

Third Study Commission Questionnaire 2022

LATVIA

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.

Latvia protects freedom of speech. Freedom of speech in Latvia is protected by international law to which Latvia has acceded and the Constitution of the Republic of Latvia, article 100. - Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views. Censorship is prohibited.

<https://likumi.lv/ta/en/en/id/57980-the-constitution-of-the-republic-of-latvia>

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

In Latvia, criminal liability may arise for hate speech in the cases specified in the Criminal Law:

1. **Section 48, Paragraph one, Clause 14** - The following may be considered to be aggravating circumstances - the criminal offence was committed due to racist, national, ethnic, or religious motives or due to social hatred.
2. **Section 71.¹ Invitation to Genocide** - For a person who commits public invitation to genocide, the applicable punishment is the deprivation of liberty for a period of up to eight years.
3. **Section 74.¹ Acquittal of Genocide, Crime against Humanity, Crime against Peace and War Crime** - For a person who commits public glorification of genocide, crime against humanity, crime against peace or war crime or who commits public glorification, denial, acquittal or gross trivialisation of committed genocide, crime against humanity, crime against peace or war crime, including genocide, crime against humanity, crime against peace or war crime against the Republic of Latvia and its inhabitants committed by the U.S.S.R. or Nazi Germany, the applicable punishment is the deprivation of liberty for a period of up to five years or temporary deprivation of liberty, or probationary supervision, or community service, or fine.
4. **Section 78. Triggering of National, Ethnic and Racial Hatred –**
 - (1) For a person who commits acts directed towards triggering national, ethnic, racial or religious hatred or enmity, - the applicable punishment is the deprivation of liberty for a period of up to three years or temporary deprivation of liberty, or probationary supervision, or community service, or fine.
 - (2) For a person who commits the same acts, if they have been committed by a group of persons or a public official, or a responsible employee of an undertaking (company) or organisation, or if they have been committed using an automated data processing system, - the applicable

punishment is the deprivation of liberty for a period of up to five years or temporary deprivation of liberty, or probationary supervision, or community service, or fine.

- (3) For committing the act provided for in Paragraph one of this Section, if it is related to violence or threats or if it is committed by an organised group, - the applicable punishment is the deprivation of liberty for a period of up to ten years, with or without probationary supervision for a period of up to three years.

5. **Section 149.¹ Violation of the Prohibition of Discrimination –**

- (1) For a person who commits discrimination due to racial, national, ethnic or religious belonging or for the violation of the prohibition of any other type of discrimination, if substantial harm has been caused thereby, the applicable punishment is the deprivation of liberty for a period of up to one year or temporary deprivation of liberty, or probationary supervision, or community service, or fine.
- (2) For the criminal offence provided for in Paragraph one of this Section, if it has been committed by a public official, or a responsible employee of an undertaking (company) or organisation, or a group of persons, or if it is committed using an automated data processing system, or for the acts provided for in Paragraph one of this Section, if they involve torture, the applicable punishment is the deprivation of liberty for a period of up to three years or temporary deprivation of liberty, or probationary supervision, or community service, or fine.

6. **Section 150. Incitement of Social Hatred and Enmity**

- (1) For a person who commits an act oriented towards inciting hatred or enmity depending on the gender, age, disability of a person or any other characteristics, if substantial harm has been caused thereby, the applicable punishment is the deprivation of liberty for a period of up to one year or temporary deprivation of liberty, or probationary supervision, or community service, or fine.
- (2) For the criminal offence provided for in Paragraph one of this Section, if it has been committed by a public official, or a responsible employee of an undertaking (company) or organisation, or a group of persons, or if it is committed using an automated data processing system, the applicable punishment is the deprivation of liberty for a period of up to three years or temporary deprivation of liberty, or probationary supervision, or community service, or fine.
- (3) For the act provided for in Paragraph one of this Section, if it is related to violence or threats, or the criminal offence provided for in Paragraph one of this Section, if it has been committed by an organised group, the applicable punishment is the deprivation of liberty for a period of up to four years or temporary deprivation of liberty, or probationary supervision, or community service, or fine.

<https://likumi.lv/ta/en/en/id/88966-criminal-law>

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

o 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

o Are there topics that enjoy special protection in terms of freedom of speech – for example topics of religion and politics

In accordance with Constitution of the Republic of Latvia, article 116. - The rights of persons set out in Articles ninety-six, ninety-seven, ninety-eight, one hundred, one hundred and two, one hundred and three, one hundred and six, and one hundred and eight of the Constitution may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals. On the basis of the conditions set forth in this Article, restrictions may also be imposed on the expression of religious beliefs.

In accordance with Constitution of the Republic of Latvia, article 91. - All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.

Article 149.¹ of the Criminal Law establishes liability for discrimination on the grounds of racial, national, ethnic or religious affiliation and Article 150. of the Criminal Law - for an activity aimed at inciting hatred or discord depending on a person's gender, age, disability or any other characteristics.

As well the Criminal Law specifically identifies criminal offenses for inciting genocide (Article 71.¹ of the Criminal Law) and justifying genocide, crimes against humanity, crimes against peace and war crimes (Article 74.¹ of the Criminal Law).

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?

• 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

• 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?

Restrictions on freedom of speech apply to all people and are assessed in relation to freedom of speech in each individual case.

Summaries of the case law of the Supreme Court, guidelines developed by the State Police for the identification and investigation of hate crimes, and training seminars help to assess freedom of speech and the restrictions imposed.

In order to assess whether the statements have reached a degree that can be considered as hate speech, the so-called Rabat principles - context, speaker, intention, content and form, breadth and possibility - may be taken into account.

According to Article 10 of the Law On Judicial Power, in administering the justice, judges shall be independent and subject solely to law.

In each specific case, the circumstances of the case, the nature and context of the offense, the damage caused, the aggravating and mitigating circumstances, etc. are assessed. Also, the norms of the Criminal Law provide for different types of punishment and the amplitude of the punishment. Consequently, the outcome of a case within the law may vary.

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?

At present, no significant problems have been identified which would indicate that the legislation is not clear among the inhabitants and which would discourage notification or litigation.

The responsible institutions monitor the situation and, if necessary, propose amendments in 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?

At present, Latvia still has relatively little case law on freedom of speech / hate speech. Case law is still evolving and no significant ambiguities or problems in the application of the law have been identified.

To draw broader conclusions greater case law are needed.