**Public Prosecutor v. Defendants Identity Protected**

**Summary and Outcome**

On the 25th of April, the three defendants were stopped by a police patrol for violating the curfew law. After that, the defendants harshly attacked the police on their social media accounts, accusing one of them of bribery.

Accordingly, the Public Prosecution in Tunisia pressed charges of defamation against the defendants under Article 128 of the Penal Code and Article 86 of the Telecommunications Code for insulting and accusing a public employee of bribery without proof, using the internet.

The first chamber of the instance court dismissed the charges due to the invalidity of the prosecution process.

**Facts**

After being stopped by the police during the curfew hours, investigations have shown that the defendants have used their social media accounts to insult and defame the police, accusing one of the police officers of bribery.

By questioning the defendants, the first denied the accusations, emphasising that his posts neither targeted the police nor incited people against them, but only criticised suspicious activities in general. The second defendant admitted that he meant by his post the police officer at issue, but he removed his post after calming down. The third defendant stated that his post was a reply to the post of the 2nd defendant.

On May 07, 2020, the defendants were accused of defamation and were charged by the Public Prosecution with violating Article 128 of the Penal Code which makes it a crime to accuse a public employee of illegal activity without proof and Article 86 of the Telecommunications Code which incriminates offending or disturbance of others, using telecommunication networks.

Article 86 of the Telecommunications Code stipulates that "Anyone who intends to offend or disturb others using via telecommunications networks shall be sentenced to imprisonment for a period between one year and two years, and a fine from one hundred and up to one thousand dinars."

Article 128 of the penal code states that "Anyone who attributes illegal acts to a public official related to his job without proof, through a public statement, the press or other communication channels shall be punished by two years of imprisonment and a fine of one hundred and twenty dinars."

The defendants moved to dismiss these accusations, arguing that due process was not properly followed and that their right to privacy was violated. They further argued that their speech is protected under the freedom of expression provision of the Tunisian Constitution.

The first chamber of the instance court in Manouba went through the accusations, noting that there were irregularities with regard to the prosecution process. The Court eventually dismissed the charges.

**Decision Overview**

The first chamber of the instance court in Manouba headed by Judge Anisa Al-Trishili, and Judge Rima Bin Maatouk delivered the ruling of the Court.

The underlying issue was whether the defendants’ acts amounted to online defamation under Article 128 of the Penal Code and Article 86 of the Telecommunications Code.

On one hand, the prosecution argued that the defendants have violated Article 128 of the Penal Code and Article 86 of the Telecommunications Code by using the telecommunication network to insult and defame the police, and to accuse one of the officers of bribery without evidence.

On the other hand, the first defendant denied the accusation, arguing that his/her social media post did neither target the police officers nor incite against them, but it aimed at criticising and exposing suspicious activities in all fields with no specificity. The second defendant noted that his/her social media comment was a mere reply on the third defendant's post, which was directed at one of the police officers, who detained the latter defendant's brother. Finally, the third defendant admitted that the post was about two specific police officers; however, he/she deleted the post after cooling down his/her anger.

First, the Court noted that the 2011 Decree No.115 supersedes both the penal code and the telecommunication code according to Article 79 of the Decree which stipulates that "all prior provisions that contradict with the current Decree shall are repealed". Accordingly, there is no legal basis to charge the defendants for online defamation under these codes. Therefore, the Court held that charging the defendants under the penal and telecommunication codes undermines the legislative value of the Decree and strips its provisions from the guarantees embedded to protect freedom of expression, and thus it leads to the invalidation of the prosecution proceedings.

The Court then explained that Article 55 of the Decree states that personal and direct harm is an essential element to prove defamation, and Article 69 of the same Decree states that a defamation case has to be filed by the person defamed. By looking at the case facts, it is apparent that the case has been filed by the prosecution, not the defamed officer, and that the prosecution failed to prove that this officer had suffered any harm.

Finally, the court reiterated that the main reason behind the issuance of the 2011 Decree was to expand freedom of expression, eliminate criminal sanctions and to emphasise on the obligation to respect the international human rights conventions ratified by Tunisia and enshrined in the Constitution, such as the International Covenant on Civil and Political Rights. The Court also referred to the European Convention on Human Rights, the African Charter on Human and Peoples’ Rights and the American Convention on Human Rights, asserting that the international community considers freedom of expression as the essential foundation of a democratic society and the cornerstone of all other rights and freedoms. The Court eventually underlines that although restrictions may be imposed on freedom of expression, these restrictions remain as an exception that should be narrowly construed.

Based on the foregoing factors, the Court found the prosecution process invalid and dismissed the charges.

**Decision Direction**

This decision expands freedom of expression.

The decision successfully restates the importance of freedom of opinion and expression, underscores the importance of due process, and well reflects the spirit of the law.