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### Legislation against antisemitism and Holocaust denial

Legislation explicitly against antisemitism This chapter will present the legislation defining antisemitism and denial of the Holocaust, **explicitly and in the language of the law** as an offence in the law books, as differentiated from general legislation dealing with preserving the rights of various groups of human beings. Among those covered, there are at least seven countries which have entered specific legislation into the law books dealing with the subject of antisemitism. They are: **Romania, Spain, Mexico, Switzerland, France, Sweden and Austria.**

One other country, **Latvia**, began preparing a draft law on the subject in April 2004. **According to the laws of these countries, antisemitism is an explicit violation of the law.** However, there are countries such as Russia in which, while laws do exist that might be interpreted as prohibiting antisemitism, they are not explicit and are rarely enforced. On the other hand, there are those countries which do not have laws specifically against antisemitism, but which strongly combat it with the aid of other laws dealing with discrimination.

#### Romania



Article 3(5) of Law nr 51 of 1991 defines antisemitism which views antisemitism as being a part of those activities posing a threat to order and the integrity of the country and are thus a violation of the law.

Law nr 51 of June 29, 1991 [1]

#### Article 3:

'The following actions constitute threats to the national security of Romania...

(h) the initiation, organization, commission of or any kind of support given to totalitarian or extremist actions of a communist, fascist, iron-guardist or any other inspiration, actions of a racist, antisemitic, revisionist or separatist nature likely to endanger in any way the unity and territorial integrity of Romania, as well as incitement to acts which can imperil law and order in the country'.

#### Spain



Subsection 4 of Article 22 of the New Penal Code of 1996 states that committing a crime for racist reasons will be considered as being under worsening circumstances.

Article 22 of the New Penal Code came into force on 24 May 1996 [2]

The following are worsening circumstances:

(4) To commit a crime for racist reasons, antisemitic or of another type, discriminating due to the victim's ideology, religion, beliefs, the ethnic group, race or nation to which he belongs, his gender or sexual orientation, or the illness or physical handicap of which he suffers.'

Subsection 1 of Article 510 of the New Penal Code of 1996 states that discrimination, hate or violence against an anti-Semitic background (as well as other discriminatory practices) are offenses carrying prison terms of one to three years as well as a fine.

Article 510 of the New Penal Code, came into force on 24 May 1996 [3]

'(1) Those who bring about discrimination, hatred or violence against groups of associations for racist, antisemitic or other reasons regarding ideology, religion or beliefs, family status, ethnic, race or national origin, gender, sexual orientation, illness or physical, will be punished with one to three years in prison and a fine equivalent to six to twelve months'.

Mexico



In 2003, both of Mexico's Houses of Congress unanimously passed a Federal Law prohibiting discrimination. Article 4 of the Law unequivocally states that antisemitism is a kind of discrimination:

Article 4: [4]

'... It will also be considered as discrimination, xenophobia, and antisemitism in every one of its manifestations'.

Switzerland



Subsection 1 of Article 1 of the Ordinance of 2001 states that assistance must be granted to educational projects enhancing the awareness of the struggle against antisemitism and racism.

Ordinance of 27 June 2001 [5]

Ordinance concerning assistance to projects for enhancing awareness of and prevention with regard to human rights and concerning the combat against antisemitism, racism and xenophobia:

Article 1:

'(1) The present decree sets the payment by the Confederation of subsidies for the purpose of supporting projects aiming at enhancing awareness of public opinion with regard to human rights or at preventing antisemitism, racism or xenophobia'.

France



There is an existing law on the combat against antisemitism and denial of the Holocaust. See paragraph 2.6

Sweden



Crimes of an antisemitic nature are defined in the Constitution as crimes against persons of Jewish extraction, against Jewish property and the like. In order for the crime to be categorized as one having been committed against an antisemitic background, the victim does not necessarily have to be Jewish; it is enough that the attacker thought the victim was Jewish. [6] Jews are recognized in Sweden as a national minority. [7] Therefore they are protected under the law prohibiting discrimination against minorities.

Austria



The law against Nazi activity of 1947 (*Verbotsgesetz*) prohibits all neo-Nazi or antisemitic activities. [8]

Latvia



In April 2004, the Latvian Parliament initiated steps towards drafting a proposal designed to increase punishment for racist, xenophobic and antisemitic crimes. [9]

Legislation explicitly against denying the Holocaust The denial of the Holocaust (or the denial of genocide) his prohibited, in various ways, in at least ten European States. There is no uniformity in the legislation on the subject and there are different emphases in each of the States according to the nature of the offense

(administrative or criminal), the trial process and the punishment. There are States in which the denial of genocide in general is an offence and there are those in which reference is explicitly to the denial of the genocide perpetrated by the Nazis.

#### Austria



In Austria, the law against denying the Holocaust has been on the books since 1992. Law No. 148 is an amendment to a law from 1945 which had illegalized the Nazi Party. The 1992 law states that denying the Holocaust and denying the committing of crimes against humanity by the Nazis, their public endorsement or justification are a criminal offense if they are of a political or propaganda nature. In the event that the offense is not of this nature, or is of little influence, it is defined as an Administrative offense. [10]

#### Article 3h:

'A person shall also be liable to a penalty under Art. 3g if, in print or in broadcast or in some other medium, or otherwise publicly in any manner accessible to a large number of people, if he denies the National Social genocide or the National Socialist crimes against humanity, or seeks to minimize them in a coarse manner or consents thereto to justify them'. Sentences according to the law: A criminal offence: one to twenty years in prison (the maximum under Austrian law) An administrative offence: a fine of between 3000-30,000 Schillings (about 180 – 1800 Dollars).

#### Belgium



A law against denying the Holocaust has existed in Belgium since 1995. According to the law, denying the Holocaust and being contemptuous of it are criminal offenses subject to imprisonment for from eight days to one year and a fine of 26 to 5,000 Belgian francs (between half-a-dollar to 100 dollars).

"Law of Holocaust Denial" of March 1995 [11]

#### Article 1:

'Whoever, in one of the circumstances indicated by Article 444 of the Penal Code, denies, grossly minimizes, tries to justify or approves of the genocide committed by the German National-Socialist regime during the Second World War will be punished by imprisonment of eight days to one year and a fine of twenty six to five thousand francs...".

#### Switzerland



There is an article in the Swiss Penal Code which defines as criminal offenses public denial of the Holocaust or an attitude of contempt for genocide or any other crime against humanity which may in certain circumstances be construed as denial of the Holocaust.

#### Article 261 bis [12]

"... he who publicly, by word of mouth, in writing, by image, by gesture, by assault or in any other way, belittles or discriminates in a way which affects the human dignity of a person or a group of persons because of their race, their ethnic belonging to their religion or who, for the same reason, denies, grossly minimizes or tries to justify a genocide or other crime against humanity". Punishment according to the law: A maximum of three years in prison and/or a fine of 40 Swiss francs (about 2,300 dollars)

#### Germany



Legislation against denying the Holocaust has been on the books in Germany since 1985, and in 1994 this law was amended. The 1985 law (Article 194, 21<sup>st</sup>) states that denying the Holocaust is an impingement of human dignity, and is defined as an offense. However, pressing charges against the offenders requires the victim's agreement.

The 1994 law (Amendment to Article 130) states that denying the Holocaust is a criminal offence according to the law against incitement. This law also broadens the prohibition from the previous law, and in addition to denying the crimes of the Nazi regime and agreeing with its objectives it includes the prohibition of the use of Nazi symbols and slogans.

Article 130: [13]

(3) Whoever publicly, or at a meeting, denies, diminishes, or approves an act committed under the regime of National Socialism, of the kind described in Article 220A, paragraph 2, in a way likely to disturb the public peace..." Punishment according to the law: The 1985 Law: Up to one year in prison or a fine The 1994 Law: Up to five years in prison or a fine

France

The Law stating that denying the Holocaust is an offense was passed in 1990. This is an amendment to a law from 1881 that related to freedom of the press. This law prohibits both antisemitism (Law 90-615) and denying the Holocaust (Article 24b, *la loi Gayssot*). Another law adopted in 2003 sets stiffer punishments for offenses against an antisemitic or racist background. (Law no. 2003-88 of February 2003).

In addition, in 2003, the French Government established a permanent inter-ministerial commission to coordinate the activities of the Government in combating antisemitism and racism which discusses, inter-alia, possible legislative measures on the subject. [14]

Spain

A law prohibiting denial of the Holocaust has been on the books since 1996 (New Penal Code: Section 607). The denial of the existence of genocide is a criminal offense in Spain which carries a sentence of between one and two years.

Article 607: [15]

(2) 'Spreading, by any means, ideas or doctrines that deny or justify the crimes typified in the former Section of this Article, or pretend the rehabilitation of regimes or institutions which promote the same...'

Slovakia

In November 2001, the Slovak Parliament passed an amendment to the Penal Code according to which denying the Holocaust and minimizing the importance of its crimes, are defined as criminal offenses. The Slovak Minister of Justice claimed in opposition to the amendment that a free society should not punish people for expressing an opinion, even if it arouses opposition. [16]

Poland

In Poland, since 1999 denying the crimes of the Nazis (and the Communists) has been defined as a punishable offense. Anyone breaking that law is facing imprisonment of up to three years. [17]

Italy

Article 8 of the Penal Code of 1967 states that the justification of genocide is an offense and anyone committing it is facing between 3 and 12 years in prison. [18]

Luxembourg

Subsection 3 of Article 475 of the Penal Code of August 1997 states that denying genocide or justifying it are offenses and carry a punishment of between one week and six months in prison and a fine of between 10,000 and 1,000,000 Luxemburg francs. [19] '...a person who, by one of the means listed in the above paragraph, has disputed, minimized, justified or denied the existence of one or several acts of genocide as defined by the Act of 8 August 1945 making genocide a crime by Luxemburg of international court or authority". Legislation prohibiting the use of Nazi symbols There are some countries in which the public display, use or distribution of Nazi symbols is categorically prohibited by law. In other countries, the prohibition is not explicitly stated but is inferred in laws prohibiting incitement.



#### Brazil

In 1989, the Brazilian Senate passed a law prohibiting the manufacture, trade and distribution of swastikas for the purpose of disseminating Nazism. Anyone who breaks that law is liable to serve a prison term from between two and five years.



Law no. 7716 of 5 January 1989 [20]

Article 20:

'Whoever manufactures, markets, distributes or issues symbols, emblems, ornaments, distinctives or propaganda that uses a swastika cross for dissemination of Nazism will be punished...'

#### Denmark

In general terms, presentation in public, use or wearing of Nazi symbols is not prohibited, except in cases in which the use of Nazi symbols is with the aim of offending a specific group, then the use of these symbols is prohibited. [21]



#### Hungary

The amendment to the Penal Code made in 1996 states that the use in public and the presentation of a swastika, among other symbols, is a misdemeanor, punishable with a fine.



Amendment Act 4/1978 and approved 12 March 1996: [22]

Article 269/B:

(1) The person who:

(a) distributes;

(b) uses before great publicity;

(c) exhibits in public;

a swastika, the SS sign, an arrow-cross, sickle and hammer, a five pointed red star or a symbol depicting the above – unless a graver crime is realized – commits a misdemeanor, and shall be punished with a fine.

#### France

According to the French Penal Code, the display of Nazi symbols is a criminal offense. [23]



#### Austria

According to Law 84/1960 and Law 117/ 1980, it is prohibited to display the symbols of organizations declared illegal, such as the neo-Nazi organizations. The offender faces a 10,000 dollar fine or a month in prison. [24]



Declarations and initiatives on legislation on the subject

Following is a partial sampling of declarations and initiatives on the subject of antisemitism in various countries in the world:

#### Britain



In Britain, no legislation exists dealing unequivocally with the subject of antisemitism or denial of the Holocaust. What does exist is general legislation on the subject of racism and discrimination, for example: The Public Order Act of 1986, Part 3; the Protection from Harassment Act of 1997 and the Malicious Communications Act of 1998. In 1997, a private draft proposal was made to the British Parliament on the subject of denying the Holocaust: The Holocaust Denial Bill. According to this proposal, denial of the Holocaust, orally or in writing, would be declared an offense. Of note is the fact that the original draft proposal referred solely to the extermination of the Jewish People by the Nazis, but the revised proposal also included the definition of similar crimes as crimes against humanity.

The draft proposal has yet to be passed into law by the British Parliament. [25]

#### Germany



In December 2003, the German Parliament unanimously ratified a declaration against antisemitic trends that had begun to emerge not only in the fringes of Germany society, but at its very heart. The Parliament recognized the need to preserve the memory of the Holocaust as part of German national identity. The President of Parliament said on this occasion that not only Germany's past, but also its present, in which radical right-wing groups and radical Islamic groups have banded together thus it is incumbent upon German society to act against antisemitism. [26]

#### Italy



In January 2004, the Italian Parliament adopted two resolutions concerning the struggle against antisemitism. One of the resolutions required the Government, among other things, to increase the struggle against antisemitism by presenting efficient measures to be taken "against this monstrous phenomenon", in the words of the proposal, and to introduce a program of study on the subject of antisemitism and the contribution of the Jewish People in history into the educational system. [27]

From July 2004, an inter-ministerial commission has been working on ways to combat antisemitism. The commission was established on instructions from the Italian Prime Minister.

#### Norway



In early 2000, the Norwegian Foreign Minister promised that stiffer measures would be taken against neo-Nazi violence as part of the struggle against racist violence.

#### The Netherlands



The subject of the increase in the number of antisemitic incidents in The Netherlands was brought up for discussion in the Lower House of the Dutch Parliament in October 2003 on the initiative of the Dutch Minister of Justice. In his remarks, the Justice Minister said that the struggle against antisemitism would not be through the charting of new policy, but rather part of the struggle against discrimination in general.

#### Australia



In early 2004, both the Federal Senate and the House of Representatives, as well as several local Houses of Representatives, presented resolutions sharply denouncing the phenomenon of antisemitism. [28]

#### The United States



In 2004, the United States House of Representatives and Senate approved a comprehensive proposal giving the State Department the authority and the obligation to monitor outbreaks of anti-Semitism and racism in the world and to publish reports on these subjects. [29]



The organization for security and cooperation in Europe (OSCE)

The "Córdoba Declaration" of June 2005, calls on its member countries to enact legislation designed to combat antisemitism. [30]

The UN



In 1992, the United Nations declared that antisemitism must be recognized as a danger that must be fought against by legal means. In its official declaration of November 2004, the organizations called on the organization and its members to struggle against racism and included a demand to combat antisemitism.

In August 2005, Israel, the United States, Australia and Canada introduced a resolution designating January 27<sup>th</sup> as the official date commemorating the Holocaust observed by the UN. [31]

Finland



The Finnish Government established a consultative and coordinating commission to deal with the struggle against racism, xenophobia and intolerance. [32]

France



In June 2004, the French Government appointed an independent commission to study the issue of racism and antisemitism in France. One of the commission's recommendations was that a law must be enacted punishing those who publicly compare Israel or Zionism to apartheid and Nazism. Another of the commission's proposals was to separate the law against antisemitism from the Freedom of the Press Law and to enact new legislation that deals specifically with that subject. [33]

Latvia



On 19<sup>th</sup> September 1990, the Latvian Supreme Council [34] came out with an official declaration denouncing antisemitism and the genocide of the Jewish People carried out in occupied Latvia during Hitler's regime. The declaration includes the recognition of the fact that Latvians also participated in this extermination. The declaration ends with the recognition of the State's responsibility in combat antisemitism. [35]

Slovakia



Resolution No. 1027 of 4<sup>th</sup> October 1994 states that a Government commission is to be established charged with the implementation of the program of combating racism, xenophobia, antisemitism and intolerance. This commission collects and organizes information on these subjects and is responsible for promoting media activities against racism. [36]

Arguments against legislation on the subject of denying the Holocaust  
Alongside the clear advantages to legislating against denial of the Holocaust, there are several arguments against such legislation: [37] - The confrontation with freedom of expression – Legislation whose object is to limit expression on the subject of denying the Holocaust could be construed as an illegitimate limitation on freedom of expression. - Problems with the effectiveness of such legislation – It is commonly claimed that in those countries in which there is legislation against denying the Holocaust, it is not very effective. Despite a number of successes in the implementation of this kind of legislation, mainly in France and Germany, the use of this legislation as a basis for obtaining an indictment is still very low. In addition, there is no clear evidence indicating a connection between this kind of legislation and the drop in the number of incidents of Holocaust denial. - Defining the concept is problematic – It is difficult to define the term "denying the

Holocaust" and this in turn causes problems in formulating legislation on the subject. Too broad a definition of the concept is liable to meet up with claims of substantial limitations on Freedom of Speech, while too narrow a definition of the concept is liable to leave too many incidents outside its purview. At the same time, an ambiguous definition could create difficulties in framing the indictments. For example: What does denying the Holocaust include? Is this the denial of it in its entirety, casting doubt on the number of victims, casting doubts on the existence of the gas chambers, etc.? - Apprehension about discussing the subject – Additional problems arising out of legislation aimed at limiting freedom of expression on the subject of denying the Holocaust is that the shaping of legislation of that sort arouses public discussion in connection with the uniqueness of the Holocaust vis-à-vis other horrors throughout human history. In this connection it has been claimed that legislation of that kind might, paradoxically result in a public debate whose result would be diminishing the status of the Holocaust in comparison with other events. - The fear of creating a platform and a resonance for the claims of the Holocaust denier – Putting Holocaust deniers on trial will provide them with a convenient arena where they can present their case while enjoying broad media coverage. Moreover, might be viewed by the public as "martyrs" fighting for the principle of free speech. - The fear of losing – The deniers' acquittal at trial is liable to be construed by the broad public as the historical vindication of their claims and not as merely a legal-technical acquittal. An example of this was the occurred several years ago with regard to the trial of Prof. David Irving in Britain which attracted a great deal of attention because of required a legal decision on the historical subject of the Holocaust.

## Conclusion

Only a few countries have enacted laws dealing directly and specifically with the subject of antisemitism (including denying the Holocaust as a particular case of antisemitism). In most of the countries, the subject of antisemitism is dealt with in the broader general legislation against racism and xenophobia.

Nevertheless, legislation against racism in its present form (given that the language of the law does not include the concept of antisemitism specifically) there are a number of problems: [38]

- The burden of proof and legal procedures according to the Penal Code in most of the countries make getting a conviction in the courts very difficult. - The Penal Code in its present form does not provide a clear definition (if at all) of the concept of racism. - Most of the legal systems in the European states have no clear category for racist crimes.

Of note is the fact that legislating against antisemitism is only one instrument, albeit the most important one, in the struggle against the phenomenon. Monitoring, collection of data and a systematic recording of antisemitic incidents are additional tools alongside legislation. Among the more prominent States engaged in systematic collection of this kind of data are Germany, France, The Netherlands, Sweden and Britain. On the other hand, Austria, Belgium, Greece, Spain, Ireland, Luxembourg, Italy, Portugal and Finland there is no orderly monitoring and registration of incidents and in some cases, there is no monitoring at all. [39]

[1]

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[2] Ibid, p.845

[3] Ibid, p.846

[4] Ibid, p.561

[5]

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[6]

EUMC, Manifestation of Antisemitism in the EU 2002-2003. p.182

[7]

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United Nations, CERD/C/SR.1675. 28 February 2005.

[15] Ibid, p.848

[16] <http://www.axt.org.uk/>

[17]

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[18] Ibid, p.430

[19] Ibid, p.507

[20] Legislating Against Discrimination. An International Survey of Anti-Discrimination Norms. Nina Osin and Dina Porat (edt.). Martinus Nijhoff Publishers, 2005. p148

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[24]

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[36] *ibid*, p.829

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