

Answers from Sweden to the questionnaire 2022 of the third Study Commission IAJ-UIM

Restrictions by the criminal law of the freedom of speech

Introductory remarks

Freedom of speech is protected by different constitutional acts depending on the form in which the freedom is exercised.

For freedom of speech as a fundamental right for the citizens towards public interests and institutions there is the 1974 Instrument of Government in which the freedom of speech is stated among others in a bill of fundamental rights. The Instrument of Government contains the most central provisions and corresponds most closely to the constitution of other countries.

For the exercise of freedom of speech in printed documents there is the 1949 Freedom of Press Act, which contains the principle of the public nature of official documents and rules about the right to produce and disseminate printed matters.

For the exercise of freedom of speech in radio, TV, films and similar medias there are the 1991 Fundamental law on Freedom of Expression, which is the fundamental law for media other than print media.

The freedom of speech stated in these acts are restricted by criminal law.

The questions and answers

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.
 - a) In chapter 2 section 1 of the Instrument of Government it is stated that each and everyone is, in reference to any public interest or institution, secured freedom of speech, meaning freedom to communicate information, express thoughts, opinions and feelings in speech, writing, picture or any other way.
 - b) The European Convention on Human Rights and Fundamental Freedoms is incorporated into Swedish law since 1994. In article 1 of the Convention it is stated that the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in the Convention. In article 10 of the Convention –

Freedom of expression – it is stated that everyone has the right to freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

- c) As a member state of the European Union Sweden has through the European Treaty committed to acknowledge the fundamental rights in the Charter of Fundamental Rights of the European Union (art 6). In art 11 of the Charter – Freedom of expression and information - it is stated that everyone has the right to freedom of expression including the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
- d) In chapter 1 article 1 of the Freedom of Press Act it is stated that freedom of press aims to secure free debate, free and comprehensive information and free artistic creation. It is furthermore stated that freedom of press involves freedom for anyone to express thoughts, opinions and feelings and to publish public documents and to provide information on any subject.
- e) In chapter 1 article 1 of the Fundamental law on Freedom of Expression it is stated the equivalent rights as in d) but for other medias - for example radio, TV, public recordings in a database, film, video and other technical recordings.
- f) In chapter 18 (On treasonable offences) article 5 of the Criminal Code unlawful acts to influence the formation of public opinion is criminalized as an *offence against civil liberties*: “A person who exercises unlawful coercion or makes an unlawful threat with intent to influence the formation of public opinion... .. and thereby endangers freedom of speech is guilty of an offence against civil liberties”.

2. Does your country criminalize hate speech and, if so, how?

- a) In chapter 16 (On offences against public order) section 8 of the Criminal Code hate speech towards a group is criminalized as *agitation against a population group*: “A person who, in a statement or other communication that is disseminated, threatens or expresses contempt for a population group by allusion to race, color, national or ethnic origin, religious belief, sexual orientation or transgender identity or expression is guilty of agitation against a population group”.
- b) In chapter 5 (On defamation) section 1 of the Criminal Code hate speech towards a person is criminalized as *defamation*: “A person who identifies someone as being a criminal or as having a reprehensible way of life, or otherwise provides information liable to expose that person to the contempt of others is guilty of defamation”.
- c) In a wider perspective the right to say whatever you like – “freedom of speech” - is limited also by crimes like for example unlawful threat, insulting behavior, inciting

crime, unlawful depiction of violence, revolt, high treason, criminal responsibility for Terrorist Offences Act.

- d) All the crimes in a)-c) are also criminalized as offences against the Freedom of Press Act and the Fundamental law on Freedom of Expression respectively.

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?

Answer: There are no specific restrictions except those described in the answer to question number 2). When it comes to specific groups of persons and/or topics there are no more groups or topics that enjoys special protection than those in the crime *agitation against a population group*, see 2. a) above.

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?

Answer: The legislation on *agitation against a population group* does not in itself express any obligation to weigh the criminalization purpose against the consideration of free speech, still it is not absolute. In the legislative history of the crime it is however clearly expressed that the criminalization through its wording will balance both interests. As a result of that and the way the legal system works it has through precedents and jurisprudence been established what different words in the law means. For example what “disseminated” means in terms of what technical form dissemination can be done and how many receivers that must have seen or have had the possibility to see the statement.

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

Answer: I do think that some convicted citizens has been surprised finding out that their statements disseminated on some social media also was a crime. However these cases are not so many and not in any substantial way different from other situations when citizens are unaware of the exact limits of the criminal law.

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?

Answer: To my experience the legislation is clear and comprehensible. It clearly establishes the hierarchy between the right to freedom of speech and the criminalized restrictions of the same right. However it needs to be stressed that the system has its challenges; as always there is a need to write criminal law in quite general terms which always leads to a certain extent of uncertainty regarding the exact limits of the criminalization. This kind of problem should though be handled within the system of appeal and precedents, rather than invoking legislative reform.

Best regards,

Olof Hellström

The Swedish association of judges