

The Court of Cassation

Indictment no: 2023/61

Case no: 2023/89 (E)

Appeal Case no: 2023/506 (E)

Between:

Republic of Türkiye

The Tatvan Chief Public Prosecutor's Office

vs.

Sinan Aygöl

EXPERT OPINION BY ARTICLE 19

London

30 January 2024

ARTICLE 19

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Introduction and summary

1. This expert opinion has been prepared by ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19), an independent human rights organisation, working globally to promote the right to freedom of expression and information. We have been asked to advise on the compatibility of the conviction of Sinan Aygül with international and European law and standards on the right to freedom of expression, in accordance with Article 67(6) of the Turkish Code of Criminal Procedure (Law No. 5271). We understand that this opinion will be relied upon by the defendant in the case currently pending before the Court of Cassation.
2. This opinion analyses the case as it pertains to the exercise of the right to freedom of expression, as guaranteed by Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 of the European Convention on Human Rights (the European Convention) that Türkiye signed and ratified. The Turkish courts are therefore required to apply international and European human rights law in the present case. This is without prejudice to the consideration of how the defendant's conviction may also violate other human rights, including the right to liberty (Article 5 of the European Convention), the right to a fair trial (Article 6 of the European Convention), and the principle of legality (Article 7 of the European Convention).
3. In the expert opinion, we address:
 - a) The facts of the case relevant for the subsequent analysis;¹
 - b) Overview of key international human rights law standards on the permissible restrictions of the right to freedom of expression, including those pertaining to 'disinformation' and criminal defamation; and
 - c) Our assessment of the present case in the light of these international and European human rights standards.
4. ARTICLE 19 submits that Article 217/A of the Turkish Penal Code, under which the defendant is prosecuted, does not comply with international and European freedom of expression standards. These provisions should be abolished. Even if this Court were to consider these provisions as providing a sufficient legal basis for prosecution under international and European human rights law, ARTICLE 19 submits that the holding the defendant criminally liable under these provisions violated his right to freedom of expression. The decisions of the lower courts should be overturned and the guilty verdict against the defendant quashed.

ARTICLE 19's expertise on the right to freedom of expression

5. ARTICLE 19 is an international human rights organisation that advocates for the development of progressive standards on freedom of expression and freedom of information at the international and regional levels, and the implementation of such

¹ These are based on an unofficial translation of the indictment against the Defendant, no. 2023/61, the judgment of the Tatvan First Criminal Court of First Instance, no. 2023/137, dated 28 February 2023, and the appeal judgment of the Second Penal Chamber of the Van Regional Court of Appeals, no. 2023/491, dated 26 May 2023.

standards in domestic legal systems. ARTICLE 19 has produced a number of standard-setting documents and policy briefs based on international and comparative law and best practice on issues ranging from freedom of expression and national security to hate speech. These include standards on permissible state measures against ‘disinformation’/‘false information’² as well as of standards on freedom of expression and defamation. On the basis of these publications and overall legal expertise, ARTICLE 19 regularly intervenes in domestic and regional human rights court cases, including in courts in Türkiye, and comments on legislative proposals as well as existing laws that affect the right to freedom of expression.

The facts and arguments of the parties of the case

6. The defendant, Sinan Aygül, is a prominent Turkish journalist and the president of the Bitlis Journalists Association. On 13 December 2022, at 10:24 pm, he tweeted the following:

Another scandalous rape case in the Tatvan district of Bitlis. There is a case of sexual abuse of a 14-year-old girl. The suspects are police officers and specialist sergeants. They were brought to Tatvan courthouse today for identification. We don't know the details. These cases are sometimes covered up.

7. After Mr Aygül received a phone from the Governor of Bitlis, he posted a second tweet at 11:06 pm that same evening. In the tweet, he said that the governor had denied any reports of sexual assault cases and apologised for tweeting about an alleged incident without first confirming the information.
8. On 14 December 2022, the police arrested Mr Aygül. He was charged with “publicly disseminating information misleading the public” under Article 271/A-1 of the Turkish Penal Code, which prohibits publicly disseminating “false information about the country's domestic and foreign security, public order and general health, with the sole aim of creating anxiety, fear or panic among the public and in a manner that is liable to disturb public peace.”
9. In the indictment, the prosecution stated that Mr Aygül created a “false news story” about “child abuse which is a sensitive subject for the public.” The charges were centred around establishing the ‘untruthfulness’ of the news story. The prosecution also pointed out the weight of Mr Aygül’s reporting as a prominent and well-known journalist. In the court proceedings, the prosecution claimed that the journalist’s phrase “these situations are sometimes covered up” satisfied the requirement of establishing the intent to create fear and panic among the public, which is a constituent element of the crime under Article 217/A-1 of the Turkish Criminal Code.

² See e.g. ARTICLE 19, Response to the consultations of the UN Special Rapporteur on Freedom of Expression on her report on disinformation; 2021; or ARTICLE 19, Countering disinformation. See also ARTICLE 19, Turkey: Dangerous, dystopian new legal amendments, 14 October 2022.

10. The defence claimed that Article 217/A of the Penal Code was unconstitutional and violated the basic principles protecting the right to freedom of expression. It submitted that the prosecution failed to establish the specific intent of creating fear and panic among the public in Mr Aygül's conduct. It also pointed out that Mr Aygül corrected himself publicly and apologised to the public for his original tweet.
11. On 28 February 2023, the Tatvan First Criminal Court of First Instance found Mr Aygül guilty and sentenced him to 10 months of imprisonment. The Court focused its analysis on establishing the element of 'disinformation' in the impugned tweet and satisfying the requirement of its being capable of 'disrupting public peace.' Citing the fact that "the allegations of 'sexual abuse of a 6-year-old child' made it to the public debate in Turkey" and underlining the language used in the tweet "a new scandalous rape incident", the Court came to the conclusion that the defendant acted with the aim of disrupting public peace with a tweet "which does not reflect the truth". The number of Mr Aygül's followers on Twitter and his high profile as a well-known journalist was relied upon to establish his ability to cause 'anxiety and fear' among the public. The Court also attributed importance to the allegation of the involvement of police officers cited in the tweet, which allegedly confirmed that "the defendant acted with the purpose of degrading the state and its institutions."
12. On 26 May 2023, the Van Regional Court of Justice rejected the appeal submitted by the defendant and upheld the conviction without further deliberation on the reasoning regarding the merits of the case.
13. Separately, the Constitutional Court of Türkiye was asked to review the constitutionality of Article 217/A of the Penal Code. On 8 November 2023, the Constitutional Court upheld the constitutionality of the provision.

Applicable international standards on the right to freedom of expression

14. As a party to the ICCPR and the European Convention, which form part of Turkish law, the domestic courts are required to consider international and European standards on freedom of expression when deciding this case.
15. Under Article 19 para 3 of the ICCPR and Article 10 para 2 of the European Convention, the right to freedom of expression is not an absolute right. It may be legitimately restricted by the State in certain circumstances. Under the so-called three-part test any restrictions:
 - **Must be provided for by law:** any restriction must have a basis in law, which is publicly available and accessible, and formulated with sufficient precision to enable citizens to regulate their conduct accordingly;³

³ See, *inter alia*, the European Court of Human Rights (the European Court), *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina*, App. No. 17224/11, 27 June 2017; *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland*, App. No. 931/13, 27 June 2017; or *De Tommaso v Italy*, App. No. 43395/09, 23 February

- **Must pursue a legitimate aim**, exhaustively enumerated in Article 10 para 2 of the European Convention and Article 19 para 3 of the ICCPR. When a threat to the legitimate aim is invoked, the State must show in a specific and individualised fashion the precise nature of the threat at issue.⁴
- **Must be necessary in a democratic society**: any restriction must be necessary and proportionate to the aim sought. Necessity entails an assessment of whether the proposed limitation satisfied a “pressing social need” and whether the measure is the least restrictive to achieve the aim. A measure cannot be regarded as necessary where a less restrictive means could be employed to achieve the same end. The proportionality lens should be used to assess the nature and severity of the penalties imposed.⁵

International standards on ‘disinformation’

16. The term ‘disinformation’ is not mentioned in any international human rights treaty; the term does not have a uniform definition despite its frequent use in legal and non-legal settings. Importantly, the falsity of information is not listed among explicitly enumerated legitimate aims under which the right to freedom of expression can be restricted (as per Article 10 para 2 of the European Convention and Article 19 para 3 of the ICCPR).

17. The fact that mere falsity of information cannot be used to restrict freedom of expression has been confirmed in other standards. For instance:

- The Human Rights Committee, in its **General Comment No 34** on the right to freedom of expression, unequivocally stated that the ICCPR does not permit general prohibition of an erroneous opinion.⁶
- Four freedom of expression mandates, in their **Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda** stated that “general prohibitions on the dissemination of information based on vague and ambiguous ideas, including “false news” or “non-objective information”, are incompatible with international standards for restrictions on freedom of expression and should be abolished.”⁷

2017; *Fernández Martínez v Spain*, App. No.56030/07, 12 June 2014, para. 117; *Cumhuriyet Vakfı and Others v Turkey*, App. No. 28255/07, 8 October 2013; or *Ahmet Yıldırım v Turkey*, App. No. 3111/10, 18 December 2012.

⁴ Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression, 29 July 2011, para 35.

⁵ See, *inter alia*, the European Court, *Fressoz and Roire v France*, App. No. 29183/95, 21 January 1999; or *Yarar v Turkey*, App. No. 57258/00, 19 December 2006.

⁶ Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, 29 July 2011, para 49.

⁷Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda, adopted on 3 March 2017 by the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information.

- In 2022, the **UN Secretary General**'s report on disinformation from a framework of human rights and fundamental freedoms emphasized that "state responses to disinformation must themselves avoid infringing on rights, including the right to freedom of opinion and expression."⁸ The Secretary General advised against a criminal law approach to addressing disinformation, instead recommending to promote access to robust public information, and ensure that any regulatory measurements be implemented with caution and separate executive function "to avoid abusive or manipulative approaches."⁹
- The **UN Special Rapporteur on Freedom of Opinion and Expression** (Special Rapporteur on Freedom of Expression), in her 2021 report also reaffirmed that 'false information'/'disinformation' can only be restricted in narrow circumstances if it is clearly and immediately linked to the protection of a recognised legitimate aim.¹⁰ The directness of the causal relationship between the speech and the harm, and the severity and immediacy of the harm, are key considerations in assessing whether the restriction is necessary.¹¹ In order to satisfy the element of legitimate aim, harm caused by 'disinformation' cannot be defined in overly broad terms. In her report, the Special Rapporteur also stated that Turkish criminal laws that penalise broad categories of speech, such as expressions that "denigrate the Turkish nation" or "insult the President" fails to meet freedom of expression standards and are used against journalists, political opponents and human rights defenders.¹²
- The **Human Rights Council** in its 2022 Resolution reiterated the need that approaches to disinformation are rooted in human rights, and not used as a "pretext to restrict the enjoyment and realization of human rights or to justify censorship, including through vague and overly broad laws criminalizing disinformation."¹³

International standards on defamation

18. Criminal laws penalising 'false news' often intersect with protection of reputation through defamation laws. Although protection of reputation is one of legitimate grounds on which freedom of expression can be restricted, such restriction still must be necessary in a democratic society and be proportionate. This is particularly the case for public officials. For instance:

- The **European Court of Human Rights** (the European Court) has consistently ruled that "the limits of permissible criticism are wider with regard to the government than

⁸ UN General Assembly, Countering disinformation for the promotion and protection of human rights and fundamental freedoms, Report of the Secretary General, A/77/287, 12 August 2022, para 10.

⁹ *Ibid.*, paras 26-27.

¹⁰ See Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Disinformation and freedom of opinion and expression, A/HRC/47/25, 12 August 2022, para 41.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Human Rights Council, Role of States in countering the negative impact of disinformation on the enjoyment and realization of human rights, A/HRC/49/L.31/Rev.1, 30 March 2022.

in relation to a private citizen or even a politician.”¹⁴ In *Dilipak v Turkey*, where a journalist was prosecuted for denigrating the Turkish armed forces, the European Court found that the prosecution violated the journalist’s right to freedom of expression and produced a chilling effect on expressing one’s views on matters of public interest.¹⁵

- The **Human Rights Committee** stated that in a “public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high.¹⁶ The Human Rights Committee also calls on states to consider decriminalising defamation and notes that imprisonment is never an appropriate penalty.¹⁷ It actively recommended decriminalization of defamation in Uzbekistan¹⁸, Cameroon,¹⁹ and Tunisia,²⁰ and endorsed decriminalization of defamation in North Macedonia as “steps in the right direction towards ensuring freedom of opinion and expression particularly of journalists and publishers.”²¹
- The **Special Rapporteur on Freedom of Expression** warned that the subjective character of many defamation laws, their overly broad scope and their application within criminal law have turned them into a powerful mechanisms to stifle investigative journalism and silence criticism.²² He explicitly urged Governments to: (a) repeal criminal defamation laws in favour of civil laws, and (b) limit sanctions for defamation to ensure that they do not exert a chilling effect on freedom of opinion and expression and the right to information.²³

19. Recommendations on how to balance freedom of expression with protection of reputation have been also elaborated by civil society. For example, ARTICLE 19 in *Defining Defamation Principles*, concluded that laws criminalising defamation are an unnecessary and disproportionate measure and, as such, constitutes a violation of the right to freedom of expression.²⁴ The Principles also outline defences that should be available in defamation laws and state that other remedies, such as a publication of a retraction, apology, or correction and the right of reply, should be considered effective responses to an unjustified attack on one’s reputation. Where appropriate, civil libel laws may also apply, as long as their application is not abused and does not produce strategic lawsuits against public participation.

¹⁴ The European Court, *Incal v. Turkey*, App. No. 22678/93, 09 June 1998; *OOO Memo v. Russia*, App. No. 2840/10, 15 March 2022.

¹⁵ The European Court, *Dilipak v. Turkey*, App. No. 29680/05, 15 September 2015, para 61.

¹⁶ Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression, 29 July 2011, para 38; *Bodrozic v. Serbia and Montenegro*, Comm. No. 1180/2003, 31 October 2005.

¹⁷ General Comment No. 34., *op.cit.*, para 47.

¹⁸ Human Rights Committee, Concluding Observations on Uzbekistan, 24 March 2010, CCPR/C/ARG/CO/4.

¹⁹ Human Rights Committee, Concluding Observations on Cameroon, 28-29 August 2010, CCPR/C/CMR/CO/4.

²⁰ Human Rights Committee, Concluding Observations on Tunisia, 28 March 2008, CCPR/C/TUN/CO/5 at para 18.

²¹ Human Rights Committee, Concluding Observations on the Former Yugoslav Republic of Macedonia, 3 April 2008, CCPR/C/MKD/CO/2, para 6.

²² Report of the Special Rapporteur on Freedom of Expression, A/HRC/7/14, 28 February 2008, para 39.

²³ Report of the Special Rapporteur on Freedom of Expression, E/CN.4/2001/64, 13 February 2001, para 47.

²⁴ See ARTICLE 19, *Defining Defamation: Principles on Freedom of Expression and Protection of Reputation*, 2017, with a particular reference to Principle 4.

Application of the relevant international human rights standards to the present case

20. Based on the international standards on freedom of expression outlined above, ARTICLE 19 makes the following submissions about the present case.

The provisions under which Mr. Aygül was sentenced do not meet the requirement of international freedom of expression standards

21. Mr. Aygül was sentenced under provisions of Article 217/A para 1 of the Penal Code which prohibit public dissemination of certain false information. As these provisions restrict the right to freedom of expression, they must be reviewed under the three-part test, outlined above. ARTICLE 19 submits that these provisions do not meet the requirements of legality that mandate that the law in question is precisely formulated and foreseeable, and does not pursue a legitimate aim, as explicitly enumerated in international human rights standards.
22. As for the **legality requirement**, ARTICLE 19 finds that the precise conduct punished by the law is overly ambiguous. There is no guidance as to what is considered “false”. Further, the notion of “creating anxiety, fear or panic among the public” is highly subjective and potentially limitless. It is unclear how a criminal investigation can measure the level of “anxiety, fear or panic” that reaches the level of severity punishable under the law. In practice, this will have a chilling effect on the free exercise of expression, as individuals and others will tend to err on the side of self-censorship to avoid criminal sanctions, or even close platforms for communication in order to avoid liability.
23. We note that the vagueness of these provisions was previously criticised by the Venice Commission in its commentary on Article 217/A.²⁵ The Venice Commission noted that the Turkish law does not provide any definition of or criteria for determining “false or misleading information”. It expressed concern that the enumerated categories of potentially ‘false’ information – domestic and foreign security, public order and general health – “risk becoming catch-all formulas that can cover any content, any information pertaining to public sphere and would require more precise drafting for the sake of the foreseeability of their application.”²⁶
24. As for the **legitimate aim**, as discussed at above, a mere falsity of information does not constitute a legitimate aim for restricting freedom of expression. The legal construction of Article 217/A is extremely convoluted as it mentions protection of country’s security, public order and health. Careful reading suggests that the restrictions on dissemination of false information are necessary for the protection of public order as the dissemination must be “in a manner liable to disturb public peace.” However, we note that under freedom of expression standards, the threshold for prohibiting expression on the basis

²⁵ Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe on the Draft Amendments to the Penal Code Regarding the Provision on “False or Misleading Information”, Opinion no. 1102/2022, 7 October 2022.

²⁶ *Ibid.*, paras 42-49.

of protecting public order or public safety is high and must be evidence based, rather than premised on speculation.²⁷

25. The ‘**necessity**’ requirement mandates that there is a pressing social need to restrict a given expression. The margin of appreciation of States in determining that pressing social needed is particularly narrow where freedom of the press is at stake.²⁸ ARTICLE 19 notes that in its Urgent Opinion on Article 217/A, the Venice Commission found that there was no social need to introduce these provisions in the first place. It noted that the Penal Code already contains standard offences against public order (e.g. “provocation to commit a public offense” and “provoking public hatred and hostility towards a section of the public”) and false reports of crime.²⁹ Last but not least, the Venice Commission unequivocally pointed out the manifestly disproportionate character of both the severe penalties and even, more broadly, the choice of a criminal law measure to achieve the alleged objective.³⁰
26. For these reasons, ARTICLE 19 submits that Article 217/A of the Penal Code should be repealed entirely and should not be used as basis of prosecution in this or any other case.

Criminal prosecution of Mr. Aygül was unnecessary and disproportionate

27. Even if the Court of Cassation accepts that Article 217/A of the Penal Code can form the basis of the prosecution, which ARTICLE 19 vehemently disputes, we submit that its application to the case of Mr Aygül would not sustain scrutiny under the requirements of necessity and proportionality.
28. First, the prosecution noted that the allegations of rape, expressed by the defendant, “made it to the public debate” in Turkey. This finding is far from demonstrating, beyond reasonable doubt, the presence of a threat to public order caused by the erroneous tweet. On the contrary, an uninhibited debate on issues of public interest is a core societal value which elevates the need for protection of the expression in question.³¹ Although the allegations of rape might have “shocked” or “disturbed” the public, it is firmly established in international jurisprudence that such expressions are protected from restrictions.³²

²⁷ C.f. for instance the European Court, *Barankevich v. Russia*, App. No. 10519/03, 26 July 2007, para 33.

²⁸ European Court, *Dammann v. Switzerland*, App. No. 77551/01, 25 April 2006, para 51.

²⁹ [Urgent Joint Opinion](#) of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe on the Draft Amendments to the Penal Code Regarding the Provision on “False or Misleading Information”, Opinion no. 1102/2022, 7 October 2022, paras 59-61.

³⁰ [Urgent Joint Opinion](#) of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe on the Draft Amendments to the Penal Code Regarding the Provision on “False or Misleading Information”, Opinion no. 1102/2022, 7 October 2022, paras 63-65, 67, 91-92. The Commission pointed out that the very fact of prosecution affects the criminal record of a person, which entails numerous additional limitations.

³¹ See European Court, *Khadija Ismayilova v. Azerbaijan*, App. No. 65286/13 and 57270/14, 10 January 2019, para 161; Human Rights Committee, *Bodrozic v. Serbia and Montenegro*, Comm. No. 1180/2003, 31 October 2005.

³² European Court, *Handyside v. the UK*, App. No. 5493/72, 7 December 1976.

29. ARTICLE 19 also points out that in its recent case against Türkiye, the European Court pointed out the abuse by the authorities of the blanket justifications of ‘public order’ or ‘public peace’ in punishing individuals for the information shared on the Internet. The case concerned the dismissal of the applicant from the Ministry of Education for “liking” social media posts that raised allegations of rape committed by teachers and contained other types of accusations against political leaders,³³ because the authorities claimed that the posts “were likely to disturb the peace.” However, the European Court concluded that the government had failed to demonstrate any specific harms to “peace” that emanated from the applicant’s “likes” and, thus, found the alleged justification for dismissal irrelevant and insufficient.³⁴
30. Similarly, in the present case, the first instance court failed to provide any analysis of the individualised nature of the effects of Mr. Aygül’s false accusations of rape on public order. Instead, the Court merely stated that “the defendant acted with the purpose of degrading the state and its institutions.” It must be underlined that the relevant part of the tweet reads, “*The suspects are police officers and specialist sergeants*”, which does not point to any specific individual.
31. Without prejudice to the main arguments, it must further be noted that if Mr. Aygül’s accusation had indeed harmed the reputation of a particular individual, which was not claimed in this case, the matter should have been pursued through a civil dispute. Criminal sanctions and, in particular imprisonment, are never an appropriate sanction for defamation.
32. Additionally, the imposition of a custodial punishment—ten months of imprisonment—is impermissible from the point of view of the proportionality test. Any interference with an expression is disproportionate unless there is no less restrictive measure to pursue the stipulated legitimate aim. ARTICLE 19 believes that the prosecution failed to demonstrate the social harm and the high level of severity of the offense that would justify such a harsh punishment. We also recall that the European Court has put great emphasis in its jurisprudence on avoiding severe penalties that amount to a form of censorship intended to discourage the press from exercising its function.³⁵ In this case, the imposition of criminal sanctions on a well-known investigative journalist will also inevitably produce a chilling effect on the media environment in Türkiye and will discourage others from participating in a debate on issues of public interest.
33. Last but not least, ARTICLE 19 invites the Court of Cassation to consider that immediately upon realising his error, Mr Aygül tried to remedy the situation. He published the second tweet on the same day with an appropriate, clear and comprehensive rectification for his earlier statement. He also apologised to the public for failing to confirm the reported information. It demonstrates that he acted in good faith and without malice to cause any

³³ European Court, *Melike v. Turkey*, App. No. 35786/1915, June 2021.

³⁴ *Ibid.*, para 53.

³⁵ European Court, *Bédat v. Switzerland*, [GC], App. No. 56925/08, 29 March 2016, para 79.

harm. The correction of the false report by the defendant himself is the most effective and sufficient response to the alleged adverse effects of “disinformation”.³⁶

Conclusions

34. In light of the foregoing assessment, ARTICLE 19 submits that the prosecution of Mr. Aygül constitutes a violation of his right to freedom of expression, as guaranteed by Article 10 of the European Convention and Article 19 of the ICCPR. The provisions of Article 217/A of the Penal Code, on the basis of which he was charged, fail to satisfy the test of legality, necessity and proportionality. The prosecution and the Court of first instance failed to establish the individualised link between the defendant’s expression and the alleged threat to public order in Türkiye. There was no “pressing social need” to apply a criminal sanction to an erroneous expression that was immediately corrected by the defendant himself. The application of the sanction of imprisonment would be a grossly disproportionate measure for the achievement of the articulated objectives. The conviction of Mr. Aygül, an investigative journalist, can also produce a chilling effect on engaging in public debate and conducting media work on issues of public interest.
35. The guilty verdict against the defendant should be quashed in its entirety with immediate effect and the defendant should be acquitted.

JUDr. Barbora Bukovska
Senior Director for Law and Policy
On behalf of ARTICLE 19

³⁶ Without prejudice to the primary argument that ‘discrediting’ abstract or collective entities such as the state or state institutions does not fall under the ambit of protection of reputations, ARTICLE 19 points out that the right to correction is the most effective non-pecuniary remedy for defamatory statements. Non-pecuniary remedies have less impact on the free flow of information and ideas than their pecuniary counterparts and may at the same time provide an effective means of redressing any harm done to individuals’ reputations. See more, *Defining Defamation, op.cit.*, with a particular reference to Principle 18.