

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 freedom of speech is protected by Article 73 in the Icelandic Constitution. That provision was revised in 1995 and takes into account international obligations of the Icelandic state under the European Convention of Human Rights (ECHR), to which Iceland is a member. The ECHR, see in particular its Article 10, has also been implemented as a law in Iceland with Law No. 62/1994.

It should be noted that the right to respect for private and family life is protected by Article 71 of the Icelandic Constitution, cf. also Article 8 of the ECHR.

In addition, the right to freedom of religion is protected by Articles 63 and 64 of the Icelandic Constitution, cf. also Article 9 of the ECHR.

Article 65 of the Icelandic Constitution contains a general principle of equality (prohibition of discrimination), cf. also Article 14 of the ECHR.

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 criminalised with fines or prison up to two years under Article 233a of the Icelandic Penal Code No 19/1940. The provision is meant to guarantee that Icelandic law is in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination. The legal provision refers that nationality, skin colour, race, religion, sexuality or sexual orientation.

Case-law of the Icelandic Supreme Court (see in particular Case 415/2017 and 577/2017, both of which were criminal cases concerning hate speech relating to sexual orientation) confirms that reference by the defendant to freedom of speech has not prevented courts from applying Article 233a of the Icelandic Penal Code. In its case-law, the Court has also recalled the importance of Article 71 of the Icelandic Constitution, which protects the right to respect for private and family life, cf. also Article 8 of the ECHR. The conclusion is that the right to freedom of speech in Iceland is not an unfettered one.

Other provisions of relevance with regard to hate speech are Articles 125, 180 and 234 of the Icelandic Penal Code No 19/1940. Article 125 prohibits blasphemy. Article 180 prohibits the refusal of sales, service or access to places of public gathering based on discrimination. Article 234 concerns defamation.

Article 27 of the Icelandic Media Act No 38/2011 prohibits the media from inciting illegal activities and hate speech.

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 answers.

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 restrictions call for consideration of free speech, as it is a constitutional right. The weighing should take into account case-law from the European Convention on Human Rights. However, no specific “guidelines” exist.

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

The legislation seems clear, but to the citizen the inherent balancing of interests, i.e. when laws are seen to restrict, to some extent, the freedom of speech but at times in protection of the right to private or family life, may not be obvious. This can generally be seen as presenting similar dilemmas to those facing citizens in other countries which are members to the ECHR.

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?

It can be said that, overall, the Icelandic Supreme Court seems to have successfully navigated balancing previously mentioned rights and managed to co-ordinate the practices of the Icelandic courts.