

Third Study Commission Questionnaire 2022, Israel

RESTRICTIONS BY THE CRIMINAL LAW OF THE FREEDOM OF SPEECH

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.

In the Republic of Serbia, freedom of speech is protected by the Constitution. According to Article 46, the freedom of thought and expression shall be guaranteed, as well as the freedom to seek, receive and impart information and ideas through speech, writing, art or in some other manner. Article 50 prescribes that everyone shall have the freedom to establish newspapers and other forms of public information without prior permission and in a manner laid down by the law, and that television and radio stations shall be established in compliance with the law. Censorship is prohibited in the Republic of Serbia. In line with the quoted Constitutional provisions, the Law on Public Information and Media was adopted, in order to establish the rules on public information ensuring and protecting the presentation, reception and exchange of information, ideas and opinions through the media, with the goal to improve the values of a democratic society, prevent conflicts and preserve peace, provide true, timely, credible and complete information, and enable the free development of personality. The Law's subject is regulation of methods of accomplishing the freedom of public information, which in particular includes the freedom to collect, publish and receive information, the freedom to form and express ideas and opinions, the freedom to print and distribute newspapers and the freedom to produce, provide and publish audio and audio-visual media services, the freedom to spread information and ideas via the Internet and other platforms, as well as the freedom to publish media and perform public information activities.

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 criminalized as a criminal offence, by Article 174. of the Criminal Code, stipulating that *whoever publicly ridicules a person or group because of a particular race, colour, religion, nationality, ethnic origin or other personal characteristics, shall be punished with a fine or imprisonment up to one year.* The Law on the Prohibition of Discrimination is also in force, laying down a general prohibition of discrimination, forms and cases of discrimination, as well as procedures for protection against discrimination. This Law also introduced the Commissioner for the Protection of Equality, as an independent state organ.

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

Criminal restrictions of freedom of speech, when it comes to the Constitutional provisions, are established in order to protect rights and reputation of others, to uphold the authority and objectivity of the court and to protect public health, morals of a democratic society and national security of the Republic of Serbia. Competent court may prevent the dissemination of information through means of public informing only when this is necessary in a democratic society to prevent inciting to violent overthrow of the system established by the Constitution or to prevent violation of territorial integrity of the Republic of Serbia, to prevent propagation of war or instigation to direct violence, or to prevent advocacy of racial, ethnic or religious hatred enticing discrimination, hostility or violence. The Criminal Code, hence, prescribes the following criminal offences:

- **Insult**, Article 170. (*Whoever insults another person, shall be punished with a fine ranging from twenty to one hundred daily amounts or a fine ranging from forty thousand to two hundred thousand dinars.*)
- **Obstruction of Justice**, Article 336. B (*Whoever calls to the resistance or failure of judicial decision or otherwise interfere with the conduct of judicial proceedings, shall be punished by imprisonment of up to three years and fined.*)
- **Causing Panic and Disorder**, Article 343. (*Whoever by disclosing or disseminating untrue information or allegations causes panic, or serious disruption of public peace and order or frustrates or significantly impedes enforcing of decisions of government authorities or organisations exercising administrative authority, shall be punished by imprisonment of three months to three years and by fine. If the offence specified is committed through media or similar means or at public gathering, the offender shall be punished by imprisonment of six months to five years.*)
- **War of Aggression**, Article 386. (*Whoever calls for or instigates a war of aggression, shall be punished by imprisonment of two to twelve years.*)
- **Racial and Other Discrimination**, Article 387. (*Whoever on grounds of race, colour, religion, nationality, ethnic origin or other personal characteristic violates fundamental human rights and freedoms guaranteed by universally accepted rules of international law and international treaties ratified by Serbia, shall be punished with imprisonment of six months to five years. The penalty specified shall be imposed on whoever persecutes organisations or individuals due to their commitment for equality of people. Whoever propagates ideas of superiority of one race over another or propagates racial intolerance or*

instigates racial discrimination, shall be punished with imprisonment of three months to three years. Who spreads or otherwise makes publicly available texts, images or any other representation of ideas or theories advocated or encourages hatred, discrimination or violence against any person or group of persons based on race, colour, religious affiliation, nationality, ethnic origin or other personal property, shall be punished with imprisonment of three months to three years. Whoever publicly approves of, denies the existence or significantly impairs the gravity of genocide, crimes against humanity and war crimes committed against a group of persons or a member of the group designated on the grounds of their race, colour of skin, religion, origin, state, national or ethnic affiliation, in the manner that may lead to violence or inciting hatred towards such a group of persons or a member of such a group, where such criminal offences are determined by a final judgement of a court in Serbia or of the International Criminal Court, shall be punished with imprisonment of six months to five years. Whoever publicly threatened that, against a person or group of persons because of a particular race, colour, religion, nationality, ethnic origin or because of other personal property, committed a criminal offence punishable with imprisonment of four and more years, shall be punished with imprisonment of three months to three years.)

- **Public Inciting to Commission of Terrorist Offences**, Article 391. A (Whoever publicly expresses or disseminates ideas which directly or indirectly incite the committing of the criminal offence Terrorism hereof shall be punished with imprisonment of one to ten years.)

There are no specific categories of persons enjoying special protection of freedom of speech following their gender, sexual preference, religion, race or other conditions, since, in the Republic of Serbia, all are equal before the Constitution and law. Also, no topics enjoy special protection in terms of freedom of speech, since freedom of speech is guaranteed to all by the Constitution.

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 restrictions are absolute.

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?

It is our opinion that the applicable legislation is clear and comprehensible to the citizens, and that there is no doubt whether a statement can be criminalized by the criminal legislation.

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?

As it was specified in the answer to question no. 5, it is our position that Serbian legislation is clear and comprehensible, and that judicial authorities act accordingly, thus causing for court decisions to be adopted in accordance with uniformed jurisprudence of the courts.