



## Q & A

### Grand Chamber judgment in the case of *Perinçek v. Switzerland* (application no. 27510/08)

- **Did the Court say that the massacres suffered by the Armenian people at the hands of the Ottoman Empire from 1915 onwards were genocide or not?**

In its judgment, the Court underlined that it was neither required to answer that question, nor did it have the authority – unlike international criminal courts, for instance – to make legally binding pronouncements on this point.

- **Did the Court find that Mr Perinçek's statements had amounted to genocide denial?**

The Court did not seek to establish whether those statements could be characterised as genocide denial or justification for the purposes of Swiss criminal law, underlining that that question was for the Swiss courts to determine. However, the nature of Mr Perinçek's statements was a significant element in the Court's examination of whether there was a violation of Article 10 (freedom of expression) of the European Convention on Human Rights. The Court emphasised that Mr Perinçek did not express contempt or hatred for the victims of the 1915 events.

- **Why did the Court find a violation of Article 10 of the Convention?**

The Court undertook a balancing exercise between the need to protect the right to respect for the dignity of the Armenians, under Article 8 of the Convention, and the need to protect Mr Perinçek's right to freedom of expression, under Article 10. It concluded that it had not been necessary to subject Mr Perinçek to a criminal penalty in order to protect the rights of the Armenian community at stake.

In arriving at that conclusion, the Court took a number of elements into account, including the following: Mr Perinçek's statements bore on a matter of public interest and did not amount to a call for hatred or intolerance; there was no international law obligation for Switzerland to criminalise such statements; the interference with Mr Perinçek's right to freedom of expression had taken the serious form of a criminal conviction.

- **Does the Court's finding that Mr Perinçek's rights under Article 10 were violated mean that States cannot outlaw genocide denial?**

The Court was not required to determine whether the criminalisation of the denial of a genocide or other historical facts could *in principle* be justified. It was only in a position to review whether or not the *application* of the Swiss Criminal Code *in this case* had been in conformity with Article 10.

- **How does the judgment relate to cases concerning denial of the Holocaust?**

The judgment does not change anything in the Court's assessment of statements denying the Holocaust. The Court and the former Commission have dealt with a number of cases under Article 10 concerning denial of the Holocaust and other statements relating to Nazi crimes and have declared the applications in all of those cases inadmissible. Those cases had been brought against Austria, Belgium, Germany and France.

For the Court, the justification for making Holocaust denial a criminal offence lies in the fact that, in the historical context of the States concerned, even if dressed up as impartial historical research, it has to be considered as implying anti-democratic ideology and anti-Semitism. The Court considers that Holocaust denial is especially dangerous in States which have experienced the Nazi horrors and which can be regarded as having a special moral responsibility to distance themselves from the mass atrocities that they have perpetrated or abetted, by, among other things, outlawing their denial. By contrast, it has not been argued that there was a direct link between Switzerland and the events that took place in the Ottoman Empire in 1915 and the following years.

- **Is this the first case before the Court concerning statements relating to the 1915 massacres suffered by the Armenian people?**

No. The Court has examined a number of cases against Turkey concerning statements relating to those events. They were brought, in particular, by people who had been convicted in Turkey following statements expressing the opinion that the 1915 events constituted genocide or criticising attitudes which allegedly amounted to denial of the massacres of 1915 and the following years. See in particular *Güçlü v. Turkey* (no. 27690/03), Chamber judgment of 10 February 2009, and *Dink v. Turkey* (nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09), Chamber judgment of 14 September 2010.