

FACTS AND COMMENTS

(OLAYLAR VE YORUMLAR)

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Abstract: *This article examines the adoption of a law on the punishment of denial of Armenian genocide in the French National Parliament and the Senate, and it being sent to the French Constitutional Council, also Turkey's attempts to prevent the adoption of this law as well as the impact of this law on Turkish-French relations.*

Keywords: *Turkish-French relations, Punishment of those who deny the Armenian genocide, Abdullah Gül, Recep Tayyip Erdoğan, Ahmet Davutoğlu, Eğemen Bağış, Nicolas Sarkozy, Alain Juppé, Valérie Boyer, Patrick Devedjian, Serge Sarkisian, Edward Nalbandyan*

Öz: *Bu yazı, Ekim-Aralık 2011 ve Ocak 2012 tarihlerinde Fransa'da Ermeni soykırımı iddialarını reddedenlerin cezalandırılmasına dair Fransız Millet Meclisi ve Senatosunda bir kanun kabul edilmesini, bu kanunun Fransız Anayasa Konseyine gönderilmesini, ayrıca Türkiye'nin bu kanunu önleme çabalarını ve bu olayın Türkiye-Fransız ilişkilerine etkisini incelemektedir.*

Anahtar Kelimeler: *Türkiye-Fransa İlişkileri, Ermeni Soykırımını reddedenlerin cezalandırılması, Abdullah Gül, Recep Tayyip Erdoğan, Ahmet Davutoğlu, Eğemen Bağış, Nicolas Sarkozy, Alain Juppé, Valérie Boyer, Patrick Devedjian, Serj Sarkisyan, Edward Nalbantyan*

Concerning the Armenian Question, the most significant development taking place in the last three months of 2011 and the first two months of 2012 has been the adoption of a law in France which penalizes those denying the Armenian genocide allegations. This law has first been adopted on 22 December 2011 at the French National Assembly and then in the Senate on 23 January 2012, but by indicating that this law particularly violates freedom of expression, 71 members of parliament and 77 senators have appealed to the French Constitutional Council to repeal the law.

Due to the intensity and significance of the events experienced regarding this law, we are dedicating our Facts and Comments article in this issue of our journal entirely to this matter.

1. Introduction

Together with Turkey's EU membership, the Armenian genocide allegations continue to be the primary issue in Turkish-French relations.

French Armenians who are in a psychological need of opposing and relentlessly struggling against Turkey, have then started requesting the punishment of individuals denying the genocide allegations for no apparent reason.

France has been one of the first countries which addressed the claims for the recognition of the Armenian genocide allegations. However, compared to other countries, rather than as a statement or a declaration, addressing these allegations in the form of a law in order to increase its significance has caused this recognition to be delayed by several years. Eventually in January 2001, this recognition has been gained with the adoption of a law consisting

of one sentence, "France publicly recognizes the Armenian Genocide of 1915". This recognition has caused tensions for some time within Turkey-France relations.

Adoption of this law by the French has constituted a model for some other member states of the European Union. Within this framework, the parliaments of the Netherlands (2004), Slovakia (2004), Poland (2005), Lithuania (2005) and Germany (2005) have been inspired from the French precedent and the reactions of Turkey not creating any results in adopting similar resolutions which recognize the genocide allegations. The situation is the same with a similar resolution adopted by the Swiss Parliament (2003) which is a not a member of the European Union.

Normally, the law of 2001 should have pleased the French Armenians. However, the French Armenians who are in a psychological need of opposing and relentlessly struggling against Turkey, have then started requesting the punishment of individuals denying the genocide allegations for no apparent reason. As a result of the Armenians' pressures, the French National Assembly has adopted in 2006 a bill on this issue. The French Government openly opposing this bill have somewhat prevented this incident from negatively affecting relations between the two countries.

In order for this bill to become a law, it had to be ratified by the French

Senate. However, the Senate has not brought the bill to its agenda for five years. Rather than the objections of Turkey, the main reason for this has been the intellectuals in France, mainly well-known historians, not approving the judgment of historical events and punishment of individuals through laws. Upon the insistence of the Armenians, the bill was sent to the Senate in May 2011, but has been found by the Laws Commission to be in contradiction with the Constitution and the bill has been rejected without further discussion¹.

It could be understood that the personal initiative of President Sarkisian played a role in the rejection of the bill². France, being one of the main obstacles in Turkey's membership to the EU, preferred not to disturb this country further, whose cooperation was necessary for its Middle East policy, an issue of internal affairs like the Armenian Question.

2. President Sarkisian's Change of Policy and His Visit to Armenia

After the Socialists gained the majority, although by a narrow margin, in the by-elections of the Senate in September 2011 and then the former General Secretary of the Socialist Party François Hollande became the Socialist Party candidate for President of France and stated that if elected, he will call for the bill rejected in the Senate to be readdressed, Sarkozy who was unable to receive good results from public opinion polls regarding Presidential elections to be held in April 2012, felt it necessary to urgently review his approach in regards to the Armenian Question.

President of Armenia Serge Sarkisian had conducted a business visit to France on 28-29 September 2011. Approximately a week after this visit, President Sarkozy had visited Armenia. This act has almost never been seen before, because unless there is an urgent situation, generally presidents conduct a return visit years later. It could be understood that the purpose of President Sarkozy's urgent visit is to implement a new Armenian policy against the Socialists.

In his statements provided during his visit, President Sarkozy has addressed the Armenian Question and Turkey's expectations in regards to it. Furthermore, he has called on Turkey to recognize the Armenian genocide thesis and has given Turkey until the end of his office term (April 2012) to make this recognition.

1 Lütem, Ömer Engin "Facts and Comments" *Review of Armenian Studies*, No. 23, pp.26-40

2 "Le Vice-Premier Ministre Turc Accuse Nicolas Sarkozy d'Avoir Manqué à sa Parole" *Armenews*, 28 December 2011.

Until now, no president of any foreign country had so clearly urged Turkey to recognize the Armenian genocide allegations and especially no one had set a certain date for Turkey. From this aspect, Sarkozy's behavior is at least not appropriate to the relations that should exist between two allies. However, it could be seen that the French President has no such concern and that his primary goal is to influence his own country along with Armenian public opinion.

As expected, Turkey's reactions towards the French President's statements have been harsh. Regarding this issue, the Ministry of Foreign Affairs has issued the following declaration³:

No: 226, 7 October 2011, Press Release Regarding the statements by the French President Nicolas Sarkozy

We are astounded and deeply regret the statements by the French President Nicolas Sarkozy during his visit to Armenia on the 6-7 October, requesting Turkey to review its history and recognize, by the end of his own term of office, Armenian allegations regarding the events of 1915. The President also said that he would be in favor of taking further steps to support Armenian claims if Turkey fails to do this.

Attempts to exploit controversies between Turkey and Armenia by third parties for their domestic political agenda and even to see in themselves the right to connect this to their electoral calendar point to a misperception of their own political power. The French people will judge whether such approaches, based on electoral calculations, are compatible with the French democratic culture and state tradition.

Such an inconsistent and imprudent handling of this serious matter that has human and moral dimensions is unfortunate. Political declarations based on one-sided information and reflecting accusatory judgments regarding historical events are very far from the fair approach that this issue requires and demonstrate a failure to even comprehend Turkey's approach on the matter. This painful part of our long history with the Armenians can be freely debated in Turkey, unlike in some countries that are party to this issue or others that are not, including France.

3 MFA "Press Release Regarding the Statements by the French President Nicolas Sarkozy" October 7, 2011s
http://www.mfa.gov.tr/no_226_-7-october-2011_-press-release-regarding-the-statements-by-the-french-president-nicolas-sarkozy.en.mfa

Turkey will continue its constructive approach on how to improve its relations with Armenia, overcome the controversy over the events of 1915 and reach a just memory.

What is expected from France is to make a positive contribution to this process and to adopt a responsible approach and discourse that would show care to avoid both damaging the multi-dimensional relationship between Turkey and France and offending the Turkish community in France.

Regarding President Sarkozy's statements, Foreign Minister Davutoğlu has said that these kinds of statements are political opportunism; that this type of opportunism arises whenever there are elections in Europe and that despite some disruptions, it could have a negative impact on the process continuing between Turkey and Armenia. Furthermore, he has indicated that there is no problem for Turkey to confront its history, but that mentalities who cannot confront their own histories and who have not intermingled with the societies they have ruled due to colonialism and who have seen them as a lower class, should confront their own histories. He has gone further to say that those countries with a colonial past do not have the right to give a lesson to Turkey to confront its history and those suggesting Turkey to do so must first look at the mirror their selves.

On the other hand, Prime Minister Erdoğan has stated in his speech delivered in the Assembly that the French President has given advices to Turkey, but that Sarkozy should first listen to his own advice since he speaks differently in each country. Moreover, after indicating that such a political leadership cannot be pursued and that above all, politics require honesty, he has said that Turkey is not a piece of cake.

As explained above, Nicolas Sarkozy has first acted with considerations in domestic politics and while the Socialists have failed in adopting the law in the past, through the influence of President Sarkozy, with some of the senators of the ruling UMP Party assuming a more favorable stance towards this law, the adoption of the law has become a possibility; in other words, a situation has been created where Sarkozy and his Party could accomplish what the Socialists have failed to do.

However, while cornering the Socialists, Sarkozy has created tensions in his country's relations with Turkey. But, it could be understood that Sarkozy does not regard this situation as important and acts by calculating that statements such as Turkey cannot become an EU member and must recognize the Armenian genocide allegations have been acknowledged by a

great part of French public opinion and could therefore turn into votes. Meanwhile, it is also possible that his statements and approaches towards Turkey have especially pleased the French extreme rightists who definitely oppose Turkey's EU membership and that within this framework it could affect some rightist votes.

Another goal of Sarkozy could be summarized as “defeating” Turkey by causing this law, which Turkey fiercely opposes, to be adopted. The disagreements between Turkey and France are actually deeper than it seems. A French newspaper summarizes the situation as follows: Turkey's membership into the European Union, Iran's nuclear researches, Turkey's problems with Cyprus in the Southern Mediterranean and Israel⁴. In addition to these, it is claimed that France, which has an influence over some Muslim countries, is disturbed of Turkey's prestige gained in the recent years in these countries and particularly in Libya and Palestine and that within this framework, by referring to Prime Minister Erdoğan, Sarkozy has said “someone must rise against him”⁵. In short, Sarkozy wants to close the door of both Europe and the Middle East on Turkey.

If Muslim countries do not give any or very little support to Turkey regarding this law, Sarkozy could become successful in his policy of pushing Turkey to the background. In fact, while Turkey is seeking Algeria's support for this law, and when Prime Minister Ahmet Uyahia asked Turkey to “stop making Algeria's colonization a matter of discussion”⁶ it shows that some Arab countries are not willing to support Turkey regarding the issue of the Armenian “genocide”.

3. Submitting a New Bill to the French National Assembly

Valérie Boyer, Marseille's Deputy of the ruling UMP Party in France, has submitted to the National Assembly on 18 October 2011 a bill foreseeing struggling against racism and the punishment of those rejecting the existence of the Armenian genocide.

This bill aimed to adjust the EU Framework Decision on 2008/913/JAI of 2008 on combating racism and xenophobia to the French legislation. Therefore, under the excuse of conformity to the EU Decision, she has sought to penalize those denying the Armenian genocide allegations.

4 “L'ouverture Turque de Nicolas Sarkozy” *Le Monde*, 1 December 2011.

5 Ibid

6 “Soykırım'a Cezayir'i Alet Etmeyin (Don't Use Algeria as an Instrument of Genocide)” *Hürriyet*, 8 January 2012.

However, although mentioning genocide, the EU Framework Decision does not comprise the Armenian genocide allegations on which there is no consensus. By including in the bill the expression of “all cries of genocide whose existence are recognized by law”, referring to the law of 2001 which recognizes the Armenia “genocide”, Valérie Boyer has strived for the Armenian genocide allegations to be included in the Framework Decision.

Meanwhile, it has been observed that the procedure of the bill presented to the National Assembly becoming a law has gained speed. This bill has been discussed in the Laws Commission of the National Assembly on 7 December 2011 to decide whether it is in conformity with the French Constitution and with the exception of two negative votes, has been adopted with unanimity⁷. Therefore, a significant step has been taken for the adoption of the bill by the Assembly.

Turkey has expressed its reaction towards the decision of the Laws Commission through the following statement of the Ministry of Foreign Affairs⁸:

No: 287, 09 December 2011, Press Release Regarding the Law Proposal Adopted in France

Since the adoption in 2001, through known political dynamics in France, of the law that takes into account the views of only one side regarding the debate on the events of 1915, it is observed that initiatives aimed at reinforcing this law with criminal sanction recur particularly during election periods in France. The law proposal just adopted by the Laws Commission of the National Assembly on 7 December 2011 constitutes the latest example in this regard.

The French government is well aware of how sensitive this serious issue is for our country. While Turkey and France have entered a period of stability in their relations where they can enhance their cooperation at bilateral and international levels, it is hoped that irredeemable steps are not taken. Responsibility arising from the consequences of these steps rests on its initiators.

Our expectation from France is to contribute constructively to discussions between Turkey and Armenia on the controversy over

7 “Le Négationnisme A l’A.N., le 19 décembre” Collectif VAN, 8 December 2011.

8 MFA Turkey “Press Releas Regarding the Law Proposal Adopted in France” December 09, 2011 http://www.mfa.gov.tr/no_-287_-09-december-2011_-press-release-regarding-the-law-proposal-adopted-in-france.en.mfa

history through dialogue and to refrain from taking decisions which clearly contradict freedom of expression and are far from showing a scientific and equitable approach that the subject deserves.

Another point which could be mentioned in regards to this issue is that about eight months earlier, the Laws Commission of the French Senate had, by indicating in particular that it was “contradictory to constitutional principles on freedoms of idea and expression”, unanimously ruled against another bill which foresaw the punishment of those not accepting the Armenian genocide allegations⁹. Therefore, the two Assemblies of the French Parliament have reached two opposite decisions on the same issue. The only difference is that the bill rejected by the Senate’s Laws Commission directly addressed the Armenian genocide allegations, while as mentioned above, the bill adopted by the Laws Commission of the National Assembly entailed the sentence “all crimes of genocides whose existence are recognized by law” which refers to the law of 2001. However, this difference is purely in style. In essence, both the bills aim for the punishment of those denying the Armenian genocide allegations.

4. Turkey’s Reactions and France’s Efforts of Persuasion

It could be seen that concerning the issue of genocide, in exchange for the French President’s approach towards Turkey taken with election considerations, the French Foreign Ministry has shown efforts so that its relations with Turkey will not be seriously damaged. For instance, at a time when Sarkozy was in Yerevan, French Minister of Interior Claude Gueant has come to Turkey and signed an agreement on combating terrorism. On the other hand, French Foreign Minister Alain Juppé has also found it necessary to conduct a visit to Turkey after Turkey’s reactions.

a. The French Foreign Minister’s Visit to Turkey

The Turkish Foreign Ministry has considered the French Foreign Minister Juppé’s visit to Turkey “as an indicator of the mutual will for further developing Turkish-French bilateral relations in the forthcoming period.”¹⁰

In spite of France, together with Germany, being the country that creates

9 Lütem, Ömer Engin “Olaylar ve Yorumlar” *Ermeni Araştırmaları*, No 39, p. 44

10 MFA Turkey “The Foreign Ministry’s declaration on 16 November 2011 numbered 259”. http://www.mfa.gov.tr/no_-259_-16-november-2011_-press-release-regarding-the-visit-of-the-minister-of-foreign-and-european-affairs-of-france-h_e_-mr_-alain-juppe-to-turkey.en.mfa. Date of Retrieval: 8 February 2012

several difficulties for Turkey's membership into the EU, during his visit, Juppé has indicated that progress could be made in the enlargement of the Union once the European Union has completed its internal reforms; in other words, only then could Turkey's membership be addressed. Moreover, by indicating that he supports the idea of three new chapters opening within negotiations, he has given some hopes for Turkey's membership into the EU.

Regarding the Armenian Question which constitutes the second significant disagreement between Turkey and France, Alain Juppé has indicated that he supports Turkey's proposal for a "Commission of Historians", that this Commission must surely also entail Armenia and that its meetings could be held in Paris. However, in order to be cautious, he has also stated that he will present this idea to President Sarkozy.

In short, due to President Sarkozy's approach, Juppé has tried to soften the negative atmosphere developed in Turkey towards France. However, when examined closely, it could be seen that the French Foreign Minister has made no indications as to a radical change in France's approach towards the issue of the European Union, or towards the Armenian Question.

As could be presumed, the reactions of the Armenian circles have been harsh towards Juppé's statements. While the Armenian media in France has posed the question "Who is France's boss? Sarkozy or Juppé?", after Eduard Sharmazanov, the Spokesman of the Republican Party, the great partner of the government coalition in Armenia, has repeated the well known Armenian views that the issue of genocide could never be discussed and that this issue is not historical, but political, so it requires a political solution, he has implied that Armenia aimed for the returning of the Armenian properties from Turkey, receiving compensation and fulfilling their other claims.

Meanwhile, it has been observed that President Sarkozy continues to utilize Armenia for the upcoming Presidential elections. Within this framework, with a lame excuse to attend the 20th Congress of the European People's Party on December 7, 2011, two months after his official visit conducted to France at the end of September, President Sarkisian has visited France (Marseille) again and in a speech delivered to the Armenians there, has described Sarkozy's visit to Armenia as "historic" and has indicated that no other state leader had spoken about the pains of the Armenians, Turkey-Armenia relations and the issue of genocide so openly. By also stating that they should be grateful to the French President, he has implied that French Armenians' votes should be given to Sarkozy.

b. The Stance of the Turkish Grand National Assembly

In order to persuade the French Government and parliament to give up on this bill, extensive activities have begun to be organized in Turkey.

The Turkish Grand National Assembly has also participated in these activities and Turkish Parliament Speaker Cemil Çiçek, by sending a letter to Speaker of the French National Assembly Bernard Accoyer, in which he has expressed that the duty of national parliaments is not to re-write history and that the issue should be left to historians, has emphasized the harm on Turkish-French relations that would take place if the bill becomes a law¹¹. Furthermore, they have decided on sending a parliamentary delegation to France consisting of the party representatives represented in the Assembly. On the other hand, Vice Speaker Meral Akşener, ruling on 20 December 2011 the First Session of the Turkish Grand National Assembly, has presented a “presidency declaration” regarding the bill on the punishment of those denying the genocide allegations. The text of the declaration is provided below:

“It is a grave and a historic mistake for the French National Assembly to agree to debate a biased, unjust and false bill that penalizes rejecting the so-called Armenian ‘genocide’. We strongly condemn the prospective debate of the bill which hurts Turkish people deeply, scandalizes Turkish history by basing it on one-sided sources and deprives them of the right of defense against this injustice. Past events in history must be addressed through scientific and objective research. The dispositions of Parliaments, which see no harm in putting their selves in place of historians and judges, are also problematic from the legal and moral aspect as must as in the political aspect.

This approach of France constitutes a distinct example of double standards. A European country attempting in the 21st century to courageously punish those denying the lies in history is extremely grave, worrisome, and in fact disgraceful on behalf of science, on behalf of freedom of expression and on behalf of human rights and freedoms. Turkish history being attacked through unfounded allegations by those not being able to confront their own histories is a very serious indication of insincerity. If the French National Assembly wants to be concerned with history, it must shed light on the events in Africa and the massacres in Rwanda and Algeria.

11 “Fransa’ya Uyarı Mektubu (A Letter of Warning to France)”, A.A., 13 December 2011.

The adoption of the bill by the French Parliament will deeply harm the multilateral relations existing between Turkey and France.

With these ideas and feelings, the Turkish Grand National Assembly condemns intentional, malevolent, unjust and unlawful initiatives and by reminding our call to the French National Assembly to abandon this historical mistake, we have fulfilled our historical responsibility”.

As could be seen, this declaration describes the French bill as a historical mistake condemning it and since the French Assembly puts itself in place of historians and judges, is regarded as both legally and morally responsible. Moreover, seeking to punish “those denying the lies in history” is characterized as grave, worrisome and disgraceful. In the declaration, French attack on Turkish history while abstaining from confronting her own history is defined as insincere and it is put forth that if the French Assembly wants to deal with history, it must bring to light the massacres in Rwanda and Algeria. Last of all, by indicating that the bill becoming a law will deeply harm relations between the two countries, the French Assembly is called on to abandon this historical mistake.

c. Prime Minister Erdoğan’s Letter to Sarkozy

Prime Minister Erdoğan has sent a letter to Sarkozy concerning this bill. According to news in the press¹², the main points of the letter could be summarized as follows:

- In a previous meeting with Sarkozy, that he expressed he had no intention of taking the bill of 2006 to the Senate and that this new initiative surprised him (truly Sarkozy had caused the bill to be rejected in the Senate in May 2011, but then by changing his idea as stated above, had caused a law with the same context to be submitted to the National Assembly in October),
- That this bill directly targets the Republic of Turkey, the Turkish Nation and the Turkish community living in France and became hostile (like an enemy),
- That if these steps are taken further, it will have grave consequences on relations between Turkey and France in the political, economic, cultural and all other areas and France would be responsible for these consequences,

12 “Vahim olur (It Will Be Fatal)” *Hürriyet*, 17 December 2011.

- That this bill violates freedom of thought and expression, contradicts the principles which France defends, and seriously restricts the freedom of expression of those who approach the Armenian question from a different perspective (those denying the Armenian genocide allegations)
- That such initiatives (the bill) would not contribute to historical conflicts between Turkey and Armenia being settled through dialogue and on the contrary poses as an obstacle before the emergence of the truth,
- That Turkish diplomats and state officials in France became the targets of the Armenian terror in the 1970's and 1980's, the memories of these events are still fresh in the minds of the Turkish public, therefore these kinds of initiatives happening in France is perceived differently by the Turkish society,
- That Turkish-French relations should not be held captive to the demands of third parties (Diaspora Armenians and Armenia),
- That they hope Sarkozy will keep his promise and prevent these kinds of legal initiatives and irreparable steps to be taken.

It could be understood that Erdoğan has written the letter in a respectful, but strong language. Without doubt, its most significant point is that if steps are taken further (the bill becomes a law), it will create grave consequences for relations between the two countries and this means that some kind of restriction and decline will take place in their relations.

Later on, Prime Minister Erdoğan has verbally referred to the contents of the letter and has mentioned some points not indicated in it. At the forefront of these comes the massacres committed in Algeria and then in Rwanda by France. By putting forth that the history of Turkey being attacked by those not being able to confront their own history is highly insincere, he has said that "history cannot be written through votes in parliaments. History cannot be distorted for the sake of populism and winning votes". Furthermore, the Prime Minister has said that a colonial and imperialist approach does not exist in Turkish history, there is no incident of occupying a country and then stealing its resources, nations of friendly and brotherly countries have not been tortured, pressured or suppressed¹³ and that not a single historian or politician could see these within Turkish history¹⁴.

13 "Soykırımını Görmek İçin Kendine Bak (Look at Yourselves to See Genocide)" (Press Conference with Chairman Mustafa Abdulcelil of the Libyan National Transitional Council) *Milliyet*, 18 December 2011.

14 "Kendi Kirli Tarihlerine Baksınlar (They Should Look at Their Own Dirty History)" *Hürriyet*, 17 December 2011.

About a month later, President Sarkozy has replied to this letter. During this period, the bill was adopted in the National Assembly and was sent to the Senate. According to the press, in his letter, Sarkozy expressed that the purpose of the law was to eliminate the prolonged feeling of denial (of the genocide allegations) of the French community (most likely he is referring to the Armenians) and to dress the wounds of a century (since 1915), that the law concerns all genocides recognized by law and does not target a specific nation or state, that the pain experienced by the Turkish nation during the First World War and the collapse of the Ottoman Empire is well known, that it is not easy to confront history, but that France has done this. Moreover, he expressed that France has accepted its responsibility in slave trade and recognizes France's role during the German occupation in gathering and sending the Jews living in France to concentration camps, and that during a speech delivered in Algeria in 2007 he had expressed that he condemned what France did in Algeria. Furthermore, after complimenting Turkey by indicating that it is a great country and hopes that mentality will prevail, he has expressed in a more threatening tone that extreme measures to be taken concerning this law will harm multilateral relations between the two countries, will create grave results and that those responsible for this would be the initiators (Turkey)¹⁵.

Although there have been comments in the press that this letter is conciliatory and placatory, we believe that the letter has put forth deep and almost irreparable diverging views between Turkey and France. Therefore, this letter has not created any effect in solving the disagreements between the two countries.

d. President Gül's Initiative

President Abdullah Gül wanted to discuss the so-called bill with President Sarkozy by phone. According to the information provided by the Chief Adviser of the Press of the Presidency Ahmet Sever, President Sarkozy has tried to be contacted by phone for two days, but through various excuses this talk was delayed. Sever has described this situation as Sarkozy "refraining from talking to Gül by phone without venture"¹⁶. Upon this development, the President has made the following statement on 20 December 2011¹⁷:

15 "Sarkozy'den Gönül Alma Mektubu (Letter of Conciliation by Sarkozy)" *Hürriyet*, 20 December 2012.

16 "Sarkozy İki Gündür Telefonlara Çıkmıyor (Sarkozy Not Answering Calls Since Two Days)" *Vatan*, 21 December 2011.

17 Presidency of the Republic of Turkey "Press Statement by H.E. Abdullah Gül, President of the Republic of Turkey" <http://www.tccb.gov.tr/speeches-statements/344/81563/preb-statement.html>

It is out of the question for us to accept the draft law that is on the agenda of the National Assembly of France, which aims to eliminate our freedom to refute the unfair and unfounded accusations against our country and nation.

I hope that France will, as soon as possible, abandon this initiative which relegates it into a position that does not respect the freedom of expression and which even prohibits scientific research.

Oddly, such initiatives coincide with pre-election periods. I want to hope that France will not sacrifice centuries-long Turkish-French friendship, common interests and bonds of alliance on account of petty political calculations.

President of a state rejecting or delaying another president's call is not a common situation and such an act could at least be described as disrespect.

Making judgments about the history of another country and to alter history for political gains through the Parliament that is itself a political institution, is at best tactlessness.

We expect that reason and common sense prevail in France, the draft law is dropped and the writing of history is left to historians.

On this point we would like to indicate that a president of a state rejecting or delaying another president's call is not a common situation and such an act could at least be described as disrespect. Meanwhile, in response to a journalist's question regarding this incident, Prime Minister Erdoğan has said "It's a diplomatic misfortune... such a blunder; such a mistake cannot be made in international diplomacy. Sarkozy has revealed himself."¹⁸

e. Other Reactions

After the Prime Minister's statements, many statesmen have made statements conveying their views on this issue. We will address some of them below.

Deputy Prime Minister Bülent Arınç has expressed that Turkey is at a point where it could prevent this and explain its mistake and hopes that what is necessary of the Prime Minister's letter will be done and relations will not be further harmed¹⁹.

18 "Fransa'ya Yaptırım Hazırlığı (Preparations for Sanctions on France)" *CNN Türk*, 21 December 2011.

19 "Önleyecek Noktadayız (We Are at a Point of Prevention)" *Hürriyet*, 17 December 2011.

Foreign Minister Ahmet Davutoğlu has made statements on this issue on every occasion.

On December 15, by inviting the representatives of French Companies in Turkey to the Foreign Ministry, Davutoğlu has emphasized to them that if the bill becomes a law, not only political relations but also economic relations will be harmed²⁰.

In his speech on budget in the Turkish Grand National Assembly, after expressing that he wants to call out to the Assembly of “Voltaire’s France”, said that “this is creating a new dogma about understanding history wanted to be created and forbidding alternative thoughts. The adoption of this Middle-Age mindset in France is the greatest danger to Europe... If such a bill is legislated, France will be the pioneer of the return of this middle age mindset to Europe. Through these initiatives directed towards eliminating an atmosphere of free discussion, preventing freedom of expression and thought and silencing history through a dogmatic legal way, the values which France represents are infringed.”²¹ Moreover, during a dinner held for the Ambassadors of EU states, he has stated that this bill is an initiative against European values, Turkey will never accept it and will bring the issue to every platform and by asking that if this issue was important for France, then why it waited four months till the elections to bring this up, and that this initiative is certainly populist²².

Davutoğlu who also addressed this issue in a meeting of the Reform Tracking Group held in Konya, in addition to his former statements, after asking “when tens of thousands of our citizens living there (in France) express their thoughts on this issue, will penalties be enforced upon them also”, has said that Turkey is ready to face its history, but if a dogma is created, then French colonialism will be discussed in every country including Africa and that they will start to “discuss reality, which they cannot in France, all over the world”²³.

On the other hand, European Union Minister and Chief Negotiator Egemen Bağış has said that this situation is not only Turkey’s issue, but is also the issue of French companies working together with Turkey or trying to conduct works through Turkey, that this bill will not only make Turkey, with a market of 74 million, uneasy but also Muslim citizens in France, and that

20 “Turkey Warns France Against ‘Grave Consequences Passing Genocide Bill’ *Today’s Zaman*, 16 Aralık 2011

21 “Davutoğlu: Gelecek 20 Yılı ‘Bugün’ Belirleyecek” *ntvmsnbc*, 15 Aralık 2011.

22 “Paris’te Ne Diyeyim (What Should I Say in Paris)” *Hürriyet*, 17 December 2011.

23 “Afrika’ya Anlatırız (We Will Explain to Africa)” *Cumhuriyet*, 19 December 2011.

11% of France's population consists of Moroccan, Tunisian and Algerian citizens and these individuals closely monitoring the legislation process of the bill. Moreover, he has stated that during this period, he hopes that the French business world and intellectual statesmen will exert their influence and considering not Turkey's but France's interests, that this bill must be taken off the agenda as soon possible²⁴.

The Opposition Parties also showed interest in the French bill.

In response to a question on this issue, Chairman of CHP Kemal Kılıçdaroğlu has said "France's and especially Sarkozy's last action is a shadow cast upon the 1789 French Revolution. In essence, this act cannot upset Turkey in any way, but then in a way France will have deceived its own history"²⁵.

MHP Leader Devlet Bahçeli has continued his approach criticizing and condemning France on every occasion.

There was no statement made by BDP (Peace and Democracy Party), the fourth party represented in the Turkish Grand National Assembly, concerning the bill. However, since it is known that this party supports Armenian views, it could be said that in principle they support the bill. On the other hand, this party indicates that the 1915 events constitute genocide at every opportunity. In fact, on December 19, Deputy of Muş Sırrı Sakık has indicated in the Turkish Grand National Assembly that "this culture of massacre exists in our pasts, those cruel policies in the 1915's and then applied to the Jews and Kurds"²⁶ raised serious objections in the Assembly. On December 20, BDP did not oppose the "Presidency Declaration" in the Turkish Grand National Assembly and conveyed its displeasure by not applauding while on the other hand, as will be explained below, has also given a member to the Delegation of the Turkish Grand National Assembly sent to France.

f. Delegations Sent to France

As mentioned above, the Turkish Grand National Assembly has sent a delegation to France to discuss this issue. Under the leadership of Chairman of the Foreign Affairs Committee of the Assembly Ret. Ambassador Volkan Bozkır, this delegation consisting of CHP deputy and former Ambassador to

24 "Bundan Özü Dile (Apologize For It)" *Hürriyet*, 18 December 2011.

25 "Fransa Kendi Tarihine İhanet (France's Betrayal of its Own History)" *Hürriyet*, 22 December 2011.

26 Records of the Turkish Grand National Assembly Dated 19 December 2011

Paris Osman Korutürk, AKP deputy and Chairman of the Turkish-French inter-parliamentary Friendship Group Kasım Gürpınar, Samsun deputy of CHP Haluk Koç and Kayseri deputy of MHP Prof. Dr. Yusuf Halaçoğlu has made various contacts in Paris with members of the National Assembly and Senate and meanwhile, have met with Foreign Minister Alain Juppé, Speaker of the National Assembly Bernard Accoyer, Vice-president of the Senate Jean-Claude Gaudin and President Sarkozy's foreign affairs advisor Ambassador Jean-David Levitte.

In a statement of the French Foreign Ministry concerning the Delegation's meeting with Foreign Affairs Minister Alain Juppé²⁷, it has been stated that the Minister has conveyed to the Delegation the mutual strategic interests of both countries and within this framework, that cooperation on Syria and Afghanistan, their memberships of NATO and G20 and furthermore, their cooperation in cultural and economic fields are strong enough to create the opportunity to overcome some problems in their bilateral relations. Moreover, it has been expressed to the Minister that in Yerevan, President Sarkozy called on Turkey to make a gesture to remember its history just as France had in the past. Therefore, Alain Juppé, said to have hesitations regarding the bill, has followed the President's line. Some other Ministers have openly supported the bill.

After returning to Turkey, Head of Delegation Ret. Ambassador Volkan Bozkır has said that they have made intensive contacts, that the individuals they met were not aware that this bill would create such a great reaction in Turkey and Turkey-France relations could be harmed due to this bill, that this concern has been awakened during their contacts, but it is found that the Assembly will pass the bill because President Sarkozy supports it and because it was submitted by the party having the majority in the Assembly. He has also indicated that when the bill is brought to the Senate, a policy could be observed which is influenced by their statements²⁸.

In the joint statement issued by the Union of Chambers and Commodity Exchanges of Turkey (TOBB) and the Turkish Industry and Business Association (TUSIAD), it was expressed that while Turkey was debating painful incidents of the past on a free, democratic and pluralist platform, France on the contrary and in conflict with European values, appearing to restrict freedom of thought and research raises concerns and that if the bill is adopted, the situation to develop will be unacceptable for Turkey.

27 "Crise franco-turque: Paris Rappelle à Ankara Ses Engagements Internationaux" *Armenews*, 21 December 2011.

28 "Tasarı Yarınki Oylamada Geçer (The Bill Will Be Adopted in Tomorrow's Voting)" *Hürriyet*, 21 December 2011.

Moreover, it was indicated that in this situation, not only the political and economic aspects of France's relations with Turkey, but also all scientific, social, cultural and human dimensions will be affected. By indicating that there is concern that this situation will harm Turkish-French business climate, it was also expressed that France and French statesmen were called on to swiftly turn back on this mistake²⁹.

Moreover, a delegation consisting of the President of TOBB Rifat Hisarlıkcıoğlu and President of TUSIAD Ümit Boyner and other businessmen have gone to Paris and conducted widespread meetings.

During these contacts, the delegation emphasized that if the bill is adopted, it will greatly harm Turkey-France economic relations³⁰. It could be understood that French officials mostly asked whether or not Turkey will boycott French goods and that the delegation indicated that boycott was not on the agenda.³¹

It could be seen that the possibility of a boycott has also worried the French Government. On this issue, Speaker of the French Foreign Ministry Bernard Valero has said that "spirit of international rules must be conformed to, Turkey is a member of the World Trade Organization and is linked to the EU by a customs union, and these two commitments mean a non-discriminatory policy towards all companies with the EU"³². On the other hand, Finance Minister Mehmet Şimşek³³ has also confirmed that a boycott will not be applied on French goods (or French companies).

Truly, Turkey's current commitments prevent a boycott on French companies or goods. Minister of Economy Zafer Çağlayan has indicated that as a government they will not boycott French goods but that they also will not prevent the boycott applied by the Turkish nation³⁴. Ambassador to

29 "TOBB ve TÜSİAD'dan Fransa'ya Çağrı (A Call on France from TOBB and TUSIAD)" *ANKA*, 15 December 2011.

30 "Genocide arménienne: Le patronat Turc Prévient de Dégats Majeurs Pour La France" *Armenews*, 19 December 2011.

31 "TÜSİAD: Fransa'ya Boykot Gündemde Yok (TUSIAD: A Boycott on France is not on the Agenda)" *Vatan*, 21 December 2011; "TÜSİAD: Boykota Gerek Yok (TUSIAD: No Need For a Boycott)" *Hürriyet*, 21 December 2011.

32 "Fransa'dan Türkiye'ye Yaptırım Uyarısı (Warning of Sanctions to Turkey by France)" *AB Haber.com*, 20 December 2011.

33 "Fransız Mallarına Boykot Yok (No Boycott on French Goods)" *Vatan*, 19 December 2011.

34 "Halkımızın Boykotuna Biz Engel Olamayız (We Cannot Prevent the Boycott of Our Nation)" *Hürriyet*, 21 December 2011.

Paris Tahsin Burcuoğlu has also said that the man on the street has the right to decide what goods to buy and what not to buy³⁵. Therefore, it could be understood that despite some international commitments and without harming them, a boycott could willingly be applied on French goods.

g. Reactions against France Increasing

As the discussions on the bill in the French National Assembly were drawing closer, views on the probable sanctions against France have increased.

Prime Minister Erdoğan has said “these irrational steps by Sarkozy based on vote calculations will harm French-Turkish relations”³⁶ and that he will announce what kinds of sanctions will be applied to France after the adoption of the bill and that they will be applied in stages³⁷.

Speaker of the Turkish Grand National Assembly Cemil Çiçek has said that the adoption of the bill will cause an irreparable damage on Turkey-France relations³⁸.

Foreign Minister Ahmet Davutoğlu has expressed that the decision reached by the French Assembly will signify a return to past centuries in Europe because an indisputable dogma will have been created about history. He has also indicated that he had a phone conversation with French Foreign Minister Alain Juppé asking him “from now on every Turkish official going to Paris will openly express their view and as soon as they do, a legal process must begin, do you think about what kind of situation this will put France in?”³⁹

President of the Parliamentary Assembly of the Council of Europe Mevlut Çavuşoğlu has also referred to the same issue and conveyed his reaction by saying “when I go to France, I will be the first person to shout ‘no genocide’, let them arrest me if they can”⁴⁰.

35 “Turkey Abide by WTO Norms’s in French Boycott” *Zaman*, 23 December 2011.

36 “Başbakan Erdoğan’dan Sarkozy’e Son Uyarı (Prime Minister Erdoğan’s Final Warning to Sarkozy)” *Radikal*, 22 December 2011.

37 “Erdoğan: Etap Etap Yaptırım Uygulanacak (Erdoğan: Sanctions Will Be Enforced Step by Step)” *Cumhuriyet*, 22 December 2011.

38 “Telâfisi Olmaz (It Cannot be Compensated)” *Hürriyet*, 22 December 2011.

39 “Bu Yasa Avrupa’yı Asırlar Öncesine Döndürecek (This Law Will Make Europe Return Back to Centuries)” *Zaman*, 22 December 2011.

40 “Bağıra Bağıra Söyleyeceğim, Tutuklasınlar (I Will Scream It, Let Them Arrest Me)” *Hürriyet*, 22 December 2011.

Strong reactions were also received from the Opposition Parties.

Concerning the bill, Chairman of CHP Kemal Kılıçdaroğlu has said “France’s and especially Sarkozy’s last move has been a shadow cast on the 1789 French Revolution. Actually this act cannot depress Turkey in any way, but France will have somehow betrayed its own history”⁴¹.

Chairman of MHP Devlet Bahçeli on the other hand has said “you must know that the power and persuasion of neither France nor any other state will be able to cast a shadow on the prestige of the Turkish nation through false news, comments, allegations or views. No primitive or inhumane event has taken place in the past of our glorious nation which is shameful and lowers their heads”. Then he has gone on to say that it would be more appropriate and rational for France to look at its own imperial and bloody past and that “human memories have never erased the blood shed in Algeria and the massacres in Rwanda and have never forgotten France’s savage side”⁴².

Meanwhile, some demonstrations have been held in front of the French Embassy or consulates, while various business and non-governmental organizations protested France. We do not have enough space to address the details of these widespread acts and activities, but let us say that unity on the level of major political parties have also been seen within public opinion. The “liberal intellectuals” who mostly support Armenian views have also opposed the bill. The Turkish Human Rights Association from among this group has adopted a completely opposite approach and has conveyed in a statement issued that they support the French bill⁴³.

5. Discussion and Adoption of the Bill in the National Assembly

Initially, bills submitted to the National Assembly or Senate came under review in order to check whether they are in conformity with the Constitution. This review is conducted in both assemblies by the Laws Commission.

The bill submitted by Valérie Boyer has been reviewed in the Assembly’s Law Commission on 7 December 2011 and without interfering with its

41 “Fransa Kendi Tarihine İhanet Etmiş Olur (France Will Have Betrayed It’s Own History)” *Cumhuriyet*, 22 December 2011.

42 “Kimse Tarihimizi Husumet Kuşatması Altına Alamaz” *Yeniçağ*, 22 December 2011.

43 “L’Asociation Turque des Droits de l’Homme se prononce contre le Négationisme et en faveur de projet de loi de pénalisation” *Armenews*, 21 December 2011.

essential source; in other words, by preserving the main idea of punishing those denying the Armenian genocide allegations, many amendments, mostly in the technical aspect, have been made. For instance, the title of Boyer's bill was "Conformity to European Union Law Regarding Struggle against Racism and Punishing Those Rejecting the Existence of the Armenian Genocide". The commission changed this title as "Punishing the Denial of Genocide Recognized by Law". Therefore, the word "Armenian" was not used in the bill and this formed the grounds for the assertion that this bill was not directed against Turkey.

During the discussions held on 22 December 2011 in the French National Assembly, a maximum of 70 deputies were present. Since the number of deputies in the Assembly is 577, almost 90% of the deputies did not attend the session, a sign of the fact that although the decision would be legal, it would not reflect the "will of the nation".

In the French National Assembly, Marseille Deputy Valérie Boyer first took the floor and said that this bill is not a "Memory Law" and its purpose is to apply French legislation to European Union legislation (Framework Decision 2008/913/JAI) and repeated this many times. Boyer's words aimed to protect France from the increasing opposition growing towards "memory laws". The bill itself was not a "memory law", but was a law similar to the memory law of 2001 foreseeing the punishment of those not having the same views.

Another point which Boyer emphasized concerned President Sarkozy's promise given during his visit to Yerevan and the President keeping his promise despite the pressures of "some states".

Another noteworthy statement of her was that the bill was in no way against Turkey. This statement was directed towards pleasing those worrying that the legislation of this bill would harm Turkey-France relations. However, since Boyer did not explain the reasons for her statement, it did not create any effect. If we remember since 1998, when France attempted to officially legalize the Armenian genocide allegations, all Turkish Governments opposed these initiatives without any withdrawals, it is not very meaningful to say that these kinds of law or bills are not against Turkey.

Without using the word "Turkey", Valéri Boyer mentioned that France was being threatened. She expressed that these threats are unacceptable, France's sovereignty is being disrespected, there is interference in its internal affairs, legislation cannot be made under a state's threats and that these archaic methods that could be characterized as a threat diplomacy

does not suit Turkey as a great and friendly country. Then, by expressing that trade between the two countries after 2001, the year France officially recognized the Armenian genocide allegations, had greatly increased, the sanctions to be imposed on France were not implemented, that the situation now is the same as in 2001 and that she hopes the same result would be obtained, she called on her Turkish comrades to act with tolerance against those with a different mindset interpreting history differently. Furthermore, by saying that she wants to give guarantee to those French initiators (investors) under great pressures, she also indicated that Turkey, as a member of the World Trade Organization and linked to the European Union with a customs union, will not discriminate against the European Union's business organizations.

Boyer has put forth that demonstrations in France denying the Armenian genocide allegations, damaging of genocide memorials and articles on this issue in the press and internet have jauntily increased and indicated that she has a list showing these kinds of activities organized within the last ten years. By saying that these activities offended the memories of the Armenian genocide victims, expressed that they call upon France to protect itself against this spiritual attack.

By indicating that it is normal to equally punish those denying the Armenian genocide allegations since there is a law foreseeing the punishment of those denying the Holocaust, she reached a conclusion which seems rational. However, when considering that the Holocaust has been recognized by almost everyone and anti-Semitism still exists especially in Europe while although the Armenian genocide allegations are recognized in the public opinion of some countries as the result of intensive Armenian propaganda, they are not recognized by many distinguished scholars and there is no Armenian hostility similar to anti-Semitism particularly in Turkey and among the Turks, drawing a similarity between the Holocaust and the Armenian genocide allegations seems as a pointless effort.

Within the Armenian press in France, a list of activities rejecting the Armenian genocide allegations which Boyer referred to has been published. When examining them closely, it could be seen that some of these activities or events have not taken place in France but in Turkey while some have although started in France, since they have occurred within the scope of the Council of Europe, have gone under diplomatic immunity. There were also demonstrations organized in France, but they carried no further meaning other than the dozens of protests organized each day. In short, the events written in this list were either irrelevant or much exaggerated. In the report of the Senate's Laws Commission of May 2011 which reviewed a similar

law and determined that it was contradictory to the Constitution, it was clearly emphasized that the French citizens of Armenian origin were not the targets of anything similar to anti-Semitism⁴⁴. Since no significant activity against the Armenians exists and this issue is conveyed in one of the Senate's documents, it was needless to still mention anti-Armenian activities.

Parliamentary Relations Minister Patrick Ollier spoke on behalf of the Government. He expressed that due to the reactions created by “memory laws”, this bill is not a memory law and its purpose is to achieve conformity with EU legislation. Moreover, he emphasized that bringing this bill to the agenda was also acknowledged by the government. The Minister's statements put forth that an issue first presented by Boyer, but for this reason would take a long time to be put on the agenda or be discussed, was embraced by the government and therefore, it was addressed in a short time. This situation also clarified that the current French Government acted differently than the former French Governments. Indeed, by taking relations with Turkey into consideration, the French Governments, whether during the negotiations of the 2001 law or the discussions on the law of 2006, had clearly declared that they were against bills regarding this issue. But now an opposite situation was taking place.

Ollier stated that both genocides are recognized by law in France, there is a provision or law penalizing the Holocaust and that now measures are taken on punishing the Armenian genocide. However, he has not mentioned at all why only two genocides are recognized in France, because there are three genocides based on international law. These are the Holocaust, the Rwandan genocide and the genocide in Bosnia; the “Armenian genocide” does not exist among them. Furthermore, the responsibility of French forces in the Rwandan genocide are still being discussed and researched⁴⁵.

After indicating that this bill does not target anyone and foresees completing French legislation (making it suitable for EU legislation), Minister Ollier has stated that the reactions of comrade Turkey cannot be ignored, that Turkey is a great country with which France wants to develop

44 Lütem, Ömer Engin “Olaylar ve Yorumlar” *Ermeni Araştırmaları*, No. 39. p. 44

45 Wikipedia provides the following information on this issue: “*Rwandan Genocide: The Rwandan Genocide was the 1994 mass murder of an estimated 800,000 people in the small East African nation of Rwanda. It was the culmination of longstanding ethnic competition and tensions between the minority Tutsi, who had controlled power for centuries, and the majority Hutu peoples, who had come to power in the rebellion of 1959–62 and overthrown the Tutsi monarchy. They began the Rwandan Civil War, fought between the Hutu regime, with support from Francophone Africa and France, France has been accused of aiding the Hutu regime to flee by creating Opération Turquoise.* http://en.wikipedia.org/wiki/Rwandan_Genocide Date of Retrieval: 8 February 2012

friendly economic and cultural relations, that no one could deny Turkey's significant strategic role in and outside its region and that France has common strategic interests with Turkey. In this respect, he has referred to Syria and Afghanistan and has mentioned Turkey's membership into NATO and G20 and that relations between the two countries have created ties strong enough to overcome difficulties that could arise.

The Minister's statements are quite interesting, because it implies that since Turkey has strong relations with France, it will accept or should accept the decisions or laws adopted by France against Turkey. However, the requirement for close or strong relations is not to do what the other side strongly opposes, but to refrain from doing them.

During the discussion of this bill, thirty-four people have taken the floor and spoken either in favor or against (mostly against) it. There is not enough space to explain all of these, but we will mention Patrick Devedjian, the single Armenian deputy in the Senate and Head of the Democratic Movement Party François Bayrou.

Patrick Devedjian, who is actually a lawyer, gained his first prestige by being the attorney of the Armenians terrorists captured in France who had attacked Turkish diplomats. In his early years, he supported extreme rightist views and for instance classified the Algerian war as a battle between the Christians and Muslims. Devedjian who became the mayor of Antony, a small village in the north of Paris in 1983 and who was elected deputy in 1986 was among the conservatives. Devedjian who was first the advisor of Nikolas Sarkozy, after being elected as Minister of Interior in 2002, served as deputy minister for some time. After Sarkozy was elected as President, he became the minister responsible for economic development for two years and then was appointed to a degree in the ruling UMP Party responsible for Paris and its surrounding area. Devedjian is known all along for the primary speaker of Turkey and Turkish hostility and the genocide allegations within the French Parliament.

During the discussions held in the French National Assembly on 22 December 2011, referring to the Turks organizing a demonstration outside the National Assembly, Devedjian has said that if such a manifestation of force could take place in France, then the situation of the Christians in Turkey is understandable and has been applauded by the UMP deputies. Then, by referring to the murder of Hrant Dink, has tried to aggravate the negative atmosphere towards Turkey.

Devedjian has asserted that during the period of the Ottoman Empire in

1919, the Armenian genocide was recognized by the democratic Government of Damat Ferit Pasha and that the perpetrators of the genocide were condemned to death in lawsuits on this issue and that the Turkish state denies its own history by denying the allegations. (He refers to the Turkish Courts-Martial established to try war criminals in 1919. The rulings of these courts which have even committed Mustafa Kemal Pasha who was not a war criminal but a war hero to a death sentence was deemed invalid later on. Meanwhile, we should also underline that Devedjian is the first person to label the Government of Damat Ferit as “democratic”). By indicating that there is more evidence for the Armenian genocide than the Holocaust, Patrick Devedjian has broken new ground for the second time. On the other hand, despite the telegraphs of Talat Pasha being proven since 1983 as fake⁴⁶, he has argued that in a telegraph sent to the Aleppo Plateau, Talat Pasha ordered all Armenians including children to be killed. He also stated that historians do not have to come together in order to understand whether or not an Armenian genocide took place and that no one considered a commission of historians to be created for the Holocaust.

In a statement, after expressing that he voted in favor of the law of 2001 and that he went to Yerevan and visited the genocide memorial, Head of the Democratic Movement Party François Bayrou has said that if the youth of Turkish origin, through what they hear from their families or the information they obtain from Turkey, make statements denying the Armenian genocide allegations, it will not be correct to punish them and that this will be dangerous. Stating that he thinks the same way regarding the massacres committed in Rwanda and Cambodia, has indicated that he will not vote in favor of the bill.

With the Chairman of the Turkish-French Parliamentary Group Michel Diefenbacher being at the forefront, some deputies have also conveyed statements close to Turkey’s views.

Following statements in favor and against the bill, the bill has been adopted with the votes of the majority of the present deputies. How many votes in favor and how many against the bill have been received have not been indicated in the French recordings. Based on news in the press, the number of votes in favor changes between 38 (*Milliyet*, 23 December 2011) and 44 (*Cumhuriyet*, 23 December 2011). These numbers are lower than 1/10th of the French Assembly which has 577 seats in total. However, all laws on the Armenian issue adopted in the French Assembly have received a few votes.

46 Orel, Sinasi and Süreyya Yuca - *Ermenilerce Talât Paşa'ya Atfedilen Telgrafların Gerçek Yüzü*, Turkish Historical Society, 1983 (English Translation of this book: *The Talat Pasha Telegrams, Historical Fact or Armenian Fiction*, Rüstem Brothers ,Nicosia, 1986).

Let us emphasize that having received a few votes does not harm the legitimacy of the laws, but morally makes their values and effects questionable.

Another point which should be underlined is that before and during the sessions in the Assembly, around 5.000 Turks have organized a demonstration near the National Assembly⁴⁷. For France, this is the highest number, but the number of the demonstrating Turks will increase five times almost a month later during the negotiations in the Senate concerning the same issue.

6. The Content of the Bill Adopted by the Assembly

The legal regulation foreseeing the punishment of those denying the Armenian genocide allegations was adopted in 1881 and has been implemented by making additions to the Law on the Freedom of Press which has been amended many times.

According to this, the penalties provisioned in Article 24 bis are applicable to the existence of one or more crimes of genocide defined in the article 211-1 of the penal code and acknowledged as such by the French law.

The penalty foreseen in Article 24 bis is imprisonment of a year and a fine of 45 thousand Euros or only one of these penalties.

Genocide defined in Article 211-1 of the French Penal Code is the same as the definition found in Article 2 of the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide.

There are two genocides recognized by French Law. The first is the Holocaust legalized in 1990 and the second is the Armenian genocide allegations recognized in 2001.

The crime sought to be punished is “denying the existence” of these genocides or “undervaluing its existence in a degrading manner”.

This crime will take place by speaking in public places or meetings, shouting, posing threats, utilizing articles, posters, pictures, gravures, tables or emblems sold, distributed or displayed, in public places or through electronic tools (internet, email).

47 “Paris’te 5000 Kişi Yürüdü (5000 People Marched in Paris)” *Milliyet*, 23 December 2011.

In short, expressing that the 1915 events are not genocide in a way which could be heard by others or publishing it which others could read or view is enough to be condemned to a one-year prison term and a fine of 45.000 Euros. Although not denying, but undervaluing genocide will also be enough to be condemned to these penalties.

Everyone in France acting in this way (French citizens or foreigners) could be condemned to this punishment. In principle, individuals having diplomatic immunity (diplomats, those working at a diplomatic status in international organizations or individuals representing their countries in these organizations (like members of the Council of Europe or the NATO Parliamentary Assembly) cannot be arrested or taken to court under these provisions. However, the French Government could ask for these individuals to be removed from office on grounds that they act in violation to an existing law.

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For this law to be implemented, prosecutors must act either ex officio or upon complaint. Meanwhile, with an amendment made to Article 48-2 of the Law on Freedom of Press, the Armenian organizations in France, in order to protect the moral interests and honor of the victims of genocide, “intervening” in these kinds of cases; in other words, becoming a party to a case has been achieved. This will create the result of some Turkish organizations in France and some individuals known as denying the genocide allegations to be pressured or blackmailed by putting forth that they will be reported by Armenian organizations.

7. The Stance of the Turkish Government and Its Decision to Sanction France Following the Adoption of the Bill

On the day of the adoption of the bill, the Turkish Foreign Ministry has made the following declaration and displayed the Government’s reaction:

No: 305, 22 December 2011, Press Release Regarding the Law Proposal Adopted by the French National Assembly

Turkey strongly condemns the law proposal adopted by the French National Assembly, which deeply offends the Turkish people, defames our history on the basis of one-sided interpretations and aims to deprive us from our right to defend ourselves against this injustice. This initiative is unjust, inappropriate and contradicts relevant rules of international law.

It is extremely unfortunate that such a serious issue is abused for electoral purposes in spite of all the demarches, friendly and constructive warnings conveyed to the Government of France, as well as promises previously received.

The introduction, this time, of criminal sanctions to the law which was adopted in 2001 also with a wrong approach, paves the way for even more negative consequences. Such parliamentary acts are problematic not only politically but also legally and morally.

This law proposal constitutes a grave example of politicization of history on account of narrow political calculations and stifling of freedom of expression by a democratic institution. France has thus preferred to ignore the universal values which it had a share in developing.

This initiative of the French Parliament, which restricts the freedom of expression of all academicians and researchers looking at historical events from different perspectives, cannot prevent the expression of the views developed on scientific basis. Nor can we accept the unilateral imposition of memory.

The proposal contradicts the international law, European norms, the reports of the French Parliament itself and the earlier official declarations of the Government of France on this issue.

The Turkish Government, the Turkish Grand National Assembly, the Turkish people and the Turkish communities living in different parts of the world, including France, find this move in the French Parliament extremely unjust.

It is a historical mistake to deal a blow with a prejudiced approach and careless moves, to the Turkish French relations that have been developing for centuries on the basis of friendship.

Following this development, we have recalled our Ambassador to

France for consultations in Ankara. Today, our Prime Minister announced several measures that will be implemented at the first stage. We naturally envisage taking additional measures in line with the course of developments.

In the forthcoming period, which constitutes a test for France, we expect that necessary actions will be taken before the damage caused by this initiative on our bilateral relations reaches more severe dimensions, and we hope that ultimately common sense and reason will prevail.⁴⁸

The important points of this statement are condemning the bill adopted by the Assembly and linking its adoption to electoral purposes. On the other hand, the issue especially being emphasized is freedom of expression being restricted. In relation to this, it is stated that the proposal contradicts international law, European norms, the reports of the French Parliament itself and the earlier official declarations of the Government of France on this issue and explains its adoption as a blow for Turkish-French relations. Last of all, it calls on the French Government to take action (in other words, prevent the bill from being adopted in the Senate) before the damage on bilateral relations reaches more severe dimensions.

The day the bill was adopted, Prime Minister Erdoğan, in a press conference given together with Ukrainian President Viktor Yanukovich, explained his thoughts on this issue. The Prime Minister stated that in the elections in the French Assembly before the presidential elections politics based on racism, discrimination and xenophobia were used and that efforts of using Turkish hostility and Islamophobia just to win the elections and for personal ambitions raises concerns. Then he has stated “We take pride in our history. We do not have a history which could cause trouble for us. We confront every kind of event experienced in history and support on all grounds the scientific research of history. We opened all our archives, others should also. Let all statesmen, jurists, historians come and work here. History cannot be written with elections in parliaments. At the most history could only be distorted through elections in parliaments. People will not forgive those distorting history and use history as a tool for political exploitation”.

Furthermore, Erdoğan expressed that they will conduct works all over the world for the French nation to learn the truth and to denounce the French genocides committed in Africa and the Middle East which France tried to

48 MFA Turkey “Press Release Regarding the Law Proposal Adopted by the French National Assembly” December 22, 2011 http://www.mfa.gov.tr/no_-305_-22-december-2011_-press-release-regarding-the-law-proposal-adopted-by-the-french-national-assembly.en.mfa

make forgotten and that they will also explain this racist and discriminatory approach. By stating that several measures will be taken against France in stages, the Prime Minister announced the first measures as follows⁴⁹:

1. Recalling the Ambassador to Paris to Ankara for negotiations
2. Cancelling political, military and economic visits to be conducted at a bilateral level
3. Non-cooperation in twinning projects within the EU framework
4. Cancelling of activities such as seminars, education, courses and personnel exchanges
5. Cancelling bilateral military activities and joint operations
6. Cancelling all annual permissions granted for military flights and landing and take-offs and requiring permission for every flight.
7. Refusing all applications made for military warships to dock in Turkey's ports.
8. Cancelling the Turkey-France Joint Economic and Trade Partnership Committee meeting that was to take place in January 2012 with the participation of the co-chairs of the two countries' ministers of economics

As could be seen, these measures or sanctions bring serious restrictions on bilateral relations. Withdrawing the Ambassador in Paris Tahsin Burcuoğlu to Turkey has taken place right away. The others were to be enforced when the time came.

In another statement, after expressing that President Sarkozy acted with the ambition of winning the elections through utilizing Turkish and Muslim hostility, the Prime Minister stated that since 1945, presumably 15% of the population in Algeria was subjected to French massacre, that this was genocide and the Algerians were collectively burned in hearths and martyred.

On the other hand, President Abdullah Gül also reacted to the adoption of the bill in the French Assembly and expressed that he considers this as disrespect to the Turkish people and condemns it, that France contradicts its

49 "8 Maddelik Yaptırım (8 Sanctions)" *Cumhuriyet*, 23 December 2012.

own values, that from now on no one could express their sincere views, historians cannot make any explanations, and that those conveying a view other than France's official view will be punished. Then, he has indicated that Sarkozy is a person with prejudice, this prejudice is a blow on relations between the two countries and that France must withdraw from the Minsk Group⁵⁰.

Concerning the adoption of the bill by the French National assembly, in a speech delivered during the inauguration of the Fourth Annual Ambassadors Conference in Turkey on 23 December 2011, after expressing that philosophically and intellectually Europe has returned to the Middle Ages, Foreign Minister Ahmet Davutoğlu has said that with this decision if the French National Assembly and statesmen behind it dictate what Europeans must think and what's forbidden to think of, then they will be no different than the dictators in the Middle East. Moreover, he has pointed out that Turkey will express its views openly everywhere and that there is no longer a country which acts defensively due to the Sevres paranoia by having to accept those being dictated and waiting for loans from the IMF⁵¹.

In response to journalists during a TV programme on TRT1 on 24 December, Davutoğlu has indicated the tensions existing between Turkey and France apart from the Armenian Question and has expressed that the two countries have mostly not possessed the same views or stances on the recent developments in the Middle East, that France supports Bin Ali in Tunisia and Hüsnü Mübarek in Egypt, has attempted to unilaterally intervene in Libya without the UN resolution gaining legitimacy and that Turkey is against all these⁵².

In a speech delivered in Edirne at the end of the Fourth Annual Ambassadors Conference, Davutoğlu has said that Mustafa Kemal did not form the new Turkish State on hostility, on the contrary, led the Balkan Pact, whereas the French leaders (during the period of colonialism) tried to create a new history by making other nations suffer⁵³.

Minister for EU Affairs and Chief Negotiator Egemen Bağış, just like Prime

50 "Gül'den Sarkozy'ye: Savaşta Bile Yapılmaz (From Gül to Sarkozy: This Would Not Even Be Done During War)" *NTV*, 23 December 2011.

51 Fourth Annual Ambassadors Conference Opening Statements, 23 December 2011
http://www.mfa.gov.tr/dorduncu-buyukelciler-konferansi_acilis-konusmalari.tr.mfa Date of Retrieval: 8 February 2012

52 "Fransa ile Sorun "Bahar"la Başladı (Problems With France Started with Spring)." *Radikal*, 25 December 2011.

53 "Balkanlarda Tarihin Yeniden Normalleşmesini İstiyoruz (We Want History To Normalize Again in the Balkans)" *Zaman*, 30 December 2011.

Minister Erdoğan, has recalled that the bill is being debated on the same day Tourism Attaché Yılmaz Çolpan was killed in Paris 32 years ago⁵⁴. Moreover, he has said that France owes Turkey an apology for failing to protect Turkish diplomats in Paris⁵⁵. On this point, let us recall that from 1973-1986, active Armenian terrorism essentially targeted Turkish diplomats, their relatives and other Government officials abroad and murdered 31 of these people⁵⁶. France is the country in which Armenian terrorism has been experienced the most. Back then, Turkey had persistently complained that France was not able to protect Turkish diplomats as necessary. It seems that just as the Diaspora Armenians, official authorities and even public opinion in France have entirely forgotten those events.

Following the adoption of the bill in the French National Assembly, CHP Center Management Board had condemned this incident the same day and declared that by eliminating freedom of expression and preventing scientific research, it violates the principles of democracy and human rights and that it is expected for the bill to be invalid in the Senate and internal legal phases⁵⁷.

Chairman of MHP Devlet Bahçeli, in a written statement⁵⁸, by providing the examples of Algeria and Rwanda, has expressed that if France wants to see historical records on genocide, it must look at its own colonial and bloody past. Moreover, he has indicated that if the French Parliament does not correct its historical mistake and escape from the genocide swamp as soon as possible, then it will have grave consequences for Turkish-French relations and it cannot be expected for this kind of action to remaining unrequited.

Speak of the Assembly Cemil Çiçek has expressed that there is no longer any point in maintaining friendly relations with France after the adoption of the bill in the French National Assembly and that the Turkey-France

54 "France Owes Turkey An Historic Apology For Failing to Protect Turkish Diplomats From Armenian Terrorists" *Anadolu Ajansı*, 23 December 2011.

55 The Turkish diplomat and his employees killed in France are these. Ambassador İsmail Erez and his driver Talip Yener in 1975, Tourism Consultant Yılmaz Çolpan in 1979, working Attaché Reşat Moralı in 1981, Religious Official Tecelli Arı and Security Attaché Cemal Özen

56 Although Armenian terror mainly targeted Turkish diplomats and other public officials, it also killed Turkish and non-Turkish individuals during bombings. Their numbers are 39 and therefore, the total number of Turkish and non-Turkish persons killed are 70. The total number of murders, injuries and capturing caused by Armenian terrorism in the world is 699. The country in which most of these have taken place is France with 292 incidents.

57 "CHP Fransa Ulusal Meclisi'ni Kınadı (CHP Condemned the French National Assembly)" *Anadolu Ajansı*, 22 December 2011.

58 "Bahçeli'den Fransa'ya Çok Sert Çıkış (Very Harsh Statement from Bahçeli To France)" *DHA*, 21 December 2011.

Parliamentary Friendship Group will not function until this situation is compensated⁵⁹.

We will shortly summarize the reactions arising in France and outside of France against the French Assembly below.

It is believed that President Sarkozy shows a special kind of effort in order not to mention this issue. However, when confronted with the journalists' questions in Prague which he visited in order to attend the funeral of former Czech President and famous writer Vaclav Havel, he has been forced to respond. As published in the press, his response is as follows: "I respect the views of our Turkish friends. It's a great country and a great civilization and they must respect ours⁶⁰. France is not giving lessons to anyone but does not want them either. France determines its policies in a sovereign manner. France does not ask for permission. France has its convictions on human rights and respect for memories". In short, it could be understood that Sarkozy is disturbed with Turkey's reactions against the legalization process of the bill and tries to indirectly convey the message "Don't intervene in our business". However, this issue concerns Turkey as much as it does France.

Sarkozy is disturbed with Turkey's reactions against the legalization process of the bill and tries to indirectly convey the message "Don't intervene in our business". However, this issue concerns Turkey as much as it does France.

In the mean time, it has been seen that Speaker of the National Assembly Bernard Accoyer and President of the Senate Jean-Pierre Bel have also not supported this bill with the belief that it will harm freedom of expression, but they also have not displayed any efforts for preventing the adoption of the bill. The reason for this is a majority of both the ruling UMP Party and the leading opposition party of the Socialists supporting this law. In other words, the above-mentioned figures have not wanted to struggle against the majority of the parties.

Prime Minister François Fillon has also showed special effort not to intervene in this issue. However, it has been conveyed in the press that he thinks the bill will harm freedom of expression and supports Foreign Minister Juppé on this issue⁶¹.

59 "Dostluk'un Anlamı Kalmadı (No Longer Any Point in Friendship)" *Yeni Şafak*, 24 December 2011.

60 "Sarkozy'ye Twitter'den Yanıt (Reply From Twitter to Sarkozy)" *Anadolu Ajansı*, 23 December 2011.

61 "La Crise franco-turque fait grincer des dents au sein du gouvernement à Paris" *AFP*, 25 December 2011.

Alain Juppé, which we have already mentioned many times, has not refrained from expressing that he does not support the bill. However, after its adoption in the National Assembly, he has accepted the situation by saying “I think that this initiative is inappropriate, but the Assembly has adopted the bill” and then has implied that Turkey-France relations could return to normal by stating “now let’s try to address relations in a calm manner. I’m aware that this is difficult but time will do what’s necessary”⁶². We should also note that other than Juppé, Minister of Interior Claude Guérant and Minister of Culture Frédéric Mitterand also oppose the bill. On the opposite, as mentioned above, Minister in charge of relations with Parliament Patrick Ollier, perhaps for being his duty, has fully supported the bill and has successfully maintained his support during negotiations in the senate.

The issue of creating a law which would punish those denying the Armenian genocide allegations has put the French Socialist Party in a difficult position. This party has no objections to such a law being adopted. However, since Sarkozy taking such an initiative on the eve of both Presidential and Parliamentary elections pushes the Socialists to the background, they have been disturbed. Yet, despite not taking any binding decision, the Socialists have expressed that votes will be given in favor of the bill⁶³.

The French Armenians have been pleased with the adoption of the bill in the National Assembly. In a declaration issued by the “Coordinating Council of Armenian Organizations in France”, which argues that they represent all the Armenians in France, has congratulated the executive and legislative powers for not submitting to pressures and restrictions and has called on the Senate to adopt the bill which was voted with a great consensus (?) as soon as possible⁶⁴.

Regarding Armenia, by sending a letter to President Sarkozy, President Sarkisian has conveyed that the words uttered by Sarkozy during his visit to Armenia on the recognition of the Armenian genocide (by Turkey) is the best evidence of his personal commitment to the Armenian-French friendship and has expressed his gratitude for the adoption of the bill⁶⁵.

62 Ibid

63 “Génocide Arménien: Un Peu Eléctoraliste de s’en Occuper Maintenant” *Armenews*, 22 December 2011.

64 “Communiqué de Conseil de Coordination des Organisations Arméniennes de France” *Armenews*, 23 December 2011.

65 “France Reiterated Its Commitment to Universal Values; Sargsyan Tells Sarkozy” *Armradio.am*, 23 December 2011.

On the other hand, Foreign Minister Nalbandyan has emphasized the great importance France gives to human rights⁶⁶ while in a letter sent to President Sarkozy, Armenian Catholicos of Cilicia Aram I residing in Beirut has emphasized Sarkozy's personal and France's unique role in defending human rights and by expressing his happiness with the adoption of the bill, has provided an incorrect assessment that a denying stance on the genocide allegations may become a reason for new genocides⁶⁷.

Regarding the US, Speaker of the Foreign Ministry Mark Toner has only indicated that they will continue to support the normalization of relations between Turkey and Armenia. On the other hand, a high-status diplomat, whose name is not given, has stated that they hope the tensions between the US's two close allies Turkey and France will quickly settle down⁶⁸. However, about a month later Foreign Minister Hillary Clinton, in respect to freedom of expression, will openly oppose the bill.

The European Union has also approached this issue with caution. In response to a question, member of the EU Commission responsible for the enlargement and neighborhood policy Stefan Füle has said that the EU's duty is not to write history, but to achieve reconciliation⁶⁹ and that in principle they do not make remarks on the initiative of the assembly of a member state⁷⁰.

General Secretary of the Islamic Conference Organization (ICO) Ekmeleddin İhsanoğlu has drawn attention to the contradiction of France by championing freedom of expression on the one hand, while banning the discussion of a historical event on the other and has said that the OIC rejects this nonsense, that the principles of liberty, equality and fraternity is at the core of the French Republic and that the adopted bill inflicts harm on at least two of them. İhsanoğlu has indicated that Europe is in an unacceptable contradiction over freedom of expression and has put forth the caricatures insulting Prophet Muhammad were defended in the name of free speech while such a bill could be enacted⁷¹.

Official authorities and the press in Azerbaijan have also opposed the bill.

66 RFE/RL, 23 December 2011

67 "Catholicos Aram I Hails France's Adoption of Genocide Bill" *Tert.am* 23 December 2011.

68 *Haber7.com*, 23 December 2011

69 "Füle, AB'nin Görevi Tarih Yazmak Değil (Füle, the EU's Duty Is Not to Write History)" *Sabah*, 22 December 2011.

70 "Tarihi Yargılamak AB'nin Görevi Değil (The EU's Duty Is Not to Judge History)" *Zaman*. 22 December 2011.

71 "OIC Calls French Genocide Vote 'nonsense', Reject It" *Today's Zaman*, 23 December 2011.

Moreover, the Azerbaijanis have also participated in the demonstrations organized by the Turks against France and the bill.

8. Debating the Bill in the Senate Constitutional Council and Being Found Inadmissible

Following the adoption of the bill in the National Assembly, the Senate also had to review and negotiate it. However, since more urgent bills were on the agenda, under normal conditions it could not be expected for the Senate to address this bill. Yet, if the Government asks for the bill to first be addressed, then the Senate must bring it to its agenda. After President Sarkozy passed the bill by the National Assembly and therefore pleased the Armenians, it was likely that by taking into consideration their relations with Turkey, he would not hurry in going to the Senate. When remembering that in 2006 a bill adopted by the National Assembly had waited for five years to be addressed by the Senate, these kinds of delays were normal within the French system. The Socialists found themselves in a difficult situation after President Sarkozy changed his stance all of a sudden and made the National Assembly adopt the bill, in order not to be deceived again they worked towards the bill quickly being presented to the Senate and called on the government to make sure the Senate put the bill on its agenda as soon as possible⁷². The Government having to accept this proposal declared through Parliamentary Relations Minister Patrick Ollier that the bill would be debated in the Senate within the last eight days of January⁷³.

From now on the following course would be taken. Based on French legislation, bills would first be reviewed in the Senate's "Constitutional Council" to determine whether they are "admissible" and a report would be written which would be sent to the General Assembly of the Senate. In May 2011, the Constitutional Council had found another bill on the punishment of those denying the Armenian genocide allegations as "inadmissible" and when this proposal was approved by the General Assembly of the Senate, the bill was not debated.

The bill being presented to the National Assembly was discussed on 18 January 2012 in the Constitutional Council having 49 members and was ruled with 23 votes in favor, 9 votes against and 8 votes abstaining votes that it was "inadmissible"⁷⁴.

72 "Génocide Arménien : Rebsamen (PS) Demande au Gouvernement d'Inscrire le Texte au Sénat" *Armenews*, 26 December 2011.

73 "Patrick Ollier: Génocide Arménien, le Texte à l'ordre du Jour du Sénat Fin Janvier" *AFP*, 4 January 2012.

74 "La Commission des lois du Sénat Rejette le Texte Contre la Négation du Génocide arménien" *Le Monde*, 18 January 2012.

President of the Constitutional Council from the Socialist Party senator Jean-Pierre Sueur stated that parliament is not a tribunal and the bill is not based on any legal grounds, that it only partially takes into consideration the European Union's Framework Decision of 2008 and that this text contradicts the Constitutional principles by endangering freedom of expression and scientific research.

Sueur also expressed that just as the Socialists, the ruling UMP party has also separated among each other and that the Socialists are the majority among those accepting the decision of the Council⁷⁵.

This decision of the Constitutional Council became the target of the criticisms of the Armenian organizations Federation in France. Co-chairman of the Federation Papazian put forth that the Council reached this decision as a result of the threats and pressures applied by Turkey. He also said that it must be fully calculated how many times the senators voting in favor of the bill have visited Turkey and has accused Valérie Boyer, who submitted the bill to the National Assembly, for not being able to dominate members of the Socialist Party⁷⁶.

From the report prepared by the Constitutional Council on this issue⁷⁷, it could be seen that the bill has been deemed "inadmissible" for the following reasons.

First it is expressed that the legislator intervening in the historical area raises some legal issues in "enacting laws related to historical events".

Secondly, it is emphasized that making the denial of the genocide allegations a crime creates some legal difficulties and that within this framework it could be contradictory to the principles of legality of crimes and penalties expressed in the French Constitution, freedom of thought and expression, and freedom of conducting research.

Thirdly, although it has been indicated that it is aimed for this bill to be applied to the 2008 Framework Decision of the European Union, in the report it is expressed that this application has been performed inadequately.

Furthermore, it has pointed out that if this bill becomes law, those opposing

75 "İnkâr Yasası. Ret Kararı (Denial Genocide, Decision to Reject)" *Hürriyet*, 19 January 2012.

76 "Komisyon Kararı Ermenileri Kızdırdı (Decision of the Council Angered the Armenians)". *Zaman.com.tr*, 21 January 2012.

77 Rapport Fait au nom de la Commission des lois constitutionnelles..... sur la proposition de loi, Adoptée par l'Assemblée Nationale, visant à réprimer la contestation de l'existence des génocides reconnus par la loi. No.209 (2011-2012), Engestré à la Présidence du Sénat, 18 January 2012

it will most likely resort to the Constitutional Council (Constitutional Court) and in this situation the Constitutional Council could decide that the law of 2001 (law on the recognition of the Armenian genocide allegations by France), whose conformity to the Constitution is very doubtful, is contradictory to the Constitution.

Lastly, it states that there are other legal methods which could make the struggle against those denying the Armenian genocide allegations possible.

This decision of the Senate Constitutional Council has been met with pleasure in Turkey. The Foreign Ministry has made the following statement on this issue⁷⁸:

No: 17, 18 January 2012, Press Release Regarding the Decision Adopted by the Commission of Laws of the French Senate

The Commission of Laws of the French Senate has once more demonstrated common sense and respect for the rule of law by its decision today. We expect the General Assembly of the Senate to abide by this decision of the Commission of Laws and display the same common sense on 23 January.

After expressing that the Council's decision displays how unlawful this initiative is even according to French laws, Foreign Minister Davutoğlu expressed that commonsense will prevail in the Senate and hopes that it will not be brought to the agenda⁷⁹.

9. Discussion and Adoption of the Bill in the Senate

4 days after the decision of the Laws Commission of being "inadmissible" as a result of the French Government wanting to adopt this law right away (2 days later if the weekend is not included), the General Assembly of the Senate has started debating the bill and while 2 hours was given for this issue, discussions continued for 7,5 hours. It could be seen that although changing from time to time, around 60-70 senators were present in the room. As will be explained below, the number of those casting their votes is much higher than this and this arises from being able to vote through representation⁸⁰.

78 MFA Turkey, "Press Release No: 17, Regarding the Decision Adopted by the Commission of Laws of the French Senate", January 18 , 2012 http://www.mfa.gov.tr/no_-17_-18-january-2012_-press-release-regarding-the-decision-adopted-by-the-commission-of-laws-of-the-french-senate.en.mfa

79 "Ermeni Tasarısı Anayasa'ya Aykırı (The Armenian Bill is Contradictory to the Constitution)" *Sabah*, 19 January 2012.

80 *Vatan*, 24 January 2012

In a speech delivered in the Senate, Parliamentary Relations Minister Patrick Ollier who represents the Government has stated, in summary, that denial is the supreme insult to collective memory, that the French community must fight against denial, that this bill is not a memory law and is a natural consequence of the 2001 law that officially recognizes the Armenian genocide allegations, while on the other hand he has expressed that it aims for the application of the 2008 Framework Decision of the European Union, that freedom of expression is very precious for them but this freedom should not be abused. Patrick Ollier has also referred to Turkey as “a great country they respect and wish to develop its relations with” and has said that their relations with Turkey are so strong that it cannot be weakened. We should at least note that expressing that relations between Turkey and France are so strong it cannot be weakened in a situation when it almost reached a freezing point is a display of extreme optimism. On the other hand, there is no doubt that these kinds of statements and repeatedly mentioning that Turkey is a great country is directed towards pacifying Turkey.

President of the Commission of Laws Jean-Pierre Sueur has mentioned a point which Minister Ollier had failed to express and after emphasizing that this bill only concerns the Armenian genocide, has said that the report of the Commission of Laws has reviewed the bill entirely from a legal aspect and has been mostly accepted by senators with various political views, that he does not underestimate the pains of the Armenians but what could and cannot be spoken of in public places cannot be determined by law, that the law carries the risk of censoring the Constitution and that laws cannot decide on history. Then, he has mentioned the Constitutional principles of legality of crimes and penalties, freedom of thought and expression and freedom of conducting research as indicated in the report.

12 senators have spoken on the bill; 5 of them have accepted the report of the Constitutional Council (in other words, the rejection of the bill) while 7 of them have rejected it (in other words, the discussion of the bill). Late on the voting has taken place.

After lengthy negotiations of the Report of the Laws Commission declaring the bill as inadmissible, it has been rejected with 167 votes against 86 and therefore, it has been understood that there is a majority in the Senate which favors the adoption of the bill. In the voting taking place after the discussions, the bill has been adopted with 127 votes against 86⁸¹.

81 The information in this section has been taken from the French Senate’s document entitled “Compte rendu analytique officiel du 23 janvier 2012, Répression de la Négation des Génocides”.

The distribution among the parties of the 127 votes in favor is as follows: the ruling UMP 57, the Socialists 56, Centrist and Republican Union Group 1, the Communists 11 and the independent deputies 2.

The distribution among the parties of the votes against the bill is as follows: UMP 19, the Socialists 26, Centrist and Republican Union Group 12, Democratic Social European Union 15, the Communists 4, the Greens 10⁸².

The point that draws attention here is that the standard separation between the Left and Right has not taken place in this voting. The separation has been among the parties and there have been those giving votes in favor and against the bill from the same party. President Sarkozy's influence has shown in the votes of the UMP. On the other hand, the Socialists that could be considered as the champion advocates of the Armenian genocide allegations in France have also given a significant number of negative votes. However, it is known that the reason for this is freedom of expression rather than the genocide allegations.

Despite the bill, which essentially relates to a legal matter, being contradictory to some principles in the French Constitution and these contradictions being clearly expressed in the report of the Senate's Laws Commission, besides legal considerations, it has been adopted upon President Sarkozy's request and entirely for political reasons such as being beneficial during the elections.

Another point we would like to point out in regards to the voting in the Senate is that despite the bill, which essentially relates to a legal matter, being contradictory to some principles in the French Constitution and these contradictions being clearly expressed in the report of the Senate's Laws Commission, besides legal considerations, it has been adopted upon President Sarkozy's request and entirely for political reasons such as being beneficial during the elections.

Another point to be emphasized is that the Turks in France, with the participation of Turks from neighboring countries and in particular Germany, organization great demonstrations in Paris. Although different numbers for the participants have been provided (although these numbers extend to 50 thousand, the general conviction is that it's not below 25 thousand⁸³), there is no doubt that the greatest demonstrations organized by the Turks have taken place in France. This situation has also drawn Prime

82 "8 Ay Önce "Hayır" Dediler Seçim Yaklaşınca Geçirdiler (They Said "No" 8 Months Ago, When Elections Nearing They Avoided It)" *Milliyet*, 24 January 2012.

83 "İnkâr Yasası Türkleri Birleştirdi (Denial Law United the Turks)" *Yeniçağ*, 24 January 2012.

Minister Erdoğan's attention and has said that hundreds of thousands of Turks could participate in similar activities in the future. When considering racism and xenophobia which is increasing for some time in Europe, it could be seen after the experience in France that it is now possible for a great number of Turks to organize demonstrations. In short, this event in France has demonstrated that as long as the Turks act collectively, they could form a great power in Europe. On the other hand, it is important that despite the number of Turks being very high, no significant riots have taken place. We should also note that at the same time the Armenians organized a demonstration near the Senate, but due to their numbers being lower compared to the Turks, they have failed to draw attention.

10. Reactions against the Adoption of the Bill in the Senate

As could be predicted, the first reaction to the adoption of the bill in the Senate has been received from the Turkish Foreign Ministry. Regarding this issue, the Ministry has issued the following declaration:⁸⁴

No:23, 24 January 2012, Press Release Regarding the Law Proposal Adopted by the French Senate

The law proposal presented by deputies of the governing Union for a Popular Movement (UMP), aiming to penalize in France any challenge to genocide allegations regarding the events of 1915 was adopted by a vote in the General Assembly of the Senate today (23 January). We strongly condemn this decision, which is problematic in every aspect and constitutes an example of irresponsibility, and declare that we will express our reaction against it in every platform.

A similar law proposal was rejected earlier by the General Assembly of the Senate on 4 May 2011 by 196 votes against 74, in line with the opinion of the Commission of Laws of the Senate which had concluded that the proposed law was in breach of the Constitution. Although the Commission of Laws of the Senate once again concluded that the latest proposal was in breach of the Constitution, the Senate adopted it. Since there has not been a change in the substance of the matter in the meantime, this development is a blatant indication of how such a sensitive issue can be exploited for domestic political purposes in France. This has been an entirely unfortunate step for French politics.

84 MFA Turkey "Press Release Regarding the Law Proposal Adopted by the French Senate" January 24, 2012 http://www.mfa.gov.tr/no_23_-24-january-2012_-press-release-regarding-the-law-proposal-adopted-by-the-french-senate.en.mfa

Politicization of the understanding of justice and history through other people's past and damaging freedom of expression in a tactless manner are first and foremost a loss for France.

It is obvious that the interpretation of historical events cannot be determined by the attitude of French politicians who see in themselves the right to judge other nations on the basis of one-sided views and declare a judgment on a serious allegation of crime such as genocide, thereby ignoring the principles of international law. In fact, no Parliament has such a right nor such a competence. The decision in question goes further and delivers a blow against the freedom of expression and scholarly research. At a period when we need positive examples for the dissemination of universal values throughout the world, it is disconcerting to see narrow political calculations producing such a result even in a country which plays a role in the advancement of such values and which takes pride in rule of law.

It is further unfortunate that the historical and multi-dimensional relations between the Republic of Turkey and France have been sacrificed to considerations of political agenda in spite of all our initiatives and warnings, as well as the opinions of prominent French institutions and jurists. It is quite clear where the responsibility for this lies.

The circles which consider that Turkey has overreacted on this matter or think that its reaction will only remain in words neither comprehend the essence of the matter, nor understand Turkey and the Turkish people. We find it useful to remind all parties that, in case of the completion of the finalization process for the law, we will not hesitate to implement, as we deem appropriate, the measures that we have considered in advance. Similarly, it must be also known that we will continue to strongly use our right to defend ourselves on a legitimate basis against unfair allegations. No one should doubt our Government's principled approach in this issue.

On the other hand, we share the calls for common sense of those who, during this process, have admitted the error being committed in French politics, appealed to return from this error and opposed to damaging relations with Turkey in such a tactless manner.

It is clear that all avenues need to be explored for the finalization of the present process in a way which will avoid this being recorded as part of France's political, legal and moral mistakes.

Turkey is determined to take every step required against this unjust action, which disregards basic human values and public conscience.

As could be seen, Turkey's main objections and criticisms towards the initiatives for the punishment of those denying the Armenian genocide allegations in France has been listed in the statement and Turkey's stance has been emphasized once again. However, what is most important here is clearly expressing that Turkey will continue to defend itself on a legitimate basis and will take every step required in this direction. In other words, it will continue its struggle.

Prime Minister Erdoğan's first reaction to the Senate's approval of the bill is that the law violates freedom of expression and is directed towards the elections. Upon a journalist reminding Erdoğan that Deputy Prime Minister Bülent Arınç had asked what French officials would do if Erdoğan said "1915 is not genocide" during a visit to Paris, the Prime Minister has said "a visit to France from now on? That falls under question" and has therefore hinted that he may not visit France if the law is implemented.⁸⁵

Since the French Senate has approved the bill, it was expected for Turkey to apply its sanctions on France. In fact news started being published in the press on what kinds of sanctions would be applied and among them measures such as the permanent withdrawal of the Ambassador, withdrawal of the military attaché, reducing the level of diplomatic relations, closing of Turkish airspace and territorial waters to French planes and ships, and not accepting French companies to public procurements were being put forth.⁸⁶

Under these conditions, it was expected for the Prime Minister to announce the new sanctions during his speech delivered a day after the meeting in the Senate in the Justice and Development Party's group meeting. However, Prime Minister Erdoğan did not make any statement in regards to sanctions. In his speech, he indicated that this law, which he classified as racist, was null and void. He also made the characterization of the sound of footsteps of fascism in Europe. Moreover, he expressed that they will wait for the law to be implemented while on the other hand stating that the necessary steps have been taken for taking the law to the French Constitutional Council and that they will announce and enforce sanctions step by step according to the developments.⁸⁷ In short, the Turkish Government preferred to wait in applying sanctions until the law was finalized.

85 "Fransa'ya Gitmem (I Will Not Go To France)" *Yeni Şafak*, 24 January 2012.

86 "Fransa'ya yaptırımlar Tamam Gibi (Sanctions on France Are Almost Complete)" *Milliyet*, 24 January 2012.

87 "Sağduyulu tavrımız sürecektir. Yasa, Bizim İçin Yok Hükümünde (Our Prudent Approach Will Continue. For us it's Null and Void)" *Zaman*, 25 January 2012.

This approach of the Government was met with understanding by the opposition. Chairman of CHP Kılıçdaroğlu said “we give the Government a blank check. If the government pursues a consistent and sound policy, CHP will support the government in all its decisions”.⁸⁸ On the other hand, Chairman of MHP Devlet Bahçeli has criticized France with a harsh language and said that before making recommendations to Turkey, France should begin with their own rancid history and look at the mirror and that the “AKP Government should not show inertia and weakness in leaving this arrogance unanswered”⁸⁹.

President Gül has expressed that he regretfully condemns this law, that France came in the category of countries restricting freedom of expression and freedom of scientific studies and that investment in an election is a behavior that is really degrading. Then he has conveyed his hope that at least 60 senators will apply to the French Constitutional Council.⁹⁰

On the other hand, Foreign Minister Davutoğlu has conveyed his reaction by stating “From here on out, European values face great danger. If every assembly decides to issue rulings on their own perspective of history, this will introduce a new era of inquisition in Europe... if the law is adopted (becomes definite), every Turk going to Paris will either individually or collectively start their words by “we do not recognize this law”. Then what will they do, arrest all of us?... will they put all of us in concentration camps or establish big, very big prisons?”

As could be assumed by Armenian circles, great happiness and pleasure have been experienced. In a statement, the Coordinating Council of Armenian Organizations in France (CCAF) in France has put forth that a great victory has been won against denial and has expressed its gratitude to the President, the Government and Rightist and Leftist parliamentarians for keeping their promise regarding this law despite initiatives of external pressures and misleading within the country.

11. Sanctions and Legal Remedies

In order to prevent the adoption of the law foreseeing the severe punishment of those denying or underestimating the Armenian genocide allegations with a prison term of one year and a fine of 45.000 Euros in France, Turkey

88 “CHP chairman: France denies itself with bill adopted at senate”. *Cumhuriyet*, 24 January 2012.

89 “Fransa Kendi Tarihine Baksın (France Should Look At it’s Own History)” *Hürriyet*, 35 January 2012.

90 “Gül Evaluated the Decision of the French Senate” *Habermonitor.com*, 24 January 2012.

has attempted to convince France through diplomatic means and in order to support these attempts, has declared that it will apply some sanctions on France. Thus, it has withdrawn its Ambassador in France and cancelling of some visits or meetings and freezing of cooperation in some areas had started being effectively applied. These sanctions, which were announced right after the adoption of the bill in the National Assembly, were not able to prevent its discussion and adoption in the Senate. There are two reasons for this: The first is that France, considered as a great country, would not accept and take into consideration, in principle, any notice or warning. The second reason is that despite the sanctions foreseen would harm France to a certain degree, they are not significant enough to change the policy it follows. In fact, French officials have not mentioned Turkey's sanctions at all. We suppose that enforcing heavier sanctions will not change the situation either and in fact will create the possibility of provoking France to resort to applying sanctions on Turkey.

However this situation does not mean that Turkey's decision to enforce sanctions is incorrect. Although this decision has failed to change France's approach, it has displayed that from now on Turkey is determined in maintaining very restrained relations with this country. In fact, the reason for Foreign Minister Alain Juppé's conciliatory policy towards Turkey, as opposed to the policy of President Sarkozy, is the likelihood of relations between the two countries becoming tense.

Since the sanctions have not changed France's approach, is it not possible to prevent the implementation of this law?

When studying the issue more closely, it could be seen that some legal remedies exist which could prevent the implementation of the law.

There are two possibilities for this. The first is proving that the French Parliament (National Assembly or Senate) does not have competence in determining whether or not an event constitutes genocide. The second is that this law adopted violates freedom of expression. These legal remedies, which has so many details that it could actually form a doctoral thesis, could be summarized as follows in the shortest way possible.

A. Parliamentarians not having Competence to Decide Whether an Event Constitutes Genocide

Article 6 of the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide determines the tribunals to try

persons charged with genocide and therefore decide on the existence of genocide as follows:

- a. a competent tribunal of the state in the territory of which the act (of genocide) was committed
- b. an international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction

As could be seen, national parliaments or international organizations are not competent in determining whether or not an event is genocide. This competence exclusively belongs to the tribunals mentioned above.

When taking this into consideration, the law adopted in 2001 in France which exists of the single sentence “France recognizes publicly the Armenian Genocide of 1915” is contradictory to Article 6 of the 1948 Convention mentioned above.

According to Article 9 of this Convention, disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide shall be submitted to the International Court of Justice at the request of any of the parties to the dispute. Based on this, Turkey could appeal to the International Court of Justice for the law of 2001 to be repealed.

B. The Law Adopted by the French National Assembly and Senate Contradicting Freedom of Expression

The most important evidence on this issue is the report of the Senate’s Law Commission dated 18 January 2012. In other words, this law violating freedom of expression along with some other freedoms has been determined with an official French document.

After making this indication, let us shortly observe to which international tribunals could be appealed for the issue of freedom of expression.

1. European Court of Human Rights

Article 10 of the European Convention on Human Rights states that

“everyone has the right of freedom of expression”. Although these may be subject to restrictions in the interests of national security, territorial integrity or public safety, and for the prevention of disorder or crime, these cannot be applied to the punishment of those denying the genocide allegations.

Based on Article 33 of the European Convention on Human Rights, any Contracting Party may refer to the court any alleged breach of the provisions of the Convention by another Contracting Party. Therefore, Turkey may refer to the European Court of Human Rights against France since there is a breach of Article 10 of the Convention.

Based on Article 34 of the Convention, the court may receive applications of individuals claiming to be the victim of a violation by one of the Contracting Parties. Therefore, Turkey could refer to the European Court of Human Rights against France for each person imprisoned or punished in France being a breach on Article 10 of the Convention.

2. The French Constitutional Council

Before releasing of a law adopted by the French Parliament, the Constitutional Council, which has similar duties to the Constitutional Court in Turkey, could be appealed to in order to determine whether the law is in conformity with the Constitution. However, this application could only be made by the President, the Prime Minister, Speaker of the National Assembly, President of the Senate or 60 deputies or 60 senators. The Council reaches a decision on these applications within a month. In urgent conditions, this period could be reduced to eight days upon the request of the Government. Laws or provisions which the Constitutional Council determines as being contradictory to the Constitution cannot be implemented.

It is possible to utilize this provision (Article 61) of the French Constitution so that the law foreseeing the punishment of those denying the Armenian genocide allegations would not be implemented.

Concerning which of the possibilities mentioned above should be preferred; filing a lawsuit depends on going through some stages many times. For instance, a person harmed by this law could appeal to the European Court of Human Rights once all domestic remedies have been exhausted and this could take years. On the other hand, since lawsuits filed on behalf of the Turkish Government will necessarily gain a political character, political influences could play a role in the decision to be taken.

In this situation, the best method is for the French to object to the law by benefitting from the opportunity provided by Article 61 of the French Constitution. This method prevents the lawsuit from gaining a political nature by leaving Turkey outside and provides the opportunity of reaching a decision much faster since no complaints would be received from person or persons harmed. On the other hand, if a solution cannot be reached in this manner, then it is possible to resort to the other methods mentioned above.

12. Appealing to the French Constitutional Council

The best method is for the French to object to the law by benefitting from the opportunity provided by Article 61 of the French Constitution. This method prevents the lawsuit from gaining a political nature by leaving Turkey outside and provides the opportunity of reaching a decision much faster since no complaints would be received from person or persons harmed.

After the law foreseeing the punishment of those denying the Armenian genocide allegations with a prison term of one year and a fine of 45.000 Euros was adopted in the Senate, it had to be approved by the President within fifteen days in order to be implemented.

Mostly for being a breach on freedom of expression and also for concerning a historical event rather than a current one; in other words, for being a “memory law”, this law was criticized within French public opinion through individuals with various political tendencies and statesmen and intellectuals. Since the reactions of the

Armenians and their advocates towards these criticisms were based on the existence of an Armenian genocide, their reactions did not constitute a complete answer to these criticisms. Despite the law being supported by President Sarkozy, the ruling UMP Party and a majority of the opposition party of the Socialists, it was perceived within public opinion as a text contradictory to freedoms.

As mentioned above, the only way to prevent the implementation of this law based on French domestic law was to appeal to the French Constitutional Council before the President’s approval by indicating that it was not in conformity with the Constitution. This application could be made by the President, the Prime Minister, Speak of the National Assembly, President of the Senate, 60 Deputies or 60 senators. It was known that the President and Prime Minister would not make such an appeal. Although the Speaker of the Assembly and President of the Senate did not support the law, they refrained from making such an appeal in order not to fall into conflict with the

President and/or parties. Since 86 senators had voted against the bill during the voting in the Senate, it was possible for 60 of them to appeal to the Constitutional Council. However, these individuals were under pressure either by their own parties or the Presidency. Since the number of those opposing the law in the National Assembly were much lower (approximately ten), it was not expected for enough number of deputies to make an appeal to the Constitutional Council. In conclusion, there was no hope that an appeal would be made to the Constitutional Council.

Under these conditions, 71 deputies and also 77 senators appealing in two separate groups to the Constitutional Council on 31 January 2012 for this law to be repealed came as a surprise. This unexpected event displayed that this law, which restricted freedom of expression and concerned not the present but the past, had drawn more reactions than presumed.

The main objection expressed in the long application presented to the Constitutional Council⁹¹ is that the law contradicts the freedoms of communication and expression. It has also been conveyed that those conducting scientific research along with teachers will be affected by it the most. Moreover, it has also been expressed that recognizing genocide by law will form an “official truth”, some political considerations could cause the parliament to recognize an event as genocide (and this is the situation for the Armenian genocide allegations), that concerning the issue of punishment, encouraging violence or hatred against a group or members of that group is mentioned in the Framework Decision of the European Union, but that the French of Armenian origin are not in such a situation and that rather the issue is solidarity to share their pains. On the other hand, it is also stated that the Armenian genocide is not recognized by any international treaty and international or national ruling of a court which is necessary for genocide to be legally recognized. In the application, the statement of “undervaluing the existence of genocide in a degrading manner” is also mentioned, expressing that since it is unknown from what point undervaluing and degrading starts and finishes, the courts could reach different decisions on this matter.

The reactions to this appeal made to the Constitutional Council have tried to be summarized below.

Most likely referring to the presidential elections, President Sarkozy has said that this appeal does not serve him. On the other hand, by expressing

91 “Loi: des parlementaires cèdent aux pressions d’un Etat Négationniste” yazısına ekliidir. *CollectifVAN*, 31 January 2012. <http://www.collectifvan.org/pdf/05-06-58-31-01-12.pdf> Date of Retrieval: 8 February 2012

that the law on punishing those denying the Holocaust could also be endangered if the law is repealed⁹², he has tried to win the support of Jewish circles. Later on, perhaps with the thought that the repeal of this law by the Constitutional Council could politically harm him, he has said that if such a situation emerges then a new bill will immediately be prepared on the same issue⁹³. At the basis of the President's harsh approach is the concern that he will greatly lose prestige if the law is repealed. On the other hand, this appeal to the Constitutional Council could also be regarded as a group within his own party rebelling against Sarkozy, because 51 of the 71 deputies belongs to the ruling UMP Party, whereas 18 of the senators are members of the same party.

This appeal made to the Constitutional Council has been met with great displeasure by the Armenians and their advocates. Valérie Boyer proposing this law to the French National Assembly has expressed her disappointment in some parliamentarians preferring legality to humanity, the pressures of a foreign state (Turkey) should not be superior to an international case, defense of human rights and the greatness of France⁹⁴.

In the statement issued by the Coordinating Council of Armenian Organizations in France, hope has been conveyed that French parliamentarians will not give in to the pressures of a denying and racist foreign state (Turkey) and it has been stated that this appeal aims to deny justice and harm the Armenians once again and that the Armenians will continue to claim their rights. In the declaration, all parliamentarians supporting the law and all French persons who believe in justice have been called upon to unite and resist Turkey's blackmail against the French Republic, government and the courts⁹⁵.

Concerning reactions in Turkey, the Foreign Ministry has issued the following statement⁹⁶:

No: 32, 31 January 2012, Press Release Regarding the Appeal Filed to the Constitutional Council for the Annulment of the Law Adopted in France

92 "Génocide Arménien: Nicolas Sarkozy Inquiet de la Saisine du Conseil constitutionnel" *Le Monde*, 31 January 2012.

93 "Sarkozy Uslanmıyor, Yeni Hamle Yolda (Sarkozy Is Not Coming to His Senses, the New Initiative Is on its Way)" *CNN Türk*, 1 February 2012.

94 "Génocide Arménien. Boyer Déçue" *AFP*, 31 January 2012.

95 "Communiqué du CCAF Sur Le Recours Au Conseil Constitutionnel" *Armenews*, 31 January 2011.

96 MFA Turkey "Press Release No:32, Regarding the Appeal Filed to the Constitutional Council for the Annulment of the Law Adopted in France" January 31, 2012 http://www.mfa.gov.tr/no_32_-31-january-2012_-press-release-regarding-the-appeal-filed-to-the-constitutional-council-for-the-annulment-of-the-law-adopted-in-france.en.mfa

We have learned that two separate appeals were lodged with the French Constitutional Council, one signed by 77 Senators and the other by 65 Members of National Assembly, to annul on the grounds of “unconstitutionality” the “draft law to penalize the denial of the genocides recognized by law in France” prepared by members of the ruling Union for a Popular Movement (UMP) and adopted by the National Assembly and Senate respectively on 22 December 2011 and 23 January 2012.

We welcome this highly honorable initiative.

At this stage we will await the decision of the Constitutional Council. We believe that this decision will be consistent with France’s deep rooted tradition of democracy and experience of rule of law.

As could be seen, in this statement it has shortly been conveyed that they are pleased with the decision and that they believe this decision will be consistent with democracy and rule of law. These simple statements must result from not wanting to intervene in the French Constitutional Council’s works.

President Gül has stated that the French will not allow their country to be overshadowed and that the Constitutional Council will make the appropriate decision and the process will continue successfully⁹⁷.

On the other hand, Prime Minister Erdoğan has said that this is an important step, that he extends deep gratitude on behalf of himself and the nation to those who signed the appeal, that he believes the French statesmen did everything necessary, and that he hopes this process which falls into conflict with France’s values will become appropriate⁹⁸.

After expressing that the French senators and deputies embraced their own values, Foreign Minister Davutoğlu went on to say that now they must wait with patience for the decision of the Constitutional Council and that he hopes Turkish-French friendship will gain at the end of this process⁹⁹.

97 “Gül: Ülkelerine Gölge Düşürmediler (Gül: They Did Not Overshadow Their Country)” *Sabah*, 1 February 2012.

98 “Senatör ve Milletvekillerine Şükranlarımı Sunarım” *Vatan*, 1 February 2012.

99 “Değerlerine Sahip Çıktılar (They Embraced Their Values)” *Hürriyet*, 1 February 2012.

13. Decision of the Constitutional Council

On 28 February 2012, the French Constitutional Council declared its decision on the law¹⁰⁰ and found it to be contradictory to the Constitution.

The main justification of this decision is that it violates the principle of the free communication of ideas and opinions stated in Article 11 of the 1789 Declaration of the Rights of Man and the Citizen belonging to the French Revolution. In the press release on this issue¹⁰¹, the Council has announced that freedom of expression and communication could be restricted if it harms public order or violates the rights of third parties, but that it must be appropriate, necessary and proportional for the purpose.

French Constitutional Council has made a legal decision by finding the law which foresees the punishment of those denying the Armenian genocide allegations unconstitutional, while it has made a political one by not taking any action regarding the law of 2001.

Furthermore, the Council has also expressed that laws must establish rules. This rather targets the law of 2001 which carries no further provision than recognizing the Armenian genocide allegations. However, the Council has also indicated that it did not reach a decision on this law since this was not asked from them and therefore made no evaluation of the “concerning events” (genocide allegations). We believe that the

Council could have also repealed the law of 2001 based on Article 6 of the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide which puts forth that a competent tribunal of the state or international penal tribunals may have jurisdiction in deciding whether an event constitutes genocide.

In conclusion, it is believed that the French Constitutional Council has made a legal decision by finding the law which foresees the punishment of those denying the Armenian genocide allegations unconstitutional, while it has made a political one by not taking any action regarding the law of 2001.

President Sarkozy has conveyed his reaction with a declaration issued by the Presidency on the same day this decision was taken. According to it, the President found denial intolerable and an act which must be sanctioned and

100 Décision n° 2012-647 DC du 28 février 2012, <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-pardate/decisions-depuis-1959/2012/2012-647-dc/decision-n-2012-647-dc-du-28-fevrier-2012.104949.html>

101 “Loi visant à réprimer la contestation de l’existence des génocides reconnus par la loi” <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-pardate/decisions-depuis-1959/2012/2012-647-dc/communiqu-de-presse.104950.html>

therefore called on the French Government to prepare a new text by taking into account the ruling of the Constitutional Council. He has also expressed that he will soon accept the Armenian representatives in France¹⁰².

However, President of the ruling UMP Party in the Assembly François Copé has said that this issue cannot be taken to the agenda since the parliament has finished its work¹⁰³ and preparation of a new bill has for the time being not been implemented.

About a week after the decision, President Sarkozy received the Armenian representatives at the Elysée Palace and in a speech delivered to them, repeated that he did not abandon the idea of a law being adopted which punishes those denying the Armenian genocide allegations, that he has called on the government to prepare a new bill on this issue and that he is determined in this bill reaching a conclusive result¹⁰⁴. Of course Sarkozy keeping his promise depends on being re-elected as President. On the other hand, even if he is elected, it will only be possible to submit a bill to the Assembly after the parliamentary elections in June.

Chairman of the Socialist Party François Hollande, who is Sarkozy's main opponent in the presidential elections and based on public opinion polls, has a high possibility of winning, has said that he is cooperating with the Armenians and if elected, promises to address the matter and conclude it in a peaceful negotiation process. Moreover, referring to the Turks organizing demonstrations in France, Hollande has indicated without giving any explanations that it is wrong for them to think this event is directed against them¹⁰⁵.

Regarding the French Armenians, they have experienced a major disappointment and under its effect, have made accusations to the Constitutional Council and some of its members. In a declaration¹⁰⁶, the Coordinating Council of Armenian Organizations in France has stated that they strongly condemn the decision of the Constitutional Council, that the decision was politically motivated, and that freedom of expression cannot be the point at issue for crimes against humanity and genocide. Moreover, it was stated in the declaration that the Council surrendered to Turkey,

102 "Communiqué de la Présidence de la République" <http://www.elysee.fr/president/les-actualites/> 1 Editions Parenthèses, Marseille, 1983.

103 "Armenian Ruling Party Rues Court Ruling on Genocide Denial" *Azatutyun*, 29 February 2012.

104 "Génocide arménien: Sarkozy Affirme Qu'il Ne Se Résignera Pas" *Armenews*, 8 March 2012.

105 "Génocide arménien.: Hollande S'Engage à Reprendre le Dossier S'il Est Elu" *Le Monde*, 28 February 2012.

106 "Négationnisme: le CCAF Condamne et Exige un Nouveau Texte" *Collectif VAN*, 29 February 2012.

Turkish lobbies harmed the independence of French organizations and that the impartiality of some of the Council's members must be questioned. Last of all, the declaration called on a new law text to be presented to the Parliament.

While some articles are published in the Armenians press which reflects the disappointment experienced, the small number of official reactions has drawn attention. In an interview, which covers many different issues, delivered to the *Der Standard* newspaper of Austria, Foreign Minister Nalbandyan has responded to a question concerning this issue by saying that this law has nothing to do with the resolution of Turkey-Armenia relations and that the responsibility for the situation between the two countries belongs to Turkey¹⁰⁷.

Turkey has conveyed its reaction to the law being found contradictory to the Constitution with the following statement issued by the Foreign Ministry the same day¹⁰⁸:

No: 65, 28 February 2012, Press Release Regarding the Annulment by the Constitutional Council of France of the Draft Law Concerning the "Criminalization of the Denial of the Genocides Recognized by Law"

The Constitutional Council of France today annulled the draft law concerning the "criminalization of the denial of the genocides recognized by law" on the grounds of unconstitutionality.

The law in question was a one-sided initiative aiming to prohibit any challenge of the Armenian views concerning a painful period in Turkish and Armenian common history.

We consider the annulment of the law as a step in line with freedom of expression and research, rule of law and the principles of international law and against the politicization of history in France.

We are glad to note that a grave error was corrected by the most competent judicial authority in France.

107 "Nalbandian: De Nombreux Pays Adopteront Une Loi Similaire A Celle de la France" *Armenews*, 1 March 2012.

108 MFA Turkey "Press Release Regarding the Annulment by the Constitutional Council of France of the Draft Law Concerning the Criminalization of the Denial of the Genocides Recognized by the Law" February 28, 2012 http://www.mfa.gov.tr/no_-65_-28-february-2012_-press-release-regarding-the-annulment-by-the-constitutional-council-of-france-of-the-draft-law-concerning-the-_criminalization-of-the-denial-of-the-genocides-recognised-by-law_.en.mfa

It is preferable that, on controversial historical issues, third countries adopt an impartial approach encouraging dialogue and resolution between the concerned parties, rather than make imprudent and prejudicial interventions.

We hope that, from now on, France will adopt a constructive approach so that this controversy between Turkey and Armenia is addressed on a just and scholarly basis and she will provide contributions supporting the resolution of the issue, rather than deepening it. Such an approach will contribute to the development of the Turkish-French relationship in the direction it deserves and in all fields.

We believe that the most important point of this declaration which reflects Turkish views is the indication that “It is preferable that, on controversial historical issues, third countries adopt an impartial approach”. The 1915 events are an issue between the Turks and Armenians and between Armenia, as representing the Armenians, and Turkey. France has no responsibility in connection to these events. However, France has acted as a party to this disagreement and has eventually brought Turkey-France relations to a deadlock.

On the other hand, it is believed that expressing in the declaration that the controversy between Turkey and Armenia should be addressed on a scholarly basis has originated from French Foreign Minister Alain Juppé stating in November 2011 during a visit to Turkey that Turkey’s proposal for a “Commission of Historians” has been embraced.

The decision of the French Constitutional Council has been welcomed pleasure in Turkey. Foreign Minister Ahmet Davutoğlu has said that the Council has reached a decision which is appropriate to European values that it will act as a precedent that a platform has developed where historical subjects could be discussed candidly and that therefore the decision has made a great contribution to Turkish-Armenian relations. On the other hand, European Union Minister and Chief Negotiator Egemen Bağış have indicated that wisdom has prevailed over foolishness and a historical mistake has been averted¹⁰⁹. Deputy Prime Minister Bülent Arınç has said that the decision gave a lesson to French politicians who signed the bill, which was an example of absurdity¹¹⁰. With a similar approach, Chairman of CHP Kemal Kılıçdaroğlu has stated that “the French Constitutional

109 “Emsal Teşkil Edecek (It Will Act As a Precedent)” *Hürriyet*, 29 February 2012.

110 “Arınç: Karar Hukuk Dışı Girişimlere Ders Olsun (Arınç: Let the Decision Be An Example to Unlawful Initiatives)” *A.A.*, 28 February 2012.

Council has rectified a legal strike that was made on French history”¹¹¹. After stating that this decision saved France’s prestige, President Abdullah Gül has said that the disagreement between Turkey and Armenia, which was rooted in history, should be solved between the two countries, it would be wrong for third countries to get involved in this matter and that on the contrary, will rarify the issue¹¹².

On the other hand, President of Azerbaijan Ilham Aliyev has expressed that he welcomes the fair decision of the French Constitutional Council and has described it as a manifestation of freedom of expression and thought¹¹³.

Although the decision of the Constitutional Council has been met with great pleasure in Turkey, it has failed to change the current negative character of Turkey-France relations, because as stated above, President Sarkozy has said despite this decision that he will present a new bill to the Parliament on the same issue. The Socialist Party’s candidate for President François Hollande also has the same idea. In short, it could be seen that the disagreement between the two countries regarding the punishment of those denying the Armenian genocide allegations will continue in the upcoming period. In this situation, Turkey has decided to continue its first stage measures enforced on France¹¹⁴.

BIBLIOGRAPHY

Agencies and Newspapers

ANADOLU AJANSI

ABHABER

AFP

ARMENEWS

ARMRADIO.AM

CİHAN

111 “France’s Esteem Saved By Constitutional Council Ruling”. *Sabah.*, 1 March 2012.

112 “Turkish President: French Council Saved Country’s Prestige” *Turkishny*, 28 February 2012.

113 “Azerbaijani President Welcomes French Constitutional Council’s Decision” *The Azeri Times*, 2 March 2012.

114 “5,5 Saat Bakanlar Kurulu (5,5 Hours Cabinet)” *Hürriyet*, 6 March 2012.

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WIKIPEDIA

YENİ ŞAFAK

YENİÇAĞ

ZAMAN

Governmental Agencies

Presidency of the Republic of Turkey

Foreign Ministry of the Republic of Turkey

French Senate “Compte rendu analytique officiel du 23 janvier 2012”

Répression de la Négation des Génocides

http://www.senat.fr/cra/s20120123/s20120123_7.html Date of

Retrieval: 8 February 2012

Articles

LÜTEM, Ömer Engin (2011) *Ermeni Araştırmaları*, No. 39. p. 44

Rapport Fait au nom de la Commission des lois constitutionnelles..... sur la proposition de loi, Adoptée par l'Assemblée Nationale, visant à réprimer la contestation de l'existence des génocides reconnus par la loi No.209 (2011-2012), Enregistré à la Présidence du Sénat le 18 janvier 2012

OREL, Sinasi and Süreyya Yuca (1983) *Ermenilerce Talât Paşa'ya Atfedilen Telgrafların Gerçek Yüzü*, Turkish Historical Society, 1983 (English Translation of this book: *The Talat Pasha Telegrams, Historical Fact or Armenian Fiction*, Rüstem Brothers, Nicosia, 1986).