[TR] Article 301 of the Turkish Criminal Code Amended

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Article 301 of the Turkish Criminal Code was amended by the Grand National Assembly of Turkey (Turkish Parliament), on 30 April 2008, by the law no. 5759. The law has been approved by the President, and entered into force upon its publication in the Official Gazette on 8 May 2008.

This controversial article is famous for its application against Orhan Pamuk, Turkish Nobel Laureate in Literature, Hrant Dink, a Turkish journalist of Armenian descent who was murdered in 2007, and many other journalists and writers.

Article 301, before it was amended, required imprisonment from six months to three years for publicly insulting “Turkishness”, the Republic or the Grand National Assembly of Turkey, and imprisonment from six months to two years for publicly insulting the Government of the Republic of Turkey, judicial bodies and military and security organisations of the State. In particular, the part of the article on publicly insulting “Turkishness” gave rise to much criticism because of the vagueness of the term and the way in which it was construed by the judiciary.

The Turkish Criminal Code (no. 5237) came into force on 1 January 2005, but the provision of article 301 is not new to Turkish law. The article 159 of the previous Turkish Criminal Code (no. 765) which remained in force from 1926 to 2005, contained almost the same provision but also penalised the publicly insult of the Ministries. In addition, article 160 of the previous Turkish Criminal Code required permission from the Ministry of Justice for a case to be brought to trial.

With the recent amendments, the terms “Turkishness” and “Republic”, were amended as “Turkish Nation” and “Republic of Turkey”. This amendment, especially the term “Turkishness” is expected to lead to a narrower meaning.

Also, similar to the article in the previous Turkish Criminal Code (no. 765), the amended article 301 will require permission from the Minister of Justice. But unlike the article 159, this new provision will require only the permission of the Minister of Justice for the commencement of the investigation. This means that no other high level officials of the Ministry of Justice other than the Minister will be entitled to provide the permission.

Another improvement in the article 301 is the lowered limit for maximum penalty. Any insults falling within the scope of this article will require imprisonment from six months to two years. The importance of this particular amendment is related

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to a technicality. According to Turkish Criminal Law, execution of an imprisonment for a conviction to two years or less can be postponed on the discretion of the court. Decreasing the maximum penalty will now make sure that any convictions for violation of article 301 will be under this two years limit and therefore may be postponed.

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Law no. 5759, Official Gazette of 8 May 2008

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