

**P E N
N O R W A Y**

Legal Report on Indictment:
Firat Bulut

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Published: 10 December 2025

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This report is produced by PEN Norway.

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PEN Norway is an independent membership organisation, dedicated to defending and promoting freedom of expression, and supporting writers, journalists and others using their freedom of expression that is at risk or in prison. PEN Norway's goal is that everyone should have the right to freedom of expression. PEN Norway is a part of PEN International – the world's largest writer and freedom of expression organisation, established in 1921.

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PEN Norway Turkey Indictment Project

PEN Norway's Turkey Indictment Project began in January 2020 and, with the publication of four reports in 2025—including the present report—it will have produced detailed legal analyses of a total of 37 indictments. These indictments have been examined by an international team of lawyers, academics and judges from across Europe, with a focus on scrutinising criminal proceedings that constitute interferences with freedom of expression in Turkey.

Among the indictments analysed to date are those from major cases such as the Cumhuriyet newspaper trial, the Büyükada human rights defenders' trial, the five-year Gezi Park trial, and the indictment targeting Şebnem Korur Fincancı. Each report examines a single indictment in depth and assesses it in light of Turkey's domestic law and international human rights standards.

As the rule of law in Turkey has weakened since 2016, none of the indictments reviewed have met the procedural safeguards required under domestic law or the guarantees of the right to a fair trial under Article 6 of the European Convention on Human Rights. It has also been strikingly observed that the prosecutors who drafted these indictments did not adhere to internationally recognised guiding principles.

Our reports have been used in numerous court cases as supporting legal reports, expert opinions or other forms of reference, and they have served as an important resource for many human rights lawyers. Likewise, the findings of this project have provided a basis for constructive recommendations regarding the training of prosecutors in Turkey and the improvement of indictment writing to prevent rights violations. The "Guidelines on Indictment Writing for Prosecutors in Turkey", prepared for this purpose, can be accessed here: norskpen.no/wp-content/uploads/2024/03/Guidelines-on-Indictment-Writing-for-Prosecutors-in-Turkey.pdf

Previous reports and compilation volumes can be accessed at:

2020: PEN-Norway_Turkey-Indictment-Project-Report-2020.pdf

2021: PEN-Norway-Turkey-Indictment-Project-Report-2021_Eng.pdf

2022-2024: PEN_Norway_final_report_2025_eng-WEB.pdf

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1. Introduction

On 10 July 2023, the Journalist Firat Bulut was charged with Publicly Disseminating Misleading Information under Article 217/A/1 of the Turkish Penal Code No. 5237 dated 26/9/2004 (TPC). This report will provide an analysis of whether the indictment (No. 2023/513) of Firat Bulut meets both Turkey's domestic law and international law standards.

To do this, in the next section a short summary of the facts of the case, as well as a summary of the proceedings will be provided. It will be followed by analyzing the indictment against the standards for indictments required under Turkey's domestic law, as well as whether the charges are in line with the requirements set out in the European Convention of Human Rights (ECHR). Finally, the conclusion will provide a summary of the findings and recommendations.

2. Summary of Case Background Information

On 6 February 2023, two heavy earthquakes struck the southern part of Kahramanmaraş, Turkey with a magnitude of 7.7 and 7.6 on the Richter scale respectively. Both earthquakes together had an estimated death toll of at least 50,000 deaths in the Eastern parts of Turkey, and an additional 5,000 deaths in the Northern parts of Syria.¹ In the aftermath of this disaster, on 8 February 2023, the Journalist Firat Bulut, who had travelled to the region to report on the earthquakes, published a video on his X (*formerly known as Twitter*) profile, showing smoke rising from the Elbistan Type E Prison, with the caption: *'Smoke was rising from the courtyards of Elbistan prison*

Journalist Firat Bulut, published a video on his X (formerly known as Twitter) profile, showing smoke rising from the Elbistan Type E Prison, with the caption: 'Smoke was rising from the courtyards of Elbistan prison and the wards were set on fire'. Upon Bulut's return to Ankara on 10 March 2023, he was arrested at the airport.

and the wards were set on fire’. Upon Bulut’s return to Ankara on 10 March 2023, he was arrested at the airport and held in custody for two days since the Bingöl Penal Judgeship of Peace had issued an arrest warrant against him charging him with Publicly Disseminating Misleading Information. On 10 July 2023, the indictment was issued with the corresponding charge.

A first hearing took place on 19 October 2023 at Elbistan 2nd Criminal Court of First Instance in which the defence requested an investigation into whether the fire at the prison had in fact taken place. Five days later, on 24 October 2023, the prosecution delivered the opinion that Bulut had committed the offence and requested a sentencing of the journalist. On 21 December 2023, a report by the Elbistan District Gendarmerie Command confirmed that the fire had in fact broken out in Elbistan prison and that prisoners had rioted on the date Bulut had reported about it. Despite the fact that official correspondence confirmed the accuracy of the news Bulut had shared on social media, the charges against him have not been dropped and the proceeding is still ongoing.

The case has now been referred to the 5th Criminal Chamber of the Court of Cassation because it remains unclear whether the Bingöl 1st Criminal Court of First Instance or the Elbistan 2nd Criminal Court of First Instance has jurisdiction. The investigation was initiated by the Bingöl Chief Public Prosecutor’s Office, but the file was initially sent to Elbistan on the grounds that the alleged offence related to Elbistan Prison. Elbistan authorities declined jurisdiction given that Bulut’s last known residence was in Bingöl. Meanwhile, Bingöl Court also ruled that it lacked jurisdiction, citing Bulut’s admission that he made the post while in Elbistan. Since both courts rejected jurisdiction, it is up to the Court of Cassation to decide which court is competent. It remains unclear before which court the trial will continue.

3. Analysis of the Indictment

In this section, the indictment against Firat Bulut will be analysed whether it complies with the Code of Criminal Procedure (CCP) in Turkey in the first part. In the second part, it will be checked whether it is compatible in regard to International law, and specifically the ECHR.

3.1 Domestic Law

Article 170/3 of the CCP sets out eleven separate elements that must be included for an indictment to be considered valid. If these requirements are not met, the indictment must be rejected, and the court may not initiate proceedings against the suspect on the basis of such an indictment. Although most of the technical requirements have been fulfilled, subparagraph (k) of Article 170/3 CCP also requires the indictment to state whether the suspect was taken into police custody. At the time the indictment was issued, Bulut was no longer in custody; however, the indictment makes no mention of this fact, nor does it state that he had been held in police custody for two days following his arrest. This omission, on its own, is not sufficient to require the rejection of the indictment. It has merely been noted as an indication that the indictment fell short of exercising due diligence in meeting basic formalistic requirements.

However, more importantly, the indictment fails to comply with several other requirements set out in Article 170 of the CCP. Paragraph 5 of this Article requires that the indictment include not only the elements unfavourable to the accused but also those in his favour. Considering that Bulut is charged with disseminating misleading information, it is a significant deficiency that the indictment does not examine whether the fire and the riot in the prison had actually occurred. The fact that the public prosecutor did not request a report from the Elbistan District Gendarmerie Command shows that the prosecution did not demonstrate even the minimum diligence required to collect evidence in favour of the suspect. Given that the alleged offence is the dissemination of misleading information, it is beyond dispute that the first matter that should be examined before bringing such a charge is whether the information disseminated corresponds to factual reality. Moreover, as Firat Bulut himself asserted in his defence, the investigation may also be interpreted as an attempt to silence journalists.

The only aspect in the indictment that could be considered favourable to Bulut is the acknowledgment that he stated he had shared the video for journalistic purposes and that the elements of the alleged offence had not been met. Apart from this, the indictment presents no evidence in his favour and fails to comply

with Article 170(4) of the CCP, which requires the prosecution to explain how the available evidence establishes the alleged offence. The prosecution has not demonstrated the necessary causal link between the evidence and the act imputed to the suspect; in this respect, the indictment merely records Bulut's statement without providing any substantiating analysis. Yet Bulut is specifically charged with violating Article 217/A (1) of the TPC, and the establishment of this offence requires the indictment to clearly set out the relationship between the evidence and the alleged act. Concretely, Bulut stands accused of violating Article 217/A/1 TPC which reads:

Anyone who publicly disseminates false information concerning the internal or external security, public order or public health of the country, with the sole intention of creating anxiety, fear or panic among the public, and in a manner capable of disturbing public peace, shall be sentenced to imprisonment for a term of one to three years.

Consequently, a proper indictment should at a minimum demonstrate that Bulut's post (1) disseminated information concerning the internal or external security of the country, or public order, (2) that the information disseminated was false, (3) that it was shared publicly, and (4) that the post was of a nature capable of disturbing public peace.

The indictment attempts to address the required elements in a disorganised way by mixing them into a single long paragraph. In its discussion of the first element, the prosecution asserts that the post was shared "at a time of heightened social tension" and "in a manner detrimental to public order". Yet it does not explain how a short factual video and caption could realistically have any impact on public order. More importantly, the first element requires that the information concern public order, not that it threaten or undermine it. Although it could reasonably be argued that a fire and unrest in a prison relate to Turkey's internal security or public order, the indictment does not set out this connection or explain how the shared content fits within that category.

As to the second element, the prosecution merely asserts in the indictment that the post was "presented in a manner that did not accurately reflect the truth", yet provides no explanation or evidentiary basis for this claim. However, the report of the Gendarmerie Command clearly confirms that the information shared was accurate. Since the post did not contain any false information, this element is not fulfilled and the conduct does not fall within the scope of Article 217/A(1) of the TPC.

As for the third element, the indictment states that the post was "presented in such a way to induce panic", yet it provides no evidence that any panic actually occurred, nor any coherent explanation as to how such panic could realistically arise. Moreover, the indictment fails to establish any link between this supposed potential for panic and the fourth element, namely the disruption of public peace. It should also be noted that the wording of the provision itself leaves the meaning of "public peace" rather ambiguous, and nothing in the indictment suggests that the prosecution has a clearer understanding of what this concept entails.

In light of the above analysis, it is unclear why this indictment was issued in the first place. Under Article 170(2) of the Code of Criminal

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Procedure, an indictment may only be issued if, at the end of the investigation phase, the evidence collected creates sufficient suspicion that an offence has been committed. However, neither the facts nor the evidence presented in the indictment give rise to sufficient suspicion that Bulut disseminated misleading information.

Finally, the prosecution fails to properly address two crucial considerations. First, Bulut's right to freedom of expression, which is guaranteed under Article 26 of the Constitution of Turkey, is not taken into account or balanced against the prohibition on publicly disseminating misleading information under Article 217/A(1) of the Turkish Penal Code. Second, the fact that Bulut disseminated the information in his capacity as a journalist—entitling him to special protection from prosecution—has been overlooked. Although the indictment notes that Bulut stated he published the video for journalistic purposes, this fact plays no role in the reasoning of the alleged offence.

In the following section, a balancing-of-interests assessment will be carried out in light of the jurisprudence of the European Court of Human Rights on the right to freedom of expression.

3.2 International Law

As a State Party to both the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR), Turkey is required to take into account the right to freedom of expression protected under both instruments (Articles 10 and 19 respectively) when adjudicating cases of this nature. Given that the approaches of the ECHR and the ICCPR towards freedom of expression are substantially comparable, this report will primarily focus on the ECHR, bearing in mind that the underlying reasoning is analogous under the ICCPR.

There is no doubt that the indictment and the ensuing criminal proceedings against Bulut constitute an interference with his right to freedom of expression, should domestic courts ultimately convict him. Article 10(1) ECHR guarantees Bulut's right to impart information without interference by public authorities. However, Article 10 is not absolute and is subject to the limitations set out in Article 10(2) ECHR. Interferences with the right to freedom of expression may fall within the scope of this provision where the restriction is prescribed by law, pursues a legitimate aim, and is necessary in a democratic society.²

While there is no doubt that the accusations against Bulut have a basis under domestic law in Article 217/A(1) of the Turkish Penal Code, the ECtHR has long held that, in order for a restriction to fall within the scope of Article 10(2) ECHR, the relevant law must have foreseeable effects. This means that the provision must be "formulated with sufficient precision to enable the citizen to regulate his conduct".³ The Venice Commission of the Council of Europe, the Council's advisory body on constitutional matters, assessed that several terms used in Article 217/A(1) are so vague that the provision would require substantial redrafting in order to satisfy the criteria demanded by Article 10(2) ECHR.⁴ For example, the TPC contains no definition of the concept of "misleading information", making it impossible to carry out an objective and consistent assessment of whether a given piece of information qualifies as misleading.⁵ Although the opinion of the Venice Commission was delivered before the adoption of the amendment, the legislative reform—including Article 217/A(1)—entered into force on 18 October 2022 without any changes reflecting the Commission's recommendations. Consequently, Article 217/A(1) cannot be regarded as meeting the "prescribed by law" requirement under Article 10(2) ECHR.

As regards the question of a legitimate aim, the indictment asserts that Bulut's post posed a threat to public order. Preventing the disruption of public order arising from the spread of misinformation is, in principle, a legitimate aim capable of justifying an interference with the right to freedom of expression. Although such an aim is invoked, it may be argued that the indictment does not genuinely pursue it, as Bulut's post was factual in nature and therefore does not constitute misinformation. Nevertheless, given the wide margin of appreciation the Court affords States in determining whether an aim falls within the meaning of Article 10(2) ECHR⁶, it is realistically possible that the Court would accept that, at least in theory, the indictment pursued a legitimate aim in the present case.

The most critical question, however, is whether the interference was necessary in a democratic society. The Court has long held, and repeatedly affirmed, that freedom of expression constitutes one of the essential foundations of a democratic society.⁷ In the same line of reasoning, the Court notes that Article

10(2) applies not only to information or ideas that are favourably received or regarded as inoffensive or a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.⁸ Moreover, the Court considers the role of the press to lie at the very heart of a democratic society, as it provides the public with one of the principal means of discovering and forming an opinion.⁹

With regard to the role of the press in a democratic society, the Court held in *Şık v. Turkey (no. 2)* that the duty of the press is to impart “information and ideas on all matters of public interest”,¹⁰ while respecting certain limits, particularly those designed to prevent disorder. Article 10 protects not only the content of the information conveyed but also the form in which it is communicated. The Court further recognises the passive aspect of Article 10: the public’s right to receive information.¹¹

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In this context, it is notable that the indictment itself refers to Bulut’s video as a “news post”, which implies that the prosecution accepted that the post was shared with journalistic intent. Accordingly, the post should be regarded as a press publication and afforded the corresponding protections. The prosecution alleges that Bulut’s video was intended to cause panic at a time of heightened public tension. However, as confirmed by the report of the Gendarmerie Command, the video depicted a real incident and did not constitute misinformation. Reporting on a fire and unrest in a prison is of clear public interest. While such reporting may evoke concern or anxiety in some individuals, the public’s right to receive accurate information on matters of public interest far outweighs such individual reactions and cannot justify characterising the reporting as having a panic-inducing intent. Therefore, the interference with Bulut’s freedom of expression cannot be regarded as necessary in a democratic society.

Overall, it is clear that the prosecution did not balance the right of freedom of expression of Bulut, and the right of the public to receive information, against those of preventing the spread of misinformation.

4. Conclusion and Recommendations

The indictment against Firat Bulut fails to meet several standards under both domestic and international law. The application of Article 217/A(1) TPC to Bulut’s case is flawed from the outset, as he never disseminated misinformation. It appears unlikely that the prosecution was unaware of this fact; however, even if they were, they were nonetheless under an obligation to collect and present evidence both against and in favour of the accused. Once it became clear that Bulut’s conduct did not satisfy the constituent elements of the offence under Article 217/A(1) TPC, the prosecution ought to have discontinued the investigation. The prosecution appears to have failed to exercise due diligence and overlooked this crucial evidence. Even if the indictment was submitted regardless, the domestic courts should have rejected it, or at a minimum discontinued the proceedings as soon as it became apparent that no misinformation had been disseminated.

Going forward, the prosecution should only bring charges where sufficient evidence — including exculpatory evidence — exists to suggest that all elements of an offence defined in the TPC have been fulfilled. Moreover, the Turkish judiciary should insist that all technical requirements under Article 170(3) CCP are met and should automatically reject any indictment that does not comply with these requirements. Where applicable, exculpatory evidence must also be incorporated into the indictment. Finally, the judiciary should immediately drop all charges once it becomes clear that not all elements of the accusation are met.

At the international level, the indictment appears to constitute an interference with Bulut's right to freedom of expression. This assessment is based on the finding that Article 217/A(1) TPC is too vague to satisfy the "prescribed by law" requirement under Article 10(2) ECHR. Furthermore, given Bulut's journalistic role and the essential function of the press in a democratic society, there was no compelling social need for Turkey to interfere with Bulut's right to freedom of expression. Taken together, these considerations indicate that Bulut's right under Article 10 ECHR would be violated if the domestic proceedings result in a conviction. Crucially, domestic authorities are bound by the international treaties to which Turkey is a party and are therefore required to take international law into account at every stage of the proceedings.

The foregoing demonstrates clearly that there is an immediate need to strengthen the training provided within the judicial branch in Turkey. Prosecutors who fail to exercise due diligence during investigations and are unable to identify when the elements of an offence are clearly not satisfied evidently require substantial training. This issue is not confined to the prosecution; the fact that the judges involved in the case similarly failed to identify the fundamental shortcomings of the indictment indicates significant deficiencies in their professional training as well. Moreover, the apparent lack of human rights training—given that neither the ECHR nor instruments such as the ICCPR were taken into account—underscores the need for improved and comprehensive human rights education for judicial actors.

Taken together, these factors raise serious concerns as to whether the judiciary in Turkey can be regarded as an independent branch of government. The indictment against Bulut—due to both its poor quality and the absence of any conduct amounting to a criminal offence—bears all the hallmarks of an attempt to deliberately target journalists and silence those who report independently on developments in Turkey. As the ECtHR has repeatedly affirmed, freedom of expression constitutes one of the very foundations of a democratic society, and attacks against it should be viewed as attacks on society itself, since any unlawful restriction deprives the public of its right to receive information. There is longstanding and serious concern that journalists in Turkey are targeted merely for performing their professional duties and engaging in critical reporting. This practice must cease, and the authorities should embrace the plurality of voices that free and independent journalism provides.



Author:

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Endnotes

- 1 Sarah Winfrey, "2023 Turkey-Syria Earthquake," EBSCO, 2023, <https://www.ebsco.com/research-starters/construction-and-building/2023-turkey-syria-earthquake>.
- 2 Article 10/2 ECHR, and also for example Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina [GC], no. 17224/11, § 67, 27 June 2017.
- 3 Karácsony and Others v. Hungary [GC], no. 42461/13, § 124, ECHR 2016.
- 4 European Commission for Democracy Through Law, "Türkiye Urgent Joint Opinion Of the Venice Commission And The Directorate General of Human Rights and Rule Of Law (Dgi) 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, October 7, 2022, § 54.
- 5 Ibid, § 42 - 43.
- 6 Karácsony and Others v. Hungary, cited above, § 128 - 129.
- 7 For example see Şik v. Turkey (no. 2), no. 36493/17, § 173, 24 November 2020, Prager and Oberschlick v. Austria, 26 April 1995, § 38, Series A no. 313; Castells v. Spain, 23 April 1992, § 42, Series A no. 236; Handyside v. the United Kingdom, 7 December 1976, § 49, Series A no. 24.
- 8 Ibid.
- 9 Lingens v. Austria, 8 July 1986, § 42, Series A no. 103.
- 10 Şik v. Turkey (no. 2), cited above, § 175.
- 11 Ibid.