

Third Study Commission Questionnaire 2022

Israel

For 2022, the Third Study Commission, which focuses on Criminal Law, decided to study " Restrictions by the criminal law of the freedom of speech".

In order to facilitate discussion and to assist us in learning from colleagues, we ask that each country answers the following questions:

- 1. Does your country protect freedom of speech and, if so, how? Please refer to legislation, including any applicable bill of rights or charter of rights or human rights code, as examples, and/or jurisprudence (court decisions) as an overall picture.**

Yes, in the constitution (the freedom of speech) and in the human rights convention and during EU and it's charters on human rights.

- 2. Does your country criminalize hate speech and, if so, how? Please refer to legislation and/or jurisprudence as an overall picture.**

Yes, in the criminal act.

- 3. Does your country have restrictions by the criminal law of the freedom of speech? And if yes, could you give an overall picture of what the legislation is like? Including**
 - Are there groups of persons who enjoy special protection **of their** freedom of speech due to their gender, sexual preference, religion, race or other conditions
 - Are there topics that enjoy special protection **in terms of** freedom of speech – for example topics of religion and politics

The Constitution guarantees the right to speak but under criminal liability. As mentioned above hate speech is included in the criminal act and the protection includes - in public - degrading talk about a group of people due to their race, gender, color of skin, nationality, ethnic origin, believe or sexual orientation. It also includes or protect a single person from in public to endure statements that are fit to violate the persons honor unless the statement is true or believed to be true and there was reasonable cause for it. Topics of politics enjoy special protection and people meaning that you must endure more when it comes to discussion politics. As goes for persons in general that participate in a public debate that they must endure more then people who do not participate but are drawn into a debate.

4. If there are restrictions in the criminal law of the freedom of speech, are the restrictions then absolute or must they be weighed against the consideration of free speech?
- Does this apply to all groups and if not, are the restrictions either absolute or not? Please mention which persons and groups belong to which category
 - In cases where the freedom of speech and the restrictions are to weighed against each other –
 - Are there then **guidelines** on how the **balancing** should be **done**?
 - If Yes, which of the two parameters weighs heaviest, a) the protection of free speech or b) the category that is protected by the legislation? And does this **differ** from category to category?
 - And how **much discretion is there such that the outcome of the balancing exercise may differ from judge to judge?**

The restrictions must all ways be weighed against the consideration of free speech. The guidelines follow primarily from The Human Rights Convention article 8 and The Court of Humans Rights verdicts.

5. Do you find that the legislation is clear and comprehensible to the citizen or does it give cause for doubt?

- If it gives cause for doubt, how is it expressed? Does it **deter** the citizen from making statements? Or does it **deter** citizens from suing?

I think that the legislation can be difficult for the citizen to comprehend because the law can't be absolute clear. When it comes to hate speech against groups there are means how to formulate your wording so that it doesn't comply for the whole group and then it is not illegal. For single persons you can say things that are true but then you may not have reasonable cause for saying it – so it is a complicated area. We have more and more cases concerning statements person to person on facebook for an example. I don't think it deter citizens from suing but it might give some citizens a feeling of not being fair treaded.

Do you find in your work as a judge that the relevant legislation in your country, as it pertains to the freedom of speech and its protection and the criminalization of hate speech, is clear and comprehensible, or do you find that it gives too much room for different outcomes in the same types of cases?

When we talk about hate speech towards a group of people it is the prosecutor leading the case and there is a defense attorney present. That is a great help. But when it comes to the other type of cases – these cases are handled as civil cases and sometimes none of the persons involved have a lawyer and that makes these cases very difficult. It can all so in some cases be difficult to evaluate if the person had reasonable cause to put forward true statements (facts) or value judgement.