



DEFAMATION AND 'INSULT': WRITERS REACT

A report from International PEN's Writers in Prison Committee

“Criminal defamation laws and laws proscribing ‘insult’ are providing heavy-duty ammunition to governments wishing to deny citizens their right to freedom of expression. Today over a quarter of all PEN’s cases of imprisoned and prosecuted writers around the world have been charged under such repressive legislation. We urgently call for an end to this pernicious form of censorship.”

– Harold Pinter

Nobel Laureate and Vice-President of English PEN

DEFAMATION & 'INSULT': WRITERS REACT

A global campaign to highlight how defamation and 'insult' laws around the world are undermining the right to freedom of expression

Summary:

The Writers in Prison Committee of International PEN is marking Writers in Prison Day 2006 (November 15) with a campaign in defence of nearly a hundred writers and journalists around the world who are in prison or facing custodial sentences for alleged defamation or 'insult'. It calls for the repeal of laws that treat defamation as a criminal, rather than a civil, offence, and argues that the term 'insult' is too vague to have any legal standing as a charge and should thus be scrapped from penal codes entirely. In order to demonstrate how such laws are being employed to curtail freedom of expression, the Writers in Prison Committee highlights five cases of writers currently in prison or being prosecuted in China, Egypt, Ethiopia, Mexico and Turkey and calls for the charges against these five, and all writers similarly threatened, to be quashed.

Defamation and 'Insult': Years of Living Dangerously

At the sixth International Writers in Prison Committee conference held in Istanbul in March 2006, PEN member participants recognised the grave threat to freedom of expression posed by defamation and 'insult' laws. The conference delegates agreed to mount a special campaign on this issue. This report comprises a first step of this initiative, to be launched on International Writers in Prison Day, November 15th, 2006. The campaign will continue through April 2007 and consist of a variety of actions calling for the abolition of all criminal defamation and 'insult' laws.

In a recent count of all those imprisoned or threatened writers known to PEN, it emerged that about a quarter (25%) of such cases fell under the category of having been targeted under criminal defamation and 'insult' laws. Cases of this kind were found in all regions of the world, although conditions of writers adversely affected varied from long prison-terms to threats of prosecution or physical intimidation. As Sara Whyatt, Programme Director of the Writers in Prison Committee,

commented, the use of such laws 'remains an intransigent and in some cases a growing problem'.

Since the Writers in Prison Committee's inception in 1960, cases of writers who have been nebulously accused of damaging the reputation, either of a nation or of an individual, have arisen frequently. In previous decades, writers from the former Soviet Union were often accused of 'anti-Soviet propaganda'. Turkish writers have found themselves indicted for such acts as 'insulting the memory of Ataturk' (and continue to do so). African and Asian writers have similarly been targeted for 'insulting' or 'defaming' powerful people or institutions in their various countries. In practice, this has meant that any criticism of the President, of the ruling political party, or of leading Government figures has not been tolerated. Those investigating corruption or other abuses of power have proven especially liable to prosecution. There have also been cases of writers accused of 'insult' when their portraits were in fact fictional: parallels to real people were a matter of interpretation, but this did not stop the writer in question from being targeted by the authorities.

Growing International Awareness of the Problem

On the positive side, international human rights organisations have become increasingly aware of the danger posed by such laws. As Abid Hussein, the Special Rapporteur on Freedom of Expression, reported to the United Nations Commission on Human Rights at its 56th Session in 2000:

Criminal defamation laws represent a potentially serious threat to freedom of expression because of the very sanctions that often accompany conviction. It will be recalled that a number of international bodies have condemned the threat of custodial sanctions, both specifically for defamatory statements and more generally for the peaceful expression of views. (E/CN.4/2000/63, page 17)

He went on to cite the United Nations Human Rights Committee's concern, expressed for the first time in 1994, over custodial sanctions on defamation in a number of countries, and its call for the

total abolition of the offence of ‘defamation of the State’. The Special Rapporteur also quoted the Declaration of Sana’a, adopted in 1996 by the United Nations/UNESCO Seminar on Promoting Independent and Pluralistic Arab Media, which recommends that ‘disputes involving the media and/or the media professionals in the exercise of their profession ... should be tried under civil and not criminal codes and procedures.’

As well as these important statements from Inter-governmental organisations, non-governmental organisations, such as PEN, Article 19, Reporters Sans Frontieres and others have increasingly identified criminal defamation and ‘insult’ laws as a barrier to freedom of expression in their many reports and actions.

Defamation: Legal Definitions and Context

In law-books around the world, defamation is usually an offence that accords the person defamed (an individual) the right to take legal action to redress the harm done to his or her reputation by the defamatory statement. In most legal systems - but unfortunately not all - **the defamatory statement must be proved to be false, and to have been made maliciously, or at least with reckless disregard for whether the statement was true or false** in order for a prosecution to succeed. If the statement is proved true, then, however damaging a statement is to a person’s reputation, there should be no case for the originator to answer.

Statements of opinion, which cannot be proven true or false, are not usually defined as being defamatory. However, ‘insult’ laws often allow for successful prosecutions of these kinds of statements. The opinion expressed may by its very nature be unverifiable, and thus the act of judging whether or not such a statement was ‘defamatory’ is necessarily one of arbitrary interpretation. It is on these grounds that statements of opinion should, in PEN’s view, be excluded from definitions of what constitutes defamation. Unfortunately, in many courts around the world, practice falls far short of this standard. Many individuals have found themselves penalised for statements of opinion that could be proved neither true or false; they have often been prosecuted under faulty defamation laws, or ‘insult’ laws so broad and vaguely phrased that free debate on public affairs is utterly stifled.

In many early law systems in Europe, defamatory statements were treated as criminal offences and could be punished severely, even with death. However, in, for example, English law, civil action for damages sustained by defamation can be traced back to the middle ages and gradually, over the centuries, became the main route for redress. As

the negative impact of harsh, criminal penalties on free, unfettered debate within a society came to be appreciated, many human rights organisations called for an end to all criminal defamation laws so that the right to freedom of expression could go unmolested. However, as Abid Hussein correctly noted in his report quoted above, in many countries of the world, defamation carries extremely high penalties, including long-term imprisonment.

Burden of proof is another important issue. The English laws on libel, for example, have often been criticised by civil libertarians for favouring the plaintiff rather than the defendant, who must prove his or her statement either to be true or at least fair comment. In the United States, where the First Amendment to the constitution affords strong protection to freedom of expression, defamation law is more defendant-friendly. It is for the *plaintiff* to prove that the statement made was false and made with malice, or with reckless disregard for truth.

The Need to Limit the Scope of Defamation Laws

In 2000, Article 19, the freedom of expression advocacy group, published *Defining Defamation: Principles on Freedom of Expression and Protection of Reputation*. This ground-breaking report was a result of an international workshop on the issue with legal and human rights experts from around the globe. In a legal analysis of the overall international situation, the report called for an ‘**appropriate balance** between the human right for freedom of expression... and the need to protect individual reputations’. While acknowledging that defamation laws were necessary to protect individuals whose reputation, and therefore livelihood, was deliberately damaged by a false assertion, the report found many instances where defamation charges are not justified.

Thus, defamation law should exclude:

- Legitimate criticism of officials
- Statements affecting the ‘reputation’ of objects as opposed to people, such as the State or nation, or national or religious symbols or emblems
- Statements affecting the reputation of those who have died.

The Need to Limit How Defamation Laws are Applied

The report, as well as calling on all nation-states to work towards the abolition of all criminal defamation laws, stressed that public authorities, including police and public prosecutors, should ‘take no part in the initiation or prosecution’ of such cases. It also stated that sanctions should not

include prison sentences, suspended sentences or banning orders preventing the accused from further expressions of his or her opinion. The report also identified the need for cases of defamation to be dealt with promptly 'in order to limit the negative impact of delay on freedom of expression'.

It is alarming to note that in many countries, the reverse of these conditions exists. Prosecutions are commonly initiated by public officials, sentences are harsh, and cases often take months, and even years, to be resolved one way or another. (Examples of these trends appear in the 'Regional Overview' below.)

Another principle recommended by the report was that public officials should not receive special protection from defamation law. Public officials should receive no aid from the state in bringing a defamation suit, nor should the penalties against convicted defendants be any greater than for private individuals. Again, in many countries, the reverse is true. This concurs with other international human rights instruments, which state that politicians and public figures should be prepared to tolerate more scrutiny, and thus criticism, of their conduct than private individuals. As set out by the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, laws limiting freedom of expression, such as defamation laws, 'shall not be used to protect the state and its officials from public opinion or criticism.'

Nor, in the report's view, should defamation law adversely affect a journalist's right not to disclose his or her sources, when it is in the public interest to disseminate that information. 'Public interest' should at all times be an important consideration in any defamation suits involving public officials, and, to further this, there should be a principle of 'reasonable publication' in defence of those accused. Reasonable publication would be established where it was found to be reasonable for a person in the position of the defendant 'to have disseminated the material in the manner and form in which he or she did'. (for more on Article 19's work on criminal defamation go to www.article19.org)

By inserting all these above principles into defamation law, PEN believes that the latter's scope to trammel legitimate public debate would be eliminated. Thus, it would be possible to achieve the 'appropriate balance' between freedom of expression and the legitimate protection of individuals from libel or slander. Above all, laws and legal practice should recognise that it is in the public interest for people to be able to speak freely without fear of concern that they may have to answer in court for what they have said. How the laws are worded and how promulgated should at all times adhere to this key principle.

Criminal Defamation and 'Insult' as Tools of Censorship

Regional Overview

The following regional overview is taken from the Writers in Prison Committee's Case List - January - June 2006. Some of the cases cited have been resolved, but in others, prosecution or imprisonment is ongoing. An examination of the 96 defamation and 'insult' cases in that period provides ample evidence of the repressiveness caused by such laws. However, what the cases cited cannot demonstrate is the overall 'chilling effect' the legislation has on whole societies. In some countries, there may be no current cases of writers in prison or in the dock for criminal defamation. However, the scope to imprison them, through a vast array of inappropriate legislation, remains. The fact that nobody is detained is not as positive as might first appear, but due entirely to a climate of severe self-censorship.

Another trend in many regions (in Africa, for example) is that criminal defamation and insult laws often have their roots in a colonial history. The current, overbroad legislation are direct descendants from the statute books in existence when colonial powers were running a given country.

The multitude of cases cited below show how far below internationally-agreed standards the legislation in a number of countries falls. Below is ample evidence of overbroad defamation and 'insult' laws that:

- apply extremely harsh sanctions, such as long-term imprisonment
- give special protection to public officials
- punish statements made against objects, such as states and emblems of state
- punish statements made against dead people
- punish alleged 'insult' with no delineation of what this might mean and no requirement that the truth or falsity of such statements be established
- punish statements made in fictional contexts by fictional characters.

Finally, many of the cases below have taken months, even years to resolve. The net result of such protracted proceedings is that the chilling effect on the local community of writers and journalists is maximised. In some countries, legal action has also been accompanied by extrajudicial attacks on writers and journalists, ranging from threats to abductions.

AFRICA

Number of cases recorded in region: 26
Number of countries with criminal
defamation / insult cases: 10



Mohammed Abbou, sentenced to 18 months in prison for 'insult' to the judiciary in Tunisia.

In May 2005, a workshop of human rights experts was held in Zambia under the sponsorship of the Media Institute of Southern Africa on defamation/insult. It noted that 'insult' laws were 'mostly a legacy of the colonial era' and though 'ostensibly to protect the dignity and official status of kings, presidents, prime ministers' and other officials, were in fact often used 'to prevent the publication of criticism of government'. It noted that over the last decade at least 125 media outlets and journalists had been charged under such laws in 35 countries in Africa. Some human rights experts said they had observed an increase in this kind of judicial harassment in the region. A legal overview found that 48 countries — in other words, the vast proportion of all African countries — had such laws on their statute books. One positive development was that Ghana and Kenya had recently scrapped criminal defamation and 'insult' laws.

Countries in which PEN has recorded cases of recent official harassment are Algeria, Congo-Brazzaville, the Democratic Republic of Congo, Ethiopia, Malawi, Morocco, Niger, Senegal, Tunisia and Zimbabwe. One of the longest custodial sentences handed down in the region in 2006 was to two journalists from Niger who each received 18-month prison terms. **Mamane Abou** and **Oumarou Keita**, editors of the weekly *Le Republicain* newspaper were found guilty of 'publishing false information' and 'defaming the state of Niger' even though the very legality of the trial was

contested by their lawyers. Their lengthy term was matched by that handed down to **Mohammed Abbou** in Tunisia. Abbou was, among other charges, indicted for 'insulting the judiciary' and 'publishing false reports' in his on-line postings. The articles in question had drawn comparisons between the Tunisian President and the Israeli Prime Minister, while another compared torture in Tunisian prisons to that carried out by US soldiers in Iraq's Abu Ghraib prison. Abbou was given an 18-month term on the above charges, plus two years for other alleged offences.

In Algeria, three journalists were detained for 'offending the head of state', while in Congo Brazzaville, **Fortune Bemba**, editor of the weekly *Thalassa*, was arrested for defamation for an alleged 'attack on the honour of the head of state' and 'propagation of false news'. In Morocco, **Driss Chahtane**, editor of the weekly *Al Michaâl* received a one-year suspended sentence and a fine for alleged libel in a satirical article and accompanying cartoon published in his newspaper about the private life of the Algerian president. Senegalese journalist **Moustapha Sow** was sentenced to six months' imprisonment for a series of articles in the daily *L'Office* alleging that an influential local businessman was implicated in an embezzlement trial.

One of the most bizarre criminal defamation cases occurred in Zimbabwe. **Iden Wetherell**, **Vincent Kahiya**, **Dumisani Muleya** and **Itai Dzamara** were tried for allegedly defaming President Robert Mugabe. The charges stemmed from an article in the *Zimbabwe Independent* reporting that the president had commandeered an Air Zimbabwe Boeing 767 in order to take his family and other members of his retinue on holiday, an action that left many regular passengers stranded. In a remarkable twist to the case, the then Minister of Information and Publicity Jonathan Moyo declared that the article in question was 'not fictitious' but in fact 'blasphemous'.

During the first half of 2006, perhaps the most alarming place to be a writer and journalist in the region was Ethiopia. Throughout 2006, the courts have been systematically used to gag journalists, and legal processes have tended to be protracted, even where the accused are eventually merely fined or acquitted. In the first half of the year, five journalists were detained under defamation/insult laws and many more faced charges and possible imprisonment if convicted. **Wesenseged Gebrekidan**, for example, had to serve an eight-month prison term for his role as the editor responsible for an article published in the former *Ethiop* magazine that appeared as long ago as 2002. The article was critical of a former diplomat Habtemariam Seyoum. Gebrekidan was not the author of the article himself, but was held legally accountable as the magazine's then editor.

THE AMERICAS

Number of cases recorded in region: 22

Number of countries with criminal
defamation / insult cases: 8



Lydia Cacho Ribeiro is on trial in Mexico on charges of defamation

Defamation and ‘insult’ laws are known as ‘desacato’ laws in much of the region.. While PEN recorded cases in Argentina, Brazil, Colombia, Costa Rica, Cuba, Mexico, Peru and Venezuela, there were worrying legal developments elsewhere. For instance, in Panama, a draft bill was introduced reforming the Penal Code. The bill, instead of dispensing with criminal defamation laws or reducing their scope, actually stiffened penalties for convicted journalists. If the bill becomes law, defamation in a news outlet would be punishable by two to three years’ imprisonment, while libel or slander elsewhere would be punishable by one to two years’ imprisonment. The bill was a surprise to many observers in light of President Martin Torrijos’ assertion that press freedoms should be enhanced, not curtailed.

In Bolivia, the international human rights community has called on the Constituent Assembly, as it is in the process of drafting a new constitution,

to amend current legislation which punishes defamation with up to three years’ imprisonment.

Meanwhile, Argentinean journalist **Angel Ruiz** faced criminal charges of ‘libel’ and ‘insult’ for an article in *El Este Rionegrino*, alleging provincial officials were involved in a smuggling venture. Angel Ruiz refused to reveal his sources for his article and apparently received threats that, if he did not comply with the authorities’ demand, his paper would be closed down. In Brazil, four journalists were accused of defaming a local businessman and press baron for saying that working conditions at the latter’s newspaper were poor. If convicted they face one year’s imprisonment, although local commentators say they are more likely to be fined, as this would be their first offence.

In Colombia, a worrying trend of death threats often either replaced or accompanied official accusations of defamation. For example, three journalists were reportedly sent fake parcel bombs at their homes in June 2006, soon after their paper had published a series of articles on corruption, criminality and vote rigging in the local area. In Cuba, charges of insulting President Castro were partially responsible for the imprisonment of **Léster Téllez Castro** who was also accused of ‘disorderly and disrespectful’ behaviour. Similarly, **Albert Santiago Du Bouchet Hernández**, director of the news agency *Havana Press*, was given a one-year sentence for showing ‘disrespect’ towards the local chief of police. The charge is thought to be linked with one of his journalistic reports but, since the trial was not open to the public, this is not certain.

Defamation laws put no fewer than five journalists in the dock in Venezuela during the first half of 2006. However, some of the most disturbing cases of defamation laws being applied to writers occurred in Mexico. **Sergio Witz** was accused of ‘insulting national symbols’ for a poem in which he imagines using the Mexican flag as toilet paper. Meanwhile, **Lydia Cacho Ribeiro** faced criminal charges of defamation and calumny. Cacho’s book convincingly implicated a local businessman in a child pornography ring, and she now faces between six months and four years in prison if convicted. Mexican criminal defamation law is such that proving that the alleged defamatory statement is actually *true* is not necessarily sufficient to secure an acquittal. *For further details on Lydia Cacho Ribeiro’s case and recommended action, see the attached case sheet.*

ASIA

Number of cases recorded in region: 5
Number of countries with criminal
defamation / insult cases: 3



Bambang Harymurti was convicted in Indonesia to one year in prison for defamation.

Cases of criminal defamation and ‘insult’ were comparatively rare in Asia, where the use of national security laws and strictly enforced self-censorship are more often used to silence writers and journalists. However, in the Southeast Asian countries of Cambodia and Thailand, East Timor and Indonesia, lawsuits mounted under defamation laws against writers and journalists, human rights activists and government critics are fairly common and across the region there has been mounting pressure from civil society groups to reform these laws. The International Federation of Journalists (IFJ) has reported ‘progressive developments’ in recent months in the countries of East Timor, Cambodia, Thailand and Indonesia.

In Cambodia, the National Assembly approved Prime Minister Hun Sen’s decision to decriminalise defamation on 26 May 2006. However, although journalists can no longer be imprisoned for defamation, on 15 September 2006 an editor was success-

fully prosecuted for defamation under Article 62 of the United Nations Transitional Authority of Cambodia (UNTAC) law instead of the more liberal Cambodian Press Law. **Dam Sith**, editor in chief and publisher of the newspaper *Khmer Conscience*, was sentenced in absentia to pay a fine of 8 million riel (USD 2,000) for disinformation and 10 million riel (USD 2,500) for defamation of the Cambodian government. In July 2006, another Cambodian editor, **You Saravuth**, was forced to leave the country after receiving death threats for an article that implicated Okhna (Lord) Hun Tho, a nephew of Prime Minister Hun Sen, in land grabbing.

In Thailand, media activist **Supinya Klangnarong** was acquitted of criminal defamation charges on 16 March 2006 in a case brought by Shin Corporation, Thailand’s largest telecommunication and mobile company. She was accused of alleging in a July 2003 interview with the ‘*Thai Post*’ that Shin Corp, formerly owned by the family of Thailand’s prime minister Thaksin Shinawatra, benefited financially from the prime minister’s policies. However, since the recent removal from power of Prime Minister Shinawatra by the military it is soon to say how the new political climate will impact on press freedom in the country.

In East Timor, President Xanana Gusmao has sent a draft law back to the Ministry of Justice for reconsideration due to concerns over its criminal defamation provisions. The draft law seeks to amend the penal code to allow jail terms of up to three years and unlimited fines for defaming public officials.

Meanwhile, on 9 February 2006, Indonesia’s Supreme Court quashed a lower court ruling against editor **Bambang Harymurti**, who had been convicted of criminal defamation and sentenced to one year in prison in September 2004. Harymurti’s publication, ‘*Tempo*’, had published an article in its 3 March 2003 issue alleging that businessman Tomy Winata stood to benefit from a suspicious fire in Tanah Abang textile market.

In China, writers and journalists found themselves behind bars for long periods for such nebulous charges as ‘inciting subversion of state power’. These harshly punished cases did not properly fall under the rubric of defamation or ‘insult’, but nonetheless the catch-all laws were an extremely effective weapon of the government in silencing all criticism of the political status quo. However, one writer was accused more overtly of defamation. **Yang Xiaoqing**, a reporter with *Zhongguo Chanjing Xinwenbao* (*China Industrial Economy News*), was sentenced to a year in prison after being convicted for posting allegedly defamatory articles on the Internet in which he accused local officials of corruption. *For further details of Yang Xiaoqing’s case and recommended actions, see the attached case sheet.*

EUROPE

Number of cases recorded in region: 26
Number of countries with criminal
defamation / insult cases: 5



Hrant Dink has had several trials against him in Turkey for 'insult to Turkishness'.

Countries in Europe with defamation and 'insult' cases were Azerbaijan, Macedonia, Poland, Russia and Turkey. **Samir Adygozalov**, editor in chief of *Boyuk Millat* in Azerbaijan, was sentenced to a year in prison on criminal libel and insult charges in February 2006. The accusation was based on article published the previous September accusing a parliamentarian and university rector of being an ethnic Armenian and improperly using university funds to support the Armenian Diaspora. From its investigation of the case, PEN acknowledges that in this case there may have been legitimate grounds for a case of civil defamation to have been initiated. However, PEN believes that the one-year custodial sentence is an inappropriately harsh sanction for the alleged offence.

In Macedonia, **Zoran Bozinovski**, co-owner and deputy editor-in-chief of the daily *Trokja*, was sentenced to three months' imprisonment for criminal defamation and briefly detained. Bozinovski, a well-known investigative journalist, is no stranger to prosecution. He is reported to face a further 82 charges for his articles, most of them being pressed by public officials. The Polish journalist **Andrzej Marek** also spent a brief time in prison - two days - after being sentenced to three months for criminal defamation. His offending article had been published back in 2001 and accused a police official of having obtained his post

through blackmail and used his position to promote his private advertising business. The police official involved called on the Polish president to release Marek, claiming 'It has never been my intention to jail a journalist. I only wanted him to apologise.'

In Russia three journalists for the newspaper *Novye Kolyosa (New Wheels)* based in the Russian enclave, Kaliningrad, between Poland and Lithuania, were charged in September 2006 for defaming two judges in articles published between September and December 2005, claiming that a local sauna was also a brothel. An owner of the building where the sauna is housed is also the husband of a judge who subsequently claimed that she the articles defamed her. The second judge quickly followed suit, also claiming defamation. *Novye Kolyosa* founder, **Igor Rudnikov** and **Dina Yakshina**, one of its journalists, face up to three years in prison under Article 129 of the Russian Penal Code. A third journalist working for the newspaper has a separate defamation suit against him **Oleg Berezovsky's** article published in November 2004 questioned the reasoning behind the acquittal of person convicted of drug offences. This led to three judges accusing him of defamation. His trial opened in August 2006.

Two other writers faced prosecution in Russia for alleged defamation. **Arseny Makhlov**, publisher of the weekly *Dvornik*, was charged with having committed criminal libel in three articles published in 2004 and 2005 that alleged a local official had accepted a bribe. **Andrei Skovorodnikov** received six months of 'corrective labour' for creating an internet site that carried material 'defaming' President Putin.

Turkey, with 18 recorded cases of 'insult' prosecutions in the first half of 2006, was the country in the world where actions under such laws were most numerous. Journalists and writers found themselves targeted by an array of 'insult' laws, such as 'insulting the republic', 'insulting the judiciary, judges and prosecutors', 'insulting the government', 'insulting Turkish identity', 'insulting the President', 'insulting the security forces' and even 'insulting the memory of Atatürk,' the Turkish leader who died in 1938. The case of internationally-famed writer, **Elif Shafak**, although recently acquitted, gave a flavour of the repressiveness of these laws. Shafak, along with her publisher and translator, was tried for 'insulting Turkishness' under Article 301 of the Turkish Penal Code. The charge was based on her recent novel, *The Bastard of Istanbul*, in which an Armenian character uses the word 'genocide' to describe what happened there in the early part of the twentieth century. Although nearly a century has gone by, it is forbidden in Turkish law to mention the word 'genocide' in this context. The government's official version of events is that Turkish forces quelled a violent and bloody

uprising and were forced to organise mass deportations of Armenians, where as many international historians believe that a widespread, brutal killing of unarmed civilians occurred that was genocidal in intent. Shafak's prosecution tested whether or not the ongoing prohibition applies to what a *fictional* person says in a *novel*. There was much relief when she was acquitted in September 2006 and it is hoped that this legal decision will set a precedent for what is allowable in other works of fiction.

Another remarkable case is that of **Ipek Çalislar** and **Necdet Tatlican**, the author and editor-in-chief of the newspaper *Hürriyet*. They are accused of insulting the memory of Atatürk in Çalislar's best-selling biographical book *Latife Hanım (Lady Latife)*, about Atatürk's first wife in an interview about the book published in *Hürriyet*. The book refers to a story about Atatürk told by Latife's sister, which, whether true or not, has been recounted by other historical sources. In the story, Atatürk once found himself trapped in a house, with an enemy outside. In order to escape, he donned a woman's headscarf and other clothes, while Latife remained within, and, wearing his hat, stood in the window so that her profile would be taken for that of Atatürk's. In response to the charges against her, Çalislar commented 'historians can argue about it, but I don't see anything that bothers the justice system.' The law concerning insult to Atatürk was brought in in 1951 and carries a maximum custodial sentence of four-and-a-half years.

Alongside this case is that of **Hrant Dink**, editor of the Armenian-Turkish language weekly *Agos*, found himself convicted in September 2006 to a six-month suspended sentence. He was accused of 'insult to the Turkish state' for an article about the Armenian Diaspora published in his paper. The proceedings against him had begun some 17 months earlier. Hrant Dink has faced other, similar 'insult' charges, based on his comments about Armenian history and identity. Yet another court case was initiated against him in September 2006 on charges of 'insulting Turkish identity' in an interview he gave to the Reuters newsagency on 14 July in which he again referred to the Armenian genocide. He is said to have told interviewers Daren Butler and Osman Senkul that he had no doubt that an Armenian genocide had taken place, that he would not remain silent on this issue, and had no plans to leave Turkey.

MIDDLE EAST

Number of cases recorded in region: 19
Number of countries with criminal
defamation / insult cases: 7



Arash Sigarchi is serving a three year sentence in Iran for 'insulting' the president.

Defamation and insult laws across the Middle East continue to muzzle free speech. Writers are often accused of insulting the country's leadership, the judiciary, or the reputation of the state. Custodial sentences range from very severe (for instance, in Iran) to fines and suspended sentences. Countries in which PEN recorded defamation and insult laws in the first half of 2006 were Egypt, Iran, Iraq, Jordan, Lebanon, Syria and Yemen.

In Lebanon, **Tawfiz Khattab** and **Fares Khashan** faced up to two years in prison if convicted of 'insulting and defaming the president' in an article appearing in the daily *Al-Mustaqbal*, while Jordanian website editor **Jamil Abu Bakr** found himself accused of 'belittling the dignity of the Jordanian state' for posting articles by members of the Islamic Action Front., the country's main opposition party. The articles had been penned as long ago as 2004. Meanwhile, Syrian novelist and website editor **Mohammed Ghanem** was jailed for six months between March and September 2006 for 'insulting the Syrian President, discrediting the Syrian government and fomenting sectarian unrest'. The charges were based on his many articles advocating political and cultural rights for Syria's Kurdish minority. In Yemen, meanwhile, an especially chilling climate persisted, no doubt caused by the regular reports of death threats, attacks and torture of writers and journalists there.

Abdullah al Sabri, editor-in-chief of the weekly *Sawt al-Shoura* was charged with defaming Deputy Interior Minister Mohamed al-Qawsi for reporting that the Minister had ordered prison officials to intimidate a jailed journalist. If convicted he could face a year in prison and a ban on practising journalism in the future.

Defamation charges in Iraq carry especially severe penalties, and again abductions of journalists result in an atmosphere of self-censorship. The Committee to Protect Journalists reported in September on an especially grave case. **Ahmed Mutair Abbas**, managing editor of the now defunct daily *Sada Wasi*, and **Ayad Mahmoud al-Tamini**, the paper's chief editor, are currently on trial for defaming local police and judicial officials in three articles they published in 2005. If convicted under article 226 of the Iraqi penal code, they could face more than ten years' in prison. Worryingly, Abbas went missing in early September while travelling from Kut to Baghdad to attend a trial hearing. Two other Iraqi journalists were charged with defamation and briefly arrested in early 2006.

The Iranian statute books contain a number of provisions prohibiting and punishing alleged 'insult'. 'Insulting the leader', 'insulting officials and institutions of the Islamic Republic of Iran' and the even more nebulous 'spreading propaganda against the system' were some of the many charges facing writers in journalists in Iran. The harshest sentence currently being served in the country in this category is that handed down to **Arash Sigarchi**. Initially sentenced to fourteen years' imprisonment, this was reduced on appeal to three years, which he is now serving. He was accused of 'insulting the President' and 'propaganda against the regime' in 2005 because of articles in his weblog and interviews he gave to the BBC World Service and Radio Farda.

There were six cases of defamation in Egypt during 2006. This was disappointing in that in February 2004, President Mubarek promised to amend the 1996 press law and abolish prison sentences for press offences. He repeated this promise at the end of 2004, but today no such reform has been initiated. To date, article 197 in the Penal Code still penalises 'insulting the president' and article 102 allows for the detention of anyone who 'deliberately diffuses news, information/data, or false or tendentious rumours, or propagates exciting publicity, if this is like to disturb public security, spread horror among the people, or cause damage to the public interest'. Thus, on June 26, a court in a village near Cairo sentenced **Ibrahim Issa** and **Sahar Zaki**, an editor and journalist respectively to a year in prison for 'insulting the president' and 'spreading false or tendentious rumours'.

Contacts:

International PEN,

Brownlow House, 50/51 High Holborn,
London WC1V 6ER UK

Tel: + 44 (0) 20 7405 0338

Fax: + 44 (0) 20 7405 0339

e-mail: wipc@internationalpen.org.uk

web-site www.internationalpen.org.uk