

Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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(Please use this reference in your reply)

24 September 2024

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 52/9.

In this connection, I wish to offer comments regarding a **legislative proposal to amend the Criminal Code of Cyprus that criminalizes the expression or dissemination false, grossly offensive, obscene, indecent, threatening, or abusive content**, which was introduced recently to the Parliament and is scheduled to be presented to the plenary session this September.

Context

On 3 July 2024, the Legal Committee of the Parliament of Cyprus discussed a proposed amendment to the Criminal code to include new articles 99C, 99D, 99E and 99F, which attribute criminal consequences, including prison sentences, to acts of expression or dissemination of statements or content known to be false or considered “grossly offensive,” “obscene,” “indecent,” “threatening,” or “abusive”. This proposal provides for the conversion of a series of civil offences into criminal offences, entailing possible prison sentences.

The proposal was sent to the Ministry of Justice for consultation and is scheduled to be presented to the plenary session of the Parliament in September 2024.

Content of the initiative

The Bill proposes to introduce some new articles in the Criminal Code that would criminalize the dissemination of fake news, threats, insults and obscene images online.

According to the information received, proposed new article 99C would read: “a person who, for the purpose of causing annoyance and/or harassment and/or undue concern to another person, either makes a telephone communication or sends a message, the content of which he knows to be false or persistently uses a public communications network for the above purpose, is guilty of a criminal offence and liable on conviction to a term of imprisonment not exceeding one (1) year, or to a fine not exceeding three thousand euros (3,000€), or to both”.

Proposed article 99D states: “a person who, through a public network communications, makes a telephone call or sends a message, the content of which is grossly offensive and/or obscene and/or indecent (and/or threatening) in nature, is guilty of a criminal offence and is liable, in the event of conviction, to a term of imprisonment not exceeding two (2) years, or a fine not exceeding three thousand euros (3000€), or both”.

Proposed article 99E indicates: “a person who intentionally sends or posts in public view, through a public communications network, a message or anything else, in writing, illustrations or in any other manner, which is grossly offensive and/or abusive and/or threatening and/or obscene and/or indecent against another person, shall be guilty of an offence and shall be liable on conviction to a term of imprisonment not exceeding three (3) years, or to a fine not exceeding five thousand euros (5000€), or to both”.

Finally, regarding the definition of 'public communications network' and 'telephone communications network', in article 99F, the initiative refers to the meaning assigned to such terms in the Act on Regulation of the Electronic Communications and Postal Services, Act 112(I)/2004, and adds that social networking platforms shall be included under these terms.

Applicable international human rights law standards

I respectfully draw the attention of your Excellency's Government to the relevant provisions of international human rights law enshrined in customary and treaty law, including under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), ratified by Cyprus on 2 April 1969.

Article 19 of the ICCPR guarantees the right to freedom of opinion and the right to freedom of expression, which includes the right “to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media”. In its general comment No. 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including “political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse” (CCPR/C/GC/34, para. 11).

This right applies online as well as offline and applies to all kinds of information and ideas, including those that may criticize, shock, offend or disturb, and irrespective of the truth or falsehood of the content. (CCPR/C/GC/34, paras. 11, 47 and 49; European Court of Human Rights, *Handyside v. the United Kingdom*, application No. 5493/72, judgment, 7 December 1976, para. 49; European Court of Human Rights, *Salov v. Ukraine*, application No. 65518/01, judgment, 6 September 2005, para. 113).

Any restriction on the right to freedom of expression must be compatible with the requirements set out in article 19(3) ICCPR. Under these requirements, restrictions must (i) be provided by law; (ii) pursue one of the legitimate aims for restriction, which are the respect of the rights or reputations of others and the protection of national security or of public order (*ordre public*), or of public health or morals; and (iii) be necessary and proportionate for those objectives. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant, proving “in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat” (CCPR/C/GC/34, para. 35). Further, restrictions “must be the least intrusive instrument amongst those which might achieve their protective function” (parr. 34).

The only other restriction applicable to freedom of expression is if it is required by article 20 ICCPR. Article 20(2) ICCPR prescribes that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. The prohibition has a high threshold as it requires the fulfilment of three components: a) advocacy of hatred; b) advocacy which constitutes incitement and c) incitement likely to result in discrimination, hostility or violence (A/67/357, para. 43).

Additionally, the Committee underlines that “defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression” (para. 47).

On my report on disinformation and freedom of opinion and expression as Special Rapporteur, I stated how “the directness of the causal relationship between the speech and the harm, and the severity and immediacy of the harm, are key considerations in assessing whether the restriction is necessary” and flagged that “the principle of necessity requires the restriction to be appropriate and proportionate to achieve the legitimate aim, using the least restrictive means to protect it”. Along these lines, the report warned that “criminal sanctions constitute serious interference with the freedom of expression and are disproportionate responses in all but the most egregious cases” ([A/HRC/47/25](#), para. 41).

In this report, I outlined that “many of these “false news” laws fail to meet the three-pronged test of legality, necessity and legitimate aims set out in article 19(3)” and they often “do not define with sufficient precision what constitutes false information or what harm they seek to prevent, nor do they require the establishment of a concrete and strong nexus between the act committed and the harm caused”. I also noted that, on many occasions, “the prescribed punishment is excessively harsh and disproportionate, and can have a chilling effect on freedom of expression” (par. 54).

Furthermore, I highlighted that “criminal law should be used only in very exceptional and most egregious circumstances of incitement to violence, hatred or discrimination” and called for criminal libel laws to be repealed. I further called on States to “refrain from restricting freedom of expression online or offline except in accordance with the requirements of articles 19(3) and 20 (2) of the International Covenant on Civil and Political Rights, strictly and narrowly construed” (para. 88).

Compatibility of the proposed amendment of the Criminal Code with international human rights standards

States should ensure that any piece of legislation that may affect the right to freedom of expression strictly adheres to international human rights standards described above and does not go beyond the restrictions allowed by these standards, including article 19(3) and 20(2) of the ICCPR and the respective general comments No. 34 and No. 11 of the Human Rights Committee.

The fundamental issue regarding the compatibility of this proposed amendment with international human rights standards is the criminalization, even with sentences of imprisonment, of certain actions that according to the law in place constitute just civil offences.

Proposed articles 99C, 99D and 99E, attribute criminal consequences, notably including sentences of up to 1, 2 or 3 years of prison respectively to acts of expression or dissemination of statements or content known to be false, or even merely considered “grossly offensive,” “obscene,” “indecent,” “threatening,” or “abusive.” The overbroad and vague language contained in these articles, including “for the purpose of causing annoyance,” “obscene,” or “indecent,” is prone to lead to an excessive restriction of free expression, in addition to presenting a considerable overlap regarding the actions criminalized by the different provisions, which could lead to simultaneous accusations on various of these articles. As I mentioned in my report on disinformation, “vague laws that confer excessive discretion can lead to arbitrary decision-making and are incompatible with article 19(3) of the Covenant” (A/HRC/47/25, parr. 40).

Additionally, the criminal measures proposed in this amendment should only be the last resort and risk to be disproportionate in all but the most egregious cases. The requirements of necessity, proportionality and being “the least intrusive instrument” to achieve its protective function established under international law for any restriction to freedom of expression imply that, in most cases, the employment of criminal measures, notably those entailing deprivation of liberty, should be ruled out when dealing with the dissemination of untrue statements, misinformation or disinformation. I have previously noted that such disproportionate measures “are not only incompatible with international human rights law but also contribute to amplifying misperceptions, fostering fear and entrenching public mistrust of institutions” (A/HRC/47/25, parr. 85).

If passed, the proposed amendment is prone to have a notable chilling effect on freedom of expression across the country and lead to a self-censorship that is contrary to the interests of any robust and healthy democracy.

For the detailed reasons, it can be concluded that the provisions of proposed articles 99C, 99D and 99E that suggest punishing fake news with prison sentences and other criminal consequences are not in line with international human rights standards or good practices in the field of countering disinformation and certainly contradict the conclusions and recommendations, detailed in my recent report on the matter (A/HRC/47/25).

I respectfully invite your Excellency’s Government or any legislator interested in enhancing the regulations oriented towards countering disinformation, misinformation and fake news, to consult my report on disinformation and freedom of expression and to abide by the international human rights standards on the field, with the purpose of passing smart, proportionate and well-tailored regulation. Countering disinformation and the respect for human rights should be seen as incompatible but as complementary and mutually reinforcing objectives to preserve an open and healthy civic and public space.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comments you may have on the above-mentioned observations.

2. Please indicate the steps taken to ensure that, if approved, the proposed amendment of the Penal Code will be in full compliance with international human rights standards, particularly those on freedom of opinion and expression, and Cyprus' international obligations and commitments.
3. Please explain how the Government has ensured sufficient public consultation prior to submitting the amendments to Parliament, and how it intends to take into account international advice and expertise on the matter.
4. Please provide information about the legislative process of the proposed amendment, its expected timeline, along with efforts to ensure substantive civil society consultation and outreach.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

I respectfully request your Excellency's Government to also refer a copy of this communication to the President of the Parliament of Cyprus for her consideration.

Please accept, Excellency, the assurances of my highest consideration.

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression