



Tunisia: Repeal Article 86 of the Telecommunications Code to protect online speech

Article 86 of the Telecommunications Code has had increasingly dire effects on the right to freedom of expression as Tunisian authorities have used it to arrest, prosecute and convict dozens of bloggers for their peaceful expression of opinion online. ARTICLE 19 calls on the Tunisian legislator to reform or repeal Article 86 as well as other legal provisions that are used to prosecute protected online speech and violate international freedom of expression standards.

Article 86 of the Telecommunications Code provides that “Any person who intentionally offends others or disturbs their comfort through public telecommunications networks shall be punished with imprisonment for a period ranging from one to two years and a fine of one hundred to one thousand dinars.” This provision was enacted in 2001 with the intention to criminalise targeted harassment by phone, which often occurred through anonymous calls from public payphones.

With the emergence of social networks, and especially following the Tunisian Revolution of 2010/2011, Tunisian authorities have, however, unduly expanded the scope of Article 86 and applied it to contents that are published on social media platforms, whether in written, audio or visual form. In what is a worrying trend, since the rise of social media platforms in Tunisia, Article 86 (sometimes together with other criminal provisions) has been used to prosecute and imprison hundreds of individuals for publishing opinions that were critical of public authorities, especially senior government officials, police officers and judges. For example:

- On 21 December 2021, the First Instance Court of Sfax 2 sentenced blogger and civil society activist Maryam Bribri to four months in prison and fined her 500 dinars over posting a video on Facebook documenting a security officer’s assault on a young Tunisian in the city of Nabeul. The criminal investigation was opened based on a complaint from the Secretary General of the Regional Section of the Security Forces Union in Sfax. In her post, Maryam Bribri had criticised the violent methods employed by the security officers by commenting “cursed be the best of you bastards”.¹
- On 12 November 2020, the Tunis First Instance Court convicted blogger Wajdi Mahwashi for posting a video just over ten days earlier, on 1 November 2020, which criticised the General Attorney for not investigating a complaint he had filed in 2019 against two policemen who allegedly had beaten him, and which also denounced a Tunis public prosecutor’s failure to investigate a Tunisian imam who appeared to justify the killing of individuals over insulting the Prophet Muhammad.²

¹ See our statement calling Tunisian authorities to drop the charges against Maryam Bribri: <https://www.article19.org/resources/tunisia-end-unlawful-judicial-harassment-of-bloggers/>

² See : <https://www.hrw.org/news/2020/11/24/tunisia-harsh-sentence-against-blogger>

- On 16 February 2019, the Tunis First Instance Court issued a two-year prison sentence (ordering its immediate execution) and a fine against blogger and activist Fadhila Belhaj. The prosecution was based on a complaint by several individuals including security officials, whom Fadhila Belhaj had mentioned and insulted on social networks for what she considered as illegal acts committed by senior officials for the benefit of the Islamist part Enahdha.³
- In 2013, the blogger Hakim Ghanmi was tried in a military court (and in 2015 acquitted on appeal) following a complaint filed by the director of the military hospital in Gabes for posting an letter on his blog *Warakat Tounsia* ("*Papers of Tunisia*") on 10 April 2013 that contained criticism of the director because he had refused access to the hospital to a patient and that demanded an investigation into the treatment of patients by the director of the hospital.⁴
- Also in 2013, Olfa Riahi, activist and blogger, was prosecuted after she published information on Facebook alleging that former Minister of Foreign Affairs Rafik Abdessalam misused public funds. The activist wasn't convicted yet as the case is still pending before the court of first instance of Tunis.

The above are examples of what we observe constitutes a shift in the type of actions pursued under Article 86 – most of these cases today do not relate to harassment or intimidation as initially intended but to statements deemed to harm the reputation and dignity of individuals, and often, public officials, thus effectively using Article 86 as a criminal defamation provision.

We remind the Tunisian authorities that international human rights standards and the Tunisian Constitution only permit limitations to the right to freedom of expression if they satisfy the requirements of legality, legitimacy, necessity and proportionality. A significant consensus has now emerged around the need to decriminalise defamation to satisfy these requirements. Indeed, in [General Comment No. 34](#), the UN Human Rights Committee urged States to consider decriminalising defamation and stated that imprisonment (as currently provided for under Article 86 of the Telecommunications Code) can never be an appropriate punishment for defamation. The Committee further observed that speech concerning public figures and political institutions merits particularly high protection; public figures are required to tolerate a higher degree of criticism than private individuals; and imposing penalties merely for insulting a public figure is therefore in breach of international human rights law.

We further remind the Tunisian authorities that Decree-Law 2011-115 of 2 November 2011 relating to freedom of the press, printing and publication is more protective of freedom of expression than Article 86 of the Telecommunications Code. Importantly, it removes custodial sentences for criminal defamation. Whilst we continue to advocate for the complete decriminalisation of defamation in line with international human rights standards, the lower sentencing imposed by Decree-Law 2011-115 (namely fines ranging from 1000 to 2000 dinars or 350 to 700 dollars) for defamation is a step in the right direction.

³See :

<https://www.businessnews.com.tn/la-bloggeuse-fadhila-commandee-a-2-ans-de-prison-ferme,520,85787,3>

⁴ See :

<http://www.kapitalis.com/medias/26796-le-blogueur-hakim-ghanmi-acquitte-par-la-cour-de-cassation-militaire.html>

<https://nawaat.org/2013/05/30/le-blogueur-hakim-ghanmi-devant-la-justice-militaire-pour-avoir-critique-ladministration-dun-hopital/>

ARTICLE 19 welcomes the reasoning in the Court of First Instance of Manouba's 2020 judgment, which refused to apply Article 86 of the Telecommunications Code in a case related to three young men who were stopped by a police patrol and subsequently took to Facebook with a number of accusations against the policemen, including of bribery. The Court considered that Decree-law No. 115 of 2011 abrogated Article 86 of the Telecommunications Code and stressed that the Tunisian revolution prompted the State to enact a libertarian law aimed at protecting the right to freedom of expression, which meant that it was no longer acceptable to apply laws that provide for imprisonment for defamation offences (Judgment No. 1753 of 14 May 2020).⁵

Despite this encouraging judgment, we observe that Tunisian authorities still mostly prosecute journalists and bloggers under the outdated and inadequate regime of Article 86 of the Telecommunications Code, apparently motivated by its harsher sentencing regime. This not only contradicts the international law principle that custodial sentences should never be applied in defamation cases. It also contradicts the international principle enshrined in Article 15 of the ICCPR that an offender shall benefit from the application of the lighter penalty. Arbitrarily applying Article 86 of the Telecommunications Code to conduct regulated by Decree-Law No. 115 further breaches the legality principle, under which individuals ought to be in a position to regulate their conduct in line and to be able to anticipate the sanction resulting from illegal conduct. Legal predictability further requires that sentences which can amount to imprisonment be regulated in the Criminal Code itself.

ARTICLE 19 therefore urges the Tunisian authorities to:

- End the prosecution of journalists, bloggers and all other individuals for peacefully exercising their right to freedom of expression.
- Repeal Article 86 of the Telecommunications Code as well as any other provisions in Tunisian legislation that are used to criminalise insults or defamation. At the very least, and as a priority, Tunisian legislators should repeal any custodial sentence for defamation and ensure that in the meantime the sentencing regime under Decree-Law 2011-115 is applied in line with international human rights standards.
- Extend the scope of Decree-Law 2011-115 to anyone exercising their freedom of expression rights and remove all expression-related offences in the decree.

⁵ See :

<https://globalfreedomofexpression.columbia.edu/cases/public-prosecutor-v-three-defendants-identities-protected/>