

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.

Freedom of speech is protected in the Constitution Art 100. This article also protects the right to give and receive information and has a prohibition against censorship unless it is for the protection of minors from harmful effects of living images. It also protects the citizens right to gain insight into public documents and the right to be able to follow the proceedings in the courts and meetings in democratically elected organs. The article also underlines that it is the responsibility of the state authorities to create the conditions for an open and enlightened public conversation.

Freedom of speech is also protected in the Human rights act from 1999 that incorporated the ECHR and some other human rights into Norwegian law, but in a manner that if there is conflict between Norwegian legislation and the convention, the convention will prevail. Thus, the ECHR art 10 is directly binding in Norway, and all the case law from the European Court of Human Rights is relevant to domestic decisions. Norwegian judges are hence very accustomed to referring to and using the case law from the European Court in their work.

It should be mentioned that the protection of the sources for the media stands strong in Norway.

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

Hate speech is criminalized under the penal code from 2005 art. 185. The penalty is a fine or imprisonment up to three years. It applies to any person who with intent or gross negligence publicly makes a discriminatory or hateful statement. «Statement» includes the use of symbols.

Discriminatory or hateful statement» means threatening or insulting a person or promoting hate of, persecution of or contempt for another person based on his or her skin colour or national or ethnic origin, religion or life stance, sexual orientation, gender identity or gender expression or reduced functional capacity.

Hate crime is one of the topics the Norwegian Attorney General prioritizes. Hence the amount of hate crime cases, including hate speech, has increased in recent years. Case law show that the freedom of speech in public democratic discussions holds a particular protection. As an example is LB-2019-177188 where a woman during an appeal before the parliament, stated what would happen if the "import" of "killer zombies", "sexual predators" and "backward culture" from the Middle East was allowed. Based on the context, the statements had to be interpreted to the extent that they concerned immigration from Muslim cultures. The defendant had aimed to participate in the public debate, so that consideration of freedom of expression had to weigh heavily. When viewed in context, the appeal did not involve a unilateral condemnation of Muslims as a group.

Blasphemy was previously prohibited by law in Norway, but the criminal provision was repealed on 29 May 2015.

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?

See previous answer.

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?

The Penal code art 185 will always have to be interpreted in the light of the Constitution and the ECHR. Hence, political expressions are well protected, as the example under nr 1 shows.

• 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

This is a general interpretation.

• In cases where the freedom of speech and the restrictions are to weighed against each other – o Are there then guidelines on how the balancing should be done? o 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? o And how much discretion is there such that the outcome of the balancing exercise may differ from judge to judge?

In general freedom of speech comes first – it is the interference with that right that requires justification.

Other restrictions than hate speech are threats in the penal code articles 263, 634, 265, sharing of private pictures, etc. under art § 267 a, incitement to criminal acts under art 183, violation of privacy under art 276, reckless behavior or harassment under art 266 and serious personal harassment under art 266a. Also defamation could be illegal, but it is not punishable.

The guidelines is developed through jurisprudence of our Supreme Court in light of case law from the European Court og HR. In general expressions in a democratic debate will have greater protection than for instance expressions of displeasure.

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

There is an ongoing public debate on how freedom of speech should be weighed against hate speech. For the general public I think it is challenging to understand the limits.

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?

I as a judge has not yet had a case on hate crime. Historically there has not been many cases.

28.09.2022

Åsne Julsrud, Judge District Court of Oslo