

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.

The concepts of hate crime and hate speech in Lithuanian law have been developing for a long time. They are based on recommendations of international organisations and the main documents regulating the methods of combating hate crimes. In 2000, the Criminal Code of the Republic of Lithuania (hereinafter – CC) was complemented by an article criminalizing incitement of hate on grounds of sex, race, nationality, language, descent, social status, religion, convictions, or views

The constitution provides for freedom of speech and press, although the law prohibits “hate speech” and dissemination of certain other objectionable materials, such as war propaganda, calls for violently changing the constitutional order, or challenges to the country’s sovereignty or territorial integrity. The government generally respected these rights. An independent press, an effective judiciary, and a functioning democratic political system combined to promote freedom of speech and press.

Article 25 (the Constitutions of the Republic of Lithuania)

Everyone shall have the right to have his own convictions and freely express them. No one must be hindered from seeking, receiving, or imparting information and ideas. The freedom to express convictions, as well as to receive and impart information, may not be limited otherwise than by law when this is necessary to protect human health, honour or dignity, private life, or morals, or to defend the constitutional order. The freedom to express convictions and to impart information shall be incompatible with criminal actions—incitement to national, racial, religious, or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation. Citizens shall have the right to receive, according to the procedure established by law, any information held about them by state institutions.

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

There is no separate article of the CC dedicated to hate speech in Lithuanian legislation. However hate speech is covered by the Article 170 of the CC, which reads as following:

1. A person who, for the purpose of distribution, produces, acquires, consigns, transports, possesses things which ridicule, despise, incite hatred or incite to discriminate against a group of persons or a person belonging to it on grounds of age, sex, sexual orientation, disability, race, nationality, language, origin, social status, religion, belief or belief, or incitement to violence, physical abuse or distribution, shall be punishable by a fine or restriction of liberty, or arrest, or imprisonment for a term not exceeding one year.
2. Any person who publicly ridicules, despises, incites hatred or discriminates against a group or person belonging to a group on the grounds of age, sex, sexual orientation, disability, race, nationality, language, origin, social status, religion, belief or belief, shall be punishable by a fine or by deprivation of liberty, or by arrest, or by imprisonment for a term not exceeding two years.
3. A person who publicly incites violence, physically copes with a group of persons or a person belonging to it on the grounds of age, sex, sexual orientation, disability, race, nationality, language, origin, social status, religion, belief or opinion, or finances or otherwise materially supports such activities, shall be punishable by a fine or by deprivation of liberty, or by arrest, or by imprisonment for a term not exceeding three years.

4. A legal person shall also be liable for the acts provided for in this Article.

In early 2020, the Prosecutor General of Lithuania approved the pre-trial investigation methodological recommendations on the characteristics of conducting, organising, and leading investigations of hate crimes and hate speech (hereinafter – the recommendations of the Prosecutor General) – they are considered to be the only legal act of the Republic of Lithuania which provides a definition of hate crime. It should be noted that the 2020 methodological recommendations amended the methodological recommendations “On the pre-trial investigation organisation, leading and conduct of criminal acts, committed on the grounds of racial, nationalistic, xenophobic, homophobic or other discriminatory motives”, which had been approved 11 years ago and were outdated. The new recommendations of the Prosecutor General defined hate crimes and explained the concepts in much greater depth, supplementing the regulations of the Criminal Code of the Republic of Lithuania. According to the 2020 methodological recommendations, hate speech is considered to be *the public dissemination (by word of mouth, in writing or other form) of information (ideas, opinions, known incorrect facts) which is used to ridicule, express contempt for, urge hatred for, incite discrimination, incite violence or a physical violent treatment of a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, convictions or views*. It should be noted that in the case of hate speech, the prejudice, hatred and/or prejudiced attitudes are a crucial point to impose criminal liability, as in the absence of this motive the speech itself is not a criminal act. According to Article 16 (2) of the Methodological recommendations, such acts *are characterised by usually being committed by linguistic means, i.e., in writing or by word of mouth, by making certain statements, using words or various inciting, discriminatory symbols (signs and other objects)*. *Hate speech is not only words. It also includes video recordings, photos, and any other action or content.*

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?

Contrary to hate speech, which is usually classified exclusively as Article 170 CC, the regulation of hate crimes covers several other individual criminal acts, which may manifest as:

- Discrimination on Grounds of Nationality, Race, Sex, Descent, Religion or Belonging to Other Groups (Article 169 CC)
- Creation and Activities of the Groups and Organisations Aiming at Discriminating a Group of Persons or Inciting against It (Article 170¹ CC)
- Public Condonation of International Crimes, Crimes Committed by the USSR or Nazi Germany against the Republic of Lithuania or Inhabitants Thereof, Denial or Gross Trivialisation of the Crimes (Article 170² CC)
- Disturbance of Religious Ceremonies or Religious Celebrations (Article 171 CC)
- Genocide (Article 99 CC)
- Desecration of a Grave or Another Place of Public Respect (Article 312 CC).

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?

Article 25 of the Constitution of the Republic of Lithuania declares that everyone shall have the right to have their own convictions and freely express them, no one must be hindered from seeking, receiving, or imparting information and ideas. Moreover, the freedom to express convictions, as well as to receive and impart information, may not be limited otherwise than by law when this is necessary

to protect human health, honour or dignity, private life, or morals, or to defend the constitutional order. It is important to note that the restriction on freedom of expression is enshrined in Article 25 as well. According to it, the freedom to express convictions and to impart information shall be incompatible with criminal actions—incitement of national, racial, religious, or social hatred, incitement of violence or to discrimination, as well as defamation and disinformation.

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

Although the CC does not provide the definitions of ridicule, contempt, promotion of hatred and incitement to discriminate, the Supreme Court of Lithuania has done in a case-law. These acts are defined by the Court as follows:

1. Ridicule – the violation of honour and dignity, depiction of a person or a group of persons as an object of ridicule.
2. Contempt – a very negative, disrespectful comment about a person or a group of persons, rejoicing over their misfortune or offences committed against them, etc.
3. Promotion of hatred – the imposition of fabricated information about a person or a group of persons which negatively describe them in the eyes of the public, create hostility or provoke intolerance towards a person or a group of persons.
4. Incitement to discriminate – a direct invitation or the indirect incentive to restrict the rights and freedoms of a person or a group of persons compared with other persons or their groups.

It should be noted that the criminal acts enshrined in Article 170 (2) CC are considered to be committed from the moment certain statements were made, i.e., it is not relevant whether any consequences arise because of such statements. In this context, reference shall be made to the case-law of the ECtHR, which has established that a direct instigation to commit certain violent or other criminal acts is not necessary to qualify the offence as incitement of hatred. Attacks committed by insulting, holding up to ridicule or slandering specific groups of the population is sufficient for the authorities to prioritise combating hate speech over the freedom of expression exercised in an irresponsible manner, which violates the dignity and safety of specific groups of the population. The ECtHR has repeatedly held that discrimination based on sexual orientation is as serious (severe, dangerous) as discrimination based on race, origin or skin colour. However, as revealed by the review of Lithuanian case-law, in such cases courts are required to determine a real danger to the values protected by the 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?

The Lithuanian case-law relating to the incitement of hatred is still under formation; therefore, there is a lack of uniform and detailed case-law. This leads to different results while classifying certain cases of hate speech. To summarize the existing case-law, it is possible to distinguish these criteria used by courts to assess potential hate speech incidents:

1. *Ultima ratio* principle. Criminal liability in a democratic society should be seen as the means of last resort, the final argument (*ultima ratio*), used in the preservation of protected legal assets and values in cases where less coercive measures cannot achieve the same goals. Currently, the position is that one laconic, unethical comment does not pose a real danger to the values protected by law that would necessitate criminal liability. However, it should be stressed that in such cases, persons who incite hatred are not held accountable in any other way.

2. The determination of a real danger. When recognizing or not recognizing certain public comments as incitement against any nation, racial, ethnic, religious or other group of persons, it is necessary to establish the reality of the emerging (potentially emerging) danger to the values protected by criminal law. It is not enough for criminal liability under Article 170(2) and especially Article 170(3) CC to result from an offensive, humiliating public statement, if it has no specific direct or indirect incitement of hatred, discrimination, violence or a physical violent treatment to a certain group of persons, which could pose a real danger to the values protected by law – dignity and equality. The absence of consequences as a necessary constituent element of the criminal act does not mean that the offence described in a formal composition (*formal corpus delicti*) does not have perilous consequences and that there is no need to investigate it at all. In each individual case, it is necessary to assess whether the actions of a person have reached such severity that allows for criminal liability to be imposed upon them. Generally, the case-law makes clear that a single comment might be unethical, amoral and not in accordance with the implementation of ethical freedom of expression, but does not reach the characteristics of the criminal acts established in the CC based on its severity. Although the severity criterion is not flawed in itself, but in the established case-law a real danger for protected values is required. Given that the formal criminal acts do not require consequences, and the courts have not determined the criteria of the determination of a real danger, it appears that the criterion, assessing the compliance of hate speech to Article 170 CC, is evaluated as problematic.

3. The determination of systematic actions. While classifying acts according to Article 170(2) CC, it is crucial to determine whether the offensive, humiliating, discriminatory public statements of the offender were published not by chance on a singular occasion, but systemic in nature, i.e., the acts were repeated. Moreover, the comments of such content should be directed towards some undetermined group of readers or listeners in order to directly influence them. However, it should be noted that a wide range of persons whom the comment is directed at, is not enough for the act to be considered dangerous. An offensive comment alone is not enough for criminal responsibility to arise as well, if it has no specific direct or indirect incitement of hatred.

4. The objective and subjective characteristics of criminal acts. When addressing the issue of criminal liability in cases of hate crimes, SCL draws attention to the need to determine the objective and subjective characteristics. Therefore, when assessing whether a specific offence has the characteristics of a hate crime and whether the committed offence meets the elements of the act prohibited by law, not individual characteristics of a criminal act, but a set of its objective characteristics should be assessed. While assessing the characteristics in the case-law, Lithuanian courts distinguish these objective characteristics: the nature and content of the comments, the social tension, the severity of the acts, the situation in which and how the specific actions were taken, the surroundings in which the acts were committed, and the nature of the public reaction towards the committed acts; subjective characteristics: intent and its focus, the purposes and motives of the comments directed against a specific social group or person.