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Background Report on the Insult Trials in Turkey
By Maureen Freely

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In December 2004 Europe decided that the time had at last come to begin opening its doors to Turkey. Having agreed upon a date to start accession talks, it laid down its conditions. It was not just the economy that was to be brought up to European standards: the state itself would have to change - quickly, efficiently, and radically. The army, which had always seen itself as the guardian of Atatürk's secularist vision and been involved in the day to day running of the government for more than three decades, was to allow some civilians onto the General Security Council. Non-Muslim minorities, all of which had been persecuted or penalized at various points during the Turkish Republic's eighty year history, were to enjoy more rights. So, too, would all other citizens. Turkey's penal code, taken in large part from Mussolini's Italy, was to be scrapped forthwith and replaced with a code that brought it into line with Europe's social democracies.

To those who had longed for a more democratic Turkey, this was the stuff of dreams. In the previous half century, the military had stepped in on three occasions, ostensibly to restore order. Many of those who worked for human rights inside Turkey had personal experience of its torture chambers and its prisons. To them, the EU seemed to promise a bloodless revolution, an overnight dismantling of the state bureaucracies that had paralysed the country for so long. Amongst the Kurds, the Alevis, and Turkey's other Muslim minorities, there were complaints that the EU had not gone far enough. But they, too, welcomed its call for more cultural rights: this strengthened the case for what they were already doing. By December 2004, a grassroots movement for cultural freedom was in evidence almost everywhere. Music in particular respected no boundaries. There was a renewed interest in music sung in Greek, Ladino, Armenian, and previously banned languages like Kurdish. There was a boom in family memoirs, each one tapping into the modern republic's long unmentionable multicultural roots. After eighty years of nationalist conformity, it was finally possible for Turks to explore and even celebrate ethnic and religious difference.

While many in the secular establishment were happy to see the old prohibitions fading, traditional Kemalists feared it would create a vacuum that would erode national unity, encourage separatism and allow religion back into politics. Possibly because it was the Justice and Development Party (AKP) - an Islamist party - that had taken Turkey into Europe, the Republican People's Party (CHP) – founded by Atatürk and traditionally the stronghold of the country's pro-Europeans – was by now a haven for the antis. But there were many other voices in the debate, and this in itself appeared to be proof that Turkey was coming of age as a democracy. This seemed in turn to bolster up that fond European hope for a Turkey that might serve as a beacon for its region, bridging the Islamic world with the West. Though there were some vexing obstacles Turkey had yet to overcome – most particularly in Cyprus and the predominantly Kurdish regions of the Southeast – Euro-optimists

were confident that EU involvement in negotiations could only help to move them forward.

Meanwhile, back in Europe, the sceptics were raising any number of doubts about Turkish accession. But Turkey's cultural elites had responded with a most impressive charm offensive. In Istanbul, Turkey's first Museum of Modern Art opened its doors. In London, the Royal Academy hosted a gorgeous exhibit of Ottoman art – spanning five centuries. Its message was clear: Turkey was a modern, westward-looking nation built on the foundations of a long, proud history. But it soon became clear that this story couldn't hold.

In February 2005, the novelist Orhan Pamuk was subjected to a fiery hate campaign in the Turkish press after he remarked to a Swiss journalist that 'a million Armenians and thirty thousand Kurds were killed in these lands' - the Armenians in 1915 and the Kurds during the 1990s. He was briefly forced into hiding abroad and within months of his return - in July 2005 – a previously unknown lawyer named Kemal Kerinçsiz filed a complaint against him, charging him with insulting Turkishness. This took even Turkey's lawyers by surprise, for Kerinçsiz had brought the case under an article from the new penal code, which had only just come into effect. This, you will recall, was the code that was to have brought the country in line with Europe.

A year and a half later, we know that there are as many as 14 articles in the new code that can be used to put severe curbs on freedom of expression. There are further concerns with the newly revised anti-terrorism law, the law to protect the memory of Atatürk (which allows for the prosecution of those who insult his memory) and the press law. Since the summer of 2005, more than a hundred other writers, scholars, cartoonists, musicians, students, and activists have been prosecuted for insulting some aspect of the Turkish state or its history. Though only a few have attracted media interest in the West, the handful of high profile cases that have done so present a puzzling picture. Even observers with some knowledge of Turkey have had a hard time understanding why the Turkish government has allowed these prosecutions to happen. Why would a nation hoping to join the EU wish to censor its writers so severely? Doesn't it see how much they harm its case for accession? Why is the Armenian question still so dangerous to discuss, ninety years on? Why must Atatürk's memory be protected from insult? Is it accidental that Turkey's most successful writers are being prosecuted, or is it deliberate? How did these broadly defined curbs on free expression make it into a penal code that was meant to have brought Turkey in line with Europe? Who are these ultranationalists driving the most famous cases, who are their backers, and what are their aims? If their aim is as stated – to keep Turkey out of Europe – why do their speeches resonate with ordinary people previously in favour of the EU?

The answers to these questions are complex; it would be impossible to answer them fully here. What I propose to do instead is to offer the view from the courtroom. If you were to go to Turkey this morning to observe a 301 hearing, what might you see? Before we set out, let me make it clear that these are show trials. Though no two are alike, together they reflect a coherent strategy on the part of those who are driving the prosecutions.

Over the past eighteen months there have been about two dozen 301 cases. Some involve up to five defendants; many are charged under more than one article. Just under half have been charged in connection with writings that touch on some aspect of the Armenian question. These include Elif Shafak, Turkey's second most famous

novelist (charged with insulting Turkishness for allowing a fictitious character to use the word genocide), as well as the eminent academic and columnist Murat Belge, who was prosecuted along with four other journalists for criticizing a court decision to shut down a 2004 conference that sought to open up the Armenian question. Others charged under 301 include Professor Baskin Oran and Ibrahim Kaboglu (for suggesting in a government-commissioned report on minorities that Turkey replace the term 'Turk' with the more inclusive 'Turkiyeli' – 'people of Turkey'); the publisher Abdullah Yılmaz, for publishing a book set in multicultural Ottoman Izmir; and Fatih Taş, in one instance for publishing John Tirman's book on the Turkish military, and in the second for publishing Chomsky's *Manufacturing Consent*. Most of the other cases rise out of newspaper pieces held to be critical of the Turkish army: one draws links between the army and the perpetrators of the infamous Şemdinli bomb attack, which was made to look like the work of Kurdish separatists but quickly traced to the Turkish intelligence network; another links certain elements of the army with the assassination of a judge, officially deemed to have been committed by an Islamist extremist; a third finds similarly sinister patterns in the recent sacking of the prosecutor of the mostly Kurdish city of Van, while a fourth calls for a new investigation into the infamous May Day Massacre in 1997, when riot police blocked off all major exits after snipers fired on a peaceful crowd of peace marchers in Istanbul's Taksim Square, resulting in 35 deaths. The journalist Hrant Dink has had four prosecutions launched against him in the past 18 months. The fourth rises from an article he ran last summer in *Agos,* the weekly of which he is editor. He was charged under Article 301 for insulting Turkishness by running an article that was critical of Article 301 and its definition of Turkishness. Not all 301 cases are political: The most recent involves a thief who, after robbing a school, wrote curses on its blackboards.

By now it should be clear what the political cases have in common: they target writers, publishers, scholars, and activists who challenge Turkey's state ideology, question its official history, make claims against its army or judiciary, or suggest a move away from monoculturalism. The same is true of the five cases in which defendants are charged with insulting the memory of Atatürk – the most famous, against the journalist Ipek Çalışlar, concerns an anecdote in her biography of his wife, Latife Hanim, in which she describes the great man's escape from would-be assassins in woman's clothing. There have been at least seventeen cases brought under 312 (which makes it an offence to instigate class, race, religion, sectarian or regional hatred by the means of media). These range from cases against students for chanting unseemly slogans to the prosecution of the owner of a music publisher for producing an album of Kurdish music in which the singer allegedly calls for Kurdish girls to take to the mountains. There are also five or so cases under 318 (alienating the people from the army). The best known of these defendants is Perihan Mağden, prosecuted last spring for an article she wrote in defence of a conscientious objector. In November she was prosecuted again under Article 288 for 'attempting to prejudice' the trial of Pinar Selek, a feminist sociologist charged with involvement in a Kurdish separatist bombing. Though Selek was later acquitted, the case against Mağden was not withdrawn. Hrant Dink has been charged under the same article for writing in his own defence.

The Prime Minister himself has prosecuted several cartoonists (for portraying him as a kitten, a giraffe, and a dog owned by President Bush). In October 2006, a respected Sumerologist was tried under Article 125 (which makes it a crime to offend honour, dignity and respectability, or to insult public officials) for claiming in a book

that the Sumerians were the first to use veils, and that the women who used them were prostitutes.

So far no one has gone to prison for insulting Turkishness, alienating the people from the military, insulting the memory of Atatürk, or offending public morals. Some defendants have (like Elif Shafak and Perihan Mağden) been acquitted; others (like Orhan Pamuk) have had their cases dropped on technicalities. Some (like Hrant Dink) have taken their cases to the European Court of Justice; others have seen their sentences suspended or converted to fines. The object (at least at this stage of the game) is not to imprison writers but to intimidate, shame, and discredit them, not to appeal to the judge presiding over the court, but to the television cameras outside.

It is still too soon to know how long this strategy will hold, or what will succeed it.

Bearing that in mind, let's make our way to the theatre where today's drama is to be performed. It's a quarter past nine, and outside our courthouse all seems calm. But there, down the road, we can see the first television crew unloading its equipment. This tells us that today's defendant is a person of some standing.

By 9.30, they have arranged themselves in a row about ten yards from the entrance. Across the street, the first demonstrators are also setting up shop. They are mostly male, middle-aged, and dressed in shabby brown suits: if today's defendant were accused of alienating the people from the army, there might have been a few Mothers of Martyrs amongst them. These are (or purport to be) women who lost soldier sons during the Turkish army's long and bloody conflict with Kurdish separatists during the 1990s.

But today it is a 301 case being prosecuted, and the insults on the demonstrators' banners make no mention of the Kurds or the Turkish 'whores' who champion their cause. Instead they list the names of the most famous 301 defendants, including the writer who is to appear in court this morning, denouncing them all as traitors, spies and 'missionary children'. This last is a clever play on several Turkish insults, implying that the accused are not just children of prostitutes but graduates of foreign schools that groomed them to become spies.

There are reasons why such accusations resonate for the Turkish public. For there has never a time when Istanbul was not full of foreigners. British, French, Genoese and Venetian concessions have existed in Istanbul for centuries, and the empire's large non-Muslim communities had dominated commerce for even longer. During the Ottoman Empire, the Greeks, the Armenians, and the Jews were each recognised as a 'millet' or nation. This gave them the right to practice their own religion and observe their own customs but also barred them from the military and the imperial bureaucracies.

These jobs went to the Ottomans, many of whom had begun life as Christians or Jews but converted to Islam. Once they changed religions and joined the establishment, they could, and often did, rise to the top of their chosen professions. But as the Empire began to shrink during the nineteenth century, so, too, did the chances for advancement. There were fears that the empire might lose more ground still unless it westernised – or at least, acquired western expertise and technology. This is why the last half century of the Ottoman Empire saw a pronounced and growing European presence not just in its capital but throughout Anatolia and beyond. Most Europeans had come at the Sultan's invitation – to act as military

trainers and consultants, to build railways, and to educate the empire's elites, but they also came to enlarge their country's sphere of influence. There was a large influx of missionaries, American as well as European, and in most of their schools, most of their pupils came from the non-Muslim *millets.* With western expertise, technology and religion, came western ideas about nationhood. The Armenians in particular are seen as having been encouraged to dream of a nation of their own by the 'foreign meddlers' who taught them.

In the aftermath of World War One, most – though not all - of Anatolia's missionary schools closed their doors. The great foreign schools of Istanbul did not just survive but grew in influence; in Atatürk's new secular state, it was not just the minorities who sent them their children, but the new Turkish republican elites as well. The western educations they gained there made them valuable assets –essential actors in their country's modernisation. But with the rise of ultranationalism has come a rebranding. They are 'missionary children' – westernised Turks working not for Turkey but against it.

Today's defendant is a graduate of Istanbul's most famous foreign school. This is well known: what the demonstrators hope to remind people with its banner is that quite a few of the best known 301 defendants were educated at the same place. The institution itself was one of the first targets of ultranationalist fury, but let's save that story for another day. Because now it's 9.45 and if you look to your right, you'll see fifty or sixty riot police piling out of two busses.

If we were standing outside a higher court, we would be seeing gendarmes. Security is generally much tighter where gendarmes are involved – passports are checked and filed away, bags are searched, cameras are banned, and rowdy demonstrations are not tolerated. But today we are standing in front of a civil court, and it will be the riot police who will be protecting us to whatever degree has been deemed appropriate.

Let's step inside. As we enter the foyer, we will see a large photograph of Atatürk on the far wall. As we search the corridors for the courtroom in which today's 301 case is to be tried, we will see many more. There is not an office or schoolroom in the city without a photograph of Atatürk, just as there is no town in the country without his statue. The love for the founder of the Republic is as great as it is genuine, but it is also enforced.

To understand why this is so – and why it is tolerated, even applauded – we must return to the last years of the Ottoman Empire. In August 1920 – twelve years after the Young Turk Revolution, six years after Enver Pasha took the country into the First World War on the side of the Germans, five years after he and his colleagues arranged for Anatolia to be cleansed of its Armenians, and a year after the Greeks invaded Anatolia - the puppet sultan Vahdettin signed the Treaty of Sevres, which parcelled what was left of the Empire – allowing the Greeks and Italians to stay in those regions they had occupied, and holding out the possibility of homelands for the Armenians and the Kurds. The armies of five Allied powers marched in to occupy its capital. Though they were welcomed by many of Istanbul's non-Muslim minorities, there was widespread outrage, especially in the army; those condemning Vahdettin as a collaborator switched allegiance to the nationalists who were fighting the Greeks in Anatolia, led by Mustafa Kemal.

What followed is what the Greeks remember as the Catastrophe: the burning of Smyrna and, after the nationalists' victory, the 1923 population exchange in which 2 million of Anatolia's ethnic Greeks and Greece's ethnic Turks lost their homes almost overnight. The Turks see this chapter of history differently. Their land had been invaded; they'd seen the invaders off, together with the fifth columnist who had supported them. A great hero had rescued them from defeat and humiliation and now he proposed to build on this victory by establishing a modern secular republic. The years that followed saw what scholars call an extraordinarily popular, and successful, 'revolution from above'. The fez was banned, and the dervish orders closed, and the new modern elites discarded the veil for good measure. Sharia law was abolished and, in due course, women given the vote. The old methods of timekeeping were abandoned for Greenwich Mean Time and the Gregorian calendar and the weekly holiday changed from Friday to Sunday. Having decided to switch from Arabic script to a modified Latin alphabet, Atatürk gave the country three months to learn it He ordered an ambitious language reform that would see Turkish cleansed of most of its words of Arabic or Persian origin. Then he ordered all citizens to invent their own surnames: he chose Atatürk (Father of Turks). In the middle of all this, he gave his famous 6-day speech in which he laid out the official history of the late Empire and the early Republic; it forms the basis for what Turkish schoolchildren learn in school to this day. Whatever their ethnic origin, whatever their parents' language or political beliefs, all schoolchildren in this highly centralised, stringently policed system must study, and commit to memory, the same official texts. The gist of it: Turkey is surrounded by enemies, and threatened, too, by the enemy within.

Though eighty-three years of thorough schooling have helped to foster a strong national identity in many if not most parts of the country, and though the Turkish army has enjoyed wide support over the years for clamping down on communists and separatists and all others viewed as threats to national unity, the faith in the state is not as pervasive as it once was. Especially but not exclusively in the Southeast, there are still deep divisions, made deeper still by decades of persecution in the name of national unity.

There is also the Left, though it, too, is not what it was. But as we stand outside the courtroom, we can see that Istanbul's left-leaning intelligentsia is here in force to give support to today's defendant. They have the air of experience, and so they should. Turkey has been prosecuting its writers from the earliest days of the Republic. The great Communist poet Nazim Hikmet spent more than half of his life in prison. The novelist Yashar Kemal has been hounded and prosecuted for his leftist views and his statements about the Kurds, all his writing life. Many of those most active in today's campaign for free expression were students when the military took charge in 1971 and again in 1980. Those who belonged to banned leftwing groups were imprisoned and routinely tortured. Many went on to distinguished careers in the arts and the professions, but as you can see from the way they are greeting each other this morning, they continue to cherish their long memories. Amongst them are journalists of all shades of opinion. Though some of their papers have condemned Article 301, others have denounced the defendants and championed the ultranationalists. Walking amongst them are a dozen transvestites and perhaps twice as many feminist activists – for today's defendant has written in defence of both. Mingling with the crowd is an assortment of plain clothes policemen and intelligence officers, and here and there, a modestly dressed man or woman who does not seem to fit into any of the above categories.

At 10.15, the defendant is led out of the waiting room and into the courtroom. And suddenly one of these modestly dressed matrons steps forward, raps the defendant over the head with a hard plastic folder, and in an ear-splitting shriek, denounces him as a traitor, foreign spy, and –bizarrely – a Jew. The riot police stand by impassively. And for a time it seems as if they are not going to stop the three men in brown suits who have gone after another 301 defendant in the crowd. But today they are to be no supporters leaving the court with black eyes. Today their instructions are to remove the shrieking matron, take her behind police lines, find her a chair to stand on, and give her forty-five minutes to 'express her democratic views.' As she does so, the crowd of supporters has no choice but to listen for the police have arranged themselves in such a way as to block their exit. They must also watch their backs, for behind them, arranged in a horseshoe, are a dozen men in brown suits who remain impassive unless their turn has come to applaud the shrieking matron, start up a chant, or throw an egg at the back of a traitor.

Another fracas. The crowds part. There, in his flowing gold and scarlet robes, is Kemal Kerinçsiz with four associates from the Grand Union of Lawyers, the group that has initiated most of the high profile cases. Though he had no public profile before the 301 prosecutions, Kerinçsiz is now the face of ultranationalism.

As we stand now at the back of the courtroom, let me warn you that he has links with the neofascist National Action Party of which he was once a branch president. This is the party that in the 1960s cultivated the 'idealist hearths' – the groups that spawned the gangs that are held to be responsible for a long string of provocations and assassinations of prominent members of the left and centre left during the seventies and eighties, allegedly at the request of state authorities. During the last decade, the party has made a strong effort to disassociate itself from these activities. Today those who stage provocations outside 301 trials are known as ultranationalists.

Kerinçsiz was the lawyer who tried to shut down the 2004 Armenian conference. He has organised rallies outside the Greek Patriarchate, calling for its removal. In 2005 he stormed into a press conference, where Professors Baskin Oran and Ibrahim Kaboğlu were to have presented their report on minorities, and tore it to shreds before the camera. Last summer he stormed a conference on forced internal migration. Not long afterwards, his associates assaulted members of a congregation greeting a visiting Armenian prelate.

At Orhan Pamuk's trial, his associates assaulted several EU parliamentarians in the courtroom, in full view of the judge. The judge did not ask for his removal, but at subsequent trials, other judges have taken action. And so, too, does today's judge. When a man in a brown suit interrupts the proceedings, she sternly arranges for his prompt removal. As we watch the guards hustle him to the door, we are reminded that we are now sitting at the heart of the Turkish state. No one in Turkey uses the words 'state' and 'government' synonymously. Governments come and go, while the state remains in the same steady and not always visible secularist hands.

Under Atatürk's gaze, the case proceeds with solemn formality. But when the charges are dropped, or the defendant acquitted, the lawyers will storm outside to speak to the cameras. There will be scuffles, all filmed. While this is happening, we, the defendant's supporters, will be held inside or released in groups of 2 or 3 by the back door.

On TV that night, and in the papers the next day, we will see Kerinçsiz foaming with injured nationalist pride, accusing the defendants of selling Turkey into European slavery. They have joined forces with the Armenian diaspora, encouraged the EU to come in and dismantle the army, abandon Turkish Cyprus, encouraged the Kurds, weaken the state, drag the proud Turkish people into slavery….

As extreme as his sentiments are, they resonate with many viewers, sometimes with good reason. It has not been pleasant to be a Turk over the past two years. The EU has often been high-handed in its requests for reform, and a day hardly passes without a new threat or a new insult from Europe's ultranationalists. This may explain why, during the same period, we have seen a new rage for flags and nationalist extravaganzas. Turkey's biggest publishing sensation is not Pamuk's *Snow* but *These Crazy Turks* – a swashbuckling tale about the nationalists who won Turkey's War of Independence. Its blockbuster film was not Lord of the Rings but The Valley of the Wolves, in which Turkish fighters take on the Americans in Iraq. A translation of *Mein Kampf* was on the bestseller list last summer, as was a book about secret Jews hatching Zionist schemes inside the Turkish establishment. The xenophobic mood has been fed, too, by the war in Iraq, the invasion of Lebanon, and Palestine.

Are we to understand from this that Kerinçsiz and his Grand Union of Lawyers have risen from the mist of their own volition, to express the mood of the day? There are many theories on his origins, and in the absence of facts, theories they will remain. But it is important to remember that Turkey has a long tradition of covert provocation. And every once in a while, someone will emerge to cast light on one of its darker chapters. Let us use as one example the anti-Christian riots in Istanbul in 1955. These were provoked by a bomb thrown at Atatürk's birthplace in the now Greek city of Salonika. Much later, a high ranking official wrote in his memoirs that the bomb had been planted by Turkish secret agents. His account is now accepted as the truth, but when an exhibition of photographs taken during the two day riots was opened in Istanbul to mark its fiftieth anniversary, the opening was raided by ultranationalist thugs.

There was shame and consternation in the responsible press, and the gallery did not close its doors. But other subjects have proven harder to open or keep open: there has yet to be a serious investigation, for example, into the links between certain power elites inside the state and the fomenting of left-right violence during the years leading up to the brutal 1980 coup. But from time to time, a scandal will make visible the links between the state and organised crime.

The current wave of nationalism may or may not have been invented by an elite network inside the state, but if an unknown lawyer like Kerinçsiz can march into a courtroom shouting curses, if his deputies can assault European parliamentarians in that courtroom with impunity, if he can launch case after case without anyone in the state apparatus moving to stop him, then it is clear that he has friends in high places. It is likely that these friends number amongst those who stand to lose a great deal of power if Turkey enters the EU. It is just as likely that they would prefer to see a rolling back of democracy and a return to militarism. It is possible that people with such aspirations were at least partly responsible for Article 301 finding its way into the new penal code, and that the 301 prosecutions are part of a larger campaign to turn Turkish public opinion against Europe.

This might explain why Kerinçsiz and his allies have chosen to go against some of Turkey's best known novelists and most popular pro-Europeans. They are using them as pawns. But they must also fear them and wish to discredit them. When Turkish writers seek to know the truth about the Ottoman Armenians, or rebel against monoculturalism, or defend conscientious objectors, or criticise the army, or question the founding myths of the Turkish Republic, they are challenging the ideology that has justified 83 years of authoritarian rule.

Where will it go from here? It all depends on what happens with Europe. A happy resolution is not out of the question: it is possible that the democratisation of Turkey has progressed too far now for even an army to stop it. The trials and the struggles around them may themselves be part of the democratisation process, a fiery overture leading to an opening up of political culture - a new settlement between the state and the intelligentsia, which could, even if Turkey turns away from Europe, make more space for civil society. But there is always the spectre of September 12, 1980, when the army stepped in to 'save the motherland from anarchy'. Within months it had put thousands of teachers, civil servants, writers, scholars, and trade unionists behind bars. It did not, in the end, crush the intelligentsia it had branded as the enemy. There may be those who think the time has come to try again.

Maureen Freely is a U.S. journalist, novelist, translator and teacher. Born in Neptune, New Jersey, she grew up in Turkey and now lives in England, where she lectures at the University of Warwick and is a regular columnist in several London newspapers. Among her novels is 'The Life of the Party', set in Turkey. She has also written 'The Other Rebecca', a contemporary version of Daphne du Maurier's classic novel 'Rebecca'. She is also the English translator of Orhan Pamuk's recent novels (including 'Snow'). She is a member of the English PEN Centre

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