



**THE OBSERVATORY**  
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Human Rights Defenders



**INTERNATIONAL  
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# Joint trial observation report

Case of Eren Keskin and Güllistan Yarkin





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Human rights defenders Eren Keskin and Güllistan Yarkin at the courthouse.  
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# INTRODUCTION

This report examines the criminal proceedings against Eren Keskin, Co-Chair of the Human Rights Association (İHD), and Güllistan Yarkin, a member of İHD's Commission against Racism and Discrimination. Both individuals were prosecuted under Article 301 of the Turkish Criminal Code, accused of "Publicly Denigrating the Turkish Nation, the State of the Republic of Turkey" following their statements at the Armenian Genocide Commemoration Day on April 24, 2021. This case, initiated by an anonymous complaint submitted to CIMER (Web Communication Centre of the Presidency of the Republic), highlights significant issues surrounding the right to freedom of expression in Turkey, particularly regarding historical events, such as the Armenian Genocide, whose occurrence is at this point beyond dispute at the international level, but which still stirs controversy in Turkey.

The İHD has been advocating for the recognition of the Armenian Genocide since 2005, with their commemoration events consistently calling for recognition, apology, and compensation. The current case against Keskin and Yarkin is, in this sense, emblematic of the broader pattern of legal challenges faced by İHD members and other activists under Article 301, which has often been employed to suppress discussions critical of the Turkish state's official narratives.

This report provides a detailed overview of the background leading to the hearing, the specific allegations and statements involved, and the broader implications for freedom of expression within Turkey's legal framework. It includes an analysis of the procedural aspects of the hearing, the defence's arguments, and critical perspectives on the use of Article 301 in this context. Notably, in the third hearing of the trial on 2 May 2024, Eren Keskin and Güllistan Yarkin were acquitted. While this acquittal is a positive outcome, the mere fact that the case was filed against them for their statements exemplifies the problematic application of Article 301, which has consistently been used as a form of "punishment" or "deterrence" of dissenters. Therefore, the criminal case still represents a disproportionate and unnecessary interference with the exercise of freedom of expression. Furthermore, following the acquittal, the prosecutor applied for appeal to the regional court on May 21, 2024. The appellate review is ongoing before the Istanbul Regional Court of Appeals, 2<sup>nd</sup> Criminal Chamber. The continued harassment of İHD, Keskin and Yarkin thus points to an ongoing violation of their right to freedom of expression, which exerts chilling effect over civil society and the broader public.

Through this examination, the report also aims to shed light on the importance of international observation and solidarity in upholding human rights and freedom of expression in Turkey, emphasizing the need for ongoing vigilance and solidarity with human rights defenders facing similar legal challenges.

This trial observation mission was carried out thanks to the facilitation of İHD and Human Rights Foundation of Turkey (HRFT). We are grateful to them for their support in accessing the case file, conducting interviews with the defendants' lawyers, engaging with other actors in the field, and managing the entire process.

## 1. CONTEXT OF THE HEARING

### (1.1) Background

İHD has been organising annual commemorations for the Armenian Genocide since 2005, with the same demand to "Recognise, ask for forgiveness and compensate the genocide". The criminal case this report examines was filed due to statements made by Keskin and Yarkin in İHD's commemoration of the Armenian Genocide on 24 April 2021.

This was neither the first criminal case initiated against İHD members on the basis of article 301 of the Turkish Criminal Code (hereinafter – TCC), nor the first case due to their advocacy regarding dealing with the past and the Armenian Genocide. İHD former co-chair Öztürk Türkođan faced article 301 charges before the Ankara 24<sup>th</sup> Criminal Court of First Instance in relation to an article titled “Stop Denying the Armenian Genocide for Justice and Truth” published by İHD on its website on April 24, 2017.<sup>1</sup> Mr Türkođan was acquitted in June 2023. Eren Keskin also faced criminal charges prior to this case on the basis of article 301 of the TCC due to her statement accusing the state of the murder of 12 years old Uđur Kaymaz and asking for accountability in a conference she attended in 2005.<sup>2</sup> She was sentenced to 10 months of imprisonment at the end of the trial in 2015<sup>3</sup>. In 2018, Eren Keskin was again convicted under Article 301, as well as Article 299 (“Insulting the President of the Republic”), due to news articles and columns published during her tenure as Co-Editor-in-Chief of Özgür Gündem Newspaper, which were deemed to denigrate the Turkish nation and the President<sup>4</sup>.

Many journalists and writers were put on trial under TCC 301, most of which ended in convictions. The prominent Turkish-Armenian journalist and former Editor-in-Chief of Agos Newspaper Hrant Dink, who was assassinated in front of the Agos office in Istanbul on 19 January 2007, had also been sentenced to six months of imprisonment under article 301 for his articles referring to the Armenian Genocide in 2004. After Dink’s murder, article 301 was highly debated and campaigns were organized for its abolition. Article 301 was amended by Law No. 5759 in 2008, which made changes within the constitutive elements of the offence and brought the condition of Ministry of Justice’s approval for any criminal prosecution to be initiated. However, the amendment did not result in a decrease in the number of investigations and article 301 continued to be at the centre of political debates due to its abuse to the detriment of human rights defenders and government critics.

Immediately after the enactment of the law, the Ministry of Justice issued the circular No. 18/1 dated 9 May 2008, requesting prosecutors initiating investigations under article 301 to provide concrete reasons as to how the crime was committed and the specific words used, as well as the reasoned opinion of the Public Prosecutor. However, in practice, the same authority has been criticized for frequently granting investigation permissions without stating reasons.<sup>5</sup>

## (1.2) The defendants

Eren Keskin is a Kurdish lawyer and the co-Chair of the İHD. For thirty years, she has contributed to the protection of minority rights, countered violence against women, and campaigned to challenge militarism and end torture. She is the founder of a law firm providing pro bono services for trans people and women who were raped or sexually abused by the national security forces. Keskin is the winner of multiple international awards for her peace and human rights work, including the **2018 Helsinki Civil Society Award**, and was a **finalist** of the **Martin Ennals Award** for Human Rights Defenders in 2019. Due to her work as a human rights defender, Keskin has been targeted, threatened, attacked and imprisoned **numerous times**.<sup>6</sup>

Güllistan Yarkin is a Kurdish human rights defender and researcher who completed her Ph.D. in the Sociology Department at the State University of New York at Binghamton in 2017 with her dissertation titled “The Making of National-Racial Formation and Coloniality in Turkey: Turkish-Kurdish Relations in a Working-Class District of Zeytinburnu in Istanbul, 1950-2017.” In 2020, her application for

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<sup>1</sup> The Observatory for the Protection of Human Rights Defenders, “Türkiye: Second hearing in the case against Mr. Öztürk Türkođan”, 15 April 2022, <https://www.omct.org/en/resources/urgent-interventions/turkey-second-hearing-in-the-case-against-mr-%C3%B6zt%C3%BCrk-%C3%BCrdo%C4%9Fan>.

<sup>2</sup> 12-year-old Uđur Kaymaz and his father Ahmet Kaymaz were killed on 21 November 2004 in front of their house in Kiziltepe, Mardin, by police fire on the grounds that they were suspected to be “terrorists”.

<sup>3</sup> Bianet, “Eren Keskin’e 301’den 10 Ay Hapis”, 22 January 2015, <https://bianet.org/haber/eren-keskin-e-301-den-10-ay-hapis-161716>.

<sup>4</sup> HRD Eren Keskin sentenced to 7.5 years prison, <https://www.frontlinedefenders.org/en/case/hrd-eren-keskin-sentenced-7-5-years-prison>.

<sup>5</sup> Bianet, “Deđişiklik Memnun Etmedi; 301’in Kalkması Zor”, 9 June 2008, <https://bianet.org/haber/degisiklik-memnun-etmedi-301-in-kalkmasi-zor-107502>.

<sup>6</sup> Keep the Volume Up for Rights Defenders in Turkey, Eren Keskin, <https://www.sessizkalma.org/en/defender/eren-keskin>

doctoral diploma accreditation/equivalency to the Interuniversity Board in Turkey was rejected on the basis that certain concepts in her dissertation, such as “Turkish colonialism,” “guerrilla warfare”, “challenging the Turkish colonial regime”, and the “Armenian Genocide” “may constitute a crime” according to article 301 of the TCC and the anti-terrorism law. She has been an active member of the İHD’s Committee Against Racism and Discrimination since 2015 and a regular participant of İHD’s Armenian Genocide commemorations.

### (1.3) The investigation and the indictment

The investigation started from an anonymous complaint to CIMER<sup>7</sup> (Presidential Communication Centre), accusing the defendants of publicly insulting the Turkish Nation, the Republic of Turkey, the Grand National Assembly of Turkey, the Government, and the Judiciary in accordance with the content of article 301 of the TCC. The complaint filed on April 24, 2021 included some links of videos from the commemoration which took place the same day. One of them was published together with a news article entitled “İHD: Recognize the genocide, ask for forgiveness, compensate” showing an opening speech made by Eren Keskin.<sup>8</sup>

On these grounds, the Istanbul Chief Public Prosecutor’s Office submitted the request for permission to the Ministry of Justice to initiate an investigation under article 301/1 of the TCC. Permission was granted with a letter dated 8 March 2023 and a formal investigation was initiated against Keskin and Yarkin.

Subsequently the indictment was prepared by the Istanbul Public Prosecutor’s Office and a criminal case was opened before the Istanbul 51<sup>st</sup> Criminal Court of First Instance on 6 September 2023. The investigation focused mostly on a press statement shared on the YouTube account of the İHD Istanbul Branch, where both defendants made statements.

The indictment quoted Keskin’s opening speech mentioned above, during which she said: “As the Human Rights Association Commission against Racism and Discrimination, we used to make a statement on the street every April 24<sup>th</sup> to commemorate the 1915 genocide, but due to the pandemic conditions for 2 years and the related restrictions, this year we are making our 1915 genocide commemoration statement in writing.”

The statement of İHD read by Güllistan Yarkin was also directly quoted within the indictment. Briefly, the statement explained how the ruling party of the time, the Committee of Union and Progress, and its paramilitary organization, the Special Organization, started to arrest, exile and kill the Armenian community’s most prolific figures 106 years ago. It continues to say how the genocide continued through the brutality extended across Anatolia, wiping out the Armenian presence along with its cultural and historical fabric. Finally, mentioning that the denial of the genocide persists, forcing Armenians to prove their existence, it calls for the acknowledgement “of the crime, ensuring dignity for the victims and bringing justice.” The statement ends with the reiteration of the call: “Recognize the genocide, ask for forgiveness, compensate.”<sup>9</sup>

*Based on the opening speech and the statement, the prosecutor asked for both Keskin and Yarkin to be sentenced under article 301/1 of the Turkish Criminal Code which reads as follows:*

*“Denigrating the Turkish Nation, State of Turkish Republic, the Organs and Institutions of the State*

<sup>7</sup> CIMER (*Cumhurbaşkanlığı İletişim Merkezi*, in Turkish) is a platform established by the Turkish government to facilitate communication between citizens and the Presidency. Through CIMER, citizens can submit requests, complaints, suggestions, and inquiries directly to the relevant government authorities. In practice, CIMER complaints have been frequently used as a pretence to target human rights defenders and dissidents in Turkey. See The Observatory for the Protection of Human Rights Defenders, İHD & HRFT, “Uncertain and Eerie: Closure Cases Against Associations in Turkey”, September 2023, <https://www.fidh.org/en/region/europe-central-asia/turkey/turkey-closure-cases-against-associations-increasingly-used-to>, p. 19.

<sup>8</sup> Bianet, “İHD: Soykırımı tanıyin, af dileyin, tazmin edin”, 24 April 2021, <https://bianet.org/haber/ihd-soykirimi-taniyin-af-dileyin-tazmin-edin-242983>.

<sup>9</sup> For the full text of the statement, see *ibid*.



*(1) A person who publicly denigrates Turkish Nation, State of the Turkish Republic, Turkish Grand National Assembly, the Government of the Republic of Turkey and the judicial bodies of the State shall be sentenced a penalty of imprisonment for a term of six months to two years.*

*(2) A person who publicly denigrates the military or security organisations shall be sentenced according to the provision set out in paragraph one.*

*(3) The expression of an opinion for the purpose of criticism does not constitute an offence.*

*(4) The conduct of an investigation into such an offence shall be subject to the permission of the Minister of Justice.”*

## 2. PROCEEDINGS OF THE HEARING

The hearing was scheduled for 11am on Tuesday, 27 February 2024 in Istanbul before the 51<sup>st</sup> Criminal Court of First Instance. This was the first hearing of the trial and there were around 40 people waiting outside the courtroom to attend the trial including the defendants, lawyers representing them, international trial observation delegations, observers from local human rights NGOs and human rights defenders. While everybody was waiting outside the courtroom, the court clerk announced that only 7 people were going to be allowed inside. The representatives of the local NGOs suggested that international observers should insist on entering the courtroom. As a result, the courtroom, which was not so spacious, was quite crowded. Many people remained outside. Representatives of the İHD and the HRFT were present at the trial, in addition to other human rights defenders, lawyers, and journalists. Beside the trial observation delegation formed by representatives of the International Observatory of Lawyers at Risk (OIAD), World Organisation against Torture (OMCT) and International Federation for Human Rights (FIDH), representatives of the European Union Delegation to Turkey, and of the consulates of Germany, the Netherlands, and the USA observed the trial.

The Court was administered by a single judge, in accordance with the formation principle of criminal courts of first instance within the judiciary organization. The prosecutor and the two defendants were also present, alongside their lawyers.

The hearing began at around 11.15am. At the beginning, the judge asked if the defence would need a recording of the hearing, which was confirmed by the lawyers.

The hearing began with the identification of the defendants with personal information such as name, surname, place and date of birth, profession, monthly income. Following this, the two defendants were requested to deliver their statements.

### (2.1) Notes on defendants' statements and lawyers' arguments

Defendant Eren Keskin took the stand first, mentioning that she was the co-chair of the İHD and also a member of the İHD Commission against Racism and Discrimination. She stated that the Armenian Genocide, that began on 24 April 1915, has never been discussed in Turkey. Reiterating İHD's statement, she said that the genocide was initiated by the Committee of Union and Progress, the ruling party in Turkey at the time. Pointing out that this official ideology of denial was problematic, she said that İHD has been calling for recognition of the genocide, apology and compensation for the victims for years. She stated that between 2005 and 2018, İHD was able to freely express this opinion, and even President Erdoğan himself expressed sympathy for the sufferings of the Armenian people's descendants. However, later on, the government abandoned this position. After 2018, İHD's commemorations were banned by the then-Minister of Interior, Süleyman Soylu, and cases were filed against İHD members in connection to their statements related to the genocide.

Keskin denied the accusations against her and requested her acquittal, highlighting that her words constituted a legitimate exercise of her right to freedom of expression, protected under the Constitution of Turkey and the European Convention on Human Rights and Fundamental Freedoms, which Turkey ratified. She concluded by stating that she could not be prosecuted for expressing her opinions and referred to previous court decisions as precedents.

Defendant Gllistan Yarkin took the stand next, noting that she had been attending genocide commemorations since she became a member of the İHD's Commission against Racism and Discrimination. She added that investigations began against İHD members after the then-Minister of Interior Soylu started targeting the Commission in 2021. She refused the statement's qualification as an "insult to the Turkish nation" and requested her acquittal on ground that the indictment was unfounded. She added that denying the Armenian Genocide did not contribute to the progress of the "Turkish nation" as referred to in article 301, and that recognition, apology and compensation for past crimes are necessary to that effect.

The defendants' statements were followed by statements of five of the seven lawyers in attendance. Without repeating all the defences, it seems relevant to include the main arguments raised by the lawyers.

The lawyers stated that the investigation was based on an anonymous complaint on CIMER using a screenshot from YouTube featuring the defendants while delivering statements at the commemoration and argued that the charges against the defendants in the indictment lacked procedural and substantive integrity.

The lawyers also mentioned that although the statement refers to the ruling party in 1915, the prosecutor inferred within the indictment that the remarks were made against the Republic of Turkey, raising the question of how this statement could be interpreted as an accusation against the Turkish Republic that did not exist back then.

In addition to these, the lawyers stated that although the prosecutor himself included some references to the European Convention on Human Rights (ECHR) and the European Court of Human Rights' (ECtHR) case law in the indictment, the Convention provisions had been misinterpreted by the prosecution, and that this criminal case in itself was at odds with both the Convention's provisions and the ECtHR's judgments on freedom of expression. They also referred to article 90/5 of the Constitution, which provides that "In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail." The ECtHR decisions in *Hrank Dink v. Turkey* and *Altuğ Taner Akçam v. Turkey* were mentioned in this context to underline that the ECtHR states the opposite of the argument raised in the indictment. More precisely, the defence lawyers underlined incorrect interpretation by the prosecutor of articles 9 and 10 of the ECHR in the indictment, which states that freedom of expression is not unlimited and can never be against the democratic social order.

The lawyers also reminded that the offence outlined in article 301 of the TCC has been amended in 2008, following Hrant Dink's assassination, and the wording "offending the Turkishness" was replaced with "offending the Turkish nation".<sup>10</sup> Yet, they mentioned that the concept of "Turkishness" was still used in judicial precedents by the Court of Cassation. They argued that this leads to discrimination and social exclusion as it results in denying the existence of different identities within Turkey, thus violating article 14 of the ECHR prohibiting discrimination. Finally agreeing with the defendants' statements, the lawyers also underlined that the commemorations have been carried out peacefully from 2005 and that only from 2018 the government changed its attitude on the matter, with this trial being part of a pattern of criminalising the work of human rights defenders, including through an arbitrary

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<sup>10</sup> One of the defence lawyers also reminded to the court during the hearing that the assassination of Hrant Dink, who was threatened and shot to death after having been prosecuted on the basis of the same article 301 of the TCC for his declarations referring to the denial of the Armenian genocide. The lawyer recalled the social and public responsibility for his murder quoting another journalist, Mehmet Ali Birand's words who wrote after his death: "Do not look for Hrant's killer in vain, it was Article 301 that killed him".

interpretation of article 301 TCC. The lawyers also pointed to the chilling effect that repeated investigations against human rights defenders and civil society representatives created.

On these grounds, all the lawyers asked for the immediate acquittal of the defendants. The prosecutor asked for some time to give his opinion. The defence requested to be given time to respond and provide its opinion after the prosecutor's opinion. The judge accepted, stating that the defence would be given time to prepare after the prosecution's opinion, and set the next hearing on 26 March 2024.

## (2.2) Ensuring procedural safeguards during the hearing

It should be noted that the procedural safeguards of a fair trial were duly respected during the hearing. The defendants were reminded of the safeguards regarding their right to defence as stipulated in the Criminal Procedural Code, and they were treated accordingly. Speaking time was allotted to the defendants, and their lawyers. They were able to make their statements without interruption. After each statement by the defendants and their lawyers, the judge would dictate the statement to the court registrar, summarising the content of the statements.

At the end of their statements, each defendant was asked whether they accepted the "deferment of the announcement of the verdict" in accordance with article 231 of the Code of Criminal Procedure No. 5271. According to this article, if the defendants are sentenced to a period of imprisonment up to 2 years or a fine at the end of the trial, the announcement of the verdict may be deferred for 5 years in the presence of the necessary conditions. In case of such a decision, the defendant shall be subject to a period of supervision for five years. If no new offence is committed intentionally within the supervision period and the obligations regarding the probation measure are complied with, the judgment deferred to be announced shall be cancelled and the case shall be dismissed. According to the law, the decision to defer the announcement of the judgment can only be objected by the defendant. However, appeal is not possible.

Both defendants rejected the deferral of the announcement of the verdict by stating that they wanted their acquittal.

## 3. CRITICAL ANALYSIS OF THE CASE AND HEARING

Despite the fact that the trial proceeded in a regular manner, with ample opportunity for both the defendants and their legal representatives to express themselves, the presence of an indictment like the one against Gllistan Yarkin and Eren Keskin raises concerns about the respect for the right to freedom of expression in Turkey, especially given both the defendants' status as human rights defenders and as a scholar and lawyer respectively.

The right to freedom of expression, as protected by Article 10 of the ECHR and Article 26 of the Constitution of Turkey, includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority. The ECtHR has emphasized on several occasions how crucial this right is for the functioning of a democratic society, considering it one of the basic conditions for its progress. This right extends not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb; such are the requirements of pluralism, tolerance and open-mindedness which are essential for a "democratic society".<sup>11</sup>

The right's exercise is not unlimited and, as set forth in article 10, freedom of expression can be subject to exceptions. However, because of its importance, any restrictions on this right must be strictly interpreted and established convincingly.<sup>12</sup> Accordingly, any interference must be prescribed

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<sup>11</sup> Handyside v. United Kingdom, § 49; Observer and Guardian v. United Kingdom, § 59.

<sup>12</sup> Stoll v. Switzerland (GC), 10 December 2007, No. [69698/01](#), § 101.

by law, pursue one of the legitimate aims enumerated in article 10/2, and be necessary in a democratic society.

In the *Dink v. Turkey* judgement, the ECtHR reiterated that freedom of expression extends to historical debate and the recognition or denial of historical events -including the Armenian Genocide- even when one's opinion runs counter to that defended by the official authorities or by a significant part of public opinion, or even if it is irritating or shocking to the latter. It must be noted that in the *Hrant Dink* case, the ECtHR has emphasized that by referring to the "Turkish nation" which is one of the foundational elements of the State, "Turkishness" was equated with the State itself. And according to the way the notion of "Turkishness" has been interpreted by the Court of Cassation, "Turkishness" and the "Turkish nation" became the symbols of the concrete policy of State institutions on a specific point, namely the identity of the Armenian minority. Thus, any criticism of the concrete policies or, in other words, the official stance of state institutions regarding the identity of the Armenian minority is likely to be considered as "offending, demeaning, and belittling the Turkish nation." In light of these views, the ECtHR found that by convicting Hrant Dink for his statements regarding the Armenian Genocide, the Court of Cassation indirectly punished him for criticizing state institutions for denying the genocide.<sup>13</sup>

It should also be remembered that restrictions on freedom of expression should not be applied to political discourse or issues related to the public interest.<sup>14</sup> Moreover, the boundaries of acceptable criticism of the Government are wider than those applicable to an ordinary citizen or even a politician. Furthermore, the Government's dominant position, especially if there are other ways to respond to unjustified attacks and criticisms by its opponents, requires it to act more moderately in using legal sanctions.<sup>15</sup> In the case at hand, although the genocide is attributed to the ruling party at the time of the events and not the current Republic of Turkey, the statement criticizes Turkey's official denial policy regarding the Armenian Genocide, which the current government also adopts. The statements made by the defendants in the trial also underline the freedom to have opinions and express them contrary to this official discourse.

In the case of *Dink v. Turkey*, the ECtHR noted that it evaluates whether the words spoken or the statements made, when considered in their entirety, incite violence, armed resistance, or rebellion as a determining criterion. It emphasized that in the absence of these criteria, convicting individuals, especially writers, journalists, academics and human rights advocates, for insulting the Turkish nation due to statements that merely contradict the State's official discourse on the Armenian Genocide does not correspond to any "pressing social need," which is one of the main elements justifying interference with freedom of expression in a democratic society.<sup>16</sup>

In light of the above, Article 301 of the TCC indeed creates a problematic situation regarding the exercise of freedom of expression. It is understood that this regulation has led to many debates in the past, and discussions around this article are ongoing, with human rights defenders requesting its annulment. The amendment made in 2008, with the aim of preventing arbitrary investigations, clearly stated in the reasoning of Article 301 TCC which is mentioned in the indictment, indicates that the government is aware of this situation. However, numerous investigations and prosecutions continue to be opened on the basis of this offense. The observed trial, in this respect, in fact has quite a symbolic importance.

In its *Akçam v. Turkey* judgment, which was also highlighted by the defence lawyers, the ECtHR made an assessment regarding the amendment of article 301 that introduced the requirement for the permission of the Ministry of Justice for an investigation. In its judgment, the Court acknowledged the Government's intention to prevent largely arbitrary or unjustified prosecutions under article 301 through this measure. However, based on the statistical data provided by the Government in the case of *Akçam v. Turkey*, the ECtHR pointed to the fact that there is still a significant number of investigations commenced by public prosecutors under article 301 and that the Ministry of Justice

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<sup>13</sup> *Dink v. Turkey*, 14 September 2010, No. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, § 132.

<sup>14</sup> *Wingrove v. United Kingdom*, 25 November 1996, No. 17419/90, § 58; *Seher Karatas v. Turkey*, 9 July 2002, no. 33179/96, § 37.

<sup>15</sup> *Incal v. Turkey*, 9 June 1998, No. 41/1997/825/1031, § 54.

<sup>16</sup> *Dink v. Turkey*, § 132.

grants authorization in a large number of cases. As stated by the Court, a system of prior authorisation by the Ministry of Justice in each individual case is not a lasting solution which can replace the integration of the relevant Convention standards into the Turkish legal system and practice, in order to prevent similar violations of the Convention. Especially, when considered with the interpretation of article 301, particularly the concept of “Turkish nation”, by the Turkish Court of Cassation, any opinion criticizing the official thesis on the Armenian issue is under the threat of sanction.<sup>17</sup>

As noted, the case against Keskin and Yarkin has been eventually dismissed during the third hearing of the article 301 case on 2 May 2024, with both defendants acquitted by the court on the grounds that the act attributed to the defendants was not defined as an offence in the law. However, the mere act of indicting and initiating the trial itself constitutes an attack, potentially causing significant distress and fatigue for both the defendants and the broader human rights movement supporting them. Furthermore, even if they are both acquitted, the investigation opened against Keskin and Yarkin based on their statements concerning the Armenian Genocide and the subsequent criminal case constitute a serious interference with their freedom of expression.

It should also be noted that the prosecutor’s application for appeal against the court’s acquittal decision points to a continuous violation of Keskin and Yarkin’s right to freedom of expression and highlights the pattern of abuse of Article 301 of the TCC to judicially harass human rights defenders. The appeal submitted by the Istanbul Chief Public Prosecutor’s Office essentially reiterates the arguments made in the original indictment without any changes. Like the indictment, the appeal emphasizes that freedom of expression is not without limits, citing the restrictions outlined in Article 10(2) of the European Convention on Human Rights (ECHR) and the European Court of Human Rights (ECtHR)’s principle that these restrictions should be interpreted narrowly. However, the court’s case law on Article 10, which was previously mentioned, has been completely overlooked, and no concrete or convincing arguments have been presented to justify the interference with this right in the context of the case at hand.

While there is no legal barrier to requesting the reversal of an acquittal decision in criminal proceedings, the rationale for seeking legal remedies, which is to address any legal violations in the ruling, along with established practice and procedural efficiency, requires that such a request be based on new and valid arguments rather than simply repeating those in the original indictment. Without presenting a new situation that would render the decision unlawful or providing a valid justification, repeating the same arguments can be seen as an attempt to misuse the legal process. Unfortunately, this appeal lacks such substantive content, effectively undermining the judicial process that led to the acquittal. The complete disregard of the defence lawyers’ arguments—highlighting the prosecutor’s misinterpretation of Articles 9 and 10 of the ECHR, particularly referring to the claim that freedom of expression is not unlimited and cannot be against the democratic social order—indicates a clear contradiction with the original judicial process and the acquittal decision. Consequently, this appeal for reversal once again highlights the problematic nature of Article 301 of the Turkish Penal Code regarding the exercise of freedom of expression.

Statements commemorating the Armenian Genocide in Turkey are usually the target of judicial harassment due to Turkey’s official policy of denial concerning the genocide. It is also clear from the statements and defences of the lawyers made during the hearing that Turkish law, particularly Article 301 TCC, has been repeatedly used to prosecute those critical of this stance and who discuss the Armenian Genocide. This case appears to be one of the many examples where Article 301 of the TCC is used to prevent the discussion of historical events in a way that contradicts the state’s official discourse and this in spite of the amendment introduced in 2008 to prevent its abuse precisely in such cases.

The judicial harassment of the Diyarbakır Bar Association under Article 301 is another striking example of this worrisome trend. Between 2017 and 2024, 8 separate statements by the Diyarbakır Bar Association on the Armenian Genocide were subject to investigations under Article 301 of the TCC

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<sup>17</sup> Altuğ Taner Akçam, § 79.



following the permission of the Ministry of Justice.<sup>18</sup> The members of the Executive Board of the Bar Association faced a total of 6 criminal cases as a result, with 4 of the cases ending in acquittal. 2 cases are ongoing.

This implies in fact a constant attempt to restrict or block public debate on a specific issue through judicial harassment and is a clear interference with freedom of expression. As argued by the defence in the present case, these violations of the right to freedom of expression also have a chilling effect on civil society, signalling to other human rights defenders, civil society actors and the broader public that they may also face judicial harassment based on spurious accusations and a flawed interpretation of both Turkish (Article 301 TCC) and European law (Article 10 ECHR), if they publicly disagree with the state's denial policy.



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<sup>18</sup> Deniz Tekin, "Armenian Genocide case filed against Diyarbakır Bar Association President Nahit Eren and 10 executives", Media and Law Studies Association, 4 April 2024, <https://www.mlsaturkey.com/en/newgenocasediyarbakir>; Deniz Tekin, "Ex-board of Diyarbakır Bar Association acquitted in 'genocide' case", Media and Law Studies Association, 3 February 2024, <https://www.mlsaturkey.com/en/diyarbakir-bar-association-acquitted-from-genocide-case>.

# CONCLUSION

A discussion about the content and the elements of the crime under article 301 of the TCC is not the subject of this observation report. However, as mentioned in the section above, it is important to underline that this case serves as an example of the abuse of the article in a manner that restricts public debate on certain issues in a way that is contrary to both the Constitution of Turkey and state obligations under international law.

While we welcome Keskin and Yarkin's eventual acquittal on 2 May 2024, the fact that their statements were investigated and prosecuted in the first place and the subsequent request for appeal of the acquittals by the prosecutor serve as an example of the abusive, arbitrary and retaliatory application of article 301 TCC to judicially harass, punish and deter human rights defenders from expressing their opinions. In this sense, the criminal case constitutes an undue and unlawful – as it is not justified by any of the reasons that would allow for its restriction - interference with the exercise of freedom of expression.

As international observers, attending these cases directly related to human rights violations, especially those involving human rights defenders, along with organizations advocating for human rights in an environment where the civic space in Turkey is so restricted, is of great importance in terms of solidarity shown with human rights defenders and lawyers who participate in these cases and to draw international attention to their struggle and to the situation of human rights defenders in Turkey more broadly. In this regard, we deem it important to emphasize the importance of civil society organizations, bar associations, and international/regional diplomatic missions observing the trial process of such cases and monitoring their outcomes as a critical responsibility, in order to show support to civil society and human rights defenders in Turkey in a context of increasing restrictions to their fundamental rights and a shrinking civic space, and to hold the authorities accountable for violations.

## **In light of the above, OIAD and the Observatory call on:**

- the Turkish authorities to:
  - Immediately put an end to all acts of judicial, administrative and any other forms of harassment against Eren Keskin and Güllistan Yarkin and all human rights defenders in Turkey, including for their advocacy regarding the recognition of the Armenian Genocide and redress for its victims;
  - Ensure that the İHD, its members and all human rights defenders and lawyers in Turkey can exercise their right to freedom of expression without undue restrictions, including in the context of the commemoration of the Armenian Genocide;
- International organisations, such as the United Nations, the European Union and the Council of Europe, and their Member States to:
  - Consistently monitor cases against human rights defenders and lawyers in Turkey, including by attending trials as observers and publicly reacting to developments in their support;
  - Monitor the situation of human rights defenders, lawyers and civil society in Turkey, and report on any unlawful restrictions and violations of their rights
  - Firmly condemn, in particular, any unlawful restrictions on the freedom of expression of human rights defenders, lawyers and other civil society actors in Turkey, publicly as well as in their diplomatic relations with the Turkish government and in international fora.

### **Establishing the facts**

**Investigative and trial observation missions** – Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed rigorous and impartial procedures to establish facts and responsibility.

Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1,500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

### **Supporting civil society**

Training and exchanges – FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

### **Mobilising the international community**

Permanent lobbying before intergovernmental bodies – FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them.

FIDH also takes part in the development of international legal instruments.

### **Informing and reporting**

Mobilising public opinion – FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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**TÉL. :** + 33 1 43 55 25 18 / [www.fidh.org](http://www.fidh.org)

Created in 1985, the World Organisation Against Torture (OMCT) works for, with and through an international coalition of over 200 non-governmental organisations - the SOS -Torture Network - fighting torture, summary executions, enforced disappearances, arbitrary detentions, and all other cruel, inhuman and degrading treatment or punishment in the world and fighting for the protection of human rights defenders.

### **Assisting and supporting victims**

OMCT supports victims of torture to obtain justice and reparation, including rehabilitation. This support takes the form of legal, medical and social emergency assistance, submitting complaints to regional and international human rights mechanisms and urgent interventions. OMCT pays particular attention to certain categories of victims, such as women and children.

### **Preventing torture and fighting against impunity**

Together with its local partners, OMCT advocates for the effective implementation, on the ground, of international standards against torture. OMCT is also working for the optimal use of international human rights mechanisms, in particular the United Nations Committee Against Torture, so that it can become more effective.

### **Protecting human rights defenders**

Often those who defend human rights and fight against torture are threatened. That is why OMCT places their protection at the heart of its mission, through alerts, activities of prevention, advocacy and awareness-raising as well as direct support.

### **Accompanying and strengthening organisations in the field**

OMCT provides its members with the tools and services that enable them to carry out their work and strengthen their capacity and effectiveness in the fight against torture. OMCT presence in Tunisia is part of its commitment to supporting civil society in the process of transition to the rule of law and respect for the absolute prohibition of torture.

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# International Observatory For Lawyers in Danger (OIAD)

Launched in 2016, the International Observatory for Lawyers in Danger (OIAD) is a joint initiative of the French National Bar Council (Conseil National des Barreaux) and the Barreau de Paris (both in France), the Consejo General de la Abogacía Española (Spain) and the Consiglio Nazionale Forense (Italy). The OIAD's primary objective is to protect lawyers threatened in the practice of their profession and to denounce situations that infringe the rights of the defence.

The OIAD works to complement defence rights mechanisms in collaboration with established networks, particularly those dedicated to human rights lawyers. With more than 40 bar associations, the OIAD is now a recognised international player defending lawyers at risk.

**E-mail:** [contact@protect-lawyers.org](mailto:contact@protect-lawyers.org) / [abogaciaenriesgo@abogacia.es](mailto:abogaciaenriesgo@abogacia.es)



**THE OBSERVATORY**

# Activities of the Observatory

The Observatory is an action programme based on the belief that strengthened cooperation and solidarity among human rights defenders and their organisations will contribute to break the isolation they are faced with. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims.

**With this aim, the Observatory seeks to establish:**

- > A mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- > The observation of judicial proceedings, and whenever necessary, direct legal assistance;
- > International missions of investigation and solidarity;
- > A personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- > The preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- > Sustained action with the United Nations and more particularly the Special Rapporteur on Human Rights Defenders, and when necessary with geographic and thematic Special Rapporteurs and Working Groups;
- > Sustained lobbying with various regional and international intergovernmental institutions, especially the Organisation of American States (OAS), the African Union (AU), the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, the International Organisation of the Francophonie (OIF), the Commonwealth, the League of Arab States, the Association of Southeast Asian Nations (ASEAN) and the International Labour Organisation (ILO).

The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by FIDH and OMCT: "Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments".

To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger.

**This system, called Emergency Line, can be reached through:**

E-MAIL: [alert@observatoryfordefenders.org](mailto:alert@observatoryfordefenders.org)

FIDH TEL: + 33 1 43 55 25 18

OMCT TEL: + 41 22 809 49 39







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