

Third Study Commission Questionnaire, International Association of Judges meeting 2022 Israel  
Answers from Bulgaria

**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.**

Freedom of speech is one of the fundamental rights enshrined in the Bulgarian Constitution. It stipulates as follows:

Art. 39.

(1) Everyone shall be entitled to express an opinion or to publicize it through words, written or oral, sound or image, or in any other way.

(2) This right shall not be used to the detriment of the rights and reputation of others, or for the incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of enmity or violence against anyone.

Art. 40.

(1) The press and the other mass information media shall be free and shall not be subjected to censorship.

(2) An injunction on or a confiscation of printed matter or another information medium shall be allowed only through an act of the judicial authorities in the case of an encroachment on public decency or incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of violence against anyone. An injunction suspension shall lose force if not followed by a confiscation within 24 hours.

Art. 41.

(1) Everyone shall be entitled to seek, obtain and disseminate information. This right shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health and morality.

(2) Everyone shall be entitled to obtain information from state bodies and agencies on any matter of legitimate interest to them which is not a state or official secret and does not affect the rights of others.

The Bulgarian Constitutional Court in its case-law has ruled that the provisions of Art. 39, 40 and 41 of the Constitution confirm as fundamental rights of the person the right to freely express and disseminate opinion and the right to seek, receive and disseminate information. These provisions protect the individual's right to free expression of his essence and dignity as an equal participant in the social community. At the same time, they guarantee the opportunity for everyone to be informed about the surrounding reality, and for society - conditions for its existence and development in accordance with the public opinion created as a result of the free exchange of opinions. These functions of the rights under Art. 39, 40 and 41 of the Constitution define them as essential for individual and social development. They are the basis of the

democratic process and contribute to its functioning, both in terms of the democratic way of forming the bodies provided for in the Constitution, and in the exercise of control over their activities. The proclamation of these rights by the Constitution and their full exercise is in connection with a number of other fundamental rights of the person and constitutional principles, such as the dignity of the human person, freedom of thought and freedom of conscience, political pluralism.

The above-mentioned Constitutional provisions and their interpretation in the case-law of the Constitutional court set the basic guidelines for national courts' jurisprudence on cases where freedom of speech is touched upon.

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

There are provisions of the Criminal Code which criminalize offences related with hate speech. Such are:

Article 162

(1) Anyone who, by speech, press or other media, by electronic information systems or in another manner, propagates or incites discrimination, violence or hatred on the grounds of race, nationality or ethnic origin shall be punishable by imprisonment from one to four years and a fine from BGN 5,000 to 10,000 /EUR 2,500 to 5,000/, as well as public censure.

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(3) (Amended, SG No. 27/2009) A person who forms or leads an organisation or group which has set itself the objective of committing acts under paragraphs (1) and (2) or systematically allows the performance of such acts, shall be punished by imprisonment for one to six years and a fine from BGN 10,000 to 30,000 and by public censure.

(4) A person who is a member of such an organisation or group shall be punished by imprisonment for up to three years and by public censure.

Article 164

(1) A person who propagates hatred on religious basis by speech, through the press or other media, through electronic information systems or in another way, shall be punished by imprisonment for up to four years or by probation and a fine from BGN 5,000 to 10,000.

Article 419a

(1) Anyone who justifies, denies or grossly palliates a crime committed against peace and humanity and thereby poses a risk of violence or instigates hatred among individuals or groups of people united on the grounds of race, colour, religion, origin, national or ethnic origin shall be punishable by imprisonment from one to five years.

(2) Anyone who abet another person to commit a crime under Paragraph 1 shall be punishable by imprisonment of up to one year.

**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? 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?**

As it is shown in the answer to the previous question, protection against hate speech is given to representatives of groups affected because of their race, nationality or ethnic origin, as well as their religion. There are no other types of special protection to these or to other groups of society.

Except for mentioned above, the Criminal Code criminalizes offences where misuse of the freedom of speech is carried out in a manner in which other persons' rights are affected:

Article 146

(1) A person who says or does something degrading to the honour and dignity of another in the presence of the latter, shall be punished for insult by a fine from BGN 1,000 to 3,000. In such a case the court may also impose the punishment of public censure.

(2) If the insulted person has responded at once with an insult, the court may exempt both of them from punishment.

Article 147

(1) A person who makes public a disgraceful fact about someone or ascribes to him a crime, shall be punished for slander by a fine from BGN 3,000 to 7,000, as well as by public censure.

(2) The perpetrator shall not be punished if the truth of the divulged circumstances or of the ascribed crimes is proved.

Article 148

(1) For insult:

1. inflicted publicly;
2. spread through printed matter or in some other way;
3. of an official or a representative of the public, during or in connection with the fulfilment of his duties or function, and
4. by an official or representative of the public, during or in connection with the fulfilment of his duties or function, the punishment shall be a fine from BGN 3,000 to 10,000 as well as public censure.

(2) For slander committed under the conditions of the preceding paragraph, as well as for slander from which serious consequences have set in, the punishment shall be a fine from BGN 5,000 to 15,000 and public censure.

(3) Paragraph (2) of Article 146 may be applied to cases under paragraph (1), sub-paragraph 1.

**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? o 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 o in cases where the freedom of speech and the restrictions are to be 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 the 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?**

Even in cases where “absolute” restrictions are subject matter, courts are obliged to weigh whether their intervention in the exercise of the freedom of speech is proportional in the light of Art. 10 (2) of ECHR the case-law of the ECtHR. It is a principle applicable to all types of such cases. However, there are specific cases where more precise estimation is needed in deciding on the balance between the freedom of speech and the protection of personal rights of the affected persons. Such kind of cases are criminal or civil suits brought against journalists and especially when those claimed to be injured are politicians or other public figures. There are not legislative standards how this estimation should be done by judges. In this process they are guided by the case-law of the Supreme Court and the ECtHR.

**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?**

The national legislation in general is in compliance with the framework given by Art. 10 (2) of the ECHR when it comes to legality of the interference in exercise of the freedom of speech. The legislation itself does not give a cause for doubt how the freedom of expression can be fulfilled. Such cause might be incoherent case-law of some courts which judgements are not subject to appeal before the Supreme Court. Another sensible and disputable issue in Bulgaria is whether insult and slander should remain punishable by the Criminal Code as crimes or these acts should be considered as torts against which only civil liability protection should be provided.

**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?**

I would refer to the answer I gave to the previous question.

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