

Third Study Commission Questionnaire 2022 Israel

Regarding ESTONIA

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.

Estonia protects freedom of speech by the Constitution. In accordance with § 45

Everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means. This right may be restricted by a law to protect public order, morals, or the rights and freedoms, health, honour and good name of others. This right may also be restricted by a law for state and municipal public servants, to protect a state secret or trade secret or information received in confidence, which has become known to them by reason of their office, or the family and private life of others, as well as in the interests of the administration of justice.

There shall be no censorship.

For the protection of the press as a bearer of freedom of speech, several special rules are prescribed in criminal proceedings. For example in general a search may be conducted based on a warrant from the Prosecutor's Office. A search at the premises of a person processing information for journalistic purposes (like at the notary's office or the office of a law firm) may be conducted under a warrant from the pre-trial investigation judge or the court (Code of Criminal Procedure § 91)

Journalists have a right to refuse to testify as a witness. Code of Criminal Procedure § 78 (1)(3)

¹ *A right to refuse to give a statement or testify as a witness concerning circumstances which have become known to the witness in the course of their professional or other activities is vested in a person processing information for journalistic purposes, regarding information which makes it possible to identify their informant, except in a situation in which the taking of the evidence by other procedural operations is precluded or exceedingly complicated and the subject matter of criminal proceedings is a criminal offence for which an imprisonment of at least up to eight years' is prescribed, there is a predominant public interest for the statement or testimony to be given and the person is required to give the statement or testimony on an application or motion of the Prosecutor's Office by order of the pre-trial investigation judge or by court order.*

Freedom of speech is well-protected in Estonia. For example, according to World Press Freedom Index published by Reporters Without Borders (RSF) Estonia is in fourth place out of 180 countries.

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

In accordance with 12 of the Constitution *the incitement of national, racial, religious or political hatred, violence or discrimination shall be prohibited and punishable by law. The incitement of hatred, violence or discrimination between social strata shall also be prohibited and punishable by law.*

There is no separate article of the Penal Code dedicated to hate speech in Estonian legislation. However hate speech is covered by Article 151 of the Penal Code, which reads as follows:

§ 151. Incitement of hatred

(1) Activities which publicly incite to hatred, violence or discrimination on the basis of nationality, race, colour, sex, language, origin, religion, sexual orientation, political opinion, or financial or social status if this results in danger to the life, health or property of a person is punishable by a fine of up to three hundred fine units or by detention.

(2) The same act if:

1) it causes the death of a person or results in damage to health or other serious consequences; or

2) committed by a person who has previously been punished by such act; or is punishable by a pecuniary punishment or up to three years' imprisonment.

(3) An act provided for in subsection 1 of this section, if committed by a legal person, is punishable by a fine of up to 3200 euros.

(4) An act provided for in subsection 2 of this section, if committed by a legal person, is punishable by a pecuniary punishment.

Offenses are divided into misdemeanors and criminal offences according to the severity of the foreseeable punishment for the act. As a result, the activity in accordance with the subsection (1) is considered a misdemeanor and the activity in accordance with the subsection (2) a crime. In the case of misdemeanors, the maximum punishment is detention for 30 days.

Since danger to the life, health or property of a person is an element necessary to constitute this rule, it is difficult to prove such acts. Therefore, persons have seldom been punished on the basis of § 151.

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?

As mentioned above, § 151 of the Penal Code criminalizes incitement of hatred.

The Penal Code also includes eight other necessary elements of an offence, the objective of which is an element of incitement (or public incitement) to certain acts.

§ 92 Propaganda for war; § 102¹ Declaration of unpardonable conduct, § 236 Incitement to commit criminal offence against Republic of Estonia; § 237² Preparation of and incitement to acts of terrorism; § 238 Organising and preparing mass disorders and incitement to participation therein; § 239 commission of offence during mass disorder; § 250 Incitement to commission of criminal offence against foreign state or international organization; § 265. Unauthorised public meeting.

Defamation or insulting persons that is directly referred to in law is punishable.

Under the Penal Code is punishable defamation or insulting of a person enjoying international immunity or of a family member of such person (§ 247)

Insulting or defamation of a representative of state authority protecting public order in connection with performance of his or her official duties (§ 275 and § 275¹)

Insulting or Defamation of a court, judge or lay judge in connection with their participation in administration of justice (§ 305 and § 305¹)

Since 29.04.2022 is punishable supporting and justifying international crime (public exhibiting of a symbol relating to an act of aggression, genocide, crime against humanity or commission of a war crime in a manner that supports or justifies such acts (§ 251¹).

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?

If necessary elements of an offence are fulfilled, the restrictions are absolute.

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

The description of punishable acts is given with sufficient clarity and is understandable to people.

6. 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?

As a judge, I find that in terms of penal norms, the Estonian legislation is clear enough. It is not possible to write all vital circumstances into law. Whether a person's statement contains an incitement (to hatred) or is insulting requires understanding the nuances of language and thus inevitably remains to be assessed by the judges. The assessment of different judges may not be identical, but the outcome would not differ by much.

In recent established case-law, the issue of balance between the interests of freedom of speech and the interests of the administration of justice has been addressed. Procedural law gives the court the opportunity to impose a fine on the parties to the proceedings and, in certain cases, also on a non-party to the proceedings. In Accordance with Code of Criminal Procedure § 214(3) where the prohibition of disclosure of information concerning pre-trial proceedings has been violated, the pre-trial investigation judge may, on an application of the Prosecutor's Office, enter an order by which they impose a fine on a party to proceedings, on any other person participating in the proceedings or on a non-party. No fine is imposed on the suspect or accused.

On the application of the Prosecutor's Office, the pre-trial investigation judge imposed a fine on a publisher and two journalists for disclosing the circumstances of the criminal proceedings and the circle of suspects in the criminal proceedings regarding money laundering without the permission of the Prosecutor's Office. The Court of Second Instance annulled the order due to procedural circumstances. To date, the dispute has been brought to the Supreme Court and no judgement has been delivered as of yet (court case 1-22-1949).