STOPPING THE CENSORS: THE FINAL DEFEAT OF ARMENIAN NATIONALISM AT THE FRENCH CONSTITUTIONAL COUNCIL IN JANUARY 2017*

(SANSÜRCÜLERİN DURDURULMASI: ERMENİ MİLLİYETÇİLİĞİNİN OCAK 2017'DE FRANSIZ ANAYASA KONSEYİ'NDEKİ NİHAİ YENİLGİSİ)

Maxime GAUIN
PhD Candidate,
Department of History, Middle East Technical University
Scholar in Residence,
Center for Eurasian Studies (AVİM)

Abstract: *The decision pronounced on January 26, 2017, by the French Constitutional Council marked the end of the attempts to censor freedom of expression regarding the Turkish-Armenian conflict, at least the serious ones in France. It finished a 23-years cycle that had begun with the court cases against Bernard Lewis in 1994-1995: The Anglo-Saxon historian was acquitted in four of them, sentenced for one civil case, in the name of a case law canceled in 2005. Even before Prof. Lewis was sentenced, bills were introduced in the Parliament, in vain until 2011. The Boyer bill was adopted, unlike the previous ones, in 2011-2012, but was immediately censored by the Constitutional Council, which maintained its position in a preliminary ruling on the issue of constitutionality (regarding Holocaust denial) in 2016. Correspondingly, the European Court of Human Rights found the conviction of Doğu Perinçek unjustified, and 1915 to be a matter of debates. The decision of 2017 is the culmination of this national and international case law, the ultimate confirmation of the freedom for historical research.*

Keywords: *Armenian Revolutionary Federation, Constitutional Council (France), European Court of Human Rights, freedom of expression, genocide, Bernard Lewis*

Öz: *Fransa Anayasa Konseyi'nin 26 Ocak 2017'de aldığı karar, Türk-Ermeni uyuşmazlığı konusunda Fransa'daki ifade özgürlüğünün sansürlenmesi çabalarına -en azından ciddi boyutta olanlara- bir son*

* This academic article is based on Maxime Gauin's conference presentation of the same title delivered at the Center for Eurasian Studies (AVİM) on February 15, 2017.

vermiştir. Bu karar, Anglo-Sakson tarihçi Bernard Lewis'a açılan davalarla başlayan 23 yıllık bir döngüyü bitirmiştir. Lewis bu davaların dördünden beraat etmiştir. Kendisi bir hukuk davasında ise cezaya çarptırılmıştır, ancak bu karar içtihat hukuku gereği 2005'te iptal edilmiştir. Prof. Lewis'in cezaya çarptırılmasından bile önce başlayarak, Parlamento'da 2011'ı yılına kadar bir sonuç vermeyen yasa tasarıları sunulmuştur. Diğer tasarıların aksine Boyer tasarısı 2011-2012'de kabul edilmiş, ancak derhal Anayasa Konseyi tarafından iptal edilmiştir. Bu kararla Konsey, 2016'da (Holokost inkârıyla ilgili olarak) aldığı anayasaya uygunluk konusundaki ön kararındaki tutumunu muhafaza etmiştir Buna bağlı olarak, Avrupa İnsan Hakları Mahkemesi Doğu Perinçek'in mahkumiyetini haksız bulmuş ve 1915'ın tartışmaya tabii olduğunu belirtmiştir. 2017 kararı, bu ulusal ve uluslararası hukuk içtihadının bir sonucudur ve tarihi araştırma konusundaki özgürlüğün nihai bir şekilde onaylanmasıdır.

Anahtar Kelimeler: *Ermeni Devrimci Federasyonu, Fransa Anaysa Konseyi, Avrupa İnsan Hakları Mahkemesi, ifade özgürlüğü, soykırım, Bernard Lewis*

INTRODUCTION

On January 26, 2017, the French Constitutional Council (the highest court of France) declared 48 articles of the law titled "Equality and Citizenship" to be partly or entirely unconstitutional, including the last paragraph of the second part of the article 173. This said paragraph planned to ban "denial, gross minimization or trivialization of crime of genocide, crime against humanity or war crime, if it incites to racial, ethnic, national or religious hatred or violence."[1] I shall explain here the meaning and the background of this decision in three parts; The first part presents an assessment of the previous attempts of criminalization, the second part explains the making of and the censorship provisioned by article 173, and the third and last part explains the consequences of and opportunities brought about by the Constitutional Council's decision.

In reaction, the unpleasant tradition of petitions of intellectuals who know nothing on what they are speaking about enriched itself by another item a dozen of days after the interview. The item in question was a text initiated by Yves Ternon, a retired surgeon who pretends to be a specialist of the Armenian question, in spite of the fact that he cannot speak Turkish or Armenian, and who never worked in any archive, even the French ones, at least on this subject. Prof. Lewis sent a letter to the editor, published—in abbreviated form —one and a half month after the petition.

I) Previous Attempts (1994-2016)

A) The Lewis Affair (1994-1995) As the Matrix of the Issue

In November 1993, the historian Prof. Bernard Lewis (specializing in Ottoman, Turkish and Islamic history) went to Paris, among other reasons, because of his book titled *The Arabs in History* and *Race and Slavery in the Middle East* had recently been translated into French by Gallimard publishers. There, he gave a series of interviews, and one of them was given to the daily *Le Monde*. At one moment of this interview, the interviewers asked a question which was not related to the discussed books: "Why does Turkey still deny the Armenian Genocide?" Prof. Lewis was a bit surprised, and answered: "Do you mean the Armenian side of this story?" He then gave a few explanations and after that, they moved to the next question.[2]

1 Conseil constitutionnel, Decision no. 2016-745 DC of 26 January 2017 - Law relating to equality and citizenship, *Conseil-constitutionnel.fr*, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2017/2016-745-dc/version-en-anglais.149221.html

2 « Un entretien avec Bernard Lewis », *Le Monde*, 16 novembre 1993.

In reaction, the unpleasant tradition of petitions of intellectuals who know nothing on what they are speaking about enriched itself by another item a dozen of days after the interview.[3] The item in question was a text initiated by Yves Ternon, a retired surgeon who pretends to be a specialist of the Armenian question, in spite of the fact that he cannot speak Turkish or Armenian,[4] and who never worked in any archive, even the French ones, at least on this subject.[5] Prof. Lewis sent a letter to the editor, published—in abbreviated form[6]—one and a half month after the petition.[7]

Prof. Lewis' "French friends were for the most part of the opinion that the whole interview and its subsequent development were a deliberate entrapment."[8] Even if there is no definitive evidence for this explanation, it is certain that the controversy was exploited. The Dashnak Armenian National Committee of France (Fr. *Comité de défense de la cause arménienne*) decided to sue Prof. Lewis on the basis of the article 24bis of the law of 1881 on the liberty of the press (an article created by the law of July 13, 1990, usually called the Gayssot Act[9]), which bans the contestation of crimes against humanity perpetrated during the Second World War and judged by the International Military Tribunal of Nuremberg or by a French court. The trial took place in October 1994 and the judgment was pronounced the same month. The tribunal of Paris rejected the claims of the ANC for two reasons: Firstly, to be a plaintiff on the basis of this article, you need to be an association which has previously included in its statutes the fight against racism, or to be an association of defense of the veterans of the French Résistance and the deportation to Nazi camps; and secondly, the article 24bis is specifically about the denial of the

3 « Au courrier du "Monde" — Cela s'appelle un génocide », *Le Monde*, 27 novembre 1993.

4 Engin Akgürbüz, "yves ternon," *YouTube* video, 0:43, January 27, 2013, https://www.youtube.com/watch?v=40ke11aHxs0

5 His books and papers on the Armenian question (for example *Les Arméniens, histoire d'un genocide* (Paris : Le Seuil, 1977, new edition, 1996)) are not the product of any original research, as the endnotes prove. His last publication on the Turkish-Armenian conflict is a simple "speech," without any note or bibliography: Yves Ternon, *Génocide. Anatomie d'un crime* (Paris: Armand Colin, 2016), 155-192. For a detailed analysis of a wrong assertion by Yves Ternon, due to his absolute ignorance of the French and British archives: Maxime Gauin, "Strategic Threats And Hesitations: The Operations And Projects Of Landing In Cilicia And The Ottoman

Armenians (1914-1917)," in *19.-20. Yüzyıllarda Türk-Ermeni İlişkileri Sympozyumu* (İstanbul: Türk Ocakları/İstanbul Üniversitesi, 2015), volume II, 982-1004 (Turkish version, pages 958-981).

6 "Lewis Replies," *Princeton Alumni Weekly*, June 5, 1996, http://www.princeton.edu/~paw/archive_old/PAW95-96/16_9596/0605let.html#story3

7 « Au courrier du "Monde" — Les explications de Bernard Lewis », *Le Monde*, 1 janvier 1994.

8 Bernard Lewis, *Notes on Century. Reflections of a Middle East Historian* (London: Weidenfeld & Nicolson, 2012), 289.

9 Loi n° 90-615 du 13 juillet 1990 tendant à réprimer tout acte raciste, antisémite ou xénophobe, *Legifrance.gouv.fr*, https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000532990&categorieLien=id

Nazi crimes against humanity and thus cannot be used about the 1915 events. The ANC even had to pay a part of Bernard Lewis' costs. They appealed, but it was in vain.[10] Their inspiration was almost certainly the series of cases opened (and lost) by the Movement Against Racism and for the Friendship among Peoples (MRAP), between 1959 and 1971, to obtain a change in the anti-racist legislation (a change voted by the Parliament in 1972: the Pleven Act).[11]

The ANC was imitated by the General Alliance against Racism and for the Respect of the French Identity (Agrif, fundamentalist Catholic) and the Union of Armenian Physicians of France (UMAF). Both were close to the National Front at that time, and their counsel for the two cases they opened was Jacques Trémolet de Villers who was defending, in the same year (1994), Paul Touvier, who was sentenced for crimes against humanity. The two cases were opened on the basis of the article 1382 of the civil code (every damage must be repaired). They too failed, both in the first instance and in the appeal.[12] Regardless, former ASALA spokesman and future president of the Coordination Council of France's Armenian Associations Jean-Marc "Ara" Toranian "went to thank" Bernard Anthony, the chair of the Agrif,[13] and in spite of its failure, the Forum of France's Armenian Associations (established in 1991, as an imitation of the Armenian Assembly of America[14]) sued Prof. Lewis again, on the basis of the article 1382. The Forum's lawyer was Patrick Devedjian, who had defended several Armenian terrorists during the 1980s, for example Mardiros Jamgotchian (ASALA) in Geneva in 1981, Max Hraïr Kilndjian (JCAG) in Aix-en-Provence in 1982 and Katchadur Gulumian (ASALA) in 1985.[15]

This time, however, Prof. Lewis lost, because the angle of attack was different; the accusation was not grounded on saying "It is genocide and nothing else can be said," but about accusing Prof. Lewis for having neglected all, or most,

10 « Les actions engagées par les parties civiles arméniennes contre "Le Monde" sont déclarées irrecevables par le tribunal de Paris », *Le Monde*, 27 novembre 1994 ; Bernard Lewis, *Notes on Century. Reflections of a Middle East Historian* (London: Weidenfeld & Nicolson, 2012), 288-289, 292.

11 « Le vote de la loi de 1972 », *Droit et liberté*, Juillet-Août 1981, 9.

12 « La fin du procès de Paul Touvier — L'ardent plaidoyer de Me Trémolet de Villers », *Le Monde*, 21 mars 1994 ; Daniel Bermond, « L'affaire Bernard Lewis », *L'Histoire*, n° 187 (Avril 1995) ; Lewis, *Notes on a…*, 290.

13 See the communiqué of Mr. Anthony published on his personal web site on December 11, 2011: http://www.bernard-antony.com/2011/12/antony-president-communique-la-negation.html

14 Association culturelle arménienne de Marne-la-Vallée, « Diaspora en France - Les associations », *Acam-France.org*, http://www.acam-france.org/contacts/diaspora-france/les-assos.htm

15 Comité de soutien à Max Kilndjian, *Les Arméniens en cour d'assises* (Roquevaire : Parenthèses, 1983) ; Richard Mels, « 30 mois avec sursis pour Charles-Antoine Sansonetti et Katchadur Gulumian », *Hay Baykar*, 25 novembre 1985, 5 ; Jean-Pierre Richardot, *Arméniens, quoi qu'il en coûte* (Paris : Fayard, 1982), 103-118.

of the elements that contradict his thesis, for having acted as a polemicist instead of a historian.[16] The judgment said: "While it was in no way established that he had pursued any purpose foreign to his mission as a historian," the "fault" was is in "hiding elements contrary to his thesis […] and had thus been lacking in his duty of objectivity and prudence, in expressing without nuance on so delicate a subject; that his remarks, likely to revive unjustly the pain of the Armenian community, are at fault and justify indemnity" (of one franc).[17] Jean-Noël Jeanneney, professor of history at the Institute of Political Science of Paris ("Sciences Po") and later (2002-2007) director of the National Library observed that the reasoning was illogical; Mr. Lewis did not neglect the arguments supporting the "genocide" allegation, he instead refuted them. Whether or not his refutation was accurate was another issue.[18] Madeleine Rebérioux (1920-2005), professor emeritus of history at Paris-VIII University and president of the League of Human Rights (LDH) from 1991 to 1995, expressed a similar critique,[19] and Antoine Prost, professor emeritus of history at Paris-I-Sorbonne University, raised more general concerns about freedom of expression as threatened by special ethnic interests.[20]

More seriously, I would like to argue that the first civil chamber looking into the case was factually misled. Indeed, the judgment says a sub-committee of the United Nations had "recognized" the "genocide" claims—which is absolutely false.[21] Yet, Bernard Lewis decided he would not appeal the decision—an error that had consequences until 2017.

B) Losing in The Parliament: 1995-2011

Regardless, it must be emphasized that the four legal actions were not coordinated; there was, rather, an emulation. The goal of the ANC was to obtain a change of the press law; they most probably knew they would lose, but they

16 « Le Forum des associations arméniennes poursuit l'historien Bernard Lewis », *Le Monde*, 19 mai 1995. Also see: Mine G. Saulnier, "Lewis'in Zor Davası", *Milliyet*, 16 Mayıs 1995.

17 Lewis, *Notes on a*..., 290.

18 Jean-Noël Jeanneney, *Le Passé dans le prétoire. L'historien, le juge et le journaliste* (Paris : Le Seuil, 1998), 37-43.

19 Madeleine Rebérioux, « Les Arméniens, le juge et l'historien », *L'Histoire*, Octobre 1995, http://www.lph-asso.fr/index6c1c.html?option=com_content&view=article&id=32%3Amadeleine-reberioux-l-les-armeniens-le-juge-et-lhistorien-r&Itemid=34&lang=fr . Also see Patrick Marnham, "Sued over a History Lesson," *London Evening Standard*, May 23, 1995, 28; "A Franc for Your Thoughts," *The Wall Street Journal*, August 28, 1995, A12 ; and "'Hate Speech' Again, Abroad," *The Washington Post*, September 9, 1995, A16.

20 Antoine Prost, *Douze leçons sur l'histoire. Édition augmentée* (Paris: Le Seuil, 2010 - 1er édition, 1996), 335-336.

21 Türkkaya Ataöv, *What really happened in Geneva: The truth about the "Whitaker report"* (Ankara, 1986).

used their failure to claim a modification in the law. This is quite clear if you take a look at the chronology of such initiatives in the French Parliament. Indeed, the first bill was introduced on February 1, 1995, a bit more than two months after the first failure of the ANC, but the trial Prof. Lewis lost took place in May of the same year, and the judgment was pronounced in June. The first of these bills filed in 1995 planned to ban "contestation of the Armenian Genocide," another one the "denial" of any crime against humanity and genocide, and another one the "denial" of "recognized" genocides, "especially the Armenian Genocide," but none of them was even discussed by the French National Assembly. They were sent to the Law Committee, where they were buried,[22] but it is remarkable that the three methods tried during the 2000s and 2010s had actually emerged as early as 1995.

After these failures, the strategy of the main Armenian nationalist associations changed. They decided to focus first on recognition of the genocide allegations, which would make penalization easier, as a second step. Yet, in 1997, François Hollande was reelected as member of the Parliament and became the first secretary of the Socialist Party after its national victory. In Mr. Hollande's electoral district, there is none or virtually no elector of Armenian heritage, but there are thousands of Turks. Regardless, these Turks and their children (who are French citizens) were from the lowest social and economic background,[23] and only became politically active around 2010, when it was too late to significantly change the results of the long-term work of Dashnak leader Franck "Mourad" Papazian that began as early as 1997.

The first result of this work was the vote of the "recognition" in the National Assembly, by about fifty deputies, in 1998. The conference of the presidents of French Senate blocked the bill twice, in March 1999 and February 2000, then the Senate itself rejected it in March 2000.[24] After a lot of threats and insults, and in procedural conditions that are quite debatable—precisely because the "recognition" had been previously rejected, the Senate accepted it at the end of the same year.[25] Then, the bill went back to the National Assembly,

22 Assemblée nationale, *Table des matières établie par le Service des archives de l'Assemblée nationale, du 1er janvier au 30 septembre 1996* (Paris, 1996), 184 ; Michel Troper, « La loi Gayssot et la Constitution », *Annales. Histoire, sciences sociales*, n° 6 (1999), 1240.

23 Gülsen Yildirim, « Les Turcs en milieu rural — Le cas du Limousin », *Hommes & Migrations*, n° 1280 (Juillet- Août 2009), 78-86, https://hommesmigrations.revues.org/304

24 « Le gouvernement refuse d'inscrire le "génocide arménien" à l'ordre du jour du Sénat », *Le Monde*, 12 mars 1999 ; « Arménie », *Le Monde*, 31 mars 1999 ; Séance du 22 février 2000, *Senat.fr,* https://www.senat.fr/seances/s200002/s20000222/sc20000222022.html ; Séance du 21 mars 2000, *Senat.fr,* https://www.senat.fr/seances/s200003/s20000321/s20000321_mono.html#chap39

25 « Séance du 7 novembre 2000 », *Senat.fr*, https://www.senat.fr/seances/s200011/s20001107/sc20001107081.html ; « Le Sénat a voté la proposition de loi reconnaissant le génocide arménien de 1915 », *Le Monde*, 9 novembre 2000.

where it was adopted—once again by a few dozens of MPs—in January 2001. That first success, after a series of failures (attempts for a "recognition" had failed in 1975, 1985-86 and 1987[26]), made the Armenian nationalists believe that they could obtain whatever they wanted. So, after 2001, in their own words, they gave the "absolute priority"[27] to a bill that would suppress freedom of expression on the Turkish-Armenian controversy.

The two first of the bills were introduced in December 2002[28] and November 2003 by François Rochebloine, a center-right member of the Parliament (from 1988 to 2017) elected in a district with a relatively significant number of constituents of Armenian heritage, but, like the three attempts of 1995, they were not even discussed. It became a bit more serious in June 2004, when a part of the Socialist deputies defended (or at least pretended to defend) a similar text, but the rightist majority of Jacques Chirac blocked the text.[29] The proposals of the Communist group experienced a similar fate in 2005, like the bill introduced by some center-right MPs the same year.[30]

Meanwhile, the ANC tried what had been tried ten years before; opening a court case on the basis of the article 1382 of the civil code, this time against the Turkish consulate in Paris. They were sure to lose, just like a decade earlier. They did indeed lose in November 2004 and even had to pay the costs of the hearing.[31] Then, they appealed —like in 1994—, but the appeal court of Paris

26 Richard Mels, « Le génocide et la loi », *Hay Baykar*, 25 février 1986, 3 ; *Journal officiel de la République française. Débats Parlementaires, Assemblée nationale*, 10 octobre 1987, 4166, http://archives.assemblee-nationale.fr/8/cri/1987-1988-ordinaire1/011.pdf ; « Quand l'Assemblée nationale "étudie" la question arménienne », *Hay Baykar*, 18 novembre 1987, 9.

27 See, for instance, the retrospective regrets of Hilda Tchoboian (ARF leader during from 1970s to 2010s) in her interview to Info Arménie on 5 February 2017: https://youtu.be/ZXcoQqkOCvY?t=135

28 Proposition de loi tendant à modifier les articles 24 bis et 48-2 de la loi du 29 juillet 1881 sur la liberté de la presse, modifiée par la loi n° 90-615 du 13 juillet 1990, de façon à interdire la contestation de la réalité de tous génocides et crimes contre l'humanité, *Assemblee-nationale.fr*, http://www.assemblee-nationale.fr/12/propositions/pion0479.asp

29 Proposition de loi sanctionnant la négation du génocide arménien, *Assemblee-nationale.fr,* http://www.assemblee-nationale.fr/12/propositions/pion1643.asp

30 Proposition de loi tendant à l'incrimination pénale de la contestation publique des crimes contre l'Humanité afin de mieux combattre toute forme de négationnisme, *Assemblee-nationale.fr*, http://www2.assemblee-nationale.fr/documents/notice/12/propositions/pion2778/(index)/depots/(archives)/index-depots ; Proposition de loi visant à sanctionner la contestation de tous les crimes contre l'humanité, *Assemblee-nationale.fr*, http://www2.assemblee-nationale.fr/documents/notice/12/propositions/pion2135/(index)/propositions-loi/(archives)/index-proposition

31 CDCA c. Sezgin, Tribunal de grande instance de Paris, jugement rendu le 13 novembre 2004, *HistoryofTruth.com*, http://www.historyoftruth.com/articles/53-turkey-and-armenia-in-1915s/14264-the-decision-of-paris-first-instance-court-on-the-lawsuit-by-the-armenian-national-committee-cdca-against-turkish-consul-general-in-paris

rejected their demands two years later.[32] In both cases, the diplomatic immunity prevailed. The openly expressed goal of the ANC was to make noise, to claim the "necessity" for a censorship bill.

The situation in the Parliament changed in 2006 for a series of reasons; the presidential and legislative elections would take place the next year and the work of the main Armenian nationalist associations increased, including their threats of electoral reprisals. The new bill, introduced by Marius Masse (deputy of Marseille),[33] failed to be adopted in May 2006—thanks to the President of the National Assembly Jean-Louis Debré and thanks to the cabinet, particularly the ministry of External trade[34]—, but was voted five months later, by 106 voices against 19 (out of 577 deputies), and against the opinion of the Villepin cabinet.[35] Regardless, when this first step was taken by the proponents of censorship, it was too late. Indeed, if at the end of 1990s and beginning of 2000s the atmosphere was in favor of the Armenian nationalist claims, in the context of polemics on the Second World War and colonial history, by mid-2000s the trend had changed. In 2005, French historians began to be organized in the association Liberté pour l'histoire (Freedom for history), not specifically against Armenian nationalism, but against bullying in general. Some of them, such as René Rémond and Pierre Nora, have good networks in the medias and, as a result, strong protests were published against the Masse bill in mainstream newspapers, unlike during the Lewis affair.[36]

---

32 CDCA c. Sezgin, Cour d'appel de Paris, 8 novembre 2006, *Wikisource*, https://fr.wikisource.org/wiki/Cour_d%27appel_de_Paris_-_05-05619

33 Marius Masse, *Rapport fait au nom de la commission des lois constitutionnelles, de la législation et de l'administration générale*, n° 3074 (2006), *Deutscharmenischegesellschaft.de*, http://www.deutscharmenischegesellschaft.de/wp-content/uploads/2010/03/Franz%C3%B6sisches-Parlament-2006-rapport-3074-P%C3%A9nalisation-de-la-n%C3%A9gation-du-g%C3%A9nocide-arm%C3%A9nien-de-1915.pdf

34 « Les divisions sur le texte et son examen dépassent le clivage gauche-droite », *Lemonde.fr*, 18 mai 2006, http://www.lemonde.fr/societe/article/2006/05/18/les-divisions-sur-le-texte-et-son-examen-depassent-le-clivage-droite-gauche_773550_3224.html ; « Question arménienne : les risques économiques français en Turquie », *Lemonde.fr*, 22 mai 2006, http://www.lemonde.fr/societe/infographie/2006/05/22/question-armenienne-les-risques-economiques-francais-en-turquie_772979_3224.html#m8YOOqaEPeQEGrG8.99

35 « L'Assemblée nationale adopte la proposition de loi sanctionnant la négation du génocide arménien », *Lemonde.fr*, 12 octobre 2006, http://www.lemonde.fr/societe/article/2006/10/12/l-assemblee-adopte-le-texte-sanctionnant-la-negation-du-genocide-armenien_822623_3224.html

36 Pierre Nora, « Gare à la criminalisation générale du passé ! », *Le Figaro*, 17 mai 2006, http://www.lph-asso.fr/index9d3c.html?option=com_content&view=article&id=15%3Apierre-nora-l-gare-a-la-criminalisation-generale-du-passe-r&catid=4%3Atribunes&Itemid=4&lang=fr ; « Des historiens ont jugé "affligeante" la proposition de loi socialiste », *Le Monde*, 12 octobre 2006 ; « Des historiens veulent saisir Jacques Chirac si le Sénat confirme cette "provocation" », *Le Monde*, 14 octobre 2006.

In 2007, Nicolas Sarkozy was elected as president, and there was, until mid-2011, a kind of deal that can be summarized as follows: "I will not be kind with you as far as your candidacy to the European Union is concerned (veto on five chapters). But for the rest—namely fight against the PKK and Armenian genocide claims—don't worry, nothing bad will happen." Actually, for more than two years, the Masse bill was blocked by the cabinet, which refused to introduce it in the Senate. In mid-2010, a *minority* of the Socialist group endorsed the bill for discussion, but it was not discussed until May 2011. Following the negative opinion of the Law Committee, the text was rejected by a clear majority (196 against 74), because the Turkish embassy was quite active, and because the context, after the Blois appeal in 2008,[37] was even less favorable than in 2006, and because Nicolas Sarkozy was not supporting the bill. Indeed, Dominique Strauss-Kahn, largely believed to be the Socialist candidate at the presidential election of 2012, was arrested eleven days after the debate, and we may now say that Mr. Sarkozy and his collaborators were not happy, as they had planned to use another affair against Mr. Strauss-Kahn during the presidential campaign (as Mr. Strauss-Kahn was acquitted in this other case, I am not saying in any way that he was guilty, only it would have been used politically). As a result, as late as the beginning of May 2011, Mr. Sarkozy was sure he would be reelected. Moreover, in September of the same years, senatorial elections took place, and for the first time since 1968, the right lost the majority in the Senate. To give only one example, a Socialist was elected in Lozère —something similar to a majority obtained by the CHP in the rural part of Konya. As a result, Mr. Sarkozy was in fear by September 2011, and began to look for new electors. Needless to say, the Armenian nationalist associations took profit of that. That is why the new bill, introduced by Valérie Boyer (successor of Marius Masse as deputy of Marseille) banning "denial of genocides recognized by the law" was, this time, endorsed by the cabinet.

It must be emphasized that the Boyer bill was discussed in the National Assembly at the end of December, just before Christmas, when about only thirty members of the Parliament were present —this was, of course, done on purpose. Then, it was sent to the Senate, where the situation was more difficult, because it was not the period of Christmas anymore; so, Nicolas Sarkozy exerted a lot of pressure on the center-right groups. The Boyer bill was adopted by a small majority: 120 against 86. Regardless, two applications to the Constitutional Council were filed, by members of almost all the parliamentarian groups.

37 Pierre Nora et Françoise Chandernagor, *Liberté pour l'histoire* (Paris: CNRS éditions, 2008), partially pre-published in *Le Figaro*, October 8, 2008 and *Le Monde*, October 11, 2008.

C) The Revenges of Law on Politics: 2012-2016

It must be emphasized that the Boyer bill was discussed in the National Assembly at the end of December, just before Christmas, when about only thirty members of the Parliament were present —this was, of course, done on purpose. Then, it was sent to the Senate, where the situation was more difficult, because it was not the period of Christmas anymore; so, Nicolas Sarkozy exerted a lot of pressure on the center-right groups. The Boyer bill was adopted by a small majority: 120 against 86.[38] Regardless, two applications to the Constitutional Council were filed, by members of almost all the parliamentarian groups. In the Senate, the signatories of the application ranged from Robert Hue, former general secretary of the Communist Party, to Serge Dassault, who is at the right wing of Mr. Sarkozy's party. This, in the context of Turkey, would be akin to a coalition ranging from Doğu Perinçek to AKP deputies of Rize. Correspondingly, in the press, I would like to insist, the overwhelming majority of the columnists and intellectual who commented on the Boyer bill were fiercely hostile —not critical, but fiercely hostile. The reactions ranged from the leftists Rony Brauman (who deemed it as an "insolent" intrusion of the Parliament in a historical controversy) and Edwy Plenel (who called it "politically disastrous," "unconstitutional", and "an infernal machine in the field of international relations"),[39] to the conservatives Frédéric Pons (who deemed it "useless" and "harmful") and Ivan Rioufol (who stated "France has no lessons to teach to Turkey"),[40] to the social-democrat Jean Daniel (who called it a "disconcerting blindness" about "a tragedy that divides historians"),[41] to the centrists Alain Duhamel (who deemed it "unjustified" and "likely unconstitutional", and that "everybody lost" because of it) and Hubert Coudurier (who deplored the "danger" that could reduce France to "a spectator" in the Middle East),[42] as well as the business-friendly

38 Séance du 23 janvier 2012 (compte rendu intégral des débats), *Senat.fr*, https://www.senat.fr/seances/s201201/s20120123/s20120123_mono.html

39 « Le génocide ne doit pas être une arme politique », *Atlantico*, 23 décembre 2011, http://www.atlantico.fr/decryptage/genocide-arme-politique-polemique-turquie-france-concurrence-memorielle-malsaine-crimes-algerie-armenie-rony-brauman-252927.html ; Edwy Plenel, « La France, la Turquie et le génocide arménien : une faute politique », *Médiapart*, 24 janvier 2012, https://www.mediapart.fr/journal/international/240112/la-france-la-turquie-et-le-genocide-armenien-une-faute-politique

40 Frédéric Pons, « L'inutile pataquès franco-turc », *Valeurs actuelles*, 5 janvier 2012, https://www.valeursactuelles.com/divers/linutile-pataques-franco-turc-35387 ; Ivan Rioufol, « La France n'a pas de leçons à donner à la Turquie », *Lefigaro.fr*, 21 décembre 2011, http://blog.lefigaro.fr/rioufol/2011/12/genocide-la-frnce-na-pas-de-le.html

41 Jean Daniel, « Les nuées de 2012 », *Le Nouvel Observateur*, 4 janvier 2012, https://tempsreel.nouvelobs.com/monde/20120104.OBS8050/les-nuees-de-2012.html

42 Hubert Coudurier, « Du danger des têtes de Turc », *Le Télégramme de Brest*, 21 décembre 2011, http://www.letelegramme.fr/ig/generales/france-monde/commentaires/point-de-vue-du-danger-des-tetes-de-turcs-21-12-2011-1543767.php?redirect=true ; Alain Duhamel, « Génocide arménien : la loi de trop ! », *RTL*, 24 janvier 2012, https://www.youtube.com/watch?v=M5wQWi6e060

daily *Les Échos* (which slammed a "memorial cretinism," "legally and scientifically flawed," and "a major political fault").[43] To give you an idea in terms of Turkey, just imagine: There is a bill in the Turkish Parliament, and you have Özgür Mumcu, Yılmaz Özdil, Murat Yetkin, Taha Akyol, Süheyb Öğüt, Hilâl Kaplan, and *Dünya* who all say: "this bill is completely nonsensical."

One month after the applications of deputies and senators, the Constitutional Council ruled that the Boyer bill was unconstitutional, based on the 1789 Declaration of Human Rights, and more specifically on Article 11 that protects freedom of expression:

> "5. Considering, on the other hand, that Article 11 of the Declaration of Man and the Citizen of 1789 provides: 'The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law'; […]
>
> 6. Considering that a legislative provision having the objective of 'recognising' a crime of genocide would not itself have the normative scope which is characteristic of the law; that nonetheless, Article 1 of the law referred punishes the denial or minimisation of the existence of one or more crimes of genocide" recognised as such under French law"; that in thereby punishing the denial of the existence and the legal classification of crimes which Parliament itself has recognised and classified as such, Parliament has imposed an unconstitutional limitation on the exercise of freedom of expression and communication; that accordingly, without any requirement to examine the other grounds for challenge, Article 1 of the law referred must be ruled unconstitutional; that Article 2, which is inseparably linked to it, must also be ruled unconstitutional, […]."[44]

43 « Crétinisme mémoriel », *Les Échos*, 21 décembre 2011, https://www.lesechos.fr/21/12/2011/LesEchos/21084-049-ECH_cretinisme-memoriel.htm . Also see: Pierre Nora, « Lois mémorielles : pour en finir avec ce sport législatif purement français », *Le Monde*, 27 décembre 2011 ; Robert Badinter, « Le Parlement n'est pas un tribunal », *Le Monde*, 14 janvier 2012 ; and « Génocide arménien - Axel Poniatowski : "Cette affaire est allée trop loin" », *AFP*, 28 janvier 2012, http://www.lepoint.fr/politique/genocide-armenien-axel-poniatowski-cette-affaire-est-allee-trop-loin-28-12-2011-1413027_20.php

44 Decision no. 2012-647 DC of 28 February 2012, *Conseil-constitutionnel.fr*, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/case-law/decision/decision-no-2012-647-dc-of-28-february-2012.114637.html. Also see: Dominique Chagnollaud de Sabouret, « Loi contre les génocides : le serpent s'est mordu la queue », *Huffington Post France*, 29 février 2012, http://www.huffingtonpost.fr/dominique-chagnollaud/genocide-armenien_b_1308760.html

Last year (Spring 2016), Jean-Louis Debré, who was the President of the Constitutional Council from February 2007 to February 2016, published the diary he had written for nine years. Two pages are devoted to the Boyer bill affair, and Mr. Debré says he received "insisting pressures" and "threats" before the decisions, and after that, "insults".[45] So, they even tried to intimidate the Constitutional Council —but it was a complete failure; in ruling based on the Declaration of Human Rights, the Constitution Council made its decision impossible to skirt around.

After that, François Hollande was elected against Nicolas Sarkozy and found himself in a complicated situation, as far as the Armenian issue was concerned. Indeed, he was not stupid; he understood that the decision had been taken with a clear wording, that it made any alternative path very complicated, and that Turkey would be upset. I really think, and a recent (February 2017) speech by Dashnak leader Franck "Mourad" Papazian[46] even confirms that, Mr. Hollande was not excited by the idea of trying again where Mr. Sarkozy had failed, but because of his long personal relationship with Mr. Papazian, he could not do nothing. So, in 2012-2013, the cabinet said: "We will just implement the framework decision of the European Union (2008) about genocide denial (without referring to any specific crime)," namely something that was tried as early as 1995. You see, this story is an extremely repetitive one. Yet, in France, when there is a bill prepared by the cabinet, it first goes to the Council of State, which expresses its opinion. The opinion is non-binding, but if the cabinet does not respect this opinion, it knows it will be in trouble. Here, the Council of State answered, in short: "What? You don't say what is crime against humanity and what is not, and you don't refer to a court decision? You can be sure it will be censored by the Constitutional Council."

As a result, in 2013, François Hollande was able to say: "At least I tried." However, Mr. Papazian persistently asked him to try again. Yet, at the end of 2013, the European Court of Human Rights (ECtHR) found Switzerland wrong in the Perinçek case, provoking an outcry in the Armenian diaspora, particularly because of remarks like this one:

> "In any event, it is even doubtful that there can be a 'general consensus', particularly among academics, about events such as those in issue in the present case, given that historical research is by definition subject to controversy and dispute and does not really lend itself to definitive

45 Jean-Louis Debré, *Ce que je ne pouvais pas dire* (Paris : Robert Laffont, 2016), 100-101.

46 Conférence – Débat sur la pénalisation de la négation du Génocide des Arméniens dans le cadre de la loi Égalité-Citoyenneté au Centre national de la mémoire arménienne, 27 janvier 2017, https://www.facebook.com/Fra.Dachnaktsoutioun.centre.france/videos/610007625855014/

> conclusions or the assertion of objective and absolute truths […]. In this connection, a clear distinction can be made between the present case and cases concerning denial of crimes relating to the Holocaust (see, for example, the case of Robert Faurisson v. France, determined by the UN Human Rights Committee on 8 November 1996, Communication no. 550/1993, doc. CCPR/C/58/D/550/1993 (1996)).”[47]

The Swiss government, breaking the promise given to Ankara, applied to the Grand Chamber of the ECtHR just before the legal delay to do so was over. As a result, Mr. Hollande found here an excellent occasion to ask the ARF to be patient, as France would support Switzerland. Nobody who made it past the first term of first year in law can take seriously the two pages sent by the French government to the ECtHR. It is clear that the French government wrote something extremely weak, to be able to say to the Armenian side: “We did our part” and to the Turkish side: “Come on! Who can take seriously what we filed?” In any case, the Grand chamber confirmed in 2015; Mr. Perinçek “took part in a long-standing controversy that the court has […] already accepted as relating to an issue of public concern […], and described as a ‘heated debate, not only within Turkey but also in the international arena.’”[48] Regardless, the Armenian nationalists asked again for a censorship law, with a particularly aggressive wording.[49]

Meanwhile, an application for priority preliminary rulings on the issue of constitutionality was filed by a Holocaust denier, Vincent Reynouard, who introduces himself as “a Nazi,” and his lawyer. Indeed, Mr. Reynouard had been previously sentenced once for having denied the genocidal politics of the Third Reich, both in first instance and then in the appeal. The main argument was the following; only the existence of the Nazi crimes against humanity cannot be challenged; it is against the principle of equality in front of law. And for the first time, the Court of Cassation found (October 2015) the application of a Holocaust denier to be sufficiently serious to be forwarded to the Constitutional Council.[50] After a hearing in December of the same year,[51] the

47 Perinçek v. Switzerland, 17 December 2013, § 117, http://hudoc.echr.coe.int/eng?i=001-139724

48 Perinçek v. Switzerland, 15 October 2015, § 231, http://hudoc.echr.coe.int/eng?i=001-158235

49 « Le CCAF condamne l’arrêt Périncek [sic] de la CEDH et exige une loi de pénalisation du négationnisme en France », *Ccaf.info*, 16 octobre 2015, http://www.ccaf.info/item.php?r=3&id=656

50 Cour de cassation, chambre criminelle, 6 octobre 2015, *Conseil-constitutionnel.fr*, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2016/2015-512-qpc/decision-de-renvoi-cass.146842.html

51 Affaire n° 2015-512 QPC — Délit de contestation de l’existence de certains crimes contre l’humanité, *Conseil-constitutionnel.fr,* http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/videos/2015/decembre/affaire-n-2015-512-qpc.146625.html

Council rejected the arguments of Vincent Reynouard's defense.[52] Indeed, the Council judged that, firstly, Holocaust denial is in itself racist—so it is perfectly logical to include ban of Holocaust denial in the law on freedom of expression, and secondly, there is a difference between a crime that was judged by a French court or an international court recognized by France and a crime that was judged by a foreign, national court —an implicit, but clear reference to the 1919-1920 trials in Istanbul.[53] Logically, it should have been the very end, and actually, even a part of the Armenian nationalists concluded that it was time to give up.[54] Regardless, Mr. Papazian is like a gambler in the casino who has put all his plaques on one number but sees that his number is not coming. That is why he insisted again.

II) The Article 173 And Its Suppression

A) The Making of the Article and Its Vote

The first step was the statement of Mr. Hollande, in January 2016, announcing that he would ask Jean-Paul Costa, a past president of the ECtHR, for a report paving the way to a text that would be in conformity with the French Constitution and the European Convention of Human Rights.[55] However, this report was never published —hardly an indication that this report was satisfactory for anybody. In fact, the only positive aspect of this report, as far as it can be understood, is that it finally convinced the Armenian nationalists that the verdicts of 1919-1920 cannot be used at all as a legal basis, because it is against the principle of national sovereignty. To convince them even more, the Presidential Palace explained; "if these verdicts are used, Azerbaijani justice will rule that Khodjaly is a genocide, and you will be legally forced to say so."[56] As a result, the "solution" was to ban "denial" of war crimes, crimes

52 Décision n° 2015-512 QPC du 8 janvier 2016, *Conseil-constitutionnel.fr*, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2016/2015-512-qpc/decision-n-2015-512-qpc-du-8-janvier-2016.146840.html

53 The goal of this article is not to discuss the Armenian relocations themselves, so I refer the reader to: Ferudun Ata, *İstanbul'unda Tehcir Yargılamaları* (Ankara: TTK, 2005) ; Guenter Lewy, *The Armenian Massacres in Ottoman Turkey* (Salt Lake City: University of Utah Press, 2005), 73-82 ; and Maxime Gauin, "'Proving a 'Crime against Humanity'?", *Journal of Muslim Minority Affairs*, XXV-1 (March 2015), 147-149.

54 For instance : Collectif VAN, « Plus d'espoir de loi contre la négation du génocide arménien? », *Collectifvan.org*, 11 janvier 2016, http://www.collectifvan.org/article.php?r=0&id=92883

55 « Hollande relance l'idée d'une loi punissant la négation du génocide arménien », *AFP*, 29 janvier 2016, http://www.lepoint.fr/politique/hollande-relance-l-idee-d-une-loi-punissant-la-negation-du-genocide-armenien-28-01-2016-2013760_20.php

56 See note 46. At the very end of 2015, Mr. Couyoumdjian was still suggesting to use the 1919-1920 verdicts: Alexandre Couyoumdjian, "Les chemins ardes de la pénalisation du négationnisme", *Les Nouvelles d'Arménie magazine*, n° 225 (Janvier 2016), 29.

against humanity, and genocide if it incites to racial, ethnic, national, or religious hatred or violence. This is an unsophisticated and quite debatable method to be in conformity with the ECtHR's case law and it completely neglects one of Constitutional Council's rulings stressing the necessity for an international or French court decision. In this regard, if I cannot be sure about the intimate conviction of Mr. Hollande, I can at least give an incontrovertible indication; in 2015, he had appointed, as General Secretary of the Presidency, Marc Guillaume, who until then was the General Secretary of the Constitutional Council.[57] Even if the General Secretary is not a member of the Council, he nevertheless associated to all the processes before the decisions[58] and, of course, is a respected jurist. Yet, it is hardly imaginable that Mr. Guillaume did not warn Mr. Hollande about the certainty of a censorship by the Constitutional Council.

Technically, the liberticidal measure was introduced as a cabinet's amendment to a very general and long bill ("Equality and Citizenship") introduced in mid-2016. Therefore there was no preliminary verification by the Council of State; the submitted draft did not contain this measure. Suddenly, during the discussion, literally in night time, when there were only 21 deputies present (most of them elected in districts where the Armenian vote is supposed to be important), it was introduced.

Technically, the liberticidal measure was introduced as a cabinet's amendment to a very general and long bill ("Equality and Citizenship") introduced in mid-2016. Therefore there was no preliminary verification by the Council of State; the submitted draft did not contain this measure. Suddenly, during the discussion, literally in night time, when there were only 21 deputies present (most of them elected in districts where the Armenian vote is supposed to be important), it was introduced. Remarkably, the first orator was Patrick Devedjian —the one we already saw during the Bernard Lewis affair. The Socialist rapporteur of the National Assembly's Law committee Marie-Anne Chapdelaine objected—in vain—that this method is fundamentally wrong, as there was no discussion in his committee, and that the text itself is legally dubious, because the incitement to racial, ethnic, religious or national hatred or violence is a crime in France since 1972[59] (an argument eventually used by the Constitutional Council, as we shall see).

57 Jean-Louis Debré, *Ce que je…*, 310.

58 See, for example: Debré, *Ce que je…*, 162.

59 Assemblée nationale — XIVe législature — Session extraordinaire de 2015-2016 — Compte rendu Intégral. Deuxième séance du vendredi 1er juillet 2016, *Assemblee-nationale.fr*, http://www.assemblee-nationale.fr/14/cri/2015-2016-extra/20161002.asp#P834905

Then, it went to Senate, after months of discussions, article by article. The ad hoc committee rejected the Armenian nationalist-inspired article,[60] but a short majority of senators voted in favor[61] and merged it with another article (it became the Article 173). Regrettably, it has to be observed that the Turkish embassy and the Franco-Turkish associations did not do what was done in 2011-2012 with senators. Correspondingly, the critiques in the mainstream medias were surprisingly less numerous.[62] It helps to understand why, at the last minute, the reference to the liberticidal amendment disappeared from the application by senators to the Constitutional Council.

However, since 1958, the Article 61 of the Constitution allows the Constitutional Council to check the constitutionality of the whole law, and not only the article(s) which are contested in the application it has received. Moreover, an association can present a demand, if the Constitutional Council already received an application from MPs or senators, or by priority preliminary ruling on the issue of constitutionality, to also check another article —or an additional argumentation supporting the application.[63] That is why, on December 28, 2016, the Association for Neutrality for Turkish History in the Schoolbooks filed such a demand, written by Dominique Chagnollaud de Sabouret, Professor of Constitutional Law at Paris-II-Assas University, with very strong arguments, based on the traditional case law of the Constitutional Council, as well as on the decisions of 2012 and 2016.[64]

60 *Rapport n° 827 (2015-2016) de Mmes Dominique Estrosi Sassone et Françoise Gatel, fait au nom de la commission spéciale, déposé le 14 septembre 2016*, *Senat.fr*, http://www.senat.fr/rap/l15-827/l15-8274.html#toc209

61 Séance du 14 octobre 2016 (compte rendu intégral des débats), *Senat.fr*, http://www.senat.fr/seances/s201610/s20161014/s20161014002.html#section327

62 Dominique Chagnollaud de Sabouret, « Quand la loi "Egalité et Citoyenneté" veut confier au juge le soin de dire l'Histoire », *Huffington Post France*, 5 janvier 2017, http://www.huffingtonpost.fr/dominique-chagnollaud/genocide-loi-egalite-citoyennete-juge-dire-histoire_a_21647538 ; Didier Mauss, « Loi Égalité et citoyenneté : cette atteinte à la liberté d'expression passée inaperçue », *Le Figaro*, 22 décembre 2016, http://www.lefigaro.fr/vox/societe/2016/12/22/31003-20161222ARTFIG00062-loi-egalite-et-citoyennete-cette-atteinte-a-la-liberte-d-expression-passee-inaperçue.php

63 Anna-Maria Lecis Cocco-Ortu, « QPC et interventions des tiers : le débat contradictoire entre garantie des droits de la défense et utilité des amici curiae », *Revue française de droit constitutionnel*, n° 104 (2015), 863-886, http://www.droitconstitutionnel.org/congresLyon/CommLA/A-lecis_T2.pdf ; Georges Vedel, « L'accès des citoyens au juge constitutionnel. La porte étroite », *La Vie judiciaire*, n° 2344 (11-17 mars 1991), 1-14.

64 « projet de loi: génocide arménien », *Ataturquie.fr*, accessed February 13, 2018, http://www.forum.ataturquie.fr/modules.php?ModPath=phpBB2&ModStart=viewtopic&p=73117

B) The Constitutional Council Delivers Its Verdict

The wording and the arguments of the decision pronounced on January 26, 2017[65] is particularly important. They show the Constitutional Council has been increasingly exasperated by the Armenian nationalists' claims for censorship. Indeed, in 2012, the constitutional judges had stated: "It is against the principle of freedom of expression, you cannot arbitrarily impose a label, an interpretation, to past events." In 2016, they had explicitly made a distinction between Holocaust denial and historical controversies. In 2017, they deliberately went one step further.

First of all, I would like to emphasize what the Council *did not* say. There is a case law notion in France: the legislative rider (Fr. *cavalier législatif*). Its origin is Article 45 of the Constitution, which imposes that an amendment must have a link with the object of the law, as in, you cannot include or add anything in a bill. Moreover, Article 44 gives a constitutional value to the ruling of the assemblies; yet, the Armenian nationalist-inspired amendment was introduced in more than dubious procedural conditions[66] —something that surely did not escape to the attention of Corinne Luquiens, who was the General Secretary of the National Assembly before being appointed as a member of the Constitutional Council in 2016. As a result, the Council was perfectly entitled to censor this part of the law as a legislative rider only —as it did for other articles.[67] Yet, this kind of formal argument was not used —the Council being free to censor in the name of the reasoning it wants, as long as it is relevant.

---

65 Conseil constitutionnel, Decision no. 2016-745 DC of 26 January 2017 - Law relating to equality and citizenship, *Conseil-constitutionnel.fr*, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2017/2016-745-dc/version-en-anglais.149221.html

66 Xavier Aurey, Aurore Catherine, Anne-Sophie Denolle, Marie Rota, Antoine Siffert and Vincent Souty, « Chronique de jurisprudence constitutionnelle française. Janvier 2009 – décembre 2009 », *Journal for Constitutional theory and Philosophy of Law*, 12 (2010), 195-212, http://journals.openedition.org/revus/265 ; Damien Chamussy, « La procédure parlementaire et le Conseil constitutionnel », *Nouveaux Cahiers du Conseil constitutionnel*, n° 38 (Janvier 2013), http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/nouveaux-cahiers-du-conseil/cahier-n-38/la-procedure-parlementaire-et-le-conseil-constitutionnel.135703.html ; Raphaëlle Déchaux, « L'évolution de la jurisprudence constitutionnelle en matière de "cavaliers" entre 1996 et 2006 », *Conseil-constitutionnel.fr*, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/pdf/Conseil/cavaliers.pdf ; Services du Conseil constitutionnel, « État de la jurisprudence du Conseil constitutionnel sur le droit d'amendement », juillet 2007, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/pdf/Conseil/droitamd.pdf

67 For instance:

"154. Article 222 states that parental authority shall exclude 'all cruel, degrading or humiliating treatment, including any use of bodily harm'.

155. Introduced on first reading, the provisions of Articles 64, 80 and 91, Paragraph XIV of Article 117, and Articles 191, 192 and 222 of the contested Law do not have a link, even an indirect one, with those in the draft law submitted in the National Assembly. Adopted according to an unconstitutional procedure, they should thus be declared unconstitutional."

Now, if we look at what the Counsellors actually wrote:

> "191. Section 2° of Article 173 of the contested Law modifies Article 24 bis of the Law of 29 July 1881. Pursuant to the last Subparagraph of this Section 2°, extreme negation, minimisation or trivialisation of a crime of genocide, a crime against humanity, a crime of forcing into slavery or a crime of war is punishable by a year in prison and a fine of 45,000 euros when this negation, minimisation or trivialisation constitutes an incitement to violence or hate in reference to presumed race, colour, religion, descent or national origin.
>
> 192. Pursuant to Article 11 of the 1789 Declaration: 'The free communication of thoughts and opinions is one of the most precious rights of humanity: every citizen should speak, write, and print freely, except in regard to the abuse of this liberty in the cases determined by the law'."

So, this first argument is clearly in continuity with the decision of 2012. Similarly, the reference (§ 196) to the necessity for a court verdict is in continuity with the 2016 one. However, there is more. Indeed, the Council continues in observing:

> "193. The last Subparagraph of Section 2° of Article 173 allows for punishing the negation of certain crimes, when this negation constitutes an incitement to violence or hate in reference to the presumed race, colour, religion, descent or national origin, including if these crimes were not part of a court conviction.
>
> 194. First of all, if the actions of extreme negation, minimisation or trivialisation of a crime of genocide, a crime against humanity, a crime of forcing into slavery or a crime of war constitutes an incitement to violence or hate of a racist or religions nature, these actions, by themselves and in any case, are not of this nature. Such remarks or writings also do not constitute, themselves, a defence of the behaviours punishable by criminal law. Therefore, the actions of extreme negation, minimisation or trivialisation of these crimes cannot, in a general manner, be considered by themselves an abuse of the free exercise of expression and communication infringing on the public order and the rights of others.
>
> 195. Secondly, according to the seventh Subparagraph of Article 24 of the Law of 29 July 1881 currently in force, actions of incitement to discrimination, hate or violence in regard to a person or group of persons because of their origin or their belonging or not belonging to a particular

> ethnicity, nationality, race or religion is punishable by a year in prison and a fine of 45,000 euros. Therefore, the provisions introduced by the last Subparagraph of Section 2° of Article 173, which impose the same sentences on remarks presenting the same characteristics, are not necessary for the suppression of such incitement to hate or violence."

This is crucially important to notice that these paragraphs would have been enough to declare the amendment unconstitutional. Yet, the Council decided to add another series of arguments (the part with italics are my emphasis):

> "196. Thirdly, taking into account what is written in the preceding Paragraph, the only effect of the provisions of the last Subparagraph of Section 2° of Article 173 is to allow the court, in establishing the elements that constitute an infraction, to decide on the existence of a crime where negation, minimisation or trivialisation is alleged, *when it is not asked to decide on the basis of this crime and no jurisdiction has decided on the activities alleged to be criminal*. Actions or remarks may therefore give rise to prosecution if they negate, minimise or trivialise facts without them already receiving the qualification of one of the crimes established under the provisions of the last Subparagraph of Section 2° of this Article 173. Therefore, *these provisions introduce an uncertainty of the legality of remarks or writings on facts that may be the subject of historical debate* that do not satisfy the requirement of proportionality that is imposed regarding the exercise of liberty of expression."

Everybody knew that the last Subparagraph of Section 2° of this Article 173 was not the claim, for example, of French citizens of Chinese origin who would have been shocked by extreme Japanese nationalism; everybody knew it was about the Turkish-Armenian dispute. So, the message of the Council is clear: "1915 is 'the subject of historical debate,' present your arguments if you wish, but stop trying to suppress freedom of expression." This is a considerable victory against Armenian nationalism, and even more remarkable as only Claire Bazy-Malaurie voted the three decisions of 2012, 2016 and 2017. Indeed, one third of the Council is renewed every three years (Jean-Louis Debré was replaced by former François Hollande' Minister of Foreign Affairs Laurent Fabius one year before the 2017 decision, for example), and two members passed away, the first, Jacques Barrot, in December 2014, the other, Hubert Haenel, in August 2015,[68] and were replaced —during Mr. Hollande's presidency. This is not a surprise, as the principle is to appoint to the

68 « Hubert Haenel, membre du Conseil constitutionnel et ancien sénateur, est mort », *Lemonde.fr*, 11 août 2015, http://www.lemonde.fr/politique/article/2015/08/11/hubert-haenel-membre-du-conseil-constitutionnel-et-ancien-senateur-est-mort_4720912_823448.html

Constitutional Council respectable persons, who are at a point of their career when they have absolutely nothing to fear or expect anymore. So, the case law I am discussing here is the one of the institution, it is not related to personal issues.

Actually, the national case law is quite coherent with the European one, as the notion of historical "debate" is also used in the ECtHR Grand chamber's decision regarding the Perinçek v. Switlzerand case (§ 231). A comparison between the two case laws was made by Roseline Letteron, Professor of Law at Paris-IV University.[69]

The reactions to the Constitutional Council's decision confirm that the situation seems desperate even for the Armenian nationalist leadership. In particular, the ANC published a communiqué saying: "Don't forget that our fight is not only the fight to obtain a law penalizing Armenian genocide's denialism. Our fight is the Armenian cause. And this fight continues, it will take other forms!" That is how an "absolute priority cause" of about 15 years has been buried.

III) The Consequences of the Decision

A) The End of the Penalization Attempts

We may begin with the words of Jean-Marc "Ara" Toranian, chief of the political wing of the ASALA in France from 1976 to 1983,[70] currently co-chairman of the Coordination Council of France's Armenian Associations, and editor of the monthly *Les Nouvelles d'Arménie magazine*. Commenting the vote at the National Assembly on July 1, 2016, Mr. Toranian concluded that there was "no credible alternative" to the angle chosen in the cabinet's amendment.[71] So, what was presented as the only "credible" remaining solution only led to the most painful and devastating defeat for Armenian nationalism in France since the trial of the Orly attack in 1985.[72] Any new pretention from Mr. Toranian about another censorship bill would be not only against an extremely strong case law, but also against his own words —and even less credible for his own supporters as he had announced a "triumph" (sic) in

69 On her blog *Liberté, libertés chéries*: http://libertescheries.blogspot.com/2017/02/negation-du-genocide-armenien-retour.html

70 Gaïdz Minassian, *Guerre et terrorisme arméniens. 1972-1998* (Paris : Presses universitaires de France, 2002), 46, 65-66, 90. Also see: Ara Toranian, « Stratégie — Entre les Justiciers et l'ASALA, quelle politique ? », *Hay Baykar*, 29 septembre 1982, 6.

71 Ara Toranian, « Pénalisation du négationnisme : le retour », *Les Nouvelles d'Arménie magazine*, n° 232 (September 2016), 53.

72 *Terrorist attack at Orly: Statements and evidence presented at the trial, February 19-March 2, 1985* (Ankara: Ankara University, 1985).

January 2012, after the vote of the Boyer bill by the Senate,[73] when the application to the Constitutional Council already was in preparation.

The reactions to the Constitutional Council's decision confirm that the situation seems desperate even for the Armenian nationalist leadership. In particular, the ANC published a communiqué saying: "Don't forget that our fight is not only the fight to obtain a law penalizing Armenian genocide's denialism. Our fight is the Armenian cause. And this fight continues, it will take other forms!"[74] That is how an "absolute priority cause" of about 15 years has been buried. Correspondingly, during the question and answer session of his conference in front of the Dashnak party, Alexandre Armen Couyoumdjian was asked about what could be done after this new defeat. Mr. Couyoumdjian did not present any concrete alternative.[75] And the official communiqué of Coordination Council of France's Armenian Associations is hardly more than a powerless scream of rage, particularly against the sentence that speaks about "historical debates."[76]

The only concrete initiative that has been announced does not come from the mainstream Armenian nationalist associations, but from a small group represented by Philippe Krikorian. The goal is to go to the European Court of Human Rights, in the name of the EU's framework decision of 2008 against genocide denial. It has no legal basis and is not serious —Haytoug Chamlian, one of Jean-Marc "Ara" Toranian's collaborators even called the initiative "useless" and "hurtful for the [Armenian] cause."[77] Actually, the same Philippe Krikorian has lost in front of the Constitutional Council in 2016, when he used the application of Holocaust denier Vincent Reynouard to ask for an extension of the anti-denialism article to any "genocide". He also previously lost several cases filed with the same aim.[78] To make the situation of the Armenian

73 Ara Toranian, « Pénalisation du négationnisme : le triomphe de la justice », *La Règle du jeu*, 24 janvier 2012, https://laregledujeu.org/2012/01/24/8683/penalisation-du-negationnisme-le-triomphe-de-la-justice/. Also see his monthly's excessively optimistic comment on the Masse bill in 2010: Paul Nazarian, « Une relance prometteuse », *Les Nouvelles d'Arménie magazine*, n° 164 (June 2010).

74 Communiqué de presse du CDCA France, *Ancnews.info*, 26 janvier 2017, http://ancnews.info/?p=10867

75 See note 46.

76 « Censure du Conseil constitutionnel », *Ccaf.info*, 27 janvier 2017, http://www.ccaf.info/item.php?r=3&id=687

77 « Dans l'état actuel des choses, toutes les démarches judiciaires se rapportant à notre Cause relèvent de l'aventurisme le plus irresponsable (et j'y inclus même les procédures intentées par le Catholicos de Cilicie). Elles sont manifestement vouées à l'échec, et en conséquence, elles sont non seulement inutiles, mais nuisibles à ladite Cause. » http://www.armenews.com/forums/viewtopic.php?pid=146943#p146943

78 See, among others: Krikorian c. Premier ministre, Conseil d'État, 26 novembre 2012, n° 350492, *Philippe-Krikorian-avocat.fr*, http://www.philippekrikorian-avocat.fr/Domaine_dactivite_files/Arret_CE_26.11.2012_V_INT-1.pdf ; Krikorian c. France, Cour de justice de l'Union européenne, 6 novembre 2014, *Europa.eu*, http://eur-lex.europa.eu/legal-content/FR/ALL/?uri=CELEX%3A62014CO0243 ;

nationalist associations only worse, the Court of cassation has banned in 2005 the use of the article 1382 of the Civil Code to restrict freedom of expression between individuals, and confirmed this case law in 2011 and 2013.[79]

An objection could be the following: "Yes, legally, they have lost for good, but there are still members of the Parliament who need Armenian votes." Yet, is the electoral argument still a relevant one, if you look at the last two decades? Paul Mercieca, the very first MP who introduced a criminalization bill, on February 1, 1995, was defeated during the legislative elections of June 1997. Jean-Paul Bret, who played a key role in the "recognition" in 1998-2001, lost his seat during the elections of 2002. Marius Masse, who introduced the bill adopted by the National Assembly in 2006, experienced the same fate in 2007. At a national level, Nicolas Sarkozy has lost the presidential election of 2012, and was eliminated, as early as the first ballot, from the primary election of the center-right in 2016. After this lecture was delivered, Valérie Boyer was reelected, in June 2017, but against the chair of Coordination Council of Marseille's Armenian associations, Pascal Chamassian, and as a result, by feeling of ingratitude as well as by electoral calculation (the "Armenian vote" is not that important, after all), she stopped any support for Armenian nationalists' claims. Correspondingly, and finally, the French citizens of Turkish heritage have started voting instead of staying at home and crying on Facebook —though a lot of effort is still needed.

Another evidence for legal impediments faced by censorship laws is the increasing popularity, during the last years, of anti-Semitic conspiracy theories, including among mainstream Armenian leaders. For example, Jean Varoujan Sirapian, past Vice-President of the Coordination Council of France's Armenian Associations, past President of the Ramkavar in France, owner of Sigest Publishing, wrote in 2015, that if the Masse bill was rejected by the Senate and the Boyer bill by the Constitutional Council, it is because the "genocide" was orchestrated by Jews and *dönmes* (En. the apostates -meaning,

---

Krikorian et autres c. Premier ministre, Tribunal des conflits, 6 juillet 2015, n° C 03995, *Revuegeneraledudroit.eu*, http://www.revuegeneraledudroit.eu/blog/decisions/tribunal-des-conflits-6-juillet-2015-k-et-autres-n-c-03995/

79 Cour de cassation, chambre civile 1, 27 septembre 2005, n° 03-13622, *Legifrance.gouv.fr*, http://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007051612&dateTexte= ; Cour de cassation, chambre civile 1, 6 octobre 2011, n° 10-18142, *Legifrance.gouv.fr*, http://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000024648298&fastReqId=391179403&fastPos=1 ; Cour de cassation, chambre civile 1, 10 avril 2013, n° 12-10177, *Legifrance.gouv.fr*, https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000027303673&fastReqId=1983397061&fastPos=1

in this case, the Ottoman Jews who converted to Islam).[80] And if you look at the social media, you will see that these conspiracy theories are increasingly popular among ordinary members of Armenian nationalist organizations. Spreading "explanations" for the repeated failures of censorship bills can only damage the reputation of the Armenian nationalist organizations and undermine their future efforts.

Yet, if Franck "Mourad" Papazian, Jean-Marc "Ara" Toranian and Alexandre Armen Couyoumdjian do not use these conspiracy theories openly, it is a legitimate question to ask why they insist so much on Robert Badinter, who is of Jewish heritage, and who was the President of the Constitutional Council from 1986 to 1995, then senator from September 1995 to September 2011. Mr. Badinter had nothing to do with the decisions of 2012, 2016, and 2017; against the Masse bill in May 2011, he was only one of the most vocal opponents, together with Jacques Blanc, Charles Gautier, Josselin de Rohan (who called the text "liberticidal, inquisitorial, and obscurantist") and Jean-Jacques Hyest. And precisely, Mr. Hyest also signed the application of senators against the Boyer bill in 2012. He was afterwards appointed to the Constitutional Council in 2015.[81] Yet, I could not find a single article, a single communiqué, from Armenian nationalist groups about his actions in 2011-2012 and his nomination in 2015. It is wrong to speak, as Mr. Couyoumdjian does, about a "Badinter doctrine" regarding the impossibility for the French Parliament to decide about history. Indeed, as Mr. Badinter himself clearly explained, his arguments are inspired by the analysis of Georges Vedel (1910-2002) in his last paper written before his death.[82] At the very least, the Armenian nationalist leadership must be aware of what kind of reaction can be provoked among their supporters by such an extreme practice of double standard.

---

80 Varoujan Sirapian, « Le génocide des Arméniens et le plafond de verre », *Arrêt sur info*, 7 novembre 2015, http://arretsurinfo.ch/le-genocide-des-armeniens-et-le-plafond-de-verre/. For the historical background of this theory: Yitzchak Kerem, "The 1909 Adana Massacre and the Jews", in Kemal Çiçek (ed.), *1909 Adana Olayları Makaleler / The Adana İncidents of 1909 Revisited* (Ankara: TTK, 2011), 323-335 ; Bernard Lewis, *The Emergence of Modern Turkey. Third Edition* (Oxford-New York: Oxford University Press, 2002), 211-212, n. 4 ; Bernard Lewis, *Semites and Anti-Semites: An Inquiry into Conflict and Prejudice* (New York-London: W. W. Norton & Company, 1986), 138-139.

81 "Jean-Jacques Hyest", *Conseil-constitutionnel.fr*, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/le-conseil-constitutionnel/les-membres-du-conseil/liste-des-membres/jean-jacques-hyest.144473.html

82 Georges Vedel, « Les questions de constitutionnalité posées par la loi du 29 janvier 2001 », in Didier Mauss and Jeanette Bougrab (ed.), *François Luchaire, un républicain au service de la République* (Paris: Publications de la Sorbonne, 2005), 37-61. Another example would be Guy Carcassonne (1951-2013), professor of law at Paris-Nanterre University who fought the "recognition" in 1999-2000 (Guy Carcassonne, « La loi dénaturée », *Le Point*, 30 mars 1999) and wrote almost entirely the application of senators against the Boyer bill in January 2012. Prof. Carcassonne never was attacked as much as Robert Badinter.

B) Divisions and New Tendencies in Armenian Nationalism

Another kind of consequence of the Article 173 and its partial censorship is that for the first time in decades, dissensions are expressed openly and publicly among Armenian nationalist leaders. Hilda Tchoboian, who was the General Director of the (Dashnak) European-Armenian Federation for Justice and Democracy (EAFJD) during the 2000s, criticized the amendment to the Equality and Citizenship Law, arguing that it was poorly written. Adding self-criticism, she said that she observed an increasing hostility toward penalization by 2006, among professors of law, journalists, some members of the Parliament, etc., and concluded that no real job was done to convince them — including by herself. Her conclusion was: "We failed for good, by lack of appropriate work, so it is time to move to other subjects."

Correspondingly, Philippe Raffy Kalfayan, a jurist by profession, who has been close to the ARF for years, but who is now skeptical about the Dashnak strategy, stated in November 2016 that the amendment is useless because one would have to prove a racist intent, which is impossible in the overwhelming majority of the cases, and if the text goes to the Constitutional Council, it will be censored.[83] Regardless, the funniest reaction was the one of the collectif VAN. Established in 2004 at the initiative of Jean-Marc "Ara" Toranian, it is hardly a moderate group, but they found the amendment so badly written, so unprofessionally prepared, with so "obvious weaknesses" that they preferred to see it suppressed rather than maintained. An absence of censorship of the amendment would have been "the worst" (sic).[84]

Moreover, there has been divisions inside the ARF for about fifteen years -for reasons which are not clear, as I don't have informants in this party- and they exploded around 2015, when a member of the youth branch assaulted the Turkish ambassador in Paris[85] (he has been sentenced by the Tribunal of Nanterre on November 28, 2017[86]). It may be assumed that the 2017 decision of the Constitutional Council will only increase these dissensions, as the

83 Info Armenie, "Entretient extrêmement intéressant sur la loi contre le négationnisme, avec Raffi Kalfayan," *YouTube* video, 50:59, November 24, 2016, https://www.youtube.com/watch?v=e-WYl54DzL4

84 « Le Conseil Constitutionnel invalide la loi pénalisant la négation du génocide arménien », *Collectif van*, 27 janvier 2017, http://www.collectifvan.org/article_print.php?id=95496

85 "ARF-France Central Committee Oppresses Its Own AYF Youth," *Usarmenianlife.com*, 25 juillet 2015, http://www.armenianlife.com/2015/07/25/arf-france-central-committee-oppresses-its-own-youth-af/

86 « Verdict du procès des deux activistes extrémistes arméniens accusés d'agression sur l'ambassadeur de Turquie », *Turquie News*, 30 novembre 2017, http://turquie-news.com/spip.php?page=article&id_article=47252

amendment was the result of the work of Franck "Mourad" Papazian and as the tensions have focused on him during the last years.

The opponents to the Papazian-Toranian line argue that the Armenian nationalist activities should skip to reparations and to the Karabakh issue. I think for the Turkish side the "reparations" issue is easier, because all these questions are about courts, and the legal basis of the Armenian side is more than slim. The U.S. courts rejected all the demands for reparation[87] and, after this lecture was delivered, the case of the Armenian Catholicos of Cilicia failed in front of the European Court of Human Rights. For the Karabakh issue, it may be a bit more political, but no matter what we may think about François Hollande's errors, he never endorsed the self-proclaimed independence of the "Republic of Karabakh", and, on the contrary, the bilateral relations between Paris and Baku improved during his presidency. As a result, the ways these dissenting Armenian nationalists suggest are not likely to be successful.

The three decisions of the Constitutional Council, the double decision of the ECtHR in the Perinçek v. Switzerland and the one of the same court in the Mercan and others v. Switzerland (2017) have built what I would call a legal stronghold; legally, we can say that contesting the genocide label for 1915 has nothing to do with Holocaust denial. It is defamatory to compare those who contest this accusation against the Turks to the propagandists who deny the existence of gas chambers used by the Third Reich.

C) What Could (And Should) Be Done

The three decisions of the Constitutional Council, the double decision of the ECtHR in the Perinçek v. Switzerland and the one of the same court in the Mercan and others v. Switzerland (2017)[88] have built what I would call a legal stronghold; legally, we can say that contesting the genocide label for 1915 has nothing to do with Holocaust denial. It is defamatory to compare those who contest this accusation against the Turks to the propagandists who deny the existence of gas chambers used by the Third Reich. Actually, Laurent Leylekian, a former ARF's top official, was sentenced by the Tribunal (February 2013) then by the Appeal Court (January 2014) of Paris for having

87 David Saltzman and Esther Neuwirth, "Ten Years of Litigation by Heirs of Ottoman Armenians for Unpaid Insurance Proceeds: An End in Sight?", *Middle East Critique*, XX-3 (Fall 2011), 341-357 ; Movsesian v. Victoria Versicherung AG, 07-56722, 23 February 2012, United States Ninth Circuit, *Findlaw.com*, http://caselaw.findlaw.com/summary/opinion/us-9th-circuit/2009/08/20/165533.html

88 Mercan et autres c. Suisse, requête no 18411/11, *Echr.coe.int*, http://hudoc.echr.coe.int/eng?i=001-178955

compared Sırma Oran-Martz to Holocaust deniers and for having accused her to be part of a plot against the European institutions (nothing less). He had to pay a total of € 9,500 to his victim.[89] Remarkably, the wording of the appeal court verdict, pronounced the month after the first ECtHR's decision in the Perinçek affair, is even stronger than the one of the tribunal: "What [Laurent Leylekian] calls the Armenian genocide." (p. 6). Such a wording could not have been imagined ten years earlier; it is likely due, at least for a part, to the decision of the Second Chamber of the ECtHR in the Perinçek case. And now, in 2017, we have even more legal decisions, particularly the one of the Constitutional Council ruling it is about "historical debates".

That is why it is time to say: "You can present your arguments, but you cannot call me a denialist." Indeed, after a first victory in Lyon (2010),[90] I have currently five libel cases filed in Paris against those who have defamed me.

Beside the strictly legal dimension, all those who oppose the "Armenian genocide" label have to publish scholarly works in French. Since 1991, only Heath Lowry's study on *Ambassador Morgenthau's story* (by the Isis Press), of Kemal Çiçek's study on 1915 (by the Turkish Historical Society, TTK) and of one book by Yücel Güçlü (in Brussels) have been translated into Molière's language. I deeply respect the Isis Press and the TTK, but you cannot expect the average French reader, or even the educated French reader to go to İstanbul or Ankara to buy books. More publications are needed. And above all, what is needed are serious efforts to present the Turkish case in the Turkish-Armenian controversy, instead of believing that because you are right, everything will go for the best.

CONCLUSION

The French Constitutional Council's decision pronounced on January 23, 2017 has ended a 23-year cycle. Now, there is an opportunity to open another one, a cycle of discussions without fear and without hate.

89 Oran c. Leylekian, Cour d'appel de Paris, 16 janvier 2014, dossier n° 13/02194.

90 Gauin c. Nissanian, Tribunal de grande instance de Lyon, 27 avril 2010, numéro de parquet 0884561, *Legipresse.com*, http://www.legipresse.com/media/272-06.pdf

BIBLIOGRAPHY

Law and Case Law

Affaire n° 2015-512 QPC — Délit de contestation de l'existence de certains crimes contre l'humanité, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/videos/2015/decembre/affaire-n-2015-512-qpc.146625.html

CDCA c. Sezgin, Tribunal de grande instance de Paris, jugement rendu le 13 novembre 2004, *HistoryofTruth.com*, http://www.historyoftruth.com/articles/53-turkey-and-armenia-in-1915s/14264-the-decision-of-paris-first-instance-court-on-the-lawsuit-by-the-armenian-national-committee-cdca-against-turkish-consul-general-in-paris

CDCA c. Sezgin, Cour d'appel de Paris, 8 novembre 2006, *Wikisource*, https://fr.wikisource.org/wiki/Cour_d%27appel_de_Paris_-_05-05619

Cour de cassation, chambre civile 1, 27 septembre 2005, n° 03-13622, *Legifrance.gouv.fr*, http://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007051612&dateTexte=

Cour de cassation, chambre civile 1, 6 octobre 2011, n° 10-18142, *Legifrance.gouv.fr*, http://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000024648298&fastReqId=391179403&fastPos=1

Cour de cassation, chambre civile 1, 10 avril 2013, n° 12-10177, *Legifrance.gouv.fr*, https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000027303673&fastReqId=1983397061&fastPos=1

Cour de cassation, chambre criminelle, 6 octobre 2015, *Conseil-constitutionnel.fr*, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2016/2015-512-qpc/decision-de-renvoi-cass.146842.html

Decision no. 2012-647 DC of 28 February 2012, *Conseil-constitutionnel.fr*, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/case-law/decision/decision-no-2012-647-dc-of-28-february-2012.114637.html

Décision n° 2015-512 QPC du 8 janvier 2016, *Conseil-constitutionnel.fr*, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2016/2015-512-qpc/decision-n-2015-512-qpc-du-8-janvier-2016.146840.html

Decision no. 2016-745 DC of 26 January 2017 - Law relating to equality and citizenship, *Conseil-constitutionnel.fr*, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2017/2016-745-dc/version-en-anglais.149221.html

Gauin c. Nissanian, Tribunal de grande instance de Lyon, 27 avril 2010, numéro de parquet 0884561, *Legipresse.com*, http://www.legipresse.com/media/272-06.pdf

Krikorian c. Premier ministre, Conseil d'État, 26 novembre 2012, n° 350492, *Philippe-Krikorian-avocat.fr*, http://www.philippekrikorian-avocat.fr/Domaine_dactivite_files/Arret_CE_26.11.2012_V_INT-1.pdf

Krikorian c. France, Cour de justice de l'Union européenne, 6 novembre 2014, *Europa.eu*, http://eur-lex.europa.eu/legal-content/FR/ALL/?uri=CELEX%3A62014CO0243

Krikorian et autres c. Premier ministre, Tribunal des conflits, 6 juillet 2015, n° C 03995, *Revuegeneraledudroit.eu*, http://www.revuegeneraledudroit.eu/blog/decisions/tribunal-des-conflits-6-juillet-2015-k-et-autres-n-c-03995/

Loi n° 90-615 du 13 juillet 1990 tendant à réprimer tout acte raciste, antisémite ou xénophobe, *Legifrance.gouv.fr*, https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000532990&categorieLien=id

Mercan et autres c. Suisse, requête no 18411/11, *Echr.coe.int*, http://hudoc.echr.coe.int/eng?i=001-178955

Movsesian v. Victoria Versicherung AG, 07-56722, 23 February 2012, United States Ninth Circuit, *Findlaw.com*, http://caselaw.findlaw.com/summary/opinion/us-9th-circuit/2009/08/20/165533.html

Oran c. Leylekian, Cour d'appel de Paris, 16 janvier 2014, dossier n° 13/02194.

Perinçek v. Switzerland, 17 December 2013, *Echr.coe.int*, http://hudoc.echr.coe.int/eng?i=001-139724

Perinçek v. Switzerland, 15 October 2015, *Echr.coe.int*, http://hudoc.echr.coe.int/eng?i=001-158235

Press Articles, Internet Resources, Opinions, and Communiqués

"'Hate Speech' Again, Abroad." *The Washington Post*, September 9, 1995.

"A Franc for Your Thoughts." *The Wall Street Journal*, August 28, 1995.

"ARF-France Central Committee Oppresses Its Own AYF Youth." *Usarmenianlife.com*, July 25, 2015, http://www.armenianlife.com/2015/07/25/arf-france-central-committee-oppresses-its-own-youth-af/

"Jean-Jacques Hyest". *Conseil-constitutionnel.fr*, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/le-conseil-constitutionnel/les-membres-du-conseil/liste-des-membres/jean-jacques-hyest.144473.html

"Lewis Replies." *Princeton Alumni Weekly*, June 5, 1996, http://www.princeton.edu/~paw/archive_old/PAW95-96/16_9596/0605let.html#story3

« Arménie ». *Le Monde*, 31 mars 1999.

« Au courrier du "Monde" — Les explications de Bernard Lewis ». Le Monde, 1 janvier 1994.

« Censure du Conseil constitutionnel ». *Ccaf.info*, 27 janvier 2017, http://www.ccaf.info/item.php?r=3&id=687

« Crétinisme mémoriel ». *Les Échos*, 21 décembre 2011, https://www.lesechos.fr/21/12/2011/LesEchos/21084-049-ECH_cretinisme-memoriel.htm

« Des historiens ont jugé "affligeante" la proposition de loi socialiste ». *Le Monde*, 12 octobre 2006.

« Des historiens veulent saisir Jacques Chirac si le Sénat confirme cette ”provocation” ». *Le Monde*, 14 octobre 2006.

« Génocide arménien - Axel Poniatowski : “Cette affaire est allée trop loin” ». *AFP*, 28 janvier 2012, http://www.lepoint.fr/politique/genocide-armenien-axel-poniatowski-cette-affaire-est-allee-trop-loin-28-12-2011-1413027_20.php

« Hollande relance l’idée d’une loi punissant la négation du génocide arménien». *AFP*, 29 janvier 2016, http://www.lepoint.fr/politique/hollande-relance-l-idee-d-une-loi-punissant-la-negation-du-genocide-armenien-28-01-2016-2013760_20.php

« Hubert Haenel, membre du Conseil constitutionnel et ancien sénateur, est mort ». *Lemonde.fr*, 11 août 2015, http://www.lemonde.fr/politique/article/2015/08/11/hubert-haenel-membre-du-conseil-constitutionnel-et-ancien-senateur-est-mort_4720912_823448.html

« La fin du procès de Paul Touvier — L’ardent plaidoyer de Me Trémolet de Villers ». *Le Monde*, 21 mars 1994.

« Le CCAF condamne l’arrêt Périncek [sic] de la CEDH et exige une loi de pénalisation du négationnisme en France ». *Ccaf.info*, 16 octobre 2015, http://www.ccaf.info/item.php?r=3&id=656

« Le Conseil Constitutionnel invalide la loi pénalisant la négation du génocide arménien », *Collectif van*, 27 janvier 2017, http://www.collectifvan.org/article_print.php?id=95496

« Le Forum des associations arméniennes poursuit l’historien Bernard Lewis ». Le Monde, 19 mai 1995.

« Le génocide ne doit pas être une arme politique ». *Atlantico*, 23 décembre 2011, http://www.atlantico.fr/decryptage/genocide-arme-politique-polemique-turquie-france-concurrence-memorielle-malsaine-crimes-algerie-armenie-rony-brauman-252927.html

« Le gouvernement refuse d’inscrire le “génocide arménien” à l’ordre du jour du Sénat ». *Le Monde*, 12 mars 1999.

« Le Sénat a voté la proposition de loi reconnaissant le génocide arménien de

1915 ». *Le Monde*, 9 novembre 2000.

« Le vote de la loi de 1972 ». *Droit et liberté*, Juillet-Août 1981.

« Les actions engagées par les parties civiles arméniennes contre "Le Monde" sont déclarées irrecevables par le tribunal de Paris ». *Le Monde*, 27 Novembre 1994.

« Un entretien avec Bernard Lewis ». Le Monde, 16 novembre 1993.

« Verdict du procès des deux activistes extrémistes arméniens accusés d'agression sur l'ambassadeur de Turquie ». *Turquie News*, 30 novembre 2017, http://turquie-news.com/spip.php?page=article&id_article=47252

« Assemblée nationale — XIVe législature — Session extraordinaire de 2015-2016 — Compte rendu intégral. Deuxième séance du vendredi 1er juillet 2016. » *Assemblee-nationale.fr*, http://www.assemblee-nationale.fr/14/cri/2015-2016-extra/20161002.asp#P834905

« Communiqué de presse du CDCA France, 26 janvier 2017 ». *Ancnews.info*, http://ancnews.info/?p=10867

« Conférence – Débat sur la pénalisation de la négation du Génocide des Arméniens dans le cadre de la loi Égalité-Citoyenneté au Centre national de la mémoire arménienne ». 27 janvier 2017, https://www.facebook.com/Fra.Dachnaktsoutioun.centre.france/videos/610007625855014/

« projet de loi: génocide arménien ». *Ataturquie.fr*, accessed February 13, 2018, http://www.forum.ataturquie.fr/modules.php?ModPath=phpBB2&ModStart=viewtopic&p=73117

Akgürbüz, Engin. "yves ternon." *YouTube* video, 0:43, January 27, 2013, https://www.youtube.com/watch?v=40ke11aHxs0

Ataöv, Türkkaya. *What really happened in Geneva: The truth about the "Whitaker report"*. Ankara, 1986.

Badinter, Robert. « Le Parlement n'est pas un tribunal ». *Le Monde*, 14 janvier 2012.

Bermond, Daniel. « L'affaire Bernard Lewis ». *L'Histoire*, n° 187 (Avril 1995).

Carcassonne, Guy. « La loi dénaturée ». *Le Point*, 30 mars 1999.

Chagnollaud de Sabouret, Dominique. « Loi contre les génocides : le serpent s'est mordu la queue ». *Huffington Post France*, 29 février 2012, http://www.huffingtonpost.fr/dominique-chagnollaud/genocide-armenien_b_1308760.html

Chagnollaud de Sabouret, Dominique. « Quand la loi "Egalité et Citoyenneté" veut confier au juge le soin de dire l'Histoire ». *Huffington Post France*, 5 janvier 2017, http://www.huffingtonpost.fr/dominique-chagnollaud/genocide-loi-egalite-citoyennete-juge-dire-histoire_a_21647538

Coudurier, Hubert. « Du danger des têtes de Turc ». *Le Télégramme de Brest*, 21 décembre 2011, http://www.letelegramme.fr/ig/generales/france-monde/commentaires/point-de-vue-du-danger-des-tetes-de-turcs-21-12-2011-1543767.php?redirect=true

Couyoumdjian, Alexandre. "Les chemins ardes de la pénalisation du négationnisme." *Les Nouvelles d'Arménie magazine*, n° 225 (Janvier 2016).

Daniel, Jean. « Les nuées de 2012 ». *Le Nouvel Observateur*, 4 janvier 2012, https://tempsreel.nouvelobs.com/monde/20120104.OBS8050/les-nuees-de-2012.html

Duhamel, Alain. « Génocide arménien : la loi de trop ! ». *RTL*, 24 janvier 2012, https://www.youtube.com/watch?v=M5wQWi6e060

Info Armenie. "Entretient extrêmement intéressant sur la loi contre le négationnisme, avec Raffi Kalfayan." *YouTube* video, 50:59, November 24, 2016, https://www.youtube.com/watch?v=e-WYl54DzL4

Journal officiel de la République française. Débats Parlementaires, Assemblée nationale, 10 octobre 1987, http://archives.assemblee-nationale.fr/8/cri/1987-1988-ordinaire1/011.pdf

Marnham, Patrick. "Sued over a History Lesson." *London Evening Standard*, May 23, 1995.

Mauss, Didier. « Loi Égalité et citoyenneté : cette atteinte à la liberté d'expression passée inaperçue ». *Le Figaro*, 22 décembre 2016, http://www.lefigaro.fr/vox/societe/2016/12/22/31003-20161222ARTFIG00062-loi-egalite-et-citoyennete-cette-atteinte-a-la-liberte-d-expression-passee-inapercue.php

Masse, Marius. « Rapport fait au nom de la commission des lois constitutionnelles, de la législation et de l'administration générale », n° 3074 (2006), *Deutscharmenischegesellschaft.de*, http://www.deutscharmenischegesellschaft.de/wp-content/uploads/2010/03/Franz%C3%B6sisches-Parlament-2006-rapport-3074-P%C3%A9nalisation-de-la-n%C3%A9gation-du-g%C3%A9nocide-arm%C3%A9nien-de-1915.pdf

Mels, Richard. « 30 mois avec sursis pour Charles-Antoine Sansonetti et Katchadur Gulumian ». *Hay Baykar*, 25 novembre 1985.

Mels, Richard. « Le génocide et la loi ». *Hay Baykar*, 25 février 1986.

Nazarian, Paul. « Une relance prometteuse ». *Les Nouvelles d'Arménie magazine*, n° 164 (Juin 2010).

Nora, Pierre. « Gare à la criminalisation générale du passé ! » *Le Figaro*, 17 mai 2006, http://www.lph-asso.fr/index9d3c.html?option=com_content&view=article&id=15%3Apierre-nora-l-gare-a-la-criminalisation-generale-du-passe-r&catid=4%3Atribunes&Itemid=4&lang=fr

Nora, Pierre. « Lois mémorielles : pour en finir avec ce sport législatif purement français ». *Le Monde*, 27 décembre 2011.

Plenel, Edwy. « La France, la Turquie et le génocide arménien : une faute politique ». *Médiapart*, 24 janvier 2012, https://www.mediapart.fr/journal/international/240112/la-france-la-turquie-et-le-genocide-armenien-une-faute-politique

Pons, Frédéric. « L'inutile pataquès franco-turc ». *Valeurs actuelles*, 5 janvier 2012, https://www.valeursactuelles.com/divers/linutile-pataques-franco-turc-35387

Proposition de loi sanctionnant la négation du génocide arménien. *Assemblee-nationale.fr*, http://www.assemblee-nationale.fr/12/propositions/pion1643.asp

Proposition de loi tendant à l'incrimination pénale de la contestation publique des crimes contre l'Humanité afin de mieux combattre toute forme de négationnisme, http://www2.assemblee-nationale.fr/documents/notice/12/propositions/pion2778/(index)/depots/(archives)/index-depots

Proposition de loi visant à sanctionner la contestation de tous les crimes contre l'humanité, http://www2.assemblee-nationale.fr/documents/notice/12/propositions/pion2135/(index)/propositions-loi/(archives)/index-proposition

Rapport n° 827 (2015-2016) de Mmes Dominique Estrosi Sassone et Françoise Gatel, fait au nom de la commission spéciale, déposé le 14 septembre 2016. *Senat.fr*, http://www.senat.fr/rap/l15-827/l15-8274.html#toc209

Rebérioux, Madeleine. « Les Arméniens, le juge et l'historien ». *L'Histoire*, Octobre 1995, http://www.lph-asso.fr/index6c1c.html?option=com_content&view=article&id=32%3Amadeleine-reberioux-l-les-armeniens-le-juge-et-lhistorien-r&Itemid=34&lang=fr

Rioufol, Ivan. « La France n'a pas de leçons à donner à la Turquie ». *Lefigaro.fr*, 21 décembre 2011, http://blog.lefigaro.fr/rioufol/2011/12/genocide-la-frnce-na-pas-de-le.html

Saulnier, Mine G. "Lewis'in Zor Davası." *Milliyet*, 16 Mayıs 1995.

Séance du 14 octobre 2016 (compte rendu intégral des débats). *Senat.fr*, http://www.senat.fr/seances/s201610/s20161014/s20161014002.html#section327

Séance du 21 mars 2000. *Senat.fr* https://www.senat.fr/seances/s200003/s20000321/s20000321_mono.html#chap39

Séance du 7 novembre 2000. *Senat.fr*, https://www.senat.fr/seances/s200011/s20001107/sc20001107081.html

Sirapian, Varoujan. « Le génocide des Arméniens et le plafond de verre ». *Arrêt sur info*, 7 novembre 2015, http://arretsurinfo.ch/le-genocide-des-armeniens-et-le-plafond-de-verre/

Toranian, Ara. « Pénalisation du négationnisme : le retour ». *Les Nouvelles d'Arménie magazine*, n° 232 (septembre 2016).

Toranian, Ara. « Pénalisation du négationnisme : le triomphe de la justice ». *La Règle du jeu*, 24 janvier 2012, https://laregledujeu.org/2012/01/24/8683/penalisation-du-negationnisme-le-triomphe-de-la-justice/

Toranian, Ara. «Stratégie — Entre les Justiciers et l'ASALA, quelle politique?». *Hay Baykar*, 29 septembre 1982.

Books and Scholarly Studies

Ata, Ferudun. *İstanbul'unda Tehcir Yargılamaları*. Ankara: TTK, 2005.

Aurey, Xavier, Aurore Catherine, Anne-Sophie Denolle, Marie Rota, Antoine Siffert and Vincent Souty. « Chronique de jurisprudence constitutionnelle française. Janvier 2009 – décembre 2009 ». *Journal for Constitutional Theory and Philosophy of Law*, 12 (2010), pp. 195-212, http://journals.openedition.org/revus/265

Chamussy, Damien. « La procédure parlementaire et le Conseil constitutionnel ». *Nouveaux Cahiers du Conseil constitutionnel*, n° 38 (Janvier 2013), http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/nouveaux-cahiers-du-conseil/cahier-n-38/la-procedure-parlementaire-et-le-conseil-constitutionnel.135703.html

Comité de soutien à Max Kilndjian. *Les Arméniens en cour d'assises*. Roquevaire : Parenthèses, 1983.

Debré, Jean-Louis. *Ce que je ne pouvais pas dire*. Paris : Robert Laffont, 2016.

Déchaux, Raphaëlle. « L'évolution de la jurisprudence constitutionnelle en matière de "cavaliers" entre 1996 et 2006 ». *Conseil-constitutionnel.fr*, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/pdf/Conseil/cavaliers.pdf

Gauin, Maxime. "'Proving a 'Crime against Humanity'?" *Journal of Muslim Minority Affairs*, XXV-1 (March 2015), pp. 141-157.

Gauin, Maxime. "Strategic Threats And Hesitations: The Operations And Projects Of Landing In Cilicia And The Ottoman Armenians (1914-1917)." In *19.-20. Yüzyıllarda Türk-Ermeni İlişkileri Sympozyumu*, (İstanbul: Türk Ocakları/İstanbul Üniversitesi, 2015), volume II, pp. 982-1004.

Jeanneney, Jean-Noël. *Le Passé dans le prétoire. L'historien, le juge et le journaliste*. Paris : Le Seuil, 1998.

Kerem, Yitzchak. "The 1909 Adana Massacre and the Jews." In Kemal Çiçek (ed.), *1909 Adana Olayları Makaleler / The Adana İncidents of 1909 Revisited*. Ankara : TTK, 2011, pp. 323-335.

Lecis Cocco-Ortu, Anna-Maria. « QPC et interventions des tiers : le débat contradictoire entre garantie des droits de la défense et utilité des amici curiae ». *Revue française de droit constitutionnel*, n° 104 (2015), pp. 863-886, http://www.droitconstitutionnel.org/congresLyon/CommLA/A-lecis_T2.pdf

Lewis, Bernard. *Notes on Century. Reflections of a Middle East Historian.* London: Weidenfeld & Nicolson, 2012.

Lewis, Bernard. *Semites and Anti-Semites: An Inquiry into Conflict and Prejudice*. New York-London: W. W. Norton & Company, 1986.

Lewis, Bernard. *The Emergence of Modern Turkey. Third Edition.* Oxford-New York: Oxford University Press, 2002.

Lewy, Guenter. *The Armenian Massacres in Ottoman Turkey*. Salt Lake City: University of Utah Press, 2005.

Minassian, Gaïdz. *Guerre et terrorisme arméniens. 1972-1998*. Paris : Presses universitaires de France, 2002.

Nora, Pierre, et Françoise Chandernagor. *Liberté pour l'histoire*. Paris: CNRS éditions, 2008.

Prost, Antoine. *Douze leçons sur l'histoire. Édition augmentée*. Paris: Le Seuil, 2010 - 1er édition, 1996.

Richardot, Jean-Pierre. *Arméniens, quoi qu'il en coûte*. Paris : Fayard, 1982.

Saltzman, David and Esther Neuwirth. "Ten Years of Litigation by Heirs of Ottoman Armenians for Unpaid Insurance Proceeds: An End in Sight?", *Middle East Critique*, XX-3, Fall 2011, pp. 341-357.

Services du Conseil constitutionnel. « État de la jurisprudence du Conseil constitutionnel sur le droit d'amendement », juillet 2007, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/pdf/Conseil/droitamd.pdf

Ternon, Yves. *Génocide. Anatomie d'un crime*. Paris : Armand Colin, 2016.

Ternon, Yves. *Les Arméniens, histoire d'un génocide*. Paris : Le Seuil, 1996.

Terrorist attack at Orly: Statements and evidence presented at the trial, February 19-March 2, 1985. Ankara: Ankara University, 1985.

Troper, Michel. « La loi Gayssot et la Constitution ». *Annales. Histoire, sciences sociales*, n° 6 (1999), pp. 1239-1255.

Vedel, Georges. « L'accès des citoyens au juge constitutionnel. La porte étroite ». *La Vie judiciaire*, n° 2344 (11-17 mars 1991), pp. 1-14.

Vedel, Georges. « Les questions de constitutionnalité posées par la loi du 29 janvier 2001 ». In Didier Mauss and Jeanette Bougrab (ed.), *François Luchaire, un républicain au service de la République*. Paris: Publications de la Sorbonne, 2005, pp. 37-61.

Yildirim, Gülsen. « Les Turcs en milieu rural — Le cas du Limousin ». *Hommes & Migrations*, n° 1280 (Juillet- Août 2009), pp. 78-86, https://hommesmigrations.revues.org/304