

Third Study Commission Questionnaire 2022 Israel

Regarding CYPRUS

- 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.**

Part 2 of the Constitution of the Republic of Cyprus (see Articles 6 to 35) stipulates which are the fundamental rights and freedoms and requires the effective protection thereof by the legislative, executive and judicial authorities of the country.

Freedom of speech is envisaged as a fundamental freedom and is expressly protected by Article 19.1 of the Constitution of Cyprus. As it is explained in Article 19.2, this fundamental freedom encompasses the right to express an opinion, to receive and disseminate information and ideas, without being subject to any interference by a public authority. This right applies irrespective of any borders.

Article 19.3 provides that the exercise of the freedom of expression may be restricted or put under conditions or may even be penalised, provided that these restrictions, conditions or penalties are prescribed by law, only to the extent that this is necessary for the protection of the security of the Republic or of the constitutional order or of the public security or of the public order or of the public health or of the public moral (ethos) or for the protection of the personality or of others' rights or for the avoidance of the disclosure of confidential information or for preserving the impartiality of the judicial power.

The confiscation of newspapers or other documents is not allowed without leave from the Attorney-General of the Republic and approval thereof by the Court (see Art.19.4).

Notwithstanding the above provisions, the Republic of Cyprus retains the power to regulate the licensing of the operation of any radio, tv or cinematographic companies (see Art. 19.5).

Article 19 has been systematically applied and liberally interpreted by the Courts in Cyprus. It has been attached a prevalent effect in the context of a modern democratic society.

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

The Republic of Cyprus acceded to the European Union on 1.5.2004. Ever since then, it abides by the duty to give primacy to EU Law and to refrain from taking any act that is contrary to its status as a member state of the EU (see Articles 1A and 179 of the Constitution). To that end, it harmonises the national legislation with the ongoing evolution of legal instruments enacted at EU level, including Directives, Regulations and Decisions issued by the relevant competent organs or bodies of the EU, in compliance with the Charter of Fundamental Rights and Freedoms of the EU.

In the above context, the Parliament of Cyprus enacted Law No. 134(I)/2011 which transposes the provisions of the *Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law*. Therein, it is particularly mentioned that 'hatred' should be understood as referring to hatred based on race, colour, religion, descent or national or ethnic origin (see para. (9) of the Preamble of the Framework Decision).

Article 1 of Council Framework Decision 2008/913/JHA makes it compulsory for each member state to take the measures necessary to ensure that, inter alia, the following “*intentional conduct*” is punishable:

- (a) *publicly inciting to violence or hatred* directed against a group of persons or a member of such group defined by reference to race, colour, religion, descent or national or ethnic origin;
- (b) the commission of an act referred to in point (a) *by public dissemination or distribution of tracts, pictures or other material*.

Article 3 of the above mentioned Framework Decision requires that each Member State shall take the necessary measures to ensure that the conduct referred to above is punishable “*by effective, proportionate and dissuasive criminal penalties*”.

Hence, Article 3(1) of Law No. 134(I)/2011 criminalises the conduct as described in Article 1 (a) and (b) of the Framework Decision above and specifies that in the event where a person is convicted of having committed that offence, he or she will be liable to a penalty of imprisonment not exceeding 5 years or to a fine not exceeding €10.000 or to both such penalties.

Article 4 of Law No. 134(I)/2011 provides that instigating, aiding or abetting the conduct criminalized as per Article 3(1) is also a criminal offence and shall be punishable in the same manner, as if the offences were committed by the person who actually committed the criminal acts.

Article 5(1) of Law No.134(I)/2011, in line with the corresponding Article 5 of the Framework Decision, provides that a legal person can also be held liable for the conduct referred to above, if it is committed for its benefit by any person, acting either individually or as part of an

organ of the legal person, who has a leading position within the legal person, based on: (a) a power of representation of the legal person. (b) an authority to take decisions on behalf of the legal person or (c) an authority to exercise control within the legal person.

Moreover, Article 5(2) of Law No.134(I)/2011 provides that a legal person may be held liable where the lack of supervision or control by a person referred to in paragraph 1 of this Article has made possible the commission of the conduct referred to in Articles 1 and 2 for the benefit of that legal person by a person under its authority.

Liability of a legal person under Article 5(1) and (2) shall not exclude criminal proceedings against natural persons who are perpetrators or accessories in the conduct referred to in Articles 1 and 2.

For the purposes of the above Articles, 'legal person' means "*any entity having such status under the applicable national law, with the exception of States or other public bodies in the exercise of State authority and public international organisations*".

Article 6 of Law No. 134(I)/2011, in line with the corresponding Article 6 of the Framework Decision, stipulates the penalties that may be imposed by courts in case where a legal person is convicted of intentionally and publicly inciting violence or hatred. The Court is empowered to impose a fine not exceeding €10.000, as well as to grant an Order: a) excluding the convicted legal person from entitlement to public benefits or aid; (b) disqualifying that legal person, either temporarily or permanently, from the practice of commercial activities; (c) winding it up; d) confiscating any item or means that had been used in committing the criminal offence for which it was convicted.

The jurisdiction of Cypriot Courts for deciding on hatred offences is prescribed in Article 7 of Law No.134(I)/2011 to extend to such

offences (a) when they are committed wholly or partly in the territory of the Republic of Cyprus, (b) by a Cypriot citizen or (c) for the benefit of a legal person which is established in the territory of the Republic of Cyprus.

The jurisdiction extends to cases where the conduct is committed *through an information system* as follows: (a) the offender commits the conduct when physically present in the territory of Cyprus, whether or not the conduct involves material hosted on an information system in its territory; (b) the conduct involves material hosted on an information system in its territory, whether or not the offender commits the conduct when physically present in its territory.

Article 10 of Law No. 134(I)/2011 stipulates that no criminal prosecution is commenced for the above offences against a person, unless the Attorney – General decides to commence such proceedings or grants his permit for them to commence.

As regards the jurisprudence in this field, on 1.7.2021 the Supreme Court of Cyprus delivered a judgment in Criminal Appeals 4-2021 and 5-2021, **Police v A.A.**, which is of paramount importance in showing the way the first instance courts are enabled to combat hate speech and hate crimes not only through the application of Law 134(I)-2011, but also through the application of the Criminal Code of Cyprus (Cap.154). The Supreme Court highlighted the fact that the Criminal Code had been amended, by the addition of a new article 35A in harmonization with Article 4 of the Framework Decision, specifying that the Courts may, in the context of the determination of penalties for basic crimes committed as per the Criminal Code, consider the existence of any racist or xenophobic motivation as an aggravating circumstance.

In those particular cases (Criminal Appeals 4-2021 and 5-2021), the accused were two Cypriot women who insulted the complainant by using heavy words degrading the complainant for what they assumed to be her national or ethnic origin. The phrases they used were clearly of a racist and xenophobic character. They were accused for common assault (article 242), public insult (article 99), causing disturbance (article 95), all being basic offences under the Criminal Code, rather than offences under Law 134(I)-2011. The first instance court failed to discern or to take into consideration the racist and xenophobic motivation as an aggravating factor when, upon convicting the accused, it arrived at the stage of determining what would be the appropriate sentence on the facts of the case. It ended up imposing merely a fine. The Supreme Court reversed that decision and replaced the fine with imprisonment, attaching the weight of a serious aggravating factor to the xenophobic motive which was evident on the facts as per article 35A of the Criminal Code.

- 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**
- a. 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**
 - b. Are there topics that enjoy special protection in terms of freedom of speech – for example topics of religion and politics.**

Article 99A of the Criminal Code, Cap. 154, as amended by Law No. 87(I)-2015, criminalises any act done in public orally or in writing, by way of threat, insult or ridicule, inciting or causing, violence or hatred against a group of persons or a member of such group, defined on the basis of their sexual orientation or their gender. Such a criminal act is

punishable by imprisonment not exceeding 3 years or by a fine of €5.000 or both.

The freedom of religion is protected by Article 18 of the Constitution of the Republic of Cyprus. Article 18.3 prescribes that all religions are equal vis – a – vis the law. Article 18.4 protects the right of a person to express his or her religious beliefs, in private or in public, as well as the right to adhere to another religion. Article 18.5 prohibits the use of any violence which is exercised with an aim at compelling somebody to change his or her religion.

Article 47 of the Criminal Code, Cap. 154, as amended by Law No. 84(I)-2003, criminalises any act done in public with an intent to cause hatred among the communities and the religious groups by reason of their religion. Such a criminal act is punishable with imprisonment not exceeding 5 years.

- 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?**
- a. 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.**
 - b. In cases where the freedom of speech and the restrictions are to be weighed against each other –**
 - i. Are there then guidelines on how balancing should be done?**
 - ii. 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?**

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

Article 11 of Law No. 134(I)/2011 was drafted in line with Article 7 of the *Framework Decision 2008/913/JHA*. It provides that the obligation to respect fundamental rights and fundamental legal principles, including freedom of expression and association, as enshrined in Article 6 of the Treaty on European Union, remains “unmodified”.

Hence the restrictions to free speech are absolute only to the extent that they fall within the ambit of what is expressly penalised in Law 134(I)/2011.

The approximation of criminal laws of the member states of the EU on the basis of the Framework Decision 2008/913/JHA, increases the potential for judicial cooperation and for a more systematic and consistent interpretation of the limits imposed on freedom of speech by their criminal laws.

The European Commission issued a Report to the European Parliament and the Council of the EU on 27.1.2014, COM (2014) 27, final, p.8, describing the status of implementation of the above Framework Decision in the various member states. Further, the Directorat-General Justice conducted a Pilot Project titled “Judicial Training Project on Hatred Crimes”.

Therefore, guidance on the interpretation of free speech and of the various categories of protected groups of people, may be derived not only from the national jurisprudence but also from the supranational training activities and other interpretational publications.

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

a. 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?

The legislation is quite clear and comprehensible.

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 type of cases?

The decision dated 1.7.2021 of the Supreme Court of Cyprus in Criminal Appeals 4-2021 and 5-2021, **Police v A.A.**, has thrown adequate light on the criminalization of hate speech in Cyprus.

There is a margin of judicial discretion in each case on deciding the facts and on determining the appropriate sentence. It is up to the judge to exercise it properly with a view at attaining, on the one hand, the effective protection of the free speech and, on the other hand, the criminalization of hate speech.

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