

Response of the JAPAN  
to the Third Study Commission Questionnaire 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.**

The Constitution of Japan guarantees freedom of speech as follows:

( Freedom of Assembly, Association, and Expression; Secrecy of Communication)

Article 21 (1) Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.

(2) No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

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

In Japan, hate speech is punished as the crime of defamation (Article 230 of the Penal Code), insult (Article 231 of the Code), intimidation (Article 222 of the Code), or forcible obstruction of business (Articles 234 and 233 of the Code), depending on its specific circumstances.

**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**

Under Japanese criminal law, representative examples of penal provisions relating to speech are as follows:

(Defamation)

Article 230, paragraph (1) of the Penal Code

A person who defames another person by making allegations in public, regardless of whether such facts are true or false, is punished by imprisonment or imprisonment without work for not more than 3 years or a fine of not more than 500,000 yen.

(Insults)

Article 231 of the Penal Code

A person who insults another person in public, irrespective of whether the accusation alleges facts or not, is punished by penal detention or a petty fine.

(Distribution of Obscene Objects)

Article 175, paragraph (1) of the Penal Code

A person who distributes or displays in public obscene objects such as documents, drawings or recording media contained in electronic or magnetic records is punished by imprisonment for not more than 2 years, a fine of not more than 2,500,000 yen or a petty fine, or both imprisonment and a fine. The same applies to a person who distributes obscene records including electronic or magnetic records through the transmission of telecommunications.

(Inducement of Insurrection and Foreign Aggression)

Article 38, paragraph (1) of the Subversive Activities Prevention Act

A person who induces another person to commit a crime referred to in Article 77 [Insurrection], 81 [Instigation of Foreign Aggression] or 82 [Assistance to the Enemy] of the Penal Code or incites the crime with the intent to cause someone to commit the crime is punished by imprisonment or imprisonment without work for not more than seven years.

For defamation above, for example, the following special provision is stipulated:

(Special Provision for Matters Concerning Public Interest)

Article 230-2 of the Penal Code

(1) When an act prescribed under paragraph (1) of the preceding Article [Defamation] is found to relate to matters of public interest and to have been conducted solely for the benefit of the public, the truth or falsity of the alleged facts are to be examined, and punishment is not imposed if they are proven to be true.

(2) In application of the preceding paragraph, matters concerning the criminal act of a person who has not been prosecuted is deemed to be matters of public interest.

(3) When the act prescribed under paragraph (1) of the preceding Article is made with regard to matters concerning a public employee or a candidate for election, punishment is not imposed if an inquiry into the truth or falsity of the alleged facts is made and they are proven to be true.

There is a court precedent stating that this provision is intended to promote reconciliation between protection of individuals' reputation and guarantee of freedom of speech. There is also a court precedent stating that, even if alleged facts are not proven to be true, if the offender mistakenly believed the alleged facts to be true based on a probable cause, the crime is not established.

Japan has no provisions that specially protect freedom of speech by specifying specific attributes of the accused, such as gender, sexual preference, religion, or race, or the specific contents of speech, such as religion or politics.

**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?**

As mentioned in 3.above, in penal provisions relating to speech, it is considered general to weigh the interests protected by the penal provisions against freedom of speech in determining whether speech constitutes a criminal act or whether the special impunity provision is applicable.

This applies to all citizens.

Whether freedom of speech or the protected interests should be weighed heavier is determined for each individual case, while also taking court precedents and other materials into account.

**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?**

There are rarely cases in which a dispute occurs over unclarity of these penal laws.

**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?**

We understand that judges are appropriately interpreting and applying laws and regulations according to individual cases, while also referring to past court determinations made in the same kinds of cases.