THE ADOPTION OF THE FRENCH RESOLUTION AND ITS AFTERMATH

Ömer Engin LÜTEM

A draft law which foresaw the criminalization of those denying the Armenian genocide allegations in France was adopted in the French National Assembly on December 22nd 2011 and was sent to the Senate. In order for the bill to become a law, the Senate should approve the text exactly as it is.

As way of procedure, the bill referred by the Assembly was addressed in the concerning commission (in short, the Constitutional Commission) of the Senate on January 18, 2012 to discuss whether it was in accordance with the French Constitution. After lengthy negotiations, it was determined that the bill was in violation of most of the principles written in the French Constitution and therefore, the inadmissibility of the bill was decided upon.

This decision was compatible with the decision taken by the Constitutional Commission of the Senate in May regarding another draft law on the criminalization of the deniers of the Armenian genocide allegations adopted by the National Assembly in 2006. In other words, despite the texts being different, the Constitutional Commission had reached the same decision on two different bills whose subject matters were the same. However, the report of the Constitutional Commission had to be approved by the full house of the Senate.

Last May, the Senate had approved with 196 votes against 74 the Constitutional Commissions report that the bill could not be accepted and as a result, the bill was not addressed; in other words, was rejected. However, on 23 January 2012 the Senate rejected the Constitutional Commissions report that the bill could not be accepted with 127 votes against 86. The bill started being discussed from then on and became a law by being adopted on the same day. Now, President Sarkozys approval of the law is being awaited. However, this is only a formality and it is expected that the law will soon be approved and enter into force.

Political developments are the reason for the French Senate to reach two opposite decisions on the same subject in only eight months. A similar bill was rejected last May because President Sarkozy did not think that he needed Armenian votes during the presidential elections. On the other hand, a similar bill was adopted as law on 23 January as a result of the assumption that, based on public opinion polls, Sarkozy would lose the elections and therefore, would need all the votes possible,.

The voting potential of the approximately 450.000 French Armenians is not actually that high. A great majority of the Armenians settled in France since four or five generations have fully embraced French values and behaviors and act accordingly during elections, while part of them give votes to the Left (Socialist Party and other leftist groups), the other part gives their votes to the Center and Right. Since the ruling party, the UMP, and the Socialist Party both support the law on the criminalization of those denying the Armenian allegations, the number of Armenians who will give their votes to Sarkozy for showing efforts in this direction should not be that high. In this situation, it is necessary to explain why President Sarkozy has shown so much effort for the adoption of the law by risking harming relations with Turkey. The strongest possibility is that Sarkozy has considered gaining some of the votes of the Extreme Right which has a voting potential of 20%. The issue which the Extreme Right is most sensitive to is the foreigners in France; in other words, French citizens not coming from a French origin. This has turned over time into hostility towards the Muslims and within this framework, Turkeys membership to the EU has strictly been opposed. Now Sarkozy entering into a struggle against Turkey due to the Armenian Question has been met with appreciation among some extreme rightists and this carries the potential of turning into a vote during the elections.

Moreover, there are those who believe that Sarkozy, being disturbed by Turkeys prestige in some Arab countries, wants to teach a lesson to Turkey through this law.

What kinds of drawbacks does this law entail? The law foresees imprisonment of a year and/or 45.000 Euro fine to those not accepting the existence of the crime of genocide or despite accepting it, greatly underestimates it. According to this, talking in public places or meetings in a way that denies or underestimates the existence of genocide, publishing articles on this issue, putting up posters, and displaying pictures, engravings or paintings are enough in imposing these penalties. For instance, if a person walks the streets of Paris or just stands in a crowded area carrying a poster with I do not recognize the Armenian genocide written on it, this will be considered a crime according to the law.

There is no doubt that with this form, the law is a gross breach on the freedom of expression. Therefore, Foreign Minister Davutoğlu persistently states that France has contradicted its own values. However, some states that since a legal regulation was made in 1990 which accepted the same penalties for those denying the Holocaust, doing the same for the Armenian genocide was normal. Since there is no doubt, except for some insignificant exceptions, that Holocaust took place, the 1990 law breaching freedom of expression has not been considered much for this case. On the other hand, the situation is not the same for the Armenian genocide allegations and furthermore, there are respectable Turkish and non-Turkish scholars who state that the 1915 events could not be considered genocide.

In this context, whats important is which events constitute genocide. According to the 1948 UN Genocide Convention, a competent tribunal of the State in the territory of which the act was committed or an international penal tribunal may decide upon whether an act constitutes genocide or not. From this aspect, the resolutions adopted by twenty state parliaments which classify the 1915 events as genocide have no legal value and

therefore, has no legal consequence. At the most, these resolutions could only show the convictions of the parliaments on these events. As this is the legal situation, the adopted French law has created a new genocide category called genocides recognized by French law and has included the Armenian genocide allegations into its scope. As known, there are two genocides recognized by law in France: the Holocaust and the Armenian genocide. However, the genocides of Rwanda and Bosnia which have been recognized in accordance with the 1948 Convention as genocide by competent tribunals is considered outside the scope of this law. The interesting point here is that French military forces have been among those responsible for the Rwandan Genocide.

Another interesting point is that prosecution of the deniers of the Armenian genocide allegations is linked to complaints and for these kinds of events to be complained, the law has granted Armenian organizations in France the task of safeguarding spiritual interests and dignity of the genocide victims. As a result of this, Armenian organizations have gained the right of somehow inspecting whether Turkish individuals and organizations in France deny the genocide allegations. It is possible that over time this could be used as an instrument of pressure or even blackmail over Turkish individuals and organizations.

Turkey has almost mobilized for the bill not be to adopted. Nearly a full consensus has been reached on this issue in the National Assembly and among public opinion. The same consensus has also been viewed among Turks living abroad. Indeed, it is a first that approximately 30.000 or more Turks have organized demonstrations in Paris against the bill. On the contrast, it is interesting that the number of Armenians demonstrating in favor of the bill has been much lower than the number of Turks.

Following the adoption of this bill in the French National Assembly, Prime Minister Erdoğan has declared the measures to be taken against France. These entailed the Ambassador of Turkey to Paris temporarily being withdrawn to Ankara for consultations and bringing some restrictions on Turkey-France relations and it was expressed that these would be implemented in stages. After the definite adoption and implementation of the law, other measures could have also been taken. However, these measures were not able to prevent the adoption of the law in the Senate. We believe that this is not a consequence of the ineffectiveness of these measures, but President Sarkozy needing this law for political reasons. On the other hand, he could have also considered that Turkey would lighten these measures over time and eventually abolish them.

It is known that in the past and especially after the adoption of the law of 2001, apart from Turkey strongly protesting against France, it was mentioned that many measures would be taken, that perhaps with the exception of some military purchases, these were not implemented and that shortly, significant developments took place in Turkey-France relations particularly in the economic field. This situation has made it especially easier for the parliaments of some European countries (Switzerland, Germany, Holland, Poland, Slovakia, and Lithuania) in adopting resolutions which recognize the Armenian genocide allegations. It is possible that by remembering the experience in 2001, France has not considered the measures declared by Turkey as important.

When considering the event from Turkeys point of view, since the law has been adopted, imposing measures on France will not create such a result as the law being abolished. However, in our opinion, in order to regain credibility which it lost in 2001 and to prevent other EU countries in adopting similar laws by following in Frances footsteps, it is necessary for Turkey to put these measures into effect when legal measures, which will be explained below, fail.

It could be seen that there is a strong opposition against the law in France. However, this does not arise from the Armenian genocide allegations being disbelieved (almost everyone in France believes the Armenian genocide), but arises from criminalizing the deniers of the genocide allegations contradicting the freedom of expression and therefore, the French Constitution being violated. For this reason, the first mean to invalidate this law is to bring the issue to the French Constitutional Court and the easiest way for this to occur is for 60 senators and deputies to appeal to the Constitutional Court against this law. It could be understood from Prime Minister Erdoğans speech delivered on January 24 that Turkey has preferred to take this path. There are indeed some French senators who want to appeal to the Constitutional Court. The only problem is whether 60 numbers could be obtained. In 2001, it was considered to take this path, but was seen that the desired number could not be reached.

If it is not possible for enough number of French parliamentarians to appeal to the Constitutional Court, then it is possible for persons who denied the Armenian genocide allegations and were condemned to imprisonment and fine to appeal to the Constitutional Court on the grounds that their freedom of expression is being violated.

On the other hand, there is some possibility to resort to international justice. By expressing that this law violates article 10 of the European Convention on Human Rights in relation to freedom of expression, Turkey could file a lawsuit against France at the European Court of Human Rights. Moreover, individuals harmed by the implementation of this law could also appeal to the same court on the condition that all domestic legal remedies have been exhausted.

Apart from these, appealing to the European Court of Justice could also be considered. However, Turkey not being a member of the EU makes it difficult to take this path. Last of all, going to the International Court of Justice by declaring that France has acted contradictory to the UN 1948 Genocide Convention could also be considered in principle.

In conclusion, it could be seen that the best struggle against the law adopted by the French Senate on 23 January 2012 could be fought legally and that at this point, this is also the preference of the Turkish Government.

About the Author :

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Süleyman Nazif Sok. No: 12/B Daire 3-4 06550 Çankaya-ANKARA / TÜRKİYE
Tel: +90 (312) 438 50 23-24 • **Fax**: +90 (312) 438 50 26
@avimorgtr
https://www.facebook.com/avrasyaincelemelerimerkezi
E-Mail: info@avim.org.tr
http://avim.org.tr

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