

3rd Study Commission – IAJ-UIM Meeting 2022 - Israel

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.

Yes. The right to freedom of speech is enshrined in the Constitution, in International Treaties applicable in Portugal and in internal legislation. Essentially, the right to freedom of expression is effectively guaranteed and protected.

However, the ECHR jurisprudence is more permissive with regard to freedom of expression, when it is in conflict with the protection of the right to honor. In consequence, Portugal was convicted in several occasions by the ECHR for violating the freedom of expression.

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

The legislation on hate crimes is essentially dispersed, constituting mainly aggravations or qualifications of specific types of crime or the measure of the sentence. This happens, for example, in the crimes of homicide and offense to qualified physical integrity, or as a factor to be taken into account when determining the sentence.

There is the criminalization of hate speech, as an autonomous crime (article 240 of the Penal Code) which, however, requires that the speech be disseminated through a public medium and suitable for its dissemination.

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**

The legal limits established relate to personality rights, namely the right to honor, privacy and image (there are several autonomous crimes in the criminal legal system for the protection of such rights, such as, for example, crimes of defamation, offense to the memory of a deceased person, debauchery of private life).

There is also civil liability for the violation of the aforementioned rights.

There is no special protection based on gender, sexual preference, religion, race or other factors. It has been understood – in jurisprudence – that freedom of expression has greater scope when it comes to trade union leaders.

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**

. Are there then guidelines on how the balancing should be done?

. 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?

. And how much discretion is there such that the outcome of the balancing exercise may differ from judge to judge?

The limitations are those already indicated.

The law is not clear as it does not contain specific and pre-defined limits to freedom of expression, but only establishes other norms that enshrine the other rights (already mentioned) and which, therefore, need to be combined with that principle. Situations are assessed on the basis of specific cases and, as such, there may be different weightings and decisions by different judges.

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

- 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?

Partially answered in the previous question.

Even so, the legislation in force does not limit freedom of expression nor does it discourage victims of its excess from resorting to the courts.

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 laws in question allow for different, more or less restrictive, interpretations of freedom of expression.