

CRIMINALIZING HOLOCAUST DENIAL IN THE EU

COMPENDIUM ON
27 MEMBER STATES

Mnemonic
REALITY

RESEARCH PROJECT
FUNDED BY



VolkswagenStiftung



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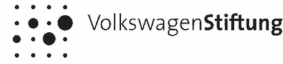
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**CRIMINALIZING HOLOCAUST DENIAL IN THE EU:
COMPENDIUM ON 27 MEMBER STATES.**

Various Authors. Lisbon-Cologne-Vilnius: Theya/Academy for European Human Rights Protection/Centre for Global Studies/Memory and Justice Research Centre, 2025.

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INTRODUCTION

1) Aims, content and structure of the compendium

The compendium *Criminalizing Holocaust Denial in the EU* collects, translates to English and provides an overview on the current state of criminal Holocaust denial legislation of all 27 EU Member States. Being the first endeavor of this kind, the compendium pursues primarily four goals: first, it aims to provide an EU-wide comprehensive empirical basis for further comparative research on Holocaust denial bans and memory laws¹ more generally. The compendium is therefore kept deliberately descriptive. Second, it seeks to inform policy makers at the national and EU level about the existing rules in (other) EU Member States and their application. This is particularly relevant since Article 1 (1) (d) of the EU Framework Decision on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal law ([2008/913/JHA](#)) [‘EU FD 2008’] obliges Member States to criminalise, under certain conditions, the condoning, denial or gross trivialisation of the Holocaust. Thus, the compendium serves as a source of inspiration for national policy regarding possible regulatory techniques of denial bans. It also helps EU policy makers to assess to what extent states have implemented the EU FD 2008 regarding Holocaust denial. Thirdly, it seeks to broaden legal practitioners’ and the general public’s knowledge about Holocaust denial legislation, which is crucial for a critical and informed

¹ Cf. “Memory laws enshrine state-approved interpretations of crucial historical events and promote certain narratives about the past“, Council of Europe, [Factsheet](#) ‘Memory Laws and Freedom of Expression’, July 2018.

discourse about memory politics and law within the EU space.² With its linkage to public education about the Holocaust as such, the compendium finally aims to contribute to providing a basis for a world in which memory laws such as Holocaust denial bans may no longer be necessary.

Holocaust denial bans have been selected as comparative material as they are the earliest and clearest examples of modern memory laws and have served as a blueprint for other forms of mnemonic governance. Moreover, they exist, even if not always explicitly codified as a separate crime, in all Member States and are usually clearly identifiable as such. Still, the country entries also include references to denial bans regarding other crimes of genocide, crimes against humanity or war crimes where they are intrinsically linked to the Holocaust denial provision.

The country entries are structured as follows: they contain the source where the relevant criminal Holocaust denial provision can be found, the text of the provision in English and in the original language, a short summary of the most relevant specificities of the country (“key points”), the background of the provision, its application in the case law, the controversies surrounding the legislation and selected references for further reading.

2) Target groups

The compendium addresses a wide range of stakeholders involved in the discourse about memory politics and law, including academics, national and international policy makers, practitioners, but also the general public that seeks more information on Holocaust denial legislation across the EU.

² A recent UNESCO study has found an alarming extent of Holocaust denial and distortion, ‘History Under Attack: Holocaust Denial and Distortion on Social Media’, Report of 13 July 2022.

3) Methodology

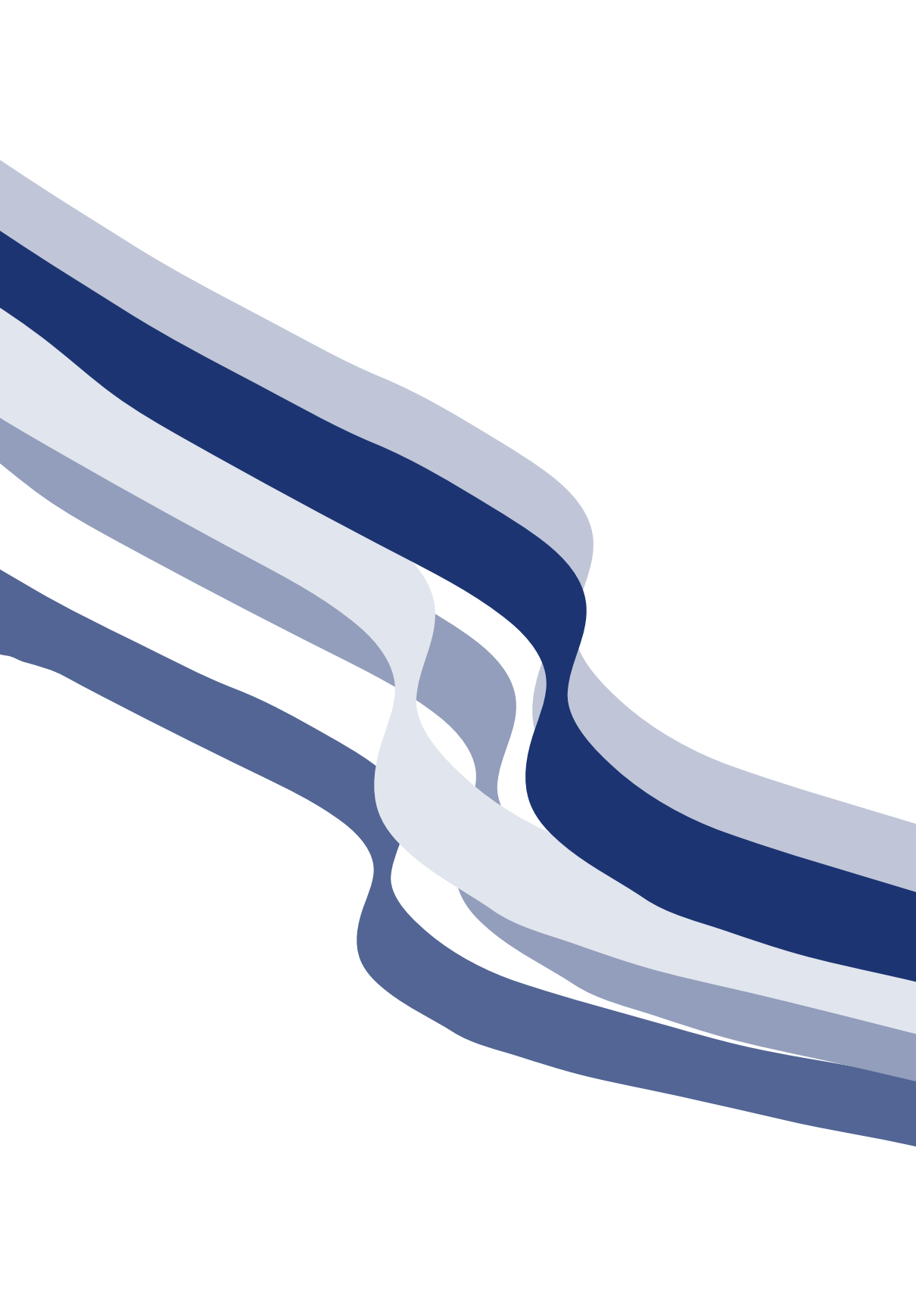
The compendium entries rely on a variety of sources. They include, in particular, the relevant national laws, parliamentary debates and other parliamentary documents, other official state information, the 2014 European Commission Report on the implementation of the EU FD 2008,³ European Commission information on infringement procedures for non-implementation of the EU FD 2008, national case laws, secondary literature, output by NGOs or thinktanks, and relevant *media* coverage. Where we encountered language barriers and/or were not fully able to assess the relevant information ourselves, national experts (scholars, state agents, or NGOs) were consulted.

In countries the language of which was not represented in our team (BG, CZ, CY, DK, EE, EL, HR, LV, RO, SI, SK, FI, SE) and where no official English translation of the relevant legal provisions existed, translations were made with the assistance of DeepL. The last substantial update was added in March 2025. All internet sources were last accessed on 25 May 2025.

4) About the authors

The compendium is the result of the first phase of the research project [Mnemonic Reality: Investigating Memory Laws' Impact on Reality and Reality's Impact on Memory Laws](#), funded by the Germany-based [Volkswagen Foundation](#) (2023-2025). The interdisciplinary team consists of ten young researchers from the Academy for European Human Rights Protection of the University of Cologne (Germany), the Centre for Global Studies of the Open University in Lisbon (Portugal), and Memory and Justice Research Center at Mykolas Romeris University in Vilnius (Lithuania) of various European nationalities (German, Italian, Lithuanian, Polish, and Portuguese) and with backgrounds in law, historical science, sociology, and philosophy.

³ [COM\(2014\) 27 final](#).





AUSTRIA





1. Source of the legal provision

Section 3h National Socialism Prohibition Act hereafter ‘Prohibition Act’ [*Bundesverfassungsgesetz über das Verbot der NSDAP, Verbotsgesetz*] as amended by Federal Law Gazette I [*Bundesgesetzblatt I*] No. 177/2023.

Available in the original language via: Rechtsinformationssystem des Bundes; <<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000207>>.

2. Legal Provision in English

Denial of National Socialist genocide and National Socialist crimes against humanity

(1) Anyone who publicly denies, minimises, approves or seeks to justify the National Socialist genocide or other National Socialist crimes against humanity will be punished with a prison sentence of between six months to five years if the offence is not punishable under Section 3g.¹

(2) Whoever commits the offence in a printed work, on the radio or via another medium or otherwise in such a way that it becomes accessible to many people will be punished with a prison sentence of between one to ten years.

(3) If the offender or the offence is particularly dangerous, the offender will be punished with a prison sentence of between ten to twenty years.

¹ Section 3g contains the catch-all offence of “revival of National Socialism”.

3. Legal Provision in the original language

Leugnung des nationalsozialistischen Völkermords und der nationalsozialistischen Verbrechen gegen die Menschlichkeit

(1) Wer öffentlich den nationalsozialistischen Völkermord oder andere nationalsozialistische Verbrechen gegen die Menschlichkeit leugnet, verharmlost, gutheißt oder zu rechtfertigen sucht, ist, wenn die Tat nicht nach § 3g mit Strafe bedroht ist, mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren zu bestrafen.

(2) Wer die Tat in einem Druckwerk, im Rundfunk oder in einem anderen Medium oder sonst auf eine Weise begeht, dass sie vielen Menschen zugänglich wird, ist mit Freiheitsstrafe von einem bis zu zehn Jahren zu bestrafen.

(3) Bei besonderer Gefährlichkeit des Täters oder der Tat ist der Täter mit Freiheitsstrafe von zehn bis zu zwanzig Jahren zu bestrafen.

4. Key Points

- Austria adopted a specific denial ban in 1992, which is limited to National Socialist crimes; it applies not only to the Holocaust, but also to the genocide of the Roma and Sinti peoples by Nazi Germany.
- The possible sanction of the non-qualified crime is a prison sentence of between six months to five years.
- Beyond this, since 2016 and in accordance with the EU Framework Decision 2008/913/JHA, Austria criminalises more broadly the approval, denial and gross minimisation of genocides and war crimes (Section 283 Criminal Code). Unlike the specific provision on Holocaust denial, this provision is only applicable if said crimes are recognised as such by an international or domestic court, and if the statement incites hatred or violence.²

² Strafrechtsänderungsgesetz 2015 [Criminal Code Amendment Act 2015], Bundesgesetzblatt [Federal Law Gazette] No. 112/2015 <https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2015_I_112/BGBLA_2015_I_112.pdf>.

- A legislative effort to combat antisemitism led to a recent overhaul of the provision, effective from 2024, and which reduced the minimum and maximum sentencing guidelines.
- Media attention has focused on whether the reform has intentionally left out statements made within the context of “pub talk”.

5. Background

Austria explicitly criminalises the denial, minimisation, approval, and the effort of justification of the “National Socialist genocide or other National Socialist crimes against humanity” according to Section 3h of the Prohibition Act, which was adopted in 1992.³ The Prohibition Act itself was originally passed in 1945 to outlaw the National Socialist (Nazi) Party, and is recognised as constitutional law. Consequently, amendments to the law require a majority of two thirds of the votes.⁴ Also, the objection of unconstitutionality is inapplicable,⁵ insofar as it does not violate fundamental principles of the Constitution.⁶

For the drafters, the proposal for Section 3h of the Prohibition Act was not a reaction to a gap in criminalisation, but rather to the inefficient application of an already existing statute concerned with the Nazi past. In fact, Holocaust denial had been prosecuted since the 1980s.⁷ Prosecutors and courts had applied a broad understanding of Section 3g of the Prohibition Act, which, as a catch-all provision, holds crimi-

³ Verbotsgesetz-Novelle [Amendment to the Prohibition Act], Bundesgesetzblatt [Federal Law Gazette] No. 148/1992.

⁴ See Article 44 Bundes-Verfassungsgesetz [Federal Constitutional Law].

⁵ R. Lässig, ‘Verbotsgesetz 1947’ in F. Höpfel, E. Ratz (eds), *Wiener Kommentar zum Strafgesetzbuch*, para. 3,

⁶ In a non-relating case, the Constitutional Court ruled that there are overriding fundamental principles of the constitution [eg. democracy, rule of law] and that the Constitutional Court is called upon to guarantee that these fundamental principles are upheld, thereby establishing the notion of unconstitutional constitutional law, see Verfassungsgerichtshof [Constitutional Court], G 12/00-17.

⁷ B. Bailer, ‘Das Verbotsgesetz’ [2005] Issue 2, *juridikum*, p. 200.

nally liable “whoever performs activities inspired by National Socialist ideas”. Section 3g had been added in 1947 to stifle any National Socialist activity whatsoever.⁸ The established jurisprudence of the Supreme Court of Justice had approved of the application of Section 3g to Holocaust denial.⁹ Therefore, as further implications to freedom of speech beyond the existing interpretation of the legal framework were seemingly not at issue, the lawmakers of 1992 across the political spectrum agreed on the basis of the symbolic value that an explicit criminalisation would entail. They held that “public statements which deny, grossly trivialise, condone or seek to justify Nazi crimes of violence impair coexistence in society – in which survivors of Nazi crimes and relatives of their victims still live today [...]”.¹⁰ The parliamentary debate also served as a forum to voice a more general self-critical reflection of Austria’s perceived inadequacy in coming to terms with its past, and the continuities of antisemitism and racism within Austrian society.¹¹

However, the scope of the reform in 1992 – and further statements made by lawmakers – revealed that the legislative intentions went beyond mere symbolism. The sentencing guidelines of the 1992 version of the newly adopted Section 3h of the Prohibition Act referred to Section 3g of the Prohibition Act. At the same time, the minimum sentence of this provision was reduced from five years to one year of imprisonment, but the maximum sentence remained at ten years, or at

⁸ Regarding the purpose of Section 3g Prohibition Act, see H. Gallhuber, ‘Rechtsextremismus und Strafrecht’, in Stiftung Dokumentationsarchiv des österreichischen Widerstandes (ed), *Handbuch des österreichischen Rechtsextremismus* [1994], p. 635.

⁹ See Oberster Gerichtshof [Supreme Court of Justice], Decision, 17 July 1992, 16 Os 7/92.

¹⁰ S. Herrmann, Protocol of 550th session of Bundesrat [Federal Council], 5 March 1992, p. 25897.

¹¹ G. Hummer, *ibid.*, p. 2589; “[...] we made it all too easy for ourselves back then to say that we had nothing to do with National Socialism. [...] One reads nothing about the fact that antisemitism has a much older history than National Socialism and that there was a kind of concealed racism in Austria even earlier [...]”

twenty years if the perpetrator was judged as particularly dangerous.¹² It was emphasised that the reduction of the minimum sentence should not be misunderstood as acknowledging a reduced gravity of revisionist statements. Instead, the change of the sentencing guidelines was supposed to make the application more effective since the lower minimum sentence eliminated the competence of jury courts.¹³ Faced with a minimum of a five-year prison sentence that appeared disproportionate for a speech offence, jurors had been reluctant to reach a conviction.¹⁴ In particular, the proceedings against the notorious Holocaust denier Gerd Honsik, who had been acquitted on three different occasions in 1979, 1983 and 1989, were a pivotal factor for many proponents of the reform in 1992.¹⁵

The provision remained unchanged for more than thirty years. In 2023, the Prohibition Act was comprehensively reformed. Coinciding with the Hamas terrorist attack on Israel on 7 October 2023, the ensuing war in Gaza, and rising threats to Jewish life in Europe, the parliamentary debate focused on the Prohibition Act as a tool to spe-

¹² Verbotsgesetz-Novelle [Amendment to the Prohibition Act], Bundesgesetzblatt [Federal Law Gazette] No. 148/1992; the proposal for a reduction of the minimum sentence originated from Simon Wiesenthal, who became known for his work of tracking down Nazi fugitives, see Preisß, Protocol of Nationalrat [National Council] XVIII. GP, 26 February 1992, p. 6130.

¹³ “Juries are used for the trial of particularly serious offences, which carry a possible sentence of at least five years to “life imprisonment”, or for certain minor political offences (e.g. disparagement of the flag of the Republic).”, see the website of the information and services of the Austrian administration <[¹⁴ W. Strutzenberger, Protocol of 550th session of Bundesrat \[Federal Council\], 5 March 1992, p. 25902; characteristically for the general misgivings about the shortcomings of jury trials, see Preisß: “There is ample evidence that juries tend to acquit in political trials.”, Protocol of Nationalrat \[National Council\] XVIII. GP, 26 February 1992, p. 6129.](https://www.oesterreich.gv.at/themen/gesetze_und_recht/strafrecht/6/Seite.2460907.html#:~:text=Geschwo-renengerichte%20werden%20bei%20der%20Verhandlung,der%20Fahne%20der%20Republik)%20eingesetzt>.”</p></div><div data-bbox=)

¹⁵ B. Bailer, ‘Gegen nationalsozialistische Wiederbetätigung und Holocaustleugnung’, in Lichtenwagner, Reiter-Zatloukal (eds), “... *um alle nazistische Tätigkeit und Propaganda in Österreich zu verhindern*” [2018], p. 18.

cifically fight antisemitism.¹⁶ The reform, which entered into force on 1 January 2024, brought about important changes: firstly, it removed the former requirement that the statement had to be expressed in a way that made it accessible to many people. Instead, Section 3h Subsection 1 now covers any “*public*” statement. Secondly, the requirement of a *gross* minimisation was removed to avoid “very difficult questions of the limits” of criminal liability and to ensure that partial denial is included as well.¹⁷ Interestingly, these considerations have not been translated to Section 283 Subsection 1 No. 3 of the Criminal Code, which still criminalises, among others, the “gross” minimisation of genocides, war crimes and crimes against humanity that have been recognised by a domestic or international court. This difference makes the protection of the memory of the Holocaust stand out.

The 1992 version of Section 3h of the Prohibition Act now serves as an aggravated offence (today’s second subsection of Section 3h). As the spread of Nazi propaganda has significantly moved to online outlets, legislators worried about overburdening the Austrian authorities with publications that were retrievable in Austria and therefore locally prosecutable (see Section 67 Subsection 2 of the Criminal Code in conjunction with Section 62 of the Criminal Code defining the territorial scope of Austrian criminal law), but which were only vaguely related to the country.¹⁸ Therefore, the reform limited the

¹⁶ K. Edstadler reporting a 300 percent increase of antisemitic incidents in the first two weeks following the Hamas attacks of 7 October 2023, see preliminary Protocol of Nationalrat [National Council] XXVII. GP, 15 December 2023; see on the interpretation of Section 3h Prohibition Act the 1990s mainly as an instrument “to place the criminal liability of an act serving the revival of National Socialism at the earliest possible stage”, H. Gallhuber, ‘Rechtsextremismus und Strafrecht’, in Stiftung Dokumentationsarchiv des österreichischen Widerstandes (ed), *Handbuch des österreichischen Rechtsextremismus* [1994], p. 639.

¹⁷ A. Zadić, Preliminary Protocol of Nationalrat [National Council] XXVII. GP, 15 December 2023.

¹⁸ Erläuterungen der Regierungsvorlage [explanatory notes to the government bill], 2285 der Beilagen XXVII. GP, p. 9 <https://www.parlament.gv.at/dokument/XXVII/I/2285/fname_1592448.pdf>.

applicability of the Holocaust denial ban in cases committed abroad to situations involving an Austrian perpetrator and with likelihood to breach (Austrian) public peace.¹⁹

6. Application

The denial of the Holocaust remains a central characteristic of right-wing extremists in Austria. Members of the “new right”, in turn, more often tend to relativise the Holocaust.²⁰ Still, under the regime of Section 3g of the Prohibition Act, which was used before a specific Holocaust denial ban was adopted in 1992, a criminal court in Vienna provoked strong criticism when it appointed an expert witness who took five years to prove the long-established fact that Jews had been murdered by the use of Zyklon B.²¹ The Supreme Court of Justice clarified in 1994 that the mass murder of Jews in gas chambers was a historical truth that required no further proof.²² Moreover, it ruled that the newly enacted Section 3h of the Prohibition Act procedurally prohibits the taking of evidence on the facts of National Socialist genocide and other National Socialist crimes against humanity.²³

In 2017, the Supreme Court of Justice upheld a fine for a disciplinary offence against a criminal defence lawyer.²⁴ In defending a client who had called for the incineration or gassing of foreigners, and who wanted to “revive facilities” in the Mauthausen concentration camp, the

¹⁹ See Section 3m Prohibition Act.

²⁰ Verfassungsschutzbericht 2023 [Annual Report by the Directorate General for Public Security], Bundesministerium für Inneres (ed), pp. 19, 30 <https://www.dsn.gv.at/501/files/VSB/180_2024_VSB_2023_V20240517_BF.pdf>.

²¹ ‘Wien: Gerichtsgutachter bestätigt den Holocaust’, *TAZ* (6 May 1992) <<https://taz.de/Wien-Gerichtsgutachter-bestaetigt-den-Holocaust/!1671383/>>.

²² Oberster Gerichtshof [Supreme Court of Justice], Judgement, 16 February 1994, 13 Os 135/92.

²³ *Ibid.*

²⁴ Oberster Gerichtshof [Supreme Court of Justice], Judgement, 14 November 2017, 20 Ds 11/17y.

lawyer portrayed these statements as mere phantasms of the defendant and argued: “Whether gassings and incinerations took place in Mauthausen” were a “kind of myth”, and therefore “the defendant wanted to recreate [something] that did not actually happen.”²⁵ Although the court did not find a violation of Section 3h of the Prohibition Act, it accepted a breach of disciplinary duty. This was because a lawyer, “who in view of his legal expertise and the obligation to observe the law, enjoys a special position of trust of the public, may not even create the impression in the exercise of his profession that he wants to doubt or relativise such notorious facts – in contradiction to the assessment of the Prohibition Act”.²⁶ The decision illustrates how the Holocaust denial ban influences fields of law beyond criminal trials.

The reform of 2023 also lowered the minimum and maximum sentencing range of Section 3h Subsection 1 of the Prohibition Act to between six months and five years of imprisonment. This change allows formal criminal proceedings to be relinquished where the facts of the case have been sufficiently clarified, and the defendant chooses to submit to a punitive measure, e.g. community service (so-called *diversion*).²⁷ To avoid the impression of any trivialisation of Holocaust denial, lawmakers stressed the need for a clear framework for the *diversion* programmes. These programmes would “need to offer more than just a mere visit to the memorial of the Mauthausen concentration camp”,²⁸ and may not apply in case of an entrenched National Socialist ideology.²⁹

²⁵ Ibid., p. 3.

²⁶ Ibid., p. 9.

²⁷ See Section 198 Subsection 2 No. 1 Code of Criminal Procedure; see for a general description of the *diversion* programme, <https://www.oesterreich.gv.at/themen/gesetze_und_recht/strafrecht/4/Seite.2460601.html>.

²⁸ S. Schatz, Preliminary Protocol of Nationalrat [National Council] XXVII. GP, 15 December 2023.

²⁹ A. Zadić, *ibid.*; the possibility of diversion was met with mixed receptions by civil society actors with some questioning the efficiency of educational measures above the group of young adults, ‘Verbotsgesetz: Geteilte Meinungen zu Diver-

7. Controversies

There have been debates about the broadened scope of Section 3h Sub-section 1 of the Prohibition Act replacing the former requirement that the statement be accessible to many people, by the mere requirement of a “public” statement. According to the minister of justice, the new wording signifies that the threshold has been reduced from an audience of 30 to ten persons.³⁰ However, criticism has been raised that the new law still does not cover most expressions in the setting of “pub talk” – a metonymy for occasions where the boundaries between private and public speech are fluid – unlike an earlier draft which had provided for a reduction to a minimum of only three people.³¹

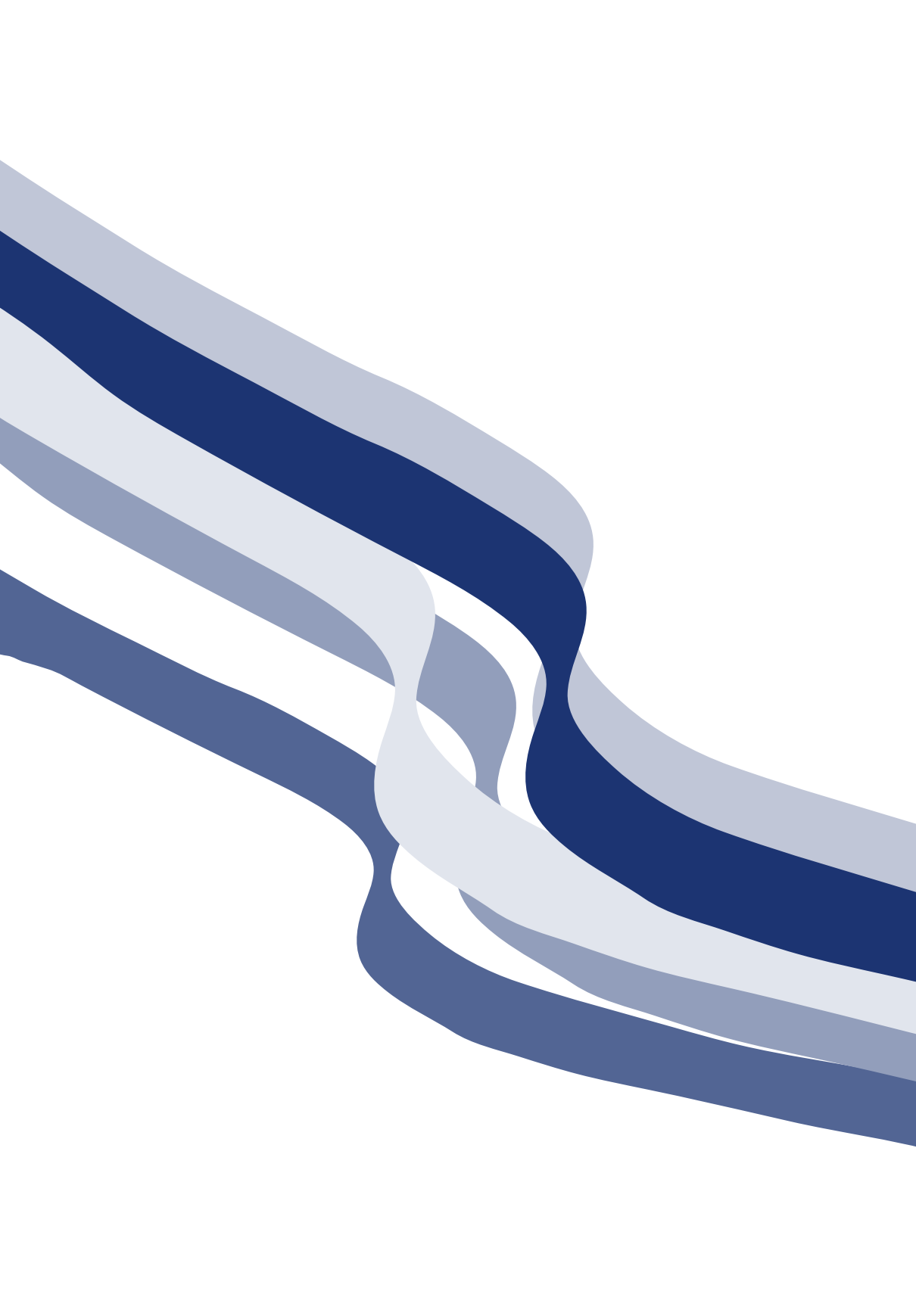
8. Further Reading

- B. Bailer, ‘The “Ban on Re-Engagement in National Socialist Activity”, as a Social and Political Counter-strategy in Austria’, in R. Melzer, S. Serafin (eds) *Right-wing extremism in Europe* [2013], pp. 281-305.
- U. Wagrandl, ‘Militant Democracy in Austria’ [2018], Volume 2, University of Vienna Law Review, pp. 95-128.
- S. J. Roth, ‘Austria: Denial of the Holocaust: A criminal offence?’ [1989] Volume 23, *Patterns of Prejudice*, pp. 42-43.

sion bei Erwachsenen’, *Der Standard* (19 July 2023) <<https://www.derstandard.de/consent/tcf/story/3000000179573/verbotsgesetz-strafrechtsexperte-sieht-diversion-bei-erwachsenen-positiv>>.

³⁰ A. Zadić, Preliminary Protocol of Nationalrat [National Council] XXVII. GP, 15 December 2023.

³¹ S. Schatz, *ibid*; C. M. Schmidt, ‘Ein Freibrief für Holocaust-Leugnung am Stammtisch’, *Der Standard* (30 November 2023) <<https://www.derstandard.at/consent/tcf/story/3000000197742/freibrief-f252r-stammtische>>; see also on the function of post-fascist antisemitism in Austria as a “stabiliser of informal, ‘private’ small groups [...], insofar as they have to compensate for a lack of bonding and solidarity through aggressive external boundaries”, B. Marin, ‘Ein historisch neuartiger ‘Antisemitismus ohne Antisemiten’ [1979] Volume 5, *Geschichte und Gesellschaft*, p. 559.





BELGIUM





1. Source of the legal provision

Law of 23 March 1995 [*Loi tendant à réprimer la négation, la minimisation, la justification ou l'approbation du génocide commis par le régime national-socialiste allemand pendant la seconde guerre mondiale*] as amended by Law of 21 December 2018 [Loi portant des dispositions diverses en matière de justice].¹

2. Legal provision in English

Article 1. Anyone who, in any of the circumstances indicated in Article 444 of the Criminal Code, denies, grossly minimises, seeks to justify or approves of the genocide committed by the German National Socialist regime during the Second World War, shall be punished by imprisonment of between eight days and one year or a fine of between twenty-six and five thousand francs.²

For the purposes of the previous paragraph, the term genocide is understood to have the meaning given to it in Article 2 of the Interna-

¹ Available in the original language via: Service public fédéral justice, <<https://www.ejustice.just.fgov.be/eli/loi/1995/03/23/1995009273/justel>>; the provision will be repealed by Law of 29 February 2024, which will enter into force on 8 April 2026, see below.

² Article 444 Criminal Code lists alternatively the following circumstances:

- In public meetings or places,
- In the presence of several individuals, in a non-public place, but open to a certain number of persons entitled to assemble there or frequent it,
- In any place whatsoever, in the presence of the person offended and before witnesses,
- By printed or unprinted matter, images or emblems displayed, distributed or sold, offered for sale or exposed to public view,
- By writings not made public but addressed or communicated to several persons.

tional Convention of 9 December 1948 on the Prevention and Punishment of the Crime of Genocide.

(The convicted person may also be sentenced to disqualification in accordance with Article 33 Criminal Code).³

Article 2. In the event of a conviction for an offence under the present law, it may be ordered that the judgment be published in full or in excerpts in one or more newspapers and posted at the expense of the convicted person.

Article 3. Chapter VII of Book One of the Criminal Code and Article 85 of the same Code shall apply to this law.

Article 4. The Centre interfédéral pour l'égalité des chances et la lutte contre le racisme et les discriminations,⁴ created by the cooperation agreement of 12 June 2013, as well as any legal entity which proposes, through its articles of association, to defend the moral interests and honour of the Resistance or deportees and which meets the conditions set out in Article 17, Section 2, 1° to 3°, of the Judicial Code, may take legal action in all disputes to which the application of this law may give rise.

3. Legal Provision in the original language

Article 1. Est puni d'un emprisonnement de huit jours à un an et d'une amende de vingt-six à cinq mille francs quiconque, dans l'une des circonstances indiquées à l'article 444 du Code pénal, nie, minimise grossièrement, cherche à justifier ou approuve le génocide commis par le ré-

³ According to Article 31 and Article 33 Criminal Code courts may, in whole or in part, prohibit convicted offenders from exercising the following rights for a duration of five to ten years:

- To hold public office or to be eligible for it,
- Wearing any decoration, any title of nobility;
- Being a juror, expert, instrumental witness or certifier in deeds; from giving evidence in court other than to provide simple information.

⁴ Interfederal Centre for Equal Opportunities and the Fight against Racism and Discrimination.

gime national-socialiste allemand pendant la seconde guerre mondiale.

Pour l'application de l'alinéa précédent, le terme génocide s'entend au sens de l'article 2 de la Convention internationale du 9 décembre 1948 pour la prévention et la répression du crime de génocide.

(Le condamné peut, en outre, être condamné à l'interdiction conformément à l'article 33 du Code pénal.)

Article 2. En cas de condamnation du chef d'infraction à la présente loi, il peut être ordonné l'insertion, du jugement intégralement ou par extrait, dans un ou plusieurs journaux, et son affichage, aux frais du condamné.

Article 3. Sont applicables à la présente loi le Chapitre VII du livre premier du Code pénal et l'article 85 du même Code.

Article 4. Le Centre interfédéral pour l'égalité des chances et la lutte contre le racisme et les discriminations, créé par l'accord de coopération du 12 juin 2013, ainsi que toute personne morale qui se propose, par ses statuts, de défendre les intérêts moraux et l'honneur de la résistance ou des déportés et qui remplit les conditions prévues à l'article 17, alinéa 2, 1° à 3°, du Code judiciaire, peuvent ester en justice dans tous les litiges auxquels l'application de la présente loi pourrait donner lieu.

4. Key Points

- Belgium possesses a specific Holocaust denial ban, introduced in 1995, which was inspired by a similar provision in France.
- In 2019, Belgium additionally adopted a crime of contestation of other mass crimes which have been recognised by an international court, thereby implementing the EU Framework Decision 2008/913/JHA (hereafter 'EU FD 2008').
- Unlike the general provision concerning the contestation of mass crimes, the specific Holocaust denial ban does not require an intent to incite hatred.

- In case of a conviction for Holocaust denial, the sentence is imprisonment of between eight days and one year, and a fine of between five and twenty-six thousand francs. The sentence can also involve community service work, including orders to visit a concentration camp memorial.
- Criticism of the law ranges from unintentionally creating backlash, to objections that the memory of the Armenian genocide, a particular concern among the sizable Armenian diaspora in Belgium, remains unprotected.

5. Background

Strongly influenced by the French *Loi Gayssot* of 1990, two parliamentarians and members of the Socialist Party proposed to adopt a similar law in Belgium in 1992. The provision, which was ultimately adopted in 1995, called in its title for punishment of the contesting, questioning, denying or condoning of crimes against humanity and war crimes.⁵ However, following the French example, the drafters limited its scope to crimes as defined in Article 6 of the Statute of the International Military Tribunal.⁶ Alluding to the Holocaust (although not mentioning it explicitly), the lawmakers stressed its singularity, since “humanity has never known such an enterprise to exterminate populations on the basis of their ethnic or religious affiliation, carried out with such terrible political, administrative, police and military efficiency”.⁷ In their reasoning, they noted a “disturbing rise” in the expressions of racism and antisemitism in Belgian society, but also invoked the need to protect the memory of victims and to safeguard against the rehabilitation of a

⁵ Chambre des Représentants de Belgique [Chamber of Representatives], Session Extraordinaire 1991-1992, 30 June 1992, 557 Il. 91/92 (S.E.), p. 3.

⁶ See International Humanitarian Law Database (International Committee of the Red Cross), <<https://ihl-databases.icrc.org/en/ihl-treaties/nuremberg-tribunal-charter-1945/article-6b>>.

⁷ Ibid., p. 1.

political system that is opposed to democratic principles.⁸ In particular, the rising electoral success of the Flemish nationalist party *Vlaams Blok* [Flemish Block] and the creation of the so-called *Vrij Historisch Onderzoek* [Free Historical Research] organisation – which exploited the new reach of the Internet to distribute negationist literature – caused worries among legislators.⁹

Lawmakers also highlighted already existing legal mechanisms against negationism in neighbouring countries, and wondered whether Belgium had been shunned to an outcast role as a European hub for the exportation of Holocaust denial literature.¹⁰

In 2019, a fifth subsection was added to Article 20 of the “Law suppressing certain acts inspired by racism or xenophobia [Loi tendant à réprimer certains actes inspirés par le racisme ou la xénophobie]” to criminalise the denial, gross minimisation, justification and approval of any genocide, crime against humanity and war crime which has been recognised by an international court, and which bears the possibility of incitement to hatred or violence.¹¹ The provision implements the EU FD 2008.¹²

⁸ *Ibid.*, pp. 1, 2.

⁹ Chambre des Représentants de Belgique [Chamber of Representatives], Session Extraordinaire 1994-1995, 27 January 1995, 55715, 91/92 (S.E.), p. 25.

¹⁰ *Ibid.*, p. 27.

¹¹ See Article 115 Loi portant des dispositions diverses en matière pénale et en matière de cultes, et modifiant la loi du 28 mai 2002 relative à l'euthanasie et le Code pénal social, 5 May 2019, see Service Public Fédéral Justice <https://www.ejustice.just.fgov.be/cgi_loi/article.pl?language=fr&lg_txt=f&type=&sort=&numac_search=&cn_search=2019050510&caller=SUM&&view_numac=2019050510f>.

¹² Article 20 of the law refers explicitly to EU FD 2008:

“Anyone who, in one of the circumstances indicated in Article 444 Criminal Code, denies, grossly minimises, seeks to justify or approves facts corresponding to a crime of genocide, a crime against humanity or a war crime as referred to in Article 136-fifth Criminal Code, established as such by a definitive decision handed down by an international court, knowing or having to know that this behaviour is likely to expose a person, a group, a community or their members, to discrimination, hatred or violence, on the grounds of one or more of the protected criteria or religion, within the meaning of Article 1(3) of the Framework Decision of the Council of the European Union of

The Law of 23 March 1995 is in the process of being repealed by the Law of 29 February 2024 [Loi introduisant le livre II du Code pénal].¹³ As part of a larger reform of the criminal law system aiming to establish a coherent codification, various provisions taken from specific statutes will be incorporated into the new Criminal Code, which will enter into force on 8 April 2026.¹⁴ The updated provision against negationism will be included in Article 256 of the new Criminal Code.¹⁵ This article will maintain the core of its predecessor but is made more comprehensive and comprehensible – as instead of enumerating various conditional circumstances, the provision now simply requires a public statement.¹⁶

28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, even outside the scope of Article 5.”

¹³ Moniteur Belge [Belgian official journal], 8 April 2024, p. 40664.

¹⁴ ‘Nouveau code pénal : de quoi s’agit-il ?’, (*Wolters Kluwer*, 15 April 2024) <<https://www.wolterskluwer.com/fr-be/expert-insights/new-penal-code>>.

¹⁵ The new Article 256 Criminal Code reads as follows (see Moniteur Belge, 8 April 2024, p. 40582):

“Negationism is the public denial, gross minimisation, attempt to justify or approval of the genocide committed by the German National Socialist regime during the Second World War.

This offence is punishable by a level 2 penalty.

In addition, the judge may also order the publication of the decision in accordance with Article 58.

For the purposes of the first paragraph, the term genocide is understood to have the meaning given to it in Article 2 of the International Convention of 9 December 1948 on the Prevention and Punishment of the Crime of Genocide.”

According to Article 36 of the new Criminal Code (see Moniteur Belge, 8 April 2024, p. 40526), a level 2 sentence includes:

- imprisonment for a term of between six months and three years,
- treatment involving deprivation of liberty for a term of between six months and two years,
- electronic surveillance for a term of between one month and one year,
- work for a term of between 120 hours and 300 hours, or
- probation for a term of between twelve months and two years.

¹⁶ This, however, constitutes also a restriction of the current applicability since the Law of 23 March 1995 also targets cases, where statements are made in “the presence of several individuals, in a non-public place, but open to a certain number of persons entitled to assemble there or frequent it”, see Article 444 Criminal Code.

6. Application

Instances of negationism are a regular concern for the Belgian justice system and receive wide media attention. Shortly after the law of 23 March 1995 came into force, the Court of Arbitration ruled – after examination of the parliamentary preparations – that the punishable element of negationism was not the denial itself, but the underlying intention “to reinstate a criminal and democracy-hostile ideology”.¹⁷ Although the legislator had refrained from explicitly requiring such an intention because of the difficulty to prove it in cases of seemingly scientific modes of expression, according to the court, such an intention is necessary and the judge may infer its absence in particular circumstances.¹⁸ The Court of Arbitration gave no examples for such circumstances. A judge found such intention clearly established in the case of a defendant who – according to his criminal record – had made the Hitler salute on several occasions in the past.¹⁹

The application of the law of 23 March 1995 was facilitated in 1999 when Article 150 of the Constitution was modified to transfer the jurisdiction over crimes related to publications from jury courts to the correctional tribunals in cases where the statement is based on racism or xenophobia.²⁰ This jurisdiction has been extended to statements made online.²¹ Previously, the Council of Europe Commission against Racism and Intolerance had criticised that the exclusive competence of

¹⁷ Arbitragehof [former name of the Constitutional Court], Judgement, 12 July 1996, Nr. 45/96, p. 26 <<https://www.const-court.be/public/n/1996/1996-045n.pdf>>.

¹⁸ Ibid.

¹⁹ Rechtbank van eerste aanleg te West-Vlaanderen – Afdeling Brugge [Court Of First Instance In West Flanders – Bruges Division], 7 October 2022, p. 8 <https://www.unia.be/files/2022_10_07_Rb._West-Vlaanderen.pdf>.

²⁰ P. Traest, ‘The jury in Belgium’ [2001] Volume 72, *Revue internationale de droit penal*, p. 49.

²¹ ‘Révision des articles de la Constitution concernant les discours de haine et les emplois statutaires’, (*UNIA*, 16 December 2018) <<https://www.unia.be/fr/legislation-et-recommandations/recommandations-dunia/revision-des-articles-de-la-constitution>>.

the jury courts and the complexity of their procedures had “resulted in the de facto impossibility to prosecute the perpetrators”.²²

The argument of a defendant that his negationist statements were not motivated by racism but by a religious conviction was rejected by the Correctional Court of East Flanders.²³ Furthermore, this case showcased, as had already been stated by previous judgements, that a statement is made “publicly” even when it is made in a closed Facebook group that can only be accessed upon invitation by a group member.²⁴

Courts have dealt differently with the defence that the incriminated statements were merely “jokes”. While one court acquitted three defendants who had referred to their “black humour”, in another case it was ruled that “the ‘humour’ that was displayed was deliberately and systematically used to make racism accessible and light-hearted”, and encouraged further unrestrained dissemination of Holocaust denial propaganda.²⁵

According to Article 37(5) Criminal Code, the judge may oblige the offender to perform community service work instead of imposing a prison sentence or a fine. In the case of negationism, the content of the work penalty shall be related to the fight against racism or xenophobia,

²² Second Report on Belgium, European Commission against Racism and Intolerance (ed) [2000] p. 5, <<https://rm.coe.int/second-report-on-belgium/16808b55a2>>.

²³ Tribunal correctionnel de Flandre orientale [Correctional tribunal of East Flanders], Audenarde division, 6 November 2023 <<https://www.unia.be/fr/jurisprudence-alternatives/jurisprudence/tribunal-correctionnel-de-flandre-orientale-division-audenarde-6-novembre-2>>.

²⁴ See for example: Tribunal correctionnel de Louven [Correctional tribunal of Leuven], 7 February 2022; Tribunal correctionnel de Flandre orientale [Correctional tribunal of East Flanders], 12 March 2024; all cited from ‘Analyse de la jurisprudence en matière de négationnisme, mars 2024’, (UNIA, 8 April 2024) <<https://www.unia.be/fr/jurisprudence-alternatives/jurisprudence/analyse-de-la-jurisprudence-en-matiere-de-negationnisme-mars-2024>>.

²⁵ X. Counasse, ‘Procès pour négationnisme à Charleroi : trois militaires acquittés, le quatrième condamné’ *Le Soir* (26 June 2024) <<https://www.lesoir.be/597691/article/2024-06-26/proces-pour-negationnisme-charleroi-trois-militaires-acquittes-le-quatrieme>>; Correctional Tribunal of East Flanders, Gand division, 12 March 2024, cited from UNIA <<https://www.unia.be/fr/jurisprudence-alternatives/jurisprudence/tribunal-correctionnel-de-flandre-orientale-division-gand-12-mars-2024>>.

discrimination, sexism and Holocaust denial.²⁶ On this basis, the Brussels Court of Appeal ordered a far-right politician, who had called into question the Holocaust, to visit memorial sites of concentration camps once per year and submit written reports on his experiences.²⁷

When applied to politicians, the law might be said to have taken on elements of militant democracy: after the Chamber of Representatives had lifted parliamentary immunity, Dries Van Langenhove, a rising figure among the far-right Flemish-nationalist movement, was convicted of Holocaust denial and incitement to hatred. A court in Ghent thus revoked his eligibility to hold public office for a period of 10 years.²⁸

7. Controversies

Even though the well-intentioned motives of the Law of 23 March 1995 to combat hate speech are generally unquestioned, some commentators are broadly critical of proof of a link between the criminalisation of Holocaust denial and the prevention of such statements.²⁹ The philosopher Etienne Vermeersch recognised the need of a protection against the defamation of living survivors of the Holocaust but advocated for

²⁶ See Article 37-fifth Section 4 Criminal Code.

²⁷ D. Hawkins, 'Holocaust denier in Belgium ordered to visit concentration camps and write about them' *Washington Post* (25 September 2017) <<https://nationalpost.com/news/world/holocaust-denier-in-belgium-ordered-to-visit-concentration-camps-and-write-about-them>>.

²⁸ J. Sohier, M. Dekleermaker, 'La lutte contre les ennemis de la démocratie' [2023] Volume 7, e-legal, *Revue de droit et de criminologie de l'ULB*, p. 23 <<https://e-legal.ulb.be/medias/pdfs/208-la-lutte-contre-les-ennemis-de-la-democratie.pdf>>; C. Gijs, L. Cerulus, 'Belgium's far-right prodigy gets prison term for inciting violence' *Politico* (12 March 2024) <<https://www.politico.eu/article/belgium-far-right-prodigy-dries-van-langenhove-prison-term-incite-violence-deny-holocaust/>>; the legal basis for ineligibility was the Law of 23 March 1995 combined with Article 33 Criminal Code.

²⁹ E. De Keyzer, 'Het ontkennen van de Holocaust in België: de Negationismewet vanuit een hedendaags mensenrechtelijk perspectief' (Master in law thesis, Universiteit Gent 2019) pp. 24-25, with further references <https://libstore.ugent.be/fulltxt/RUG01/002/790/194/RUG01-002790194_2019_0001_AC.pdf>.

the abrogation within the next 20 years.³⁰ Others fear that the legislation creates the impression of special privilege for Jewish memory, thereby generating adverse effects.³¹

In accordance with the EU Framework Decision 2008/913/JHA, in 2019, Belgium expanded the criminalisation to the denial, minimisation, justification and approval of other historic crimes which have been established by a final decision of a national or an international court.³² As in France, the requirement of a court decision essentially excludes the denial of the Armenian genocide – which has never been adjudicated – although parliament has formally recognised the mass killing of the Armenian people in the Ottoman Empire as genocide.³³ With anti-discrimination activists deploring this gap,³⁴ outside pressure likely played its part since political observers had already highlighted the dubious presence of the Turkish ambassador at parliamentary meetings in 2004 concerning a similar reform proposal which ultimately stalled.³⁵

In the wake of the global “Black Lives Matter” demonstrations against ongoing racial discrimination in 2020, memory culture was debated publicly when protesters in Belgium defaced statues of the former King

³⁰ P. Cobbaert, ‘Filosoof Etienne Vermeersch pleit voor verbreding van het begrip vrijheid van meningsuiting: “Negationisme moet kunnen”’, *De Zondag* (3 January 2016) <<https://www.dezondag.be/actua/vermeersch/>>.

³¹ De Keyzer, 2019, pp. 24-25, with further references, see above note 27. <https://libstore.ugent.be/fulltxt/RUG01/002/790/194/RUG01-002790194_2019_0001_AC.pdf>.

³² See Article 20-fifth Loi tendant à réprimer certains actes inspirés par le racisme ou la xénophobie [Law against racism and xenophobia], which was added in 2019.

³³ ‘La reconnaissance du génocide arménien adoptée par la Chambre’ *La Libre* (23 July 2015) <<https://www.lalibre.be/belgique/2015/07/23/la-reconnaissance-du-genocide-armenien-adoptee-par-la-chambre-J3ANSNP2QJCSPMX2EIUSVSFCWM/>>.

³⁴ ‘Nier un génocide? Unia peut désormais intervenir plus souvent’ UNIA (30 April 2019) <<https://www.unia.be/fr/articles/nier-un-genocide-unia-peut-desormais-intervenir-plus-souvent>>.

³⁵ G. Grandjean, ‘La répression du négationnisme en Belgique: de la réussite législative au blocage politique’ [2011] Volume 77, No. 1, *Droit et société*, p. 150.

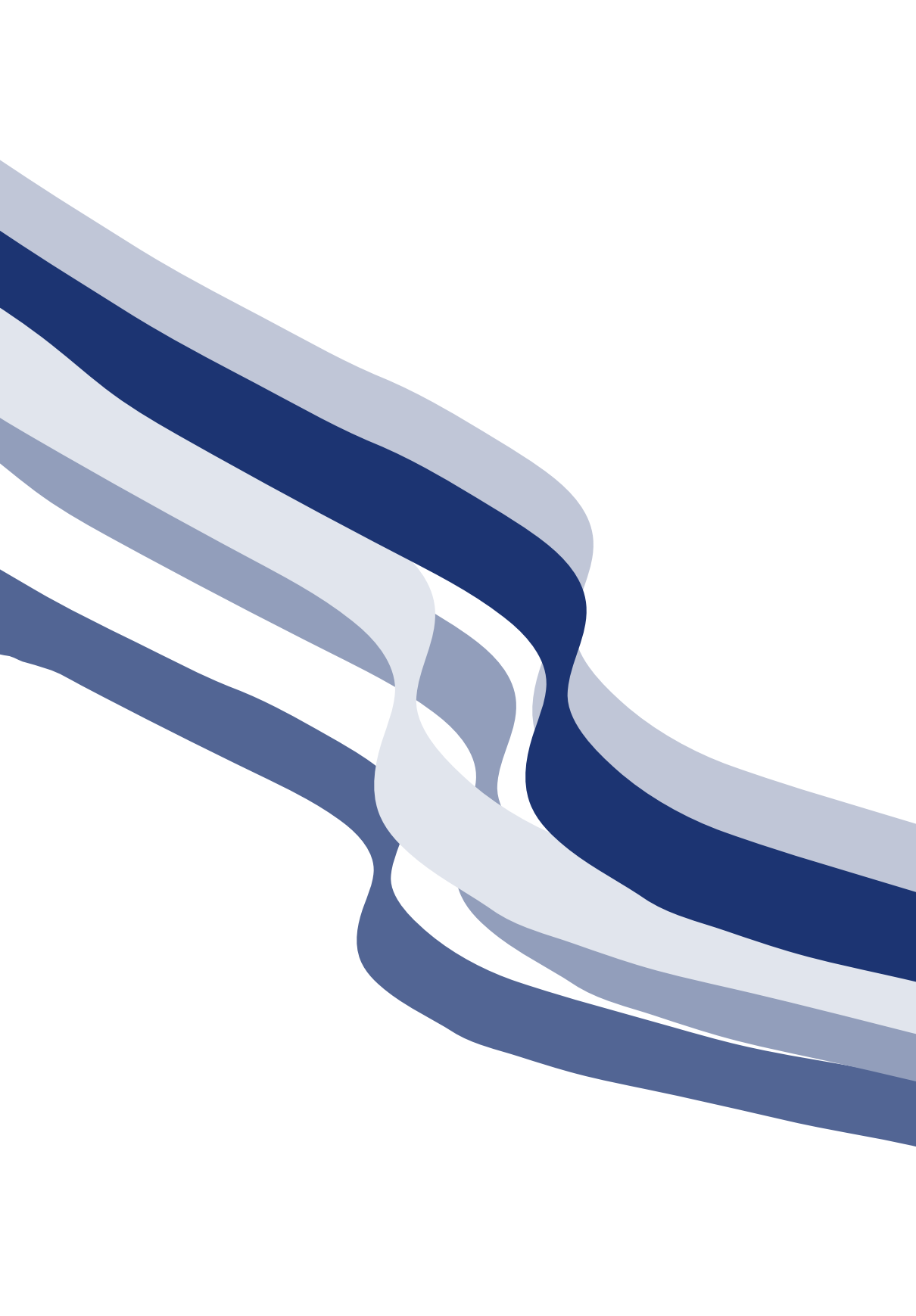
Leopold II.³⁶ These acts reflected growing anger regarding political discourse which had neglected to confront the historic responsibility for systematic brutality committed by Belgian authorities during its colonial rule on the territory now known as the Democratic Republic of the Congo.³⁷

8. Further Reading

- A. van den Braembussche, 'The Silence of Belgium: Taboo and Trauma in Belgian Memory' [2002] *Yale French Studies*, No. 102, pp. 34–52 <<https://www.jstor.org/stable/3090591>>.
- O. Luminet, L. Licata, O. Klein, V. Rosoux, S. Heenen-Wolff, L. van Ypersele, C. B. Stone, 'The interplay between collective memory and the erosion of nation states – the paradigmatic case of Belgium' [2012] *Volume 5, No. 1, Memory Studies*, pp. 3-15 <<https://journals.sagepub.com/doi/full/10.1177/1750698011424027>>.
- G. Verbeeck, 'Legacies of an imperial past in a small nation. Patterns of postcolonialism in Belgium' [2019] *Volume 21 No. 3, European Politics and Society*, pp. 292-306 <<https://www.tandfonline.com/doi/full/10.1080/23745118.2019.1645422>>.

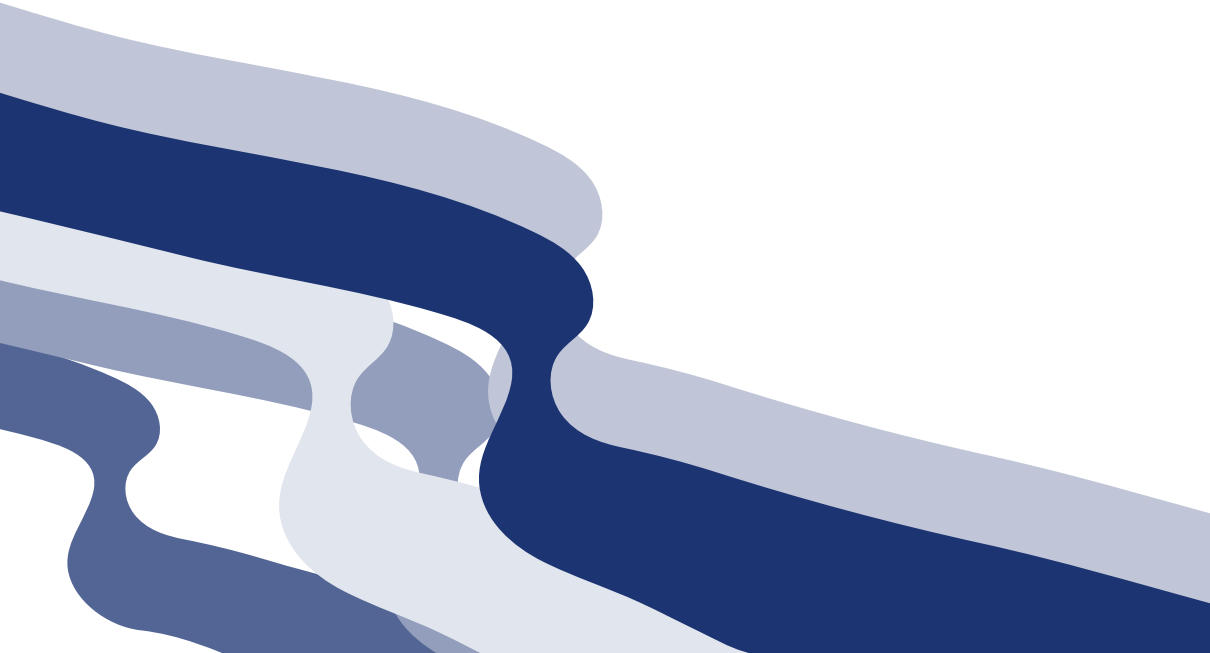
³⁶ G. Rannard, E. Webster, Leopold II: 'Belgium "wakes up" to its bloody colonial past' (*BBC News*, 13 June 2020) <<https://www.bbc.com/news/world-europe-53017188>>.

³⁷ J. Bobineau, 'Belgiens gespaltene Erinnerung: Aufarbeitung und Verdrängung von kolonialer Geschichte in Flandern und Wallonien' [2020].





BULGARIA





1. Source of the legal provision¹

Article 419a. of the Criminal Code of 1968 [Наказателен Кодекс], as amended by Official Gazette, No. 33 of 2011, in force as of May 27, 2011[ДВ, бр. 33 от 2011 г., в сила от 27.05.2011 г., изм. – ДВ, бр. 67 от 2023 г].

Available in the original language via: Lex.bg <<https://lex.bg/laws/ldoc/1589654529>>

2. Legal Provision in English

Article 419a.

(1) Whoever publicly justifies, denies or grossly belittles a crime committed under this chapter² and the act is committed in a way that may create a danger to use violence or to create hatred against individuals or groups of people united by race, skin colour, religion, origin, national or ethnic affiliation, shall be punished with imprisonment from one to five years.

(2) The penalty under para. 1 also applies when the crime under this chapter was committed during and in connection with the National Socialist regime.

(3) Whoever incites another to commit a crime under para. 1 and 2, is punishable by imprisonment for up to one year.

¹ The authors of the Compendium would like to thank Momchil Milanov for his guidance through Bulgarian law.

² Chapter 14 of the Criminal Code, ‘Crimes Against Peace and Humanity’.

3. Legal Provision in the original language

Чл. 419а.

(1) Който публично оправдава, отрича или грубо омаловажава извършено престъпление по тази глава и деянието е извършено по начин, който може да създаде опасност да се упражни насилие или да се създаде омраза срещу отделни лица или групи от хора, обединени по раса, цвят на кожата, религия, произход, национална или етническа принадлежност, се наказва с лишаване от свобода от една до пет години.

(2) Наказанието по ал. 1 се налага и когато престъплението по тази глава е извършено по време на и във връзка с националсоциалистическия режим.

(3) Който подбужда другото към престъпление по ал. 1 и 2, се наказва с лишаване от свобода до една година.

4. Key Points

- Bulgaria does not have a specific law criminalising Holocaust denial, or a general prohibition on genocide denial. However, Bulgarian law criminalizes the justification, denial, or gross belittlement of crimes against peace and humanity if the act is carried out in a manner that may incite hatred or violence against individuals or groups based on race, skin colour, religion, origin, national, or ethnic affiliation.
- The recognition of these international crimes by a national or international court is not required.
- Article 419(a)(2) of the Criminal Code further clarifies that the provision also applies to crimes committed by the National Socialist regime, although it does not explicitly reference the Holocaust.
- These offences are punishable by imprisonment from one to five years.

- The European Commission initiated an infringement procedure against Bulgaria for the partial and incorrect transposition of the EU Framework Decision on Racism and Xenophobia 2008/913/JHA (hereafter ‘EU FD 2008’), which is currently still pending at time of writing.

5. Background

The Bulgarian Criminal Code provisions relating to genocide denial were adopted very late, coming into force only on 27 May 2011, likely as a direct result of the EU FD 2008. Its original version only included crimes against peace and humanity, without any specific reference to the National Socialist regime. Apparently under the pressure of an EU infringement proceeding,³ Article 419a of the Criminal Code was amended in 2023, whereby a special reference to the National Socialist regime in paragraph two was inserted. The reluctance to directly refer to the Holocaust seems to fit into the more general memory policy in the country, one primarily focused on remembering the atrocities committed by the communists. Importantly, the procedure is still ongoing due to the lack of inclusion of hate speech as an aggravating circumstance.⁴

This practice is noticeable in a much earlier memory law, the Law Declaring the Communist Regime in Bulgaria Criminal of 2000.⁵ This Law clearly delineates the contemporary Bulgarian memory policy, stating in Article 1 (2) that the Bulgarian Communist party was responsible for leading the country to “national catastrophe,” and declaring in Article 3 the Party itself a criminal organisation (not unlike how the German Nazi organisations were characterised during the Nuremberg

³ See European Commission, October infringement package: key decisions, 3 October 2024, https://ec.europa.eu/commission/presscorner/detail/en/inf_24_4561.

⁴ See European Commission, March infringement package: key decisions, 13 March 2024, https://ec.europa.eu/commission/presscorner/detail/en/inf_24_663.

⁵ Law Declaring The Communist Regime In Bulgaria Criminal, Pron. DV. No. 37 of May 5, 2000.

Trial). Article 2 gives a very specific overview of the communist crimes, which range from very specific, such as (Article 2 (2) 2) “the human rights violations” or (Article 2 (1) 6) “the deprivation of property rights”, to more general ones, such as (Article 2 (1) 1) “the purposeful and deliberate destruction of the traditional values of European civilization” or (Article 2 (2) 6) the subordination of “the interests of the country to a foreign state.”

In addition to the much more recent history of the communist atrocities, one of the reasons for such a peculiar memory policy might lie in the collective Bulgarian memories of World War II. These are predominantly shaped by the narrative of the Bulgarians as saviours of their 48,000 citizens of Jewish origin during WWII – generally glossing over⁶ the memories of the deportation of over 11,000 Jews from the occupied Yugoslav and Greek territories which were denied Bulgarian citizenship.⁷ Such collective memories may lead to a lesser interest in the questions of Holocaust in Bulgaria, and a greater focus on the period of communism.

6. Application

To the best of our knowledge, no prosecutions on the basis of either Article 419(a) or Article 108(1)⁸ of the Criminal Code (relating to the prohibition of spreading of fascist and “other anti-democratic ideologies”) have been made in Bulgaria, despite a large number of calls to do

⁶ Nadège Ragaru, ‘Nationalization through Internationalization. Writing, Remembering, and Commemorating the Holocaust in Macedonia and Bulgaria after 1989’ (2017) 65:2 *Südosteuropa* 284-315, 284.

⁷ Deborah Mayersen, ‘Saving Bulgarian Jewry from the Holocaust: The Role of National Identity’ (2023) *Ethnopolitics* 1-18, 1.

⁸ Art. 108. (Amended – SG No. 41 of 1985, amended – SG No. 99 of 1989) (1) (Amended – SG No. 10 of 1993, amended – SG , No. 92 of 2002, amended – SG No. 38 of 2007) Whoever preaches a fascist or other anti-democratic ideology or violently changes the social and state order established by the Constitution of the Republic of Bulgaria shall be punished by imprisonment up to three years or with a fine of up to five thousand BGN.

so and despite over 100 reports of both types of crime having been filed by 2018. Furthermore, regular marches take place in Sofia commemorating a historical figure, general Hristo Lukov, who is considered to have been an “ally of Nazi Germany and a promoter of antisemitism”.⁹

Furthermore, there openly exists a far-right party that is considered to be “neo-Nazi,” the “Bulgarian National Union – New Democracy” Party, whose leader, Miroslav Ivanov, has been known to publicly make antisemitic statements, perform Nazi salutes, and deny the Holocaust.¹⁰

The inaction on the part of Bulgarian authorities when it comes to such instances has led to a case before the ECtHR (see below in section 7 Controversies).

7. Controversies

In the precursor to the ECtHR judgement of *Behar and Gutman v. Bulgaria*,¹¹ the applicants, belonging to the Jewish ethnic minority, took the Bulgarian state to court, seeking an apology from a Bulgarian politician, Volen Siderov from the Ataka party, who had made public statements, including in his two books, clearly denying the Holocaust.¹² However, their complaints were dismissed by the state prosecutors, who argued that Siderov was protected under free speech provisions.¹³

⁹ Martin Dimitrov, ‘Bulgaria Tacitly Allows Neo-Nazis to March Again’ <<https://balkaninsight.com/2018/02/16/bulgaria-tacitly-allows-neo-nazis-to-march-again-02-16-2018/>>.

¹⁰ JP Staff, ‘Bulgarian far-right candidate denies Holocaust, praises Hitler, Nazis’ <<https://www.jpost.com/diaspora/antisemitism/bulgarian-far-right-candidate-denies-holocaust-praises-hitler-nazis-672953>>.

¹¹ Behar and Gutman v. Bulgaria, no. 29335/13 (2021).

¹² Krassen Nikolov, ‘Bulgaria convicted of ignoring Holocaust denial and anti-Semitism’ <https://www.euractiv.com/section/politics/short_news/bulgaria-convicted-of-ignoring-holocaust-denial-and-anti-semitism/>.

¹³ Cnaan Liphshiz, ‘Bulgarian courts failed to punish Holocaust denier, European tribunal rules’ <<https://www.timesofisrael.com/bulgarian-courts-failed-to-punish-holocaust-denier-european-tribunal-rules/>>.

Following unsuccessful appeals to national courts, the applicants brought their case to the ECtHR. The Court considered it on the basis of Article 14 in conjunction with Article 8 of the ECHR. In a unanimous decision, the Court found that, despite the fact that the two books were not widely distributed, the impugned statements had been capable of having a sufficient impact on the sense of identity of Jews in Bulgaria, and on their feelings of self-worth and self-confidence, and had reached the “certain level” or “threshold of severity” required, given that their author later became a prominent politician. It had thus affected the applicants’ “private life”. Article 8, and, therefore, Article 14, were applicable.

Furthermore, the Court stated that Siderov’s statements “deserved no or very limited protection under Article 10, read in the light of Article 17.” As such, the inaction on the part of Bulgarian courts was a failure “to comply with their positive obligation to respond adequately to discrimination on account of the applicants’ ethnic origin, and to secure respect for their ‘private life’,” given Article’s 14 active requirement to combat racial discrimination.¹⁴

8. Further Reading

- Ragaru N, *Bulgaria, the Jews and the Holocaust. On the Origins of a Heroic Narrative* (University of Rochester Press, Rochester, NY, 2023).
- Rosensaft MZ, ‘The Ambiguity of Evil and Good: A Tale of Holocaust Rescue and Deportation in Bulgaria’, *Just Security* (May 23, 2023) <<https://www.justsecurity.org/86658/the-ambiguity-of-evil-and-good-a-tale-of-holocaust-rescue-and-deportation-in-bulgaria/>>.
- Sage SF, ‘The Holocaust in Bulgaria: Rescuing History from “Rescue”’ 31(2) *Dapim: Studies on the Holocaust* (2017) 139-145.

¹⁴ Behar and Gutman v. Bulgaria, no. 29335/13 (2021).



CROATIA





1. Source of the legal provision

Article 325 of the Criminal Code [Članak 325 Kazneni zakon], as amended by the Act on Amendments to the Criminal Code [Zakon o izmjenama i dopunama Kaznenog zakona], adopted on 12 October 2017.

Available in the original language via: Zakon.hr; <<https://www.zakon.hr/z/98/Kazneni-zakon>>

2. Legal provision in English

Public Incitement to Violence and Hatred

[...]

(4) The punishment referred to in paragraph 1 of this Article¹ shall be imposed on anyone who publicly approves, denies or significantly minimizes the criminal act of genocide, the crime of aggression, a crime against humanity or a war crime, directed against a group of people or a member of the group because of their racial, religious, national or ethnic affiliation, origin or skin colour, in a manner likely to incite violence or hatred against such a group or a member of that group.

[...]

3. Legal provision in the original language

Javno poticanje na nasilje i mržnju

[...]

(4) Kaznom iz stavka 1 ovoga članka kaznit će se tko javno odobrava, poriče ili znatno umanjuje kazneno djelo genocida, zločina agresije, zločina protiv čovječnosti ili ratnog zločina, usmjereno prema skupini

¹ Imprisonment for a term not exceeding three years.

ljudi ili pripadniku skupine zbog njihove rasne, vjerske, nacionalne ili etničke pripadnosti, podrijetla ili boje kože, na način koji je prikladan potaknuti nasilje ili mržnju protiv takve skupine ili pripadnika te skupine.
[...]

4. Key points

- Croatia's Criminal Code does not explicitly mention Holocaust denial, but criminalizes the public approval, denial, or significant minimisation of genocides in general, crimes against humanity, war crimes, and the crime of aggression where the statement is likely to incite violence or hatred against such a group (Article 325 (4)), in compliance with the EU Framework Decision 2008/913/JHA (hereafter 'EU FD 2008').
- The possible sanction for such conduct is imprisonment for a term not exceeding three years.
- The recognition of these international crimes by a national or international court is not required.
- Symbols related to antisemitism, totalitarian and similar ideologies are not banned in Croatia.

5. Background

It seems that physical violence related to antisemitism is quite rare in Croatia. According to the latest crime statistics, the majority of hate crimes are not related to antisemitism.²

However, there are antisemitic biases and prejudices, as in various online comments and discussions. Some antisemitic conspiracy theories are also being broadly spread – for instance, about the so-called

² Organization for Security and Co-operation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODIHR), Hate crime data: Croatia, <<https://hatecrime.osce.org/croatia>>.

“Jewish lobby”, an antisemitic trope referring to powerful Jewish networks ruling the global arena.³

However, Croatia is considered to have quite strong legislation related to hate crimes, and which can also be applied in cases of Holocaust denial. Article 39 of the Croatian Constitution prohibits hate-related expressions of violence. It stresses: “Any call for or incitement to war, or resort to violence, national, racial or religious hatred, or any form of intolerance shall be prohibited and punishable by law.”⁴

Croatia has adjusted its Criminal Code in accordance with the provisions of the EU Framework Decision on Racism and Xenophobia 2008/913/JHA. Article 325 has become the most prominent legal instrument for sanctioning all public manifestations of hatred and intolerance, as it forbids the incitement or distribution of content and materials initiating violence and hatred directed against any group or a member of such a group on account of their race, religion, national or ethnic origin, language, descent, skin colour, gender, sexual orientation, gender identity, disability, or any other characteristic.

6. Application

In the case of Croatia, the most recent available data regarding the criminal prosecution of denial crimes is collected and published within the broader framework of hate crimes. To the best of our knowledge, there is no statistical data today on how many crimes were prosecuted in the courts under the legal framework of denial crimes specifically after 2021 – because this data is not publicly available.

However, there is research on hate crimes that identifies the number of denial crimes for the period of 2016-2021. It demonstrates that the

³ I. Merheim Eyre, B. Aleksov, B. Bino, A. Sokol, H. Cvijanović, S. Përteshi, B. Papovic, A. Bokshi, I. Nikolić, Antisemitic Discourse in the Western Balkans. A Collection of Case Studies, 21 April 2021. <<https://www.iri.org/resources/antisemitism-remains-a-key-obstacle-to-democratic-transition-in-western-balkans/>>

⁴ Constitution of the Republic of Croatia, <https://www.sabor.hr/sites/default/files/uploads/inline-files/CONSTITUTION_CROATIA.pdf>

vast majority – 94.9% – of cases concerning Article 325 of the Criminal Code pertain to Article 325(1), which addresses the general offense of public incitement to hatred or violence. In only three cases (5.1%) was the offence classified as a public denial of international crimes referred to in Article 325 (4) of the Criminal Code. Two cases involved the denial or approval of war crimes committed against the Republic of Croatia or Croatians. One case involved both the denial and significant trivialisation of genocide in Jasenovac (referred to as a “communist lie”) and the Holocaust in general. In that period, 62 defendants, or 93.9 % of them, were prosecuted for an offence referred to in Article 325, paragraph 1 of the Criminal Code, while for the offence referred to in paragraph 4 (denial crimes), four defendants were prosecuted (6.1%).⁵

The general view is that, although in recent years there have been instances where individuals promoting revisionist views or denying genocide have faced legal consequences, prosecutions are often met with public debate about freedom of expression versus the need for accountability regarding historical truths. Activists and organisations advocating for recognition of these crimes (including Jewish organizations) have called for stricter enforcement of laws against hate speech and genocide denial. But courts have been reluctant to prosecute cases related to genocide denial fully, citing concerns over infringing upon free speech rights. Criticism is thus wide-spread⁶.

Regarding hate crimes more generally, according to the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE), Croatia regularly reports hate crime data to the ODIHR. The Croatian government is taking measures to prevent hate crimes, including by adopting

⁵ Maja Munivrana, Aleksandar Maršavelski, Ines Sučić, Ivana Eterović, Hate speech in Croatia. Empirical research of the cases in the period from 2016 to 2021. An abridged research report, p. 9-10. <<https://www.hpc.hr/wp-content/uploads/2024/11/Final-Research-Report-An-abridged-version.pdf>>

⁶ Vuk Tesija, Holocaust Denial ‘Unsanctioned in Croatia’, Jewish Leader Warns, April 19, 2023, <<https://balkaninsight.com/2023/04/19/holocaust-denial-unsanctioned-in-croatia-jewish-leader-warns/>>

a “Protocol for Procedure in Cases of Hate Crime” (2021).⁷ Antisemitic and other hate crimes in Croatia have been reported systematically since 2014 via the OSCE monitoring website. According to the Ombudsman’s Office report of 2018, hate crime cases that end up in court often result in a mere warning for the convict.⁸ In 2022, a total of 80 hate crimes were reported in Croatia, while 24 were prosecuted. Out of all reported crimes, two were antisemitic hate crimes.⁹

7. Controversies

Croatia has been criticised for not paying enough attention to its historical memory politics, which concerns topics such as the Holocaust and crimes committed by the Ustaša regime¹⁰ – although labour camps such as Jasenovac, Jadovno and Pag were known as death camps.

Following its independence in the 1990s, the new Croatian state condemned the Ustaša regime – but some of the regime’s symbols are still common, for instance, the Ustaša salute and insignia marked with “za dom spremni” (“for homeland ready”).

⁷ Organization for Security and Co-operation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODIHR), Hate crime legislation in Croatia, Criminal Code of Croatia (2011, amended in 2019), excerpts related to Hate Crime Laws, unofficial translation, <<https://hatecrime.osce.org/croatia>>

⁸ Ombudsman Office of the Republic of Croatia, ‘Report for the Ombudsman of 2018,’ March 2019. <<https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2018-godinu/?wpdmdl=4747&refresh=5f21%20f492295b11596060818>>

⁹ Organization for Security and Co-operation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODIHR), Hate crime data: Croatia, <<https://hatecrime.osce.org/croatia?year=2022>>

¹⁰ The Ustaša (Croatian Revolutionary Movement) was a Croatian ultranationalist organization, active in 1929-1945. Before the World War II, Ustaša engaged in terrorist activities against the Kingdom of Yugoslavia. During World War II in Yugoslavia, the organization became involved in the Holocaust and committed genocide – crimes against Croatian Jewish, Serb and Roma populations, as well as Muslim and Croat political dissidents. The regime established labour and death camps. See A. Korb, ‘Understanding Ustaša violence’ [2010], *Journal of Genocide Research*, 12 (1–2), pp. 1–18.

Laws are sometimes criticised too: “While the legal framework, including the Constitution, Criminal Code, and other laws, are designed to fight discrimination and hate crimes including antisemitism and xenophobia, there are legal gaps regarding hate speech and contentious symbols due to the lack of a standardised juridical approach”.¹¹

8. Further reading

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¹¹ I. Merheim Eyre et al., *ibid.*



CYPRUS





1. Source of the legal provision¹

Article 3 – Law n. 134 (I) (21 October 2011) – Law on the Combating of Certain Forms and Expressions of Racism and Xenophobia by means of Criminal Law [Ο Περί της Καταπολέμησης Ορισμένων Μορφών και Εκδηλώσεων Ρατσισμού και Ξενοφοβίας μέσω του Ποινικού Δικαίου Νόμος].

Available in the original language via: CyLaw; <https://www.cylaw.org/nomoi/enop/non-ind/2011_1_134/full.html>

2. Legal provision in English

Offences and penalties

3.

[...]

(2) Subject to the provisions of subsection (3), a person who intentionally and in a manner that disturbs public order or is threatening, abusive or insulting in any manner;

(a) publicly condones or denies or grossly trivialises the crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, and directed against a group of persons or a member of a group of persons identified on the basis of race, colour, religion, descent, or national or ethnic origin, and such conduct is manifested in a manner likely to incite violence or hatred against such a group or a member of such a group; or

¹ The authors of the Compendium would like to thank Hélio Silva (University of Lisbon) for his guidance through Cypriot law.

(b) publicly condones or denies or grossly understates the crimes set forth in Article 6 of the Statute of the International Military Court, the original English text of which is set out in Part I of the Table and the Greek translation in Part II of the Table, and is directed against a group of persons or a member of such a group identified on the basis of race, colour, religion, descent or national or ethnic origin, and such conduct is manifested in a manner likely to incite violence or hatred against such a group or a member of such a group,

is guilty of an offence and liable on conviction to a term of imprisonment not exceeding five years (5) or a fine not exceeding ten thousand euros (€10 000) or to both.

(3) The denial or gross understatement of the crimes referred to in paragraphs (a) and (b) of subsection (2) shall constitute a criminal offence under subsection (2) only if the crimes referred to have been recognised by an irrevocable decision of an international court or by a unanimous decision or unanimous resolution of the House of Representatives.

(4) Without prejudice to subsections (1) and (2), a reference to religion includes conduct which constitutes a pretext for directing acts against a group of persons or a member of such a group identified on the basis of race, colour, descent, or national or ethnic origin.

3. Legal provision in the original language

Αδικήματα και ποινές

3.

[...]

(2) Τηρουμένων των διατάξεων του εδαφίου (3), πρόσωπο το οποίο εκ προθέσεως και κατά τρόπο που διαταράσσει τη δημόσια τάξη ή που έχει απειλητικό, υβριστικό ή προσβλητικό χαρακτήρα με οποιοδήποτε τρόπο-

(α) δημόσια επιδοκιμάζει ή αρνείται ή κατάφωρα υποβαθμίζει τα εγκλήματα γενοκτονίας, εγκλήματα κατά της ανθρωπότητας και εγκλήματα πολέμου, όπως αυτά ορίζονται στα άρθρα 6, 7 και 8 του Καταστατικού του Διεθνούς Ποινικού Δικαστηρίου, και στρέφεται κατά ομάδας προσώπων ή μέλους ομάδας προσώπων που προσδιορίζεται βάσει της φυλής, του χρώματος, της θρησκείας, των γενεαλογικών καταβολών ή της εθνικής ή εθνοτικής καταγωγής και η συμπεριφορά του αυτή εκδηλώνεται κατά τρόπο που είναι πιθανόν να υποκινήσει βία ή μίσος κατά μιας τέτοιας ομάδας ή μέλους της ή

(β) δημόσια επιδοκιμάζει ή αρνείται ή κατάφωρα υποβαθμίζει τα εγκλήματα τα οποία ορίζονται στο άρθρο 6 του Καταστατικού του Διεθνούς Στρατοδικείου, του οποίου άρθρου το κείμενο στο αγγλικό πρωτότυπο εκτίθεται στο Μέρος I του Πίνακα και η ελληνική μετάφραση στο Μέρος II του Πίνακα, και στρέφεται κατά ομάδας προσώπων ή μέλους τέτοιας ομάδας που προσδιορίζεται βάσει της φυλής, του χρώματος, της θρησκείας, των γενεαλογικών καταβολών ή της εθνικής ή εθνοτικής καταγωγής και η συμπεριφορά του αυτή εκδηλώνεται κατά τρόπο που είναι πιθανόν να υποκινήσει βία ή μίσος κατά μιας τέτοιας ομάδας ή μέλους της,

είναι ένοχο αδικήματος και, σε περίπτωση καταδίκης, υπόκειται σε ποινή φυλάκισης που δεν υπερβαίνει τα πέντε χρόνια (5) ή σε χρηματική ποινή που δεν υπερβαίνει τις δέκα χιλιάδες Ευρώ (€10 000) ή και στις δύο αυτές ποινές.

(3) Η άρνηση ή κατάφωρη υποβάθμιση των εγκλημάτων που αναφέρονται στις παραγράφους (α) και (β) του εδαφίου (2) συνιστά ποινικό αδίκημα δυνάμει του εδαφίου (2) μόνο αν τα εγκλήματα στα οποία αναφέρεται έχουν αναγνωριστεί με αμετάκλητη απόφαση διεθνούς δικαστηρίου ή με ομόφωνη απόφαση ή με ομόφωνο ψήφισμα της Βουλής των Αντιπροσώπων.

(4) Άνευ επηρεασμού των εδαφίων (1) και (2), αναφορά στη θρησκεία καλύπτει και συμπεριφορά η οποία συνιστά πρόσχημα για να κατευθύνονται οι πράξεις κατά ομάδας προσώπων ή μέλους τέτοιας

ομάδας που προσδιορίζεται βάσει φυλής, χρώματος, γενεαλογικών καταβολών, ή εθνικής ή εθνοτικής καταγωγής.

4. Key points

- There is no specific legislation in Cyprus that criminalises denial of the Holocaust. However, Cyprus does penalise the public denial, promotion or gross trivialization of Nazi crimes as well as crimes of genocide, crimes against humanity and war crimes more generally, thereby seeking to transpose the EU Framework Decision 2008/913/JHA (hereafter ‘EU FD 2008’).
- This applies only when such conduct is carried out intentionally, in a manner likely to incite violence or hatred, and where it disturbs public order or is threatening, abusive, or insulting in any way.
- Additionally, these international crimes must have been previously recognised by an irrevocable decision of an international court or by a unanimous decision or unanimous resolution of the House of Representatives.
- Penalties for denialism may include imprisonment for up to five years, or a fine not exceeding €10,000.

5. Background

The provision originally dates from 2011,² although revised versions were adopted in 2015,³ 2016,⁴ and 2017.⁵ In Cyprus, Holocaust re-

² Επίσημη Εφημερίδα της Δημοκρατίας, ν. 4299: <<https://www.mof.gov.cy/mof/gpo/gazette.nsf/All/338182762BAB7DF8C225872C003C96FC?OpenDocument>>.

³ Law n. 45 (I) 2015. Επίσημη Εφημερίδα της Δημοκρατίας, ν. 4503: <<https://www.mof.gov.cy/mof/gpo/gazette.nsf/All/A65347E01F56F4FFC225872C004063B4?OpenDocument>>.

⁴ Law n. 94 (I) 2016. Επίσημη Εφημερίδα της Δημοκρατίας, ν. 4576: <https://www.cylaw.org/nomoi/arith/2016_1_094.pdf>.

⁵ Law n. 30 (I) 2017. Available here: <https://www.cylaw.org/nomoi/arith/2017_1_030.pdf>.

membrance and the fight against antisemitism is determined by general anti-discrimination laws and educational initiatives. Although there are no specific laws on Holocaust remembrance, the country's actions have reflected a commitment to promoting remembrance and preventing discrimination, notably since the 2011 law and amendments referenced above – which references the crimes stated in the Statute of the International Military Tribunal.

At the same time, there exists Cypriot legislation that directly seeks to address issues of genocide denial, such as in the case of the Armenian genocide by the Ottomans. The criminalization of the denial of the 1915 Armenian genocide by the Ottoman Empire took effect in 2015 through a parliamentary resolution, a move seen as directly linked to the Turkish occupation of the Northern part of the island, which has not been internationally recognised.⁶ Likewise, Law 24 (I) 2001 “on the Establishment of 15 July 1974 as a Day of Memory and Tribute for Those who Fell or Fought in Defence of Democracy” is worth mentioning. This remembrance day recalls the resistance and the massacre of those who refused to take over the Presidential Palace during the coup d'état that deposed president Makarios III, which was then followed by the Turkish invasion.

6. Application

To the best of our knowledge, so far, there have been no criminal convictions in Cyprus related to Holocaust denial on the basis of this law. There has been, however, a conviction for racist posts made online against a child based on the offence of the dissemination of racist and xenophobic material online.⁷

⁶ *Reuters*, 2 april 2015: <<https://www.reuters.com/article/lifestyle/cyprus-criminalizes-denial-of-1915-armenian-genocide-by-turks-idUSKBN0MT0YR/>>.

⁷ *Financial Mirror*, 10 january 2019: <<https://www.financialmirror.com/2019/01/10/cyprus-first-conviction-for-posting-racist-comments-on-social-media>>.

7. Controversies

Although we did not find controversial issues that relate directly to this legal provision, and despite legislative efforts on issues related to discrimination and racism, Cyprus faces a tense political climate in this context, given the large numbers of migrants arriving on the island and the conflict between the Turkish Northern and the Greek Southern parts of the island. At the same time, Cyprus also still has great difficulties in fully integrating its Roma community.⁸

8. Further reading

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- Mannergren J. *et alii*, 'Cyprus: Parallel peace(s) and competing nationalisms', *Peace and the Politics of Memory*, Manchester University Press, 2024, pp. 33-64.

⁸ Cf. *Cyprus Country Report: Non-discrimination*, European Network of Legal Experts in Gender Equality and Non-discrimination, 2023. Available here: <<https://www.mig-polgroup.com/wp-content/uploads/2024/01/Cyprus-country-report-non-discrimination-DSBB23005ENN.pdf>>.



CZECH REPUBLIC





1. Source of the legal provision¹

Section 405 of the Criminal Code of 2009 [*Trestní Zákoník*]

Available in the original language via *Codexis*: <https://next.codexis.cz/legislativa/CR17044_2024_04_01>

2. Legal provision in English

Denying, questioning, approving and justifying genocide

Whoever publicly denies, questions, approves or tries to justify Nazi, communist or other genocides, or Nazi, communist or other crimes against humanity or war crimes or crimes against peace shall be punished by imprisonment for six months to three years.

3. Legal provision in the original language

Popírání, zpochybňování, schvalování a ospravedlňování genocidia

Kdo veřejně popírá, zpochybňuje, schvaluje nebo se snaží ospravedlnit nacistické, komunistické nebo jiné genocidium nebo nacistické, komunistické nebo jiné zločiny proti lidskosti nebo válečné zločiny nebo zločiny proti míru, bude potrestán odnětím svobody na šest měsíců až tři léta.

¹ Special thanks for Dr. Neela Winkelmann for clarifying crucial issues covered in this entry.

4. Key points

- In 2001, several years prior to the adoption of the EU Framework Decision on Racism and Xenophobia 2008/913/JHA (hereafter ‘EU FD 2008’), but also the denial of communist and other genocides; it also covers other genocides, crimes against humanity, war crimes and crimes against peace.
- The Czech denial ban provision neither requires any incitement to hatred or likely disturbance of the public peace, nor any recognition of the historical crime by a court.
- These offences are punishable by imprisonment for a term ranging from six months to three years.
- In addition to crimes committed by the Nazi and communist regimes, the genocide against the Roma is also a significant topic of public discourse in the Czech Republic.
- So far, the case law has been more focused on the investigation of communist crimes themselves than their denial under the law of 2001. Still, there have been several cases of Holocaust denial after 2001.

5. Background

The Czech Republic was among the first countries in CEE to criminalise both the denial of the Holocaust and the Soviet crimes as soon as 2001, significantly before required to do so by the EU FD 2008. The provision was adopted in the “context of an increasing dissemination of denial statements linked to ultra-right groups and movements”² The history of the 2001 reform can be traced back to the Criminal Code of 1961. This code already criminalised the defamation of any

² Piotr Bąkowski, ‘Holocaust denial in Criminal law: Legal frameworks in selected EU Member States’ (*European Parliament Research Service (EPRS)*, 2022) <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698043/EPRS_BRI\(2021\)698043_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698043/EPRS_BRI(2021)698043_EN.pdf)>.

nation, race and belief in Sections 198, the act of genocide in Section 259, and the support and propagation of fascism and similar movements proclaiming national, racial and religious hatred in Section 260, and the public condoning of said movements in Section 261.³

The 1961 Criminal Code continued to be valid even after the fall of communism in 1989, although it was amended multiple times. Moreover, the debate over the 2001 reform⁴ was taking place at a time where the only unreformed communist party in Central and Eastern Europe (CEE) – the Communist Party of Bohemia and Moravia (KSČM), which had registered in 1990 as a territorial branch of the old Communist Party of Czechoslovakia (KSČ) – was still represented in both houses of Parliament, and an important player on and behind the scenes in Czech politics, including in the election of the President of the country. The KSČM only dropped out of Parliament following defeat in the elections in 2021. In general, the social democrats (ČSSD) were also not keen on discussing communist crimes, and were opposed to the establishment of new memory institutions. They too, once a dominant party in the country, also dropped out of Parliament in 2021.

6. Application

A small but persistent and fairly well-organised extreme right-wing movement with antisemitic views emerged in the Czech Republic in the 1990s, and authorities thus pursued Holocaust-denial investigations and prosecutions. The first criminal case was initiated in 2001, when a Prague publisher released a Czech translation of Adolf Hitler’s “Mein

³ Section 261. Who publicly shows sympathy for fascism or for another similar movement mentioned in Section 260 will sentenced to imprisonment for six months: National Assembly of the Czechoslovak Socialist Republic, ‘Criminal Code’ (*National Gazette*, 8 December 1961) <<https://www.ustrcr.cz/data/pdf/projekty/usmrceni-hranice/dokumenty/zakon140-1961.pdf>>.

⁴ Parliament of the Czech Republic ‘Law of 25 October 2000 amending Act No. 140/1961 Coll Criminal Code, as amended’ (*Collection of Laws [Zakony Pro Lidi]*, 01 December 2000) <<https://www.zakonyprolidi.cz/cs/2000-405>>.

Kampf”.⁵ The publisher, Michal Zitko, was charged with disseminating Nazi propaganda and faced up to eight years in prison.⁶ Although the publisher initially landed a conditional sentence, he was ultimately acquitted due to lack of evidence before the Supreme Court in March 2005.⁷

According to a briefing by the European Council of January 2022, Section 405 of the Criminal Code has recently been evoked in the context of the Nazi genocide against Roma and Sinti, and there has been renewed efforts to create a memorial for these victims at the location of a former “Roma camp” in Lety near Písek.⁸ Lety is the most prominent site of memory related to Czech-Romani history, which is why the pig farm that was built on this public space has become a symbol for failed memory politics and anti-Romani sentiments in Czech society.⁹ The Czech Republic was singled out in a European Parliament resolution for failing to remove the pig farm and create “a graceful memorial” to honour victims of the Romani Holocaust.¹⁰

Special attention was given to investigate communist crimes, rather than focusing on their denial under the reform of 2001. This was not without precedent. A special Office for the Documentation and Investigation of Communist Crimes of the Police of the Czech Republic

⁵ Jan Richter, ‘Czech court clears publishers of Hitler speeches’ (*Radio Prague International*, 09 November 2014) <<https://english.radio.cz/czech-court-clears-publishers-hitler-speeches-8284285>>.

⁶ Kate Connolly, ‘Czechs try to ban Hitler’s book’ (*The Guardian*, 16 June 2000) <<https://www.theguardian.com/world/2000/jun/16/books.booksnews>> .

⁷ CTK, ‘Czech Supreme Court overturns acquittal on publication of Hitler’s speeches, wants more evidence’ (*Romea*, 07 July 2018) <https://romea.cz/en/czech-republic/czech-supreme-court-overturns-acquittal-on-publication-of-hitler-s-speeches-wants-more-evidence#google_vignette>.

⁸ Bąkowski (n 3).

⁹ Jiří Smlal ‘The Stench of Pigs and the Authority of Historians: Czech Debates About the Lety Concentration Camp’ (*Cultures of History Forum*, 25 January 2022) <<https://www.cultures-of-history.uni-jena.de/czech-republic/czech-debates-about-the-lety-concentration-camp>>.

¹⁰ Brian Kenety ‘Lety u Písku: The politics behind the ‘concentration camp’ pig farm’ (*Radio Prague International*, 19 May 2005) <<https://english.radio.cz/lety-u-pisku-politics-behind-concentration-camp-pig-farm-8099096>>.

(ÚDV) was established in 1995, and it has successfully led to about 70 final court verdicts according to their most recent published data.¹¹ Investigation responsibilities enable the ÚDV to expose and to prosecute criminal acts from the period of 1948-1989.

Moreover, in 2019, the last Secretary General of the KSČ, Milouš Jakeš, the last prime minister of the Czechoslovak Socialist Republic (ČSSR), Lubomír Štrougal, and one of the last ministers of the Interior, Vratislav Vajnar, were accused by the Czech prosecutors of the killing of fleeing civilians from the Iron Curtain in the ČSSR.¹² The first two passed away before their trials began, whereas the latter passed away in 2023 before sentencing. In June 2024, a trial was opened against another perpetrator in the line of command, Jan Muzikář, a top former commander of the border guards of the ČSSR.¹³

7. Controversies

The first controversy is related to the absence of distinction between communist crimes and the Holocaust. The ‘denial laws’ in the Czech Republic were adopted after presenting various arguments such as “the need to protect the ‘historical truth’ and ‘freedom’, or to secure the dignity of the victims, survivors and their descendants”.¹⁴ A key debate took place around the proposal of Jiří Payne, a member of parliament, who argued the need to protect freedom from extremist political pow-

¹¹ Czech Republic Police, ‘The Office for the Documentation and the Investigation of the Crimes of Communism Police of the Czech Republic’ [2024] <<https://www.policie.cz/clanek/the-office-for-the-documentation-and-the-investigation-of-the-crimes-of-communism-police-of-the-czech-republic.aspx>>.

¹² The Associated Press, ‘3 former top Czech communist face misuse of power charges’ (*AP News*, 26 November 2019) <<https://apnews.com/general-news-40b1e2dac20b43cdb2fa3fa36bc640ab>>.

¹³ Daniela Lazarová ‘Former communist border patrol chief denies responsibility for killings’ (*Radio Prague International*, 12 June 2024) <<https://english.radio.cz/former-communist-border-patrol-chief-denies-responsibility-killings-8819735>>.

¹⁴ Max Steuer, ‘The (Non)Political Taboo: Why Democracies Ban Holocaust Denial’ (2017) 49(6) *Sociológia* 673.

ers and to limit the spread of hatred and intolerance.¹⁵ However, the adoption of the “denial laws” lacked the distinction between Nazi and communist crimes. Some experts, like Professor of law Zdeněk Jičínský, objected to the inclusion of the crimes of Nazism and communism at the same level, arguing that, while Nazis were definitively “directed towards liquidation of the Czech nation”, many Czechs were helping communism, so in the latter case “determining the border between us and them, between initiators and perpetrators, seduced, frightened and totally innocent is extremely difficult and usually it results in smaller or greater alibismus, in efforts to hide one’s own part of responsibility”. Hence, his argument appealed to the responsibility of Czechs for communist crimes, as opposed to Nazi crimes. In addition, in 2008, the Czech government initiated “*The Prague Declaration on European Conscience and Communism*”, calling for “Europe-wide condemnation of, and education about, the crimes of communism.”¹⁶

The second controversy involves political challenges for memory institutions, in particular, the Institute for the Study of Totalitarian Regimes (ÚSTR) – which was established in 2007 and carries out academic research into two periods in the modern history of Czechoslovakia: the period of Nazi occupation in 1939-1945 and the period of communist rule in 1948-1989.¹⁷ The Institute has been criticised for being too political, as its members allegedly “became primarily ideological tools of the new governing post-communist elites that served to centralise control of the collective ‘national’ memory.”¹⁸ Broadly, the newly

¹⁵ Ibid, 682.

¹⁶ Radio Free Europe ‘Interview: How Much Do Western Europeans Know About Communist Crimes?’ (*Radio Liberty*, 13 October 2011) <https://www.rferl.org/a/interview_how_much_does_west_know_about_communist_crimes/24358883.html> .

¹⁷ Institute for the Study of Totalitarian Regimes, ‘About Us’ [2024] <<https://www.ustrcr.cz/en/about-us/>> .

¹⁸ Tomas Sniegon, ‘Implementing post-communist national memory in the Czech Republic and Slovakia’ in Conny Mithander, John Sundholm and Adrian Velicu (eds.) *European Cultural Memory Post-89* (Brill 2013).

established memory institutions are under pressure from the political left and former communist structures, which also leads to internal conflicts over leadership, and the streamlining of these institutions. These institutions include not only the ÚSTR, but also the Security Services Archive (ABS),¹⁹ and the 20th Century Museum in Prague.²⁰

The third controversy is linked with the memory of the crimes against Roma minorities during the Second World War, when 95 percent of the Roma population in the Czech Republic were killed.²¹ In the Czech Republic, this genocide has been recognized under the terms “Roma Holocaust”, “Holocaust of the Roma” or “Genocide of the Roma”.²² Sometimes referred to as the “Forgotten Holocaust,” the Roma Genocide was excluded from the history of the Second World War for decades after its end. There were no Roma witnesses at the Nuremberg Trials.²³ The lack of recognition of the crime reflects the long-standing discrimination against Roma people in Europe. The Roma genocide is a subject that is still readily neglected by Czechs.

¹⁹ Security Services Archive, ‘About us’ (*Institute for the Study of Totalitarian Regimes*, 14 February 2013) <<http://old.abscr.cz/en/the-archive-of-security-forces>>.

²⁰ Twentieth Century Museum, ‘Homepage’ [2024] <<https://www.muzeum20stoleti.cz/en/>>.

²¹ Michael Longaro, ‘Czechs discuss holocaust denial at public forum’ (*Radio Prague International*, 24 May 2006) <<https://english.radio.cz/czechs-discuss-holocaust-denial-public-forum-8619499>>.

²² Council of Europe, ‘Czech Republic – Recognition of the Roma Genocide’ [2024] <https://www.coe.int/en/web/roma-genocide/virtual-library/-/asset_publisher/M35KN9V-VoZTe/content/cyprus-recognition-of-the-genocide, <https://www.coe.int/en/web/roma-genocide/czech-republic>>.

²³ Margareta Matache, Gabriela Ghindea and Matei Demetrescu, ‘The Roma Holocaust/Roma Genocide in Southeastern Europe: Between Oblivion, Acknowledgment, and Distortion’ (*The Auschwitz Institute for the Prevention of Genocide and Mass Atrocities and the Roma Program at the François-Xavier Bagnoud Center for Health and Human Rights, Harvard University* 2022) <<https://fxb.harvard.edu/wp-content/uploads/sites/2464/2022/11/The-Roma-Holocaust-Roma-Genocide-in-Southeastern-Europe-Report-1.pdf>>.

8. Further reading

- Laurent Pech, 'The Law of Holocaust Denial in Europe', in Ludovic Hennebel and Thomas Hochmann (eds), *Genocide Denials and the Law* (Oxford University Press 2011).
- Max Steuer, 'The (Non)Political Taboo: Why Democracies Ban Holocaust Denial' (2017) 49(6) *Sociológia* 673.
- Jakub Drápal, *Defending Nazis in Postwar Czechoslovakia: The Life of K. Resler, Defence Counsel ex officio of K. H. Frank* (Karolinum Press 2018).
- Roman David, *Communists and their Victims: The Quest for Justice in the Czech Republic* (University of Pennsylvania Press 2018).
- Jiří Příbáň, 'Politics of Public Knowledge in Dealing with the Past: Post-Communist Experiences and Some Lessons from the Czech Republic' in Uladzislau Belavusau and Aleksandra Gliszczynska-Grabias (eds.) *Law and Memory: Towards Legal Governance of History* (Cambridge University Press 2017) 195.
- Tomas Sniegon, 'Implementing post-communist national memory in the Czech Republic and Slovakia' in Conny Mithander, John Sundholm and Adrian Velicu (eds.) *European Cultural Memory Post-89* (Brill 2013).
- Nadya Nedelsky, 'Divergent Responses to a Common Past: Transitional Justice in the Czech Republic and Slovakia' (2004) 33(1) *Theory and Society* 65.
- Nadya Nedelsky, 'Czechoslovakia, and the Czech and Slovak Republics', in Lavinia Stan (ed.) *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past* (Routledge, 2009).



DENMARK





1. Source of the legal provision

Denmark has no specific Holocaust denial ban; however, the Danish government has argued that the hate speech provision in Section 266(b) of the Criminal Code [Straffeloven] as amended by Consolidation Act no. 1851 of 20 September 2021 [lovbekendtgørelse nr. 1650 af 20. september 2021] could be applied to the denial of mass crimes.

Accessible in the original language via: Retsinformation; <<https://www.retsinformation.dk/eli/lta/2021/1851>>

2. Legal provision in English

Anyone who publicly or with intent to disseminate in a wider circle makes a statement or other communication by which a group of persons is threatened, insulted or degraded because of their race, skin colour, national or ethnic origin, faith or sexual orientation is punishable by a fine or imprisonment for up to two years.

(Subsection 2) When sentencing, it shall be considered a particularly aggravating circumstance that the offence has the character of propaganda activity.

3. Legal Provision in the original language

Den, der offentligt eller med forsæt til udbredelse i en videre kreds fremsetter udtalelse eller anden meddelelse, ved hvilken en gruppe af personer trues, forhånes eller nedværdiges på grund af sin race, hudfarve, nationale eller etniske oprindelse, tro eller seksuelle orientering, straffes med bøde eller fængsel indtil 2 år.

(Stk. 2) Ved straffens udmåling skal det betragtes som en særligt skærpende omstændighed, at forholdet har karakter af propaganda-virksomhed.

4. Key Points

- Despite pressure from the EU, Denmark has not explicitly banned Holocaust denial, nor is there specific legislation concerning the denial or distortion of mass crimes in general.
- While the government points to the applicability of hate speech legislation, there appear to have been no convictions for Holocaust denial so far.
- The general hate speech law, Section 266(b) of the Criminal Code, falls short of the requirements of the EU Framework Decision 2008/913/JHA (hereafter ‘EU FD 2008’).
- Danish resistance towards the criminalisation of Holocaust denial is often portrayed in the context of a specific “Nordic” tradition that puts great emphasis on the exercise of free speech.

5. Background

Denmark neither has a law which specifically criminalises the denial of the Holocaust, nor is there any provision which outlaws the approval, trivialisation and denial of unspecified genocides or crimes against humanity in general. The Danish government opposed plans to harmonise legislation on hate speech bans as part of the EU FD 2008 alongside Sweden and the United Kingdom.¹ It was joined in its rejection by academics nationwide.² The EU FD 2008, which was adopted on 28 November 2008, has prompted no legislative action in Denmark. The

¹ B. Pedersen, ‘Skal stater lovgive om historieskrivning?’, *Kristeligt Dagblad* (5 January 2012) <<https://www.kristeligt-dagblad.dk/kirke-tro/skal-stater-lovgive-om-historieskrivning>>.

² ‘DIIS-forsker anbefaler nej til EU-forbud mod Holocaust-benægtelse’ (*Dansk Institut for Internationale Studier*, 9 February 2007) <<https://www.diis.dk/aktivitet/diis-forsker-anbefaler-nej-til-eu-forbud-mod-holocaust-benaegtelse>>; V. Greve, ‘Krænkende ytringer og strafferetten’ [2007] Volume 94, No. 3, *Nordisk Tidsskrift for Kriminalvidenskab*, p. 250.

Danish Ministry of Justice has regarded existing legislation, in particular the hate speech offence in Section 266(b) of the Criminal Code, as sufficient to meet the obligation of the EU FD 2008 to criminalise the denial of certain mass crimes when it carries the danger of inciting violence or hatred against groups defined by reference to race, colour, religion, descent, or national or ethnic origin.³ However, the European Commission, in its 2014 report on the implementation of the EU FD 2008, pointed out that the EU FD 2008 defines victims of incitement as a group of persons or a member of such group, whereas the Danish law “only make[s] express reference to a group of people”.⁴ Nevertheless, the European Commission has not opened an infringement procedure for inadequate transposition of the EU FD 2008 so far.

The European Commission against Racism and Intolerance (ECRI), the human rights monitoring body of the Council of Europe, has been more outspoken in its criticism of Danish legislative inaction. As early as 2005, the ECRI expressed its “[deep] regrets [on] the fact that Holocaust denial and revisionism are not a crime in Denmark.”⁵ In its 2012 and 2017 reports on Denmark, the ECRI reiterated its “recommendation that the public denial, trivialisation or condoning of the Holocaust as well as the production, publication and dissemination of Nazi memorabilia and Holocaust denial and revisionism material be forbidden”.⁶ Instead, the Danish government has pointed to its

³ Pedersen, 2012, see above note 1.

⁴ Report from the Commission to the European Parliament and the Council on the implementation of Council EU FD 2008, COM/2014/027 (*EUR-Lex*, 27 January 2014), para. 3.1.1 <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52014DC0027>>.

⁵ Third Report on Denmark (*ECRI*, adopted on 16 December 2005), p. 22 <<https://rm.coe.int/third-report-on-denmark/16808b569e>>.

⁶ Fourth report on Denmark, (*ECRI*, adopted on 23 March 2012), p. 31 <<https://rm.coe.int/fourth-report-on-denmark/16808b56a1>>; Fifth report on Denmark, (*ECRI*, adopted on 23 March 2017, p. 12, note 7 <<https://rm.coe.int/fifth-report-on-denmark/16808b56a4>>, in its report in 2017 the ECRI broadened its recommendation to criminalise “public denial, trivialisation, justification or condoning, with a racist aim” of mass crimes in general, see p. 12.

efforts to “maintain and promote knowledge about the Holocaust”,⁷ and recently launched an action plan to combat antisemitism, which foresees that teaching about the Holocaust in primary and lower secondary schools and upper secondary education be mandatory.⁸ Meanwhile, a report by the state-run *Ytringsfrihedskommissionen* [Freedom of Expression Commission] emphasised “a long-standing social tradition of not criminalising denial of the Holocaust or other historical events”.⁹ Scholars have argued that the resistance to adopt a Holocaust Denial law reflects a specific approach towards freedom of expression in Denmark which is influenced by the dominant doctrine of absolute protection of free speech in US constitutionalism.¹⁰ Even more relevant may be the particular collective memory of the Holocaust in Denmark, where an *ad-hoc* rescue mission by citizens and government workers enabled the evacuation of the majority of Danish Jews to Sweden in 1943 and contributed to one of the highest Jewish survival rates of all German-occupied countries.¹¹ Therefore, the lack of memory laws in Nordic countries has been explained by scholars with the fact that Denmark did not experience such a difficult identity crisis and trauma as Germany and France where Holocaust denial triggers that trauma.¹²

⁷ Appendix of the Third Report on Denmark, (ECRI), comment section, p. 43 <<https://rm.coe.int/government-comments-on-the-third-report-on-denmark/16808b56aa>>.

⁸ Handlingsplan mod antisemitisme [action plan against antisemitism], (*Justitsministeriet*, January 2022) p. 14 <<https://www.justitsministeriet.dk/wp-content/uploads/2022/01/Antisemitisme-handlingsplan.pdf>>.

⁹ Betænkning om ytringsfrihedens rammer og vilkår i Danmark (*Ytringsfrihedskommissionen*, 2020), p. 538 <https://www.justitsministeriet.dk/wp-content/uploads/2020/04/betaenkning_nr_1573_2020_del_2.pdf>.

¹⁰ L. Pech, ‘The Law of Holocaust Denial in Europe’, in L. Hennebel, T. Hochmann (eds), *Genocide Denials and the Law* (2011), p. 189.

¹¹ Entry on Denmark in the Holocaust Encyclopaedia on the website of the United States Holocaust Memorial Museum <<https://encyclopedia.ushmm.org/content/en/article/denmark>>.

¹² K. Nuotio, ‘Holocaust Denial as Memory Criminal Law Seen Through the Nordic Lenses’, [2023] Volume 11, No. 1, *Bergen journal of criminal law and criminal justice*, p. 20 <<https://helda.helsinki.fi/server/api/core/bitstreams/bc586024-18b0-4caf-b0d8-fb462cde9cee/content>>.

6. Application

Despite the government's insistence that the EU FD 2008 obligations are covered by Section 266(b) Criminal Code,¹³ it appears that there have been no convictions on the sole basis of a contestation of the Holocaust under this provision so far.¹⁴ However, the extradition of a Dane and a German to Germany, on charges of publishing and distributing CDs with strongly racist messages and Holocaust denial, in February 2009 have been interpreted as signs of stronger European cooperation on this matter.¹⁵ In 2024, a man was sentenced to seven days of suspended imprisonment on the basis of Section 266(b) of the Criminal Code for running two websites that contained racist and antisemitic "jokes".¹⁶ At least one statement could be qualified as an approval of the Holocaust.¹⁷ The court, however, did not distinguish between the nature of the different expressions, as it only had to determine that they threatened, insulted or degraded groups of people because of race, skin colour, national or ethnic origin or faith.

¹³ Pedersen, 2012, see above note 1.

¹⁴ See EU-lovgivning om Holocaust-benægtelse, (*Folkedrab.dk*, January 2010) <<https://folkedrab.dk/temaer/holocaust-benaegtelse/ytringsfrihed/eu-lovgivning-om-holocaust-benaegtelse>>; also since 2010 there have been no reports about any criminal conviction specifically for Holocaust denial.

¹⁵ J. Adam, 'Volksverhetzung: Auslieferung aus Dänemark', (*Endstation rechts*, 23. February 2009) <<https://www.endstation-rechts.de/news/volksverhetzung-auslieferung-aus-danemark>>; Folkedrab.dk, 2010, see above note 14.

¹⁶ Retten i Holstebro [Holstebro Court], Judgement, 3 April 2024 <<https://domstol.dk/holstebro/aktuelt/2024/4/mand-doemt-for-overtraedelse-af-straffelovens-266-b-for-vittigheder-online/#266%20b>>.

¹⁷ The indictment contains quotes of the 129 "jokes", among them "What's worse than the Holocaust? – Six million Jews", see L. Kirkebæk-Johansson, E. Mortensen, 'Professor efter racismedom: Ironien får svære kår' DR (5 April 2024) <<https://www.dr.dk/nyheder/indland/professor-efter-racismedom-ironien-faar-svaere-kaar>>.

7. Controversies

The above-mentioned conviction contrasts with a seeming consensus in Danish society on the unrivalled importance of the freedom of speech. Historians and members of the Danish Jewish community have been opposed to an explicit ban on Holocaust denial, and have instead prioritised education as a means against negationism.¹⁸ Predictably, the conviction in 2024 sparked criticism, with one law professor doubting whether Section 266(b) of the Criminal Code allows “courts to take into account the irony that often permeates Danish satire”.¹⁹ The prosecutor who had led the indictment confirmed that the prosecution had been aiming to test the limits of the application of the law in order to set a precedent.²⁰

8. Further Reading

- R. Kahn, ‘Five thoughts about the repeal of Denmark’s blasphemy ban’, [2018] Volume 19, No. 2, Rutgers Journal of Law and Religion, pp. 120-148, available at SSRN <<https://ssrn.com/abstract=3112778>>.
- K. Nuotio, ‘Holocaust Denial as Memory Criminal Law Seen Through the Nordic Lenses’, [2023] Volume 11, No. 1, Bergen journal of criminal law and criminal justice, p. 20 <<https://helda.helsinki.fi/server/api/core/bitstreams/bc586024-18b0-4caf-b0d8-fb462cde9cee/content>>.
- Fourth report on Denmark, (ECRI, adopted on 23 March 2012), p. 31 <<https://rm.coe.int/fourth-report-on-denmark/16808b56a1>>; Fifth report on Denmark, (ECRI, adopted on 23 March 2017, p. 12, note 7 <<https://rm.coe.int/fifth-report-on-denmark/16808b56a4>>.

¹⁸ N. Hein, ‘I Holland kan man nu straffes med fængsel for at benægte holocaust. Men sådan skal det ikke være i Danmark’, *Kristeligt Dagblad* (25 July 2023) <<https://www.kristeligt-dagblad.dk/kirke-og-tro/danske-joeder-nej-til-straf-holocaustbenaegelse-som-i-holland>>.

¹⁹ L. Kirkebæk-Johansson, E. Mortensen, ‘Professor efter racismedom: Ironien får svære kår’ *DR* (5 April 2024) <<https://www.dr.dk/nyheder/indland/professor-efter-racismedom-ironien-faar-svaere-kaar>>.

²⁰ Ibid.



ESTONIA





1. Source of the legal provision

Section 151 of the Criminal Code [*Karistusseadusti*] as amended by the Act amending the Criminal Code, the Code of Criminal Procedure and the Code of Misdemeanour Procedure (incitement to hatred and hate crimes) 232 SE, entered into force on 12 June 2023

Available in the original language via The National Assembly [*Riigi Kogu*]; <<https://www.riigikogu.ee/tegevus/eelnoud/eelnou/da6b6990-df0b-460d-aa87-447d656e184f/karistusseadustiku-kriminaalmenetluse-seadustiku-ja-vaarteomenetluse-seadustiku-muutmise-seadus-vaenu-ohutamine-ja-vaenumotiiviga-kuriteod/>>

2. Legal provision in English

Incitement to hatred

(1) For public incitement to hatred, violence or discrimination against a group of persons or a member of a group on the basis of nationality, race, colour, sex, disability, language, origin, religion, sexual orientation, political beliefs or property or social status in a manner that gives reason to fear an act of violence following the incitement or a significant threat to the safety of society, – shall be punished with a monetary penalty or imprisonment of up to one year.

(2) For the same act, if it is committed: 1) repeatedly, or 2) by the group – shall be punished with a monetary penalty or imprisonment for up to three years.

(3) For the act provided for in subsection 1 or 2 of this section, if it has been committed by a legal entity, – shall be punished with a financial penalty’.

3. Legal provision in the original language

Vaenu õhutamise

(1) Avaliku õhutamise eest vihkamisele, vägivaldale või diskrimineerimisele isikute rühma või rühma liikme vastu rahvuse, rassi, nahavärviga, soo, puude, keele, päritolu, usutunnistuse, seksuaalse sättumuse, poliitiliste veendumuste või varalise või sotsiaalse seisundi tunnuse alusel viisil, mis annab aluse karta õhutusele järgnevat vägivaldtegu või ühiskonna turvalisuse olulist ohtu sattumist, – karistatakse rahalise karistuse või kuni üheaastase vangistusega.

(2) Sama teo eest, kui see on toime pandud: 1) korduvalt, või 2) grupi poolt – karistatakse rahalise karistuse või kuni kolmeaastase vangistusega.

(3) Käesolevas paragrahvi lõikes 1 või 2 sätestatud teo eest, kui selle on toime pannud juriidiline isik, – karistatakse rahalise karistusega.

4. Key points

- Estonia does not possess any specific denial ban, but denialism is covered by hate speech legislation (Section 151 Criminal Code) allowing, in its simple form, for sanctions of a monetary penalty or imprisonment of up to one year.
- This lack of specific denial ban has been influenced by the fact that, while the Holocaust question remains prominent in Latvia and Lithuania due to the populous local Jewish communities that existed there in the pre-war era, it is less urgent in Estonia where the Jewish population was not sizable.¹
- The lack of specific denial ban, among other things, has led to an infringement procedure by the European Commission for not fully transposing EU Framework Decision on Racism and Xenophobia

¹ Anton Weiss-Wendt, 'Why the Holocaust Does Not Matter to Estonians' (2008) 39(4) *Journal of Baltic Studies* 475.

2008/913/JHA (hereafter ‘EU FD 2008’). These issues were partly solved in 2023 by the introduction of the new regulation of CC Article 151, however the infringement procedure by the European Commission is still pending as of October 2024, as “Estonia has not correctly transposed the provisions related to the definition of the offence of incitement to hatred or violence, including the condoning, denial or gross trivialisation of international crimes and the Holocaust.”

5. Background

While reconstituting their statehoods in the 1990s, the Baltic states all built their legitimacy around references to their period of independence between 1918 and 1940 – to negate and overcome the legacy of the Soviet regime. Estonia, Latvia and Lithuania rejected the Soviet regime as illegal, and consider the years under Soviet rule as occupation.² Thus, any denial of the criminality of the foundations of the Soviet regime was considered as undermining the legal continuity of the Baltic states and their legitimacy.³ As the Soviet (and later Russian) narrative intensified after the 2000s – about how the Baltic States had supposedly voluntarily joined the USSR, the Baltics started searching for other ways to minimise this subversion of their national biographies. There were many other factors, such as the debate over the “Bronze Soldier” monument in Estonia in 2007,⁴

² Article 42 of the 1907 Hague Regulations concerning the Laws and Customs of War on Land states that a “territory is considered occupied when it is placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised”; see further: International Committee of the Red Cross, ‘Occupation and International Humanitarian Law: Questions and Answers’ [4 August 2004] <<https://www.icrc.org/en/article/occupation-in-international-humanitarian-law-questions>>.

³ See Lauri Mälksoo, *Illegal Annexation and State Continuity: The Case of the Incorporation of the Baltic States by the USSR: A Study of the Tension between Normativity and Power in International Law* (Martinus Nijhoff 2003).

⁴ Karsten Brüggemann and Andres Kasekamp, ‘The Politics of History and the ‘War of Monuments’ in Estonia’, (2008) 36(3) *Nationalities Papers* 425; David J. Smith, ‘Woe from Stones’: Commemoration, Identity Politics and Estonia’s ‘War of Monuments’

the clash over the celebration of the end of the Second World War in 2005 in Moscow, as well as the ban on Soviet symbols in Lithuania in 2008,⁵ all of which signalled increasing mnemonic hostilities.

In 2002, the Estonian Criminal Code introduced new regulations on offences against political and civil rights, under the umbrella of offences against equality (Section 151).⁶ The legal concept of this offence was very broad, as it included a prohibition to incite hatred, which in the memory-battle context can include the incitement of hatred against specific groups by asserting different views on certain historical events: “Activities which publicly incite to hatred, violence or discrimination on the basis of nationality, race, colour, sex, language, origin, religion, sexual orientation, political opinion, or financial or social status, if this results in danger to the life, health or property of a person, is punishable by a fine of up to three hundred fine units or by detention.”⁷

(2008) 39(4) *Journal of Baltic Studies* 419; Inge Melchior and Oane Visser, ‘Voicing Past and Present Uncertainties: The Relocation of a Soviet World War II Memorial and the Politics of Memory in Estonia’ (2011) 59 *Focaal* 33; Steven Lee Myers, ‘Tensions Between Russia and Estonia Escalate’, *The New York Times* (2 May 2007) <<http://www.nytimes.com/2007/05/02/world/europe/02cnd-russia.html>>; Martin Ehala, ‘The Bronze Soldier: Identity Threat and Maintenance in Estonia’ (2009) 40(1) *Journal of Baltic Studies* 139.

⁵ Code of Administrative Offences of the Republic of Lithuania of 2008 (Article 188-18: Distribution or display of Nazi or Communist symbols)’ (Infolex, 2015) <<http://www.infolex.lt/ta/103787:str188-18>>.

⁶ Estonian Parliament [Riigikogu], ‘Criminal Code of the Republic of Estonia (consolidated)’ (*State Gazette*, 6 June 2001) <<https://www.riigiteataja.ee/en/eli/522012015002/consolide>>.

⁷ The background for this law was Section 12 of the Estonian Constitution: “Everyone is equal before the law. No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other beliefs, property or social status, or on other grounds. The incitement of national, racial, religious or political hatred, violence or discrimination shall be prohibited and punishable by law. The incitement of hatred, violence or discrimination between social strata shall also be prohibited and punishable by law”: People of Estonia ‘Constitution of the Republic of Estonia, Section 12’ (*State Gazette*, 03 July 1992) <<https://www.riigiteataja.ee/en/eli/530122020003/consolide#:~:text=Rights%20and%20freedoms%20may%20be,is%20equal%20before%20the%20law>>.

Unlike its Baltic neighbours Lithuania and Latvia, which integrated the substance of the EU FD 2008 into their respective criminal law systems, Estonia initially incorporated EU FD 2008 by adopting the *Equal Treatment Act* to “ensure the protection of persons against discrimination on grounds of nationality (ethnic origin), race, colour, religion or other beliefs, age, disability or sexual orientation”.⁸ Section 2, which defined the scope of application of the Act, stipulated, that: Discrimination of persons on grounds of nationality (ethnic origin), race or colour is prohibited upon: 1) establishment of conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, as well as upon promotion; 2) entry into employment contracts or contracts for the provision of services, appointment or election to office, establishment of working conditions, giving instructions, remuneration, termination or cancellation of employment contracts or contracts for the provision of services, release from office; 3) access to vocational guidance, vocational training, advanced vocational training and retraining, practical work experience; 4) membership in an organisation of employees or employers, including a professional organisation, and the granting of benefits by such organisations; 5) access to the services of social welfare, social security and healthcare, including social benefits; 6) education; 7) access to and supply of goods and services which are available to the public, including housing.

In addition, unlike Lithuania and Latvia, which criminalised not only the denial of the Holocaust following EU FD 2008 legislation, but also the denial of Soviet crimes, Estonia decided not to include a specific denial ban into its national legislation.⁹ Following an infringement procedure by the European Commission, the Criminal Code was amended in

⁸ Estonian Parliament [Riigikogu], ‘Equal Treatment Act of the Republic of Estonia, Section 1’ (*State Gazette*, 11 December 2008) <<https://www.riigiteataja.ee/en/eli/530102013066/consolide>>.

⁹ JTA, ‘Estonian politician vows to legalize Holocaust denial’ (*Times of Israel*, 03 June 2017) <<https://www.timesofisrael.com/estonian-politician-vows-to-legalize-holocaust-denial/>>.

2023 to include such hate speech that either causes a threat of violent act to take place, or that significantly endangers public security.¹⁰

6. Application

National case law concerning the 2002, 2008 and 2023 Estonian regulations has so far been very limited. One case concerning Section 151 of the 2002 Criminal Code illustrates how this law fails within the memory-issue context. In case No. 3-1-4-113-99, an Estonian national court discussed the issue in light of events on January 1999, when Mr Bairas distributed the *Nashe Otechestvo* newspaper [‘Our Fatherland’], which was printed in St. Petersburg, from an apartment block in Tallinn. He invited people to subscribe to the paper, which contained antisemitic material.¹¹ He was accused of incitement to hatred, and the Tallinn Circuit Court found him guilty, a verdict that held on appeal to the higher court. The court stated that the distribution of materials inciting ethnic hatred cannot be justified with reference to economic motives or freedom of expression. This is one of the first cases where Estonia demonstrated its intent to combat the distribution of antisemitic materials.

However, the main issue of the application of Estonian regulations so far concerns the EU law infringement proceedings levied against Estonia in 2020.¹² The European Commission considered that Estonia failed to transpose the criminalisation of specific forms of hate speech; namely, the public condoning, denying or gross trivialisation of international crimes and the Holocaust, when such conduct aims at

¹⁰ See Section “Legal provision in English”.

¹¹ Supreme Court of the Republic of Estonia: Criminal Chamber, ‘Case No. 3-1-4-113-99’ (*State Gazette*, 14 December 2012) <<https://www.riigiteataja.ee/akt/79425>>.

¹² European Union Agency for Fundamental Rights, ‘Antisemitism: Overview of Antisemitic Incidents Recorded in the European Union 2011–2021’ (2022) <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2022-antisemitism-overview-2011-2021_en.pdf>, 12.

inciting violence or hatred.¹³ Additionally, Estonia omitted the criminalisation of public incitement to violence or hatred when directed at certain groups, and it had not provided for adequate penalties. Finally, the Estonian Criminal Code did not ensure that the racist and xenophobic motivations of such crimes are considered as aggravating circumstances – impeding the effective and adequate prosecution of such crimes.¹⁴ Estonia responded with new information relating to the concerns raised by the European Commission. Having analysed this additional information, the Commission found further transposition issues – in addition to the concerns already raised in the letters of formal notice – that needed to be specifically addressed.¹⁵ This issue remained unsolved during the pandemic in 2021, and in January 2023, the Commission opened five infringement procedures against Estonia, including failure to properly transpose requirements of the restriction of hate speech.¹⁶ Thus, in June 2023, amendments were introduced.¹⁷ The European Commission remains unsatisfied, however, and sent a reasoned opinion in October 2024.¹⁸ The infringement procedure is therefore still ongoing.

¹³ BNS, ‘European Commission Launches Infringement Proceedings against Estonia’ (*ERR News*, 30 October 2020) <<https://news.err.ee/1153405/european-commission-launches-infringement-proceedings-against-estonia>>.

¹⁴ European Commission ‘October Infringements Package: Key Decisions’ (*EU Press Corner*, 30 October 2020) <https://ec.europa.eu/commission/presscorner/detail/en/inf_20_1687>.

¹⁵ European Commission, ‘January Infringements Package: Key Decisions’ (*EU Press Corner*, 26 January 2023) <https://ec.europa.eu/commission/presscorner/detail/en/inf_23_142>.

¹⁶ ERR News, ‘European Commission Opens 5 Infringement Procedures against Estonia’ (*ERR News*, 26 January 2023) <<https://news.err.ee/1608864740/european-commission-opens-5-infringement-procedures-against-estonia>>.

¹⁷ See Section “Legal provision in English”.

¹⁸ European Commission, October infringement package: key decisions, 3 October 2024, https://ec.europa.eu/commission/presscorner/detail/en/inf_24_4561.

7. Controversies

The main controversy in Estonia regarding denial laws is linked with the transposition of EU FD 2008, as Estonia has failed to fully criminalise specific forms of hate speech, lacked adequate penalties for offences, and did not recognize racist motivations as aggravating circumstances in other crimes.¹⁹ Some of these issues were solved in 2023, but the reasons for the delay, and the reluctance to solve remaining issues, are not fully clear. Some of this is supposedly a result of “limited resources” and a reluctance to overcriminalise behaviour, but this remains uncertain.²⁰

8. Further reading

- Karsten Brüggemann and Andres Kasekamp, ‘The Politics of History and the ‘War of Monuments’ in Estonia’ (2008) 36(3) *Nationalities Papers* 425.
- Lauri Mälksoo, *Illegal Annexation and State Continuity: The Case of the Incorporation of the Baltic States by the USSR: A Study of the Tension between Normativity and Power in International Law* (Martinus Nijhoff 2003).
- Eva-Clarita Pettai, ‘Protecting Memory or Criminalizing Dissent? Memory Laws in Lithuania and Latvia’ in Elazar Barkan and Ariella Lang (eds.) *Memory Laws: Criminalizing Historical Narratives* (Routledge 2022).
- Laurent Pech, ‘The Law of Holocaust Denial in Europe’ in Ludovic Hennebel and Thomas Hochmann (eds.) *Genocide Denials and the Law* (Oxford University Press 2011).
- Democracy Research Consortium, ‘Policy Briefs: country studies of the Baltic states; Germany; Poland and Hungary; Russia and Ukraine’ (2024) <<https://memocracy.eu/policy-briefs>>.

¹⁹ Ibid.

²⁰ ERR News, ‘Prosecutor General: I Oppose the Criminalization of Hate Speech’ (*ERR News*, 17 February 2021) <<https://news.err.ee/1608112696/prosecutor-general-i-oppose-the-criminalization-of-hate-speech>>.



FINLAND





1. Source of the legal provision

Chapter 11, Section 10 and Section 10a of the Criminal Code [Rikoslaki] as amended by the 511/2011 Law amending the Criminal Code [511/2011 Lakirikoslain muuttamisesta].

Available in the original language via: Finlex; <<https://www.finlex.fi/fi/laki/ajantasa/1889/18890039001#L11>>

2. Legal provision in English

Chapter 11, Section 10: Agitation against a population group

A person who makes available to the public or otherwise disseminates among the public or keeps available to the public information, an opinion or another message where a certain group is threatened, defamed or insulted on the basis of its race, colour, birth, national or ethnic origin, religion or belief, sexual orientation or disability or on another comparable basis shall be sentenced for agitation against a population group to a fine or to imprisonment for at most two years.

Chapter 11, Section 10a: Aggravated agitation against a population group

If agitation against a population group involves exhortation or enticement

(1) to genocide or preparation of genocide, a crime against humanity, an aggravated crime against humanity, a war crime, an aggravated war crime, murder, or manslaughter committed with a terrorist intent, or

(2) to serious violence other than that referred to in paragraph 1 so that the act clearly endangers public order and security,

and the agitation against a population group is also aggravated when assessed as a whole, the perpetrator shall be sentenced for aggravated

agitation against a population group to imprisonment for at least four months and at most four years.

3. Legal provision in the original language

Luku 11, 10 §: Kiihottaminen kansanryhmää vastaan

Joka asettaa yleisön saataville tai muutoin yleisön keskuuteen levittää tai pitää yleisön saatavilla tiedon, mielipiteen tai muun viestin, jossa uhaataan, panetellaan tai solvataan jotakin ryhmää rodun, ihonvärin, syntyperän, kansallisen tai etnisen alkuperän, uskonnon tai vakaumuksen, seksuaalisen suuntautumisen tai vammaisuuden perusteella taikka niihin rinnastettavalla muulla perusteella, on tuomittava kiihottamisesta kansanryhmää vastaan sakkoon tai vankeuteen enintään kahdeksi vuodeksi.

Luku 11, 10 a §: Törkeä kiihottaminen kansanryhmää vastaan

Jos kiihottamisessa kansanryhmää vastaan kehoitetaan tai houkutellessa

(1) joukkotuhontaan tai sen valmisteluun, rikokseen ihmisyyttä vastaan, törkeään rikokseen ihmisyyttä vastaan, sotarikokseen, törkeään sotarikokseen, murhaan tai terroristisessa tarkoituksessa tehtyyn tappoon tai

(2) muuhun kuin 1 kohdassa tarkoitettuun vakavaan väkivaltaan siten, että teolla selvästi vaarannetaan yleistä järjestystä ja turvallisuutta

ja kiihottaminen kansanryhmää vastaan on myös kokonaisuutena arvostellen törkeä, rikoksentekeijä on tuomittava törkeästä kiihottamisesta kansanryhmää vastaan vankeuteen vähintään neljäksi kuukaudeksi ja enintään neljäksi vuodeksi.

4. Key points

- Finland has no specific legislation banning Holocaust denial or general genocide denial, therefore falling short of the requirements of the EU Framework Decision 2008/913/JHA (hereafter 'EU FD 2008').
- However, the exhortation or enticement to genocide can serve as an aggravating factor in cases of hate speech and incitement against

a population group, particularly when an individual disseminates, makes available, or shares information, opinions, or messages that threaten, defame, or insult a person based on their national, racial, ethnic, or other group membership.

- The possible sanctions for simple agitation include a fine or imprisonment for at most two years.
- At present, Finland is exploring possibilities to ban Holocaust denial and certain symbols (including National Socialist and Communist symbols).
- Concurrently, Finland is subject to an infringement procedure for failing to criminalize specific forms of hate speech, namely the public condoning, denial, or gross trivialization of international crimes and the Holocaust – thereby not fully transposing the EU FD 2008.

5. Background

Finland has no specific Holocaust or Genocide denial ban: however, some provisions of the Criminal Code can be applied in the case of Holocaust denial – such as from Chapter 11 “War crimes and offences against humanity”.

“Hate speech” is prohibited in Finland, and defined in the Chapter 11 Section 10 of the Criminal Code as “information, an opinion or another message where a certain group is threatened, defamed or insulted on the basis of its race, colour, birth, national or ethnic origin, religion or belief, sexual orientation or disability or on another comparable basis”.¹

Agitation is punishable with a fine or up to two years in prison, and aggravated agitation is punishable by imprisonment of between four months to four years. A possible form of aggravated agitation is the incitement to genocide (Chapter 11, Section 10a (1) of the Criminal Code).

¹ Finland’s Criminal Code in English: <https://www.finlex.fi/en/laki/kaannokset/1889/en18890039_20210433.pdf>

Finland has neither specific legislation aimed at controlling ownership, display, purchase, and import, nor the export of Nazi flags, or other symbols or symbolic objects of other dictatorships.

The lack of specific denial legislation has resulted in an infringement proceeding by the European Commission, which is still ongoing.² It is also against this background that there have been attempts to specifically ban Holocaust denial in Finland in recent years. In 2023, the four parties comprising Finland's coalition government unveiled their joint statement on eradicating racism and promoting equality within Finnish society at a press conference. The statement was delivered in the context of racism and far-right scandals involving ministers from the right-wing populist Finns Party. The government then appointed a working group tasked with proposing concrete measures to tackle racism and discrimination.³

The working group proposed the following measures: to criminalise Holocaust denial, to test and discuss the possibility of outlawing the political use of certain symbols (including the swastika as used by Nazi Germany as well as the hammer and sickle that appeared on the former Soviet Union symbolics).

State Secretary Risto Artjoki who chaired the working group noted that such a ban was “legally challenging”, and that it was not possible to draft a proposed change in legislation on so tight a schedule as the working group had originally intended.

6. Application

To the best of our knowledge, no convictions for Holocaust denial, based on Finland's hate speech provisions, have been adjudicated. However,

² European Commission, February infringement package: key decisions, 18 February 2021, https://ec.europa.eu/commission/presscorner/detail/en/inf_21_441; an additional formal notice was issued on 26 January 2023.

³ ‘Government statement to Parliament on promoting equality, gender equality and non-discrimination in Finnish society’ Finnish government, (2023) <https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/165112/VN_Statement_31082023_EN.pdf?sequence=1&isAllowed=y>.

Finland has taken certain legal steps to ban neo-Nazi groups and movements. Following a series of court battles that began in 2017, the Supreme Court of Finland upheld in 2020 a ban on the neo-Nazi group “Nordic Resistance Movement” (PVL). This made Finland, which has been a member state of the International Holocaust Remembrance Alliance (IHRA) since 2010, the first to ban this group in Northern Europe.⁴ The group, which sought to establish a National Socialist state, was linked to a number of violent incidents in Norway, and used tactics that involved the spreading of hate speech. The Court ruled that its activities constituted a misuse of the rights afforded under the freedoms of speech and assembly. Noting that the group’s activities were “significantly contrary to law,” the Finnish Supreme Court upheld the decisions of the two lower courts.⁵

7. Controversies

Finland has a history of swastikas used in government and military flags. Flags containing the symbol can be found in the Finnish Air Force, Defence Forces, certain regiments of the army, and flight schools.

The recent discussions on memory laws in Finland (especially in 2023) intensified due to racism issues. Since Prime Minister Petteri Orpo’s (NCP) right-wing government came into office on 20 June 2023, it has been involved in a series of scandals. The controversies have mostly revolved around the past activities and writings of Finns Party parliament members, all of whom have taken on ministerial positions within the Orpo administration. These scandals included, for instance, Deputy Prime Minister Riikka Purra’s racist (against black and muslim people) and violent blog comments. Furthermore, the economic minister, Vilhelm Junnila, had

⁴ ‘Finland Supreme Court bans Neo-Nazi group’ (*The official website of the International Holocaust Remembrance Alliance (IHRA)*), 24 September 2020 <<https://holocaustremembrance.com/news/finland-supreme-court-bans-neo-nazi-group>>.

⁵ See Ibid; ‘Finnish top court bans Finland’s main neo-Nazi group’, *AP News*, September 22, 2020, <<https://apnews.com/general-news-959402562fc46f29ac4a7bf21fa6615>>.

to resign after ten days in office after making jokes about Nazism and attending a far-right event with links to neo-Nazis in 2019.⁶

The attempts in Finland to draft and adopt new memory laws, such as a Holocaust denial ban, have received criticism too. They are sometimes seen as threatening freedom of speech. Critics claim that, in political contexts, labelling certain opinions and statements “hate speech” can be used to silence unfavourable or critical opinions, and suppress debate. Certain politicians and society consider the term “hate speech” problematic because of disagreements over its definition.⁷

8. Further reading

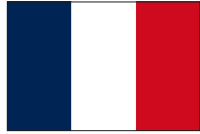
- Tom Gullberg, ‘The Holocaust as History Culture in Finland’, in Helle Bjerg, Claudia Lenz, Erik Thorstensen (eds), *Historicizing the Uses of the Past* (Bielefeld, Germany | 2011).
- Claudia Chiappa, ‘Scandal-ridden Finnish government presents anti-racism agenda’ (*Politico*, 31 August 2023) <<https://www.politico.eu/article/finland-government-adopts-anti-racism-statement-after-months-of-racism-scandals/>>.
- ‘Government statement to Parliament on promoting equality, gender equality and non-discrimination in Finnish society’, Finnish government (2023) <https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/165112/VN_Statement_31082023_EN.pdf?sequence=1&isAllowed=y>.

⁶ See A. Lapin, ‘After leading minister joked about Nazis, Finland moves to criminalize Holocaust denial’, *Jewish Telegraphic Agency*, August 31, 2023, <<https://www.jta.org/2023/08/31/global/finlands-prime-minister-hopes-to-criminalize-holocaust-denial-after-a-deputy-joked-about-nazis>>; ‘Finland to criminalise Holocaust denial, probe banning swastika use’, *Yle News*, 31 8 2023, <<https://yle.fi/a/74-20047962>>; ‘APN Podcast: Finland’s stormy summer of political scandals’, *Yle News*, 10 8 2023, <<https://yle.fi/a/74-20044700>>; J. Henley, ‘Finnish far-right finance minister accused of racist online comments’, *The Guardian*, 11 Jul 2023, <<https://www.theguardian.com/world/2023/jul/11/finnish-far-right-finance-minister-riikka-purra-accused-of-racist-online-comments>>.

⁷ See S. Bagman, ‘Finnish reactions to the Holocaust’ [Dec. 2012], *Journal for the Study of Antisemitism*, vol. 4, no. 2; J/ Korpela, ‘The law should not determine what is true in history’, *Helsinki Times*, 6 September 2023, <<https://www.helsinkitimes.fi/columns/columns/viewpoint/24118-the-law-should-not-determine-what-is-true-in-history.html>>.



FRANCE





1. Source of the legal provision

Article 24 *bis* of the Law on the Freedom of the Press of 29 July 1881 [*Loi du 29 juillet 1881 sur la liberté de la presse*] as amended by Article 38 of Law No. 2021-1109 of 24 August 2021 [*loi no. 2021-1109 du 24 août 2021 – art. 38*].

Available in the original language via: Légifrance; <https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000043982451>

2. Legal provision in English

Anyone who contests, by any of the means set out in Article 23,¹ the existence of one or more crimes against humanity as defined by Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945,² and committed either by members of an organisation declared a criminal pursuant to Article 9 of the said Statute,³ or by a person found guilty of such crimes by a French or international court, will be liable to one year of imprisonment and a fine of 45,000 Euro.

¹ The following means are listed in Article 23 *Loi du 29 juillet 1881 sur la liberté de la presse*: speeches, shouts or threats made in public places or meetings, or by writings, printed material, drawings, engravings, paintings, emblems, images or any other written, spoken or pictorial material sold or distributed, offered for sale or exhibited in public places or meetings, or by placards or posters exposed to public view, or by any public communication by electronic means.

² Article 6 of the Charter of the International Military Tribunal defines crimes against humanity as follows: “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”

³ The NSDAP, the Gestapo, the SD and SS were declared to be criminal organizations by the International Military Tribunal, see Judgement of the International Military Tribunal, 30 September and 1 October 1946, accessible via The Avalon Project, Yale School of Law <<https://avalon.law.yale.edu/imt/judorg.asp>>.

The same punishment will be imposed on anyone who denies, minimises or grossly trivialises, by any of the means set out in Article 23, the existence of a crime of genocide other than those mentioned in the first paragraph of this Article, another crime against humanity, a crime of enslavement or exploitation of a person forced into slavery or a war crime as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court signed in Rome on 18 July 1998 and in Articles 211-1 to 212-3, 224-1 A to 224-1 C and 461-1 to 461-31 of the Criminal Code, when:

1.° The crime has led to a conviction by a French or international court;

When the acts referred to in this article are committed by a person acting in a public capacity or entrusted with a public service function in the exercise or on the occasion of the exercise of their functions or mission, the penalties are increased to three years of imprisonment and a fine of 75,000 Euro.

[...]

3. Legal Provision in the original language

Seront punis d'un an d'emprisonnement et de 45 000 € d'amende ceux qui auront contesté, par un des moyens énoncés à l'article 23, l'existence d'un ou plusieurs crimes contre l'humanité tels qu'ils sont définis par l'article 6 du statut du tribunal militaire international annexé à l'accord de Londres du 8 août 1945 et qui ont été commis soit par les membres d'une organisation déclarée criminelle en application de l'article 9 dudit statut, soit par une personne reconnue coupable de tels crimes par une juridiction française ou internationale.

Seront punis des mêmes peines ceux qui auront nié, minoré ou banalisé de façon outrancière, par un des moyens énoncés à l'article 23, l'existence d'un crime de génocide autre que ceux mentionnés au premier alinéa du présent article, d'un autre crime contre l'humanité, d'un crime de réduction en esclavage ou d'exploitation d'une personne réduite en esclavage ou d'un crime de guerre défini aux articles 6,7 et

8 du statut de la Cour pénale internationale signé à Rome le 18 juillet 1998 et aux articles 211-1 à 212-3, 224-1 A à 224-1 C et 461-1 à 461-31 du code pénal, lorsque :

1.° Ce crime a donné lieu à une condamnation prononcée par une juridiction française ou internationale;

Lorsque les faits mentionnés au présent article sont commis par une personne dépositaire de l'autorité publique ou chargée d'une mission de service public dans l'exercice ou à l'occasion de l'exercice de ses fonctions ou de sa mission, les peines sont portées à trois ans d'emprisonnement et à 75 000 euros d'amende.

[...]

4. Key Points

- France was one of the first countries worldwide to explicitly criminalise Holocaust denial in 1990, preceding the adoption of a broader prohibition on the denial of international crimes in 2016. The denial ban neither requires the act to be conducted in a manner likely to incite to violence or hatred nor to disturb public order or peace.
- The law initially applied only to crimes against humanity under the jurisdiction of the International Military Tribunal, but was later expanded to cover statements relating to mass crimes recognised by an international or French court.
- The basic sanction for Holocaust denial may include imprisonment of up to one year and a fine of up to 45,000 Euro.
- Even before the explicit criminalization of Holocaust denial, such statements were prosecuted by means of more general offenses, and subjected to civil lawsuits.
- Recent discussion focuses on legislative attempts to enlarge the scope of the provision to include statements concerning the Armenian genocide and colonial slavery.

5. Background

The negation of crimes against humanity committed during the Second World War has been criminalised in France by the so-called *Loi Gayssot* in 1990 which added Article 24 *bis* in the Law on the Freedom of the Press of 29 July 1881. Importantly, the provision does not refer to “denial” but allows the mere “contesting” of the existence of the Holocaust to suffice, thereby demonstrating the intention to ban any negationist statement, be it total or partial, conditional or interrogative.⁴ The requirement that the crime must have been committed by members of an organisation declared criminal pursuant to Article 9 of the London Charter, or by a person found guilty of such crimes by a French or international court, limits the range of relevant historical crimes to Nazi crimes. Since the law does not globally refer to all crimes within the jurisdiction of the International Military Tribunal but only to the contestation of crimes against humanity, it also does not cover one of the most notorious massacres committed by Nazi forces against French civilians in Oradour-sur-Glane in 1944.⁵

Before the explicit criminalisation, negationist statements had been prosecuted under the offence of racial defamation, which had been adopted in 1972.⁶ However, convictions on this basis had been rare, as

⁴ N. Droin, ‘L’article 24 bis sanctionnant le délit de négationnisme: toujours discuté, toujours discutable?’ in T. Hochmann, P. Kasparian (eds), *L’extention du délit de négationnisme* (2019), p. 62.

⁵ Accordingly, a court in Paris was unable to convict a man for charges of calling into question the massacre, which qualified as a war crime but lacked the political, religious or racial motives for it to constitute a crime against humanity; see: H. Abalo, ‘Le négationniste Vincent Reynouard relaxé pour des propos tenus sur le massacre d’Oradour-sur-Glane’ (franceinfo, 25 November 2020) <<https://france3-regions.francetvinfo.fr/nouvelle-aquitaine/haute-vienne/negationniste-vincent-reynouard-relaxe-propos-tenus-massacre-oradour-glane-1898836.html>>; already in 2011, a member of parliament had pointed out the lack of protection for the memory of this event; see: M. Boulestin, Assemblée Nationale, Les comptes rendus de la session [Session reports of the National Assembly], 22 December 2011 <<https://www.assemblee-nationale.fr/13/cr/2011-2012/20120094.asp>>.

⁶ Droin, 2019, p. 59, see above note 5.

the intention to racially discriminate is difficult to prove.⁷ Negationist statements had often been disguised as pseudo-historic publications, further complicating indictments.⁸

In the years following the *Loi Gayssot*, parliamentarians demonstrated an increased interest in passing provisions concerning historical events – ranging from the recognition of the Armenian genocide⁹ to the recognition of the slave trade and slavery as crimes against humanity.¹⁰ This development culminated in a short-lived and highly controversial law, which, among others, provided for school curricula to recognise the positive role of French colonialism.¹¹ The legislative activism in the field of public history and collective memory sparked strong criticism by historians and intellectuals.¹² The critics who united behind the rallying cry “Freedom for history” maintained that history was not a legal subject and the parliament and the judiciary were overstepping their competences if they were to take up the task to define historical truth.¹³ Their call for an abrogation of these laws, known as *lois mémorielles*, was subsequently supported by a group of law professors, who claimed that the “communitarian logic contradicts the case law of the Constitutional Council which precludes the recognition of collective rights”.¹⁴

However, the criticism was not unanimous. Some researchers pointed out that by attacking so-called memory laws in general, the opponents risked losing sight of the specificities of the *Loi Gayssot* which might

⁷ Ibid., p. 60.

⁸ Ibid., p. 60.

⁹ Loi No. 2001-70 du 29 janvier 2001.

¹⁰ Loi No. 2001-434 du 21 mai 2001.

¹¹ Loi No.2005-158 du 23 février 2005.

¹² Among them Pierre Vidal-Naquet whose parents had been murdered in Auschwitz and who was one of the most outspoken public figures in the fight against negationism in France.

¹³ ‘Liberté pour l’histoire’ *Liberation* (13 December 2005) <https://www.liberation.fr/societe/2005/12/13/liberte-pour-l-histoire_541669/>.

¹⁴ Cited from S. Tomei, ‘Lois Mémorielles et dislocation de la République’, [2007] No. 276, *Humanisme*, p. 14.

be justifiable.¹⁵ Concerning Holocaust denial, one historian refused to consider it “scandalous that politics should enforce essential concepts that are enshrined in the Universal Declaration of Human Rights”.¹⁶

In 2016, the Constitutional Council upheld the *Loi Gayssot* as a proportionate restriction of the freedom of speech since negationist statements “constitute in their very nature an incitement to racism and antisemitism”.¹⁷ Additionally, some scholars consider the provision to safeguard democratic traditions against National-Socialist ideology.¹⁸

By implementing EU Framework Decision 2008/913/JHA (hereafter ‘EU FD 2008’),¹⁹ the scope of Article 24 *bis* was enlarged in 2016 to cover the negation, minimisation and gross trivialisation of any genocide, crime against humanity, crime of enslavement or of the exploitation of enslaved persons and war crimes.²⁰ In 2017, the Constitutional Council upheld the extension insofar as the provision required the relevant historical crime to be established by domestic or international court judgment. In contrast, it held unconstitutional the alternative condition according to which the relevant statement was also criminal if it incited to violence or hatred, even where the relevant crime was not established by a court. The court found this second alternative made the offence unpredictable.²¹

¹⁵ See S. Tomei, ‘Lois Mémoires et dislocation de la République’, [2007] No. 276, *Humanisme*, p. 16.

¹⁶ ‘Faut-il abroger les lois mémorielles?’, *L’Express* (2 February 2006) <https://www.lexpress.fr/societe/faut-il-abroger-les-lois-memorielles_483148.html>.

¹⁷ Conseil constitutionnel [Constitutional Council], Décision No 2015-512 QPC, 8 January 2016.

¹⁸ Droin, 2019, p. 65 see above note 5.

¹⁹ Already in 2010, a government official remarked on the necessity to make adaptations on existing the hate speech legislation due to the demand of the EU FD 2008, see Question écrite parlementaire [written parliamentary question], No. 56575, response published on 5 January 2010, accessible via the website of the Asssemblée Nationale <<https://questions.assemblee-nationale.fr/q13/13-56575QE.htm>>.

²⁰ Article 173, Loi No. 2017-86 du 27 janvier 2017 relative à l’égalité et à la citoyenneté.

²¹ Conseil Constitutionnel [Constitutional Council], Décision n° 2016-745 DC, 26 January 2017.

6. Application

The judicial fight against Holocaust denial in France dates back to the early post-war years. In particular, publications by Maurice Bardèche and Paul Rassinier in the late 1940s and early 1950s called into question the murderous purposes of the gas chambers.²² Bardèche's books primarily aimed to vindicate the *Vichy* regime and to attack the Résistance. In his case, the prosecution proved ingenious when it filed charges not based on defamation but on the law against the apology of crimes.²³ This provision was rarely used, as its original purpose had been to combat anarchist press outlets in the 1890s.²⁴ Bardèche was sentenced to one year in prison by the appellate court, overriding the scepticism of the trial judge who had argued that it was “not his role to assess the value or validity of historical or political theses”.²⁵

Similar hesitations to delve into historiographic methodology were visible in the Paris Court of Appeal's judgement on a civil lawsuit against Robert Faurisson in 1983. The literature professor had spread negationist theses in the mainstream media and later established himself as a preeminent figure in the international scene of Holocaust denialism.²⁶ The court convicted Faurisson for the harmful consequences of his remarks, holding that they incited violence and rehabilitated Nazi crimes. However, the ruling refused to deconstruct his method as “accusations of care-

²² J.-M. Dreyfus, ‘Les procès de Maurice Bardèche (1948-1954) Combats pour l'honneur de la Résistance ou premiers procès du négationnisme?’, [2022] Volume 155, No. 3, 20 & 21. *Revue d'histoire*, p. 43.

²³ *Ibid.*, p. 51; the criminalisation of the apology of (certain grave) crimes is – as it has been already at the time of the process against Bardèche – included in Article 24 Loi du 29 juillet 1881 sur la liberté de la presse, see for the version of Article 24 in force during the time of the process: *Journal Officiel de la République Française* [Official Journal of the French Republic], Volume 25, No. 338, 13 December 1893.

²⁴ Dreyfus, 2022, p. 51, see above note 23.

²⁵ *Ibid.*, p. 53.

²⁶ A. Nossiter, ‘Robert Faurisson, Holocaust Denier Prosecuted by French, Dies at 89’, *New York Times* (22 October 2018) <<https://www.nytimes.com/2018/10/22/obituaries/robert-faurisson-dead.html>>.

lessness levelled against him lack relevance and are not sufficiently established.”²⁷ Despite his conviction, Faurisson readily used these passages to misrepresent the ruling as a judicial acknowledgement of his work.²⁸

Jean-Marie Le Pen, who unified right-wing groups under his party “Front National” in 1972, made negationism a hallmark of his political extremism.²⁹ A civil lawsuit was successfully levelled against him for dismissing the Holocaust as “a point of detail of the history of the Second World War” in 1987. Repeating the statement in 2015 earned him a criminal conviction under the *Loi Gayssot*.³⁰

Jurisprudence has been deliberate in stressing that Article 24 *bis* of the Law of 29 July 1881 does not impede historical research disputing “the number of victims of the extermination policy in a particular concentration camp”.³¹ Nonetheless, the Court of Cassation found, in a case involving a defendant who associated Auschwitz with 125,000 deaths, that “grossly underestimating the number of victims constitutes the offence when committed in *mauvaise foi*s [bad faith].³²

7. Controversies

The above-mentioned decision of the Court of Cassation³³ on the gross underestimation of victim numbers in case of bad faith sparked debates

²⁷ Cited from T. Hochmann, ‘Faurisson, ‘falsificateur de la jurisprudence?’’, [2011], Volume 61, Droit et Cultures, pp. 235-256.

²⁸ T. Hochmann, ‘Faurisson, ‘falsificateur de la jurisprudence?’’, [2011], Volume 61, Droit et Cultures, pp. 235-256.

²⁹ V. Igounet, ‘Une tradition extrémiste: le négationnisme’, [1999] Volume 166, No. 2, Revue d’Histoire de la Shoah, p. 8.

³⁰ ‘Jean-Marie Le Pen définitivement condamné pour ses propos sur les chambres à gaz’, *Le Monde* (27 March 2018) <https://www.lemonde.fr/police-justice/article/2018/03/27/jean-marie-le-pen-definitivement-condamne-pour-ses-propos-sur-les-chambres-a-gaz_5277072_1653578.html>.

³¹ Cour de Cassation, Chambre criminelle [Court of Cassation, criminal chamber], 17 June 1997, Bulletin criminel 1997 No. 236 p. 786.

³² Ibid.

³³ Ibid.

in scholarship about whether the court narrowed criminal liability by requiring a subjective element.³⁴ Some authors stressed that such a requirement could only be applied to the minimisation, but not any other form of contestation of the Holocaust.³⁵ Others emphasised that bad faith is traditionally presumed in the area of press offenses.³⁶ A majority of scholars hence appear to be of the view that a conviction does not require proof that the speaker had been conscious of the falsity of his claims.³⁷

Similarly, the above-mentioned 2017 Constitutional Council decision,³⁸ which ultimately limited the criminalisation of negationist statements to mass crimes that have been the subject of a court decision, sparked fierce controversies. Scholars criticized that this ruling primarily and arbitrarily excluded the Armenian genocide, which itself has not been the subject of a court decision.³⁹ Already in earlier judgements, the Constitutional Council had censured the legislation against the denial of the Armenian genocide and which was, as a consequence, praised by the Turkish government.⁴⁰ These judgements were criticised for disfavoursing the memory of the Armenian diaspora of France, which, with its 600.000 members, is one of the largest in the world,⁴¹

³⁴ B. Beignier, “De la langue perfide, deliver moi...”, *Réflexions sur la loi du 13 juillet 1990 dite ‘loi Gayssot’*, in Bruylant (ed), *Pouvoir et Liberté, Etudes offertes à Jacques Mourgeon* (1998), p. 525, cited from T. Hochmann, *Le négationnisme face aux limites de la liberté d’expression*, Editions A. Pedone, 2013, p. 644, note 284.

³⁵ T. Hochmann, *Le négationnisme face aux limites de la liberté d’expression* (Editions A. Pedone 2013) p. 644.

³⁶ Droin, 2019, p. 63, see above note 5.

³⁷ Hochmann, 2013, p. 647, see above note 36.

³⁸ See above note 22.

³⁹ T. Hochmann, ‘Le Conseil constitutionnel et l’art de la suggestion. A propos du critère de la condamnation juridictionnelle du crime nié’, T. Hochmann, P. Kasparian (eds), *L’extension du délit de négationnisme* (2019), pp. 49-50.

⁴⁰ ‘La loi sur le génocide arménien invalidée par le Conseil constitutionnel’, *France 24* (28 February 2012) <<https://www.france24.com/fr/20120228-france-turquie-armenie-genocide-loi-invalidee-censure-conseil-constitutionnel-diplomatie>>.

⁴¹ ‘Diaspora arménienne en France’, *Wikipedia* <https://fr.wikipedia.org/wiki/Diaspora_arménienne_en_France#:~:text=Ce%20sont%20essentiellement%20les%20immigrations,le%20génocide%20arménien%20de%201915>.

and they induced the media to examine peculiar ties between a Constitutional Council judge and Turkish institutions.⁴²

Likewise, the requirement of a court decision practically decriminalises the contestation of colonial slavery; a historic crime which is, yet, explicitly mentioned by Article 24 *bis* Law on the Freedom of the Press. In light of such legislative inconsistency provoked by the decision of the Constitutional Council, a group of lawmakers called on the government to modify the law in a way that effectively includes negationist statements on the slave trade and colonial slavery.⁴³

8. Further Reading

- D. Rueda, 'A certain idea of France's past: Marine Le Pen's history wars' [2022] Volume 24, Issue 4, *European Politics and Society* pp. 445–460 <<https://www.tandfonline.com/doi/full/10.1080/23745118.2022.2058751>>.
- M. M. Sadowski, *Intersections of Law and Memory. Influencing Social Perceptions of the Past*, Routledge, 2024.
- J. G. Shields, 'French revisionism on trial: The case of Robert Faurisson', [1991] Volume 25, Issue 1, *Patterns of Prejudice*, pp. 86–88, <<https://www.tandfonline.com/doi/pdf/10.1080/0031322X.1991.9970068>>.
- P. Vidal-Naquet, *Assassins of Memory: Essays on the Denial of the Holocaust*, Columbia University Press, 1993.
- R. L. Weaver, N. Delpierre, L. Boissier, 'Holocaust Denial and Governmentally Declared "Truth": French and American Perspectives' [2009] Volume 41, *Texas Tech Law Review*, pp. 495-517.

⁴² A. Dastakian, 'Merci confrère – Un Conseil constitutionnel bien turcophile?', *Marianne* (3 January 2015) <<https://www.marianne.net/politique/un-conseil-constitutionnel-bien-turcophile>>.

⁴³ Proposition de résolution [Motion for a resolution], No.4996, 4 February 2022, accessible via the website of the Assemblée Nationale <https://www.assemblee-nationale.fr/dyn/15/textes/115b4996_proposition-resolution.pdf>.



GERMANY





1. Source of the legal provision

Section 130 (3), (4), (5) German Criminal Code [*Strafgesetzbuch*] as amended by Federal Law Gazette [*Bundesgesetzblatt*] I p. 2146.

Accessible in the original language via: Bundesamt für Justiz;
<https://www.gesetze-im-internet.de/stgb/___130.html>

2. Legal provision in English

Incitement to hatred

[...]

(3) Whoever publicly or in a meeting approves of, denies or minimises an act committed under the rule of National Socialism of the kind indicated in Section 6 (1) of the Code of Crimes against International Law¹ in a manner suited to causing a disturbance of the public peace incurs a penalty of imprisonment for a term not exceeding five years or a fine.

(4) Whoever publicly or in a meeting disturbs the public peace in a manner which violates the dignity of the victims by approving of,

¹ Section 6 (1) of the Code of Crimes against International Law includes the crime of genocide. It reads: “Whoever with the intent of destroying as such, in whole or in part, a national, racial, religious or ethnic group

1. kills a member of the group,
 2. causes serious bodily or mental harm to a member of the group, especially of the kind referred to in Section 226 of the Criminal Code,
 3. inflicts on the group conditions of life calculated to bring about their physical destruction in whole or in part,
 4. imposes measures intended to prevent births within the group,
 5. forcibly transfers a child of the group to another group
- shall be punished with imprisonment for life.”

glorifying or justifying National Socialist tyranny and arbitrary rule incurs a penalty of imprisonment for a term not exceeding three years or a fine.

(5) Whoever approves of, denies or grossly minimises an act of the kind indicated in Sections 6 to 12 of the German Code of Crimes against International Law² against one of the groups of persons of persons referred to in subsection 1 number 1³ or against an individual because of his belonging to one of these groups of persons in public or in an assembly in a manner that suited to incite hatred or violence against such a person or group of persons and to disturb the public peace incurs a penalty of imprisonment not exceeding three years or a fine.

3. Legal Provision in the original language

Volksverhetzung

[...]

(3) Mit Freiheitsstrafe bis zu fünf Jahren oder mit Geldstrafe wird bestraft, wer eine unter der Herrschaft des Nationalsozialismus begangene Handlung der in § 6 Abs. 1 des Völkerstrafgesetzbuches bezeichneten Art in einer Weise, die geeignet ist, den öffentlichen Frieden zu stören, öffentlich oder in einer Versammlung billigt, leugnet oder verharmlost.

(4) Mit Freiheitsstrafe bis zu drei Jahren oder mit Geldstrafe wird bestraft, wer öffentlich oder in einer Versammlung den öffentlichen Frieden in einer die Würde der Opfer verletzenden Weise dadurch stört, dass er die nationalsozialistische Gewalt- und Willkürherrschaft billigt, verherrlicht oder rechtfertigt.

² By including these sections of the German Code of Crimes against International Law the provision makes a reference to genocide, crimes against humanity and various war crimes.

³ Section 130 (1) Criminal Code defines the groups by nationality, race, religion or ethnic origin.

(5) Mit Freiheitsstrafe bis zu drei Jahren oder mit Geldstrafe wird bestraft, wer eine Handlung der in den §§ 6 bis 12 des Völkerstrafgesetzbuches bezeichneten Art gegen eine der in Absatz 1 Nummer 1 bezeichneten Personenmehrheiten oder gegen einen Einzelnen wegen dessen Zugehörigkeit zu einer dieser Personenmehrheiten öffentlich oder in einer Versammlung in einer Weise billigt, leugnet oder gröblich verharmlost, die geeignet ist, zu Hass oder Gewalt gegen eine solche Person oder Personenmehrheit aufzustacheln und den öffentlichen Frieden zu stören.

4. Key Points

- In 1994, Germany introduced a specific denial ban, limited to genocide committed under the National Socialist regime and applicable when such denial is likely to disturb public peace. However, the denial of the Holocaust had already led to criminal prosecutions on the basis of general hate speech legislation adopted in the 1960s.
- In 2023, an EU infringement procedure for failing to implement the EU Framework Decision 2008/913/JHA (hereafter ‘EU FD 2008’) was closed following the adoption of a general ban on denying any genocide, crime against humanity, or war crime, where the statement is likely to incite to hatred or violence and to disturb public peace, however, regardless of whether it has been recognized by a court.
- German courts are increasingly tasked with defining the line between criminal relativisations and acceptable public discourse.
- Recent controversy involves the comparison of the Nazis’ persecution of Jews with the containment measures during the Covid-19 pandemic.

5. Background

Vandalism against a Jewish synagogue in Cologne in 1959 and an ensuing wave of antisemitic incidents that spread to other cities alarmed the

political leaders of the early West German Republic who were striving to re-establish normality after the country had unleashed an unprecedented scale of death and destruction on the European continent and beyond.⁴ Swiftly, a law against incitement to hatred was passed in 1960 which generally targeted inflammatory statements against “parts of the population” to avoid the impression of special protection for Jews.⁵ Prosecutors, who noticed the rising phenomenon of Holocaust denial, were soon inspired to bring charges on the basis of the new law. However, courts only accepted the charge of incitement to hatred if the defendant was found to identify with National Socialist ideology, or if the Holocaust was portrayed as a Jewish conspiracy “intended to extort and exploit the German people”.⁶ Simple expressions of Holocaust denial that did not feature these qualifications, however, could be prosecuted under defamation law since the Federal Court of Justice ruled in 1979 that the collective memory of Jews living in Germany regarding their and their ancestors’ experiences of persecution and destruction was an integral part of their personal dignity.⁷ The first legislative attempt to enact an explicit Holocaust denial ban failed in the 1980s, with opponents asserting that historical fact-finding exceeded judicial competences.⁸ The complexity of two statutes covering different forms

⁴ W. Stenke, ‘Schändung der Kölner Synagoge vor 60 Jahren: Beginn einer Welle antisemitischer Vorfälle’ (*Deutschlandfunk*, 24 December 2019) <<https://www.deutschlandfunk.de/schaendung-der-koelner-synagoge-vor-60-jahren-beginn-einer-100.html>>.

⁵ E. Hoven, A. Witting, ‘Antisemitische Volksverhetzung – Für eine Reform der Strafbarkeit von § 130 Abs. 1 und 2 StGB’ [2024] *Kriminalpolitische Zeitschrift*, No. 1, p. 6.

⁶ Bundesgerichtshof [Federal Court of Justice], Judgement, 11 November 1976, 2 StR 508/76, para. 12, see Wolters Kluwer <<https://research.wolterskluwer-online.de/document/149cb41c-a1ab-44c0-a757-bfd758907e8a>>; Federal Court of Justice, Judgement, 14 January 1981, 3 StR 440/80 (S), [1981] *Neue Zeitschrift für Strafrecht*, p. 258.

⁷ Bundesgerichtshof [Federal Court of Justice], Judgement, 18 September 1979, VI ZR 140/78, see Wolters Kluwer <<https://research.wolterskluwer-online.de/document/ded2118b-9e5c-47e2-8622-4ea4adabc03e>>.

⁸ K. Miltner, Sitzung des Bundestags [Meeting of the Bundestag], 14 March 1985, Plenarprotokoll [Plenary Protocol] 10/126, p. 9318.

of Holocaust denial, the on-going shift from pure denial (which had been effectively culturally marginalised), to more vague forms of minimisations and, finally, public pressure after the acquittal of a notorious neo-Nazi, prepared the ground for the parliament of recently reunified Germany to ultimately adopt an explicit Holocaust denial ban under Section 130 (3) of the Criminal Code in 1994.⁹ In 2005, Section 130 of the Criminal Code was supplemented by a fourth paragraph that criminalises the approval, glorification or justification of the Nazi regime.¹⁰ In 2022, to fully implement EU FD 2008, a fifth paragraph was added, incriminating a general denial ban for any genocide, crime against humanity or war crime, where the statement is likely to incite hatred or violence.¹¹ Unlike in other neighbouring European countries which also expanded their denial bans in reaction to EU FD 2008, the German provision does not require the crime in question to be recognised by a domestic or international court.

6. Application

Courts are not required to hear historians as expert witnesses on the veracity of the Holocaust since the Federal Court of Justice ruled in 1976 that essential historical facts concerning the persecution of Jews by National Socialists were generally known.¹² Still, for the law to be applied effectively, the prosecution needs to be aware of “dog whistles” and metaphors implicitly alluding to the Jewish genocide. Section 130 (3) of the Criminal Code includes three modalities, namely the approval, denial or downplaying of the Holocaust. In particular, statements of

⁹ Rhein-Fischer, S. Mensing, *Memory Laws in Germany: How Remembering National Socialism Is Governed through Law* (Torkel Opsahl Academic EPublisher 2022), pp. 14-16, with further references <<https://www.toaep.org/ops-pdf/14-rhein-fischer-mensing>>.

¹⁰ Bundesgesetzblatt [Federal Law Gazette] I [2005] Nr. 20, pp. 969, 970.

¹¹ Bundesgesetzblatt [Federal Law Gazette] I [2022] Nr. 48, p. 2148.

¹² Bundesgerichtshof [Federal Court of Justice], Judgement, 11 November 1976, 2 StR 508/76, see Wolters Kluwer <<https://research.wolterskluwer-online.de/document/149cb41c-a1ab-44c0-a757-bfd758907e8a>>.

approval or downplaying are not always evident, and recognising them as such requires knowledge of specific historical references. For instance, a conviction for Holocaust approval for chanting the so-called ‘underground song’ (“We build an underground railway from Jerusalem to Auschwitz”) was, among others, grounded in the general knowledge that the Holocaust was facilitated by train transportations.¹³

In another case, a court ruled that a tattoo which combined a depiction of the gates of Auschwitz and the words “Jedem das Seine” [“To each his own”] on a defendant’s back could only be understood as an endorsement of the Holocaust.¹⁴ Furthermore, the tattoo disturbed public peace, as the law requires, since the defendant had been seen in a public swimming pool dressed in nothing but his bathing shorts.¹⁵ Vastly underestimating the number of victims of the Holocaust in a way that surpasses the margins of the historically established scope, can also constitute the offence of downplaying.¹⁶

The provision has also served, to some extent, as a point of reference beyond criminal law. In an administrative lawsuit about whether the president of a Saxony intelligence service was allowed to state that a political party was aiming to re-establish a National Socialist “*Führer*” state, the court accepted that the party chairman’s criticism of Section 130 (3) of the Criminal Code indicated right-wing extremist ideas. However, as debate about the boundaries of this provision was part of a pluralist exchange of opinions, and the relevant statements did not indicate the establishment of a “*Führer*” state, the political party still won the case.¹⁷

¹³ Oberlandesgericht Hamm [Higher Regional of Court Hamm], Order, 1 October 2015, III-1 RVs 66/15, juris, para. 12.

¹⁴ Brandenburgisches Oberlandesgericht [Higher Regional Court of Brandenburg], Order, 12 April 2017, (1) 53 Ss 17/17 (13/17), see [2017] Neue Zeitschrift für Strafrecht – Rechtsprechungsreport, p. 206.

¹⁵ Ibid.

¹⁶ Verwaltungsgericht Dresden [Administrative Court Dresden], Judgement, 12 March 2024, 2 K 2284/21, para. 20, juris.

¹⁷ Ibid.

7. Controversies

While plain Holocaust denial typically concerns supporters of a neo-Nazi agenda, Holocaust relativisations are increasingly expressed across the political spectrum.¹⁸ It could be argued that the decades-long process of centring German memory culture around the Holocaust has ushered in a reverse effect – and prompted agitators to use it as a reference point for alleged present-day injustices and inconveniences. In recent years, courts have in particular had to deal with comparisons of measures to contain the Corona pandemic to methods of the National Socialist persecution of Jews. The case law was inconsistent and thus not always easy to predict, illustrating the difficulties arising from the tension between the legislator’s aim to ban relativisation of the Holocaust, and the necessary protection of political debate. In this respect, for example, the Higher Regional Court of Bavaria annulled the conviction of a defendant who had compared the treatment of unvaccinated people with the measures against the Jewish population during the November 1938 pogroms.¹⁹ After a historical analysis that concluded that the “1938 pogroms were already part of the systematic persecution of Jews with the aim of exterminating them”, the lower court had applied Section 130 (3) of the Criminal Code as it found that the comparison relativised the Holocaust.²⁰ However, the Higher Court held that “according to the overall context it was at least just as likely that the defendant wanted to express that politicians are always looking for [...] ‘scapegoats’, and that in 1938 these were the Jews, and today the unvaccinated” and concluded that – based on this interpretation – the defendant had not relativised the

¹⁸ P. Gensing, ‘NS-Relativierung verfestigt sich’ (*Tagesschau*, 9 November 2021) <<https://www.tagesschau.de/investigativ/antisemitismus-querdenken-ns-verharmlosung-101.html>>.

¹⁹ Bayerisches Oberstes Landesgericht [Higher Regional Court of Bavaria], Order, 15 January 2024, 207 StRR 440/23, see Bayerische Staatskanzlei <<https://www.gesetze-bayern.de/Content/Document/Y-300-Z-BECKRS-B-2024-N-187?hl=true>>.

²⁰ Landgericht München II [Regional Court Munich II], Judgement, 17 August 2023, 6 Ns 510 Js 5/22, para 76, juris.

Holocaust. Hence, it found that the statement was protected by the freedom of speech.²¹

Another example was an imitation of the “Yellow Star” where the word “Jew” was replaced by “unvaccinated”. Again, courts delved into delicate issues of collective memory and history to understand whether the “Yellow Star” was directly linked with the genocide, and thus whether the denial ban was applicable. Here, too, the courts were not always in agreement. The Higher Court of Brandenburg emphasized that the decree that introduced the “Jewish star” in 1939 had been related with the regime’s intention to prepare “for the mass deportation of Jews in the German Reich and in the territories occupied by Germany and was a publicly visible measure to carry out the Holocaust.”²² In contrast, the Higher Regional Court of Braunschweig underlined that the issuing of the compulsory yellow badge did not constitute the act of genocide itself, even though “collective memory of the National Socialist regime and the existing culture of remembrance might regard the ‘Jewish star’ as a symbol of the persecution of the Jews in general”.²³ The Higher Court of Frankfurt, in turn, argued that the issue did not depend on historical analysis, but on the intention of the defendant: The “comparison is out of touch with history, tasteless and dramatises the situation of unvaccinated persons excessively, but it does not aim at presenting the horror of the Holocaust as less serious.”²⁴

²¹ Bayerisches Oberstes Landesgericht, 2024, see above note 19.

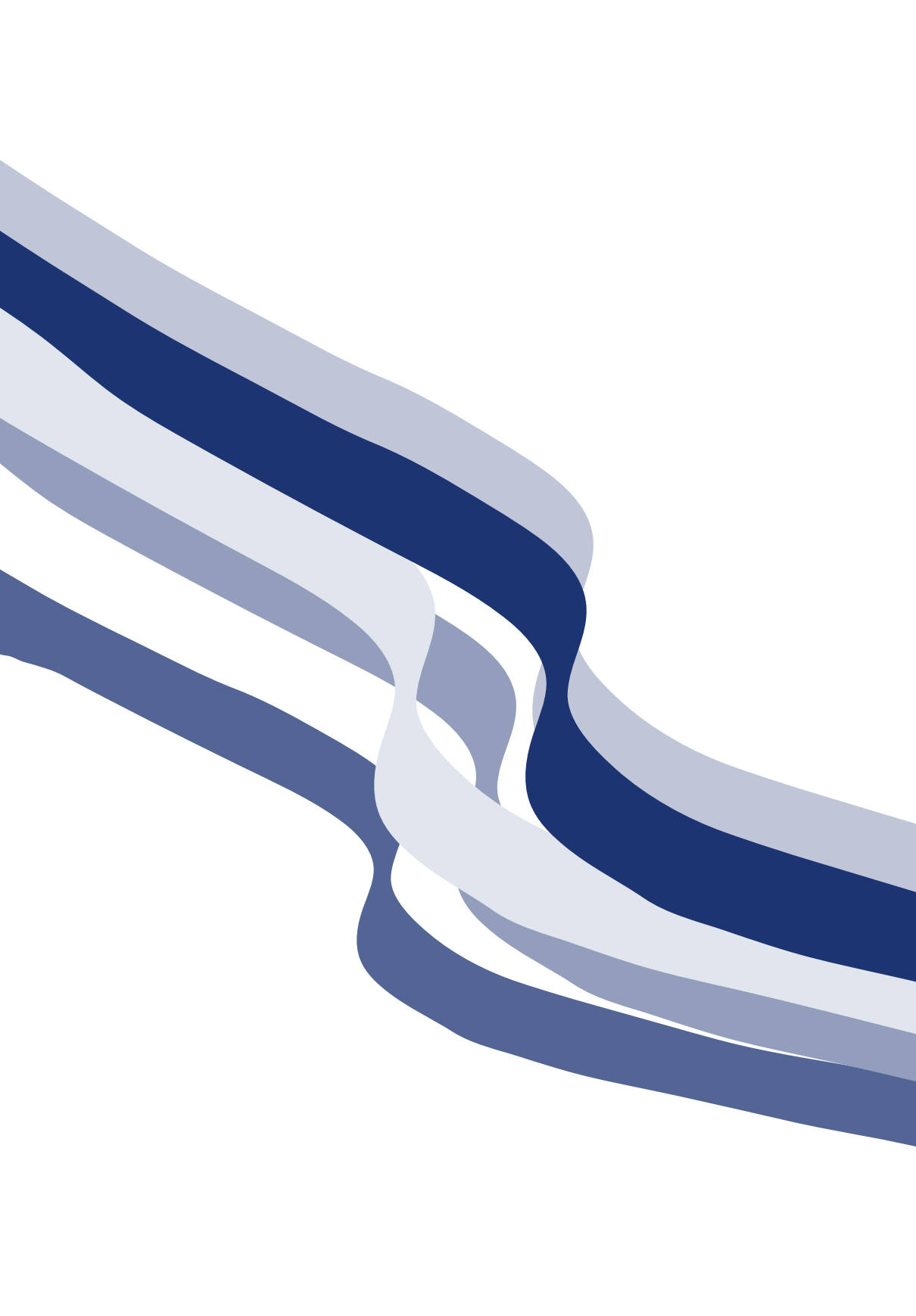
²² Brandenburgisches Oberlandesgericht [Higher Regional Court of Brandenburg], Judgement, 17 April 2024, 1 ORs 23/23, para. 16, 17, juris.

²³ Oberlandesgericht Braunschweig [Higher Regional Court of Braunschweig], Judgement, 7 September 2023, 1 ORs 10/23, Rn. 17, juris.

²⁴ Oberlandesgericht Frankfurt [Higher Regional Court of Frankfurt], Judgement, 13 February 2023, 1 Ss 166/22, Rn. 10, juris.

8. Further Reading

- W. Benz, 'The Motivations and Impact of Contemporary Holocaust Denial in Germany', in R. S. Wistrich (ed), *Demonizing the Other: Antisemitism, Racism and Xenophobia*, (Routledge 1999).
- P. Rhein-Fischer, S. Mensing, *Memory Laws in Germany: How Remembering National Socialism Is Governed through Law* (Torkel Opsahl Academic EPublisher 2022), <<https://www.toaep.org/ops-pdf/14-rhein-fischer-mensing>>.
- A. Goldberg, 'Minority Rights, Honor, and Hate Speech Law in Post-Holocaust West Germany' [2021] Volume 17, No. 2, *Law, Culture and the Humanities*, pp. 224-245.
- R. A. Kahn, 'Who Takes the Blame – Scapegoating, Legal Responsibility and the Prosecution of Holocaust Revisionists in the Federal Republic of Germany and Canada' [1998], Volume 16, *Glendale Law Review*, pp. 17-64.





GREECE





1. Source of the legal provision¹

Articles 1, 2 of Law 927/1979, Official Gazette 139/A/28-6-1979, on criminalization of acts or actions aimed at racial discrimination [Νόμος 927/1979, Νόμος 927 ΦΕΚ Α'139/28.6.1979, Περὶ κολασμοῦ πράξεων ἢ ενεργειῶν αποσκοποουσῶν εἰς φυλετικές διακρίσεις], as amended by Law 4491/2017 [Νόμος 4491/2017].

Available in the original language via: kodiko.gr; <<https://www.kodiko.gr/nomothesia/document/307515/nomos-927-1979>>

2. Legal provision in English

Article 1

Public incitement to violence or hatred

1. Whoever intentionally, publicly, orally or through the press, via the internet or by any other means or manner, incites, provokes, stimulates or incites acts or actions that may cause discrimination, hatred or violence against a person or group of persons, identified on the basis of race, colour, religion, ancestry, national or ethnic origin, sexual orientation, gender identity, gender characteristics or disability, in a manner that endangers public order or poses a threat to the life, liberty or physical integrity of the aforementioned persons, shall be punished by imprisonment of three (3) months to three (3) years and a fine of five to twenty thousand (5,000 – 20,000) euros.

[...]

¹ The authors of the Compendium would like to thank Hélio Silva (University of Lisbon) for his guidance through Greek law.

Article 2

Public approval or denial of crimes

1. Whoever intentionally, publicly, orally or through the press, via the internet or by any other means or manner, approves, trivializes or maliciously denies the existence or seriousness of crimes of genocide, war crimes, crimes against humanity, the Holocaust and the crimes of Nazism that have been recognized by decisions of international courts or the Hellenic Parliament and such conduct is directed against a group of persons or a member thereof identified on the basis of race, color, religion, lineage, national or ethnic origin, sexual orientation, gender identity, gender characteristics or disability, when such conduct is manifested in a manner that may incite violence or hatred or is of a threatening or abusive nature against such a group or a member thereof, shall be punished with the penalties of paragraph 1 of the previous article.

2. If the act of the previous paragraph was committed by a public official or employee, during the exercise of the duties assigned to him, imprisonment of six (6) months to three (3) years and a fine of ten thousand to twenty-five thousand (10,000 – 25,000) euros shall be imposed.

3. Legal provision in the original language

Άρθρον 1

Δημόσια υποκίνηση βίας ή μίσους

1. Όποιος με πρόθεση, δημόσια, προφορικά ή δια του τύπου, μέσω του διαδικτύου ή με οποιοδήποτε άλλο μέσο ή τρόπο, υποκινεί, προκαλεί, διεγείρει ή προτρέπει σε πράξεις ή ενέργειες που μπορούν να προκαλέσουν διακρίσεις, μίσος ή βία κατά προσώπου ή ομάδας προσώπων, που προσδιορίζονται με βάση τη φυλή, το χρώμα, τη θρησκεία, τις γενεαλογικές καταβολές, την εθνική ή εθνοτική καταγωγή, το σεξουαλικό προσανατολισμό, την ταυτότητα φύλου, χαρακτηριστικά φύλου ή την αναπηρία, κατά τρόπο που εκθέτει σε κίνδυνο τη δημόσια τάξη ή ενέχει απειλή για τη ζωή, την ελευθερία ή τη σωματική ακεραιότητα των ως άνω προσώπων, τιμωρείται με φυλάκιση τριών (3) μηνών έως τριών (3) ετών και με χρηματική ποινή πέντε έως είκοσι χιλιάδων (5.000 – 20.000) ευρώ.

[...]

Άρθρο 2

Δημόσια επιδοκιμασία ή άρνηση εγκλημάτων

1. Όποιος με πρόθεση, δημόσια, προφορικά ή δια του τύπου, μέσω του διαδικτύου ή με οποιοδήποτε άλλο μέσο ή τρόπο, επιδοκιμάζει, ευτελίζει ή κακόβουλα αρνείται την ύπαρξη ή τη σοβαρότητα εγκλημάτων γενοκτονιών, εγκλημάτων πολέμου, εγκλημάτων κατά της ανθρωπότητας, του Ολοκαυτώματος και των εγκλημάτων του ναζισμού που έχουν αναγνωριστεί με αποφάσεις διεθνών δικαστηρίων ή της Βουλής των Ελλήνων και η συμπεριφορά αυτή στρέφεται κατά ομάδας προσώπων ή μέλους της που προσδιορίζεται με βάση τη φυλή, το χρώμα, τη θρησκεία, τις γενεαλογικές καταβολές, την εθνική ή εθνοτική καταγωγή, το σεξουαλικό προσανατολισμό, την ταυτότητα φύλου ή την αναπηρία, όταν η συμπεριφορά αυτή εκδηλώνεται κατά τρόπο που μπορεί να υποκινήσει βία ή μίσος ή ενέχει απειλητικό ή υβριστικό χαρακτήρα κατά μίας τέτοιας ομάδας ή μέλους της, τιμωρείται με τις ποινές της παραγράφου 1 του προηγούμενου άρθρου.

2. Αν η πράξη της προηγούμενης παραγράφου τελέστηκε από δημόσιο λειτουργό ή υπάλληλο, κατά την άσκηση των ανατεθειμένων σε αυτόν καθηκόντων, επιβάλλεται φυλάκιση έξι (6) μηνών έως τριών (3) ετών και χρηματική ποινή δέκα χιλιάδων έως είκοσι πέντε χιλιάδων (10.000 – 25.000) ευρώ.

4. Key points

- Greece specifically mentions the Holocaust in its general denial ban, which sanctions the denial, promotion or gross trivialization of genocides, war crimes and crimes against peace and humanity when it is carried out in a manner that may incite violence or hatred or when it is threatening or abusive.
- Additionally, the crimes must have been recognised by decisions of international courts or the Hellenic Parliament.
- The direct reference to the Holocaust, present in this legal provision, was already included in the 1979 first version of the law. The law was later revised in 2014, and then again in 2017.

- For the offence of denialism, committed in its basic form, the law stipulates a punishment of imprisonment for 6 months up to 3 years, and a fine of ten thousand to twenty-five thousand euros.

5. Background

Dated from 1979, the Greek law “on punishing acts or activities aiming at racial discrimination” (N. 927/1979) – also known as “the first anti-racist law”² – came into effect. But it was during the 1990s that Greece faced increasing challenges concerning discrimination, since almost a million people from Albania and newly independent states of the former USSR came into Greece as refugees, foreign migrants and ethnic Greeks. During that decade, a series of initiatives tried to regulate conditions for people that were entering the country, namely by the so-called Aliens Law,³ and then by the Presidential Decrees 358/1997 and 359/1997. Laws concerning racial discrimination more directly, such as the 1979 law, also continued to apply.

Article 2 of this legal provision concerns the criminalisation of a person who “[...] publicly, orally or by word of mouth, or through the press, the Internet, or by any other means or manner, condones, trivialises or maliciously denies the existence or gravity of genocide crimes, war crimes, crimes against humanity, the Holocaust and crimes of Nazism [...]”.

However, Greece had already devoted special attention to other genocides through various parliamentary resolutions, namely the

² Modified over the years (mod. 1419/1984; 2910/2001; 4285/2014; 4491/2017; 5028/2023). It was specifically amended in 2014, through N. 4285/2014 – Amendment of Law 927/1979 (A 139), adapting to the decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law; cf. Analytical Report on Legislation: RAXEN National Focal Point GREECE – Antigone Information and Documentation Centre, Athens (by Nasos Theodorides; Ioannis N. Dimitrakopoulos), Vienna, 2004, p. 4. Available here: <https://fra.europa.eu/sites/default/files/fra_uploads/300-R4-LEG-EL.pdf>.

³ Law 1975/199 (replacing N. 4310/1929).

so-called Pontic Greek genocide,⁴ the Armenian genocide,⁵ and the Ionian Greek genocide.⁶

The European Commission introduced an infringement procedure for failing to adequately transpose EU Framework Decision on Racism and Xenophobia 2008/913/JHA.⁷ The procedure was closed in October 2023, after Greece amended some of its hate speech regulations.

6. Application

Several reports have identified the 1979 law as ineffective in granting protection to minority and protected groups, even with the changes introduced by law N. 1419/1984 (that assured that “discrimination on the basis of religion is also punishable”) and by law N. 2910/2001 (which allowed the public prosecutor to bring charges *ex officio*).⁸

The 1979 law, in its revised version, was unsuccessfully applied *in absentia* to the German historian Heinz Richter who was charged with the denial of German Nazi crimes on the people of Crete in 2016, but ultimately acquitted. The law was also used in the case of a Member of the European Parliament, Ioannis Lagos, although not in the context of Holocaust denial.⁹ Lagos, was a leader of the Golden Dawn (Χρυσή Αυγή), a Greek far-right political party that was deemed a crim-

⁴ Law N. 2193/1994.

⁵ Law N. 2397/1996.

⁶ Law N. 2645/1998; see ‘Political Recognitions of Genocides avant la lettre: the Case of the Armenian Genocide’, by Dimitrios A. Kourtis (20.05.21). Available here: <<https://opiniojuris.org/2021/05/20/political-recognitions-of-genocides-avant-la-lettre-the-case-of-the-armenian-genocide/>>.

⁷ European Commission ‘June infringements package: key decisions’ (EU Press Corner, 9 June 2021), <https://ec.europa.eu/commission/presscorner/detail/en/inf_21_2743>.

⁸ Analytical Report on Legislation: RAXEN National Focal Point GREECE – Antigone Information and Documentation Centre, Athens (by Nasos Theodorides; Ioannis N. Dimitrakopoulos), Vienna, 2004, p. 4. Available here: <https://fra.europa.eu/sites/default/files/fra_uploads/300-R4-LEG-EL.pdf>.

⁹ European Parliament decision of 24 March 2022 on the request for waiver of the immunity of Ioannis Lagos: <https://www.europarl.europa.eu/doceo/document/TA-9-2022-0087_EN.html>.

inal organization in 2020. The European Parliament decided to waive the immunity of Ioannis Lagos, a second time in 2023,¹⁰ and he was subsequently convicted in Greece for incitement to violence or hatred. Similarly, it was also used in various cases relating to the incitement of hatred, albeit not the question of genocide denial, some of which ended up before international tribunals (e.g., ECtHR, *Lenis v. Greece*¹¹ and *Sidiropoulos v. Greece*,¹² as well as the 2008 UN Human Rights Committee decision in *Vassilari v. Greece*.¹³

In its older 1979 version, the law was used once in a Holocaust denial case, namely regarding the extremist writer Kostas Plevris, who was sentenced to fourteen months imprisonment in 2007. He was found to have incited hatred and racist violence through his denialist book ‘The Jews – The Whole Truth’.¹⁴

7. Controversies

The 2014 amendment was criticised by experts who pointed out its possible resulting limits upon freedom of expression.¹⁵ Others considered this legal provision insufficient, even ineffective, which became acutely

¹⁰ European Parliament Decision C/2023/411, available here: <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023DP0060>>; it was first waived in 2021 to allow Greek authorities to prosecute him in connection with his leadership role in the far-right Golden Dawn party, which had been classified as a criminal organization.

¹¹ Decision of 27 June 2023, application no. 47833/20, <<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-226442%22%5D%7D>>.

¹² Judgment of 10 July 1998, application no. 57/1997/841/1047, <<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-58205%22%5D%7D>>.

¹³ See *The Future of Free Speech*, 1 August 2021: <<https://futurefreespeech.org/vassilari-et-al-v-greece/>>.

¹⁴ DerStandard, ‘Faschistenführer verurteilt’ <<https://www.derstandard.at/story/3150484/faschistenfuehrer-verurteilt>>.

¹⁵ “Αντιρατσιστικός νόμος και ελευθερία της έκφρασης”, *Η Αυγή*, 23 September 2014: <https://www.avgi.gr/politiki/112511_antiratsistikos-nomos-kai-eleytheria-tis-ekfrasis?amp>.

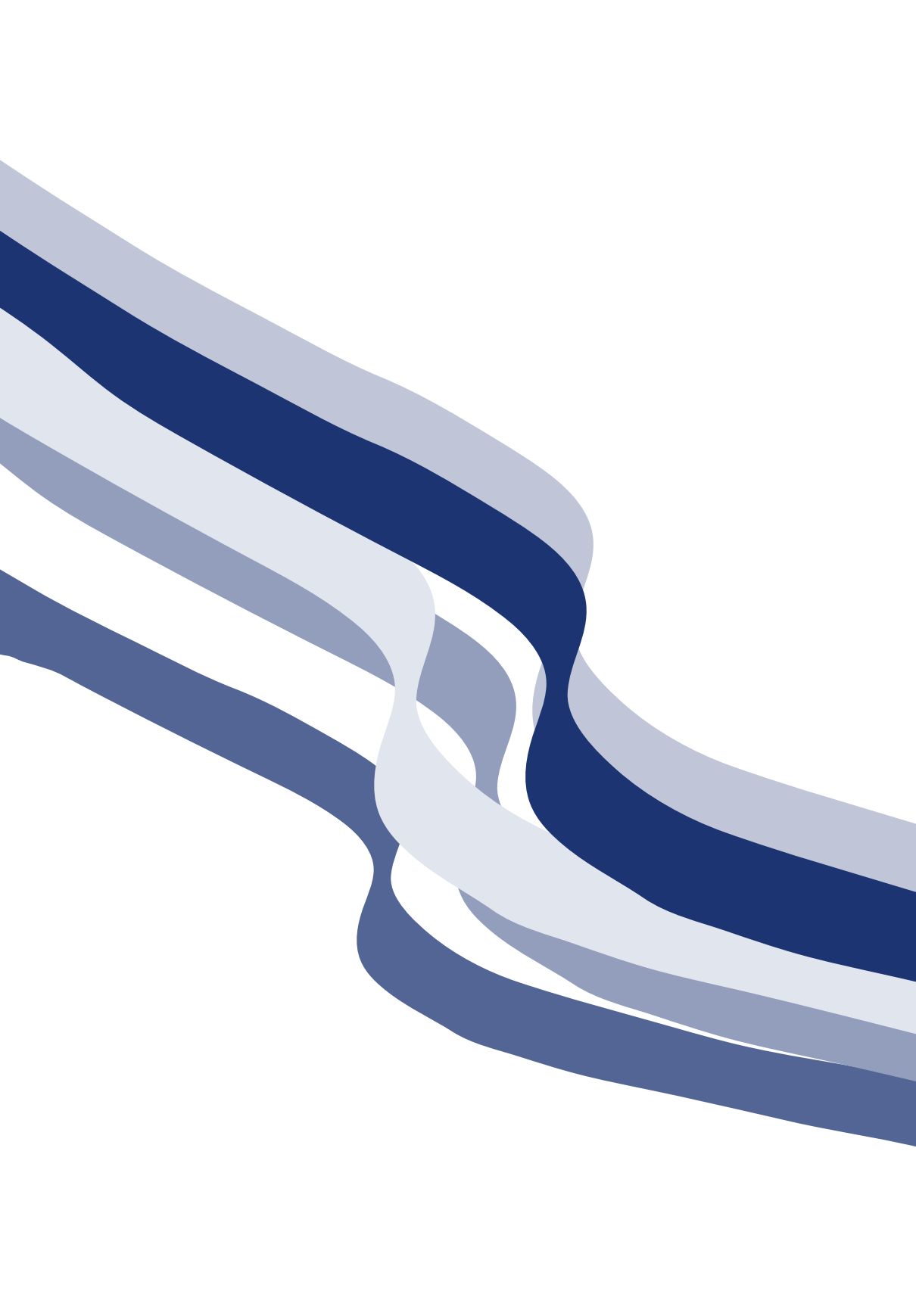
visible in the Golden Dawn case mentioned above, and postulated its replacement with clearer legal provisions.¹⁶

8. Further reading

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- Droumpouki A. M. (2015). ‘Shaping Holocaust memory in Greece: memorials and their public history’, *National Identities*, 18(2), 199-216.
- Tourkochoriti I., *The New Regulation Against Hate Speech in Greece: Strengths and Weaknesses* (December 3, 2014). Council for European Studies, Reviews & Critical Commentary (CritCom) Columbia University, Forthcoming.¹⁷
- ‘Memory Laws in European and Comparative Perspective’, MELA Project, <<https://melaproject.org/>>.

¹⁶ ‘Ο αντιρατσιστικός νόμος, ο ‘ρατσιστής’ ιερέας και ο Δημητράς’, *Liberal*, 25 November 2019: <<https://www.liberal.gr/apopsi/o-antiratsistikos-nomos-o-ratsistis-iereas-kai-o-dimitras>>.

¹⁷ Available at SSRN: <<https://ssrn.com/abstract=2533498>>.





HUNGARY





1. Source of the legal provision

Section 333 of Law C of 2012 Criminal Code (New Criminal Code)
[2012. évi C. törvény a Büntető Törvénykönyvről]

Available in the original language via: Wolters Kluwer: <<https://net.jogtar.hu/jogszabaly?docid=a1200100.tv>>

2. Legal Provision in English

Public denial of the crimes of National Socialist or Communist regimes

§ 333. Whoever denies, casts doubt on, trivializes, or attempts to justify the facts of genocide committed by the National Socialist or Communist regimes or other acts against humanity in public, shall be punished for the crime by up to three years imprisonment.

3. Legal Provision in the original language

A nemzetiszocialista vagy kommunista rendszerek bűneinek nyilvános tagadása

Aki nagy nyilvánosság előtt a nemzetiszocialista vagy kommunista rendszerek által elkövetett népirtás vagy más, emberiség elleni cselekmények tényét tagadja, kétségbe vonja, jelentéktelen színben tünteti fel, vagy azokat igazolni törekszik, büntett miatt három évig terjedő szabadságvesztéssel büntetendő.

4. Key Points

- The Hungarian provision covers not only the Holocaust but also communist atrocities, but also other crimes against humanity. There is no need for the crimes concerned to be established by a court. Nor

does the offence require any likely incitement to hatred or violence or disturbance of public order or peace.

- In its list of crimes, however, also lies a notable limitation: it leaves, in particular, war crimes, out of the scope. The Holocaust is not specifically referenced, only Nazi crimes more generally.
- The possible sanction is up to three years of imprisonment.
- An infringement procedure for not fully transposing EU Framework Decision on Racism and Xenophobia 2008/913/JHA (hereafter ‘EU FD 2008’),¹ is ongoing, despite the changes to the law introduced in 2016 to make it more in line with the EU FD 2008.

5. Background

The Hungarian Criminal Code provision² came into force in 2012, alongside many other reforms introduced by the Viktor Orbán administration which are oftentimes considered “illiberal”.³ Initially, unlike some other countries within the region (e.g., Poland) for many years after the transition from communism, Hungary was simply relying on the articles of its Criminal Code concerning the offence of “incitement against a community” to deal with negationism.⁴ However, following the EU FD 2008, a specific piece of legislation on Holocaust denial was introduced in 2010 by the outgoing socialist administration. The new illiberal government of Viktor Orbán added a prohibition of denial of

¹ Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

² ‘Hungarian Criminal Code’ <<https://vidakovics.hu/nemzetiszocialista-vagy-kommunista-rendszerek-buneinek-nyilvanos-tagadasa-btk-333/>>.

³ Mirosław M. Sadowski, ‘Central Europe in the Search of (Lost) Identity. The Illiberal Swerve’ in Alesksandra Mercescu (ed.), *Constitutional Identities in Central and Eastern Europe. The CEE Yearbook vol. 8* (Peter Lang 2020) 173-193, 176-177.

⁴ Marina Bán, *The Legal Governance of Historical Memory and the Rule of Law* (PhD thesis, University of Amsterdam) 201, <<https://pure.uva.nl/ws/files/51201837/Thesis.pdf>>.

the negation of communist crimes, while at the same time removing a direct reference to the Holocaust from the article.⁵

6. Application

The first and most widely-known case of a prosecution of a Holocaust denier that we could identify took place in 2011 after Gyorgy Nagy was arrested at a protest for holding a banner inscribed with the words “The Shoah did not happen”. In 2013, he was sentenced to 18 months of a suspended prison sentence, and additionally obliged by the court to visit the Auschwitz Memorial Museum, the Yad Vashem Institute or the Budapest’s Holocaust Museum – but in case of choosing the latter he would need to make at least three separate excursions and produce a record of his observations.⁶ Since then, eight other cases have been initiated by the Budapest Chief Prosecutor Office in the years 2013-2023.⁷

7. Controversies

Hungary has a particular relationship with its World War II past, having refocused its collective memory from the country’s involvement in the Holocaust (the Hungarian Horthy government was an ally of Hitler) to the Nazi 1944 occupation of the country already during the communist era, when the first monuments dedicated to all the victims of fascism (and not specifically Jewish victims) appeared in the public spaces.⁸ This policy has been continued after 1989, in particular by the current Or-

⁵ Bán (n 259) 201.

⁶ Nissan Tzur, ‘Hungary orders Holocaust denier to visit Auschwitz’ <<https://www.jpost.com/jewish-world/jewish-news/hungary-orders-holocaust-denier-to-visit-auschwitz>>.

⁷ Mihály B. Botos, ‘A „specifikus hazugságot” büntető tényállásA nemzetiszocialista és a kommunista rendszerek bűneinek nyilvános tagadása tényállással kapcsolatos hazai gyakorlat vizsgálata’ [2024] 8 In *Medias Res* 114-138.

⁸ Gábor Gyáni, ‘Hungarian Memory of the Holocaust in Hungary’ in Randolph L. Braham and András Kovács (eds), *The Holocaust in Hungary. Seventy Years Later* (Central European University Press 2016) 215-230, 216.

bán administration who constructed a controversial monument to all the victims of the German invasion,⁹ as well as built a museum – the “House of Fates” (“Sorsok Háza”). The latter was supposed to tell the story of the Hungarian Holocaust, but remains unopened since the mid-2010s due to issues surrounding its narrative.¹⁰ The law on denial in a way follows the same line, and as such came under scrutiny for having only communist and Nazi and not fascist atrocities within its scope, however it was upheld by the Hungarian Constitutional Court in its current form.¹¹

Another controversy concerns the Section 335 (previously Article 269/B of the old Criminal Code) of the country’s current Criminal Code.¹² This provision criminalises the public display of certain symbols (e.g., the swastika, the hammer and sickle, the five-pointed red star). While upheld by the country’s Constitutional Court, the European Court of Human Rights found it unnecessary in relation to the communist symbols given the lack of a danger posed by this ideology

⁹ Mark MacKinnon, ‘Statue in Budapest based on Second World War evokes dark history’ <<https://www.theglobeandmail.com/news/world/statue-in-budapest-based-on-second-world-war-evokes-dark-history/article22099406/>>.

¹⁰ Sheena McKenzie, ‘This Holocaust museum cost millions and still hasn’t opened. But that’s not what worries historians’ <<https://edition.cnn.com/interactive/2018/11/world/holocaust-museum-hungary-cnnphotos/>>.

¹¹ Aleksandra Gliszczyńska-Grabias, Grażyna Baranowska, Anna Wójcik, Mirosław M. Sadowski and Anastasiia Vorobiova, *Memory Laws in Poland and Hungary. Report by the research consortium ‘The Challenges of Populist Memory Politics and Militant Memory Laws (MEMOCRACY)’* (Reports ILS PAS 2023) 45.

¹² Section 335 of Law C of 2012 on the Criminal Code (New Criminal Code): “A person who, in a manner capable of disturbing public peace or, in particular, violating the human dignity of or the right to respect for the deceased victims of despotic regimes, a) disseminates, b) uses in front of a large audience, or c) displays in public a swastika, SS insignia, arrow cross, hammer and sickle, five-pointed red star, or any symbol depicting such signs is guilty of a misdemeanour and shall be punished by confinement, unless a criminal offence of greater gravity is established”.

to modern-day Hungary¹³ in the 2010 Vajnai case,¹⁴ and the 2011 Fratanoló case.¹⁵

In December 2021, the European Commission opened an infringement proceeding against Hungary for not fully implementing EU FD 2008. The Commission criticised that the Hungarian provision failed to criminalise the public condoning, denial or gross trivialisation of international crimes *per se*.¹⁶ The procedure is still ongoing, a reasoned opinion having been sent in January 2023.¹⁷

8. Further Reading

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- Pető, Andrea. 2019. The Lost and Found Library: Paradigm Change in the Memory of the Holocaust in Hungary. 9 *Mémoires en jeu: enjeux de société / Memories at stake* 77-81.

¹³ Katalin Izsák-Somogyi, 'Memory Laws in Hungary after the Holocaust' (2021) 2021 *Regional Law Review* 223-233, 231.

¹⁴ Vajnai v. Hungary, no. 33629/06 (2008).

¹⁵ Fratanoló v. Hungary, no. 29459/10 (2011).

¹⁶ European Commission, December infringement package: key decisions, 2 December 2021, https://ec.europa.eu/commission/presscorner/detail/en/inf_21_6201.

¹⁷ European Commission, January infringement package: key decisions, 26 January 2023, https://ec.europa.eu/commission/presscorner/detail/en/inf_23_142.





IRELAND





1. Source of the legal provision

Section 3 and 3A of the Criminal Justice (Hate Offences) Act 2024
PT.2 S.6 [No. 41.]

Available in the original language via: Houses of the Oireachtas;
<<https://data.oireachtas.ie/ie/oireachtas/act/2024/41/eng/enacted/a4124.pdf>>.

2. Legal Provision in English

Section 3

Meaning of protected characteristic

- (1) In this Act, “protected characteristic”, in relation to a person or a group of persons, means any one of the following, namely—
 - (a) race,
 - (b) colour,
 - (c) nationality,
 - (d) religion,
 - (e) national or ethnic origin,
 - (f) descent,
 - [...]
- (2) In this Act, in relation to the protected characteristics—
 - (a) references to “religion” include references to the absence of a religious conviction or belief,
 - (b) references to “descent” include references to persons or groups of persons who descend from persons who could be identified by certain characteristics (such as race or colour), but not necessarily all of those characteristics still exist,
 - (c) references to “national or ethnic origin” include references to membership of the Traveller community (within the meaning of section 2(1) of the Equal Status Act 2000),
 - [...]

Section 3A

Aggravation of certain offences by hatred

(1) An offence committed by a person is aggravated by hatred for the purposes of sections 6A, 7A, 11A and 18A if—

(a) where there is a specific victim of the offence—

(i) at the time of committing the offence, or immediately before or after doing so, the person demonstrates hatred towards the victim, and

(ii) the hatred is on account of the victim's membership or presumed membership of a group defined by reference to a protected characteristic,

or

(b) whether or not there is a specific victim of the offence, the offence is motivated (wholly or partly) by hatred towards a group of persons on account of the group being defined by reference to a protected characteristic.

(2) It is immaterial whether or not an accused person's hatred is also on account (to any extent) of any other factor.

[...]

d) by the insertion of the following section after section 7:

“Distribution or display in public place of material which is threatening, abusive, insulting or obscene aggravated by hatred

7A. (1) A person shall be guilty of an offence under this section if he or she commits an offence under section 7 which is aggravated by hatred for the purposes of this section.

(2) A person who is guilty of an offence under this section shall be liable on summary conviction to a class C fine or to imprisonment for a term not exceeding 6 months or to both.

(3) A person charged with an offence under this section may, if the evidence does not warrant conviction for an offence under this section, be found guilty of an offence under section 7.”,

[...]

3. Legal Provision in the original language

Legal provision is in English.

4. Key Points

- Ireland has no explicit ban on Holocaust denial. Its recently introduced provision targets hate-motivated crimes by establishing a new set of protected characteristics like race, religion, origin and descent.
- While the law prohibits hate-motivated crimes, it does not specifically mention the Holocaust, Nazism, or fascism, making its applicability to Holocaust denial unclear.
- Instead of introducing a new category of crimes, the Bill proposes that hate-motivation will serve as an aggravating factor for crimes committed against an individual with protected characteristics, carrying a penalty of up to six months' imprisonment and/or a fine.
- In 2024, the European Commission opened an infringement procedure against Ireland for failing to fully implement the provisions of the EU Framework Decision on Racism and Xenophobia 2008/913/JHA (hereafter 'EU FD 2008'), including "the condoning, denial or gross trivialisation of international crimes and the Holocaust".¹ That procedure remains ongoing.

5. Background

The Bill was adopted following a lengthy process in the Irish parliament, which started in 2022.² The question of inclusion of specific provisions

¹ European Commission, Letter of formal notice: The Commission calls on BULGARIA, ESTONIA and IRELAND to correctly transpose EU law combating racism and xenophobia, 3 October 2024 <https://ec.europa.eu/commission/presscorner/detail/en/inf_24_4561>.

² Criminal Justice (Hate Offences) Act 2024, *House of Oireachtas*, <<https://www.oireachtas.ie/en/bills/bill/2022/105/>>.

banning Holocaust denial was also debated. Its proponents argued that the inclusion of banning Holocaust denial should be motivated by the perception that “far-right extremism is threatening to diminish the lessons learned from the Holocaust, with racism and antisemitism on the increase” in Ireland,³ including “Holocaust denial and distortion”.⁴

The second-to-last version of the Bill had a number of specific provisions banning Holocaust and other genocide denial,⁵ which were considered to be a testament to Ireland’s commitment to fight these worrying phenomena, with the government signing the UN Human Rights Council pledge to combat anti-Semitism in 2021, and working on a “National Action Plan on Racism”.⁶ This was further motivated by the then-Irish government considering the prohibition of genocide denial to be an element of customary international law, and as such wants to bring its legislation in line with its “international obligations”.⁷

Shortly before the Bill was passed, the European Commission criticised Ireland for the lack of full implementation of the Council Framework Decision 2008/913/JHA,⁸ opening an infringement procedure

³ Liz Dunphy, “These declarations and acts were hateful and wrong in the 1930s, and remain so today” <<https://www.irishexaminer.com/news/arid-41059682.html>>.

⁴ INN, ‘Irish PM warns of rise of antisemitism and Holocaust denial’ <<https://www.israelnationalnews.com/news/366794>>.

⁵ Article 8, Criminal Justice (Hate Offences) Act 2022, *House of Oireachtas*, <https://data.oireachtas.ie/ie/oireachtas/bill/2022/105/eng/ver_c/b105c22d-p-c-sent-gr.pdf/>.

⁶ LSG, ‘Holocaust denial to become crime under new hate law’ <<https://www.lawsociety.ie/gazette/top-stories/2021/10-october/holocaust-denial-to-become-crime-under-new-hate-law--martin>>.

⁷ Conor Gallagher, ‘Holocaust denial may become an offence under new legislation’ <<https://www.irishtimes.com/news/crime-and-law/holocaust-denial-may-become-an-offence-under-new-legislation-1.4440014>>.

⁸ ILN, ‘Ireland rapped by EU over law on combating racism and xenophobia’ <<https://www.irishlegal.com/articles/ireland-rapped-by-eu-over-law-on-combating-racism-and-xenophobia>>.

that is still ongoing. Ultimately, however, due to a general scaling-back of the Bill, provisions relating to Holocaust denial were entirely removed.⁹

6. Application

The Bill came into effect only on 29 October 2024 and so far it has not been applied in the context of Holocaust denial.

7. Controversies

The Bill has been widely debated and is considered generally controversial in Ireland, with the main criticisms (not related to the prohibition of the Holocaust denial *per se*) against it coming from the right and far-right who perceive the provisions to be draconian, and underdefined to the point they may be misconstrued by the authorities and generally impact freedom of speech.¹⁰

While the removal of the provisions on Holocaust denial was not a contentious point in Ireland (just like neither was their inclusion), it needs to be noted that it came at a time of increased tensions between Ireland and Israel, with the latter country taking the decision to close their embassy in Dublin.¹¹

⁹ LSG, ‘Bill on hate crimes passes all stages’ <<https://www.lawsociety.ie/gazette/top-stories/2024/october/bill-on-hate-crimes-passes-all-stages/>>.

¹⁰ Ian O’Doherty, ‘Ireland’s deeply sinister hate crime bill’ available at: <<https://www.spectator.co.uk/article/irelands-deeply-sinister-hate-crime-bill/>>.

¹¹ BBC News, ‘Israeli foreign minister calls Ireland’s premier ‘antisemitic’’ <<https://www.bbc.com/news/articles/cy0nwd9n9ylo>>.

8. Further Reading

- Hull, Mark M. 2017. Holocaust Denial, Treason and Irish Identity. *25(6) History Ireland* 48-51.
- Power, Ed. 2020. David Baddiel comes to Ennis to meet a Holocaust denier. *The Irish Times* <<https://www.irishtimes.com/culture/tv-radio-web/david-baddiel-comes-to-ennis-to-meet-a-holocaust-denier-1.4177274>>.
- IJM, Ireland and the Holocaust. *Irish Jewish Museum* (no date), available at <<https://jewishmuseum.ie/jews-of-ireland/ireland-the-holocaust/>>.



ITALY





1. Source of the legal provision¹

Article 604-bis of the Italian Criminal Code [Testo del Regio Decreto 19 ottobre 1930, n. 1398]

Available in the original language via: Altalex; <<https://www.altalex.com/documents/codici-altalex/2014/10/30/codice-penale>>.

2. Legal provision in English

Article 604-bis. Propaganda and incitement to commit crime for discrimination on racial, ethnic and religious grounds²

Unless the fact constitutes a more serious offence:

a) whoever disseminates ideas based on racial superiority or racial/ethnic hatred, or incites to commit/commits discrimination acts on racial, ethnic, national or religious grounds shall be punished with imprisonment up to one year and six months or with a fine up to 6,000 euro;

b) whoever, in any way, incites to commit/commits violence or acts of provocation of violence on racial, ethnic, national or religious grounds shall be punished with imprisonment from six months to four years;

Any organization, association, movement or group which, in any way, incites to discrimination or violence on racial, ethnic, national or religious grounds shall be prohibited.

Whoever participates in said organizations, associations, movements or groups or supports their activities shall, by the mere fact of participating or supporting, be punished with imprisonment from six months to four years.

¹ The authors of the Compendium would like to thank Gianfranco Ferraro (Open University of Portugal) for his guidance through Italian law.

² Translation adapted from: <<https://legislationline.org/taxonomy/term/23690>>.

Whoever promotes or directs said organizations, associations, movements or groups shall, for that reason alone, be punished with imprisonment from one to six years. The punishment shall be from two to six years' imprisonment if the propaganda or the instigation and incitement – committed in such a way that a real danger of dissemination arises – are fully or partially based on the denial, gross trivialization or condoning of the Holocaust, or the crimes of genocide, crimes against humanity and war crimes set out in Articles 6, 7 and 8 of the Statute of the International Criminal Court.

3. Legal provision in the original language

Articolo 604-bis. Propaganda e istigazione a delinquere per motivi di discriminazione razziale etnica e religiosa

Salvo che il fatto costituisca più grave reato, è punito:

a) con la reclusione fino ad un anno e sei mesi o con la multa fino a 6.000 euro chi propaganda idee fondate sulla superiorità o sull'odio razziale o etnico, ovvero istiga a commettere o commette atti di discriminazione per motivi razziali, etnici, nazionali o religiosi;

b) con la reclusione da sei mesi a quattro anni chi, in qualsiasi modo, istiga a commettere o commette violenza o atti di provocazione alla violenza per motivi razziali, etnici, nazionali o religiosi.

È vietata ogni organizzazione, associazione, movimento o gruppo avente tra i propri scopi l'incitamento alla discriminazione o alla violenza per motivi razziali, etnici, nazionali o religiosi. Chi partecipa a tali organizzazioni, associazioni, movimenti o gruppi, o presta assistenza alla loro attività, è punito, per il solo fatto della partecipazione o dell'assistenza, con la reclusione da sei mesi a quattro anni. Coloro che promuovono o dirigono tali organizzazioni, associazioni, movimenti o gruppi sono puniti, per ciò solo, con la reclusione da uno a sei anni.

Si applica la pena della reclusione da due a sei anni se la propaganda ovvero l'istigazione e l'incitamento, commessi in modo che derivi concreto pericolo di diffusione, si fondano in tutto o in parte sulla negazione, sulla minimizzazione in modo grave o sull'apologia della Shoah

o dei crimini di genocidio, dei crimini contro l'umanità e dei crimini di guerra, come definiti dagli articoli 6, 7 e 8 dello statuto della Corte penale internazionale.

4. Key points

- Holocaust denial is not a distinct criminal offense under Italian law, but is considered an aggravating factor in offenses related to propaganda and incitement to crimes driven by racial, ethnic, or religious discrimination.
- The possible penalty is imprisonment for two to six years.
- To qualify as an aggravating factor, it must involve a real risk of the statement being disseminated.
- The relevant provision is not limited to Holocaust denial, its trivialisation, or its condoning, but also includes other crimes of genocide, crimes against humanity or war crimes, provided they meet the relevant criteria from the Rome Statute.

5. Background

Article 604-bis was introduced in 2018.³ It criminalises, under certain circumstances, the denial, minimization or apology of the Holocaust, other crimes of genocide, crimes against humanity or war crimes. Prior to this provision, in 1993, the “Mancino Law” [Legge Mancino], in its art. 3, had banned incitement to racial hatred and the propaganda of ideas based on racial or ethnic superiority.⁴ The Law n. 115 of 16 June 2016⁵ amended other laws concerning racist issues (Law n. 654/13

³ Law Decree available here: <<https://www.gazzettaufficiale.it/eli/id/2018/03/22/18G00046/sg>>.

⁴ Decree-Law No. 122 of 26 April 1993 converted into Law No. 205 of 25 June 1993 – the so-called *Mancino Law*: <<https://www.normattiva.it/uri-res/N2Ls?urn:nir:sta-to:legge:1993;205>>.

⁵ <<https://www.gazzettaufficiale.it/eli/id/2016/06/28/16G00124/sg>>.

October 1975, art. 3⁶), and implemented the EU Council Framework Decision 2008/913/JHA was introduced.⁷

6. Application

While not yet applied to a case concerning Holocaust denial, the Article 604-bis was used in a case concerning hate speech against the Roma, which was later found to be compatible with the ECHR by the Italian Court of Cassation (Sentence of 22 July, n. 32862/2019).⁸

7. Controversies

In 2018, Lorenzo Fontana, Minister of Family, proposed the abolition of the Mancino Law, an initiative which would also have had repercussions for the offence of denialism, on the basis of freedom of speech concerns, but this was not supported by other government coalition partners.⁹

In a decision of 2024, the Italian Supreme Court found that the so-called Roman salute was not a crime, unless it presents a concrete risk of the return of the fascist party, or had a clear incentive of sparking violence, thus linking it to the Article 604-bis.¹⁰ Although not directly linking it to the questions of the Holocaust, this particular decision

⁶ Legge 13 ottobre 1975, n. 654: <<https://www.gazzettaufficiale.it/eli/id/1975/12/23/075U0654/sg>>.

⁷ Legge 20 novembre 2017, n. 167: <<https://www.normattiva.it/uri-res/N2Ls?urn:nir:sta-to:legge:2017;167~art5>>. About these 2016 and 2017 laws, *vide* <https://temi.camera.it/leg17/post/OCD25-278.html?tema=temi/nuovi_reati_d>.

⁸ Altalex, ‘Politico offende i rom? È reato diffusione dell’odio razziale’: <<https://www.altalex.com/documents/news/2019/08/14/politico-offende-rom-reato-diffusione-odio>>.

⁹ RaiNews, ‘Razzismo, Fontana: è arma ideologica, abroghiamo la ‘Legge Mancino’’: <<https://www.rainews.it/archivio-rainews/articoli/razzismo-ministro-fontana-arma-ideologica-abroghiamo-legge-mancino-1f4e6606-9a11-4a73-be9b-3e6ce7ceca46.html>>.

¹⁰ Reuters, ‘Ambiguous Italian court ruling on fascist salute delights extreme right’: <<https://www.reuters.com/world/europe/ambiguous-italian-court-ruling-fascist-salute-delights-extreme-right-2024-01-19/>>.

needs to be read in close connection to the approval or denialism of Nazi crimes.

Concerning the culture of memory, it is also important to note the efforts done with the approval (2023) of the construction of the Holocaust Museum in Rome.¹¹ Symbolically, the museum is planned to be built near the Villa Torlonia, a place that served as the residence of fascist dictator Benito Mussolini.

8. Further reading

- P. Bartrop, E. Grimm, 'Italy', *The Holocaust: Country by Country*, Bloomsbury, 2024, pp. 155-163.
- BATTINI, M., *The Missing Italian Nuremberg: Cultural Amnesia and Postwar Politics*, Palgrave, 2007.
- CAROLI, Paolo, *Transitional Justice in Italy and the Crimes of Fascism and Nazism*. Routledge 2022.
- SAPORITO, Paolo, "Cultural memory against institutionalised amnesia: the Togliatti amnesty and Antonioni's *I vinti*", *Modern Italy*, vol. 23, n. 3, 2018, pp. 299-313. DOI: 10.1017/mit.2018.18

¹¹ ANSA. 'Via libera al Museo della Shoah a Roma, atteso da 20 anni': <https://www.ansa.it/sito/notizie/politica/2023/03/16/ok-del-cdm-al-museo-della-shoah-a-roma-_767a59d0-c89b-4b56-8940-a56933c2ea25.html>.





LATVIA





1. Source of the legal provision

Section 74.1 of the Criminal Code of the Republic of Latvia [*Krimināllikums*], as Amendments to the Criminal Code of the Republic of Latvia of 14 December 2023 [*Grozījumi Krimināllikumā*].

Available in the original language via: Likumi; <<https://likumi.lv/ta/id/88966-kriminallikums>>

2. Legal provision in English

Acquittal of genocide, crime against humanity, crime against peace and war crimes

(1) For a person who commits public glorification of genocide, crimes against humanity, crimes against peace or war crimes or who commits public glorification, denial, acquittal or gross trivialisation of committed genocide, crimes against humanity, crimes against peace or war crimes, including genocide, crimes against humanity, crimes against peace or war crimes against the Republic of Latvia and its inhabitants committed by the USSR or Nazi Germany, the applicable punishment is deprivation of liberty for a period of up to five years or temporary deprivation of liberty, or probationary supervision, or community service, or a fine.

(2) For a person who commits the same acts, if they have been committed by a group of persons or a public official, or a responsible employee of an undertaking (company) or organisation, or if they have been committed using an automated data processing system, the applicable punishment is the deprivation of liberty for a period of up to six years, with or without probationary supervision of up to three years.

3. Legal provision in the original language

Genocīda, nozieguma pret cilvēci, nozieguma pret mieru un kara nozieguma attaisnošana

(1) Par genocīda, nozieguma pret cilvēci, nozieguma pret mieru vai kara nozieguma publisku slavināšanu vai īstenotā genocīda, nozieguma pret cilvēci, nozieguma pret mieru vai kara nozieguma, tai skaitā PSRS vai nacistiskās Vācijas īstenotā genocīda, nozieguma pret cilvēci, nozieguma pret mieru vai kara nozieguma pret Latvijas Republiku un tās iedzīvotājiem, publisku slavināšanu, noliegšanu, attaisnošanu vai rupju noniecināšanu soda ar brīvības atņemšanu uz laiku līdz pieciem gadiem vai ar īslaicīgu brīvības atņemšanu, vai ar probācijas uzraudzību, vai ar sabiedrisko darbu, vai ar naudas sodu.

(2) Par tādu pašu darbību, ja to izdarījusi personu grupa vai valsts amatpersona, vai uzņēmuma (uzņēmējsabiedrības) vai organizācijas atbildīgs darbinieks vai ja tā izdarīta, izmantojot automatizētu datu apstrādes sistēmu, soda ar brīvības atņemšanu uz laiku līdz sešiem gadiem un ar probācijas uzraudzību uz laiku līdz trim gadiem vai bez tās.

4. Key points

- Latvia criminalised not only the denial of the Holocaust following the EU Framework Decision on Racism and Xenophobia 2008/913/JHA (hereafter 'EU FD 2008'), but also the denial of Soviet crimes, regardless of the recognition by a court, to address the growing security threat related to the intensification of Russian disinformation on historical narratives regarding former Soviet rule (and crimes) in the region.
- However, regarding Nazi and communist crimes, the provision is limited to acts that have been committed against the Republic of Latvia or its inhabitants.
- The Latvian criminal offence does not require that Holocaust denial be carried out in a manner likely to incite violence or hatred. Nor is any disturbance of public order or peace required.

- Basic sanctions for Holocaust denial may include imprisonment for up to five years, temporary deprivation of liberty, probationary supervision, community service, or a fine.
- The main issue addressed by the Latvian denial laws is that denying the criminal foundations of the Soviet regime in the Baltic states undermines the legal continuity of these states and questions their legitimacy.
- Relevant national jurisprudence signals mixed results, as no criminal cases regarding Holocaust denial have been initiated (though three in total regarding the denial of Soviet crimes have).

5. Background

Latvia transposed EU FD 2008 into national criminal law by adopting their respective denial legislation (Section 74.1 of the Criminal Code), which included not only the denial of Holocaust, but also the denial of Soviet crimes during their occupation of the country (1940-1941, 1944-1990). In 2009, Latvia amended its Criminal Code by introducing a completely new criminal offence in Section 74.1, which was amended in 2014 as follows: “For public glorification of genocide, crimes against humanity, crimes against peace and war crimes or public glorification, denial, acquittal or gross trivialization of committed genocide, crimes against humanity, crimes against peace and war crimes, including genocide, crimes against humanity, crimes against peace and war crimes perpetrated by the USSR or Nazi Germany against the Republic of Latvia and its inhabitants.”¹ This amendment was proposed by the Ministry of Justice during the second reading of the (then proposed) law.² The

¹ Ministry of Justice, ‘Amendments to the Criminal Code [Grozījumi Krimināllikumā]’ (*State Gazette*, 31 May 2014) <<https://www.vestnesis.lv/op/2014/105.2>>.

² Ministry of Justice, ‘Proposals for the draft law “Amendments to the Criminal Law”’ (*Latvian Ministry of Justice*, 2014) <<https://titania.sacima.lv/LIVS14/SacimaLIVS14.nsf/0/99B230835138A272C2258A5C002713A8?OpenDocument>>.

Ministry indicated that the provision's purpose is to strengthen criminal liability for such crimes, and that similar aggravating features (group of persons or a public official, or a responsible employee of an undertaking (company) or organization, or if they have been committed using an automated data processing system) are already included in Section 78 of the Criminal Code ("Inciting national, ethnic and racial hatred").

The reasons for adopting this type of "denial laws" were influenced not only by the purpose of the EU FD 2008 on combating racism and xenophobia through criminal law, but also related to growing tensions in the region since the eastern EU enlargement in 2004. The main issue addressed by the Latvian denial law is that denying the criminal foundations of the Soviet regime in the Baltic states undermines the legal continuity of these states and questions their legitimacy. While rebuilding their statehoods in the 1990s, the Baltic states all legitimised themselves with reference to the period of independence between 1918 and 1940 to negate and overcome the legacy of the illegal Soviet occupation.³ Thus, any denial of the criminality of the foundations of the Soviet regime was considered as undermining the legal continuity of the Baltic states and their legitimacy.⁴

As the Soviet (and later Russian) narrative projection intensified after the 2000s regarding how the Baltic States had supposedly voluntarily joined the USSR, the Baltics started searching for other ways to minimise this subversion of their national biographies. There were many other factors, such as the debate over the 'Bronze Soldier' mon-

³ Article 42 of the 1907 Hague Regulations concerning the Laws and Customs of War on Land states that a "territory is considered occupied when it is placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised"; see further: International Committee of the Red Cross, 'Occupation and International Humanitarian Law: Questions and Answers' [4 August 2004] <<https://www.icrc.org/en/article/occupation-international-humanitarian-law-questions>>.

⁴ See Lauri Mälksoo, *Illegal Annexation and State Continuity: The Case of the Incorporation of the Baltic States by the USSR: A Study of the Tension between Normativity and Power in International Law* (Martinus Nijhoff 2003).

ument in Estonia in 2007,⁵ the clash over the celebration of the end of Second World War in 2005 in Moscow, as well as the ban on Soviet symbols in Lithuania in 2008,⁶ all of which signalled increasing hostilities. During the debate on the EU FD 2008, the Baltic countries lobbied for the policy to condemn Soviet-era crimes. However, the Council of the EU only added a declaration condemning all totalitarian atrocities to satisfy member states that wanted the EU FD 2008 to cover Stalinist crimes.⁷ As Žilinskas argued, this failure to *specifically* condemn communist crimes evolved “into the movement for ‘equal legal treatment’”⁸ of the crimes of totalitarian regimes that culminated in the Prague Declaration of 2008 “On European Conscience and Communism”, where the signatories – famous European politicians and activists – called for a just recognition of the criminal communist legacy in Europe. Nonetheless, in 2010, the European Commission (EC) rejected a major initiative to hold Soviet crimes to the same standard as Nazi crimes.⁹

⁵ Karsten Brüggemann and Andres Kasekamp, ‘The Politics of History and the “War of Monuments” in Estonia’ (2008) 36(3) *Nationalities Papers* 425; David J. Smith, ‘Woe from Stones: Commemoration, Identity Politics and Estonia’s ‘War of Monuments’ (2008) 39(4) *Journal of Baltic Studies* 419; Inge Melchior and Oane Visser, ‘Voicing Past and Present Uncertainties: The Relocation of a Soviet World War II Memorial and the Politics of Memory in Estonia’ (2011) 59 *Focaal* 33; Steven Lee Myers, ‘Tensions Between Russia and Estonia Escalate’ (*The New York Times*, 2 May 2007) <<http://www.nytimes.com/2007/05/02/world/europe/02cnd-russia.html>>; Martin Ehala, ‘The Bronze Soldier: Identity Threat and Maintenance in Estonia’ (2009) 40(1) *Journal of Baltic Studies* 139.

⁶ ‘Code of Administrative Offenses of the Republic of Lithuania of 2008 (Article 188-18: Distribution or display of Nazi or Communist symbols)’ (*Infoplex*, 2015) <<http://www.infolex.lt/ta/103787:str188-18>>.

⁷ Laurent Pech, ‘The Law of Holocaust Denial in Europe’, in Ludovic Hennebel and Thomas Hochmann (eds.) *Genocide Denials and the Law* (Oxford University Press 2011).

⁸ Justinas Žilinskas, ‘Introduction of ‘Crime of Denial’ in the Lithuanian Criminal Law and First Instances of Its Application’ (2012) 19(1) *Jurisprudencija* 316, 319.

⁹ Wendy Zeldin, ‘European Union: Rejection of Eastern European States’ Call to Hold Communist Crimes to Same Standard as Nazi Crimes’ (*Library of Congress*, 30 December 2010) <<https://www.loc.gov/law/foreign-news/article/european-union-rejection-of-eastern-european-states-call-to-hold-communist-crimes-to-same-standard-as-nazi-crimes/>>.

6. Application

The application of the Latvian denial law until 2022 was recently analysed by Eva-Clarita Pettai, indicating that “a number of cases involving article 74.1 have been investigated so far, yet they all ended at the pre-trial stage, which makes it difficult to draw conclusions about the Section’s ultimate legal interpretation or its effects on free speech and open historical debate”.¹⁰ However, after 2022 there have been two criminal cases in which a person was convicted under Section 74.1 Criminal Code. In 2023, two judgments concerned statements which were related to the justification and glorification of Russia’s aggression in Ukraine.¹¹

7. Controversies

The main controversy over the denial law in Latvia, as in Lithuania, is the criminalisation of the denial of Soviet crimes, along with the denial of Holocaust. As stated by Pettai, “combating racist talk, antisemitism and other hate speech were only indirectly part of the debates surrounding this piece of legislation. In media reports that appeared in connection with criminal investigations against individuals for the potential crimes of denial or gross trivialization of Stalinist crimes, hate speech and anti-state agitation were, however, central.”¹²

¹⁰ Eva-Clarita Pettai, ‘Protecting Memory or Criminalizing Dissent? Memory Laws in Lithuania and Latvia’, in Elazar Barkan and Ariella Lang (eds.) *Memory Laws: Criminalizing Historical Narratives* (Routledge 2022) 188; for more on Latvian implementation of EU FD 2008, see: Latvian Centre for Human Rights ‘Franet National contribution to the Fundamental Rights Report 2021: Latvia’ (*European Union Agency for Fundamental Rights*, 2022) <https://fra.europa.eu/sites/default/files/fra_uploads/fundamental_rights_report_2022-latvia_.pdf>.

¹¹ Judgement on the behalf of Latvia, ‘Vidzeme regional court judgement ECLI:LV:VRT:2023:0216.11840001522.3.S’ (16 February 2023) <<https://manas.tiesas.lv/eTiesasMvc/eclinolemumi/ECLI:LV:VRT:2023:0216.11840001522.3.S>>; I. Ādamsone-Struža, ‘Rīga regional court judgement ECLI:LV:RIRT:2023:0210.11840004722.2.S’ (10 February 2023) <<https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/499891.pdf>>.

¹² Pettai (n 12) 188.

Another controversy is linked with the legal issues of the legal formulation of denial ban law itself and the application of the denial ban law in practise. According to Pettai, differently from the Lithuanian version, neither the 2009 law, nor its amendment of 2014 laid out the criteria under which denial was to be seen as a criminal offence – that is, whether it was done to incite hatred or to cause public disorder, as the EU FD 2008 required. Thus, even though the law was justified, at least initially, in order to transpose the EU legislation, the central criteria for defining denialism as hate speech did not appear in the final law itself.

From a formal point of view, the Latvian memory law thus resembles more closely the other “anti-communist memory laws” – like those in Poland and Czech Republic – that have no built-in safeguards to balance anti-hate speech laws with rights to freedom of expression.¹³ However, the concretization of such criteria can take place through judicial practice, as indicated in the summary of the case law of the Latvian Supreme Court.¹⁴ For example, in a case involving incitement to national, ethnic and racial hatred (Section 78 of the Criminal Code) the Supreme Court explained, that, “[i]n order to decide whether the statement reaches such a degree of gravity that a person can be held criminally liable according to the second part of Section 78 of the Criminal Code for inciting national hatred or discord, the court must evaluate the intention of the speaker of the statement, the content and form of the statement, as well as the breadth of access to the statement, the duration of its availability, the social and political context in which the statements were made and disseminated, the status of the person making the statement in society, especially evaluating the influence of this person on the audience for which the statements are intended, as

¹³ Pettai (n 12) 185.

¹⁴ Latvian Jurisprudence and Scientific Analytical Department, ‘Hate Speech And Freedom of Speech (Court Practice In Criminal Cases On Articles 74.1, 78, 150 Of The Criminal Law)’ (2018) <https://at.gov.lv/files/uploads/files/6_Judikatura/Tiesu_prakses_apkopojumi/2018/Naida%20runa%20un%20varda%20briviba_Apkopojums_2018_22_10_2018.doc>.

well as the person's behaviour during the perpetration, and the connection with organisations that incite to hatred.”¹⁵

Regarding case law, the problem appears to be that in the cases concerning “Soviet aggression”, the courts seem to have made a sizable effort to prove that the denial of Soviet crimes and or glorification of aggression had incited public disorder, or that they were done in a clearly insulting manner, thus justifying the limitation of the defendant's rights to freedom of expression.¹⁶ One of the possible explanations for such “asymmetry” with Holocaust denial cases can also be the actual situation in society, that is, doubts are much more often expressed about the commission of crimes by the USSR, while the fact that Nazi Germany committed crimes is not (as often) denied. Instead, the discussions in society arise about Latvian collaboration with the Nazis, and successive co-responsibility for the crimes committed by the Nazis.

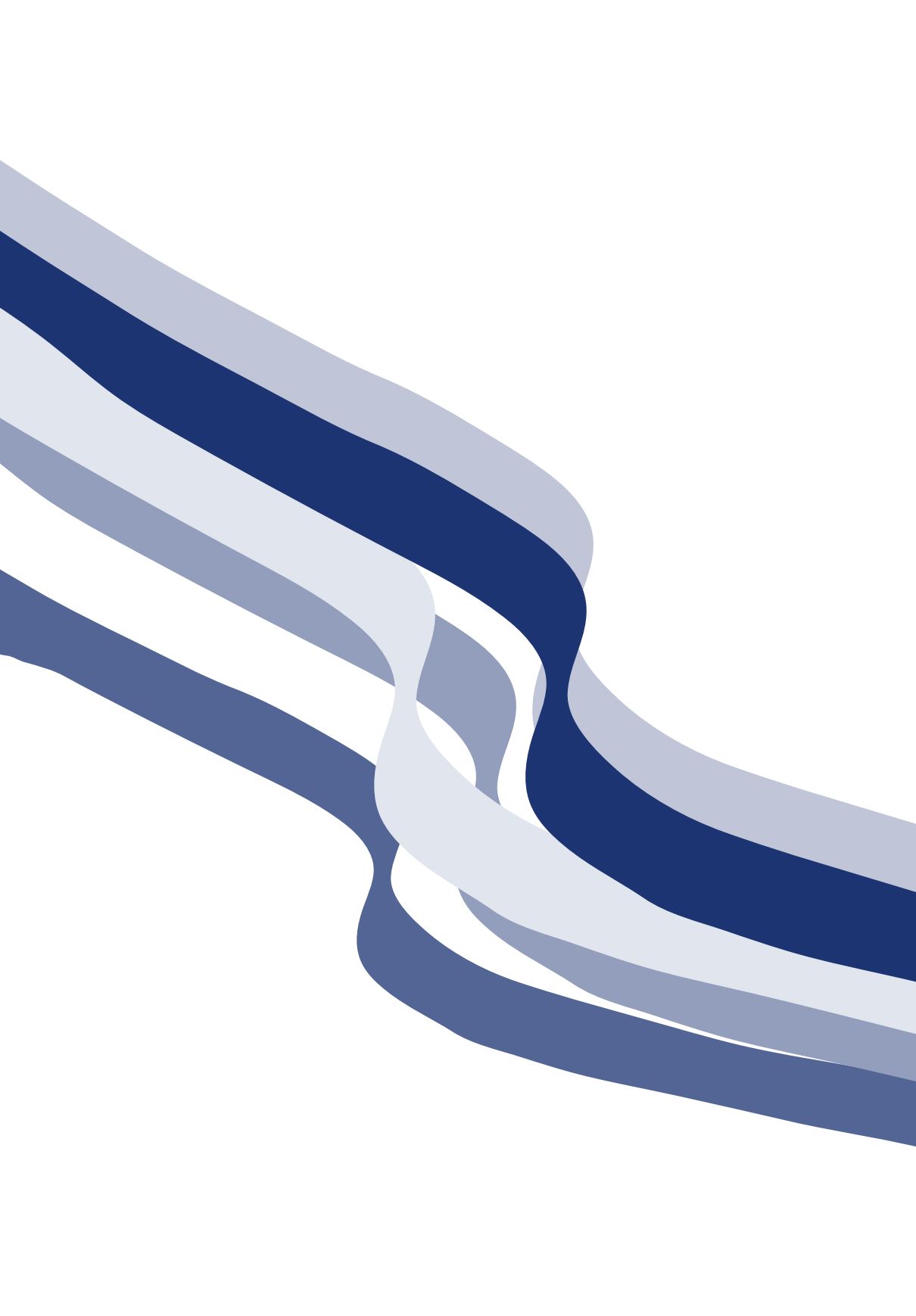
8. Further reading

- Karsten Brüggemann and Andres Kasekamp, ‘The Politics of History and the “War of Monuments” in Estonia’ (2008) 36(3) *Nationalities Papers* 425.
- Lauri Mälksoo, *Illegal Annexation and State Continuity: The Case of the Incorporation of the Baltic States by the USSR: A Study of the Tension between Normativity and Power in International Law*, (Martinus Nijhoff 2003).
- Eva-Clarita Pettai, ‘Protecting Memory or Criminalizing Dissent? Memory Laws in Lithuania and Latvia’, in Elazar Barkan and Ariella Lang (eds.), *Memory Laws: Criminalizing Historical Narratives* (Routledge 2022).
- Laurent Pech, ‘The Law of Holocaust Denial in Europe’, in Ludovic Hennebel and Thomas Hochmann (eds.), *Genocide Denials and the Law*, (Oxford University Press 2011).

¹⁵ Department of Criminal Affairs, ‘Decision on case 1181700120 of 10 January 2023’ (Senate of the Republic of Latvia, 2023) <<https://at.gov.lv/downloadlawfile/8850>>.

¹⁶ Pettai (n 12) 183.

- Division of Case-law and Research of the Supreme Court of Latvia, 'Hate Speech And Freedom Of Speech (Court Practice In Criminal Cases On Articles 74.1, 78, 150 Of The Criminal Law: Case Law between October 2012 – May 2018' [2018] <https://at.gov.lv/files/uploads/files/6_Judikatura/Tiesu_prakses_apkopojumi/2018/Naida%20runa%20un%20varda%20briviba_Apkopojums_2018_22_10_2018.doc>.
- Memocracy Research Consortium, 'Country Studies of the Baltic states; Germany; Poland and Hungary; Russia and Ukraine' (MEMOCRACY Policy Briefs, 2024) <<https://memocracy.eu/policy-briefs>>.





LITHUANIA





1. Source of the legal provision

Article 170² of the Criminal Code of the Republic of Lithuania [*Lietuvos Respublikos baudžiamasis kodeksas*], as amended by *Baudžiamojo kodekso 60, 129, 135, 138, 169, 170, 170¹ ir 170² straipsnių pakeitimo įstatymas 2022 04 28* [Law on the Amendment of Articles 60, 129, 135, 138, 169, 170, 170¹ and 170² of the Criminal Code of the Republic of Lithuania of 28 April 2022]

Available in the original language via Infolex; <https://www.infolex.lt/portal/start_ta.asp?act=doc&fr=pop&doc=66150>

2. Legal provision in English

Public approval of international crimes, crimes committed by the USSR or Nazi Germany, their denial, or gross minimization

(1) A person who publicly approved genocide or other crimes against humanity or war crimes recognized by the legal acts of the Republic of Lithuania or the European Union or by final decisions of the Republic of Lithuania or international courts, denied them, or grossly belittled them—if this was done in a threatening, offensive, or insulting manner, or if public order was disturbed or could have been disturbed—as well as a person who publicly approved the aggression committed by the USSR or Nazi Germany against the Republic of Lithuania, the genocide or other crimes against humanity or war crimes committed by the USSR or Nazi Germany, or other grave or particularly grave crimes committed in 1990–1991 by persons who carried out or participated in aggression against the Republic of Lithuania, denied them, or grossly belittled them—if this was done in a threatening, offensive, or insulting manner, or if

public order was disturbed or could have been disturbed—shall be punished by a fine, restriction of liberty, arrest, or imprisonment for up to two years.

(2) A legal person is also responsible for the acts provided for in this article.

3. Legal provision in the original language

Viešas pritarimas tarptautiniams nusikaltimams, SSRS ar nacistinės Vokietijos nusikaltimams, jų neigimas ar šurkštus menkinimas

Tas, kas viešai pritarė Lietuvos Respublikos ar Europos Sąjungos teisės aktais arba įsiteisėjusiais Lietuvos Respublikos ar tarptautinių teismų sprendimais pripažintiems genocido ar kitiems nusikaltimams žmoniškumui arba karo nusikaltimams, juos neigė ar šurkščiai menkino, jeigu tai padaryta grasinančiu, užgauliu ar įžeidžiančiu būdu arba dėl to buvo sutrikdyta ar galėjo būti sutrikdyta viešoji tvarka, taip pat tas, kas viešai pritarė SSRS ar nacistinės Vokietijos įvykdytai agresijai prieš Lietuvos Respubliką, SSRS ar nacistinės Vokietijos įvykdytiems genocido ar kitiems nusikaltimams žmoniškumui arba karo nusikaltimams, arba 1990–1991 metais įvykdytiems kitiems agresiją prieš Lietuvos Respubliką vykdžiusių ar joje dalyvavusių asmenų labai sunkiems ar sunkiems nusikaltimams Lietuvos Respublikai arba labai sunkiems nusikaltimams Lietuvos Respublikos gyventojams, juos neigė ar šurkščiai menkino, jeigu tai padaryta grasinančiu, užgauliu ar įžeidžiančiu būdu arba dėl to buvo sutrikdyta ar galėjo būti sutrikdyta viešoji tvarka, baudžiamas bauda arba laisvės apribojimu, arba areštu, arba laisvės atėmimu iki dvejų metų.

Už šiame straipsnyje numatytas veikas atsako ir juridinis asmuo.

4. Key points

- Lithuania criminalised the approval, denial or gross trivialisation of genocides, crimes against humanity, or war crimes recognized by Lithuania, the European Union or by final decisions of national or international courts, as well as the specific denial of the Holocaust and Soviet crimes following the EU Framework Decision on Racism and Xenophobia 2008/913/JHA (hereafter ‘EU FD 2008’). The latter measure was introduced in response to growing security threats related to an intensifying Russian disinformation regarding historical narratives about the former Soviet regime (and crimes) in the region.
- This conduct is criminalised if carried out in a threatening, offensive, or insulting manner, or if it disturbs, or could disturb, public order. The Lithuanian criminal offence does not require that Holocaust denial be carried out in a manner likely to incite violence or hatred.
- Regarding Nazi and communist crimes, the provision specifically refers to acts by persons who participated in the aggression against the Republic of Lithuania.
- Holocaust denial may be punished by a fine, restriction of liberty, arrest, or imprisonment for up to two years.
- The main dilemma addressed by the Lithuanian denial laws is that denying the criminal foundations of the Soviet regime in the Baltic states undermines the legal continuity of these states and questions their legitimacy.
- Relevant national jurisprudence signals mixed results in criminal cases concerning denial regulation – particularly regarding Soviet crimes, where courts justified limiting freedom of expression more often than in the cases of Holocaust denial.
- Lithuanian criminal legislation faced an EU infringement procedure for failing to implement EU FD 2008, which was solved in 2022.

5. Background

Lithuania transposed the EU FD 2008 into national criminal law in 2010 by adopting their respective denial legislation, which included not only the denial of Holocaust, but also the denial of Soviet crimes during the occupations (1940-1941, 1944-1990). The reasons for adopting this type of ‘denial laws’ were influenced not only by the purpose of the EU FD 2008, but also related to the growing tensions in the region since the eastern EU enlargement in 2004. The main dilemma addressed by the Lithuanian denial law is that denying the criminal foundations of the Soviet regime in the Baltic states undermines the legal continuity of these states and questions their legitimacy. While rebuilding their statehoods in the 1990s, the Baltic states all legitimised themselves with reference to the period of independence between 1918 and 1940 to negate and overcome the legacy of the Soviet occupation.¹ Thus, any denial of the criminality of the foundations of the Soviet regime was considered as undermining the legal continuity of the Baltic states and their legitimacy.²

As the Soviet (and later Russian) narrative intensified after the 2000s about how the Baltic States had supposedly voluntarily joined the USSR, the Baltics started searching for other ways to minimise this subversion of their national biographies. There were many other factors, such as the debate over the ‘Bronze Soldier’ monument in Estonia in 2007,³ the clash over the celebration of the end of the Second World

¹ Article 42 of the 1907 Hague Regulations concerning the Laws and Customs of War on Land states that a ‘territory is considered occupied when it is placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised’; see further International Committee of the Red Cross, ‘Occupation and International Humanitarian Law: Questions and Answers’ [4 August 2004] <<https://www.icrc.org/en/article/occupation-in-international-humanitarian-law-questions>>.

² See: Lauri Mälksoo, *Illegal Annexation and State Continuity: The Case of the Incorporation of the Baltic States by the USSR: A Study of the Tension between Normativity and Power in International Law* (Martinus Nijhoff 2003).

³ Karsten Brüggemann and Andres Kasekamp, ‘The Politics of History and the “War of Monuments” in Estonia’ (2008) 36(3) *Nationalities Papers* 425; David J. Smith, ‘Woe from Stones: Commemoration, Identity Politics and Estonia’s ‘War of Monu-

War in 2005 in Moscow, as well as the ban on Soviet symbols in Lithuania in 2008,⁴ all of which signalled increasing hostilities. During the debate on the EU FD 2008, the Baltic countries lobbied for the policy to condemn Soviet-era crimes; however, the Council of the EU only added a non-binding declaration condemning all totalitarian atrocities to satisfy member states that wanted the EU FD 2008 to cover Stalinist crimes.⁵ As Žilinskas argued, this failure to *specifically* condemn communist crimes evolved “into a movement for equal legal treatment”⁶ of the crimes of totalitarian regimes that culminated in the Prague Declaration of 2008 “On European Conscience and Communism”, where the signatories – famous European politicians and activists – called for a just recognition of the criminal communist legacy in Europe. Nonetheless, in 2010, the European Commission (EC) rejected a major initiative to hold Soviet crimes to the same standard as Nazi crimes.⁷

The implementation of the EU FD 2008 in Lithuania also faced some challenges. In 2021, the EC notified the Lithuanian Ministry of Justice of infringement procedures for failing to transpose and implement the

ments” (2008) 39(4) *Journal of Baltic Studies* 419; Inge Melchior and Oane Visser, ‘Voicing Past and Present Uncertainties: The Relocation of a Soviet World War II Memorial and the Politics of Memory in Estonia’ (2011) 59 *Focaal* 33; Steven Lee Myers, ‘Tensions Between Russia and Estonia Escalate’ (*The New York Times*, 2 May 2007) <<http://www.nytimes.com/2007/05/02/world/europe/02cnd-russia.html>>; Martin Ehala, ‘The Bronze Soldier: Identity Threat and Maintenance in Estonia’ (2009) 40(1) *Journal of Baltic Studies* 139.

⁴ Code of Administrative Offences of the Republic of Lithuania of 2008 (Article 188-18: Distribution or display of Nazi or Communist symbols)’ (Infolex, 2015) <<http://www.infolex.lt/ta/103787:str188-18>>.

⁵ Laurent Pech, ‘The Law of Holocaust Denial in Europe’, in Ludovic Hennebel and Thomas Hochmann (eds), *Genocide Denials and the Law* (Oxford University Press 2011) <<https://doi.org/10.1093/acprof:oso/9780199738922.003.0007>>.

⁶ Justinas Žilinskas, ‘Introduction of ‘Crime of Denial’ in the Lithuanian Criminal Law and First Instances of Its Application’ (2012) 19(1) *Jurisprudencija* 316, 319.

⁷ Wendy Zeldin, ‘European Union: Rejection of Eastern European States’ Call to Hold Communist Crimes to Same Standard as Nazi Crimes’, (*Library of Congress*, 30 December 2010) <<https://www.loc.gov/law/foreign-news/article/european-union-rejection-of-eastern-european-states-call-to-hold-communist-crimes-to-same-standard-as-nazi-crimes/>>.

EU FD 2008.⁸ According to the notification, Lithuanian regulations failed to adequately transpose Article 1(c) and (d) and Article 2(1) of the EU FD 2008 for two reasons. First, the scope of behaviour that was criminalised by Article 170² Criminal Code in its earlier version was not as comprehensive as the EU FD 2008 instructed. Criminal liability for permission, rejection, or excessive denigration under Article 170² of the Criminal Code applied only if public order *was* interrupted (not if it *may* have been). Second, the earlier Article 170² Criminal Code limited criminal liability to offenses committed on Lithuanian territory or against Lithuanian residents, while the EU FD 2008 did not.⁹ In April 2022, an amended version of Article 170² Criminal Code was adopted to be fully in line with the EU FD 2008.¹⁰

6. Application

As the laws criminalising denial are quite new in the Baltics, there are only a few domestic cases in Lithuania, none of which have reached the ECtHR at the time of writing. In 2016, a national court acquitted the local council member named Raimondas Pankevičius of the charge that, at a meeting of the Panevėžys City Council, he publicly denied the Holocaust in a speech.¹¹ In 2011 Petras Stankeras, a Lithuanian amateur historian, was accused of denying the Holocaust and promoting anti-

⁸ EU Newsroom ‘Commission Calls on Greece, the Netherlands and Lithuania to Fully Transpose EU Law Criminalising Hate Speech and Hate Crimes’ (*European Commission*, 9 June 2021 <<https://ec.europa.eu/newsroom/just/items/713873/en>>).

⁹ Parliament of the Republic of Lithuania, ‘Explanatory Note on The Draft Law Amending Articles 60, 129, 135, 138, 169, 170, 170(1) and 170(2) of The Criminal Code of the Republic of Lithuania’ (2021) <<https://e-seimasx.lrs.lt/portal/legalAct/lt/TAP/d6b9afd21c4411ecad9fbbf5f006237b?jfwid=-gucsndw5w>>.

¹⁰ For the amended version, see the text of current Article 170² in the above section ‘2. Legal provision in English’.

¹¹ BNS, ‘Former Panevėžys Councillor Acquitted of Genocide Denial’ (*Kauno diena*, 3 November 2016) <<https://kauno.diena.lt/naujienos/kriminalai/nusikaltimai/buves-panevezio-tarybos-narys-isteisintas-del-genocido-neigimo-779891>>.

semitic views, but these charges were also later dismissed.¹² However, in 2019, a Lithuanian publisher, Povilas Masiulionis, was found guilty of producing a book that contradicted the official historical account of the events of 13 January 1991, where Soviet troops killed 13 unarmed civilians.¹³ Furthermore, politician Viačeslav Titov was convicted for his statements about general Adolfas Ramanauskas-Vanagas, who was a leader of Lithuanian partisans in their war against the USSR.¹⁴ None of these convictions, to our knowledge, have been appealed. In 2018 the Lithuanian Supreme Court reversed a conviction for denying Soviet crimes by Jurius Subotinas (who commented on social media about the Soviet past), as the Court found that: “Article 170² Criminal Code does not apply because the content of the comment under review is insufficiently detailed and informative to warrant criminal liability. Notably, in establishing criminal liability for acts that may be construed as one form or another of abuse of the right to freedom of expression, it is necessary not only to consider the practice of the ECtHR in interpreting Article 10 of the [European] Convention [on Human Rights], but also to adhere to the standards for establishing personal guilt applied in criminal justice: to establish both objective and subjective elements of the criminal offense, to adhere to the presumption of innocence, and to establish both objective and subjective elements of the criminal offense.”¹⁵

¹² BNS, ‘Investigation into Peter Stanker Is Closed after Finding No Evidence of a Crime’ (*15min*, 3 March 2011) <<https://www.15min.lt/naujiena/aktualu/istorija/ikiteisminis-tyrimas-del-petro-stankero-nutrauktas-neradus-nusikaltime-pozymiu-582-140277>>.

¹³ Vilnius City District Court, ‘Judgement of 18 February 2019, in the Case No. 1-61-908/2019, Trial No. 1-01-2-00009-2017-3’ (*Liteko: Lithuanian Courts Information System*, 2019) <<https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=7f0e2658-4420-4a42-aa67-e21572bbd5d7>>.

¹⁴ Klaipeda District Court, Judgement of 14 May 2019, in the Case No. 1-253-659/2019⁹ (14 May 2019) <<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.atviraklaipeda.lt%2Fwp-content%2Fuploads%2F2019-05-14nuasmenintanusprendisbyloje1-253-659-2019.docx&wdOrigin=BROWSELINK>>.

¹⁵ Supreme Court of Lithuania, ‘Judgement of 6 November 2018, in the Case No. 2K-293-788/2018’ (*Liteko: Lithuanian Courts Information System*, 11 November 2018).

The most recent case involving Article 170² of the Criminal Code involves charges against a Member of Parliament, Remigijus Žemaitaitis, for an antisemitic statement on his Facebook account in 2023 which triggered not only criminal investigations,¹⁶ but also led to investigating the constitutional viability of an impeachment procedure in 2024.¹⁷ In April 2024, the Constitutional Court ruled that Žemaitaitis had broken his oath of office and grossly violated the constitution with his statements about Jewish people.¹⁸ Anticipating a vote by lawmakers on stripping him of his mandate, he stepped down voluntarily. A person removed from the *Seimas* [Lithuanian Parliament] through impeachment for a serious violation of the constitution or for breaking their oath of office is banned from standing for election to any office with an oath for ten years. However, Žemaitaitis will avoid this ban given that he opted to resign.¹⁹ He has appealed to the European Court of Human Rights (ECtHR) against the impeachment proceedings against him in the Lithuanian parliament.²⁰ Moreover, during the summer he

2018), <<https://liteko.teismai.lt/viesasprendimupaiaska/tekstas.aspx?id=6cce3fcc-46f9-493d-b0aa-fd10b2e575a9>>.

¹⁶ BNS, ‘Lithuanian MP’s post about Israel draws condemnation as anti-Semitic’ (*Lrt.lt*, 09 May 2023) <<https://www.lrt.lt/en/news-in-english/19/1984809/lithuanian-mp-s-post-about-israel-draws-condemnation-as-anti-semitic>>.

¹⁷ Constitutional Court of the Republic of Lithuania, ‘The inquiry of the Seimas [Parliament] whether the actions of the member of the Seimas, Remigijus Žemaitaitis, violates the Constitution was accepted for examination.’ (*CCL Newsroom*, 07 December 2023) <<https://lrkt.lt/lt/apie-teisma/naujienos/1331/priimtas-nagrineti-seimo-paklausimas-ar-seimo-nar-io-remigijaus-zemaitaicio-veiksmu-priestaruja-konstitucijai:598>>; Milena Andrukaitytė, ‘Lithuanian MP Žemaitaitis stripped of immunity over anti-Semitic posts’ (*Lrt.lt*, 14 February 2024) <<https://www.lrt.lt/en/news-in-english/19/2195646/lithuanian-mp-zemaitaitis-stripped-of-immunity-over-anti-semitic-posts>>.

¹⁸ BNS, ‘Lithuanian MP Žemaitaitis broke oath, violated constitution, court finds’ (*Lrt.lt*, 25 April 2024) <<https://www.lrt.lt/en/news-in-english/19/2259470/lithuanian-mp-zemaitaitis-broke-oath-violated-constitution-court-finds>>.

¹⁹ BNS, ‘Žemaitaitis steps down as MP following Constitutional Court ruling’ (*Lrt.lt*, 29 April 2024) <<https://www.lrt.lt/en/news-in-english/19/2261468/zemaitaitis-steps-down-as-mp-following-constitutional-court-ruling>>.

²⁰ BNS, ‘Lithuania’s ex-MP Žemaitaitis turns to ECHR over his impeachment process’ (*Lrt.lt*, 26 August 2024) <<https://www.lrt.lt/en/news-in-english/19/2346878/lithuania-s-ex-mp-zemaitaitis-turns-to-echr-over-his-impeachment-process>>.

started a new party named “*Nemuno Aušra*” [Nemunas Dawn] for the upcoming Parliamentary elections in October 2024. This election was very successful for his party, and before the second tour in October 27, this Party became a kingmaker in the formation of a ruling coalition for the next 4 years.²¹ The party now holds 3 of the 14 ministerial portfolios in the government, including justice minister, after taking third place in the election with 15% of the popular vote and 20 seats from 141 at the Parliament. In December 2024 the newly elected Parliament voted to strip Žemaitaitis of immunity, allowing a trial to proceed on criminal charges. The criminal case was investigated in the open hearings in January 2025 and the verdict is expected later this year.

7. Controversies

The main controversy over denial laws in Lithuania, as in Latvia, is the criminalisation of the denial of Soviet crimes alongside the denial of the Holocaust. As argued by Grażyna Baranowska and Aleksandra Gliszczyńska-Grabias, the problem is not that they view fascism and communism as two equally criminal regimes – which is understandable given the historical experience of these countries – but that they blame others (Nazi Germany and the USSR) for historical injustices, victimise the past for nation-states’ sake, and use history for nationalist mobilisation. The EU promoted memory rules in Western Europe to achieve the opposite. In this way, certain memory laws, while officially serving as a guarantee for accessing historical truth, led to its deformation. Consequently, an ‘alternative’ truth, based on the will of the legislators, is being imposed.²² As some scholars argue, in practice, the Lithuanian memory law does not

²¹ Eglė Samoškaitė, ‘We created him’: Behind the rise of Žemaitaitis and Nemunas Dawn’ (*Lrt.lt*, 16 October 2024) <<https://www.lrt.lt/en/news-in-english/19/2386559/we-created-him-behind-the-rise-of-zemaitaitis-and-nemunas-dawn>>.

²² Grażyna Baranowska, Aleksandra Gliszczyńska-Grabias, ‘Right to Truth’ and Memory Laws: General Rules and Practical Implications’ (2018) 47(1) *Polish Political Science Yearbook* 97.

protect minorities and instead validates the views of the majority population, protecting it against certain historical reinterpretations.²³

Secondly, the intense legal debate over denial laws in Lithuania focused on the problem of freedom of speech and even freedom of thought – and for this reason, the first proposal of a legal regulation in 2009 was dropped.²⁴ After further discussions, the legal provision was finally adopted in 2010.²⁵ However, as Professor Justinas Žilinskas has pointed out: “The first instances show the narrow approach, misunderstanding of the purpose of the crime and confusion of arguments”.²⁶ Relevant national jurisprudence also signals mixed results in the criminal cases under denial regulation. There have been five criminal cases so far, in which one person was acquitted for Holocaust denial, and one case was dismissed. In the remaining three cases, which related to the denial of Soviet crimes, two persons were found guilty, and one was acquitted. As stated by Pettai, “in the ‘Soviet aggression’ cases, the courts seem to have made quite an effort to prove that the denial of Soviet crimes and or glorification of aggression had incited to public disorder, or that they were done in a clearly insulting manner, thus justifying the limitation of the defendant’s rights to freedom of expression”.²⁷

Lastly, new legal developments emerged following Russia’s full-scale invasion of Ukraine in 2022, leading to the inclusion of a new dimension in a draft law that aims to criminalize public approval, denial, or gross minimization of international crimes, including genocide and war crimes committed by the USSR, Nazi Germany, and the Russian

²³ Grazyna Baranowska, Leon Castellanos-Jankiewicz, and Agnieszka Chidlow, ‘The Impact of Language on Multinational Enterprises’ Knowledge Transfer: Insights from the Spanish Context’ (2020) 5(1) *European Papers – a Journal on Law and Integration* 137.

²⁴ Žilinskas (n 6).

²⁵ Seiom of the Republic of Lithuania, ‘Conclusion of the Main Committee on the draft law on the addition of Article 170-2 of the Criminal Code and the addition of the Code’s annex’ (*Law and Order Committee*, 16 April 2010) <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/TAIS.369887?jfwid=-onfyferuh>>.

²⁶ Žilinskas (n 6).

²⁷ Eva-Clarita Pettai, ‘Protecting Memory or Criminalizing Dissent? Memory Laws in Lithuania and Latvia’, in Elazar Barkan and Ariella Lang (eds.), *Memory Laws: Criminalizing Historical Narratives* (Routledge 2022) 183.

Federation against Lithuania and Ukraine. Those found guilty of such offenses could face penalties ranging from fines and restrictions on liberty to arrest or imprisonment for up to two years, particularly if their actions threaten public order. The draft law also holds legal entities accountable and, despite being under consideration for two years, has not yet sparked public debate or discussion.²⁸

It seems that the judicial verdicts in the criminal case of the Lithuanian member of parliament – Žemaitaitis – both before national courts and the ECtHR will be observed closely by the international community to indicate where Lithuania stands on this front.²⁹

8. Further reading

- Karsten Brüggemann, Andres Kasekamp, ‘The Politics of History and the ‘War of Monuments’ in Estonia’ (2008) 36(3) *Nationalities Papers* 425.
- Lauri Mälksoo, *Illegal Annexation and State Continuity: The Case of the Incorporation of the Baltic States by the USSR: A Study of the Tension between Normativity and Power in International Law* (Martinus Nijhoff 2003).
- Eva-Clarita Pettai, ‘Protecting Memory or Criminalizing Dissent? Memory Laws in Lithuania and Latvia’, in Elazar Barkan and Ariella Lang (eds.), *Memory Laws: Criminalizing Historical Narratives* (Routledge 2022).
- Laurent Pech, ‘The Law of Holocaust Denial in Europe’ in Ludovic Hennebel and Thomas Hochmann (Eds.) *Genocide Denials and the Law* (Oxford University Press 2011).
- Democracy Research Consortium, ‘Country Studies of the Baltic states; Germany; Poland and Hungary; Russia and Ukraine’ (MEMOCRACY Policy Briefs, 2024) <<https://memocracy.eu/policy-briefs>>.

²⁸ Seimas of the Republic of Lithuania, ‘Draft Law Amending Article 170² of the Criminal Code of the Republic of Lithuania’ (*Petras Gražulis [drafter]*, 28 February 2022) <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/af6ff77098a111ec9e62f960e3ee1cb6>>.

²⁹ BNS, ‘Lithuanian Jewish leader calls for state’s reaction to MP’s anti-Semitic remarks’ (*Lrt.lt*, 14 June 2023) <<https://www.lrt.lt/en/news-in-english/19/2013413/lithuanian-jewish-leader-calls-for-state-s-reaction-to-mp-s-anti-semitic-remarks>>; Jewish Community of Lithuania, ‘Criminal Case against Former MP Žemaitaitis Begins’ (04 September 2024), <<https://www.lzb.lt/en/2024/09/04/criminal-case-against-former-mp-zemaitaitis-begins/>>.





LUXEMBOURG





1. Source of the legal provision

Article 457-3 Criminal Code [*Code pénal*] as amended by the Law of 13 February 2011 amending article 457-3 of the Criminal Code [*Loi du 13 février 2011 portant modification de l'article 457-3 du Code pénal*].

Accessible in the original language via: Journal officiel du Grand-Duché de Luxembourg <https://legilux.public.lu/eli/etat/leg/code/penal/20240308#art_457-3>

2. Legal provision in English

(1) Any person who, either by speeches, shouts or threats made in public places or gatherings, or by writings, prints, drawings, engravings, paintings, emblems, images or any other written, spoken or pictorial material sold or distributed, offered for sale or exhibited in public places or gatherings, or by placards or posters displayed for public viewing, or by any means of audiovisual communication, has disputed, minimised, justified or denied the existence of one or more crimes against humanity or war crimes as defined by Article 6 of the Charter of the International Military Tribunal annexed to the London Agreement of 8 August 1945,¹ and which were committed

¹ Article 6 of the Charter of the International Military Tribunal contains the definitions of the crimes over which the tribunal held jurisdiction:

‘Crimes against peace’: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

‘War crimes’: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of

either by members of an organisation declared criminal pursuant to Article 9 of the said Charter,² or by a person found guilty of such crimes by a Luxembourg, foreign or international court, is punished by imprisonment of between eight days and two years and a fine of between 251 and 25,000 Euros or one of these penalties only.

(2) Any person who, by one of the means set out in the preceding paragraph, has disputed, minimised, justified or denied the existence of one or more genocides as defined by Article 136bis of the Criminal Code, as well as crimes against humanity and war crimes, as defined in Articles 136ter to 136quinquies of the Criminal Code and recognised by a Luxembourg or international court, shall be punished by the same penalties or by one of these penalties only.

3. Legal Provision in the original language

(1) Est puni d'un emprisonnement de huit jours à deux ans et d'une amende de 251 euros à 25.000 euros ou de l'une de ces peines seulement celui qui, soit par des discours, cris ou menaces proférés dans des lieux ou réunions publics, soit par des écrits, imprimés, dessins, gravures, peintures, emblèmes, images ou tout autre support de l'écrit, de la parole ou de l'image vendus ou distribués, mis en vente ou exposés dans des lieux ou réunions publics, soit par des placards ou des affiches exposés au regard du public, soit par tout moyen de

public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

'Crimes against humanity': namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

² The NSDAP, the Gestapo, the SD and SS were declared to be criminal organizations by the International Military Tribunal, see Judgement of the International Military Tribunal, 30 September and 1 October 1946, accessible via The Avalon Project, Yale School of Law <<https://avalon.law.yale.edu/imt/judorg.asp>>.

communication audiovisuelle, a contesté, minimisé, justifié ou nié l'existence d'un ou de plusieurs crimes contre l'humanité ou crimes de guerre tels qu'ils sont définis par l'article 6 du statut du tribunal militaire international annexé à l'accord de Londres du 8 août 1945 et qui ont été commis soit par les membres d'une organisation déclarée criminelle en application de l'article 9 dudit statut, soit par une personne reconnue coupable de tels crimes par une juridiction luxembourgeoise, étrangère ou internationale.

(2) Est puni des mêmes peines ou de l'une de ces peines seulement celui qui, par un des moyens énoncés au paragraphe précédent, a contesté, minimisé, justifié ou nié l'existence d'un ou de plusieurs génocides tels qu'ils sont définis par l'article 136bis du Code pénal, ainsi que des crimes contre l'humanité et crimes de guerres, tels qu'ils sont définis aux articles 136ter à 136quinquies du Code pénal et reconnus par une juridiction luxembourgeoise ou internationale.

4. Key Points

- Following legislative precedents in France and Belgium, Luxembourg criminalized Holocaust denial in 1997 through Article 457-3 of the Criminal Code.
- The provision does not reference the Holocaust directly and only applies to crimes against humanity, or war crimes from the IMT Charter more generally, provided that they are recognised by a national or international court.
- Article 457-3 of the Criminal Code does not require that Holocaust denial be carried out in a manner likely to incite violence or hatred. Nor is the disturbance of public order or peace required.
- Courts can decide to go beyond a prison sentence or fine and restrict specific civic rights.

- The provision has been applied to statements equating public health measures during the Covid pandemic with anti-Jewish legislation in Nazi Germany.

5. Background

When Luxembourg explicitly criminalized Holocaust denial in 1997 in the course of a broader package of anti-discrimination laws, the social and legal situation in its neighbouring countries played a pivotal role. Referring to racist movements, lawmakers raised concerns about whether Luxembourg would “remain untouched by the spread of these particularly reprehensible ideas”.³ The introduction of a paragraph on revisionism was seen as completing the provisions against racial discrimination which had been adopted when denialism had not yet surfaced in the country. In particular, a demonstration organised by neo-Nazis from neighbouring countries in commemoration of Rudolf Hess in 1994 caused concerns.⁴ Revisionist movements in France by people such as Paul Rassinier to Jean-Marie Le Pen were considered by many to fall outside the freedom of historic research, as they did not intend to contribute to the search for historic truth.⁵ A denial ban was also considered to be in line with the freedom of speech.⁶

The text of the provision was inspired by similar laws in France (1990) and Belgium (1995).⁷ However, lawmakers in Luxembourg regarded the French predecessor law as too limited in its scope in that it only criminalised ‘contestation’. Therefore, the Luxembourg provision

³ Projet de loi [draft legislation] No. 4071, published in the Journal Officiel [Official Journal], 27 May 1995, p. 5.

⁴ Ibid.

⁵ Ibid., p. 7, 9.

⁶ Ibid., p. 8 f; referring to European Court of Human Rights (9235/81) – Commission – Decision – X. v. Federal Democratic Republic of Germany

⁷ The reference to the French example led the Council of State, who dismissed the legislation in his advisory opinion, to point to the criticism the equivalent law had provoked among French human rights defenders at the time, 4071/01 Avis du Conseil d’Etat [Opinion of the Council of State], 23 January 1996, p. 11 <https://wdocs-pub.chd.lu/docs/archive/3d/36/3141494_pdf>.

explicitly targets not just denial, but also the justification and minimisation of the Holocaust.⁸ In addition, the Luxembourg criminal law is noteworthy for the broad list of additional sanctions supplementing a possible prison sentence or fine: according to Article 457-4 in conjunction with Articles 11 and 24 of the Criminal Code, defendants can be barred from the exercise of certain rights for a duration between five to ten years: for example, from holding public office, voting or eligibility, possessing arms, or being employed in an educational establishment.

Already before the EU FD 2008 came into force, Luxembourg had criminalised the denial, minimisation and justification of genocides in general through the introduction of Article 457-3 Section 2 of the Criminal Code.⁹ The ban was enlarged – through implementing the demands of the EU FD 2008 in 2011 – to include war crimes and crimes against humanity that have been recognised by a Luxembourg or international court.¹⁰

6. Application

Cases of explicit Holocaust denial appear to be rather rare in Luxembourg.¹¹ That said, the author of a revisionist book, who tried to defend himself by arguing that he had made his statements in the conditional tense, in the form of questions, and said he had been unaware of the criminal prohibition, was sentenced to an 18-month suspended prison term and a fine of 2,000 Euro in 2017.¹²

⁸ Projet de loi No. 4071, published in the Journal Officiel, 27 May 1995, p. 12.

⁹ ‘Étude comparative sur la négation des génocides et des crimes contre l’humanité’, Institut suisse de droit comparé (ed) [2006], p. 3.

¹⁰ Projet de loi [draft legislation] No. 6126, rapport de la comission juridique [report by the legal committee], 16 December 2010 <<https://wdocs-pub.chd.lu/docs/exped/052/931/095310.pdf>>.

¹¹ B. Gottlieb, ‘Sans comparaison’ d’*Lëtzebuenger Land* (23 October 2020), <<https://www.land.lu/page/article/388/337388/DEU/index.html>>.

¹² F. Armborsti, ‘Luxembourg : 18 mois de prison requis contre l’auteur d’un livre négationniste’ *Le Quotidien* (24 March 2017) <<https://lequotidien.lu/police-justice/negationnisme-lauteur-du-livre-condamne-a-18-mois-de-prison/>>.

In the context of the Covid-19 pandemic, Luxembourg observed a rise in antisemitic hate speech and statements relativising the Holocaust.¹³ The District Court of Luxembourg held that a Facebook post which compared the necessity of a vaccine certificate during the Corona pandemic with the Yellow Star – badge that Jews were ordered to wear under Nazi occupation – and portrayed the sanitary measures as a “continuation of that final solution” were a criminal minimisation the Holocaust.¹⁴ The court reached the same conclusion in the case of another defendant who had posted an image that was reminiscent of the walls of a concentration camp online, with a Illuminati symbol above the gate and signs reading: “You are now entering America. Those with no chip merge right.”¹⁵

7. Controversies

Article 457-3 Criminal Code refers – like its equivalent French provision – to the London Charter of 8 August 1945 for the definition of crimes against humanity and war crimes. However, during the drafting process, the Council of State in its advisory role questioned whether a domestic criminal sanction could be based on an international treaty to which Luxembourg was not a party.¹⁶ These doubts were voiced again in the criminal defence against the above-mentioned author who was con-

¹³ ‘National Action Plan to Combat Antisemitism’, Ministry of State (ed) [2023] p. 6 <<https://gouvernement.lu/dam-assets/documents/actualites/2023/09-septembre/27-bettel-antisemitismus/brochure-panas-b5-en-web-2023.pdf>>.

¹⁴ Tribunal d’arrondissement Luxembourg [Luxembourg District Court], Judgement, No. 1463/2023, 29 June 2023 <https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/Tribunal%20d%27arrondissement%20Luxembourg%20p%C3%A9nal/07_Chambre%20correctionnelle/2023/20230629_TAL7_1463_pseudonymis%C3%A9-accessible.pdf>.

¹⁵ Le Tribunal d’arrondissement Luxembourg [Luxembourg District Court], Judgement, No. 2546/2023, 20 December 2023, p. 5, 7 <https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/Tribunal%20d%27arrondissement%20Luxembourg%20p%C3%A9nal/13_Chambre%20correctionnelle/2023/20231220_TAL13_2546_pseudonymis%C3%A9-accessible.pdf>.

¹⁶ Avis du Conseil d’Etat [Opinion of the Council of State], No. 4071/01, 23 January 1996, p. 11 <https://wdocs-pub.chd.lu/docs/archive/3d/36/3141494_pdf>.

victed for a book containing revisionist passages.¹⁷ However, the drafters of the Luxembourg provision had held that it was “possible to refer to an existing international text which is in force and of which there is official knowledge.”¹⁸ The court opted for a different reasoning and ruled that, despite lacking a ratification, Luxembourg had in fact acceded to the London Agreement under its Article 5 on 1 November 1945.¹⁹

8. Further Reading

- E. Hoffmann, B. Majerus, “Nationbranding” avant la lettre – Le 10 octobre 1941 dans la mémoire collective luxembourgeoise’, *Luxemburger Wort* (6 October 2016), pp. 2-4.
- E. M. Klos, B. S. Schulz, ‘Remembering the Second World War in Luxembourg and the Border Regions of its Three Neighbours’, in C. Wille, R. Reckinger, S. Kmec, M. Hesse (eds), *Spaces and Identities in Border Regions*, (Transcript 2015) pp. 315-326.
- B. Landau, D. Scuto, L. Wienke, “What is remembered lives.” The Digital Memorial for the Victims of the Shoah in Luxembourg’ [2024] No. 219, *Revue d’Histoire de la Shoah*, pp. 217-235.

¹⁷ Tribunal d’arrondissement Luxembourg [Luxembourg District Court], Judgement, No. 1330/2017, 4 May 2017, p. 8 <https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/Tribunal%20d%27arrondissement%20Luxembourg%20p%C3%A9nal/09_Chambre%20correctionnelle/2017/20170504-TALux9-1330a-accessible.pdf>.

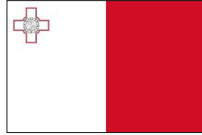
¹⁸ Note du groupe de travail ‘Réforme du code pénal’- sous-groupe II sur l’avis du Conseil d’Etat, 23 janvier 1996 [Note of the working group on the “reform of the Criminal Code”], 3 May 1996, p. 7 <https://wdocs-pub.chd.lu/docs/archive/0e/03/3056515_pdf>.

¹⁹ Tribunal d’arrondissement Luxembourg [Luxembourg District Court], Judgement, No. 1330/2017, 4 May 2017, p. 8 <https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/Tribunal%20d%27arrondissement%20Luxembourg%20p%C3%A9nal/09_Chambre%20correctionnelle/2017/20170504-TALux9-1330a-accessible.pdf>.





MALTA





1. Source of the legal provision¹

Article 82B of the Criminal Code [*Kodiċi Kriminali*] as amended by Law XXIV of 2014 – Law of 2014 amending various laws concerning criminal matters (Amendment No. 2) [*Att XXIV tal-2014 – Att tal-2014 li jemenda Diversi Liġijiet li jirrigwardaw materji kriminali (Emenda Nru. 2)*].²

Article 82C Criminal Code [*Kodiċi Kriminali*] as amended by Law LXV of 2021 – Law of 2021 amending the Criminal Code (Amendment No. 8) [*Att LXV tal-2021 – Att tal-2021 li jemenda l-Kodiċi Kriminali (Emenda Nru 8)*].³

Available in the original language via: Legiżlazzjoni Malta; <<https://legislation.mt/eli/cap/9/20240315/mlt>>

2. Legal Provision in English

Article 82B

Whosoever publicly condones, denies or grossly trivialises genocide, crimes against humanity or war crimes directed against a group of persons or a member of such a group defined by reference to race, colour, religion, citizenship, descent or national or ethnic origin when the conduct is carried out in a manner -

- a. likely to incite to violence or hatred against such a group or a member of such a group;

¹ Special thanks to Dr. Carla Camilleri (Aditus Foundation) for her valuable insights and clarifications on key issues addressed in this entry.

² Gazzetta tal-Gvern ta' Malta Nru. 19,291, 01.08.2014.

³ Gazzetta tal-Gvern ta' Malta Nru. 20,750, 14.12.2021.

b. likely to disturb public order or which is threatening, abusive or insulting,

shall, on conviction, be liable to imprisonment for a term from eight months to two years:

Provided that for the purposes of this article “genocide”, “crimes against humanity” and “war crimes” shall have the same meaning assigned to them in article 54A.

Article 82C

(1) Whosoever publicly condones, denies or grossly trivialises crimes against peace directed against a person or a group of persons defined by reference to gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, age, disability, citizenship, religion or belief or political or other opinion when the conduct is carried out in a manner-

a. likely to incite to violence or hatred against such a person or group; or

b. likely to disturb public order or which is threatening, abusive or insulting,

shall, on conviction, be liable to imprisonment for a term from eight months to two years.

(2) For the purposes of this article a crime against peace means conduct consisting of:

a. the planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances;

b. participation in a common plan or conspiracy for the accomplishment of any of the acts referred to in paragraph (a).⁴

⁴ <<https://legislation.mt/eli/cap/9/20240315/eng>>.

3. Legal Provision in the original language

Article 82B

Kull min pubblikament jiskuża, jiċhad jew itaffi b’mod grossolan xi ġenocidju, delitt kontra l-umanità u delitt tal-gwerra dirett kontra grupp ta’ persuni jew xi membru ta’ dak il-grupp b’referenza għar-razza, kulur, reliġjon, ċittadinanza, dixxendenza jew oriġni nazzjonali jew etnika meta dik l-imġieba titwettag b’mod li -

- a. x’aktarx ixxewwex għall-vjolenza jew mibegħda kontra dak il-grupp jew membru ta’ dak il-grupp;
- b. x’aktarx jikser l-ordni pubblika jew li jkun ta’ theddid, abbuż jew insult, jista’, meta jinstab hati, jeħel priġunerija għal żmien minn tmien xhur sa sentejn:

Iżda għall-finijiet ta’ dan l-artikolu “ġenocidju”, “delitti kontra l-umanità” u “delitti tal -gwerra” għandu jkollhom l-istess tifsira bħal dik mogħtija lilhom fl-artikolu 54A.

Article 82C

(1) Kull min pubblikament jiskuża, jiċhad jew itaffib’mod grossolan delitti kontra l-paċi diretti kontra persuna jewgrupp ta’ persuni b’referenza għal ġeneru, identità tal-ġeneru, orjentazzjoni sesswali, razza, kulur, lingwa, oriġini nazzjonali jewetnika, età, diżabilità, ċittadinanza, reliġjon jew twemmin jew opinjonipolitika jew opinjoni oħra meta dik l-imġieba titwettag b’mod li –

- a. x’aktarx ixxewwex għall-vjolenza jew mibegħdakontra dik il-persuna jew dak il-grupp; jew
- b. x’aktarx jikser l-ordni pubblika jew li jkun ta’ theddid, abbuż jew insult,

jista’, meta jinstab hati, jeħel priġunerija għal żmien minn tmienxhur sa sentejn.

(2) Għall-finijiet ta’ dan l-artikolu delitt kontra l-paċi jfissermġieba li tkun tikkonsisti:

- a. fl-ippjanar, tnejjija, bidu jew għemil ta' gwerra ta'aggressjoni, jew gwerra bi ksur ta' kull trattat, ftehimjew assikurazzjoni internazzjonali;
- b. fil-partecipazzjoni fi pjan komuni jew assoċjazzjonighall-għemil ta' xi wieħed mill-atti msemmija fil-paragrafu (a).⁵

4. Key Points

- There is no specific legislation in Malta that criminalises the denial of the Holocaust. However, Malta does penalise the public condoning, denial, or gross trivialisation of war crimes, crimes against humanity, genocides in general and crimes against peace. These prohibitions apply regardless of whether the crimes have been established by a court.
- The offence under Article 82B of the Criminal Code (denial of genocide, crimes against humanity, and war crimes) is supplemented by further requirements stipulating that such behaviour must likely incite violence or hatred, and additionally, must likely disrupt public order, or be threatening, abusive, or insulting.
- Article 82C of the Criminal Code (denial of crimes against peace) only requires either incitement to violence or hatred, or disruption of public order, or conduct that is threatening, abusive, or insulting.
- Possible sanctions may include imprisonment for a term from eight months to two years.
- To date, no convictions have been made specifically for Holocaust denial. Instead, antisemitic remarks are prosecuted as hate speech under Article 82A of the Criminal Code.

⁵ <<https://legislation.mt/eli/cap/9/20240315/mlt>>.

5. Background

To implement the EU Framework Decision on Racism and Xenophobia 2008/913/JHA (hereafter ‘EU FD 2008’),⁶ Malta enacted legislation on 17 July 2009 criminalising the public condoning, gross trivialisation, and denial of genocides under Article 82B of the Criminal Code. Such conduct is subject to legal sanctions only when carried out in a manner likely to incite violence or hatred (Article 82B a of the Criminal Code). Notably, it must also be likely to disrupt public order or be threatening, abusive, or insulting (Article 82B(b) of the Criminal Code). By introducing this requirement, Malta exercised its discretion under Article 1 (2) EU FD 2008 – thus opting for a narrow scope when sanctioning such behaviour.⁷ Similarly, Malta specified that public denial or gross trivialisation is only punishable under Article 82B of the Criminal Code upon a final determination of genocide by a competent national or international court.⁸

Conversely, for Article 82C of the Criminal Code, it requires either incitement to violence or hatred, or disruption of public order, or conduct that is threatening, abusive, or insulting.

During parliamentary deliberations, the meaning of the term “publicly” was especially discussed. This term was meant to specifically denote public gatherings as distinct from private expressions of opinion or academic contributions.⁹

Although the opposition ultimately supported the governmental proposal for legislative amendment, culminating in the adoption of the

⁶ COM/2014/027 final.

⁷ Article 1 (2) EU FD 2008 reads “For the purpose of paragraph 1, Member States may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting”.

⁸ Thereby making use of Article 1 (4) EU FD 2008; see European Commission, *Report from the Commission to the European Parliament and the council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law* (COM 27 final, 2014) 6.

⁹ Maltese Chamber of Deputies, Official and Revised Report, Session no. 77, 28 January 2009, 764.

memory laws, it concurrently characterised it as an “overkill”.¹⁰ In particular, criticism was directed towards the added provision of Article 82D of the Criminal Code concerning complicity, which specifically criminalises the act of aiding, abetting, or instigating the incriminated statement under Article 82B or 82C of the Criminal Code.¹¹ Malta appears to be the only EU member state to have adopted such a provision.¹² The opposition further denounced the severity of the imposed prison sentence. Provided that the offence is directed against a group of people or an individual belonging to a group as defined by the listed attributes in Articles 82B and 82C of the Criminal Code, it carries a penalty of up to 2 years imprisonment.

Article 82B underwent its last amendment in 2014, introducing the additional attribution of “citizenship” to the provision,¹³ whilst Article 82C of the Criminal Code was last revised in 2021, adding “age” and “disability”.¹⁴

6. Application

To date, there has been no conviction for Holocaust denial in Malta. Furthermore, no prosecutions have been reported under Articles 82B or 82C of the Criminal Code. This lack of legal action could be attributed to the relatively recent enactment of these memory laws in 2009. At the same time, instances of explicit Holocaust denial, such as those by far-right politician and leader of the *Imperium Europa* party, Norman Lowell, appear to not have resulted in prosecution under these specific provisions. Lowell has made highly controversial statements, including

¹⁰ Maltese Chamber of Deputies, Official and Revised Report, Session no. 77, 28 January 2009, 747.

¹¹ See Article 82D of the Criminal Code.

¹² European Commission, *Report from the Commission to the European Parliament and the council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law* (COM 27 final, 2014) 6.

¹³ Law XXIV of 2014.

¹⁴ Law LXV of 2021.

comparing Auschwitz to “the Disneyland of Poland” and denying the Holocaust by calling it “the biggest lie since the Virgin Mary”.¹⁵

Instead, the politician has been convicted for inciting hatred under Article 82A of the Criminal Code¹⁶ in 2008 for delivering racist speeches and publishing a derogatory article that included terms such as “parasites” for Jews and “vicious Sudanese”, as well as advocating violence against refugees. Lowell’s subsequent appeal was unsuccessful.¹⁷

7. Controversies

The introduction of Articles 82B and 82C of the Criminal Code did not stir major controversy in Maltese society. Public debate concerning Holocaust denial in Malta most recently focused upon Ronald Bugeja, author of the biography entitled “*Mein Führer Adolf Hitler – L-Istorja u l-Bijografija*” [My Führer Adolf Hitler: History and Biography], which he promoted during the book review programme *Ħajjitna Ktieb* on Maltese Television (TVM) in April 2023.¹⁸ The book is deemed revisionist as it glorifies and justifies Hitler and the actions of the Nazi

¹⁵ Jonathan Cilia, ‘Norman Lowell Denies Holocaust After Calling Auschwitz The ‘Disneyland Of Poland’ *Lovin Malta* (6 May 2019) <<https://lovinmalta.com/news/norman-lowell-denies-holocaust-after-calling-auschwitz-the-disneyland-of-poland/>>.

¹⁶ Article 82A reads “(1) whosoever uses any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up violence or hatred against another person or group of persons on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, age, disability, religion or belief or political or other opinion or whereby such violence or hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six (6) to eighteen (18) months [...]

(2) For the purposes of sub-article (1) “violence or hatred” means violence or hatred against a person or against a group of persons in Malta defined by reference to gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, age, disability, citizenship, religion or belief or political or other opinion”.

¹⁷ See for more <<https://fra.europa.eu/en/databases/anti-muslim-hatred/node/6700>>.

¹⁸ ‘Police report filed against Maltese author of a glorifying Hitler biography’ *EJC* (17 April 2023) <[Police report filed against Maltese author of a glorifying Hitler biography – European Jewish Congress \(eurojewcong.org\)](https://www.eurojewcong.org/police-report-filed-against-maltese-author-of-a-glorifying-hitler-biography)>.

civil and military administration.¹⁹ It is reported that Bugeja’s intention was to explore whether there were any positive aspects of Hitler. He asserted that the Nazi leader was unaware of the “atrocities” committed during World War II, while blaming Jews and Communists for having “destroyed” Germany.²⁰

The public controversy focused on two main issues: firstly, the initial promotion of the book, and secondly, the lack of critical reflection during the interview.²¹ The interviewer, John Demanuele, later apologised for having hosted the interview.²²

The authors’ organisation *PEN Malta* expressed that it was “shocked and disgusted” with the national broadcaster for using its platform to promote Nazi ideas.²³ Meanwhile, in a letter published in the *Times of Malta*, the German ambassador condemned any “ill-guided attempts to attribute allegedly positive characteristics to Hitler and/or to belittle the enormity of his crimes”, calling such views “erroneous to the extreme”.²⁴ The Ministry of Culture distanced itself from the interview and referred to *PBS*, the national public broadcaster, which has initi-

¹⁹ Matthew Vella, ‘PEN Malta riled at prison historian’s Hitler glorification being given TVM platform’ *Malta Today* (14 April 2023) <https://www.maltatoday.com.mt/arts/books/122332/pen_malta_riled_at_prison_historians_hitler_glorification_given_tvm_platform>.

²⁰ ‘Police report filed against Maltese author of a glorifying Hitler biography’ *EJC* (17 April 2023) <[Police report filed against Maltese author of a glorifying Hitler biography – European Jewish Congress \(eurojewcong.org\)](https://www.eurojewcong.org/en/news/2023/04/17/police-report-filed-against-maltese-author-of-a-glorifying-hitler-biography)>.

²¹ Jessica Arena, ‘Watch: Anger, disgust as TVM promotes Hitler propaganda biography’ *Times of Malta* (14 April 2023) <[Watch: Anger, disgust as TVM promotes Hitler propaganda biography \(timesofmalta.com\)](https://www.timesofmalta.com/articles/view/malta/122332/watch-anger-disgust-as-tvm-promotes-hitler-propaganda-biography)>.

²² Matthew Vella, ‘TVM investigates Nazi book promotion as John Demanuele issues apology’ *Malta Today* (14 April 2023) <[TVM investigates Nazi book promotion as John Demanuele issues apology \(maltatoday.com.mt\)](https://www.maltatoday.com.mt/news/122332/tvm-investigates-nazi-book-promotion-as-john-demanuele-issues-apology)>.

²³ Statement published by PEN Malta on Facebook, 13 April 2023 <<https://www.facebook.com/photo/?fbid=535892738712401&set=pcb.535894342045574>>.

²⁴ Letters to the editor, *Times of Malta* (15 April 2023) <[Letters to the editor – April 15, 2023 \(timesofmalta.com\)](https://www.timesofmalta.com/articles/view/malta/122332/letters-to-the-editor-april-15-2023)>.

ated an internal investigation into the incident.²⁵ Moreover, a police report was filed against Bugeja.²⁶ There is no further information if any action was taken.

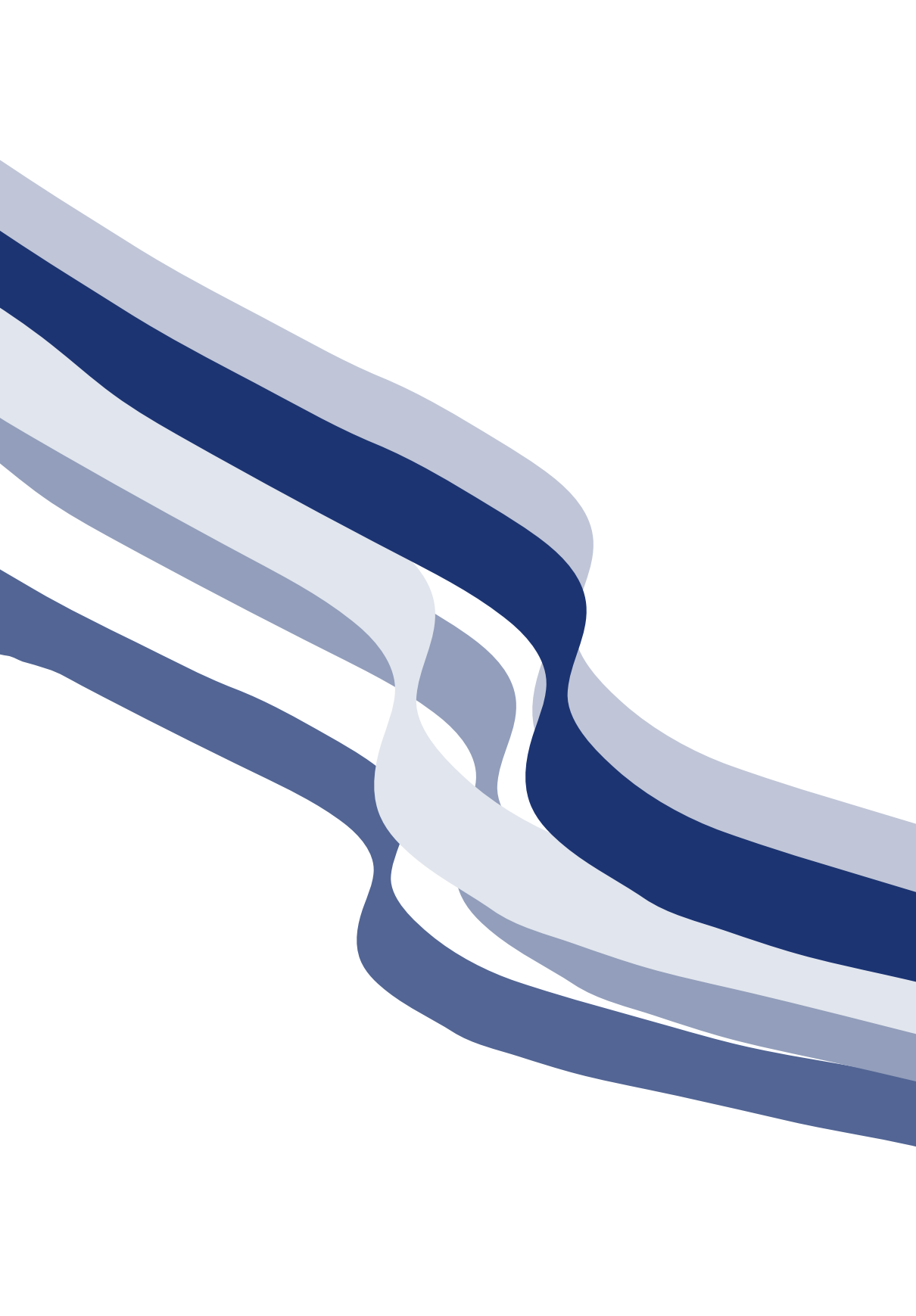
The public outrage over this interview suggests that Holocaust minimisation and denial remain strongly condemned in Malta.

8. Further Reading

- Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law (COM 27 final, 2014).
- William R. Pruitt, 'Understanding Genocide Denial Legislation: A Comparative Analysis (2017) 12(2) International Journal of Criminal Justice Sciences' 270.

²⁵ Jessica Arena, 'Watch: Anger, disgust as TVM promotes Hitler propaganda biography' *Times of Malta* (14 April 2023) <[Watch: Anger, disgust as TVM promotes Hitler propaganda biography \(timesofmalta.com\)](https://www.timesofmalta.com/articles/view/malta/2023/04/14/watch-anger-disgust-as-tvm-promotes-hitler-propaganda-biography)>.

²⁶ Daniel Tihn, 'Police report filed against author of Hitler biography, German ambassador reacts' *Times of Malta* (15 April 2023) <[Police report filed against author of Hitler biography, German ambassador reacts \(timesofmalta.com\)](https://www.timesofmalta.com/articles/view/malta/2023/04/15/police-report-filed-against-author-of-hitler-biography-german-ambassador-reacts)>.





NETHERLANDS





1. Source of the legal provision

Article 137c (2) of the Criminal Code [*Wetboek van Strafrecht*] as amended by Official Gazette 2024, 207 [*Staatsblad 2024, 207*].

Available in the original language via: InView; <<https://www.inview.nl/openCitation/ida4427c86d761bc9ddb5de5ebba8817/wetboek-van-strafrecht-artikel-137c?ctx=7a79f965349ec4763806f5db567bdc8>>

2. Legal Provision in English

(1) Any person who, in public, orally or by writing or image, intentionally insults a group of people on account of their race, religion or belief, heterosexual or homosexual orientation or physical, mental or intellectual disability shall be punished by imprisonment for a term not exceeding one year or a fine of the third category.

(2) The same penalty is imposed on anyone who in public, orally or by writing or image, deliberately insults a group of people as described in the first paragraph:

a. by condoning any of the offences as described in Articles 3 to 6, 7, paragraph 2, and 8 to 8b of the International Crimes Act¹ or any of the offences as described in Article 6 of the Charter of the International Military Court, annexed to the Treaty of London of 8 August 1945²;

¹ These Articles incorporate the international crimes of genocide, crimes against humanity, war crimes, and the crime of aggression, as defined by the Rome Statute of the International Criminal Court, into national criminal legislation, with several additions to the definition of war crimes.

² Codification of crimes against peace, war crimes and crimes against humanity.

b. by denying or grossly trivialising one of the facts as described in the articles referred to under a, insofar as that fact has been established by a final decision by an international court that derives its jurisdiction from a treaty to which the Kingdom is a party or by the Dutch court.

(3) If the offence is committed by a person who makes it a profession or habit or by two or more persons acting together, imprisonment of not more than two years or a fine of the fourth category shall be imposed.

3. Legal Provision in the original language

(1) Hij die zich in het openbaar, mondeling of bij geschrift of afbeelding, opzettelijk beledigend uitlaat over een groep mensen wegens hun ras, hun godsdienst of levensovertuiging, hun hetero- of homoseksuele gerichtheid of hun lichamelijke, psychische of verstandelijke handicap, wordt gestraft met gevangenisstraf van ten hoogste een jaar of geldboete van de derde categorie.

(2) Met dezelfde straf wordt gestraft degene die zich in het openbaar, mondeling of bij geschrift of afbeelding, opzettelijk beledigend uitlaat over een groep mensen als omschreven in het eerste lid:

a. door het vergoelijken van een van de feiten als omschreven in de artikelen 3 tot en met 6, 7, tweede lid, en 8 tot en met 8b van de Wet internationale misdrijven of een van de feiten als omschreven in artikel 6 van het Handvest van de Internationale Militaire Rechterbank, gehecht aan het Verdrag van Londen van 8 augustus 1945;

b. door het ontkennen of verregaand bagatelliseren van een van de feiten als omschreven in de onder a genoemde artikelen, voor zover dat feit bij onherroepelijke beslissing is vastgesteld door een internationaal gerecht dat zijn rechtsmacht ontleent aan een verdrag waarbij het Koninkrijk partij is of door de Nederlandse rechter.

(3) Indien het feit wordt gepleegd door een persoon die daarvan een

beroep of gewoonte maakt of door twee of meer verenigde personen wordt gevangenisstraf van ten hoogste twee jaren of geldboete van de vierde categorie opgelegd.

4. Key Points

- There is no specific provision in the Netherlands that criminalises Holocaust denial. However, as of 1 October 2024, the Netherlands has adopted legislation prohibiting the condoning, denying, or gross trivialising of genocide, crimes against humanity, war crimes, and the crime of aggression.
- This amendment to Article 137c (2) of the Criminal Code aligns with the EU Framework Decision on Racism and Xenophobia 2008/913/JHA (hereafter ‘EU FD 2008’), and was introduced following an infringement procedure by the European Commission, which has now been solved.
- Article 137c (2) of the Criminal Code neither requires that such actions be carried out in a manner likely to incite violence or hatred, nor that they are likely to disturb public peace or order; however, it is required that a relevant group of persons is insulted.
- With regard to the denial or gross trivialisation of such crimes, they must have been previously established by an international court with jurisdiction recognised by the Netherlands, or by a national court.
- The basic punishment for such conduct is imprisonment for a term not exceeding one year or a fine.
- Even prior to the incorporation of an explicit genocide denial prohibition into the Criminal Code, established case law consistently recognised Holocaust denial as constituting a group insult based on race and/or religion under the former Article 137c (insult/defamation) of the Criminal Code.

5. Background

The Netherlands previously did not have a specific criminal law that sanctioned Holocaust or genocide denial. However, on 17 July 2024, the *Wet herimplementatie Europees strafrecht* [European Criminal Law Reimplementation Act]³ was adopted, which amended Article 137c (2) of the Criminal Code to criminalise the justification, denial, and gross trivialisation of genocides, crimes against humanity, and war crimes.⁴ This law entered into force on 1 October 2024.⁵

In the past, there had been various unsuccessful attempts to introduce legislation criminalising such conduct. Notable initiatives included a proposal by a Member of Parliament, Joël Voordewind of the Christian Union political party, in 2006,⁶ and a revised version of the proposal in 2008/2009 to align with the EU FD 2008.⁷ However, a corresponding memory law was not adopted, as Holocaust denial and trivialisation were considered adequately addressed under existing criminal case law.⁸ In fact, at the time of the adoption of the EU FD 2008 by the Council of the EU, the Netherlands maintained that its national laws were already in compliance, with Holocaust denial falling under the scope of Articles 137c (group insult), 137d (hate speech), and 137e

³ Kamerstukken I, 2023-2024, 36491, Nr. A (Amended Version).

⁴ The law was published in the Official Gazette on July 24, 2024, see: Staatsblad 2024, 207.

⁵ Staatsblad 2024, 221.

⁶ Kamerstukken II, 2005-2006, 30579, Nr. 2: the proposal was aimed at criminalising “*the public denial, gross trivialisation, approval, or justification of genocide and crimes against humanity with the intent to incite hatred, discrimination, or violence against individuals or property based on their race, religion, beliefs, gender, or sexual orientation, or when it is suspected or reasonably should be suspected that such actions insult a group of people based on their race, religion, beliefs, or sexual orientation*”.

⁷ Kamerstukken II, 30579, 2008-2009, Nr. 6.

⁸ Marloes Van Noorloos, *Hate Speech Revisited, A comparative and historical perspective on hate speech law in the Netherlands and England & Wales* (Intersentia 2011), School of Human Rights Research Series vol 45, 188.

(distribution of objects containing group insult and hate speech) of the Criminal Code.⁹

However, on 9 June 2021, the European Commission concluded that Dutch regulations on insult and hate speech did not fully comply with EU FD 2008 – leading to an infringement procedure for failing to transpose specific hate speech provisions, including “the public condoning, denial, or gross trivialisation of international crimes and the Holocaust”, into national legislation.¹⁰

In response to this, Article 137c (2) of the Criminal Code was adopted in 2024 (as noted above). According to its explanatory memorandum, this provision seeks to align with existing case law and aims to enhance legal certainty.¹¹ The memorandum highlights that the prohibition of condoning, denying, and grossly trivialising genocides, crimes against humanity, and war crimes constitutes a specific form of group insult, acting as *lex specialis* in relation to the broader provision of group insult under Article 137c (1) of the Criminal Code.¹²

It is notable that Article 137c (2) of the Criminal Code makes a distinction between condoning (that is justifying, approving or glorifying) and denying or grossly trivialising the aforementioned international crimes.¹³ The latter are only punishable under the condition that the crimes in question have been determined by an international court with jurisdiction recognised by the Netherlands, or by a national court.¹⁴

⁹ See the Addendum to the Draft Minutes of 27 January 2009, 16395/08 ADD 1; see also Kamerstukken I 2007/08, 23490, DH.

¹⁰ European Commission, Letter of formal notice, Combating racism and xenophobia: Commission calls on GREECE, the NETHERLANDS and LITHUANIA to fully transpose EU law criminalising hate speech and hate crimes, 9 June 2021 <https://ec.europa.eu/commission/presscorner/detail/en/inf_21_2743>.

¹¹ Kamerstukken II, 2023-2024, 36491, Nr. 3, 52.

¹² Kamerstukken II, 2023-2024, 36491, Nr. 3, 53.

¹³ This is a change from the initial draft law, where the relevant provision had a uniform approach for all three acts, see: Voorstel van wet, Wet herimplementatie Europees strafrecht, 10.08.2023, Article 3, A, 10.

¹⁴ Therefore making use of Article 1 (4) EU FD 2008.

Furthermore, the memorandum explicitly states that, in principle, the condoning, denial, or gross trivialisation of an international crime should only be considered to be insulting to a group under additional circumstances, such as the “glorification of the perpetrators, accusations against the victims, or the use of highly offensive language”.¹⁵ However, states the memorandum, Holocaust denial should be exempt from this additional requirement due to its “exceptional character”.¹⁶ This approach appears to be in line with existing ECtHR case law.¹⁷

6. Application

Since there have not yet been any verdicts under the new Article 137c (2) of the Criminal Code, the following is a summary of the application of Article 137c of the Criminal Code up to October 2024.

Even before adopting Article 137c (2) of the Criminal Code, national courts had repeatedly recognised that Holocaust denial could constitute a group insult based on race and/or religion.¹⁸ While this offense was often prosecuted using both Article 137c (group insult) and Article 137d (hate speech),¹⁹ convictions were frequently pronounced solely under Article 137c due to its lower burden of proof.²⁰

¹⁵ Kamerstukken II, 2023-2024, 36491, Nr. 3, 55 f.

¹⁶ Kamerstukken II, 2023-2024, 36491, Nr. 3, 56.

¹⁷ Compare, i.a., *Garaudy v France* (dec.), App no 65831/01 (ECtHR, 24 June 2003); *M’Bala M’Bala v France* (dec.), App no 25239/13 (ECtHR, 20 October 2015); *Witzsch v. Germany (no. 2)* (dec.), App no 7485/03 (ECtHR 13 December 2005); *Perinçek v. Switzerland* (GC), App no 27510/08 (ECtHR, 15 October 2015).

¹⁸ Kamerstukken II, 2023-2024, 36491, Nr. 3, 55, with reference to: HR 27 October 1987, NJ 1988, 538; HR 25 November 1997, NJ 1998, 261; HR 27 March 2012, NJ 2012, 220; HR 26 June 2018, NJ 2019, 214.

¹⁹ See e.g. Rechtbank’s-Hertogenbosch, 21 December 2004, 01/040521-04.

²⁰ See the parliamentary debate on a proposal law to amend the Criminal Code in relation to an extension of freedom of expression, notably by repealing Article 137c and restricting the scope of Article 137d: Plenair debat, 2016-2017, Nr. 36, Item 5; see also the explanatory memorandum to the “European Criminal Law Reimplementation Act”, where it is explicitly emphasised that Article 137d can form a basis of conviction for Holocaust denial: Kamerstukken II, 2023-2024, 36491, Nr. 3, 53 f.

One of the most prominent judgments concerning Holocaust denial is the 1997 “Verbeke judgment” by the Dutch Supreme Court, which affirmed that denying the Holocaust and alleging that the Jewish population fabricated it for political gain constituted a group insult against Jews under Article 137c of the Criminal Code.²¹

To evaluate whether a statement qualifies as a group insult under this provision, courts have developed a framework²² that ensures convictions align with freedom of expression.²³ The Supreme Court reiterates the so-called “three-step model” in its 2012 Auschwitz-cartoon judgement as follows:

“In a first step, it is assessed whether the particular statement is, in itself, insulting to a group of people; in a second step, it is assessed whether, considered in its context, the statement is significant for a social debate, which might negate its insulting character; in a third step, it is assessed whether the statement is unnecessarily offensive, in which case the statement can still be considered ‘insulting’”.²⁴

The case in question involved the Arab-European League (AEL) publishing a cartoon on their website depicting two Jewish men examining corpses under a sign labeled “Auschwitz”. One of the men remarks, “I don’t think they are Jews”. The other responds, “We have to reach the 6,000,000 somehow”. The AEL argued that the primary aim of the cartoon was not to insult Jews, but to highlight a perceived double standard in the public debate on freedom of speech, particularly the differing assessments of offensive expressions against Muslims compared to those made by Muslims. The AEL contended that its intent

²¹ David Korteweg, ‘Strafbaarstelling negationisme: geschiedschrijving via het recht?’ [2010] Mediaforum 79, 81, with reference to ALJ Janssens, AJ Nieuwenhuis, *Uitingsdelicten* (Kluwer 2008) 156.

²² A key case for this development is HR 14 January 2003, NJ 2003, 261; see for more: Paul Velleman, Fien de Ruiter, ‘Het Babylonische artikel 137c Sr’ [2023] Boom Strafbblad 142.

²³ The right to freedom of expression is guaranteed by Article 10 ECHR, Article 11 EU Charter and Article 7 of the Constitution.

²⁴ HR 27 March 2012, NJ 2012, 220.

was clarified through various public statements, including a disclaimer on its website. While the court of first instance accepted this argument as contributing to public debate, the appellate court and the Supreme Court found that even if the intent was sufficiently recognisable for third parties, it was still “unnecessarily offensive”. The courts concluded that demonstrating perceived double standards could have been achieved through alternative methods, and that the cartoon’s insulting nature — specifically, the assertion that Jews have exaggerated the Holocaust — was not justified. The AEL was thus found guilty under Articles 137c and 137e of the Criminal Code.²⁵

In contrast, in 2016, the Arnhem Court of Appeal held that “the mere disputation of historical facts”, such as the occurrence of the Holocaust, while offensive, does not necessarily harm the self-esteem or reputation of the affected group – a condition required for an offence to be considered insulting under Article 137c of the Criminal Code. The case concerned statements by a defendant who referred to the Holocaust among others as a myth and a hoax created to establish the state of Israel. The Court of Appeal acquitted the defendant of charges under Article 137c of the Criminal Code.²⁶ It appears that this judgement would not be in line with the current Article 137c (2) of the Criminal Code.

7. Controversies

Controversies in the past have centered on legislative proposals aimed at limiting hate speech criminalisation and repealing Article 137c of the Criminal Code. These initiatives were partly in response to the 2008 trial of right-wing politician Geert Wilders (leader of the *Partij voor de*

²⁵ See HR 27 March 2012, NJ 2012, 220; Marloes van Noorloos, *Strafbaarstelling van ‘belediging van geloof’* (Boom Lemma uitgevers 2014) 31; Marloes van Noorloos, ‘The politicisation of hate speech bans in the twenty-first century Netherlands’ (2014) 40 *Journal of Ethnic and Migration Studies* 249, 259.

²⁶ Gerechtshof Arnhem-Leeuwarden, 27 May 2016, NJFS 2016/155.

Vrijheid [Party for Freedom], PVV),²⁷ who faced prosecution for various statements made in interviews that were published online and in newspapers. In these, he frequently compared the Quran to Hitler's *Mein Kampf*, labelled it a "fascist book" that should be banned, and claimed the need to halt the "Islamization" of the Netherlands. In addition, he produced a film, *Fitna*, portraying violent and antisemitic behaviour among Muslims.²⁸ The Court of Appeal acquitted Wilders of all charges, citing that most statements targeted Islam as a religion rather than Muslims as a group. Moreover, the remarks directed at Muslims occurred during a period when "the multicultural society and immigration played a prominent role in the social debate", thus granting broader freedom of expression, particularly for politicians.²⁹ Notably, the court did not address the potential insulting impact of Wilders' statements against Jews, despite the fact that it could be argued that some of these remarks might be perceived as relativising the Holocaust and were, therefore, insulting.

Scholars have observed that the debate about a potential conviction of Wilders under Articles 137c-e of the Criminal Code prompted the first critical examinations of these, up to that time widely accepted, provisions on insult and hate speech.³⁰ The subsequent proposal in 2009 of the conservative-liberal *Volkspartij voor Vrijheid en Democratie* (VVD) [People's Party for Freedom and Democracy] to abolish Article 137c of the Criminal Code sparked public debate.³¹ It focussed not solely on the proposal itself, but also on a remark made by then VVD fac-

²⁷ Marloes van Noorloos, 'The politicisation of hate speech bans in the twenty-first century Netherlands' (2014) 40 *Journal of Ethnic and Migration Studies* 249, 257.

²⁸ Rechtbank Amsterdam, 23 June 2011, NJ 212, 370.

²⁹ Rechtbank Amsterdam, 23 June 2011, NJ 212, 370; compare: Peter van de Waerd, 'Geert Wilders "Incitement to Discriminate" Trial' (*Verfassungsblog*, 7 November 2016) <<https://verfassungsblog.de/geert-wilders-incitement-to-discriminate-trial/>>.

³⁰ Marloes van Noorloos, 'The politicisation of hate speech bans in the twenty-first century Netherlands' (2014) 40 *Journal of Ethnic and Migration Studies* 249, 257.

³¹ David Korteweg, 'Strafbaarstelling negationisme: geschiedschrijving via het recht?' [2010] *Mediaforum* 79, 79 with reference to 'Ophef in VVD om uitspraak Rutte Holocaust' *NRC Handelsblad* (28 May 2009); 'Rutte spreekt met joden na ophef over Holocaust' *De Volkskrant* (31 May 2009).

tion leader Mark Rutte.³² Rutte’s statement suggesting that the abolition of Article 137c of the Criminal Code would legalise Holocaust denial came as a shock and surprise to many.³³ Consequently, legislative efforts aiming to restrict hate speech criminalisation, notably through the VVD’s 2009 proposal law, as well as proposal laws in 2012³⁴ and 2014,³⁵ initiated by members of Wilder’s party PVV, were successful.

8. Further Reading

- Esther Janssen, Aernout Nieuwenhuis, ‘De verhouding tussen vrijheid van meningsuiting en discriminatie in het Wilders-proces: een analyse van “het proces van de eeuw”’ (2012) 37(2) NJCM-Bulletin 177.
- David Korteweg, ‘Strafbaarstelling negationisme: geschiedschrijving via het recht?’ [2010] (3) Mediaforum 79.
- Marloes Van Noorloos, ‘The politicisation of hate speech bans in the twenty-first century Netherlands’ (2014) 40 Journal of Ethnic and Migration Studies 249.
- Paul Velleman, Fien de Ruiter, ‘Het Babylonische artikel 137c Sr’ [2023] Boom Strafbblad 142.

³² David Korteweg, ‘Strafbaarstelling negationisme: geschiedschrijving via het recht?’ [2010] Mediaforum 79, 79.

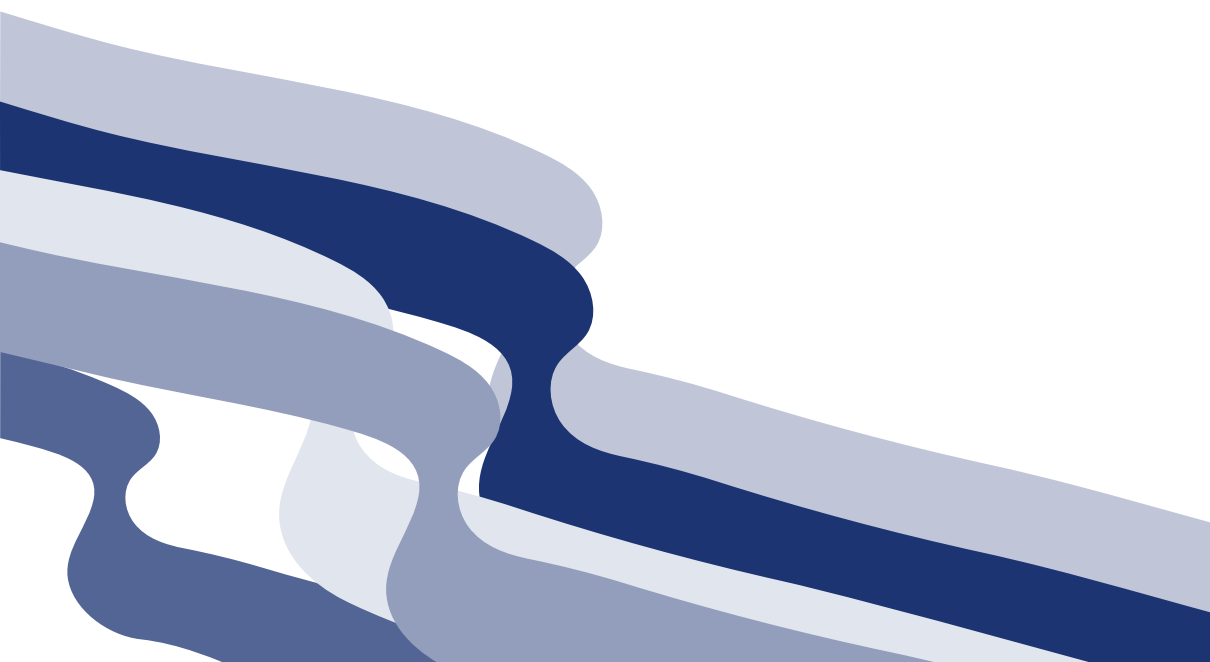
³³ Marloes van Noorloos, ‘The politicisation of hate speech bans in the twenty-first century Netherlands’ (2014) 40 Journal of Ethnic and Migration Studies 249, 257.

³⁴ Kamerstukken II, 2011-2012, 33369, Nr 2.

³⁵ Kamerstukken II, 2014-2015, 34051, Nr. 2.



POLAND





1. Source of the legal provision

Article 55 of the Act on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation (Dz.U.2023.102) [Ustawy o Instytucie Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu] of December 18, 1998 (Dz.U.2023.102)

Available in the original language via: Sejm <<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19981551016>>.

2. Legal Provision in English

Article. 55. Whoever publicly and contrary to the facts denies the crimes referred to in Article 1 point 1 is subject to a fine or imprisonment for up to 3 years. The judgment is made public.

Article 1. The Act regulates:

(1) recording, collecting, storing, processing, securing, making available and publishing documents of the state security organs, produced and collected from 22 July 1944 to 31 July 1990, as well as of the security organs of the German Third Reich and the Union of Soviet Socialist Republics, regarding:

a. crimes committed against persons of Polish nationality or Polish citizens of other nationalities in the period from 8 November 1917 to 31 July 1990:

- Nazi crimes,
- communist crimes,
- crimes of Ukrainian nationalists and members of Ukrainian

formations collaborating with the Third Reich German,

– other crimes constituting crimes against peace, humanity or war crimes, [...].

3. Legal Provision in the original language

Art. 55. Kto publicznie i wbrew faktom zaprzecza zbrodniom, o których mowa w art. 1 pkt 1, podlega grzywnie lub karze pozbawienia wolności do lat 3. Wyrok podawany jest do publicznej wiadomości.

Art. 1. Ustawa reguluje:

(1) ewidencjonowanie, gromadzenie, przechowywanie, opracowywanie, zabezpieczenie, udostępnianie i publikowanie dokumentów organów bezpieczeństwa państwa, wytworzonych oraz gromadzonych od dnia 22 lipca 1944 r. do dnia 31 lipca 1990 r., a także organów bezpieczeństwa Trzeciej Rzeszy Niemieckiej i Związku Socjalistycznych Republik Radzieckich, dotyczących:

a. popełnionych na osobach narodowości polskiej lub obywatelach polskich innych narodowości w okresie od dnia 8 listopada 1917 r. do dnia 31 lipca 1990 r.:

– zbrodni nazistowskich,

– zbrodni komunistycznych,

– zbrodni ukraińskich nacjonalistów i członków ukraińskich formacji kolaborujących z Trzecią Rzeszą Niemiecką,

– innych przestępstw stanowiących zbrodnie przeciwko pokojowi, ludzkości lub zbrodnie wojenne, [...].

4. Key Points

- The Polish law penalising negationism prohibits the denial of not only the Holocaust and other Nazi crimes, but also communist crimes, crimes committed by Ukrainian nationalists, as well as other crimes

constituting crimes against peace, humanity or war crimes, regardless of any recognition by a court, provided that they were committed against Poles or Polish citizens of other nationalities in the period from 8 November 1917 to 31 July 1990.

- Possible sanctions for such conduct may include a fine or imprisonment for up to 3 years.
- It is not necessary that the statement is likely to incite to hatred or violence or that it disturbs public order or peace.
- At the same time, the limited personal scope of the (concerning only Poles and Polish citizens) law needs to be noted, as denying crimes and atrocities committed on other peoples could not be punished.
- A further limitation stems from the restriction of the protection of memory to only those events established as facts.
- In 2021, the EU Commission initiated an infringement procedure against Poland for failing to fully transpose the EU Framework Decision on Racism and Xenophobia 2008/913/JHA (hereinafter ‘EU FD 2008’) by omitting the penalisation of gross trivialization of the Holocaust, and restricting the criminalization of its denial and condoning to cases to only those involving Polish citizens. The process is still ongoing.

5. Background

The Polish law penalising negationism (known in the country as the *Oświęcim – Auschwitz – lie*) was introduced in 1998, as a part not of the Criminal Code – as it is often the case in other European countries – but rather as a part of the law on the National Institute of Memory (also known as the Institute of National Remembrance). It is a state institution tasked with not only the establishment and protection of the official narrative regarding the past, but also lustration, archival and research work, and the prosecution of those responsible for atrocities

committed against Poles and Polish citizens under Nazism and communism.¹ The inclusion of the law on negationism in the law on the National Institute of Memory lends the penalisation of the “Auschwitz lie” to a broader dimension. Importantly, according to Article 45a of the act, it is the prosecutor of the local commission of the Institute of National Remembrance that initiates the prosecution.² It should also be noted that in 2021, the EU Commission initiated an infringement procedure against Poland for incorrectly transposing the criminalization of specific forms of hate speech under the EU FD 2008 by omitting penalisation of the gross trivialization of the Holocaust, and restricting the criminalization of its denial and condoning to cases involving only Polish citizens.³ The process is still ongoing.

6. Application

Established in 1998, Article 55 was most famously employed only once, soon after its introduction, in a case against a historian, Dariusz Ratajczak, who self-published a revisionist pamphlet questioning the existence of the gas chambers in Nazi concentration camps. The district attorney’s office brought a criminal case against him, and he was ultimately found to have denied the Nazi crimes by the court in 2002. However, the case was discontinued due to low levels of social harm; the pamphlet had only reached a limited audience, and in the second edition, the author distanced himself from Holocaust deniers.⁴ Nev-

¹ Rafał Reczek, ‘Rola Instytutu Pamięci Narodowej w procesie przywracania pamięci’(2015) 3 Środkowoeuropejskie Studia Polityczne 221, 222.

² Article 45a of the 1998 Act on Institute of National Remembrance. “The prosecutor of the branch commission initiates investigations into cases concerning offenses specified in Article 54 and Article 55.”

³ European Commission, Letters of formal notice, Combatting racism and xenophobia: The Commission calls on BELGIUM, BULGARIA, FINLAND, POLAND, and SWEDEN to fully transpose EU law criminalising hate speech and hate crimes, 18.2.21 <https://ec.europa.eu/commission/presscorner/detail/en/inf_21_441>.

⁴ Aushwitz.org, ‘First Polish Holocaust Denial Case Dismissed’ <<https://www.auschwitz.org/en/museum/news/first-polish-holocaust-denial-case-dismissed,134>>.

ertheless, he was dismissed from his position at a university in 2000, and banned from entering teaching positions for three years. He never worked in academia again.⁵

7. Controversies

While the penalisation of negationism in Poland is not controversial *per se*, the 2018 amendment of the Law on the Institute of National Memory led to major perturbances on both the national and international level. Triggered by the proliferation of the factually inaccurate phrase ‘Polish death camps’ (rather than ‘Nazi German death camps in occupied Poland’) globally in the 2010s, first, a number of civil suits – most notably by World War II veterans – followed on the basis of their personal interests’ protection afforded under Articles 23 and 24 of the Polish Civil Code.⁶ Then, in 2018, the parliament passed an amendment adding Chapter 6c to the Law on the Institute of National Memory,⁷

[html](#)>.

⁵ Agnieszka Rybak, ‘Historia doktora Ratajczaka’ <<https://www.rp.pl/plus-minus/art15121221-historia-doktora-ratajczaka>>.

⁶ Polish Civil Code (1964) Art. 23: “Protection of personal interests. The personal interests of a human being, in particular health, freedom, dignity, freedom of conscience, name or pseudonym, image, privacy of correspondence, inviolability of home, and scientific, artistic, inventive or improvement achievements are protected by civil law, independently of protection under other regulations.” Art. 24: Means of protection. § 1. Any person whose personal interests are threatened by another person’s actions may demand that the actions be ceased unless they are not unlawful. In the case of infringement he may also demand that the person committing the infringement perform the actions necessary to remove its effects, in particular that the person make a declaration of the appropriate form and substance. On the terms provided for in this Code, he may also demand monetary recompense or that an appropriate amount of money be paid to a specific public cause.”

⁷ Chapter 6c of the 1998 Act on Institute of National Remembrance (2018 amendment) Article 53o: “The provisions of the Act of 23 April 1964 – Civil Code (Journal of Laws of 2017, item 459, 933 and 1132) on the protection of personal interests shall apply accordingly to the protection of the reputation of the Republic of Poland and the Polish Nation. Action for the protection of the reputation of the Republic of Poland or the Polish Nation may be brought by a non-governmental organisation acting within the scope of its statutory goals. Any damages or compensation awarded

introducing the previously unknown concept of the civil protection of the ‘good name’ of the Polish nation (still in place). It also introduced the soon-repealed Articles 55a and 55b of the Act on the Institute of National Remembrance.⁸ These proved particularly controversial given that they extended Polish criminal jurisdiction beyond Polish borders, giving the authorities potential capacities to charge and try foreigners who committed prohibited acts outside of the country.⁹ It needs to be also noted that in 2024 the European Commission launched infringement proceedings against Poland for failing to notify measures transposing the EU FD into national law. This process remains ongoing.

shall be due to the State Treasury.” Art. 53p: “Action for the protection of the reputation of the Republic of Poland or the Polish Nation may also be brought by the Institute of National Remembrance. In such cases, the Institute of National Remembrance shall have the capacity to be a party to court proceedings.” Art. 53q: “The provisions of art. 53o and art. 53p shall apply irrespective of the governing law”.

⁸ Article 55a of the 1998 Act on Institute of National Remembrance (2018 amendment) Article 55a. “1. Whoever publicly and contrary to the facts attributes to the Polish Nation or to the Polish State responsibility or co-responsibility for the Nazi crimes committed by the German Third Reich, as specified in Article 6 of the Charter of the International Military Tribunal – Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis, executed in London on 8 August 1945 (Journal of Laws of 1947, item 367), or for any other offences constituting crimes against peace, humanity or war crimes, or otherwise grossly diminishes the responsibility of the actual perpetrators of these crimes, shall be liable to a fine or deprivation of liberty for up to 3 years. The judgment shall be communicated to the public. 2. If the perpetrator of the act specified in section 1 above acts unintentionally, they shall be liable to a fine or restriction of liberty. 3. An offence is not committed if the perpetrator of a prohibited act set out in sections 1 and 2 above acted within the framework of artistic or scientific activity. Article 55b. Irrespective of the law applicable at the place of commission of the prohibited act, this Act shall be applicable to a Polish citizen as well as a foreigner in the event of commission of the offences set out in art. 55 and art. 55a”.

⁹ Mirosław M. Sadowski, *Intersections of Law and Memory. Influencing Perceptions of the Past* (Routledge 2024) 276-282.

8. Further Reading

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PORTUGAL





1. Source of the legal provision

Article 240 of the Portuguese Criminal Code, as amended by Law No. 4/2024. *Discrimination and incitement to hatred and violence* [Lei n.º 4/2024, de 15/01. *Discriminação e incitamento ao ódio e à violência*]

Available in the original language via: Diário da República; <<https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-lei/1995-34437675-836759596>>.

2. Legal provision in English

Article 240

Discrimination and incitement to hatred and violence¹

(1) Whoever:

a. Founds or sets up an organisation or carries out propaganda activities that incite or encourage discrimination, hatred or violence against a person or group of persons on the grounds of their ethno-racial origin, national or religious origin, colour, nationality, descent, territory of origin, religion, language, sex, sexual orientation, gender identity or expression or sex characteristics, physical or mental disability; or

b) Participates in the organisations referred to in the previous paragraph, in the activities undertaken by them or providing them with assistance, including funding;

shall be punished with imprisonment of one to eight years.

¹ Translation on the basis of OSCE. Available here: <<https://hatecrime.osce.org/hate-crime-legislation-portugal>>.

(2) Whoever, publicly, by any means intended for dissemination, namely through apology, denial or gross trivialisation of crimes of genocide, war or against peace and humanity:

a. Causes acts of violence against a person or group of persons because of their ethno-racial origin, national or religious origin, colour, nationality, ancestry, territory of origin, religion, language, sex, sexual orientation, gender identity or expression or sexual characteristics, physical or mental disability;

b. Defames or insults a person or group of persons because of their racial/ethnic origin, national or religious origin, colour, nationality, descent, territory of origin, religion, language, sex, sexual orientation, gender identity or expression or sexual characteristics; or

c. Threats a person or group of persons because of their racial/ethnic origin, national or religious origin, colour, nationality, descent, territory of origin, religion, language, sex, sexual orientation, gender identity or expression or sex characteristics, physical or mental disability; or

d. Incites discrimination, hatred or violence against a person or group of persons because of their racial/ethnic origin, national or religious origin, colour, nationality, descent, territory of origin, religion, language, sex, sexual orientation, gender identity or expression or sex characteristics, physical or mental disability;

shall be punishable by imprisonment from 6 months to 5 years.

(3) When the offences provided for in the previous paragraphs are committed using a computer system, the court may order the deletion of computer data or content.

3. Legal provision in the original language

Artigo 240

Discriminação e incitamento ao ódio e à violência

(1) Quem:

a. Fundar ou constituir organização ou desenvolver atividades de propaganda que incitem ou encorajem à discriminação, ao ódio ou à violência contra pessoa ou grupo de pessoas em razão da sua origem étnico-racial, origem nacional ou religiosa, cor, nacionalidade, ascendência, território de origem, religião, língua, sexo, orientação sexual, identidade ou expressão de género ou características sexuais, deficiência física ou psíquica; ou

b. Participar nas organizações referidas na alínea anterior, nas atividades por elas empreendidas ou lhes prestar assistência, incluindo o seu financiamento;

é punido com pena de prisão de um a oito anos.

(2) Quem, publicamente, por qualquer meio destinado a divulgação, nomeadamente através da apologia, negação ou banalização grosseira de crimes de genocídio, guerra ou contra a paz e a humanidade:

a. Provocar atos de violência contra pessoa ou grupo de pessoas por causa da sua origem étnico-racial, origem nacional ou religiosa, cor, nacionalidade, ascendência, território de origem, religião, língua, sexo, orientação sexual, identidade ou expressão de género ou características sexuais, deficiência física ou psíquica;

b. Difamar ou injuriar pessoa ou grupo de pessoas por causa da sua origem étnico-racial, origem nacional ou religiosa, cor, nacionalidade, ascendência, território de origem, religião, língua, sexo, orientação sexual, identidade ou expressão de género ou características sexuais, deficiência física ou psíquica;

c. Ameaçar pessoa ou grupo de pessoas por causa da sua origem étnico-racial, origem nacional ou religiosa, cor, nacionalidade,

ascendência, território de origem, religião, língua, sexo, orientação sexual, identidade ou expressão de género ou características sexuais, deficiência física ou psíquica; ou

d. Incitar à discriminação, ao ódio ou à violência contra pessoa ou grupo de pessoas por causa da sua origem étnico-racial, origem nacional ou religiosa, cor, nacionalidade, ascendência, território de origem, religião, língua, sexo, orientação sexual, identidade ou expressão de género ou características sexuais, deficiência física ou psíquica;

é punido com pena de prisão de 6 meses a 5 anos.

(3) Quando os crimes previstos nos números anteriores forem cometidos através de sistema informático, o tribunal pode ordenar a eliminação de dados informáticos ou conteúdos.

4. Key points

- Portugal does not have a specific ban on Holocaust denial, but prohibits the denial, promotion, or gross trivialization of genocides in general, war crimes, or crimes against peace and humanity, regardless of any recognition by a court.
- This applies when the conduct causes acts of violence, defames, insults, threatens, or incites discrimination, hatred, or violence against a person or group based on certain characteristics like race, colour, ethnic or national origin, ancestry or religion.
- The basic sanction for breaching the denial ban may include imprisonment for between 6 months and 5 years.

5. Background

In 1998, Portugal amended Article 240 of its Criminal Code, for the first time introducing questions of memory directly into its criminal law (namely at article 240: 2 – b). The original version of that article dated

from 1995 (DL n.º 48/95, de 15/03), and only concerned, according to its title, “Racial discrimination”. The 1998 version thus enlarged this title to “Racial or religious discrimination”. The title was then changed to “Racial, religious or sexual discrimination” (2007 version; also maintained in the 2013 version), and to a new formulation: “Discrimination and incitement to hatred and violence” (2017 version), which remains the current one (6th version – 2024).

None of these successive versions make any direct reference to the Holocaust. Nevertheless, the importance of its remembrance casts a remarkable place in Portuguese pedagogical and legal policies (e.g., Portugal is a member of the International Holocaust Remembrance Alliance (IHRA) from 2019;² International Holocaust Remembrance Day (27th January) is officially commemorated in Portugal; and there are many other activities related to Holocaust remembrance,³ namely exhibitions, debates or remembrance places, like Aristides de Sousa Mendes Museum⁴).

² Government of Portugal official website: <<https://www.portugal.gov.pt/pt/gc22/comunicacao/noticia?i=portugal-integra-alianca-internacional-para-a-memoria-do-holocausto>>; IHRA: <<https://holocaustremembrance.com/countries/portugal>>.

³ See especially the Council of Ministers Resolution no. 51/2020, of June 25, that, *inter alia*, established the project *Nunca Esquecer* [*Never Forget*], a national project on Holocaust Remembrance: <<https://diariodarepublica.pt/dr/detalhe/resolucao-conselho-ministros/51-2020-136600049>>.

⁴ Aristides de Sousa Mendes Foundation: <<https://fundacaoaristidesdesousamendes.pt/>>. Aristides de Sousa Mendes (1885-1954) was a Portuguese consul stationed in Bordeaux (France) that, defying the direct orders of the Portuguese government, issued thousands of visas due to give refugees the opportunity to flee from Holocaust. Since 1998, the Portuguese government has officially made efforts to disseminate the memory of Sousa Mendes as one of the personalities that helped to save thousands of people, indiscriminately, from war and consequently from the Nazi Holocaust. Cf. Jose-Alain Fralon; Peter Graham, *A Good Man in Evil Times: The Story of Aristides de Sousa Mendes – The Man Who Saved the Lives of Countless Refugees in World War II*, New York: Carroll & Graf, 2001.

6. Application

Although Portuguese law makes no direct mention of the criminalization of Holocaust denial, in 2012, Article 240, no. 2, al. B of the Portuguese Criminal Code was applied for the first time to a case of Holocaust denial. This instance placed Portugal “on the list of countries that, in practice, criminalize Holocaust denialism”.⁵ The case concerned Gerhard Ittner, a German neo-Nazi intellectual who was arrested in Portugal in April 2012. The Supreme Court of Justice, in a ruling of July 5, 2012, dismissed the case and decided to extradite Ittner, complying with a European arrest warrant. Gerhard Ittner had been convicted in Germany for Holocaust denial. The ruling thus confirmed that this type of public statement is also punishable under Portuguese law.

7. Controversies

Towards the end of the 20th century, there were several cases of anti-semitic provocations involving Holocaust denial: Artur Nunes da Silva called the Holocaust a “myth” (1996); Silva Resende “excused” the Nazi crimes (1996); Carlos Azeredo referred to the Holocaust in quotation marks (1997). In another text by Pedro Miguel Melo de Almeida (2003), the author used quotation marks to spell the word Holocaust and thus questioned the six million Jews killed.⁶

The denial of the Holocaust is still a point of reflection and debate in an academic and, consequently, political context. José Pacheco Pereira, in 2007, speaking about the introduction of legislation in European Union countries to criminalise the Holocaust, stated that “Holocaust

⁵ ‘Extraditado alemão preso em Portugal por negar holocausto’, *Diário de Notícias*, 12 november 2012: <<https://www.dn.pt/arquivo/diario-de-noticias/extraditado-alemao-presno-em-portugal-por-negar-holocausto.html>>.

⁶ ‘De novo, a mentira da negação do Holocausto...’, *Público*, 14 april 2003: <<https://www.publico.pt/2003/04/14/jornal/de-novo-a-mentira-da-negacao-do-holocausto-200173>>.

denial is a historical aberration and political extremism”, and stressed that “any criminalization of thinking and saying is liberticidal.”⁷

Of major importance also remains the introduction of changes to nationality and citizenship law, in regard to the granting of the Portuguese nationality for Sephardic Jews, i.e., those from *Sefarad* (the territory of Portugal and Spain – the Iberian Peninsula – at the time when all Jews who did not convert to the Christian faith were expelled from Portugal and Spain by decree in the 15th century). To this end, legislation was drawn up (not without controversy)⁸ that opened up Portuguese nationality to Sephardic Jews, upon their formal request to the Portuguese state, according to certain criteria, which is considered to be one of the first pieces of legislation on a form of historical reparations.⁹

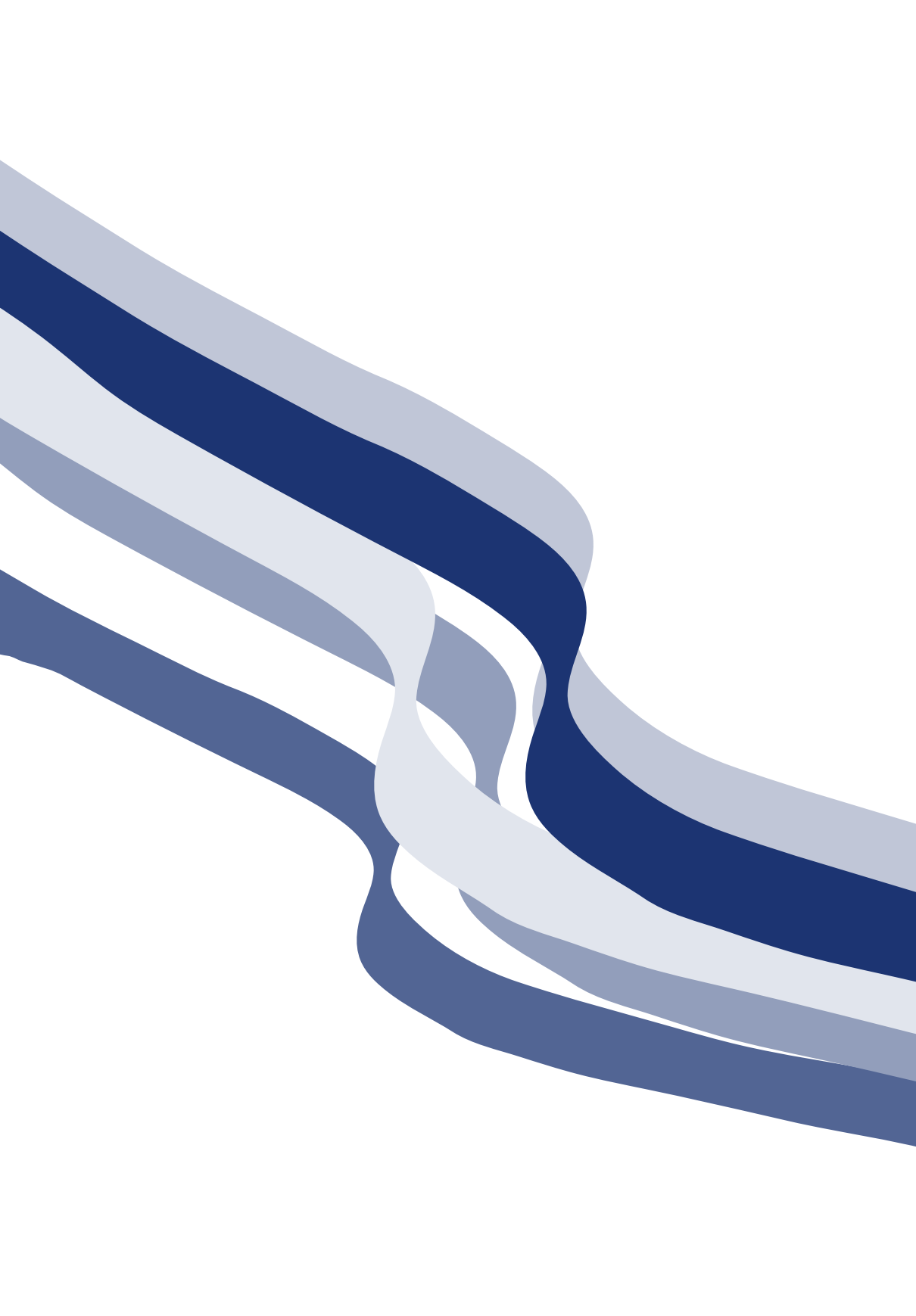
8. Further reading

- N. Kaposov, ‘Memory Laws in Western Europe’, *Memory Laws, Memory Wars: The Politics of the Past in Europe and Russia*, Cambridge: Cambridge University Press, pp. 60-125.
- P. Bartrop, E. Grimm, ‘Portugal’, *The Holocaust: Country by Country*, Bloomsbury, 2024, pp. 252-256.
- F. Clara, ‘Collaborating neutrality?’ Portuguese collaboration networks at the Secretariat of National Propaganda’, Martina Bitunjac, Julius H. Schoeps (ed.), *Complicated Complicity: European Collaboration with Nazi Germany during World War II*, Berlin-Boston: De Gruyter Oldenbourg, 2021, pp. 241-260.

⁷ ‘Um mau caminho para a liberdade’, *Público*, 21 abril 2007: <<https://www.publico.pt/2007/04/21/jornal/um-mau-caminho-para-a-liberdade-211798>>.

⁸ ‘Cresce movimento contra alteração da lei da nacionalidade de judeus sefarditas’, *Expresso*, 13 may 2020: <<https://expresso.pt/sociedade/2020-05-13-Cresce-movimento-contra-alteracao-da-lei-da-nacionalidade-de-judeus-sefarditas>>.

⁹ See DL n.º 26/2022, 18 march: <https://diariodarepublica.pt/dr/detalhe/decreto-lei/26-2022-180657814>; and previous DL n.º 30-A/2015, 27 february: <https://diariodarepublica.pt/dr/detalhe/decreto-lei/30-a-2015-66619927>.





ROMANIA





1. Source of the legal provision

Article 6 of Government Emergency Ordinance No. 31/2002 (GEO 31/2002) [*Ordonanței de urgență a Guvernului Nr. 31/2002 (OUG 31/2002)*],¹ of 2002, as amended by Law No. 217/2015 amending and supplementing Government Emergency Ordinance No. 31/2002 on the prohibition of organisations and symbols with a fascist, racist, or xenophobic character and the promotion of the cult of persons guilty of committing crimes against peace and humanity [*Lege Nr. 217/2015 pentru modificarea și completarea Ordonanței de urgență a Guvernului nr. 31/2002 privind interzicerea organizațiilor și simbolurilor cu caracter fascist, rasist sau xenofob și a promovării cultului persoanelor vinovate de săvârșirea unor infracțiuni contra păcii și omeniri*].²

Available in the original language via: *Ministerul Justiției* [Ministry of Justice]; <<https://legislatie.just.ro/Public/DetaliiDocument/170134>>

2. Legal Provision in English

(1) Denial, contestation, approval, justification or minimisation in an obvious way by any means in public of the Holocaust or its effects is punished by imprisonment from six months to three years or by a fine.

(2) Denial, contestation, approval, justification or minimisation in an obvious way by any means in public of genocide, crimes against humanity and war crimes as defined in international law, in the Statute of the International Criminal Court and in the Charter of the

¹ Monitorul Oficial Nr. 214, 28.3.2002.

² Monitorul Oficial Partea I Nr. 558, 27.7.2015.

International Military Tribunal established by the London Agreement of 8 August 1945 and recognised as such by a judgment of the International Court of Justice, the International Military Tribunal established by the London Agreement of August 8, 1945, the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, or any other international criminal tribunal established by relevant international instruments and whose jurisdiction is recognised by the Romanian state, or their effects, shall be punishable by a term of imprisonment of six months to three years or by a fine.

(3) The commission of the acts referred to in paragraph 1 shall be punishable by a fine of (1) and (2) by means of a computer system shall constitute offence and shall be punishable by imprisonment for a term of 6 months to 5 years.

3. Legal Provision in the original language

(1) Negarea, contestarea, aprobarea, justificarea sau minimalizarea în mod evident, prin orice mijloace, în public, a holocaustului ori a efectelor acestuia se pedepsește cu închisoare de la 6 luni la 3 ani sau cu amendă.

(2) Negarea, contestarea, aprobarea, justificarea sau minimalizarea în mod evident, prin orice mijloace, în public, a genocidului, a crimelor contra umanității și a crimelor de război, astfel cum sunt definite în dreptul internațional, în Statutul Curții Penale Internaționale și în Carta Tribunalului Militar Internațional înființat prin Acordul de la Londra, la data de 8 august 1945, și recunoscute ca atare printr-o hotărâre definitivă a Curții Penale Internaționale, a Tribunalului Militar Internațional înființat prin Acordul de la Londra, la data de 8 august 1945, a Tribunalului Penal Internațional pentru fosta Iugoslavie, a Tribunalului Penal Internațional pentru Rwanda sau a oricărui altui tribunal penal internațional înființat prin instrumente internaționale relevante și a căror competență este recunoscută de

statul român, ori a efectelor acestora se pedepsește cu închisoare de la 6 luni la 3 ani sau cu amendă.

(3) Săvârșirea faptelor prevăzute la alin. (1) și (2) prin intermediul unui sistem informatic constituie infracțiune și se pedepsește cu închisoare de la 6 luni la 5 ani.³

4. Key Points

- Romania prohibits the denial, contestation, approval, justification or minimisation in an obvious way by any public means of the Holocaust, genocides in general, crimes against humanity and war crimes, regardless of whether such conduct disturbs public order or peace or is likely to incite violence or hatred. For crimes other than the Holocaust, this applies only to those crimes that have been established by an international court with jurisdiction recognised by Romania.
- Sanctions for Holocaust denial may include imprisonment for up to six months to three years or a fine.
- The prohibition of Holocaust denial in Romania was first introduced by a government emergency ordinance in 2002, driven by efforts toward international integration and the need to counter the rise in antisemitism, Holocaust denial, and the resurgence of the Ion Antonescu cult.
- As of today, there has only been one instance of conviction under this provision, rendered in 2021. However, this conviction was subsequently overturned by the Appellate Court in 2022.

5. Background

Legislation addressing Holocaust denial in Romania has been in place since the enactment of Government Emergency Ordinance 31/2002

³ <<https://legislatie.just.ro/Public/DetaliiDocument/170057>>.

(GEO 31/2002) on 13 March 2002. Article 6 of the GEO 31/2002 prohibited the public denial of the Holocaust and its effects, making its public denial punishable by imprisonment of up to five years and “the loss of certain rights”.⁴ Moreover, the ordinance banned fascist, racist, and xenophobic organisations and symbols,⁵ and outlawed the cult of all persons guilty of committing war crimes and crimes against humanity.⁶

The issuance of GEO 31/2002 was driven by international pressure, prompting Romania to confront and acknowledge its role in the Holocaust,⁷ particularly as a precondition for NATO and EU membership.⁸ These international demands emerged amidst a national movement seeking the rehabilitation of Ion Antonescu, the Romanian pro-fascist dictator during the Nazi era, an ally of Hitler, and who was responsible for facilitating the Holocaust in Romania. He was executed as a war criminal in 1946.⁹ Prior to the adoption of the ordinance, numerous squares and streets were named after him, and statutes were erected to honour his memory.¹⁰ Concurrently, there was a rise in both Holocaust

⁴ Article 6 GEO 21/2002 (“Contestarea sau negarea în public a Holocaustului ori a efectelor acestuia se pedepsește cu închisoare de la 6 luni la 5 ani și interzicerea unor drepturi”).

⁵ Articles 3 and 4 GEO 21/2002.

⁶ Article 5 GEO 21/2002.

⁷ The International Commission on the Holocaust in Romania (ICHR), an international committee appointed by the government to examine the Holocaust in Romania, approximates the total death toll of Romanian and Ukrainian Jews under Romanian administration to be between 280,000 and 300,000, see International Commission on the Holocaust in Romania, *Final Report* (Polirom, 2004) 179.

⁸ Michael Shafir ‘Varieties of antisemitism in post-communist east central Europe: Motivations and Political Discourse’ in *Jewish Studies at the CEU 2002-2003* (Central European University Press, 2003) vol. 3, 175, 196 f; Valerie Chelaru, ‘Tradition, Nationalism and Holocaust Memory: Reassessing Antisemitism in Post-Communist Romania’ (2022) 10 PLURAL. History. Culture. Society. Journal of History and Geography Department 58, 79; Raul Cârstocea, ‘Anti-semitism in Romania: Historical Legacies, contemporary challenges’ (2014) ECMI Working Paper #81, 27.

⁹ Adam Taylor, ‘Why Romania had to ban Holocaust denial twice’ *The Washington Post* (27 July 2015).

¹⁰ International Commission on the Holocaust in Romania, *Final Report* (Polirom, 2004) 359.

negationism and antisemitism in Romania,¹¹ alongside a noticeable increase in the prominence of radical right organisations and parties.¹²

Following a report in November 2004 by the International Commission on the Holocaust in Romania (ICHR), which called for the formal adoption of the GEO 31/2002,¹³ the ordinance was enacted as law with minor modifications in 2006.¹⁴ This new legislation included a definition of the Holocaust, characterising it as “the systematic persecution supported by the state and the annihilation of European Jews by Nazi Germany, as well as by the allies and its collaborators from 1933-1945”.¹⁵ Further reference was made to the Roma population being subjected to deportation and annihilation during the Second World War. Four months later, Article 6 was expanded to prohibit “the public denial, contestation, endorsement, or justification, by any means, of the Holocaust, genocide, crimes against humanity, or their effects”.¹⁶

Article 6 underwent its most recent alteration in 2015, when the prohibition of minimising the Holocaust, genocides in general and crimes against humanity “in an obvious way” was added.¹⁷ Furthermore, the following amendments were implemented: Firstly, the Legionary Movement¹⁸ was explicitly categorised a fascist organisation, thereby prohib-

¹¹ Nikolay Kopolov, *Memory Laws, Memory Wars* (CUP 2017) 166.

¹² Raul Cârstocea, ‘Anti-semitism in Romania: Historical Legacies, contemporary challenges’ (2014) ECMI Working Paper #81, 26 f.

¹³ International Commission on the Holocaust in Romania, *Final Report* (Polirom, 2004) 390.

¹⁴ Law 107 of 27 April 2006 (Law 107/2006); see Nikolay Kopolov, *Memory Laws, Memory Wars* (CUP 2017) 167.

¹⁵ Article 2 letter d) Law 107/2006.

¹⁶ Article 6 of Law 237/2006 (“negarea, contestarea, aprobarea sau justificarea, prin orice mijloace, în public, a Holocaustului, genocidului sau a crimelor contra umanității ori a efectelor acestora se pedepsește cu închisoare de la 6 luni la 5 ani și interzicerea unor drepturi sau cu amendă”).

¹⁷ Law 217 of 23 July 2015 (Law 217/2015).

¹⁸ Article 2 letter f) Law 217/2015: “the Legionary Movement shall be understood a fascist organisation in Romania that operated in the period 1927-1941 under the names of ‘Archangel Michael Legion’, ‘Iron Guard’, and ‘Everything for the Country Party’”.

iting its symbols and propaganda in public spaces.¹⁹ And secondly, in an effort to increase the application of the provision prohibiting the denial of the Holocaust by the judiciary,²⁰ the Holocaust was redefined as “the systematic persecution and annihilation of Jews and Romani people, supported by the authorities and institutions of the Romanian State within the territories that it administered between 1940 and 1944”.²¹

6. Application

The first and only criminal conviction under Article 6 for denying the Holocaust occurred in 2021,²² involving a former colonel of the Romanian Intelligence Service. He received a suspended prison sentence of one year and one month for publishing two articles and a book between 2013 and 2017, wherein he contested the Holocaust’s existence, labelling it as “one of the biggest scams of the 20th century”.²³ He further claimed that the Holocaust is “a diabolical invention of Zionist organisations to raise money to support Zionist activities”.²⁴ However, on 31 March 2022, the Bucharest Court of Appeal overturned the sentence

¹⁹ Raul Cârstocea, ‘Between Europeanisation and Local Legacies: Holocaust Memory and Contemporary Anti-Semitism in Romania’ (2021) 35 *East European Politics and Societies* 313, 323.

²⁰ Michael Shafir, ‘Neither “Fleishig” nor “Milchig”: A Comparative Study’, in: Florian Alexandru (ed.) *Holocaust Public Memory in Post-Communist Romania* (Indiana University Press 2018) 103.

²¹ Article 2 letter e) Law 217/2015.

²² Judecătoria Sectorului 3 Bucureşti, 29 April 2021, 9749/301/2020 <https://portal.just.ro/301/SitePages/Dosar.aspx?id_dosar=30100000000642032&id_inst=301>.

²³ Cited after Dora Vulcan, ‘O sentiință care va face istorie. Cât de reprezentativ este pentru societatea românească ofițerul SRI care neagă Holocaustul?’ *Europa Liberă România* (8 february 2021) <<https://romania.europalibera.org/a/sentinta-sri-holocaust-antisemitism/31088231.html>>.

²⁴ Flavia Drăgan, ‘Undă verde pentru negaționiști, de la CAB. Vasile Zărnescu, ex-ofițerul SRI care a negat Holocaustul, scapă de închisoare’ *DeFapt.ro* (1 April 2022) <<https://defapt.ro/negationistul-vasile-zarnescu-scapa-de-inchisoare/>>.

in response to an appeal from the defendant.²⁵ The court opined that, instead, a warning not to commit further crimes of the same nature sufficed. The application of Holocaust denial bans has therefore been sporadic, despite the criminalisation on paper.

In May 2021, the general prosecutor's office published a thematic assessment of criminal investigations conducted between 2017 and 2020 concerning incitement to hatred or discrimination (Article 369 of the Criminal Code) and the provisions of GEO 31/2002.²⁶ The report revealed a low number of cases concerning these offences compared to overall criminal cases. Furthermore, it highlighted the lack of significant national impact from the investigated acts, as evidenced by decisions to waive prosecution, dismiss cases, and impose minimal penalties or fines. Most sentences were either suspended or had penalties waived entirely.

7. Controversies

The 2015 amendment to GEO 21/2002, adding the alternative of minimisation, was issued by three members²⁷ of the centre-right National Liberal Party following criticism from the ICHR and other organisations combating antisemitism in Romania.²⁸ The criticism highlighted the continued existence of neo-legionary organisations, and failure to enforce the GEO 31/2002 despite complaints about public antisemi-

²⁵ Curtea de Apel București, 31 March 2022, 9749/301/2020 (1363/2021) <https://portal.just.ro/2/SitePages/Dosar.aspx?id_dosar=30100000000642032&id_inst=2> .

²⁶ Superior Council of Magistracy, Judicial Inspection, 'Report on the review of the investigation of cases under the criminal offence stipulated by Article 369 of the Criminal Code and the criminal offences stipulated by Emergency Governmental Ordinance 31/2002, amended by Law 157/2018' (2021).

²⁷ Crin Antonescu, PNL senator, Andrei Gere, PNL deputy, George Scutaru, PNL deputy.

²⁸ Michael Shafir, 'Neither "Fleishig" nor "Milchig": A Comparative Study', in: Florian Alexandru (ed.) *Holocaust Public Memory in Post-Communist Romania* (Indiana University Press 2018) 103; Gabriel Andreescu, 'Temele "legii antilegionare" din perspectiva eticii memoriei' (2015) 11 Noua Revistă de Drepturile Omului 3, 3.

tism to the Prosecutor's Office.²⁹ According to the Explanatory Memorandum accompanying Law 217/2015, the amendment was moreover deemed necessary to rectify legal deficiencies within the original Holocaust definition.³⁰ It was argued that these deficiencies prompted Holocaust deniers to assert that Romania's current territories differed from those governed during the relevant historical period,³¹ and that the modern Romanian state bore no responsibility for the Holocaust (so called "selective Holocaust denial").³² The Holocaust definition was therefore redefined, now directly addressing the Holocaust supported by "the Romanian State".

Although the legislative revision by Law 217/2015 has been praised at the international level, scholars have noted that it has faced significant backlash from public figures in Romania.³³ Criticism targeted mainly the status of the Legionary Movement as a fascist organisation and the perceived failure to equally condemn communist crimes.³⁴ Radu Preda, then director of the Institute for the Investigation of Communist Crimes and the Memory of the Romanian Exile (IICCMER),

²⁹ Gabriel Andreescu, 'Temele "legii antilegionare" din perspectiva eticii memoriei' (2015) 11 *Noua Revistă de Drepturile Omului* 3, 3.

³⁰ Michael Shafir, 'Neither "Fleishig" nor "Milchig": A Comparative Study', in: Florian Alexandru (ed.) *Holocaust Public Memory in Post-Communist Romania* (Indiana University Press 2018) 103 f.

³¹ Expunerea de motive, Proiect de Lege pentru modificarea O.U.G. Nr. 31/2002, 1.

³² Raul Cârstocea, 'Anti-semitism in Romania: Historical Legacies, contemporary challenges' (2014) ECMI Working Paper #81, 28; Raul Cârstocea, 'Between Europeanisation and Local Legacies: Holocaust Memory and Contemporary Anti-Semitism in Romania' (2021) 35 *East European Politics and Societies* 313, 323.

³³ See for the following controversy: Raul Cârstocea, 'Between Europeanisation and Local Legacies: Holocaust Memory and Contemporary Anti-Semitism in Romania' (2021) 35 *East European Politics and Societies* 313, 324 ff.; Valerie Chelaru, 'Tradition, Nationalism and Holocaust Memory: Reassessing Antisemitism in Post-Communist Romania' (2022) 10 *PLURAL. History. Culture. Society. Journal of History and Geography Department* 58, 81 f.

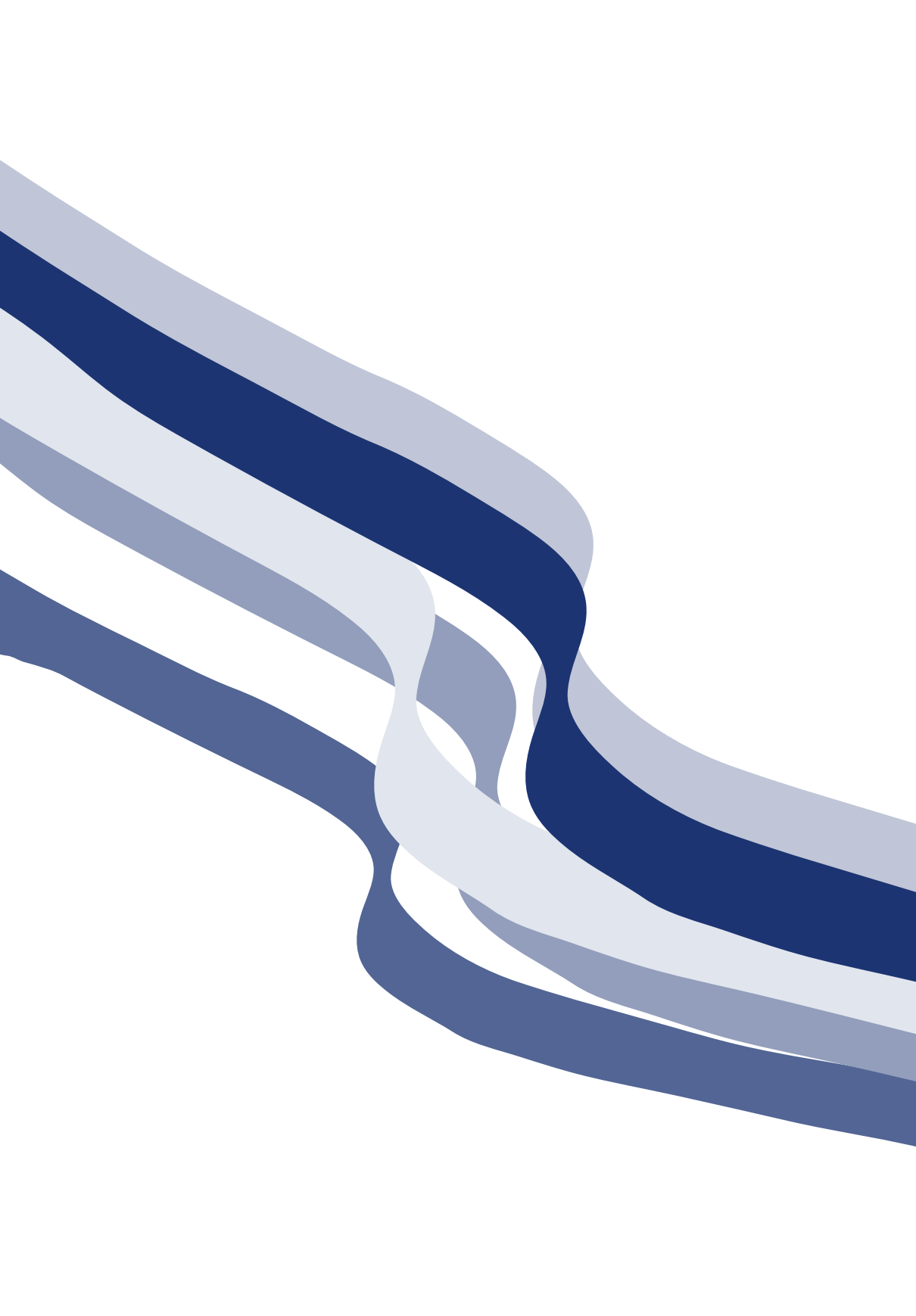
³⁴ Compare Andrei Pleșu, 'Mărturii pentru cercetări viitoare' *adevarul.ro* (10 August 2015) <<https://adevarul.ro/blogurile-adevarul/marturii-pentru-cercetari-viitoare-i-1643301.html>>.

described the legislation as “pro-communist”. Radu Ciuceanu, the head of the Romanian Institute for the Study of Totalitarianism of the Romanian Academy, criticised that the Legionary Movement did not “meet (...) a fascist ideological character”. Others just plainly characterised the law as “antidemocratic and insulting to Romanian culture”.³⁵

8. Further Reading

- Raul Cârstocea, ‘Between Europeanisation and Local Legacies: Holocaust Memory and Contemporary Anti-Semitism in Romania’ (2021) 35(2) East European Politics and Societies 313.
- Valerie Chelaru, ‘Tradition, Nationalism and Holocaust Memory: Reassessing Antisemitism in Post-Communist Romania’ (2022) 10(2) PLURAL. History. Culture. Society. Journal of History and Geography Department 58.
- Alexandru Florian (ed.), *Holocaust Public Memory in Postcommunist Romania* (Indiana University Press 2018).

³⁵ Valerie Chelaru, ‘Tradition, Nationalism and Holocaust Memory: Reassessing Antisemitism in Post-Communist Romania’ (2022) 10 PLURAL. History. Culture. Society. Journal of History and Geography Department 58, 81 f, with reference to Alex Ștefănescu, ‘Poate că sunt eu nebun’ *adevarul.ro* (20 August 2015) <https://adevarul.ro/news/societate/poatenebun-1_55d58512f5eaafab2cbe441e/index.html>; Ion Spânu, ‘Legea 217/2015 a lui Crin Antonescu, o Lege împotriva culturii române’ *Cotidianul.ro* (2 July 2017) <<https://www.cotidianul.ro/legea-2172015-a-lui-crin-antonescu-o-lege-impotriva-culturii-romane/>>.





SLOVAKIA





1. Source of the legal provision

§422d of the Slovakian Criminal Code [Zákon č. 300/2005 Z. z. Trestný zákon]¹

Available in the original language via: Zákony pre ľudí; <<https://www.zakonypreludi.sk/zz/2005-300#p422d>>.

2. Legal provision in English

Denial and approval of the Holocaust and the crimes of political regimes and crimes against humanity

(1) Anyone who publicly denies, disputes, approves or attempts to justify the Holocaust, the crimes of a regime based on fascist ideology, the crimes of a regime based on communist ideology or the crimes of another similar movement that aims to suppress the fundamental rights and freedoms of persons by violence, threat of violence or threat of other serious harm shall be punished by imprisonment for a term of six months to three years.

(2) As in Subsection 1, anyone shall be punished who publicly denies, approves, disputes, grossly trivializes or attempts to justify genocide, crimes against peace, crimes against humanity or war crimes in a manner that is likely to incite violence or hatred against a group of persons or a member thereof, if the perpetrator or participant of that act has been convicted by a final judgment of an international tribunal established on the basis of public international law; whose jurisdiction has been recognized by the Slovak Republic, or by a final judgment of a court of the Slovak Republic.

¹ Available here: <https://www.zakonypreludi.sk/zz/2005-300#p422d>.

3. Legal provision in the original language

Popieranie a schvaľovanie holokaustu a zločinov politických režimov a zločinov proti ľudskejšti

(1) Kto verejne popiera, spochybňuje, schvaľuje alebo sa snaží ospravedlniť holokaust, zločiny režimu založeného na fašistickej ideológii, zločiny režimu založeného na komunistickej ideológii alebo zločiny iného podobného hnutia, ktoré násilím, hrozbou násilia alebo hrozbou inej ťažkej ujmy smeruje k potlačeniu základných práv a slobôd osôb, potrestá sa odňatím slobody na šest mesiacov až tri roky.

(2) Rovnako ako v odseku 1 sa potrestá, kto verejne popiera, schvaľuje, spochybňuje, hrubo zľahčuje alebo sa snaží ospravedlniť genocídium, zločiny proti mieru, zločiny proti ľudskejšti alebo vojnové zločiny spôsobom, ktorý môže podnecovať násilie alebo nenávisť voči skupine osôb alebo jej členovi, ak bol páchatel' alebo účastník tohto činu odsúdený právoplatným rozsudkom medzinárodného súdu zriadeného na základe medzinárodného práva verejného, ktorého právomoc uznala Slovenská republika, alebo právoplatným rozsudkom súdu Slovenskej republiky.

4. Key points

- Slovakia specifically criminalises the denial of the Holocaust, as well as the denial of the crimes of fascist, communist or similar regimes.
- Additionally, Slovakia prohibits the public denial, approval, dispute, gross trivialization, or attempts to justify genocide, crimes against peace, crimes against humanity, or war crimes.
- Unlike the ban on denying genocides, the Holocaust denial ban does not require the act to be likely to incite violence or hatred against a group of persons or a member thereof.
- The sanction for Holocaust denial may include imprisonment ranging from six months to three years.

5. Background

Slovakian “memory laws”, including the Holocaust denial ban, should be seen in the broader context of transitional justice that begun in the wake of the collapse of the state-socialist system in 1989 – when the country was still a part of Czechoslovakia, as a consequence of the peaceful Velvet Revolution – that was eventually followed by Czechoslovakia’s dissolution into two successor states.

In the initial state of decommunization, firstly laws marking the transition were adopted – such as the “Law on Judicial Rehabilitation (119/1990)”, the “Act No. 403/1990 Coll. on the Mitigation of the Consequences of Certain Property Losses”, and the “Constitutional Act No. 496/1990 Coll. on the Reversion of Property of the Communist Party to the People of the Czech and Slovak Federative Republic”.²

Further laws can be seen as being part of the transitional justice process. One of them is particularly important in the context of this compendium: “Act No. 125/1996, on the Immorality and Illegality of the Communist Regime”, adopted in 1996.³ It explains why the later “denial bans” in Slovakia target the communist crimes as well – not only the crimes of Nazism.

Holocaust denial, as well as fascist and communist ideological propaganda have been a criminal offence in Slovakia since 2001 (the law since expired in 2005, just as the currently applicable Section 422d Criminal Code came into force).⁴ Today the scope of denial bans also includes genocide, crimes against peace, and crimes against humanity – so it is particularly broad.

² For more information, see ‘Slovakia’ (*Transitional Justice and Memory in the EU. Slovakia*) <<http://www.proyectos.cchs.csic.es/transitionaljustice/content/slovakia>>.

³ Ibid.

⁴ Amendment adding § 261 to the Criminal Code; the provision expired in 2005, see ktorým sa mení zákon č. 140/1961 Zb. Trestný zákon v znení neskorších predpisov, vyhlásené: 29.11.2001 [Act no. 140/1961 Criminal Code of 29 November 2001] <http://static.slov-lex.sk/pdf/SK/ZZ/2001/485/ZZ_2001_485_20020101.pdf>.

6. Application

Article 422d of the Criminal Code was not always applied when cases of Holocaust denial and hate speech have occurred. In 2016, a representative for the far-right “People’s Party – Our Slovakia” (LSNS) Milan Mazurek was not prosecuted for denying the Holocaust on a social network. Some lawyers, such as the chairman of Transparency International Slovakia, Pavel Nechala, commenting on the case, agreed with the conclusion of the police to close the case, arguing that even though “these views are dangerous, they have to be fought differently than through repressive forces”.⁵

However, following the victory of the centre-right coalition in March 2020, several new cases were opened, among them, the case against Marian Kotleba, chairman of the LSNS and a member of Slovakian parliament. In October 2020, Kotleba was found guilty of promoting a movement and ideology that aims to suppress civil rights and democracy. The case was pending while Kotleba appealed to the Supreme Court of Slovakia.⁶

Kotleba’s crime involved the use of symbols of Nazism. He was prosecuted after presenting three families with checks for €1,488 euros in March 2017 on the anniversary of the Slovak state’s establishment on the eve of the Second World War in 1939. The number 1,488 has a symbolic meaning for neo-Nazis and white supremacists.

Ultimately, in 2022, Kotleba was found guilty by Slovakia’s Supreme Court of supporting a movement “aimed at suppressing fundamental human rights”. However, the judges dismissed part of the lower court’s ruling that had convicted him for illegally using neo-Nazi symbols.⁷

⁵ ‘Holocaust denial in criminal law. Legal frameworks in selected EU Member States’ (*European Parliament*) p. 12.

⁶ Ibid.

⁷ ‘Slovakian far-right leader loses mandate as MP over neo-Nazi symbols, court decides’ (Euronews, 5 April 2022) <<https://www.euronews.com/2022/04/05/slovakian-far-right-leader-loses-mandate-as-mp-over-neo-nazi-symbols-court-decides>>.

7. Controversies

Historically, there were some controversies related to the freedom of expression in Slovakia – and the attempts to use law and the courts to limit the freedom of speech. In the 1990s, the influential Slovak politician and Minister of Culture at that time, Dušan Slobodník, sued poet Lubomír Feldek for defamation. The poet had published a statement saying that “Dušan Slobodník became Minister of Culture and his fascist past immediately came to light”, referencing Slobodník’s involvement in an SS training course as a teenager at the age of 17 at the time of the First Slovak Republic. The Supreme Court voted in Slobodník’s favour. The case went to the European Court of Human Rights which ruled in 2001 that Slovakia had violated freedom of speech (Article 10 of the European Convention of the Human Rights) by doing so.⁸

It seems that far-right and neo-Nazi movements are a persistent problem in Slovakia. The issue of Nazi salutes by LSNS party members did not impact the party’s standing among voters, who made it the fourth most popular party in Slovakia in the 2020 parliamentary election with a support of 8% of the electorate. Kotleba and his party’s members openly back Slovakia’s legacy of collaboration with the Nazi regime during the Second World War. Milan Mazurek, a member of the LSNS party already mentioned above, became the first Slovak lawmaker to lose his parliamentary seat in 2019, after he was convicted for the use of racist language against the Roma community. In 2019, the Supreme Court dismissed a request by the country’s prosecutor general to ban Kotleba’s party as an “extremist group”, ruling that the prosecutor general failed to provide enough evidence that the party violated the Slovak constitution, and aimed to destroy the country’s democracy.⁹

⁸ European Court Of Human Rights, Case Of Feldek v. Slovakia (Application No. 29032/95), Judgment, Strasbourg, 12 July 2001.

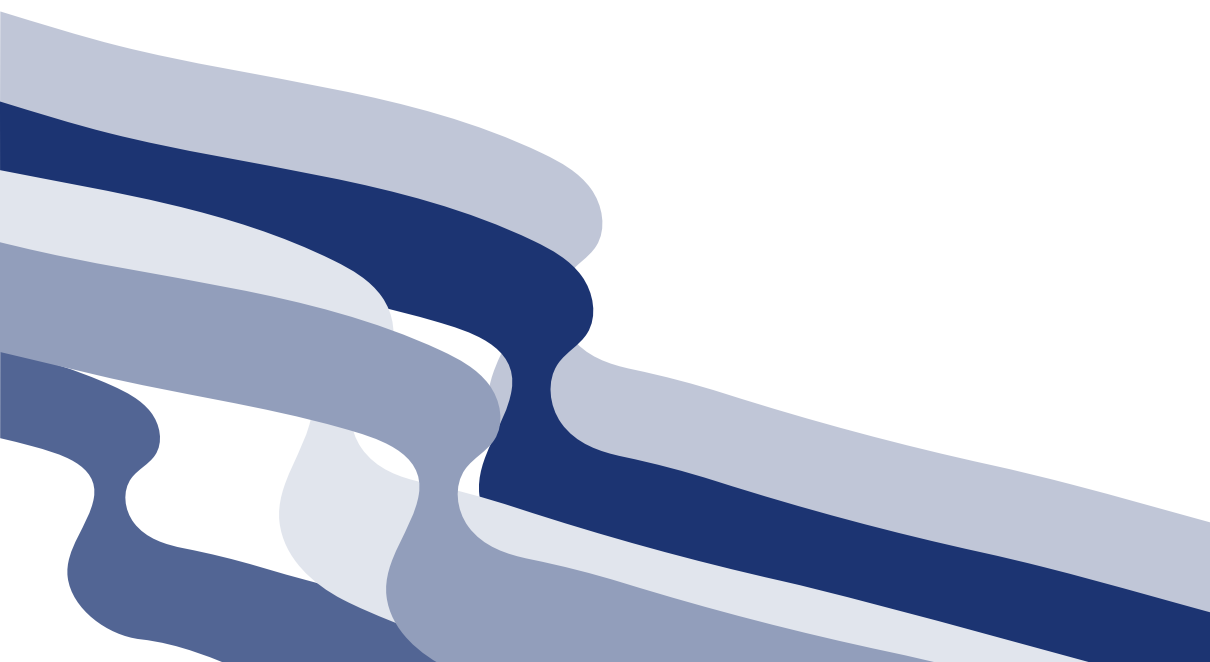
⁹ ‘Slovakian far-right leader loses mandate as MP over neo-Nazi symbols, court decides’ (Euronews, 5 April 2022), <<https://www.euronews.com/2022/04/05/slovakian-far-right-leader-loses-mandate-as-mp-over-neo-nazi-symbols-court-decides>>.

8. Further reading

- Eszter Bartha, Slávka Otčenášová, 'Memory and politics: "totalitarian" and "revisionist" approaches to the study of the Holocaust in Hungary and Slovakia' [2019] Volume 7, No. 1, Central European Papers, pp. 9-24.
- Michael Shafir, 'Denying the Holocaust where it happened', in Ronit Lentin (ed), *Re-presenting the Shoah for the Twenty-first Century* (2004), p. 195.
- 'Holocaust denial in criminal law. Legal frameworks in selected EU Member States', Briefing, (European Parliament, 26 January 2022) <[https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2021\)698043](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)698043)>.
- 'Memory Laws in European and Comparative Perspective', MELA Project, <<https://melaproject.org/>>.



SLOVENIA





1. Source of the legal provision

Article 297 of the Slovenian Criminal Code [Kazenski zakonik]¹

Available in the original language via: PISRS; <<https://pisrs.si/pregledPredpisa?id=ZAKO5050>>.

2. Legal provision in English

Public promotion of hatred, violence or intolerance

[...]

(2) Anyone who publicly spreads ideas about the superiority of one race over another in the manner referred to in the previous paragraph or provides any assistance in racist activity or denies, diminishes the importance of, approves, justifies, ridicules or defends genocide, Holocaust, crimes against humanity, war crimes, aggression or other crimes against humanity, as defined in the legal order of the Republic of Slovenia, shall be punished in the same manner.

(3) If the act referred to in the preceding paragraphs is committed by publication in the media or on websites, the responsible editor or the person who replaced him shall also be punished with the penalty from the first or second paragraph of this article, unless it was a transmission of the show in live, which he could not prevent, or for publication on websites that allow users to publish content in real time or without prior control.

(4) If the act referred to in the first or second paragraph of this article is committed by coercion, ill treatment, endangering safety, dishon-

¹ The current consolidated version available here: <https://pisrs.si/pregledPredpisa?id=ZAKO5050>.

ouring ethnic, national, national or religious symbols, damaging foreign property, desecrating monuments, memorials or graves, the perpetrator shall be punished with imprisonment up to three years.

(5) If an official commits the acts referred to in the first or second paragraph of this article by abusing his official position or rights, he shall be punished by imprisonment for up to five years.

[...]

3. Legal provision in the original language

Javno spodbujanje sovraštva, nasilja ali nestrpnosti

[...]

(2) Enako se kaznuje, kdor na način iz prejšnjega odstavka javno širi ideje o večvrednosti ene rase nad drugo ali daje kakršnokoli pomoč pri rasistični dejavnosti ali zanika, zmanjšuje pomen, odobrava, opravičuje, smeši ali zagovarja genocid, holokavst, hudodelstvo zoper človečnost, vojno hudodelstvo, agresijo ali druga kazniva dejanja zoper človečnost, kot so opredeljena v pravnem redu Republike Slovenije.

(3) Če je dejanje iz prejšnjih odstavkov storjeno z objavo v sredstvih javnega obveščanja ali na spletnih straneh se s kaznijo iz prvega ali drugega odstavka tega člena kaznuje tudi odgovorni urednik oziroma tisti, ki ga je nadomeščal, razen če je šlo za prenos oddaje v živo, ki ga ni mogel preprečiti ali za objavo na spletnih straneh, ki uporabnikom omogočajo objave vsebin v dejanskem času oziroma brez predhodnega nadzora.

(4) Če je dejanje iz prvega ali drugega odstavka tega člena storjeno s prisilo, grdim ravnanjem, ogrožanjem varnosti, sramotitvijo etničnih, narodnostnih, narodnih ali verskih simbolov, poškodovanjem tujih stvari, skrunitvijo spomenikov, spominskih znamenj ali grobov, se storilec kaznuje z zaporom do treh let.

(5) Če stori dejanja iz prvega ali drugega odstavka tega člena uradna oseba z zlorabo uradnega položaja ali pravic, se kaznuje z zapornom do petih let.

[...]

4. Key points

- Slovenia has a specific Holocaust denial ban under Article 297 (2) of the Criminal Code. In addition, the provision also prohibits the denial, trivialisation, approval, justification, ridicule, or defence of other genocides, crimes against humanity, war crimes, or crimes of aggression.
- The provision does not require the relevant crime to be established by a court, nor does it require that it likely incites hatred or causes any likely disturbance of public peace.
- For the offence of denialism, committed in its basic form, the law stipulates a punishment of imprisonment of up to two years.

5. Background

Slovenia's history is marked by its experiences during World War II and the subsequent communist regime. The memory of these events has influenced public discourse and legislative measures aimed at preventing similar occurrences in the future. It seems that the Holocaust, and other Nazi crimes in Slovenia, are generally interpreted within the broader framework of crimes of totalitarian regimes. This perspective has induced criticism from Holocaust remembrance activists.²

Thus, in Slovenia, the ban on genocide and Holocaust denial is part of a broader legal system that addresses hate speech and the promo-

² Nicholas Haeg, Holocaust Remembrance Project. Slovenia, <<https://www.holocaustremembranceproject.com/Countries/slovenia>>

tion of totalitarian ideologies. For instance, in 2024, Slovenia had introduced bans for Nazi and Fascist symbols.³

The specific legal provisions can be traced back to the Criminal Code of Slovenia, which was amended in 2008. This amendment included provisions that criminalised the public denial, approval, or justification of genocide, including the Holocaust. The introduction of the Holocaust denial ban was part of a broader amendment to Slovenia's Criminal Code in 2008. During the legislative process, one of the central arguments was balancing freedom of expression with the need to prevent hate speech. Proponents of the ban argued that denying or trivializing the Holocaust undermines historical truth, and can incite hatred against specific groups. Opponents raised concerns about potential overreach, fearing that such laws could infringe upon individual rights to free speech. Public opinion on this issue has varied over time, with some segments advocating for stricter measures against hate speech while others express concerns about governmental control over discourse related to history.⁴

6. Application

In 2019, the Slovenian Supreme Court ruled that – in order for Article 297 of the Criminal Code to be actually applied – it is not necessary that a direct threat actually takes place. “It is sufficient that the act, by its content, nature, place or other circumstances in which it was committed, is capable of causing a concrete danger, which manifests itself in

³ Slovenia bans Nazi, Fascist symbols, December 19, 2024 <<https://sloveniatimes.com/42011/slovenia-bans-nazi-fascist-symbols>>

⁴ The Memory of Guilt Revisited: The Slovenian Post-Socialist Remembrance Landscape in Transition, Oto Luthar, Heidemarie Uhl, et al. (eds), Vienna University Press, 2019; Urška Valentič, Tackling Hate Speech – Examples from Slovenia, Albanian Media Institute, <<https://institutemedia.org/urska-valentic-interview/>>; Extract of the Strategy of the Republic of Slovenia on Combating Antisemitism until 2033, <<https://www.gov.si/assets/ministrstva/MP/Antisemitizem/Extract-of-the-Strategy-of-the-Republic-of-Slovenia-on-Combating-Antisemitism-until-2033.pdf>>.

endangering or disturbing public order and peace.”⁵

In another case involving alleged incitement to hatred, violence, and intolerance against Roma, the Supreme Court set a legal precedent. The court ruled that in cases in which an act is committed by means of a threat, abusive language or insult, with other legal indications of a crime, it does not necessarily need to jeopardise public order and peace to be treated as a crime.⁶

Despite the Slovenian Criminal Code prohibiting the expression of ideas of racial superiority and the denial of the Holocaust, the prosecution remains unsteady. The local hotline *Spletno oko* in 2018 received a slight increase in potential cases of online hate speech compared to 2017.⁷

7. Controversies

Slovenia’s progress in memory politics and remembrance work is evaluated quite positively when it comes to the commemoration of the Holocaust. Slovenia has been a member of the International Holocaust Remembrance Alliance (IHRA) since 2011.⁸ According to the IHRA, “the joint efforts of the Slovenian government and NGOs to educate and inform the public about the fate of the Jewish population in the territory of Slovenia during the Holocaust have been well received in schools and beyond”, and “significant developments include visits by groups of Slovenian history teachers to Yad Vashem in 2009, 2015 and

⁵ Judgement of the Slovenian Supreme court, 65803/2012, 4 July 2019 <[https://www.sodnapraks.si/?q=*&database\[SOVS\]=SOVS&database\[IESP\]=IESP&database\[VDSS\]=VDSS&database\[UPRS\]=UPRS&_submit=i%C5%A1%C4%8Di&id=2015081111431656](https://www.sodnapraks.si/?q=*&database[SOVS]=SOVS&database[IESP]=IESP&database[VDSS]=VDSS&database[UPRS]=UPRS&_submit=i%C5%A1%C4%8Di&id=2015081111431656)>; ‘Holocaust denial in criminal law. Legal frameworks in selected EU Member States’ (*European Parliament*) p. 11 <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698043/EPRS_BRI\(2021\)698043_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698043/EPRS_BRI(2021)698043_EN.pdf)>.

⁶ ‘Supreme Court sets important precedent in hate speech case’ (*STA*, 8 August, 2019), <<https://english.sta.si/2665413/supreme-court-sets-important-precedent-in-hate-speech-case>>

⁷ ‘Bureau of Democracy, Human Rights, and Labor, 2019 Country Reports on Human Rights Practices: Slovenia’, *US Department of State* <<https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/slovenia/>>.

⁸ ‘Slovenia’ (*IHRA*) <<https://holocaustremembrance.com/countries/slovenia>>.

2018, the unveiling of a memorial to Slovenian Holocaust victims – entitled ‘Forgotten Suitcase’ – in the city of Murska Sobota, and the annual symposiums of ‘Each Year One Name’ at the Centre for Jewish Cultural Heritage – Synagogue in Maribor”.⁹

Despite the aforementioned efforts to foster Holocaust remembrance, right-wing extremist and neo-Nazi movements have been a matter of concern in Slovenia for decades. During the 2000s, local police statistics indicated a spike in “criminal acts involving public promotion of hatred, violence, or intolerance”, with five incidents in the year 2000, up to 13 in 2005, and 19 in 2008.¹⁰ On 6 September 2011, the prime minister was briefed by the head of the Slovenian Intelligence and Security Agency regarding the activities of extremist groups (in particular, Blood & Honour), which, according to the agency’s assessment, presented a clear and present danger to national security.¹¹

Incidents related to Holocaust denial, right-wing extremism and antisemitism continue to occur. In November 2023, a door of the Jewish Cultural Centre in Ljubljana was vandalised – it was the first known incident of antisemitism in Slovenia since the latest Israel-Hamas war. The antisemitic drawing contained the Star of David and the Nazi swastika with an equals sign between them. The Cultural Centre is home to the Museum of the Holocaust in Slovenia, the Jewish Museum, a synagogue, and an exhibition about Anne Frank’s family.¹²

⁹ Ibid.

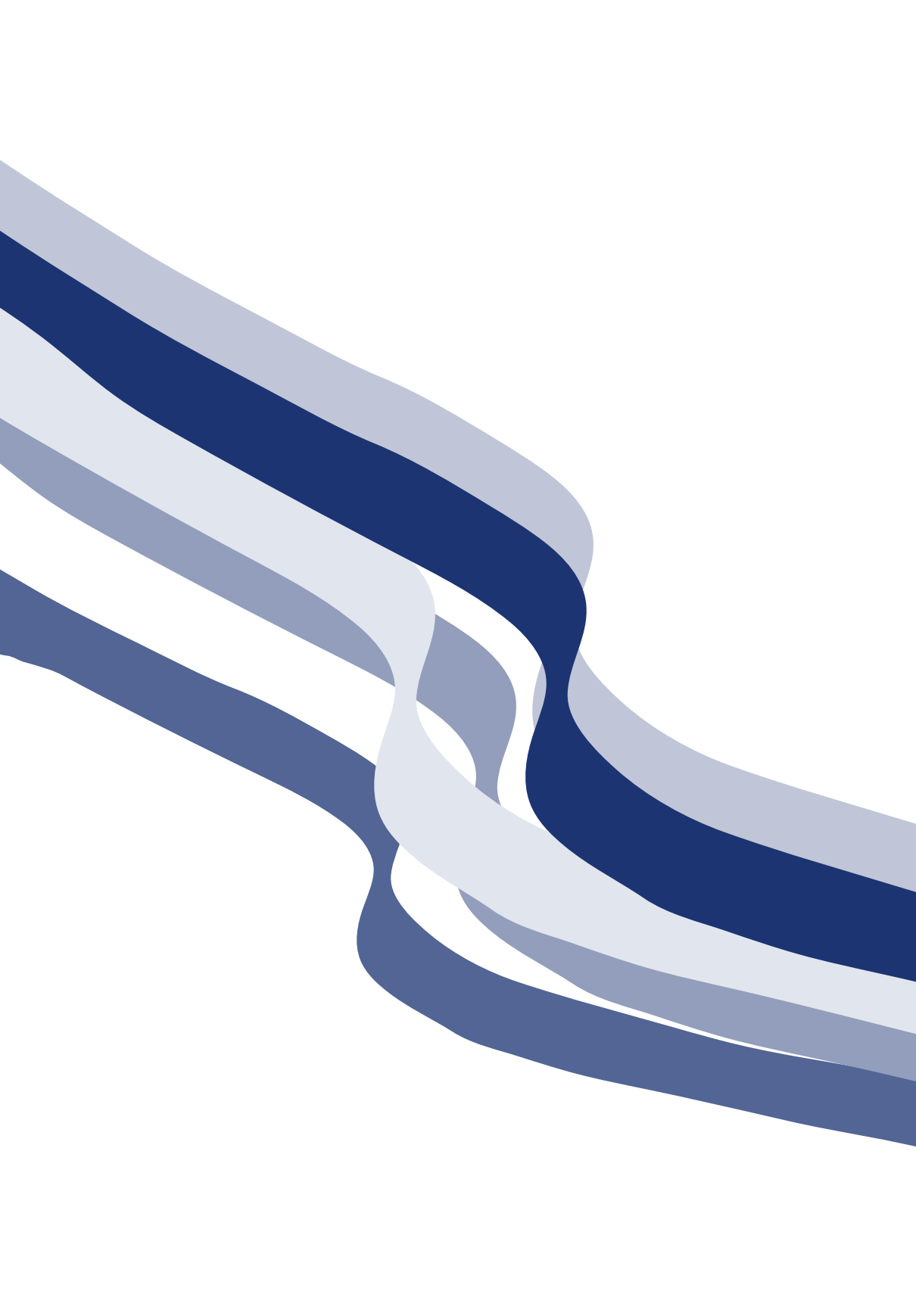
¹⁰ Borut Mekina, ‘Kdo je naslednji?’ (*Mladina*, 2. July 2009) <<https://www.mladina.si/47555/kdo-je-naslednji/>>.

¹¹ Borut Mekina, ‘Neonacisti na varnem’ (*Mladina*, 28. 9. 2014) <<https://www.mladina.si/160578/neonacisti-na-varnem/>>.

¹² Vuk Tesija, ‘Jewish Centre in Slovenia Defaced with Anti-Semitic Graffiti’, (*Balkan Insight*, 17 November 2023) <<https://balkaninsight.com/2023/11/17/jewish-centre-in-slovenia-defaced-with-anti-semitic-graffiti/>>.

8. Further reading

- Holocaust denial in criminal law. Legal frameworks in selected EU Member States, Briefing, 26 January 2022.
- <[https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2021\)698043](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)698043)>.
- Florin Lobont, 'Antisemitism and Holocaust denial in post-communist Eastern Europe', in Dan Stone (ed), *The historiography of the Holocaust* (London, Palgrave Macmillan UK, 2004).
- 'Memory Laws in European and Comparative Perspective', MELA Project, <<https://melaproject.org/>>.





SPAIN





1. Source of the legal provision¹

Article 510 of the Spanish Criminal [Ley orgánica 10/1995, de 23 de Noviembre, del Código Penal, con modificaciones posteriores].

Available in the original language via: BOE; <https://www.boe.es/biblioteca_juridica/codigos/codigo.php?id=38&modo=2¬a=0>.

2. Legal provision in English

Article 510²

(1) A prison sentence of one to four years and a fine of six to twelve months shall be imposed on:

[...]

c. Those who publicly deny, seriously trivialise or extol the crimes of genocide, crimes against humanity or against persons and property protected in the event of armed conflict, or who extol the perpetrators thereof, if committed against a group or part thereof, or against a certain person for belonging to such a group, for reasons of racism, antisemitism, or for other reasons related to ideology, religion or beliefs, family circumstances, the fact that the members belong to an ethnicity, race or nation, national origin, gender, sexual orientation or identity, or due to gender, illness or disability, if such conduct promotes or encourages a climate of violence, hostility, hatred or discrimination against such individuals.

[...]

¹ The authors of the Compendium would like to thank Pedro Albuquerque (Universidad de Sevilla) for his guidance through Spanish law.

² Translation available here: <https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Criminal_Code_2016.pdf>. The present translation (of 2016) corresponds to the consolidated text extracted from the Boletín Oficial del Estado, last updated on 28 April 2015.

(3) The penalties outlined in the previous Sections shall be imposed in the upper half if the deeds are committed via social media, via the internet or by using the information technologies in a manner that makes them accessible to a high number of persons.

(4) If, in view of the specific circumstances, the criminal offences are likely to alter the public peace or provoke a serious sense of insecurity or fear among the members of the group, the penalty shall be imposed in its upper half and up to the highest degree.

(5) In all cases, special barring from engaging in a profession or trade in education, in the field of teaching, sports and free time shall be imposed for a period of time greater than the prison sentence duly imposed in the judgement by between three and ten years, proportionally in view of the seriousness of the criminal offence, the number of criminal offences committed and the circumstances of the convict.

(6) The Judge or Court of Law may order the destruction, deletion or deactivation of the books, files, documents, articles and any kind of medium subject to the criminal offence outlined in the preceding Articles or by means whereof it was committed. If the criminal offence is committed through information and communication technologies, removal of the content shall be ordered. In the cases in which, through an Internet access portal or information society service, the content outlined in the preceding Section is distributed exclusively or predominantly, access shall be blocked, and the interruption of such distribution shall be ordered.

3. Legal provision in the original language

Artículo 510³

(1) Serán castigados con una pena de prisión de uno a cuatro años y multa de seis a doce meses:

[...]

c. Quienes públicamente nieguen, trivialicen gravemente o enaltezcan los delitos de genocidio, de lesa humanidad o contra las personas y bienes protegidos en caso de conflicto armado, o enaltezcan a sus autores, cuando se hubieran cometido contra un grupo o una parte del mismo, o contra una persona determinada por razón de su pertenencia al mismo, por motivos racistas, antisemitas, antigitanos, u otros referentes a la ideología, religión o creencias, la situación familiar o la pertenencia de sus miembros a una etnia, raza o nación, su origen nacional, su sexo, orientación o identidad sexual, por razones de género, aporofobia, enfermedad o discapacidad, cuando de este modo se promueva o favorezca un clima de violencia, hostilidad, odio o discriminación contra los mismos.

[...]

(3) Las penas previstas en los apartados anteriores se impondrán en su mitad superior cuando los hechos se hubieran llevado a cabo a través de un medio de comunicación social, por medio de internet o mediante el uso de tecnologías de la información, de modo que, aquel se hiciera accesible a un elevado número de personas.

(4) Cuando los hechos, a la vista de sus circunstancias, resulten idóneos para alterar la paz pública o crear un grave sentimiento de inseguridad o temor entre los integrantes del grupo, se impondrá la pena en su mitad superior, que podrá elevarse hasta la superior en grado.

³ Consolidated version available at: <https://www.boe.es/biblioteca_juridica/codigos/codigo.php?id=038_Codigo_Penal_y_legislacion_complementaria&tipo=C&modo=2>.

(5) En todos los casos, se impondrá además la pena de inhabilitación especial para profesión u oficio educativos, en el ámbito docente, deportivo y de tiempo libre, por un tiempo superior entre tres y diez años al de la duración de la pena de privación de libertad impuesta en su caso en la sentencia, atendiendo proporcionalmente a la gravedad del delito, el número de los cometidos y a las circunstancias que concurran en el delincuente.

(6) El juez o tribunal acordará la destrucción, borrado o inutilización de los libros, archivos, documentos, artículos y cualquier clase de soporte objeto del delito a que se refieren los apartados anteriores o por medio de los cuales se hubiera cometido. Cuando el delito se hubiera cometido a través de tecnologías de la información y la comunicación, se acordará la retirada de los contenidos.

En los casos en los que, a través de un portal de acceso a internet o servicio de la sociedad de la información, se difundan exclusiva o preponderantemente los contenidos a que se refiere el apartado anterior, se ordenará el bloqueo del acceso o la interrupción de la prestación del mismo.

4. Key points

- Spain does not have a specific Holocaust denial ban. Instead, Article 510 (1) (c) of the Criminal Code prohibits the denial of genocides in general, crimes against humanity, or crimes against persons and property protected during armed conflict, regardless of any recognition by a court.
- The provision requires that the relevant conduct promotes or encourages a climate of violence, hostility, hatred or discrimination against individuals based on characteristics as defined in Article 510 (1) (c) of the Criminal Code.
- The possible sanctions may include imprisonment for 1 to 4 years and a fine of 6 to 12 months.

5. Background

The Organic Law 1/2015, of March 30, introduced several changes to the Spanish penal code, including to take into account the Council Framework Decision 2008/913/JHA (hereinafter “EU FD 2008”) of 28 November 2008. According to Section I of the Preamble: “Finally, a large part of the changes made are justified by the need to meet international commitments. Thus, the reform deals with the transposition of EU FD 2008, on combating certain forms and manifestations of racism and xenophobia by means of criminal law. [...]”⁴ This organic law also took into special account an amendment to article 607 under consideration.⁵ These changes to articles 510 and 607, were made also considering the Sentence 235/2007 delivered on 7 November 2007,⁶ concerning the Varela Geiss case dating back to 1996.

Highlighting memory issues, Spain also recently enacted the so-called Democratic Memory Law.⁷ This law repealed, with effect from 21 October 2022, the so-called Historical Memory Law, “which recognizes and expands rights and establishes measures in favour of

⁴ Available here: <<https://www.boe.es/buscar/act.php?id=BOE-A-2015-3439>>.

⁵ Preamble, XXVI: “El cambio de ubicación del artículo 607 viene justificado por el propio texto de la Decisión Marco y por el hecho de que el Tribunal Constitucional haya impuesto que la negación del genocidio solamente puede ser delictiva como forma de incitación al odio o a la hostilidad. De igual forma, la Decisión Marco impone la tipificación de la negación del genocidio en la medida en que se trate de una forma de incitación al odio contra minorías.” Available here: <<https://www.boe.es/buscar/act.php?id=BOE-A-2015-3439>>.

⁶ Sentencia 235/2007, de 7 de noviembre de 2007. Cuestión de inconstitucionalidad 5152-2000. Planteada por la Sección Tercera de la Audiencia Provincial de Barcelona respecto al artículo 607.2 del Código penal. Vulneración del derecho a la libre expresión: sanción penal de la difusión de ideas o doctrinas que nieguen o justifiquen delitos de genocidio. Nulidad parcial e interpretación de precepto legal. Votos particulares. Reference: BOE-T-2007-21161. Available here: <<https://www.boe.es/buscar/doc.php?id=BOE-T-2007-21161>>.

⁷ Ley 20/2022, de 19 de octubre. Available here: <<https://www.boe.es/buscar/act.php?id=BOE-A-2022-17099>>.

those who suffered persecution or violence during the civil war and the dictatorship.”⁸

Although these laws refer directly to Spain’s internal history, namely to the dictatorial period in that country (before the 1978 Constitution), the new Democratic Memory Law begins its articles with an express mention of the Holocaust and the duty to remember: “Since the end of the civil wars and global conflicts that ravaged Europe in the 20th century, and especially since the Holocaust, the promotion of democratic memory policies has become a moral duty that must be strengthened in order to neutralize forgetfulness and prevent the repetition of the most tragic episodes in history. A firm commitment to the pedagogy of “never again” has become a fundamental ethical imperative in democratic societies around the world.”⁹

6. Application

The aforementioned Varela Geiss case directly relates to Article 510 of the Criminal Code. Pedro Varela Geiss, a Spanish neo-nazi and owner of the Europa bookshop in Barcelona, has been repeatedly tried on the basis of these articles. The case dates back to 1996, and Geiss was convicted in 1998, 2008 and 2012. In 2024, he has again been tried for hate crimes and partaking in organised criminal activity.¹⁰ Another case covered by the articles under consideration is the Kalki Bookshop in Barcelona¹¹ (“Crime of dissemination of ideas or doctrines that deny or justify genocide”).

⁸ Ley 52/2007, de 26 de diciembre. Available here: <<https://www.boe.es/buscar/act.php?id=BOE-A-2007-22296>>.

⁹ Ley 20/2022, de 19 de octubre. Available here: <<https://www.boe.es/buscar/act.php?id=BOE-A-2022-17099>>.

¹⁰ ‘El librero Pedro Varela volverá a ser juzgado a partir de este martes por delitos de odio y organización criminal’, *20 Minutos*, 13 may 2024: <<https://www.20minutos.es/noticia/5244832/0/librero-neonazi-pedro-varela-vuelve-ser-juzgado-desde-martes-por-delitos-odio-organizacion-criminal/>>.

¹¹ STS 259/2011, 12 april 2011. Available at V-Lex: <<https://vlex.es/vid/284165199>>.

7. Controversies

In the initial Varela Geiss case, the Spanish Constitutional Court decided that denying the Holocaust was not a crime in Spain at that time, and ordered the local court to reduce his sentence, which prompted the 2015 changes in the law.¹² His continued unrepentant behaviour mentioned above remains a source of major controversies.

Equally interesting is the introduction of changes to citizenship law, in particular with the recognition of Spanish nationality for Sephardic Jews, i.e., those from *Sefarad* (the territory of Spain and Portugal – the Iberian Peninsula – at the time when all Jews who did not convert to the Christian faith were expelled from these territories by decree in the 15th century). To this end, legislation was enacted that opened up nationality to Sephardic Jews, upon their formal request to the Spanish state and pending fulfilment of certain criteria.¹³ This was considered controversial at that time.

8. Further reading

- A. Aragonese, ‘Legal silences and the memory of Francoism in Spain’, in U. Belavusau, A. Gliszczynska-Grabias (ed.), *Law and Memory: Towards Legal Governance of History*, Cambridge: Cambridge University Press, 2017, pp. 175-194.
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- FRAMIS, Andrea Giménez-Salinas, GOROSTIZA, Jon-Mirena Landa (dirs.), *Análisis de casos y sentencias en Materia de racismo, xenofobia, LGTBIfobia, y otras formas de intolerancia 2018-2022*, Madrid: Ministerio de Inclusión, Seguridad Social y Migraciones, 2023. Available here: <https://www.inclusion.gob.es/web/>

¹² Available here: <https://english.elpais.com/elpais/2012/01/20/inenglish/1327040445_850210.html>.

¹³ Ley 12/2015, de 24 de junio: <<https://www.boe.es/buscar/pdf/2015/BOE-A-2015-7045-consolidado.pdf>>.

[oberaxe/w/analisis-de-casos-y-sentencias-en-materia-de-racismo-xenofobia-lgtbifobia-y-otras-formas-de-intolerancia-2018-2022](#)

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SWEDEN





1. Source of the legal provision

Chapter 16, Section 8 Criminal Code (Brottsbalk), as amended by the law 2024:340 (“Lag om ändring i brottsbalken”)¹

Chapter 29, Section 2 Criminal Code

The Criminal Code available in the original language via: <https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/brottsbalk-1962700_sfs-1962-700/#K16>

2. Legal provisions in English

Chapter 16 (On offences against public order), Section 8 Criminal Code:

“Anyone who, in a statement or in another message that is disseminated, calls for violence against, threatens or expresses contempt for an ethnic group, another such group of persons or an individual in one of these groups with reference to race, skin colour, national or ethnic origin, creed, sexual orientation or transgender identity or expression, shall be sentenced to imprisonment for a maximum of two years for incitement to racial hatred. A person shall also be convicted of incitement to racial hatred who, in a statement or in another message that is disseminated, denies, excuses or manifestly belittles a crime that constitutes or corresponds to genocide, crimes against humanity, war crimes or the crime of aggression in accordance with a decision issued by a Swedish court or by a recognised international court for violations of international law and which has become final, if the act is likely to incite violence against, threaten or express contempt for a group or individual referred to in

¹ Law 2024:340 (“Lag om ändring i brottsbalken”). Accessible online: <<https://svenskforfattningssamling.se/sites/default/files/sfs/2024-05/SFS2024-340.pdf>>

the first paragraph. If the offence is minor, a fine is imposed on minor incitement to racial hatred. If the offence is serious, the sentence for aggravated incitement to racial hatred is imprisonment for a minimum of six months and a maximum of four years. When assessing whether the crime is serious, particular consideration must be given to whether the message had a particularly threatening or offensive content and was disseminated to a large number of people in a way that was likely to attract significant attention.”²

Chapter 29 (On determination of penalties and remission of sanctions), Section 2 Criminal Code:

“As aggravating circumstances when assessing the value of the penalty, in addition to what applies to each particular type of crime, particular consideration must be given to:

[...]

“No. 7. if a motive for the crime was to offend a person, a group of people or another such group of persons due to race, skin colour, national or ethnic origin, creed, sexual orientation, gender identity or expression or other similar circumstance;

[...]”³

3. Legal provisions in the original language

Kapitel 16 (Om brott mot allmän ordning), 8 § Brottsbalk:

“Den som i ett uttalande eller i ett annat meddelande som sprids uppmanar till våld mot, hotar eller uttrycker missaktning för en folkgrupp, en annan sådan grupp av personer eller en enskild i någon av dessa grupper med anspelning på ras, hudfärg, nationellt eller etniskt ursprung, trosbekännelse, sexuell läggning eller könsöverskridande identitet eller

² The Swedish Criminal Code in Swedish, translated. Accessible online: <https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/brottsbalk-1962700_sfs-1962-700/#K16>

³ Ibid.

uttryck, döms för hets mot folkgrupp till fängelse i högst två år. För hets mot folkgrupp döms också den som i ett uttalande eller i ett annat meddelande som sprids förnekar, ursäktar eller uppenbart förringar ett brott som utgör eller motsvarar folkmord, brott mot mänskligheten, krigsförbrytelse eller aggressionsbrott enligt ett avgörande som har meddelats av en svensk domstol eller av en erkänd internationell domstol för brott mot folkrätten och som fått laga kraft, om gärningen är ägnad att uppmanna till våld mot, hota eller uttrycka missaktning för en sådan grupp eller enskild som avses i första stycket. Om brottet är ringa döms för ringa hets mot folkgrupp till böter. Om brottet är grovt döms för grov hets mot folkgrupp till fängelse i lägst sex månader och högst fyra år. Vid bedömningen av om brottet är grovt ska det särskilt beaktas om meddelandet haft ett särskilt hotfullt eller kränkande innehåll och spritts till ett stort antal personer på ett sätt som varit ägnat att väcka betydande uppmärksamhet.”⁴

Kapitel 29 (Om straffmätning och påföljdseftergift), 2 § Brottsbalk:

“Som försvårande omständigheter vid bedömningen av straffvärdet ska det, vid sidan av vad som gäller för varje särskild brottstyp, särskilt beaktas [...]

7. om ett motiv för brottet varit att kränka en person, en folkgrupp eller en annan sådan grupp av personer på grund av ras, hudfärg, nationellt eller etniskt ursprung, trosbekännelse, sexuell läggning, könsöverskridande identitet eller uttryck eller annan liknande omständighet,

[...]”

⁴ The Swedish Criminal Code in Swedish, translated. Accessible online: <https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/brottsbalk-1962700_sfs-1962-700/#K16>

4. Key points

- Sweden does not have an explicit Holocaust denial ban. Instead, it criminalizes denial of genocides, crimes against humanity, war crimes and the crime of aggression, provided that the conduct is likely to incite violence against, threaten or express contempt for a group or individual referred to in the provision and that it is recognised by a court. The disturbance of public order or peace is not required.
- The basic sanction for breach of the denial ban includes imprisonment for a maximum of two years.
- For a long time, Sweden did not have a specific a denial ban or similar laws. However, hate speech, including antisemitically motivated crimes, was illegal under the Criminal Code, Chapters 16, Section 8 and 29, Section 2.
- In 2021, infringements Proceedings were launched against Sweden for not having fully or accurately transposed the EU Framework Decision on Racism and Xenophobia 2008/913/JHA (hereafter ‘EU FD 2008’).⁵ These proceedings have now been closed following the amendment of Chapter 16, Section 8 of the Criminal Code in 2024.

5. Background

Holocaust denial was not banned in Sweden for many years, though discussions about banning Holocaust denial in Sweden were active for a while. For instance, in 2021, Sweden’s then Minister of Justice Morgan Johansson revealed to the press his firm belief that Holocaust denial ought to be made illegal. In his comments to Sweden’s national broadcaster, he indicated that the government had established a parliamentary committee to look into the issue in greater detail.⁶

⁵ T. Wahl, ‘Commission Launches/Continues Infringements Proceedings in Several JHA Matters’ (Eurocrim, 20 March 2021) <<https://eucriim.eu/news/commission-launchescontinues-infringements-proceedings-in-several-jha-matters/>>

⁶ ‘Sweden’s Minister of Justice announces support for ban on Holocaust denial’ (*World Jewish Congress*, 14 Apr 2021) <<https://www.worldjewishcongress.org/en/news/swedens-minister-of-justice-announces-support-for-ban-on-holocaust-denial/>>

In explaining his thoughts on the matter, the minister cited three particularly strong reasons why he viewed the law as necessary: the growing threat of right-wing extremism, the ease at which false propaganda can spread on social media, and the declining number of Holocaust survivors left alive to make others bare witness to the reality of the Holocaust via their personal stories.⁷

The current war in Gaza and the Hamas terrorist attack of 7 October 2023 further stimulated Sweden's legislative change. It was supported by various actors, including the World Jewish Congress' Nordic Office. The primary goal of these efforts was to ensure security for local Jewish communities.⁸ Since 7 October 2023, hate crime incidents, Holocaust denial and distortion rhetoric have risen dramatically in Sweden.

Amendments were proposed by the Swedish government on 16 February 2024 in regard to the laws on agitation against ethnic groups, commonly referred to as hate speech legislation. These amendments aimed to: specifically criminalise the denial of the Holocaust and other recognized international crimes; clarify the inclusion of incitement to violence within the legislation; provide individuals within protected groups with recognized victim status and a right to compensation. The Parliament of Sweden voted in favour of these amendments in May 2024. The amending Law 2024:340 is based on the parliamentary decision ("riksdagens beslut") of 22 May 2024.⁹ Furthermore, changes to the Freedom of the Press Ordinance are proposed to enter into force on 1 January 2027.¹⁰

⁷ Ibid.

⁸ 'Sweden's Parliament Approves Proposal to Outlaw Holocaust Denial and Distortion' (*World Jewish Congress*, 22 May 2024) <<https://www.worldjewishcongress.org/en/news/swedish-parliament-proposes-resolutions-to-outlaw-holocaust-denial-and-distortion>>

⁹ Clearer provisions concerning agitation against a population group, 22 May 2024. Accessible online: <https://www.riksdagen.se/en/news/articles/2024/may/22/clearer-provisions-concerning-agitation-against-a_cms49e364d6-e36d-4f22-900d-2ed65bad2716en/>

¹⁰ Proposition 2023/24:93, En tydligare bestämmelse om hets mot folkgrupp, <https://www.riksdagen.se/sv/dokument-och-lagar/dokument/proposition/en-tydligare-bestammelse-om-hets-mot-folkgrupp_hb0393/html/>

6. Application

There have been a series of criminal cases related to Holocaust denial, hate speech, and hate crimes in Sweden in general. For example, in 2009, Swedish street artist Dan Park was tried for placing swastikas and boxes labelled “Zyklon B” in front of a Jewish community centre.¹¹

In another case involving the same artist, A Malmö court, in 2014, sentenced Park to six months imprisonment for incitement to racial agitation and defamation.¹² This time he was sentenced for works which – according to the judgement – depicted Roma and black people in a racist way. Park was convicted for defamation and inciting to hatred against an ethnic group. The case focused on nine framed posters by Park that were seized from an art gallery in Malmö. One depicted three black men with nooses around their necks. Another showed Roma community leaders with text suggesting they condoned crime.¹³

7. Controversies

The reemergence of pro-Nazi views, antisemitism and Holocaust denial has a long history in Sweden – as do civic attempts to combat such views. For instance, the Anti-Jewish Action League of Sweden [Sveriges Antijudiska Kampförbund] was an antisemitic political organisation, founded in 1941, by veteran antisemite Einar Åberg. The organisation was small, often consisting only of Åberg himself. Åberg’s propagandistic activities eventually provoked legislation, sometimes referred to as Lex Åberg, which added the crime of agitation against a population

¹¹ M. Enge, ‘Dan Park-debatt brer seg i Norden’ (*Kunstkritikk*, 23 October 2014), <<https://kunstkrutt.no/dan-park-debatt-brer-seg-i-norden/>>.

¹² ‘Swedish artist jailed for ‘race hate’ pictures’ (*The Local*, 21 August, 2014) <<https://www.thelocal.se/20140821/swedish-artist-jailed-for-race-hate-pictures>>; M. H. Jensen, ‘Swedish Artist Dan Park “Incited Against an Ethnic Group”’ (*Hyperallergic*, 12 October 2014), <<https://hyperallergic.com/154676/sentenced-swedish-artist-dan-park-incited-against-an-ethnic-group/>>.

¹³ ‘Swedish artist sentenced for “racist” art’ (*The Guardian*, 22 August 2014) <<https://www.theguardian.com/world/2014/aug/22/swedish-artist-sentenced-racist-art-dan-park>>.

group to the Swedish Criminal Code. Sweden also had a national socialist party, created and led by Birger Furugård, which was however, dismantled in 1936.¹⁴

A “Report on Global Antisemitism” conducted by the U.S. State Department in 2005 indicated that Sweden had the third highest rate of antisemitic incidents in Europe, following Germany and Austria. According to the “Coordination Forum for Countering Antisemitism”, antisemitism in Sweden nowadays focuses on the Israeli–Palestinian conflict. A survey by the EU Agency for Fundamental Rights found that in 2012, 40–50% of Swedish Jews had frequently heard the accusation that “Israelis behave to the Palestinians like the Nazis to the Jews”.¹⁵ More than 100 antisemitic hate crimes were reported in Sweden between October 7 and the end of 2023, almost five times the number of the same period a year earlier.¹⁶

8. Further reading

- Henrik Bachner, ‘Political Cultures of Denial? Antisemitism in Sweden and Scandinavia’, in: *Politics and Resentment: Antisemitism and Counter-Cosmopolitanism in the European Union*, Brill, 2010.
- Lars Dencik, Marosi Karl, ‘Different antisemitisms: On three distinct forms of antisemitism in contemporary Europe. With special focus on Sweden’, *Nordisk Judaistik/Scandinavian Jewish Studies*, 27.2 (2016): 61-81.
- Gerald Tishler, ‘Freedom of Speech and Holocaust Denial’ [1986] *Cardozo L. Rev.* 8, p. 559.

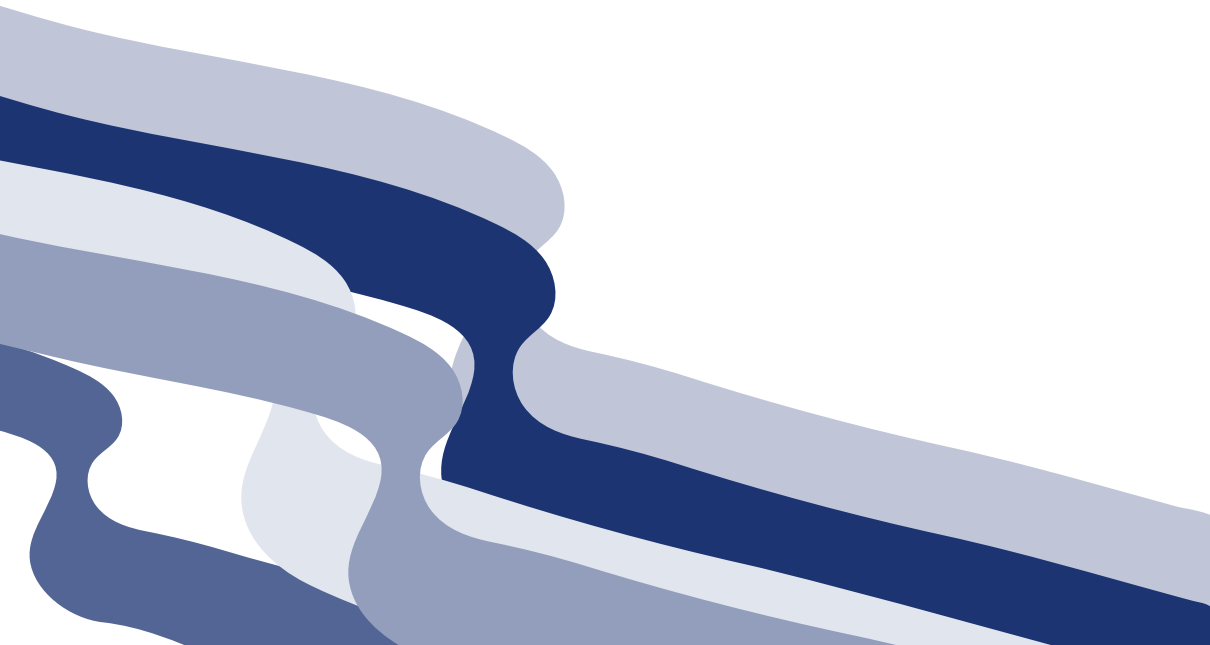
¹⁴ ‘Görel Granström: Den antisemitiske bokhandlaren och kriminaliseringen av hets mot folkgrupp’ (*Swedish Committee Against Antisemitism*, 20 June 2017), <<https://skma.se/2017/06/gorel-granstrom-den-antisemitiske-bokhandlaren-och-kriminaliseringen-av-hets-mot-folkgrupp/>>


¹⁵ Daniel Schwammenthal, ‘The new face of European antisemitism’ (Accessible via *AJC Transatlantic Institute*, 13 November 2013) <<https://transatlanticinstitute.org/the-new-face-of-european-anti-semitism>>.

¹⁶ ‘Sweden reports sharp rise in antisemitic hate crimes since Hamas attack on Israel’ (*The Times of Israel*, 2 May 2024) <<https://www.timesofisrael.com/sweden-reports-sharp-rise-in-antisemitic-hate-crimes-since-hamas-attack-on-israel/>>.



TABLE SUMMARY OF THE MAIN FINDINGS



<p>Most Liberal</p>  <p>Most Restrictive</p>	Ban on general hate crimes only	Denmark Estonia Finland Ireland		
	Ban covering international crimes (some specifically including Nazi crimes), requiring an incitement of hatred for all		Disturbance of public order/peace and/or threatening manner required	Disturbance of public order/peace and/or threatening manner not required
		Recognition of crime by international and/or domestic courts required	Cyprus* Greece*	Netherlands* Sweden
		Recognition of crime by international and/or domestic court not required	Malta*	Bulgaria Croatia Portugal* Spain
	(1) Specific ban on Holocaust / other Nazi genocide / other Nazi crimes denial without requiring incitement to hatred and (2) ban covering other international crimes requiring an incitement of hatred	Recognition of crime by international and/or domestic courts required		Austria Belgium Slovakia
		Recognition of crime by international and/or domestic court not required	Germany	
	Provision covering international crimes (some specifically including Nazi crimes) without requiring an incitement of hatred for any	Recognition of crime by international and/or domestic courts required	Lithuania*	France Luxembourg Romania
		Recognition of crime by international and/or domestic court not required		Czech Republic Hungary* Latvia* Poland* Slovenia
	Other	Italy*		

*Additional Remarks:

Cyprus: The provision also allows for the recognition of the crime by the House of Representatives (apart from recognition by an international court).

Greece: The provision requires either incitement to hatred or threatening manner.

Hungary: The provision covers crimes against humanity, not genocide and war crimes.

Italy: Denial is an aggravating circumstance.

Latvia: Nazi and communist crimes covered only as far as they were directed against the state of Latvia.

Lithuania: Nazi and communist crimes covered only regarding acts by persons who carried out or participated in aggression against the Republic of Lithuania.

Malta: Incitement to hatred is only required for crimes against humanity and war crimes; for crimes against peace, this is not required.

Netherlands: The provision requires only insult, not incitement to hatred.

Poland: The provision covers only crimes committed against the Polish citizens at that time.

Portugal: The provision requires either violence, insult, threat or incitement to hatred.

Mnemonic **REALITY**

RESEARCH PROJECT

NEXT FUNDING FRAMEWORK — LAW BETWEEN NORMATIVITY AND REALITY

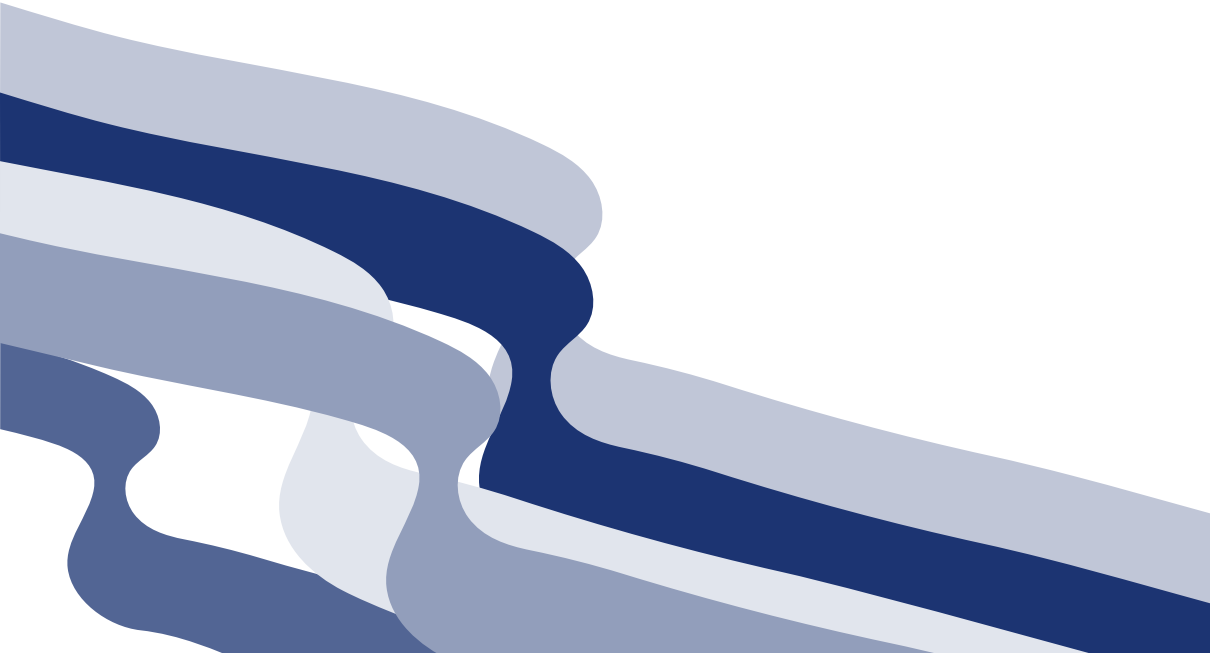
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“The compendium *Criminalizing Holocaust Denial in the EU* collects, translates to English and provides an overview on the current state of criminal Holocaust denial legislation of all 27 Member States. Being the first endeavor of this kind, the compendium pursues primarily four goals: first, it aims to provide an EU-wide comprehensive empirical basis for further comparative research on Holocaust denial bans and memory laws more generally. The compendium is therefore kept deliberately descriptive. Second, it seeks to inform policy makers at the national and EU level about the existing rules in (other) EU Member States and their application. [...] Thus, the compendium serves as a source of inspiration for national policy regarding possible regulatory techniques of denial bans. It also helps EU policy makers to assess to what extent states have implemented the EU FD 2008 regarding Holocaust denial. Thirdly, it seeks to broaden legal practitioners’ and the general public’s knowledge about Holocaust denial legislation, which is crucial for a critical and informed discourse about memory politics and law within the EU space. With its linkage to public education about the Holocaust as such, the compendium finally aims to contribute to providing a basis for a world in which memory laws such as Holocaust denial bans may no longer be necessary.”

[from the Introduction]

