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## **End or continuity of a legal case on genocide denial?**

The cancellation of an earlier decision against the notorious Turkish genocide denier Dogu Perinçek by the supreme Swiss Federal Court does not come as a surprise, after the Grand Chamber of the *European Court for Human Rights* (ECHR) had ruled last year in favor of the Turkish nationalist. Previously, the same ECHR at several occasions decided in favor of Turkish nationals who had been legally prosecuted in Turkey for publicly mentioning the genocide against the Armenians. The ECHR's philosophy behind such rulings seems to be that it defends as highest priority the freedom to question mainstream opinions on massive crimes, including the freedom to deny genocide.

Let us recall the facts in this long-lasting legal case: In 2005, Perinçek had provoked European legal systems by publicly and repeatedly declaring that the genocide against the Armenians is an 'Imperialist lie'. Perinçek's intentional denier 'tour' of 2005 included Germany, France and Switzerland. In Switzerland, genocide denial can be legally prosecuted under §261bis, 4 of the 'anti-racism norm' of this country's penal law. Basing on the anti-racism penal law, in 2007 Perinçek had been sentenced by all three court levels of Switzerland, starting with the Lausanne Tribunal of Police as a local court and ending with the Federal Court. But neither Perinçek, nor the ECHR accepted the Swiss decisions.

Subsequently, the revision by the ECHR was prompted by the collection of the judgment by the Federal Court of Switzerland; it also ruled that the *Society Switzerland-Armenia* (Gesellschaft Schweiz-Armenian, or GSA) that had started the series of court decisions in 2007, had to pay a fine of 2.500 SF as compensation to Dogu Perinçek. As the honorary president of GSA, Sarkis Shahinian, told me, there is a possibility to seek a legal revision of this decision at the ECHR in Strasbourg.

The prominent Swiss daily *Neue Zürcher Zeitung* headlined the Federal Court's decision as 'involuntary acquittal'. But this is not the end of this matter, because the Federal Court had re-directed it for further revision to the lower regional court of the Swiss canton Waadtland. It has not only to decide on the validity or revision of its previous decision on Perinçek, but also on Perinçek's claim for a compensation of 100,000 SF. The legal representative of GSA has now to clarify the freedom of decision that the cantonal court of Waadtland possesses: Can it confirm the judgment of the first court decision of 2007 (by the Police Tribunal at Lausanne), or is it entirely bound by the 2015 decision of the ECHR?

The recent cancellation by the Federal Court of Switzerland has re-activated Swiss debates on the anti-racism law; in the past, the abolition of this law has been demanded at several occasions. The Swiss MP Yves Nidegger started a parliamentary initiative to amend §261bis, 4, arguing that Swiss courts had tremendous difficulties to decide which historic events qualify as a genocide. Therefore the denial of genocides should either no longer be prosecuted at all, or the prosecution has at least to be limited to cases when the crime of genocide has already been evaluated by an international tribunal. At present, the Swiss Ministry of Jus-

tice had refused to follow such initiatives for amendment or abolition, but admitted that courts should more cautiously employ the anti-racism norm.

The experience of the 'causa Switzerland ./. Perinçek' and its political and legal effects illustrate the difficulties to prevent and punish the crime of denying the most severe crime that humans commit. Among scholars of genocide it is a mainstream opinion that denialism forms an integral part of the crime of genocide and subsequently should be prosecuted; these scholars take into consideration the suffering that genocide causes to survivors and their descendants. Among historians, however, the majority fervently defends their freedom of opinion and their unlimited rights to express it, including the denial of genocide. Jurists who are trained to follow precise definitions may draw the conclusion that it is better for their career not to tread on the uncertain ground of 'contested history' and those cases of genocide committed before the UN Convention of 1948, for these cases naturally lack legal evaluations by any international court. At any rate, the ECHR's ruling of 15 October 2016 is no useful tool in fighting denialism, but rather a source of confusion, if not even an encouragement for denialists.