being aimed at determining Switzerland to stop recognizing the Armenian genocide and preventing the recognition of the genocide by other states. Moreover, the statements were made in a clear political context, the applicant being the Chairman of the Turkish Workers' Party.

Applicant is an opinion maker, being an influential person within Turkey's political elite. His vision may be a defining one for voters, who support the political party led by him which aggravates the social danger of utterances pronounced by Mr. Doğu Perinçek.

The Switzerland-Armenia Association filed a complaint to national authorities against the applicant for the comments he had made. The applicant was sentenced, with a two-year suspension, to ninety day-fines of 100 Swiss francs (CHF), and fined CHF 3,000, for which thirty days' imprisonment could be substituted, and was ordered to pay

CHF 1,000 in damages to the complainant association (Information Note on the Court's case-law, 2013, p.14).

The European Court of Human Rights highlighted the fact that under Article 19 of the Convention, the Court's task is limited to "ensur[ing] the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto", and under Article 32 § 1, its jurisdiction only extends to "matters concerning the interpretation and application of the Convention and the Protocols thereto". Unlike the International Criminal Tribunal for the former Yugoslavia, the International Criminal Court or the International Court of Justice, it does not have penal or other jurisdiction under the Genocide Convention or another international-law instrument relating to such issues (Case of Perinçek v. Switzerland, 2015, §101). It follows that in the present case the Court is not only, as noted by the Chamber in paragraph 111 of its judgment, not required to determine whether the massacres and mass deportations suffered by the Armenian people at the hands of the Ottoman Empire from 1915 onwards can be characterised as genocide within the meaning of that term under international law, but has no authority to make legally binding pronouncements, one way or the other, on this point (Case of Perinçek v. Switzerland, 2015, §102).

Thus, the European Court refrained from determining the legal nature of the acts of mass extermination of Armenians in 1915-1920. This approach that was determined by the inconsistency of this historical event, the lack of international consensus on this issue and the contradictory opinion of historians about the Armenian genocide. The European Court highlighted that its vision on the Armenian Genocide is not binding on international bodies competent to deal with international crimes.

Hight Court mentioned that it was not disputed that the applicant's conviction and punishment, coupled with the order to pay damages to the Switzerland-Armenia Association, constituted an interference with the exercise of his right to freedom of expression. Such interference will be in breach of Article 10 of the Convention if it does not satisfy the requirements of its second paragraph (Case of Perinçek v. Switzerland, 2015, §117).

The High Court noted that the application of criminal punishment to the applicant for denying the Armenian Genocide is a violation of the freedom of expression, guaranteed by art. 10 of the Convention. At the same time, freedom of expression is not an absolute right, being allowed the restriction of this right in cases such as: 1. The restriction is necessary in a democratic society, 2. Prescribed by law, 3. The implementation of measures is necessary for national security, territorial integrity or public security, the defence of order and the prevention of crimes, the protection of health, morals, reputation or the rights of others, to prevent the disclosure of confidential information (European Convention on Human Rights, 2022, art. 10 phar. (2)).

The ECtHR analyzed the lawfulness of the interference of the freedom of speech of applicant. The Hight Court held that, among other things, it entailed a requirement of foreseeability. A norm could not be regarded as a "law" unless it was formulated with sufficient precision to enable the person concerned to regulate his or her conduct: he or she needed to be able – if need be, with appropriate advice – to foresee, to a degree that

was reasonable in the circumstances, the consequences that a given action could entail. However, the Court went on to state that these consequences did not need to be foreseeable with absolute certainty, as experience showed that to be unattainable (Case of Perinçek v. Switzerland, 2015, §131).

So, this requirement is based on the fact that person should clearly understand which acts are prohibited and are sanctioned with criminal liability. Committing this act, person should understand that he or she breaks the law and could be sanctioned according to criminal code. Also, foreseeability of the law includes the high probability that this sanction would be applied by the competent authorities and the person would not enjoy impunity for the act committed. So, this criterion involves some important aspects: the clear regulation of crimes in Criminal Code; uniform application of criminal rules by national authorities; the person's understanding of the fact that he committed the crime; the understanding of the type of punishment, which could be applied for the violation of law and that understanding that there is no impunity for the commission of some type of crimes.

At the same time, Court mentioned that even in cases in which the interference with the applicants' right to freedom of expression had taken the form of a criminal "penalty", the Court has recognized the impossibility of attaining absolute precision in the framing of laws, especially in fields in which the situation changes according to the prevailing views of society, and has accepted that the need to avoid rigidity and keep pace with changing circumstances means that many laws are couched in terms which are to some extent vague and whose interpretation and application are questions of practice (Case of Perinçek v. Switzerland, 2015, §133).

Therefore, the Court recognized the impossibility of development of accurate and precise regulation applicable in all cases relating to hate speech. This impossibility is determined by the multitude of contexts in which hate speech is encountered, the difficulty in determining the social danger of speech and identifying its prejudicial consequences, as well as the difference in the specific social context for a particular society in a period of development. Therefore, the determination of the specifics of hate speech and genocide denial should be applied in practice by national courts and practitioners in the field. At the same time, the practice of the national courts should be a well-argued one, avoiding contradictions between decisions adopted on similar cases.

It is important to note, when speaking of "law", Article 10 § 2 denotes the same concept to which the Convention refers elsewhere when using that term, for instance – as especially relevant for the purposes of this case – in Article 7. In the context of Article 7, the Court has consistently held that the requirement that offences be clearly defined in law is satisfied where a person can know from the wording of the relevant provision – if need be, with the assistance of the courts' interpretation of it – what acts and omissions will render him or her criminally liable. Article 7 does not prohibit the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, if the resultant development is consistent with the essence of the offence and can reasonably be foreseen (Case of Perinçek v. Switzerland, 2015, §134). So, for the average person without the degree in law should be able to understand what type of acts is prohibited by

legal regulations and may entail the application of criminal punishment. However, the detailed determination of the crime component could be put in charge of national authorities such as national courts. The interpretation of legal provision by court could not be qualified as a violation of the principle of foreseeable of law.

The Court has also held, by reference to Articles 9, 10 and 11 of the Convention, that the mere fact that a legal provision is capable of more than one construction does not mean that it does not meet the requirement of foreseeability. In the context of Articles 7 and 10, it has noted that when new offences are created by legislation, there will always be an element of uncertainty regarding the meaning of this legislation until it is interpreted and applied by the criminal courts (Case of Perinçek v. Switzerland, 2015, §135). So, the regulation of new crimes is closely related to the development of judicial practice, through which the courts elaborate the interpretation of the component of crime introduced by the legislator. The court's interpretation of the crime could not be considered the violation of the foreseeability principle.

In examining these points in the present case, the Court is mindful that under its well-established case-law, in proceedings originating in an individual application under Article 34 of the Convention its task is not to review domestic law in the abstract but to determine whether the way in which it was applied to the applicant gave rise to a breach of the Convention (Case of Perinçek v. Switzerland, 2015, §136). The Court do not evaluate, if the countries' national legislation corresponds to the general provisions of the Convention. In the ECtHR competence enter the examination of the violation of human rights in the particular case.

The European Court of Human Rights noted that the salient issue in this case is not whether Article 261 bis § 4 of the Criminal Code is in principle sufficiently foreseeable in its application, in particular in its use of the term "a genocide", but whether when making the statements in respect of which he was convicted the applicant knew or ought to have known – if need be, after taking appropriate legal advice – that these statements could render him criminally liable under this provision (Case of Perinçek v. Switzerland, 2015, §137). So, ECtHR analyses if the applicant understood or should clearly understand that his declarations represent the crime and could determine his criminal liability. The most important signification in this case is the subjective applicant's understanding of the danger of the committed act and the intention to commit the act prohibited by law.

The Grand Chamber evaluated the necessity of the interference in the applicant freedom of expression in a democratic society. Hight Court elaborated the general principles for assessing whether an interference with the exercise of the right to freedom of expression is "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention, such as (Case of Perinçek v. Switzerland, 2015, §196):

(i) Freedom of expression is one of the essential foundations of a democratic society and one of the basic conditions for its progress and for everyone's self-fulfillment. Subject to Article 10 § 2, it applies not only to "information" or "ideas" that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance, and broadmindedness without which there is no "democratic society". As set forth in Article

10, this freedom is subject to exceptions, but these must be construed strictly, and the need for any restrictions must be established convincingly (Case of Perinçek v. Switzerland, 2015, §196). So, in the Hight Court point of view, the freedom of expression represents the bases of the state's democracy, protecting different opinions, points of view, ideas which are or not accepted by society. Without the guarantee of freedom of expression, it is impossible to realize democratic principles in practice, to guarantee political pluralism and the possibility of organizing the electoral campaign on equal conditions for all participants. At the same time, the restriction of freedom of expression can turn into the censorship of written publications and public speeches, which is a characteristic feature of the totalitarian regime. These aspects highlight the importance of the freedom of expression, which represents the bases of democratic society.

(ii) The adjective "necessary" in Article 10 § 2 implies the existence of a pressing social need. The High Contracting Parties have a margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the law and the decisions that apply it, even those given by independent courts. The Court is therefore empowered to give the final ruling on whether a "restriction" can be reconciled with freedom of expression (Case of Perinçek v. Switzerland, 2015, §196). So, the necessity of the restriction of liberty of expression begins from the country's social-political context, which determines the adoption of legislation in this domain. At the same time, national authorities, including national courts have the obligation to evaluate the people's speeches and to determine, if these speeches violate the limits of freedom of expression. However, the ECtHR could analyze the legality and necessity of the application of these restrictions by national authorities. We should mention that Hight Court does not analyze the correctness of general legal provision but examine the presence of the violation of human right in each particular case.

(iii) The Court's task is not to take the place of the competent national authorities but to review the decisions that they made under Article 10. This does not mean that the Court's supervision is limited to ascertaining whether these authorities exercised their discretion reasonably, carefully and in good faith. The Court must rather examine the interference in the light of the case as a whole and determine whether it was proportionate to the legitimate aim pursued and whether the reasons adduced by the national authorities to justify it were relevant and sufficient. In doing so, the Court has to satisfy itself that these authorities applied standards which were in conformity with the principles embodied in Article 10 and relied on an acceptable assessment of the relevant facts (Case of Perinçek v. Switzerland, 2015, §196). Therefore, the Court does not substitute national authorities in determining whether freedom of expression has been violated. At the same time, the Hight Court has the right to verify whether the restriction of freedom of expression was proportionate to the purpose, which should be achieved, being relevant, sufficient and in accordance with the principles of art. 10 of the Convention.

At the same time, there is little scope under Article 10 § 2 of the Convention for restrictions on political expression or on debate on questions of public interest (Case of Perinçek v. Switzerland, 2015, §197). Thus, evaluating the legality of the restriction of the freedom of expression, Hight Court evaluates the context of discussion and the typology

of speech. The discussion which refers to the political life of the country and questions related to the public interest enjoy the highest degree of protection. This rule is based on the need to guarantee political pluralism, prevent the establishment of censorship and persecution of the leaders of the opposition political parties.

Analysis

The balance between the right to respect for private life and the right to freedom of expression

In Case Perinçek v. Switzerland, Hight Court analyzed the general principles applicable to cases in which the right to freedom of expression under Article 10 of the Convention has to be balanced against the right to respect for private life under Article 8 of the Convention (Case of Perinçek v. Switzerland, 2015, §198).

In such cases, the outcome should not vary depending on whether the application was brought under Article 8 by the person who was the subject of the statement or under Article 10 by the person who has made it, because in principle the rights under these Articles deserve equal respect (Case of Perinçek v. Switzerland, 2015, §198). So, in cases concerning freedom of expression, there are present competing rights, which counterbalance each other. A person's freedom of expression may violate another person's right to private life and family by containing slander, false statements, or incitement to discrimination or hate crime. Thus, the High Court should determine the limits of the exercise of the rights guaranteed by the Convention, based on the premise that all rights have the same value and should be respected in a democratic society. Moreover, the criteria and standards applied by the European Court in cases concerning the violation of art. 8 or 10 must be identical. In this context, the outcome of the examination must not vary depending on whether the application has been submitted by the person claiming that his or her right to privacy has been violated by a public speech or by the applicant who believes that his or her freedom of expression has been restricted. Establishing the necessity to apply similar standards, the European Court wants to prevent the creation of a contradictory judicial precedent in cases, which relate to the violation of art. 8 or 10 of the Convention.

The choice of the means to secure compliance with Article 8 in the sphere of the relations of individuals between themselves is in principle a matter that falls within the High Contracting Party's margin of appreciation, whether the obligations on it are positive or negative. There are different ways of ensuring respect for private life and the nature of the obligation will depend on the particular aspect of the private life that is in issue (Case of Perinçek v. Switzerland, 2015, §198). Therefore, the determination of the measures to be taken to ensure the realization of the right to private and family life falls within the limit of discretion of the state, which has the right to choose the most effective positive and negative measures to ensure the observance of this fundamental right.

Likewise, under Article 10 of the Convention, the High Contracting Parties have a margin of appreciation in assessing whether and to what extent an interference with the

right to freedom of expression is necessary (Case of Perinçek v. Switzerland, 2015, §198). The state has the right to adopt national legislation that determines the limits on freedom of expression and prohibits incitement to discrimination, hate speech, slander, promotion of crime, justification of international crimes and denial of the Holocaust.

The margin of appreciation, however, goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by independent courts. In exercising its supervisory function, the Court does not have to take the place of the national courts but to review, in the light of the case as a whole, whether their decisions were compatible with the provisions of the Convention relied on (Case of Perinçek v. Switzerland, 2015, §198). The European Court of Human Rights is therefore entitled to review national legislation governing the limits of freedom of expression and to examine whether the decisions of national courts comply with the standards of the convention. However, the review is not a general one and refers to the alleged violation of human rights in a specific case.

If the balancing exercise has been carried out by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for theirs (Case of Perinçek v. Switzerland, 2015, §198). So, when evaluating the necessity to limit the freedom of expression, national courts should apply the same criteria established by the ECtHR. At the same time, the High Court could determine other criteria, based on the specific circumstances of the analyzed case.

Analyzing the cases, which refer to the appreciation or denial of historical events, the European Court analyzed the following elements: the manner in which the impugned statements were phrased and the way in which they could be construed, the specific interest or right affected by the statements, the statements' impact, the lapse of time since the historical events to which the statements are related (Case of Perinçek v. Switzerland, 2015, §216-219).

The importance of analyzing the manner of expression is evident in the fact that this type of speeches refers to historical events, namely the formulations used in the analyzed speeches represent hate speech or incitement to discrimination. The similar idea related to the historical event can be considered as part of historical discourse and freedom of research or as incitement to discrimination or denial of international crimes. Therefore, in these cases the way of expression is a crucial aspect in determining the limits of freedom of expression.

At the same time, it is important to determine the right affected or violated by exercising the freedom of expression. In particular, it should be determined whether the contested speech violates the right to private or family life, the right to respect for human dignity. Moreover, it should be determined whether the contested speech contains the appeal to violence against persons belonging to vulnerable groups or addresses contradictory issues which determine the disagree of a certain circle of persons. We should mention that the article 10 of Convention is applicable not only to "information" or "ideas" that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb; such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society" (Council

of Europe, Guide on Article 10 of the European Convention on Human Rights, 2022, p. 11). However, the regulation of the Convention could not be used for the protection of speech which violates other person's rights and fundamental freedoms, incite to violence or discrimination of vulnerable groups.

In other news, the European Court highlight the importance of assessing the impact of the statements made. Especially, the impact of the statements depends on the speaker's social position, his prestige, the number of audiences, the channel that published/ republished the statements made, as well as the social consequences of those statements, such as protests or statements of officials.

Also, the time spent after the disputed historical events took place determines the severity of the sufferings of the victims and their relatives affected by these events. The more time has passed since these events occurred, the less social impact the analyzed statements will have. However, some events mark the entire history of a people, being crucial and changing the course of contemporary history. These events include in particular the Armenian Genocide, the Holocaust, the repressions of the USSR, and the Holodomor.

The jurisprudence of the ECtHR highlights the necessity of interference with statements relating to historical events has also been quite case-specific and has depended on the interplay between the nature and potential effects of such statements and the context in which they were made (Case of Perinçek v. Switzerland, 2015, §220).

The Chamber, taking into account the manner in which the Swiss Federal Court had construed Article 261 bis § 4 of the Criminal Code in the case at hand, found that the precision of the term "a genocide" in this Article could give rise to doubts (Case of Perinçek v. Switzerland, 2015, §125). So, Court noted that the law does not explain the essence of the term "genocide", being unprecise one. We could conclude that Court found the inefficiency of national regulation of criminal liability for the genocide denial. Formally, this crime was criminalized by national legislation, despite the fact that the adopted regulation was imperfect and did not clearly define the crime component.

However, it went on to state that the applicant, being a lawyer and a well-informed politician, could have suspected that his statements could result in criminal liability because the Swiss National Council had recognized the Armenian genocide and because the applicant had later acknowledged that when making his statements, he had been aware that the public denial of genocide had been criminalized in Switzerland. The applicant could not therefore have been "unaware that by describing the Armenian genocide as an 'international lie', he was liable to face a criminal penalty in Swiss territory" (Case of Perinçek v. Switzerland, 2015, §125). So, the Court concluded that the application of criminal liability for the denounce of Armenian Genocide was predictable for applicant. This conclusion is based on the following arguments: 1. Applicant knew about the criminalization of the denial of genocide in the Swiss Criminal Code; 2. Applicant understood that Swiss legislation would be applied to the violations committed in the Swiss territory; 3. Applicant realized that his behavior could be punished because of the fact that Switzerland recognized the Armenian genocide. So, the application of criminal punishment was previsible and clear for applicant. The Court stated that the requirement that the restriction of the freedom of liberty should be prescribed by the law is respected

in this case. So, the Court concluded that the interference with his right to freedom of expression could therefore be regarded as "prescribed by law" (Case of Perinçek v. Switzerland, 2015, §125).

The legitimate aim to the restriction of the applicant's freedom of expression

The Chamber accepted that the interference with the applicant's right to freedom of expression had been intended to protect the "rights of others", namely the honor of the relatives of the victims of the atrocities perpetrated by the Ottoman Empire against the Armenian people from 1915 onwards. However, it found that the Swiss Government's assertion that the applicant's comments had in addition posed a serious risk to public order was not sufficiently substantiated (Case of Perinçek v. Switzerland, 2015, §141). In the Chamber's point of view, the denial of the Armenian genocide affects the memory of innocent victims of atrocities, represents disrespect for the deceased and aggravates the suffering of their relatives. At the same time, Court considered that there is no risk to public order, based on the absence of the risk of protest or public disorder.

The Grand Chamber evaluated the risk of the public disorder after the politician's declarations. The ECtHR mentioned that the various Articles in the English text of the Convention and its Protocols use different formulations, especially the art. 10 § 2, 8 § 2 and 11 § 2, contains the term "prevention of disorder", whereas art. 6 § 1and art. 1 § 2 of Protocol No. 7 speak of the "interests of public order", art. 9 § 2 of the Convention uses the formula "protection of public order", and Article 2 § 3 of Protocol No. 4 refers to the "maintenance of order public" (Case of Perinçek v. Switzerland, 2015, §146). These concepts could have different meaning in the different legal systems and different languages. Bearing in mind that the context in which the terms in issue were used is a treat for the effective protection of individual human rights, that clauses, such as Article 10 § 2, that permit interference with Convention rights must be interpreted restrictively, and that, more generally, exceptions to a general rule cannot be given a broad interpretation, the Court finds that, since the words used in the English text appear to be only capable of a narrower meaning, the expressions "the prevention of disorder" and "la défense de l'ordre" in the English and French texts of Article 10 § 2 can best be reconciled by being read as having the narrower meaning (Case of Perinçek v. Switzerland, 2015, §151).

In the European Court point of view, the exceptions of the guarantee of the liberty of expression could not be interpreted extensive because the extensive interpretation of this provision could determine the unjustified restriction of rights, guaranteed by the Convention. Court considers that the arguments for the restriction of the liberty of expression should be based on the prevention of disorder arguments, for example, on the high probability of massive protests of population determined by the hate speech. At the same time, Court considers inappropriate the argumentation of the restriction of the liberty of expression based on the defense of public order argument. This point of view is based on the fact that the defense of public order has the brought interpretation and could determine the unjustified violation of human rights.

The ECtHR mentioned that the Government should demonstrate if the applicant's statements were capable of leading or actually led to disorder – for instance in the form of public disturbances – and that in acting to penalize him (Case of Perinçek v. Switzerland, 2015, §152). However, the only argument that the Swiss Government put forward in support of their assertion that this was the case was the reference to two opposing rallies held in Lausanne on 24 July 2004 – about a year before the events in respect of which the applicant was convicted – and the applicant's participation in one of them as a speaker. Court concluded that there is no evidence that at the time of the public events at which the applicant made his statements the Swiss authorities perceived those events as capable of leading to public disturbances and attempted to regulate them on that basis. Nor is there any evidence that, in spite of the presence of both Armenian and Turkish communities in Switzerland, this kind of statement could risk unleashing serious tensions and giving rise to clashes (Case of Perinçek v. Switzerland, 2015, §153). So, in this context, the Court found that the risk of protests and public disorder as a result of the applicant's statements was not proven by the authorities.

The Hight Court analysis if the necessity of the limitation of the liberty of expression could be justified by the "protection of the ... rights of others". With regard to this legitimate aim, a distinction needs to be drawn between, on the one hand, the dignity of the deceased and surviving victims of the events of 1915 and the following years and, on the other, the dignity, including the identity, of present-day Armenians as their descendants (Case of Perinçek v. Switzerland, 2015, §155). So, Court makes the distinction between the memory of the victims of the Armenian Genocide and the social-cultural identity of Armenian nation.

As noted by the Swiss Federal Court in point 5.2 of its judgment, many of the descendants of the victims of the events of 1915 and the following years – especially those in the Armenian diaspora – construct that identity around the perception that their community has been the victim of genocide (Case of Perinçek v. Switzerland, 2015, §156). This apperception is based on the fact that, during the Genocide, the Armenian cultural heritage, objects of art, monuments and specific traditions of Armenian community were destroyed. Moreover, the majority of families are the relatives of Armenian Genocide victims. The consequence of the Armenian Genocide could not be overestimated, including the 1,5 million of victims, which were killed with great cruelty, mass deportations of population and death marches made up of women, children and the elderly into the Syrian deserts and the forced conversion to Islam.

In view of that, the Hight Court accepts that the interference with the applicant's statements, in which he denied that the Armenians had suffered genocide, was intended to protect that identity, and thus the dignity of present-day Armenians. At the same time, it can hardly be said that by disputing the legal qualification of the events, the applicant cast the victims in a negative light, deprived them of their dignity, or diminished their humanity. Nor does it appear that he directed his accusation that the idea of the Armenian genocide was an "international lie" towards those persons or their descendants; the overall tenor of his statements shows that this accusation was rather aimed at the "imperialists" of "England, France and Tsarist Russia" and "the [United States of America]

and [European Union]" (Case of Perinçek v. Switzerland, 2015, §156). So, in the European Court of Human Right point of view, the denying of the existence of the Armenian genocide does not affect the dignity of the victims, their memory and does not a represent justification of genocide. Moreover, the High Court holds that the politician's speech was directed against the "imperialists", but not against the Armenian people (Case of Perinçek v. Switzerland, 2015, §156).

The reasoning of the ECHR of this conclusion leaves room for interpretation, based on the fact that the prevention of international and war crimes and the fight against them begin with their recognition, requests for forgiveness from relatives of victims, payment of reparations to relatives of victims and people affected by acts of genocide. Without recognition of the commission of acts of genocide it is impossible to fully commemorate the victims, to award compensation to their relatives, to triumph historical truth and to reconcile the peoples who committed and suffered from the genocide. So, in our point of view, the denial of the crime of genocide from the perspective of international relations and the involvement of other states in these historical events cannot be interpreted separately from the commemoration of the victims of genocide and the respect of their memory, the statements affecting the relatives of the victims and all the Armenian people. Moreover, these statements were pronounced by the Turkish politician, an influential man, who has a great power of influence over the electors. Therefore, the danger of his statements should not be overestimated.

On the other hand, ECtHR mentioned that cannot be overlooked that in his statements made in Köniz the applicant referred to the Armenians involved in the events as "instruments" of the "imperialist powers", and accused them of "[carrying] out massacres of the Turks and Muslims". In these circumstances, the Court can agree that the interference was also intended to protect the dignity of those persons and thus the dignity of their descendants (Case of Perinçek v. Switzerland, 2015, §156). According to the final conclusion of the Hight Court, the authorities had the right to limit the applicant liberty of expression based on the fact that his expression affect the dignity of Armenian Genocide's victims and their relatives. At the same time, applicant blamed the victims in committing the murders of the Turks, justifying their persecution, which blatantly violates respect for their memory. Based on these considerations, Court concluded that the interference with the applicant's right to freedom of expression can thus be regarded as having been intended "for the protection of the ... rights of others".

Analyzing the necessity to limit the freedom of expression in this case in a democratic society, the ECtHR noted that Court is not required to determine whether the criminalization of the denial of genocides or other historical facts may in principle be justified, but review whether or not the application of Article 261 bis § 4 of the Criminal Code in the case of the applicant was "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention (Case of Perinçek v. Switzerland, 2015, §226). The answer to the question whether such a necessity exists depends on the need to protect the "rights of others" in issue by way of criminal-law measures. These were the rights of Armenians to respect for their and their ancestors' dignity, including their right to respect for their identity constructed around the understanding that their community has

suffered genocide. In the light of the case-law in which the Court has accepted that both ethnic identity and the reputation of ancestors may engage Article 8 of the Convention under its "private life" heading, the Court agrees that these were rights protected under that article (Case of Perinçek v. Switzerland, 2015, §227).

Therefore, the criminalization of the denial of the Armenian genocide in the Criminal Code is based on the need to guarantee respect for the memory of the victims of the genocide, the suffering of their relatives, the right of the Armenian nation to free cultural, ethnic, and national development. The protection of national identity is included in the art. 8 of Convention, which regulates the private and family life. So, the limitation of the liberty of expression is based on the necessity to respect the right to memory and national identity of Armenian nation and represent the balance between right to private life and freedom of expression.

In this context, Court takes into account the principles set out in its case-law in relation to that balancing exercise. The salient question is what relative weight should be ascribed to these two rights, which are in principle entitled to equal respect, in the specific circumstances of this case. It requires the Court to examine the comparative importance of the concrete aspects of the two rights that were at stake, the need to restrict, or to protect, each of them, and the proportionality between the means used and the aim sought to be achieved. The Court will do so by looking at the nature of the applicant's statements; the context in which the interference occurred; the extent to which they affected the Armenians' rights; the existence or lack of consensus among the High Contracting Parties on the need to resort to criminal-law sanctions in respect of such statements; the existence of any international-law rules bearing on this issue; the method employed by the Swiss courts to justify the applicant's conviction; and the severity of the interference (Case of Perinçek v. Switzerland, 2015, §228). These criteria are applied by the Court to determine if the restriction of the applicant's freedom of expression was justified by the necessity to protect the Armenian's right to private life.

To assess the weight of the applicant's interest in the exercise of his right to freedom of expression, the Court must first examine the nature of his statements. To realize this, Hight Court determine whether the statements belonged to a type of expression entitled to heightened or reduced protection under Article 10 of the Convention (Case of Perinçek v. Switzerland, 2015, §229). So, the ECtHR begins with the determination if the applicant speech is or not protected by the standards of the art. 10 of Convention. Under the Court's case-law, expression on matters of public interest is in principle entitled to strong protection, whereas expression that promotes or justifies violence, hatred, xenophobia or another form of intolerance cannot normally claim protection. Statements on historical issues, whether made at public rallies or in media such as books, newspapers, or radio or television programmes are as a rule seen as touching upon matters of public interest (Case of Perinçek v. Switzerland, 2015, §230). So, Hight Court determined 3 types of speech which are protected in different grade, such as: declarations, which refer to matters of public interest, for example, the political life of the state, economic, political and social issues, which enjoy a high level of protection; the incitement to discrimination, hate speech, intolerance towards vulnerable categories of the population, which do not enjoy

the protection of art. 10 of the Convention, freedom of expression being exercised in bad faith in violation of the rights of other persons; the historical, scientific, social issues which are touching upon matters of public interest. So, the specific of speech determines the category of protection accorded by art. 10 of Convention. At the same time, we could conclude that not all species are protected at the same level, the hate speech being excluded from the protection of the Convention.

The applicant speech was qualified as a political one, based on the following arguments: 1. The applicant's speech referred to historical and legal aspects; 2. There are made during the public events, where the applicant spoke to like-minded people; 3. Applicant participated in a long-standing controversy relating to an issue of public concern; 4. The issue had been debated in the Swiss Parliament in 2002 and 2003; 5. the applicant expressed himself in strong terms; 6. The applicant's speech is controversial and often virulent; 7. The applicant's speech refers to the public interest, if it does not cross the line and turn into a call for violence, hatred or intolerance (Case of Perinçek v. Switzerland, 2015, §231). So, the applicant's speech was qualified as political one, enjoying a higher level of protection.

While being fully aware of the acute sensitivities attached by the Armenian community to the issue in relation to which the applicant spoke, the Court, taking into account the overall thrust of his statements, does not perceive them as a form of incitement to hatred or intolerance (Case of Perinçek v. Switzerland, 2015, §233). So, ECtHR considers that the applicant's speech does not represent hate speech, based on the following arguments: (1) Applicant did not express contempt or hatred for the victims of the events of 1915; (2) Applicant did not call the Armenians liars, use abusive terms with respect to them, or attempt to stereotype them; (3) His strongly worded allegations were directed against the "imperialists" and their allegedly insidious designs with respect to the Ottoman Empire and Turkey (Case of Perinçek v. Switzerland, 2015, §233). Therefore, in the interpretation of the European Court of Human Rights, the applicant's speech was not directed against the Armenian people and did not contain the message of incitement to discrimination against Armenians, having a geopolitical character and being directed against the "imperialists". However, the applicant's speech focused on the denial of the Armenian genocide as historical fact, as well as the denial of the role of the Ottoman Empire in the organization and conduct of the genocide. In our view, this approach contradicts to the respect for the memory of the victims of Armenian Genocide, its grave consequences for the history, culture and identity of Armenians and the suffering of the relatives of the deceased.

The next question is whether the statements could nevertheless be seen as a form of incitement to hatred or intolerance towards the Armenians on account of the applicant's position and the wider context in which they were made. In the cases concerning statements in relation to the Holocaust that have come before the former Commission and the Court, this has, for historical and contextual reasons, invariably been presumed. However, the Court does not consider that the same can be done in this case, where the applicant spoke in Switzerland about events which had taken place on the territory of the Ottoman Empire about ninety years previously. While it cannot be excluded that

statements relating to those events could likewise promote a racist and antidemocratic agenda, and do so through innuendo rather than directly, the context does not require this to be automatically presumed, and there is not enough evidence that this was so in the present case. The only element that could denote such an agenda was the applicant's self-professed affiliation with Talaat Pasha. However, the Swiss courts did not elaborate on this point, and there is no evidence that the applicant's membership of the so-called Talaat Pasha Committee was driven by a wish to vilify the Armenians and spread hatred for them rather than his desire to contest the idea that the events of 1915 and the following years had constituted genocide (Case of Perinçek v. Switzerland, 2015, §234).

So, ECtHR do not qualify the declarations of applicant as incitement to hatred or intolerance towards the Armenians. However, it cannot be excluded that the applicant's speech can be qualified as the one, which indirectly propagates racism and anti-democratic views, therefore the findings of the European Court are contradictory themselves. On the one hand, the decision states that the applicant's statements do not contain incitement to discrimination or hatred towards Armenians, and, on the other hand, it states that the applicant's statements can be interpreted as having a racist and anti-democratic one.

In the Court's point of view, the applicant's statements, read as a whole and taken in their immediate and wider context, cannot be seen as a call for hatred, violence or intolerance towards the Armenians. It is true that they were virulent and that his position was intransigent, but it should be recognized that they apparently included an element of exaggeration as they sought to attract attention (Case of Perinçek v. Switzerland, 2015, §239). Therefore, in the view of the European Court of Human Rights, denying of the Armenian Genocide, its existence, number of victims and the role of the Ottoman Empire in the massacres of Armenians, which took place in the period 1915-1920, are within the freedom of expression, being protected by art. 10 of the Convention.

So, ECtHR concluded that the applicant's statements could not be seen as a call for violence, hatred or intolerance. At the same time, Hight Court highlights that genocide justification does not consist in assertions that a particular event did not constitute a genocide, but in statements which express a value judgment about it, relativizing its gravity or presenting it as right. The Court does not consider that the applicant's statements could be regarded as bearing this meaning; nor could they be regarded as justifying any other crimes against humanity (Case of Perinçek v. Switzerland, 2015, §240). On the other hand, the applicant clearly denies the existence of Armenian Genocide and the crucial role of Ottoman Empire in the massacres of Armenians. Therefore, the Court's conclusions deviate from the original content of the applicant's statements. Hight Court concluded that the applicant's statements, which concerned a matter of public interest, were entitled to heightened protection under Article 10 of the Convention, and that the Swiss authorities only had a limited margin of appreciation to interfere with them (Case of Perinçek v. Switzerland, 2015, §241).

In reviewing whether there exists a pressing social need for interference with rights under the Convention, the Court has always been sensitive to the historical context of the High Contracting Party concerned (Case of Perinçek v. Switzerland, 2015, §242). In these aspects we could see the contradictions within the ECtHR decision. Especially, in decisions

related Holocaust the justification for making its denial a criminal offence lies not so much in that it is a clearly established historical fact but in that, in view of the historical context in the States concerned. Holocaust denial, even if dressed up as impartial historical research, must invariably be seen as connoting an antidemocratic ideology and anti-Semitism (Case of Perinçek v. Switzerland, 2015, §243). At the same time, the denial of the Armenian Genocide is not seen as antidemocratic and racist expression.

ECtHR analyzed the link between Switzerland and the events that took place in the Ottoman Empire in 1915. Hight Court mentioned that there is no such link except the presence of an Armenian community on Swiss soil. So, the controversy sparked by the applicant was external to Swiss political life. There is moreover no evidence that at the time when the applicant made his statements the atmosphere in Switzerland was tense and could result in serious friction between Turks and Armenians there. Nor could a failure to prosecute the applicant realistically have been perceived as a form of legitimation of his views on the part of the Swiss authorities (Case of Perinçek v. Switzerland, 2015, §244). Therefore, in the view of the European Court of Human Rights, Switzerland has no direct connection with the Armenian genocide of 1915, it is not affected by these events, nor has it been geostrategically, politically, or socially involved in the atrocities. Moreover, there was no risk of clashes between the Turkish population and Armenians on the territory of Switzerland. So, the applicant's public speech did not affect the internal situation in Switzerland and did not cause massive protests. Moreover, Hight Court concluded that the applicant's criminal conviction in Switzerland could not be justified by the situation in Turkey, whose Armenian minority is alleged to suffer from hostility and discrimination and Swiss Government was concerned with their domestic political context (Case of Perinçek v. Switzerland, 2015, §245). Thus, Switzerland was not concerned with the internal situation of Turkey, for which the presence of discrimination against the Armenian minority is characteristic, and the applicant's conviction was based solely on the internal situation specific to Switzerland, but not on the international context or that specific to other states.

It is true that at present, especially with the use of electronic means of communication, no message may be regarded as purely local. It is also laudable, and consonant with the spirit of universal protection of human rights, for Switzerland to seek to vindicate the rights of victims of mass atrocities regardless of the place where they took place. However, the broader concept of proportionality inherent in the phrase "necessary in a democratic society" requires a rational connection between the measures taken by the authorities and the aim that they sought to realize through these measures, in the sense that the measures were reasonably capable of producing the desired result. It can hardly be said that any hostility that exists towards the Armenian minority in Turkey is the product of the applicant's statements in Switzerland, or that the applicant's criminal conviction in Switzerland protected that minority's rights in any real way or made it feel safer. There is moreover no evidence that the applicant's statements have in themselves provoked hatred towards the Armenians in Turkey, or that he has on other occasions attempted to instill hatred against Armenians there (Case of Perinçek v. Switzerland, 2015, §246). Moreover, there is no evidence that the applicant's statements had a direct effect in France, which is home to the third-largest community in the Armenian diaspora, or that the Swiss

authorities had that context in mind when acting against him (Case of Perinçek v. Switzerland, 2015, §248).

The ECtHR therefore concluded that the measures taken by Switzerland were not necessary in a democratic society based on the following elements: (1) the applicant's statements in Switzerland did not cause the growing hatred of the Turks towards Armenians, who live on the territory of Turkey; (2) the criminal conviction of the applicant was not a necessary measure to protect the rights of the Armenian minority; (3) Switzerland authorities did not clearly determine the purpose of the incitement to discrimination against Armenians pursued by the applicant; (4) it is not established the applicant's intention to determine the discrimination of Armenians in the France, nor is it proved that the French context was examined by the national authorities of Switzerland.

The Court stated that, while controversial remarks concerning traumatic historical events were always likely to reopen the controversy and bring back memories of past sufferings, a lapse of time of some forty years made it inappropriate to deal with them with the same severity as ten or twenty years previously (Case of Perinçek v. Switzerland, 2015, §249). The European Court underlines that the social resonance of the controversial aspects of history loses its relevance over time, the memories of the victims are no longer so acute, the speech, which was previously qualified as a political, turns into the historical one, and the restrictions on freedom of expression become less.

In the present case, the lapse of time between the applicant's statements and the tragic events to which he was referring was considerably longer, about ninety years, and at the time when he made the statements there were surely very few, if any, survivors of these events. While in their submissions some of the third-party interveners emphasized that this was still a live issue for many Armenians, especially those in the diaspora, the time element cannot be disregarded. Whereas events of relatively recent vintage may be so traumatic as to warrant, for a period of time, an enhanced degree of regulation of statements relating to them, the need for such regulation is bound to recede with the passage of time (Case of Perinçek v. Switzerland, 2015, §250). Therefore, in the view of the High Court, the time that has elapsed since the Armenian Genocide took place determines that fewer limits must be applied to expressions relating to these events, and these speeches cannot be regarded as traumatic for the Armenian people.

Extent to which the applicant's statements affected the rights of the members of the Armenian community

The Court mentioned that it is aware of the immense importance attached by the Armenian community to the question whether the tragic events of 1915 and the following years are to be regarded as genocide, and of that community's acute sensitivity to any statements bearing on that point. However, it cannot accept that the applicant's statements in issue in this case were so wounding to the dignity of the Armenians who suffered and perished in these events and to the dignity and identity of their descendants as to require criminal-law measures in Switzerland. As already noted, the sting of the applicant's statements was not directed towards those persons but towards the "imperialists" whom he regarded as

responsible for the atrocities. The parts of his statements that could in some way be seen as offensive for the Armenians were those in which he referred to them as "instruments" of the "imperialist powers" and accused them of "carr[ying] out massacres of the Turks and Muslims". However, as can be seen from the overall tenor of the applicant's remarks, he did not draw from this the conclusion that they had deserved to be subjected to atrocities or annihilation; he rather accused the "imperialists" of stirring up violence between Turks and Armenians. This, coupled with the amount of time that had elapsed since the events to which the applicant was referring, leads the Court to the conclusion that his statements cannot be seen as having the significantly upsetting effect sought to be attributed to them (Case of Perinçek v. Switzerland, 2015, §252).

The European Court of human rights concludes that the message sent by the applicant did not violate the principle of respect for the human dignity of the victims of atrocities and their descendants. Therefore, the application of criminal punishment to the applicant was disproportionate to the social danger of his statements, the statements being directed against the "imperialists", but not the people themselves. In addition, considering the period of time that elapsed after the Armenian Genocide the court concludes that the applicant's message was not significantly disturbing to the Armenian community.

Nor is the Court persuaded that the applicant's statements – in which he denied that the events of 1915 and the following years could be classified as genocide but did not dispute the reality of the massacres and mass deportations – could have a severe impact on the Armenians' identity as a group. The Court has already held, albeit in different circumstances, that statements that contest, even in virulent terms, the significance of historical events that carry a special sensitivity for a country and touch on its national identity or contesting the identity of a national group cannot in themselves be regarded as seriously affecting their addressees. The Court would not exclude that there might exist circumstances in which, in view of the particular context, statements relating to traumatic historical events could result in significant damage for the dignity of groups affected by such events: for instance, if they are particularly virulent and disseminated in a form that is impossible to ignore (Case of Perinçek v. Switzerland, 2015, §253). However, in this case the applicant's statements were made at three public events, thus, their impact was bound to be rather limited (Case of Perinçek v. Switzerland, 2015, §254). Therefore, in the view of the European Court, statements, which deny the national identity of one people or deny the significance of historical events crucial to it do not affect the members of that community and cannot be qualified as particularly harmful to the group. At the same time, the High Court notes that in the case of contesting the legal aspects of the Holocaust, these statements cannot be ignored, being qualified as anti-democratic and anti-Semitic.

In this case the policy of double standards applied by the Court becomes evident. In particular, two events represent crimes against humanity, which have caused the death of the great number of victims, have changed the course of the history and culture of two nations and have been determined by the national policy of a state, are, however, qualified differently by the ECtHR. Denying the Holocaust, even in scientific publications, is a crime, freedom of expression being rightly limited, but denying of the Armenian Genocide, which

caused the death of about 1.7 million victims, represents the manifestation of freedom of expression, being perfectly legal. In this case, the argument that the Armenian Genocide is a lie, and did not take place has been qualified by the High Court as an assertion, which does not require intervention, being absolutely legal. Therefore, the denial of historical truth, the disregard for the massacre, which caused the death of s great number of victims and caused the destruction of the cultural identity of Armenians are within the limits of freedom of expression, being included in the protection of art. 10 of the Convention.

The High Court stated that currently there is no consent among the High Contracting Parties on the criminalization of the denial of historical events, in particular: (1) Denmark, Finland, Spain, Sweden and the United Kingdom do not criminalize the denial of historical events; (2) Austria, Belgium, France, Germany, the Netherlands and Romania only criminalize, by using different methods, the denial of the Holocaust and Nazi crimes; (3) Czech Republic and Poland criminalize the denial of Nazi and communist crimes; (4) Andorra, Cyprus, Hungary, Latvia, Liechtenstein, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Malta, Slovakia, Slovenia and Switzerland criminalize the denial of any genocide (Case of Perinçek v. Switzerland, 2015, §256). Based on the presence of substantial differences in the qualification of the denial of historical events as crimes, the ECtHR stated that the comparative-law position cannot play a weighty part in the Court's conclusion regarding this issue.

Analyzing the severity of the interference within the applicant's rights, European Curt concluded that the most important aspect of the case is not so much the severity of the applicant's sentence but the very fact that he was criminally convicted, which is one of the most serious forms of interference with the right to freedom of expression (Case of Perinçek v. Switzerland, 2015, §273). At the same time, Switzerland authorities did not analyze if the conviction's necessity in a democratic society, and did not engage in any discussion of the various factors that bear on that point (Case of Perinçek v. Switzerland, 2015, §278). Taking into account all the elements analyzed above – that the applicant's statements bore on a matter of public interest and did not amount to a call for hatred or intolerance, that the context in which they were made was not marked by heightened tensions or special historical overtones in Switzerland, that the statements cannot be regarded as affecting the dignity of the members of the Armenian community to the point of requiring a criminal-law response in Switzerland, that there is no international-law obligation for Switzerland to criminalize such statements, that the Swiss courts appear to have censured the applicant for voicing an opinion that diverged from the established ones in Switzerland, and that the interference took the serious form of a criminal conviction – the Court concludes that it was not necessary, in a democratic society, to subject the applicant to a criminal penalty in order to protect the rights of the Armenian community at stake in the present case (Case of Perinçek v. Switzerland, 2015, §280) and there has therefore been a breach of Article 10 of the Convention (Case of Perinçek v. Switzerland, 2015, §281).

The execution of the decision

According to the published information, this decision was executed and the case is closed. On 29/01/2016, the applicant seized the Federal Court with a revision request. On 25 August 2016 the Federal Court quashed the applicant's conviction and remitted the case to the lower instance, which annulled the conviction. The case resulted from the application of Article 261 bis § 4 of the Criminal Code and did not put in question its compatibility with the ECHR as such. The judgment was translated, published and disseminated (Perinçek v. Switzerland Leading Case, 2015). So, Switzerland authorities implemented all necessary actions for the execution of this judgment.

Conclusion

The studies elaborated by scholars like Vahakn Dadrian, Taner Akçam, and Richard Hovannisian arguments that the Armenian Genocide represents a state-driven extermination, with studies documenting the systematic nature of the atrocities. Anthropological and sociological analyses emphasize the deep cultural and identity-based trauma inflicted on the Armenian people, making the denial of the genocide not just an affront to historical accuracy but a continuous harm to the affected community. By allowing genocide denial to be treated as free speech, the ECtHR decision overlooks the sociological impact of such denials on collective memory and identity, perpetuating cycles of injustice.

The ECtHR judgment on the Armenian Genocide, as analyzed in *Perinçek v. Switzerland*, reveals a critical tension between the protection of freedom of expression and the rights of victims to safeguard their historical memory. While the Armenian Genocide has been recognized as a crime against humanity by scholars, legal bodies, and various states, the Court's decision prioritizes freedom of speech over the rights of a historically traumatized community. This legal stance raises important questions about how the ECtHR balances conflicting rights, particularly when historical truths are at stake.

The Case of Perinçek v. Switzerland is crucial in the case law of the European Court of Human Rights. This case illustrates, on the one hand, the different views of the member states of the Council of Europe on the criminalization of the denial of historical events, which relate to the commission of crimes against humanity, and, on the other hand, shows the lack of consensus at the level of the High Court, the decision on the violation of art. 10 of the Convention being adopted by 10 of 17 votes of the judges of the Grand Chamber. In the decision, the Court conducted an exhaustive analysis of the criteria for limiting art. 10 of the Convention, of concepts such as hate speech and incitement to discrimination, determined the danger of denying historical events depending on the significance of these events, the personality of the applicant who denies them, the impact of the presented speech, its audience, and the purpose of the analyzed speech. However, this decision contains internal contradictions, generated by the different interpretation of Holocaust denial and Armenian Genocide, despite the seriousness of crimes against humanity and the serious impact of these crimes on the development of the Jewish and Armenian people.

This decision highlights a troubling inconsistency in its approach to the denial of historical atrocities, specifically genocide. The Court's ruling effectively prioritizes the freedom of expression under Article 10 of the European Convention on Human Rights over the collective right to memory of the Armenian Genocide's victims, illustrating a double standard in its interpretation of crimes against humanity.

The ECtHR has consistently upheld that Holocaust denial is not protected by freedom of expression due to the immense harm it causes to the memory of the victims and the potential for inciting hatred. However, by contrast, the Court ruled that denying the Armenian Genocide, despite its historical recognition and the vast number of victims, falls within the scope of protected speech. This discrepancy undermines the gravity of the Armenian Genocide as a crime against humanity and disregards the trauma and cultural erasure experienced by the Armenian community.

The ruling not only questions the uniformity of international human rights protections but also highlights how historical denialism can perpetuate harm. In *Perinçek v. Switzerland*, the ECtHR's decision leaned heavily on protecting Perinçek's right to freedom of expression, overlooking the profound implications this has for the dignity and identity of the Armenian people. By treating the Armenian Genocide as a matter of opinion rather than an established historical fact, the Court failed to protect the victims' right to memory and justice, further embedding a dangerous precedent of selective recognition of genocides in international law.

Thus, the Court's decision exposes the unequal treatment of genocide denial under European human rights law. While Holocaust denial remains a criminal offense, the denial of the Armenian Genocide is treated as permissible under the guise of free speech, revealing an inconsistent and ethically problematic application of justice. This case reflects a broader failure to adequately balance the rights of expression with the rights of victims and the historical truths they fought to preserve.

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