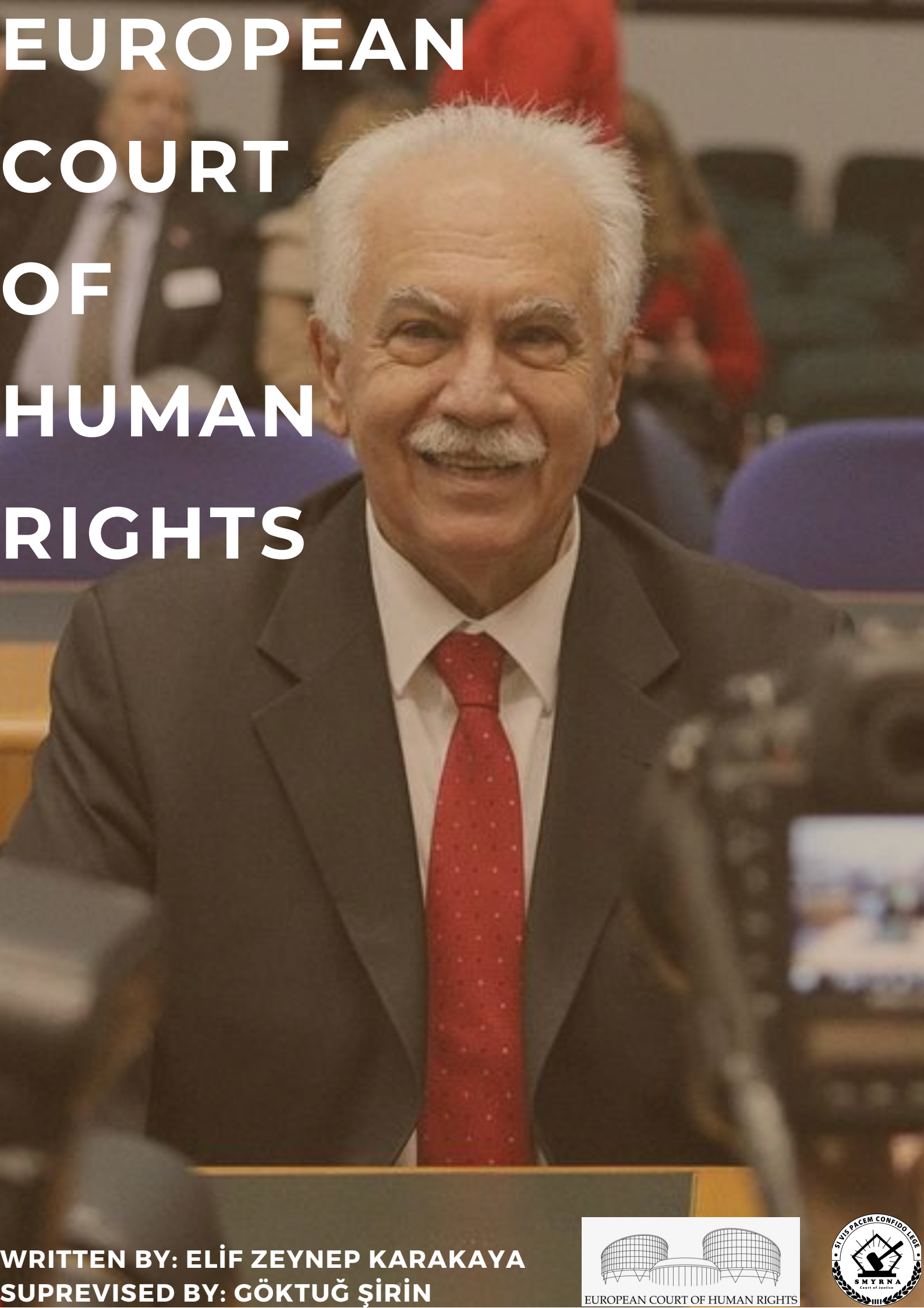
EUROPEAN COURT OF HUMAN RIGHTS



WRITTEN BY: ELİF ZEYNEP KARAKAYA
SUPREVISED BY: GÖKTUĞ ŞİRİN

EUROPEAN COURT OF HUMAN RIGHTS

SI VIS PACEM CONFIDO LEGE
SMYRNA
Court of Justice

LETTER

Dear Participants,

I am delighted to say welcome our new kind of justice simulations. My name is Elif Zeynep KARAKAYA and I am a third year law student at Izmir University of Economics.

It is an honour for me to introduce the case of Perince vs Switzerland case of Smyrna Court of Justice as under Secretary General of European Court of Human Rights .

Since Republic of Türkiye is a party to the European Convention on Human Rights and a member of the European Council, the jurisdiction of European Human Rights Court is accepted within the scope of the European Human Rights Convention, therefore, our lawyers have a right to apply to the European Court of Human Rights when there is a violation of fundamental rights guaranteed by both in the contract and constitution by judiciary organs of Türkiye. Due to this, I thought that I should include a case before the European Court of Human Rights in the committee.

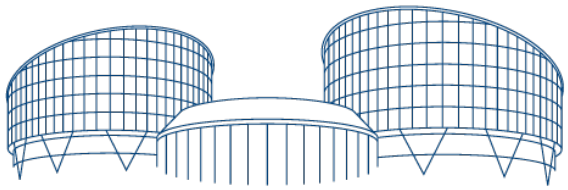
As it is known, the issue of whether a discourse can be evaluated within the scope of freedom of expression constitutes an important part of the files in the European Court of Human Rights. I am excited to be able to observe the perspectives of law school, political science student friends against freedom of expression, and their views on whether freedom of expression should be interpreted narrowly or broadly.

I wish all of you will enjoy being a participant of Smyrna Court of Justice event and you will improve yourself to best of your while preparing your defenses as lawyer, questions as lawyers and judges and making decisions as judges.

Before I end my letter, I would say sincere thanks to our Secretary General Göktuğ Şirin for his valuable effort, support and help to Academic team of Smyrna Court of Justice. Also, I would say great thanks to organization team of Smyrna Court of Justice.

If you have any questions, please do not hesitate to contact us.
Elif Zeynep KARAKAYA
Under Secretary General of European Court of Human Rights.

PART 1: INTRODUCTION OF THE EUROPEAN COURT OF HUMAN RİGHTS



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

European Court of Human Rights (ECtHR) is a human rights judicial body which is make a judgement regarding European Human Rights Convention when the provisions of it is violated by states that are members of European Council. European Court of Human Rights that is the regional human rights court is situated in Strasbourg, France. The decisions of ECtHR are binding for member states of Council of Europe.

The European Court of Human Rights has examined more than 10,000 cases since its establishment in 1959. Among them, there are a large number of cases regarding freedom of expression, and the European Court of Human Rights has ruled in most of its decisions that the decisions of the judicial organs of the member states violate the freedom of expression guaranteed in the convention.

Since 1998, people have a right to apply directly to the European Court of Human Rights to get a decision that their rights have been violated by judicial organs of European Council member states by using their right of individual application. Thanks to this, for the person whose rights have been violated by the member states, the ECtHR has become the sole, final and compulsory body of application after domestic remedies have been exhausted. In addition to these reasons, the ECHR's full-time work also enables it to gain an important role. This situation caused lecturers of faculty of law, lawyers, judges, prosecutors and law students of member states examine decisions of European Court of Human Rights carefully and write articles, organize seminars about it.

As council of Europe has 46 members which ratified European Convention on Human Rights -after Russian Federation was expelled from membership beacuse of its attack on Ukraine- the European Court of Human Rights has 46 judges, one from each member state. The basic principle that judges should be impartial and independent is also valid in the European Court of Human Rights, members do not represent their own country, they conduct their trials independently from their countries' position about case.

European Court of Human Rights makes judgment when individuals complain states' judicial organs violate their rights or member states of it complain other states in accordance with provisions of European Convention on Human Rights. After European Court of Human Rights makes decision that whether there is a violation of provison of convention or not member states must comply the judgment and act in accordance with the decision such as pay compensation, release from prison if necessary. Generally, member states obey the decisions of European Court of

Human Rights. Due to this Council of Europe does not prefer to impose any sanctions like exclusion from the Council of Europe to member states.

1. HISTORY OF ECtHR

Ten Western European countries that are Belgium, France, Luxembourg, the Netherlands, the United Kingdom, Ireland, Italy, Denmark, Norway, and Sweden created Council of Europe on 5 May, 1949. Their aim was to create a peaceful world order by means of law. Türkiye and Greece joined European Council 3 months later. Today, European Council reaches 46 members, like Armenia, Azerbaijan, Bosnia and Herzegovina, Germany, Switzerland, Ukraine. As it is known, Russian Federation was recently removed from the Council of Europe because of acts of its attacks against Ukraine. Removal of Russian Federation from European Council caused the lose of individual application to ECtHR when there is a violation of contractual rights by the judicial organs of the Russian Federation. To put it briefly, the Council of Europe today consists of 46 member states.

The reasons that pushed these ten states to establish a European Council in 1949 were the Second World War whose devastating effects ended in 1948 and the beginning of cold war period. Their aim was to make this kind of such a brutal process impossible through law.

The Council of Europe created declerations and institutions for monitoring human rights among its members. These were the legal basis of the Convention for the Protection of Human Rights and Fundamental Freedoms, commonly known as the European Convention on Human Rights which was signed on November 4, 1950, in Rome, and went into force on September 3, 1953. The Court is embedded in the institutional structure of the Council of Europe. Thanks to the European Court of Human Rights implementations of European Convention on Human Rights is monitored.

Thanks to articles from 19 to 51 of Convention for the Protection of Human Rights and Fundamental Freedoms the supervisory machinery which is called as European Court of Human Rights (ECtHR) was formed on January 21, 1959. Signing and ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) means that states promise to act in accordance with human rights and freedoms and not to violate them.

As it is stated in article 19 of the European Convention on Human Rights, a court ehich is permanent was established to ensure that the parties comply with the obligations in which the convention includes and the first judges of the court were appointed by the Council of Europe.

As it is written in the preamble of the European Convention on Human Rights, states that signed and ratified the convention respect rule of law, guarantee fundamental right and freedoms and act in accordance with human right when their judicial organs make a judgment.
Actually, it is clear that the reason why people who witnessed the world war two times and its devestating effects, cold war period and destructive effects of Nazism, Fascism used these expressions is to prevent possible human rights violations.

Over the years, the convention has undergone various revisions due to experiences and changing perspectives on human rights. These revisions are called as additional protocols and the convention has 13 additional protocols today.

Protocol no:11 has a great importance since the right of individual application is added to article 34 of the convention. Until this protocol was signed, individuals did not have the right to apply directly to the ECtHR. Firstly they had to apply the European Commission on Human Rights. If European Commission on Human Rights found the application to be able to go before the ECtHR, the file was sent to the ECtHR. The majority of the cases that have brought before the court since the day it was established have been realized after the acceptance of the individual application mechanism, which shows that the individual application is used effectively as envisaged. Individuals must apply to the ECtHR to seek their rights after exhausting their domestic legal processes.

Article 34 – Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

2. SOURCES OF ECtHR

i. The European Convention on Human Rights

The European Convention on human rights which was adopted in 1950 is a international treaty that is ratified by all member states' of Council of Europe. There are fundamental rights and freedoms that are considered to be protected within the jurisdiction of the ECHR. These rights are sacred and important that they will not be violated by any person or institution. For this reason it is aimed to prevent possible unlawfulness by judicial organs of member states in domestic law. Member states of European Council give up some sovereignty and judicial power for protecting the rights and freedoms which are mentioned in the European Convention on Human Rights through the European Court of Human Rights, which is a higher authority. After 1953 which was the date of its entered into force numerous protocols have been adopted which added basic rights and freedoms, also amended procedural rules like Protocol no: 11 that added indivudual application to court directly. Protocols are signed and ratified separately, so it is possible to see that not every state that has signed and ratified the contract has signed and ratified the protocol.

It contains basic, first generation human rights and freedoms which are civil and political rights instead of economic, social, or cultural rights.

Convention includes 59 articles divided into 3 sections.
a. The rights and freedoms are listed in Section 1 (Articles 1-18);
b. Section 2 (Articles 19–51) deals with the establishment of the Court as well as its duties and powers;
c. Section 3 (Articles 52-59) contains miscellaneous provisions concerning such issues as territorial application, reservations, denunciations, signature, and ratification (Equality Human Rights, 2017).

The substantive rights and freedoms which are secured by lost of constitutions and conventions guaranteed by the Convention are set out in Articles 2–14 of the Convention. They are:

– Article 2 Right to life;
– Article 3 Prohibition of torture;
– Article 4 Prohibition of slavery and forced labor;
– Article 5 Right to liberty and security;
– Article 6 Right to a fair trial;
– Article 7 No punishment without law;
– Article 8 Right to respect for private and family life;
– Article 9 Freedom of thought, conscience, and religion;
– Article 10 Freedom of expression;
– Article 11 Freedom of assembly and association;
– Article 12 Right to marry;
– Article 13 Right to an effective remedy;
– Article 14 Prohibition of discrimination.

In the context of Smyrna Courts of Justice we will intensly deal with freedom of expression which is guaranteed by constitution of Switzerland, constitution of Türkiye and European Convention on Human Rights.

In accordance with article 1 of the convention, states parties ensure that everyone within their jurisdiction enjoys the rights and freedoms described in chapter one. So, within the scope of article 1 of the convention, states undertake to provide individuals with all the rights and freedoms contained in the convention.

Moreover, as the convention is a text written 50 years ago, there have been many important changes in the human rights perspective since then. According to Article 32 of the Convention, interpretation is also within the scope of the Court's jurisdiction. It can be said that the interpretations of ECtHR makes the European Convention on Human Rights alive. The ECtHR states that within the scope of the interpretation of the contract, it has the authority to evaluate the provisions of the contract according to the changing and developing human rights perspectives and conditions. That is the ECtHR makes the contract a living text with its jurisprudence.

ii. The Protocols

After the European Convention on Human Rights came into force in 1953, some of the member states of the Council of Europe signed and ratified protocols which they pledged to protect a number of rights and freedoms, thus making them binding for themselves. Protocol No: 2, 3, 5, 8, 9, 10, 11, and 14 are Protocols have been signed by all contracting parties that amended convention proceedings and did not include any additional rights or freedoms.

The remaining Protocols which added and guaranteed new rights and freedoms, are as follows:

– Protocol No.1, which entered into force on 18 May 1954: protection of property, the right to education, and the right to free elections.

– Protocol No. 4, which entered into force on 2 May 1968: prohibition of imprisonment for debt, freedom of movement, the prohibition of the expulsion of nationals, and the prohibition of collective expulsion of aliens.

– Protocol No. 6, which entered into force on 1 March 1985, provides for the abolition of the death penalty but includes a provision to allow the Contracting Parties to prescribe the death penalty in their legislation in a time of war or of imminent threat of war.

– Protocol No. 7, which entered into force on 1 November 1988: procedural safeguards relating to expulsion of aliens, the right of appeal in criminal matters, the right to compensation for wrongful conviction, the right not to be tried or punished twice for the same offense, and equality between spouses.

– Protocol No. 12, which entered into force on 1 April 2005: created a free-standing prohibition of discrimination. Unlike Article 14 of the Convention, which prohibits discrimination in the enjoyment of “the rights and freedoms outlined in the Convention”, Protocol No. 12 prohibits discrimination in the enjoyment of “any right set forth by law” and not just those rights guaranteed under the Convention.

– Protocol No. 13, which entered into force on 1 July 2003: abolished the death penalty in all circumstances. Applicants should note that the Protocols mentioned above have not been ratified by

all the Contracting Parties. It follows that a complaint made under an Article of one of the Protocols against a State that has not ratified that Protocol will be declared inadmissible. The table of Dates of Entry into Force of the Convention and its Protocols reproduced in “Textbox i” above should be consulted.

It should be emphasized that the additional protocols have not been signed and ratified by all the contracting parties, therefore, indiciduals should check whether the state that they claim violates right and freedoms protected by the protocol has signed the protocol in question or not. If the state has not signed that protocol, their application will be declared inadmissible.

3. STRUCTURE

i. The Court

Structure of European Court of Human Rights is created by section II of the European Convention of Human Rights among Article 19 to 51. Articles between 19-51 is like the constitution of the court.

The Court has 46 members each from contracting states. Judges are chosen by the Parliamentary Assembly of the Council of Europe, which votes on a list of three candidates proposed by governments.

In order to handle a large number of cases simultaneously, the court is separated into five sections, or administrative bodies, each with its own judicial chamber. A President, Vice President, and number of judges are appointed to each part.

Judges of court serve 9 years which is called as one term and they can be re elected, and also their terms of office end when they reach to seventy years old. Judges serve on the Court in their individual capacities, not as representatives of any state. They are prohibited from engaging in any activity that would threaten their independence or impartiality.

According to article 26 of convention court can be formed in 4 different ways. These are single judge formation, commitee of three judges, chambers of seven judges, the grand cahmber consisting of 17 members.

a. Single Judge Formation

Depending on the information provided by the applicants, single judges examine the case against the court's admissibility criteria. Their decisions are final, they present the file they deem acceptable to the committee.

b. Committee of Three Judges

The committee consisting of three judges examines the merits of the file if issue is about well developed case law and takes its decisions unanimously. Also in committe ıt is reviewed the admissibility of application, it can be declared as inadmissible. It is a final decision.

c. Chambers of Seven Judges

It is made up of seven judges who rule on admissibility and merits for cases that have caused problems and have yet to be resolved, and a decision can be made by a majority. Chambers determine the great majority of the decisions of the Court. Each chamber also has the Section president and the national judge, who have the nationality of the State against which the application is filed.

In other words ıf no decision or judgment was made by a single judge and the committee, the chamber will decide on the admissibility and merits of individual applications. But in interstate cases, both admissibility and judgment on the merits will be decided by the Chamber assigned by the President. Each chamber has seven members from a particular section. Each chamber will consist of the Section's president and the judge elected in respect of the State concerned. If the case is not in the national judge's section, then the national judge shall sit as an ex officio member of the Chamber. Other five members of the Chamber will be designated by the section's president in rotation from among the members of the section. Members of the section who do not sit will be substitute judges.

Do not forget Pericek vs Switzerland case was first heard in Chambers of Seven Judges then the appeal portion of the file was heard before the grand chamber as Switzerland appealed the grand chamber. This issue will be discussed in more detail in the following parts of guide.

d. The Grand Chamber

In short ıt can be desciribed like consisting of 17 judges, it hears a small number of cases referred to it by an appeal from a chamber decision or abandoned by a chamber when the matter involves a significant or unusual issue. The Grand Chamber never accepts applications directly. The President and Vice-President of the Court, the five Section presidents, and the national judge are always present in the Grand Chamber.

In other words, Article 26 of the convention decsribes the structure of Grand Chamber. It includes seventeen judges. National judges (the judge elected in respect of the Contracting State) sit in cases concerning their country in the Grand Chamber as ex officio members.

In grand chamber there are the president of court, the vice president, the president of the chambers, elected judges, national judges. In addition to seventeen judges, there must be at least three substitute judges.

Submitting an Application to the Court

Rule 46 demands contracting parties or parties intending to bring an interstate application shall file an application to the Court’s registry. It is required to include
(a) the name of the Contracting Party against which the application is made;
(b) a statement of the facts;
(c) a statement of the alleged violation(s) of the Convention and the relevant arguments;
(d) a statement on compliance with the admissibility criteria (exhaustion of domestic remedies and the four-month rule) laid down in Article 35 § 1 of the Convention;

(e) the object of the application and a general indication of any claims for just satisfaction made under Article 41 of the Convention on behalf of the alleged injured party or parties;

(f) the name and address of the person or persons appointed as Agent; and accompanied by

(g) copies of any relevant documents and in particular the decisions, whether judicial or not, relating to the object of the application.

Principles

* Parties may be represented by a lawyer if they want. While lawyers are not necessary to file a complaint, they are required to represent the applicant at any hearing before the Court once the application is confirmed to be admissible.
* Usually, transactions are made through written proceedings, public hearings are rarely occurred.
* There is no fee for submitting an application. In addition, the applicant may request legal aid in terms of expenses that must be met in the next stages.
* Decisions of Court are published in English and Frech which are official languages of court

In analysing cases submitted before the court, there are two basic steps. The admissibility step is the first of these stages, and it determines whether the matter can be examined by the court. The major step, where the concerns are examined, is the second stage. The speed and duration of the proceedings will be determined by the nature of the case.

Admissibility

First of all, the court has to decide whether the application is admissible or not. This kind of decision can be made by a single judge, a three-judge committee, or a seven-judge chamber.

An application must meet the following requirements to be declared admissible:

* The use of all household remedies has been exhausted.
* Applications must be submitted within four months from the final domestic judicial decision. It is obligatory to apply to the court within 4 months after domestic remedies have been exhausted.
* Applications submitted after this 4-month period will be deemed inadmissible.
* A complaint brought against a signatory to the European Convention on Human Rights.
* The applicant was at a significant disadvantage.

If one of these criteria is missing in the application, the application will be deemed inadmissible. Therefore the court will not examine the merits. Inadmissibility decisions are final and cannot be appealed.

After the application is found admissible, the presiding officer notifies the respondent state. If application found acceptable, the president of the court gives time to parties for submitting their written opinions.

If the parties demand or the president of the court decides ex officio, a hearing which is oral can be held instead of getting a written defense. The motivation of the presiding judge determines the trial procedure

Hearings

Hearings are determined by the president of the court, The parties and their attorney at lawyers take turns and speak orderly. All judges may ask questions of those present before the court.

Hearings are open to the public unless there are exceptional circumstances. To give an example of exceptional cases, the best interest of the child and the privacy of private life can be mentioned. The court decides that whether the hearing is closed to the public or not.

Grand Chamber Procedure

The rules of procedure before the chambers also apply to the grand chamber. There is no difference in method.

Regardless of the type of application, the Grand Chamber has appellate jurisdiction on the applications.

There are two types for the jurisdiction of the Grand Chamber

First one is the "Chamber relinquishing its power in favor of the Grand Chamber" regulated under Rule 72.

A chamber might relinquish its power if there is an important question in the interpretation of the Convention or the protocols or if the outcome of the case is likely to be against established precedent. The second type of jurisdiction of the Grand Chamber is called "referral". Article 31 (a) of the Convention and Rule 73.1 of the Rules of the Court establishes appellate jurisdiction on the inter-state and individual application in three months by the applicants or the contracting state.

Rules of the Court require the case to raise a serious question affecting the interpretation or application of the Convention or the Protocols or the serious issue of general importance.
Thiscriterium shall be reviewed by a panel of five judges from the Grand Chamber.
Panel: shall examine the request solely based on the existing case file. It shall accept the request only if it considers that the case does raise such a question or issue. Reasons need not be given for a refusal of the request. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

Referral to the Grand Chamber is to be granted "if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto or a serious issue of general importance", the "discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known" to at least one of the parties is a reason for requesting revision of the judgment. Therefore, where a referral request is based on the discovery of such a fact, the Panel may decide to refuse referral but to transmit the party's observations to the original Chamber, which should, in turn, examine whether the conditions for revising its judgment are complied with.

The Panel declares inadmissible any referral requests which:
(a) challenge the Chamber's decision declaring a complaint inadmissible
(b) do not comply with the three-month rule set out in Article 43 § 1 of the Convention.

Usually, Grand Chamber hears applications if there is a new precedent being established, the section's judgment being contrary to established precedent or there is a serious issue of general importance. General practice suggests that inter-state applications are reviewed as credible for the Grand Chamber referral.

Merits

If there is no problem with admissibility in the application, the issue is allocated to one of the five divisions of the ECHR, and the complaint is sent to the opposing State. Following that, both parties have the opportunity to offer their findings to the Court, which may contain specific information requested by the Head of the Chamber or Division, as well as any other materials deemed relevant to the case by the parties. The court that will hear the case has the option of deciding on admissibility and merits separately, or it can decide on both if it notifies the parties.

Within three months of receiving the judgment of the Chamber, the parties to the dispute may request that the case be sent to the Grand Chamber for reconsideration. Requests for referral to the Grand Chamber are reviewed by a panel of judges, which determines whether the referral is suitable.

Judgments finding violations bind the states involved, and they are required to carry them out. The Committee of Ministers of the Council is in charge of overseeing the execution of judgments, especially ensuring that the amounts awarded by the Court to the applicants in compensation for damages they have suffered are paid.

This also includes reasonable satisfaction or monetary compensation, which is known as 'just satisfaction', when a court rules against a state and finds that the applicant was harmed

Decisions and Judgement

Considering the difference between a decision and a judgment, a decision is usually given by a single judge, a Committee, or a Chamber of the Court and it only concerns the admissibility stage of the case. However, when the admissibility and merits of an application are examined at the same time, as in the process of the Chamber, it will then become a judgment.

Judges may express their 'opposition views,' which include their reasons for disagreement, if they disagree with the majority opinion at the decision stage. They can also write a 'consensus view' if they agree with the majority but want to express their reasons, and these opinions can be found at the end of the judgment.

Effects on its Judgements and Enforcement

When the Court issues a judgment finding a violation, it sends the file to the Committee of Ministers of the Council of Europe, which advises the state concerned and the department in charge of enforcing judgments to determine how the judgment should be carried out and how to prevent future violations of the Convention. This can be achieved by a combination of general measures, such as legislative reforms, as well as individual measures, if necessary. Besides that, after a violation has been found, the state concerned must ensure that similar violations do not occur again, otherwise the court may order new judgments against them.

Jurisdiction

Individuals and nations may file complaints with the Court alleging violations of the European Convention on Human Rights, which primarily concerns civil and political rights.

Article 32 of the current redaction of the Convention defines the jurisdiction of the Court. According to Article 32(1) of the Convention, *'The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33 (inter-state applications), 34 (individual applications), 46 (referrals by the Committee of Ministers of the Council of Europe of problems of interpretation and execution) and 47 (requests by the Committee of Ministers for advisory opinions).'*

The complaints need to be about alleged violations of the Convention committed by a State Party to the Convention that have a direct and significant impact on the applicant. As of November 2018, the Convention had 47 signatories, including member states of the Council of Europe and the European Union. Some of these countries have also ratified one or more of the Further Protocols of the Convention, which provide additional protection.

On August 1, 2018, the European Court of Human Rights granted advisory jurisdiction under Protocol 16 to the European Convention on Human Rights. Protocol No. 16 broadens the jurisdiction of the Court, and allows the Court to issue advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or its protocols. As a result, it is possible to improve the interaction between the Court and state authorities, thus strengthening theimplementation of the Conventionin accordance with the subsidiarity concept

However, it should be noted that the requesting court or tribunal may only seek an advisory opinion in the context of a case that it is already considering. It must provide the Court with the relevant legal and factual background to the pending case, as well as explain the reasons for its request.

PART 2: HISTORY OF DISPUTE

The subject of the case is Doğu Perinçek's claim that the freedom of expression guaranteed by Article 10 of the European Convention on Human Rights had been violated by the Swiss government.

As will be discussed in more detail later, Doğu Perinçek stated that the Ottoman Empire did not commit genocide against the Armenians in 1915 in various cities of Switzerland which were Lausanne, Opfikon and Köniz in May, July and September 2005. He said that this was an imperialist lie and saying there was a genecide against Armenians did not match the facts. These are subjects of the sentence given against Perinçek by the Swiss Criminal Court, which is the subject of the ECtHR judgment.

In 2005, Doğu Perinçek, the Chairman of the Turkish Workers' Party, made three separate public statements in Switzerland on the Armenian genocide. First, during a press conference in Lausanne, he said: "Let me say to European public opinion from Bern and Lausanne: the allegations of the 'Armenian genocide' are an international lie." "The lie of the 'Armenian genocide' was first invented in 1915 by the imperialists of England, France and Tsarist Russia, who wanted to divide the Ottoman Empire during the First World War," said Perinçek.

Later during a public event in Zürich, he implicitly denounced the existence of the genocide by claiming that the "Kurdish problem and the Armenian problem were therefore, above all, not a problem and, above all, did not even exist." Then in September 2005, during a rally of the Turkish Workers' Party in Bern, Perinçek said: "even Lenin, Stalin and other leaders of the Soviet revolution wrote about the Armenian question. They said in their reports that no genocide of the Armenian people had been carried out by the Turkish authorities."

Perinçek's speeches were added so that it could be discussed in detail in the simulation. "Let me say to European public opinion from Berne and Lausanne: the allegations of the 'Armenian genocide' are an international lie. Can an international lie exist? Yes, once Hitler was the master of such lies; now it's the imperialists of the USA and EU! Documents from not only Turkish but also Russian archives refute these international liars. The documents show that imperialists from the

West and from Tsarist Russia were responsible for the situation boiling over between Muslims and Armenians. The Great Powers, which wanted to divide the Ottoman Empire, provoked a section of the Armenians, with whom we had lived in peace for centuries, and incited them to violence. The Turks and Kurds defended their homeland from these attacks. It should not be forgotten that Hitler used the same methods – that is to say, exploiting ethnic groups and communities – to divide up countries for his own imperialistic designs, with peoples killing one another. The lie of the 'Armenian genocide' was first invented in 1915 by the imperialists of England, France and Tsarist Russia, who wanted to divide the Ottoman Empire during the First World War. As Chamberlain later admitted, this was war propaganda. ... The USA occupied and divided Iraq with the Gulf Wars between 1991 and 2003, creating a puppet State in the north. They then added the oilfields of Kirkuk to this State. Today, Türkiye is required to act as the guardian of this puppet State. We are faced with imperialist encirclement. The lies about the 'Armenian genocide' and the pressure linked to the Aegean and Cyprus are interdependent and designed to divide us and take us hostage ... The fact that successive decisions have been taken that even refer to our liberation war as a 'crime of humanity' shows that the USA and EU have included the Armenian question among their strategies for Asia and the Middle East ... For their campaign of lies about the 'Armenian genocide', the USA and EU have manipulated people with Turkish identity cards. In particular, certain historians have been bought and journalists hired by the American and German secret services to be transported from one conference to another ... Don't believe the Hitler-style lies such as that of the 'Armenian genocide'. Seek the truth like Galileo, and stand up for it." Also he added that "The Kurdish problem and the Armenian problem were therefore, above all, not a problem and, above all, did not even exist ..." " ... even Lenin, Stalin and other leaders of the Soviet revolution wrote about the Armenian question. They said in their reports that no genocide of the Armenian people had been carried out by the Turkish authorities. This statement was not intended as propaganda at the time. In secret reports the Soviet leaders said – this is very important – and the Soviet archives confirm that at that time there were occurrences of ethnic conflict, slaughter and massacres between Armenians and Muslims. But Turkiye was on the side of those defending their homeland and the Armenians were on the side of the imperialist powers and their instruments ... and we call on Berne, the Swiss National Council and all parties of Switzerland: Please take an interest in the truth and leave these prejudices behind. That is my observation, and I have read every article about the Armenian question and these are merely prejudices. Please leave these prejudices behind and join (??), what he said about these prejudices, and this is the truth: there was no genocide of the Armenians in 1915. It was a battle between peoples and we suffered many casualties ... the Russian officers at the time were very disappointed because the Armenian troops carried out massacres of the Turks and Muslims. These truths were told by a Russian commander ..."

Besides, Perinçek handed out copies of a tract he had written, entitled "The Great Powers and the Armenian question", in which he denied that the events of 1915 and the following years had constituted genocide.

In 2005, Switzerland-Armenia Association filed a law suit against Perinçek for 'publicly denying the Armenian genocide'. The Lausanne Police Court took on the investigation of Perinçek for racial discrimination by means of denying the 'Armenian genocide'. In the trial, Perinçek requested an investigation on the alleged factuality of the 'Armenian genocide'. The Lausanne Police Court, however, refused such an investigation by attesting a consensus on the factuality of the 'Armenian genocide' in the Swiss society. It also alleged a wider consensus on this matter by referring to various parliamentary acts, legal publications, statements of Swiss federal and cantonal political authorities, and the resolutions of the Council of Europe and the European Parliament.

Notably, the Lausanne Police Court claimed that the ‘Armenian genocide’ was comparable to the Jewish Holocaust. Eventually, the Lausanne Police Court ruled that Perinçek’s speeches were not contributions to historical debate and his rejection of the ‘Armenian genocide’ was conditioned by a racist intention.

In March 2007, the Lausanne District Police Court of Switzerland found him guilty of violating Article 261 bis § 4 of the Criminal Code, which imposes imprisonment up to three years or a fine against “any person who publicly denigrates or discriminates against a person or group of persons on the grounds of their race, ethnic origin or religion in a manner that violates human dignity, whether through words, written material, images, gestures, acts of aggression or other means, or any person who on the same grounds denies, grossly trivialises or seeks to justify a genocide or other crimes against humanity . . .” The court sentenced Perinçek to pay 100 Swiss francs for 90 days, a sum of 3,000 Swiss francs, replaceable with 30 days imprisonment, and 1,000 Swiss francs to the Switzerland-Armenia Association for its non-pecuniary damages.

The Lausanne Criminal Court of Peace found the plaintiff was right and decided that Doğu Perinçek was guilty of racial discrimination, which defines the 4th paragraph of Article 261 of the Swiss Penal Code. In its reasoned decision, the court noted that the Armenian Genocide was a "historical event" accepted both in Switzerland and generally. In addition, the Council of Europe did not recognize such a genocide, but it was shown as if it did.

Perinçek brought the judgment of the Lausanne Police Court to the Criminal Cassation Division of the Vaud Cantonal Court. In June 2007, the Criminal Cassation Division of the Vaud Cantonal dismissed Perinçek’s appeal, finding that he had denied the Armenian genocide, which has been recognized as a “proven historical fact” by the Swiss legislature. Court said that "the Armenian genocide, just like the Jewish genocide, was defined as an obvious and well-known historical phenomenon" by the legislator during the adoption of the 4th paragraph of Article 261 of the Criminal Code.

In December 2007, the Federal Court as the last available Swiss legal authority denied his appeal from that judgment. The Federal Court added that Perinçek was aware of the Swiss law that criminalized the denial of Armenian genocide hence his claim that his criminal conviction was not unforeseeable was not correct. As it is known, individuals should be able to foresee whether they will be subject to any sanctions as a result of their actions, this is one of the basic principles of the law. The Court claimed ‘denial of the genocide’ or presenting the Armenians as aggressors constituted an offense to the Armenians. The court added that thanks to Article 261, the honor of Armenians is protected. The court stated that Article 261 bis § 4 of the Criminal Code was enacted when Switzerland acceded to the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (RS 0.104). During the parliamentary debates, the National Council’s Legal Affairs Committee proposed inserting the following wording in Article 261 bis § 4 of the Criminal Code: ‘[...] or who on the same grounds grossly trivialises or seeks to excuse genocide or other crimes against humanity’

All of these courts stated that the Armenian genocide was similar to the Jewish Holocaust.They stated that the justification of Article 261 in the parliament is to prevent all racist expression without seeking for any legal acceptance. The Courts expressed that there was no need to refer to works of historians to verify the factuality of the ‘Armenian genocide’.

Perinçek brought a case to the European Court of Human Rights (ECHR) against Switzerland when there is no domestic remedy to be declared innocent. The appellant relies on the freedom of expression enshrined in Article 10 of the ECHR, in connection with the cantonal authorities' interpretation of Article 261 bis § 4 of the Criminal Code.

European Court of Human Rights evaluated whether the criminal proceedings against Perinçek violated his freedom of expression or not. The details of this subject will be discussed in the next paragraphs.

In this simulation, we will examine the Perinçek Swiss decision of the Great Chamber rather than the decision of the 2nd Chamber of the ECtHR. In both of these cases, the defenses of the parties are the same, the only difference is the chamber where the case is heard.

Since we will examine the case before the grand chamber, the perinçek vs switzerland decision given by the 2nd Chamber of the ECtHR will be briefly mentioned, and then the judgment of the grand chamber, which is the decision that needs to be examined detailed for this simulation, known as the appeal body of the European Court of Human Rights.

In June 2008, Perinçek filed an application in the European Court of Human Rights. Among other grounds, he alleged that the Swiss courts had wrongfully breached his right to freedom of expression under Article 10 of the European Convention on Human Rights by convicting him for denial the Armenian genocide.

The applicant, Perinçek, argued that the Swiss criminal court's judgment against him, which was approved by the higher courts, violated the freedom of expression stipulated in Article 10 of the Convention.

The Swiss government, on the other hand, argued that this discourse constitutes a crime according to paragraph 4 of Article 261 of the Swiss Criminal Code and that the sentence given as a result of the trial did not violate Article 10 of the Convention. He complained that Switzerland unjustly restricted his freedom of expression. Swiss Criminal Code Article 261bis, paragraph 4 does not refer to the Armenian genocide, Perinçek's conviction amounted to the disregard of the principle of nulla poena sine lege (no penalty without a law).

Switzerland claimed that ECHR's task was not to replace the decisions of national courts but to examine their decisions with respect to Article 10 of the European Convention of Human Rights. By emphasizing that this article was legislated on September 25th, 1994 by a referendum, Switzerland asked the ECHR to respect the will of the Swiss people. The ECHR decided to hear Perinçek v. Switzerland as a case on freedom of expression in the meaning of Article 10 and Article 17 of the European Convention of Human Rights. Also, Switzerland claimed that Perinçek acted intentionally and he is a provocateur. He has displayed a certain arrogance towards the Court in particular, and towards Swiss laws in general. Doğu Perinçek's motives appear to be racist and nationalistic.

Government of Türkiye and Armenia intervened to the case as a third party. The Chamber concluded that the reasons given by the domestic court of Switzerland were insufficient to justify his conviction.

The ECHR stated that it was not possible to speak of a general consensus on the ‘Armenian genocide’, also by drawing attention to different opinions even within the political bodies in Switzerland

On 17 December 2013, The ECHR judged that Swiss authorities had “overstepped the margin of appreciation afforded to them in the present case, which had arisen in the context of a debate of undeniable public interest” and violated Perinçek’s right in the meaning of the Article 10 and Article 17 of the European Convention of Human Rights, by five votes to two. The ECtHR ruled that there was no “pressing social need” for Perinçek’s conviction in a democratic society and therefore. In other words, it held that in light of all circumstances, the conviction neither amounted to a “pressing social need” nor “necessary in a democratic society.”

The statement of ECtHr is the ECHR “It is even doubtful that there could be a ‘general consensus’, in particular a scientific one, on events such as those that are in question here, given that historical research is by definition open to debate and discussion and hardly lends itself to definitive conclusions or objective and absolute truths. Genocide’ is a well-defined legal concept… for the violation to be described as genocide, the members of a targeted group must not only be chosen as a target because of their membership in this group, but it is necessary at the same time that the actions committed be accomplished with the intention of destroying, in whole or in part, the group as such (dolus specialis). It is thus a very strict legal concept, which is, moreover, difficult to prove. The Court is not convinced that the ‘general consensus’ to which the Swiss courts have referred, to justify the conviction of the applicant, can bear on these very specific points of law (emphasis added). The ECHR argued that the Armenian case was “clearly distinct from cases bearing on denial of the Holocaust crimes” because Holocaust was an established fact both through historical research and international courts.

The ECHR admitted that Perinçek’s statements such as his thesis of “international lie” were provocative. Yet, the ECHR stated that ideas, which are upsetting, shocking or disturbing including those about historical events were also under the protection of the Article 10 of the European Convention of Human Rights. The dismissal of the legal characterisation of the events of 1915 was not likely to in and of itself to incite hatred against the Armenian people”. Thus, the court concluded that Perinçek's statements did not damage the protection of the honor and dignity of a race, which is included in the justification of Article 261 of the Swiss Penal Code. Moreover, considering that other nations did not make any law to protect the Armenians’ honor and dignity the ECtHR found the defense made by Switzerland as an urgent social need to make a law and to make a decisin in accordance with article 261 of penal code in this case is unsopported. The ECtHR has stated that it is only possible for action to be considered genocide with the existence of a court decision. “Governments that have acknowledged the Armenian genocide – the vast majority of them through their parliaments – have not deemed it necessary to adopt laws laying down criminal punishment, since they are aware that one of the main aims of the freedom of expression is to protect minority points of view likely to encourage debate on questions of general interest that have not been fully established”.

Moreover, the 2nd Chamber of the ECtHR gave a decision of partial acceptance and partial rejection, declaring the conclusion that Perinçek's freedom of expression had been violated, but there was no need to award compensation.

In conclusion, the ECHR judged as follows: …the Court believes that the reasons put forward by the [Swiss] authorities to justify the sentencing of the applicant are not relevant and, considered as a whole, insufficient. The domestic courts have not, in particular, proved that the sentencing of the applicant responded to a "pressing social need" or that it was necessary, in a democratic society, to protect the honour and feelings of the descendants of victims of atrocities dating back to 1915 and thereafter. The domestic courts therefore exceeded the limited margin of assessment that it enjoyed in the case in hand, which is part of a debate which is of specific interest to the public.

On 17 March 2014, Switzerland requested the ECHR Grand Chamber to take the case. On 2 June 2014, Grand Chamber accepted this request. This time, in addition to the Turkish Government, French and Armenia governments and eight non- governmental organizations also intervened as third parties. Only Armenian and Türk governments were permitted to make an oral presentation in the public hearing. The hearing was held on 28 January 2015, which was broadcasted on internet on the same day.

PART 3:

RELEVANT DOMESTIC LAW

Article 261 bis of the Swiss Criminal Code

"Any person who publicly stirs up hatred or discrimination against a person or group of persons on the grounds of their race, ethnic origin or religion;

any person who publicly disseminates an ideology aimed at systematic denigration or defamation of the members of a race, ethnic group or religion;

any person who with the same objective organises, encourages or participates in propaganda campaigns;

any person who publicly denigrates or discriminates against a person or group of persons on the grounds of their race, ethnic origin or religion in a manner that violates human dignity, whether through words, written material, images, gestures, acts of aggression or other means, or any person who on the same grounds denies, grossly trivialises or seeks to justify a genocide or other crimes against humanity;

any person who refuses to provide a service to a person or group of persons on the grounds of their race, ethnic origin or religion when that service is intended to be provided to the general public;

shall be punishable by a custodial sentence of up to three years

APPLICABLE LAW

Eurpean Convention on Human Rights

ARTICLE 17 Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

-The court conducts the examination in terms of Article 17 in terms of those who want to participate in the case.

ARTICLE 10 Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

In doctrine, generally freedom of expression defined as the ability of an individual or group of individuals to freely express their opinions, thoughts, ideas, and emotions on a wide range of topics without fear of government repression.149 Freedom of expression requires a free, uncensored and unrestricted press that can comment and enlighten the public on public matters without fear of censorship or restriction.

The court examines the merits within the scope of Article 10, especially in terms of paragraph 2.

ARTICLE 16 Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

-Since Perinçek is not a Swiss citizen, it should be evaluated whether the activities that Perinçek participated in were political nature or not.

ARTICLE 7 No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

ARTICLE 41 Just satisfaction

If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

PART 4: CLAIMS

CLAIMS OF CLAIMANT PARY -PERINCEK

“Perinçek claims that the freedom of expression which is protected in Article 10 of the Convention has been violated. As a justification, he stated that, as stated below, the Armenian genocide has not accepted in the international arena, for example, in the UN, for this reason, there may be different opinions on this issue, as there are different interpretations of historians. Moreover, the court cannot act like a historian. He also argued that the justification of Article 261 should be examined. He can reached a conclusion based on concrete facts.”

1. The applicant alleges thath when it drew up Article 261 bis of the Criminal Code, Parliament only had in mind the genocide of the Jews in the Second World War. The defence also argued that to be entitled to the protection of Article 261 bis, a genocide must necessarily be recognised as such by an international court of justice.

2. The applicant allegs ıt stressed that the Armenian genocide had not been universally recognised, in particular not by Türkiye, and that certain historians shared Doğu Perinçek’s opinions.

3. The applicant allegs ıt does not have to transform itself into a self-taught historian. The courts rule on the facts and the law.

4. The applicant the applicant allegs the genocides acknowledged by Swiss criminal law are confined to those recognised by an international court of justice.

5. The appellant also argues that it would be contradictory for Switzerland to acknowledge the existence of the Armenian genocide while supporting the establishment of a panel of historians in the context of its relations with Türkiye. This, in his submission, shows that the existence of genocide is not established.

6. The appellant does mention that a number of States have refused to recognise the existence of an Armenian genocide.

7. The appellant further relies on the freedom of expression enshrined in Article 10 of the ECHR, in connection with the cantonal authorities’ interpretation of Article 261 bis § 4 of the Criminal Code.

CLAIMS OF RESPONDENT PARTY - SWITZERLAND

“Switzerland government notes that there is no dispute as to the facts since Doğu Perinçek admits to denying the Armenian genocide. He therefore comes within the scope of Article 261 bis of the Criminal Code, under which he is charged. Doğu Perinçek acknowledges that massacres took place but justifies them in the name of the laws of war and maintains that the massacres were perpetrated by the Armenian as well as by the Türk side. He also acknowledges that the Ottoman Empire moved thousands of Armenians from the borders of Russia towards what are now Syria and Iraq, but denies totally the genocidal nature of these deportations. He maintains that at most these deportations reflected security needs. He has even claimed that the Ottoman troops were acting to protect the Armenians in the conflict between the Ottoman Empire and Russia. Moreover, he has often stated in public that the Armenians, or at least some of them, were traitors, as they were allied to the Russians against the troops of the Empire. The defendant has received varying degrees of support for his opinions from the historians whom he called to give evidence to the court. The historians called by the civil party have disagreed totally with him. In this context, it should be noted that in response to Doğu Perinçek’s comments, the Switzerland-Armenia Association filed a complaint against him on 15 July 2005. The association’s civil-party claims will be considered later.”

1. Switzerland government notes that that a genocide be widely recognised and that it is for the Court to take formal note of this international recognition.

2. Switzerland government notes that Armenian genocide is a well-known fact, whether or not it has been recognised by an international court of justice.

3. Switzerland government notes that National Council of Switzerland has approved a non-binding parliamentary motion [postulat] recognising the genocide (the de Buman motion). et it was this same Federal Council that expressly cited the Armenian genocide in its dispatch of 31 March 1999 on the Convention on the Prevention and Punishment of the Crime of Genocide, which was to serve as the basis of the current Article 264 of the Criminal Code criminalising genocide (Feuille fédérale [FF – Federal Gazette], 1999, pp. 4911 et seq.)

All these were stated in the court to show that the Swiss government's penal code, article 261, while passing through the parliament, aimed to punish not only the acts that are qualified as genocide in the international area, but also the defense of acts that are recognized as genocide by their own government.

4. Switzerland government notes that Doğu Perinçek acted intentionally. This amounts to asking whether he could have believed, in good faith, that he was not acting wrongfully, in other words that he was not denying the obvious when stating, on no fewer than three occasions, that the Armenian genocide had not existed, and that it was an ‘international lie’. The defendant is a doctor of laws. He is a politician. He describes himself as a writer and historian. He is aware of the arguments of those who disagree with him. He has quite simply chosen to ignore them and proclaim that the Armenian genocide never took place. Doğu Perinçek cannot therefore claim, or believe, that the genocide did not exist. Moreover, as the Public Prosecutor stated in his address, Doğu Perinçek has formally stated that he would never change his position, even if a neutral panel should one day conclude that the Armenian genocide did indeed take place. It can be concluded, without question,

that for the defendant genocide denial is, if not an article of faith, at least a political slogan with distinct nationalist overtones.

5. Switzerland government notes that appellant has not denied the existence either of massacres or of deportations which cannot be categorised, even if one exercises restraint, as anything other than crimes against humanity. That shows there are other crimes that Ottoman Empire did against Armenians with genocide.

It is also necessary to mention the words of the parties, especially in front of the grand chamber, in addition to the claims that we have mentioned above.

Perinçek and his lawyers emphasized that freedom is the basis of the case and that ensuring the minorities can express their views is freedom of expression,because expressing the opinion of the majority is already protected in every administration. In short, he stated that the minorities' freedom of expression, which is a part of human rights, means that not afraid to express his or her opinions, and that is related to the fact that he or she is not investigated for her speech. Perinçek also reminded the basic legal principle that freedoms must be interpreted bradly, restrictions must be interpreted narrowly.

Perinçek and his lawyers once again stated that they did not see the events of Armenians duri world war 1 as genocide

Swiss government mention that Article 261bis of the Swiss Criminal Code caused many debates in Switzerland and finally it was put into force after a referendum in which 54.6% of the voters voted for the legislation which shows general will of a citizens of switzerland. Spokesperson of Switzerland also emphasized the Swiss tradition of democracy as another reason of the necessity of non-interference of the international courts to the national court judgements. As explained above, states and non-state organizations were involved in the proceedings in the grand chamber, while the grand chamber only gave Turkey and Armenia the right to speak before the court. Attorney at law of Türkiye highlighted that neither Switzerland recognizes the 1915 events as genocide nor had Swiss courts made a judgement on that issue. Also, he rejected the alleged identity between the Jewish Holocaust and the 'Armenian genocide' by recalling that the former is an established historical fact that was also determined by a valid international court

Spokesperson of Armenia emphasized that theArmenia Government perceived the case not as a trial on freedom of speech and the legitimate limitation of this freedom, but as aplatform to decide about the character of the 1915 events.

Perinçek side stated that these speeches of the Armenian government had nothing to do with the case and that the main issue, which is the compliance of the sentence given by the Swiss judicial organs with human rights, should be discussed.

Perincek's sides said that argued that criminal law shall not be dependent on the population's comprehension or incomprehension of certain legal terms.

PART5 : MERITS OF THE CASE

There are 6 questions that are expected to be discussed in the case.

These:

1. How should freedom of expression be defined according to the previous decisions of the ECHR, its well-established case law and human rights doctrine?

2. Is freedom of expression an inviolable right? Or is it possible to set a limit in order to protect a higher right?

3. If we accept the freedom of expression as a limitable right, what will be the limits of this limitation? In other words, if it is possible for certain expressions of people to be considered as a crime, in which area should we say that the person uses his right or in which are should we say that the expression of a person constitutes a crime? discuss on some concrete criteria.

4. As it is known, the Swiss court accepted the existence of genocide and conducted a trial based on it. The Grand Chamber of the ECtHR briefly included this issue in its decision. What are the legally necessary concrete conditions for an act to be considered genocide legally?

5. In the concrete case, the events of Ottoman Empire did against the Armenian people could be accepted as genocide when the legally valid definition of genocide and other international court decisions are examined?

6. If it is possible for a person's speech to be considered a crime under the penal code, is it fair that the punish a person with imprisonment in addition to a judicial fine? Evaluate the fairness to be punished the speech of a person by liberty binding punishment regarding modern criminal law principles. You can use decisions of all courts like Constitutional Courts of Türkiye, Switzerland, Germany, Armenia, France and so on or International Courts Decisions or doctrinal view of lecturers.

PART 6: IMPORTANCE OF THE CASE

As it is known, the issue of whether a speech can be evaluated within the scope of freedom of expression constitutes an important part of the files in the European Court of Human Rights. The case of penalizing a person's speech by the states parties has often been evaluated by the European Court of Human Rights as a violation of freedom of expression.

Unlike other crimes, the discretion of the judge is important in solving the problem of whether a person's speech is a offense of libel or a crime of insulting a part of the public with religious or ethnic motives. For example, the crime of deliberate killing occurs with the existence of more concrete facts. For all these reasons, I wanted to include in the committee a decision made by the European Court of Human Rights regarding the violation of freedom of expression.

I am excited to be able to observe the perspectives of law school, political science student friends against freedom of expression, and their views on whether freedom of expression should be interpreted narrowly or broadly. As known the principle of broad interpretation for freedoms and narrow interpretatioan for limitations is one of the basic rules in law, Thanks to this committee we will be able to observe the evaluation processes of this principle among young people on a concrete case will be a mini indicator of how judges, lawyers and politicians will draw the framework for this in the future.

In this Court of ours we will be focusing on the Perinçek v. Switzerland case in which the Grand Chamber of European Court of Human Rights decided that Switzerland violated Perinçek's freedom of expression in 2015. Court will be discussing the legal questions that are content of freedom of expression on the basis of European Convention on Human Rights, limits of restrictions imposed on freedom of expressions basing on human rights perspective, legal definition of defamatory allegations or deragatory expression and much more. The process of the case up to the Grand Chamber of the European Court of Human Rights and the problems to be discussed before the Grand Chamber will be discussed in the following parts of the article.

In short in this committee, the definition and scope of freedom of expression, whether the states party to the European Convention on Human Rights can make a restriction on freedom of expression or not, and also this restriction can be subject to a prison sentence in the context of criminal law, ıf possible, what are the limits of this limitation on freedom of expression, which is one of the that is protected as fundamental rights and freedoms by European Convention on Human Rights.

What conditions should exist for a person to be exposed to imprisonment and/or a judicial fine for his speech is one of the most important issues to be discussed ina legal way.

According to article 261, paragraph 4 of the Swiss penal code, racial discrimination is punishable by imprisonment and a judicial fine. It is discuused that saying the Ottoman Empire did not commit a crime of Armenian genocide can be considered within the scope of the crime in swiss penal code article 261 of the relevant law or not be punished in accordance with article 10 of the european human rights convention within the scope of this committee. The question of whether this decision, which was given by the Swiss criminal court and approved by the high court, is unlawful and violates Perinçek's right, is the main question of the judges who will take part in the case and it will generate discussions.

As it is known, there is no thought crime in the sense of criminal law, that is, a person cannot be punished purely for his thoughts. However, if this expression of thought is insulting to a certain person, race or religious group, it is possible to be punished. The aim of this committee is to be made the distinction between purely thought or offense of libel concretely by the judges in the committee.

While discussing all these, you can argue before the court what is necessary for an act to be considered genocide by law, elements of it, the concrete conditions put forward by international judicial organs, organizations. To prove your idea you can look at the defitinition of genocide in which be found in the Convention on the Prevention and Punishment of the Crime of Genocide by United Nations.

In addition to these of course, since it constitutes the subject of the concrete event, whether such an act of genocide against the Armenians by the Ottoman Empire acted or not can be opened to discussion by the lawyers and judges attending the conference with its legal dimension. However it should not be forgotten that the main topic of the conference is the issues mentioned above, this topic should not cover a large part of the discussions in the conference.

To reiterate, the main issue that is needed to be discussed at the conference is evaluating freedom of expression with the above mentioned aspects and whether the expression in question, which is seen as crime by swiss criminal court by refferring the article 261 of Swiss penal code will be considered as a speech in which a scope of freedom of expression or not.

BIBLIOGRAPHY

Case Law:

Perincek vs Switzerland case at 2nd chamber

Perincek vs Switzerland case at grand chamber

Perincek's crimal case at The Lausanne Police Court

Perincek's criminal case at Lausanne District Police Court

Perincek's criminal case ar The Lausanne Criminal Court of Peace

Perincek's criminal case at Criminal Cassation Division of the Vaud Cantonal Court

Perincek's criminal case Federal Court

Legislation:

Swiss Penal Code Article 261bis on racial discrimination

European convention on human rights article 10

European convention on human rights article 17

European convention on human rights article 6/7/41

Charter of Fundamental Rights of the European Union

Websites and articles:

Echr.coe.int, 2022

50Questions of ECtHR (https://www.echr.coe.int/Documents/50Questions_ENG.pdf)

Ijrcenter.org, 2022 (https://ijrcenter.org/european-court-of-human-rights)

A Brief History Of The European Court Of Human Rights

'European Convention On Human Rights | Summary, History, & Facts

European Court Of Human Rights (https://structurae.net/en/structures/european-court-of-human-rights)

European Human Rights System - Research Guides

A look at the Perinçek vs Switzerland Case: Examination of a Lawsuit To Understand the Current State of the Armnian- Turkish Dispute and Prospective Developments

European Court of Human Rights, Press Release issued by the Registrar of the Court 370

European Court of Human Rights, Press Release issued by the Registrar of the Court 158

European Court of Human Rights, Matter of Perinçek v. Switzerland, Application no. 27510/08

Pulat Tacar, İnsan Hakları Mahkemesi'nde Doğu Perinçek-İsviçre Davası