

# Holocaust denial in criminal law

## Legal frameworks in selected EU Member States

### SUMMARY

The Holocaust ('Shoah' in Hebrew) – the state-sponsored, systematic persecution and mass murder of Jews, whom the Nazi regime and its collaborators sought to annihilate along with other persecuted groups, such as Roma and Sinti – took place in Europe. It is therefore not surprising that a trend to address negationism – i.e. unfounded theories questioning certain historical events – by means of criminal law, originated in Europe. With time, the scope of criminalisation has been extended to cover not only the Shoah, but also other internationally recognised crimes. Such prohibition is, however, not without controversy as it may interfere with fundamental rights, such as freedom of expression and academic freedom.

The Council of Europe has played a major role in addressing Holocaust denial, in particular through the case law of the European Court of Human Rights pertaining to the limits of freedom of expression. The Court has consistently excluded negationism from the protection of the European Convention on Human Rights, pointing to the antisemitic nature of the prohibited statements and qualifying them as abuse of rights.

In the European Union (EU), a 2008 Framework Decision on racism and xenophobia sought to align national legislation on historical denialism. Yet, national laws still differ in many respects, such as the definition of offences and the range of historical events, the memory of which they serve to protect. This Briefing looks at criminal provisions in 17 selected EU Member States: Belgium, Czechia, Germany, Greece, Spain, France, Italy, Lithuania, Luxembourg, Hungary, Netherlands, Austria, Poland, Portugal, Romania, Slovenia and Slovakia. It attempts to identify the main elements of the criminal conduct and of the corresponding punishment.

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## Introduction

A surge in ethnically-motivated crime and the proliferation of hate speech, reaching ever broader audiences in the online sphere, have brought renewed attention to the issue of Holocaust<sup>1</sup> denial – questioning the state-sponsored, systematic persecution and mass murder of Jews, whom the Nazi regime and its collaborators sought to annihilate along with other persecuted groups, such as Roma and Sinti. The most recent [report](#) on antisemitism, published by the Fundamental Rights Agency (FRA) in 2021 and based on data covering the 2010–2020 period, attests to Holocaust denial and trivialisation being a persistent problem, at least in some European Union (EU) Member States. Negationism (also referred to as 'historical denialism'), characterised by systematic and ideological negation of reality and truth, derives from, but is different to, revisionism, i.e. a tendency to review history in the light of new information and knowledge acquired through research in order to reinterpret events and rewrite their narratives. With respect to the Holocaust, in the context of which the term 'negationism' was coined, negationist claims tend to involve not only 'denial' *stricto sensu*, but also distorting the circumstances of the genocide of the Jews by the Nazis in Europe during World War II. They typically include questioning the existence of gas chambers, rejecting the idea that the 'final solution of the Jewish problem' amounted to mass extermination, or depicting the Military Tribunal of Nuremberg as 'victor's justice', motivated by its unreliable and biased findings.<sup>2</sup>

There is no uniform legal definition of 'Holocaust denial'. A non-binding working definition of denial and distortion has been promoted by the [International Holocaust Remembrance Alliance](#) (IHRA), of which the EU is a permanent international partner, alongside [25 EU Member States](#) that have become IHRA member countries. The IHRA [definition](#) covers both denial and distortion, providing a non-exhaustive list of acts amounting to the latter, such as gross minimisation of the number of the victims, in contradiction to reliable sources, and attempts to blame the Jews for their own genocide. The IHRA qualified Holocaust denial as an expression of antisemitism.

Holocaust denial has been denounced by the international community, as illustrated by the [resolution](#) adopted by the United Nations (UN) General Assembly in January 2022, which condemned it without any reservation and urged all UN Member States to do so, in line with earlier UN resolutions of [2005](#) and [2007](#). The resolution provides a definition of Holocaust denial and distortion, based on the IHRA working definition.

It is not an accident that the trend to address Holocaust denial in criminal law originated in Europe, as it is deemed to erode Member States' anti-totalitarian post-war foundations, and thus, arguably, [undermine](#) the collective European memory. At first, in the early 1990s, several EU Member States started adopting anti-denial criminal statutes, as well as remembrance laws, i.e. legislation governing the interpretation of historical events. The obligation to consider denial a criminal offence was then incorporated in international and EU law, and broadened to cover statements concerning other historical events. These rules had in turn to be implemented by individual countries, which led to the emergence of new criminal provisions in some legal systems and the amendments to the existing ones (which often consisted in covering internationally recognised crimes, other than the Holocaust).<sup>3</sup> In the EU, this tendency to either introduce or expand the scope of criminalisation in domestic legal systems, has gained momentum following the adoption of the Council Framework Decision [2008/913/JHA](#) on combating certain forms and expressions of racism and xenophobia by means of criminal law.

The prohibition of Holocaust denial raises fundamental issues regarding the very idea of defending collective memory by law, as well as the limits of freedom of expression and academic freedom. Unsurprisingly, criminal convictions of Holocaust deniers have led to high-profile judgments in both national courts and the European Court of Human Rights, sparking debates that often surpassed the borders of the jurisdiction concerned.

## Holocaust denial and the European Convention on Human Rights

The work of the Council of Europe (CoE) has been instrumental in addressing Holocaust denial, through legal provisions and jurisprudence defining the scope of the right to freedom of expression in the context of negationism. In 2003, the [Additional Protocol](#) to the Council of Europe Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, was adopted. Its Article 6 requires CoE Member States to establish as a criminal offence under their domestic laws, making material that denies, grossly minimises, approves or justifies acts constituting genocide or crimes against humanity available to the public, through a computer system. Moreover, numerous European Court of Human Rights (ECtHR) judgments have addressed the issue of whether statements qualified as denial are protected by the European Convention on Human Rights ([ECHR](#)).

The ECtHR has consistently upheld the exclusion of Holocaust denial from the protection of Article 10 ECHR on the right to freedom of expression. The Court has relied on the 'abuse of rights' clause under [Article 17 ECHR](#), declaring the complaints inadmissible, without examining their merits and balancing freedom of expression against other rights. Holocaust denial has been consistently presumed by the ECtHR to incite to hatred or intolerance, a presumption that allows for such incitement not to be proved in each case. The Court declared that 'in view of the historical context in the states concerned, Holocaust denial, even if dressed up as impartial historical research, must invariably be seen as connoting an antidemocratic ideology and anti-Semitism'. In this respect, the Court underlined the distinction between the 'clearly established historical facts, such as the Holocaust' and 'facts about which there is still an ongoing debate among historians'. It found Holocaust denial particularly dangerous, 'especially in States which have experienced the Nazi horrors, and which may be regarded as having a special moral responsibility to distance themselves from the mass atrocities that they have perpetrated or abetted by, among other things, outlawing their denial'. In the Court's view, deniers 'deflect Article 10 from its real purpose by seeking to use [their] right to freedom of expression for ends which are contrary to the text and spirit of the Convention and which, if admitted, would contribute to the destruction of the rights and freedoms guaranteed by the Convention' (ECtHR judgments in cases [Lehideux and Isorniv France](#), [Garaudyv France](#), [Perinçekv Switzerland](#), and [M'Bala M'Bala v France](#), and [Pastörs v Germany](#)).

The Court's position on Holocaust denial may be unique, and not automatically apply to the protection of the memory of other historical events, as illustrated in the [Perinçek v Switzerland](#) case concerning statements on the massacres and forced deportation of Armenians by the Ottoman Empire.

## EU action on racism and xenophobia

Since the 1980s, the EU has addressed the problem of the [discrimination of racial and ethnic minorities](#) through a set of actions and policies. The perceived necessity of an adequate EU response to particularly heinous manifestations of racism resulted in the adoption, in 2008, of Council Framework Decision [2008/913/JHA](#) on combating certain forms and expressions of racism and xenophobia by means of criminal law. It took seven years to negotiate this act, due to the disparity of national legal systems and traditions, not least with respect to the boundaries of freedom of expression.

The 2008 Framework Decision requires, among other things, that certain forms of hate speech constitute criminal offences across the EU and are punishable by effective, proportionate and dissuasive penalties. Public incitement to violence or hatred directed against a group of persons or a member of such a group, defined by reference to race, colour, religion, descent or national or ethnic origin, is thus punishable. Moreover, taking a broad approach to criminalising negationism, the 2008 Framework Decision requires EU countries to make it an offence to publicly condone, deny or grossly trivialise not only crimes committed by the Nazi regime (as defined in the [Charter of the International Military Tribunal](#) annexed to the 1945 [London Agreement](#)), but also genocide, crimes against humanity and war crimes, as defined in the [Statute of the International Criminal Court](#). The conduct,

however, needs to be likely to incite violence or hatred against such a group or its member. According to the [2014 Commission implementation report](#), the relevant provisions can be transposed without an express reference to the Charter and the Statute if the relevant national legislation provides for definitions of genocide, crimes against humanity and war crimes mirroring the Charter or the Statute.

The 2008 Framework Decision includes optional clauses, making it possible for the Member States to limit the application of their criminal laws by punishing only conduct that is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting. Moreover, the Member State may, at any time, make a statement that it will make punishable the act of denying or grossly trivialising genocide, crimes against humanity and war crimes, only if the crimes in question have been established by a final decision of a national court of this Member State, an international court, or both.

In 2016, the European Commission launched a [High-level Group on Combating Racism, Xenophobia and other forms of intolerance](#). In its 2018 [guidance note](#) on the practical application of the 2008 Framework Decision, the group qualified negationism as a specific manifestation of antisemitism aimed at provoking hatred. The same year, the European Parliament adopted a [resolution](#) on the rise of neo-fascist violence in Europe, whereby it called on the Member States to condemn and counteract all forms of Holocaust denial, including the trivialisation and minimisation of the crimes perpetrated by the Nazis and their collaborators. The Parliament also pointed out that the truth about the Holocaust must not be trivialised in political and media discourses. It reiterated these calls in its 2019 [resolution](#) on the importance of European remembrance for the future of Europe.

In October 2021, the Commission adopted the first-ever [EU Strategy on Combating Antisemitism and Fostering Jewish Life \(2021-2030\)](#). The Strategy provides for a range of actions to address Holocaust denial and distortion, such as promoting the IHRA working definition and developing a handbook on best practices in dealing with these issues. In December 2021, it presented a [proposal](#) to extend the list of 'EU crimes' set out in [Article 83\(1\)](#) of the Treaty on the Functioning of the European Union (TFEU) to cover all forms of hate crime and hate speech. If adopted, this initiative would open a path for the European Parliament and the Council to establish minimum rules concerning the definition of criminal offences and sanctions in this area by means of directives.

## Criminalisation of Holocaust denial across the EU

### Overview

The Member States were supposed to transpose the 2008 Framework Decision by 2010. However, the 2014 [report](#) on its implementation concluded that a number of them had not properly done so, at least as regards some provisions, including Article 1c) and d), concerning denial of the Holocaust and other internationally recognised crimes. Since then, several anti-denial laws have been adopted across the EU. Whereas, in general, the 2008 Framework Decision has broadened the range of prohibited statements (to cover not only the Holocaust, but also other internationally recognised crimes), differences persist between Member States as regards the catalogues of crimes concerned. For example, it is common among Central and Eastern EU Member States to cover, alongside Nazi crimes, those committed by the communist regimes – a tendency absent from legislation in western European countries.<sup>4</sup>

Whilst some Member States rely on their criminal codes to address negationism, others have introduced special legislation for this purpose. A variety of optional elements allowed under the 2008 Framework Decision can be found in national laws, such as the requirement for the conduct to be carried out in a manner likely to disturb public order or to be threatening, abusive or insulting.

## Selected EU Member States

*Information correct as of September 2021.*

### Belgium

Holocaust denial has been illegal in Belgium since 1995. The '[Negationism Law](#)' of 23 March 1995 (amended in 1999) provides for a **prison sentence of eight days to one year** and a fine of between 26 and 5 000 Belgian francs (approximately €124) for anyone who **denies, grossly minimises, attempts to justify, or approves the genocide committed by the German National Socialist regime during World War II.**<sup>5</sup> In the event of a conviction on account of a violation under this law, publication in one or more newspapers of the entire or part of the judgment may be ordered, as well as its public display, at the expense of the convicted person. Chapter VII of the First Book of the [Penal Code](#) and Article 85 of the same code are also applicable to this law. The term genocide in the Negationism Law is meant in the sense of Article 2 of the 1948 [International Convention on the prevention and punishment of the crime of genocide](#). In case of recidivism, the guilty party may also have their civic rights suspended in accordance with Article 33 of the [Penal Code](#). The law was introduced [in response](#) to the rise in antisemitism and racism in Belgian society since the 1980s, as well as in memory and honour of the victims of the Holocaust. The narrow interpretation of the term genocide in the Negationism Law – limited to the Holocaust – led in May 2019 to the inclusion in the 1981 [Anti-Racism Act](#) of a new penal provision on the denial, minimisation, justification or condoning of genocides, crimes against humanity or war crimes recognised by an international court, such as the International Criminal Court in The Hague and the international UN tribunals. The Negationism Law has, however, remained in force, thus occupying a [special place in Belgian penal law](#).

### Czechia

In the context of an increasing dissemination of denial statements linked to ultra-right groups and movements, the Czech Republic made Holocaust denial illegal in 2000, so that such acts could be criminally [prosecuted](#). The [Act No 405/2000 Coll.](#) amended the criminal law ([Act No 140/1961 Coll.](#)) by enlarging the crime of 'support and dissemination of movements oppressing human rights and freedoms' with a new standalone offence. Introduced as Article 261a), it established that anyone who 'publicly denies, questions, approves or seeks to justify Nazi, communist or other genocide or other crimes of Nazis and communists against humanity, shall be punished by imprisonment'. Today, Holocaust denial is incorporated in the new Criminal Code ([Act No 40/2009 Coll.](#)), in Article 405, entitled 'Denial, disparagement, approval and justification of genocide'. It establishes that 'anyone who **publicly denies, disputes, approves or attempts to justify a Nazi, communist or other genocide or Nazi, communist or other crimes against humanity or war crimes or crimes against peace** will be punished by **imprisonment for six months to three years**'. This article has recently been evoked in the context of another Nazi genocide and the renewed efforts to create a memorial to the Roma and Sinti victims, at the location of a former '[gypsy camp](#)' in Lety near Písek. Occupied since the 1970s by a large-capacity pig farm, the government decided to buy and demolish the pig farm and build a memorial in 2017, sparking a public debate with some controversial public reactions. The ensuing prosecutions, however, were later dropped.

### Germany

In Germany, Holocaust denial is prosecuted based on statutes protecting individual rights, such as honour, and statutes protecting public peace. The denial of the Holocaust presents a denial of the dignity and therefore an insult to Jewish residents of the Federal Republic of Germany and any descendants that would have been persecuted under the National Socialist regime, pursuant to [Section 185 of the German Criminal Code](#) (GCC).<sup>6</sup> Simultaneously, this denial presents a disparaging of the memory of the deceased, which constitutes an offence according to Section 189 GCC.<sup>7</sup> [Section 194\(2\) GCC](#) provides relatives with the right to request prosecution. An insult without

physical interference is penalised with a maximum jail sentence of one year or a fine, while the disparaging of the memory of the dead is penalised with a maximum jail sentence of two years or a fine. On 23 October 1994, the German Parliament adopted the law on combatting crime ([Verbrechensbekämpfungsgesetz](#)), which introduced a provision that explicitly penalises Holocaust denial in the GCC. According to [Section 130\(3\) GCC](#), whoever **publicly or in an assembly approves of, denies or downplays an act committed under the rule of National Socialism** of the kind indicated in [Section 6\(1\) of the Code of Crimes against International Law](#) (CCAIL, *Völkerstrafgesetzbuch*) in a manner that is liable to cause a disturbance of the public peace, incurs a penalty of **imprisonment for a term not exceeding five years or a fine**. In practice, courts adopt a [broad interpretation](#) of 'downplay' and 'disturbance of the public peace', whereby a wide range of statements become criminally relevant. The act of approval, denial or downplay must be committed in public or at an assembly, which may exempt, for instance, private family reunions.

## Greece

In Greece, Holocaust denial is a criminal offense under [law 927/1979](#) (as subsequently amended). Article 2 of the law provides that any person that intentionally, orally or through the press, via the internet or by any other means or manner, **publicly condones, trivialises or maliciously denies the commission or seriousness of crimes of genocide, war crimes, crimes against humanity, the Holocaust and the Nazi crimes recognised by decisions of international courts or the Hellenic Parliament**, against groups of individuals, or a member thereof, defined by reference to race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity, gender characteristics, or disability, in a manner that may incite violence or hatred or engage, threaten or insult against groups of individuals or members thereof, is punished with **imprisonment of three months to three years and with a fine of €5 000 to €20 000**. The law places special importance (and therefore is stricter with regards) to public officials or employees. Indeed, if they commit the aforementioned crime during the exercise of the duties assigned to them, the minimum imprisonment is increased to six months and the minimum fine to €10 000. Finally, the law also deals with the cases where one of the aforementioned criminal offenses has been committed by a person, acting for the benefit – or on behalf of – a legal person or a union of persons. The person committing the crime can be acting either individually or as part of an organ of the legal person or the union of persons, and having a power of representation thereof. In this case, by joint decision of the Minister of Justice and the competent minister, apart from referral of the individual to trial, administrative sanctions are imposed upon the legal person, i.e. a fine up to €100 000, as well as exclusion from entitlement to public benefits, grants, aid, subsidies or assignments of public works and services, supply contracts and public procurement, advertising and tenders of the public sector, for up to six months. In case the crime results from a lack of supervision or control by an individual relative over a person under their authority, the exclusion remains the same but the fine range is halved to €5 000 to €50 000. The sanctions are imposed only after summoning the legal person or union of persons to provide explanations and, in case of irrevocable acquittal of the referred person, the relevant decisions imposing them are revoked.

## Spain

Holocaust denial was considered a criminal offence punishable with the penalty of imprisonment from one to two years (Article 607, paragraph 2, of the criminal code), until Constitutional Court judgment [No 235 of 7 November 2007](#) of declared Holocaust denial unconstitutional, based on the distinction between 'denial' and 'justification' for genocide. The Court [considered](#) that the conviction for denial was a violation of the right to freedom of expression and a limitation of scientific freedom, whereas the act of justifying genocide represents a real danger of carrying out discriminatory acts. [Commentators](#) pointed out that the Court distinguished between the rejection or interpretation of a past event, which should be seen as a manifestation of freedom of expression, and thus protected, and the justification of hatred, violence or discrimination, which should be

punished. For these reasons, the specific word 'deny' was removed from the second paragraph of Article 607. Law [No 1](#) of 30 March 2015 profoundly changed the discipline related to Holocaust denial by modifying the provision contained in Article [510.1, lett. c](#)) of the criminal code, which allows for a penalty of imprisonment of **one to four years and a fine of 6 to 12 months** (the amount of which is determined on the basis of the number of days' fine imposed on the convicted person, with a financial sum fixed for each day) in case of '**denial, serious trivialisation, public enhancement of crimes of genocide, crimes against humanity or against persons and property protected in the event of armed conflict**, or endorsement of their perpetrators, where such crimes have been committed against a group or a part thereof, or against a person determined by reason of their membership thereof, when in this way a climate of violence, hostility, hatred or discrimination against them is promoted or encouraged'. Genocide denial has to be accompanied by the conduct of incitement to hatred against certain groups of persons<sup>8</sup> to be punishable. In the preamble of law 1/2015, the legislator pointed out that these changes did not conflict with judgment no 235/2007, which 'imposes an interpretation of the crime of denial of genocide that limits its application to cases in which such conduct constitutes incitement to hatred or hostility against minority'; moreover such conduct must be subject to a new regulation in line with Framework Decision 2008/913/JHA, which must be transposed into our legal system'.

## France

France was the first country to legislate against Holocaust denial in the early 1990s, to combat revisionist views denying the existence of gas chambers and other Nazi crimes. [Law no 90-615](#) of 13 July 1990, seeking to repress acts of racism, antisemitism or xenophobia (the Gaysot Act), criminalised the act of '**contesting**' **crimes against humanity as defined in Article 6** of the [Charter of the International Military Tribunal](#) annexed to the 1945 London agreement. The Gaysot Act introduced a new Article 24 *bis* to the [1881 Freedom of the Press law](#), establishing the same sanctions for denial offences as for offences of incitement to discrimination, hatred or violence on ethnical, racial or religious grounds, already envisaged in Article 24. However, Article 24 *bis* applies without any condition related to the consequences of the criminal conduct or the intention of the perpetrator: it **criminalises the denial as such**. Despite controversy around the Gaysot Act, linked to its interference with the freedom of speech and of historical research, both [ECtHR](#) and the [French Constitutional Council](#) recognised such interference as justified and the law valid. The Gaysot Act also introduced the possibility for any association defending the interests of deported persons registered for more than five years to file a civil suit in relation to the denial offence ([Article 48-2](#) of the Freedom of the Press law). As to the sanctions, Article 24 *bis* permits **up to one year's imprisonment and a fine of up to €45 000**. Moreover, a [2017 Law on equality and citizenship](#) extended the scope of [Article 24 bis](#) to cover the act of **denying, minimising or trivialising other crimes against humanity, crimes of genocide, war crimes and crimes of enslavement**, subject to the same sanctions.

## Italy

Holocaust denial is not a standalone criminal offence in Italian law, but it is considered an **aggravating circumstance** in relation to the crimes of racist propaganda and incitement of acts of discrimination committed on grounds of race, ethnic or national origin or religion, punishable under [Law No 654 of 13 October 1975](#). The latter was modified by [Law No 115 of 16 June 2016](#), which introduced, in paragraph 3 *bis*, the penalty of imprisonment from two to six years if propaganda or incitement were based in whole or in part on the denial of the Shoah or crimes of genocide, crimes against humanity and war crimes. According to Article 5 of [Law 167/2017](#), minimisation of the Shoah as well as its denial, constituted an aggravating circumstance of the crime established in Article 3, paragraph 3 *bis* of Law 654/1975. Following [Legislative Decree No 21/2018](#), the provision relevant to crimes of denialism is now contained in Article [604bis](#) of the Criminal Code. This provision establishes the penalty of **imprisonment of between two and six years** if propaganda or incitement, based in whole or in part on the **denial, serious minimisation or apology of the Shoah**

**or crimes of genocide, crimes against humanity and war crimes, as defined by the Statute of the International Criminal Court**, represent a concrete danger of wider diffusion.

## Lithuania

Holocaust denial is not explicitly mentioned in the Lithuanian [Criminal Code](#). However, the Criminal Code – amended in 2010, to include Article 170<sup>2</sup> to harmonise its provisions with the 2008 Framework Decision – establishes criminal liability for anyone who **publically endorses, denies or grossly minimises** the crimes of genocide, war crimes and crimes against humanity, recognised under the legal acts of Lithuania or the EU, as well as effective judgments passed by Lithuanian or international courts. It also includes specific events of special importance to Lithuania, such as crimes of genocide, war crimes and crimes against humanity (including the [Holocaust](#)), committed by the Soviet Union or Nazi Germany on the territory of the Republic of Lithuania or against its inhabitants. The Criminal Code provides for **imprisonment for a term of up to two years, restriction of freedom, arrest or punishment by a fine**. Quite importantly, to be punishable, the endorsement of such crimes, their denial or gross trivialisation need to be effected in a particular way: publicly and in a manner that is threatening, abusive, insulting or which disturbs public order. This 'public order' requirement, as well as the need for the crimes to have been perpetrated in the territory of Lithuania or against its inhabitants, have led the European Commission to launch infringement proceedings against Lithuania for failure to fully or accurately transpose the 2008 Framework Decision.

## Luxembourg

Article [457\(3\)\(1\)](#) of the Luxembourg Criminal Code was modified by the Law of [13 February 2011](#), specifically to [adapt](#) it to the 2008 Framework Decision, although the act of denial ('*negationnisme*') had been introduced in the criminal code by the Law of 19 July 1997. Originally, the provision set a penalty of imprisonment from six days to six months, which was modified to comply with Article 3(2) of the 2008 Framework Decision, establishing a maximum penalty of at least one to three years. Today the Criminal Code establishes a **maximum prison sentence of two years**. The punishable acts include 'speeches, shouts or threats uttered in public places or meetings ... by writings, prints, drawings, engravings, paintings, emblems, images or any other written, spoken or image medium sold or distributed, offered for sale or exhibited in public places or meetings, ... exposed to the public eye, or by any means of audiovisual communication', when any of these acts aims at **contesting, minimising, justifying or denying the existence of a crime against humanity or a war crime**. These crimes are defined in Article 6 of the [Charter of the International Military Tribunal](#), annexed to the 1945 London Agreement, and should be committed either by members of an organisation declared criminal in application of Article 9 of the Statute or by an individual when this person is convicted of such crimes by a Luxembourg, foreign or international court. The Law of [25 February 2012](#) further modified the Criminal Code, introducing Article 136*bis*, *ter* and *quater*, which concern the crime of genocide, crimes against humanity and war crimes respectively. Those **who dispute, minimise, justify or deny the existence of such crimes**, as recognised by a Luxembourg or international court, shall be subjected to the same punishment prescribed in Article [457-3\(1\)](#).

## Hungary

No provision on Holocaust denial was included in the Hungarian Criminal Code before 2010, due to strong protections for the right of free speech and free expression – regardless of its value and its truthfulness – confirmed by a Hungarian Constitutional Court [judgment](#). Nevertheless, before 2010, hate speech and harming the dignity of a person or group fell under the offence of criminal libel or under the offence of incitement against the community, without further specification. The Criminal Code was amended in 2010. By the enacted paragraph: 'Whoever insults the dignity of a Holocaust victim in public by denying, questioning, or portraying the fact of the Holocaust in insignificant colours is committing a crime' (269/C § of Act IV, 1978 (Criminal Code)). This new provision made Holocaust denial a standalone offence. The provision faced criticism, which culminated in an [application](#) of the [Hungarian Civil Liberty Union \(HCLU\)](#) to the Constitutional Court. The HCLU



requested to ascertain the unconstitutionality of the article on various grounds, including the fact that the article would not comply with the principles of legal certainty and legislative clarity, because of the overly broad concepts. It would also harm the freedom of expression by using a criminal law provision to limit a fundamental right, and would lead to self-censorship and content-based restriction, while, according to the claimant, any expression should be protected regardless of its value and content. The Constitutional Court in its court order ([574/B/2010 court order](#)) rejected the application on procedural grounds, without subsequent review.

In 2013, the Parliament [modified the relevant article](#), giving it a new title: Public denial of the crimes of the National Socialist and communist regimes. The word 'Holocaust' was removed and, the provision, as amended, refers to crimes committed by both totalitarian regimes stating that: 'Anyone who **denies, doubts, portrays in insignificant colours, or seeks to justify the fact of genocide or other acts against humanity committed by the National Socialist or communist regimes in public** shall be punished by **imprisonment for a term up to three years**', ([333. § of Act C., 2012](#) (New Criminal Code)). Between 2013 and 2018, [53](#) prosecutions were based on the statutory definition

## The Netherlands

Even though a proposal to specifically criminalise Holocaust and genocide denial ('negationism') has been debated in the House of Representatives [since 2006](#), it has **not been considered necessary**, due to the availability of case law on criminal provisions concerning hate speech, specifically Articles 137c, 137d and 137e of the penal code ([Wetboek Strafrecht, Sr](#)), in which **Holocaust denial is considered under group insults**. However, some [courts deviate from this jurisprudence](#), stating that the denial of historic facts does not by itself demean a certain group that was affected by those historic events. For this reason, the European Commission has launched an [infringement procedure](#) against the Netherlands for failure to transpose the 2008 Framework Decision. Article 137c Sr states that 'anyone who publicly, verbally or by writing or image, deliberately insults a group of people because of their race, their religion or beliefs, their heterosexual or homosexual orientation or their physical, psychological or mental disability, shall be punished by imprisonment of up to one year or a fine of the third category'. Article 137d Sr concerns incitement of hatred, which is considered applicable in certain cases of Holocaust denial. Article 137e Sr states that 'He who, other than for business reporting purposes: 1° makes public any statement that he knows or should reasonably suspect is offensive to a group of people because of their race, religion or belief, heterosexual or homosexual orientation, physical, psychological or mental disability, or incites hatred of or discrimination against people or acts of violence against the person or property of people because of their race, their religion or beliefs, their gender, their heterosexual or homosexual orientation or their physical, psychological or mental disability; 2° forwards to someone, other than at his request, or distributes or has in stock for publication or distribution, an object in which he knows or should reasonably suspect that such a statement is contained, is punished with imprisonment not exceeding six months or a fine of the third category'. The means of distribution in these articles also includes cases where the Holocaust denial was [expressed online](#). Each article prescribes different punishments for a single offence and for repeat offenders (where the person has made a habit of the offence or has made a profession out of it), or where the offence has been conducted by a group.

## Austria

Austria has prohibited any form of approval, denial or trivialisation of the Holocaust or other crimes of the Nazi regime since 1947 – immediately after World War II – under the '[Verbotsgesetz](#)' (National Socialism Prohibition Act), also referred to as Verbotsg. The [law](#), unlike other provisions of Austrian criminal law including the Penal Code, has constitutional status. It was adopted by the provisional government on 8 May 1945, at the very end of World War II in Europe and then amended in 1947 and renamed the [Prohibition Act 1947](#). Whilst it did not clearly state that Holocaust denial was covered as a Nazi activity, Austrian courts interpreted the law in this way.<sup>9</sup> The law was amended in 1992, to explicitly cover Holocaust denial. According to § 3h of the [Prohibition Act](#), 'anyone who

**denies, approves or seeks to justify the National Socialist genocide or other National Socialist crimes against humanity** in a printed work, on the radio, or in another medium or publicly in a way that makes it accessible to many people shall be punished'. Point § 3g of the National Socialism Prohibition Act provides for **imprisonment between one and ten years**, which may increase to 20 years in most severe cases.

## Poland

With the Auschwitz concentration and extermination camps located in the Polish territories occupied by the Third Reich, the Holocaust has a particular resonance for the Poles. Holocaust denial (in Poland, commonly referred to as the 'Auschwitz lie') is criminalised by legal provisions outside the criminal code, namely by the [Act](#) of 18 December 1998 on the Institute of National Remembrance. Under Article 55 of this law, **denying – publicly and contrary to facts** – the crimes enumerated in its Article 1 is an offence subject to **a fine or imprisonment of up to three years**, with the judgment made known publicly. Beyond Nazi crimes, the crimes in question include communist crimes and other offences falling under the categories of crimes against peace, crimes against humanity and war crimes, a catalogue recently extended to crimes perpetrated by members of Ukrainian formations collaborating with the Third Reich. In Poland, the legal debate on Holocaust denial mainly concerns the conduct to be criminalised, rather than the fact of criminalisation. In the context of the above law, debate has focused on the expression 'to deny crimes', used in Article 55. Narrowly interpreted, it would cover the denial of the existence of the camps or of the mass extermination of Jews. A broader interpretation would extend its scope to a major distortion of facts, so as to consider illegal the use of expressions, such as 'Polish camps', wrongly attributing the crimes to an actor other than Nazi Germany. Statements condoning or justifying the Holocaust are not covered by the provision in question.<sup>10</sup> Addressing the repetitive use by foreign media of the term 'Polish camps' was in fact the stated purpose of a controversial January 2018 [amendment](#) to the Act. The law criminalised claims that the Polish Nation or the Republic of Poland were responsible or co-responsible for Nazi crimes committed by the Third Reich, with individuals making such claims liable to a fine or imprisonment for up to three years. This sparked a major public debate, both in Poland and abroad, meeting with widespread international criticism and affecting diplomatic relations with Israel, the United States and Ukraine. It was seen by many as an attempt to silence the accounts of Polish collaboration with the Nazis, violating the freedom of speech and academic inquiry: while artistic and academic activities were expressly excluded from its scope, the two notions are open to interpretation.<sup>11</sup> The new criminal provisions were superseded, as early as June 2018, by the subsequent [amendment](#) to the law.

## Portugal

Holocaust denial is not expressly mentioned in the Portuguese Criminal Code. However, its [Article 240\(2\)](#) punishes those who, in public and by any means, **make an apology, deny or grossly trivialise crimes of genocide, war or against peace and humanity** resulting in (a) violence, or (b) defamation, or (c) threat, or (d) incite violence and hatred against a person or group of persons because of their race, colour, ethnic or national origin, ancestry, religion, sex, sexual orientation, gender identity or physical or mental disability, with **imprisonment** of between **six months and five years**. In 2012, the [Supreme Court](#) pointed out that there are two elements to consider when combating denialism: the freedom of ideas and opinions, and the need to value 'the fundamental legal good that is at stake, protecting it with the use of criminalisation'.<sup>12</sup> According to the Court, the mere dissemination of ideas concerning the existence or non-existence of a given fact without a value judgment cannot be considered a crime but rather the result of an intellectual elaboration 'perhaps unjustified or pathetic, but permissible'. The Court distinguished between mere denial and denial aimed at supporting the crime of genocide or expressing a positive judgement of appreciation about it, for instance when a genocide is presented as a result of some alleged provocation by the victims.

## Romania

In March 2002, [Emergency Ordinance No 31](#) clarified that the 'contestation or denial of the Holocaust or its effects in public is punishable by imprisonment from six months to five years and the loss of certain rights' (Article 6). The act also incriminates (a) disseminating, selling, producing etc., fascist, racist or xenophobic symbols, and their use in public, unless in the interest of art, science, research or education; (b) promoting the cult of persons guilty of crimes against peace and humanity or of promoting fascist, racist or xenophobic ideology in public. The act also prohibits public authorities from placing or maintaining in public spaces (except museums) statues or commemorative plates related to persons guilty of crimes against humanity or peace or from naming any public place after them. The Romanian Parliament approved the ordinance with modifications by [Law 107 of 27 April 2006](#). Notably, the law defined the Holocaust ('the systematic persecution supported by the state and the annihilation of European Jews by Nazi Germany and its allies and collaborators during 1933-1945'), and mentioned the deportation and annihilation of Romani people during the Second World War. [Law 217 of 23 July 2015](#) changed the Holocaust definition: 'the systematic persecution and annihilation of Jews and Romani people, supported by the authorities and institutions of the Romanian state in the territories administered between 1940 and 1944'. Article 6 now provides that: '**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**'. The same applies as regards genocide, crimes against humanity and war crimes. If a computer system is used in the above crime, a prison sentence of six months to five years applies. Some organisations deplore the lack of application of the law: e.g. in 2018, out of 42 complaints regarding Holocaust denial or disseminating prohibited symbols, prosecutors solved only 8 cases, including only one case sent to trial. The first [conviction](#) for Holocaust denial occurred in February 2021, when a former intelligence officer received a suspended sentence of one year of [prison](#).

## Slovenia

[Article 297 of the Criminal Code](#) introduced the criminal offense of public incitement to hatred, violence or intolerance, based on any personal circumstance. Dissemination of racist ideas or **denial, diminishing, approval, justifying, ridiculing or defending of the Holocaust or other crimes against humanity** are also punishable. The purpose of the criminalisation is the protection of public order and peace. Inciting hatred alone, however, is not enough. One of two additional conditions must be met for the conduct to be considered a criminal offense according to the Criminal Code. It must endanger public order and peace and insults, verbal abuse or threats must be used. According to [experts](#), the two conditions can be interpreted as follows: endangering public order and peace occurs when disturbances of public order in the form of various misdemeanours, criminal offenses or other unlawful conduct have actually occurred, or there was a serious and imminent danger that such disturbances would occur (they did not occur merely by chance or due to the timely intervention of the competent authorities). As regards the use of insults, verbal abuse or threats, in addition to inciting hatred and intolerance, the statements at issue must comply with the statutory elements of one or more criminal offenses against honour and reputation or the criminal offense of threat, which significantly exceeds the usual delicts of insult in terms of the number of persons affected, the extent, gravity, rudeness and aggression. According to Article 297, such offenses are punishable by **imprisonment for up to two years**; if the crime also includes coercion, ill-treatment, endangering security, defacing symbols or material damage, with **imprisonment of up to three years**. If they are committed by an official who has abused his position, the offender may be punished **by imprisonment for up to five years**. In [judgment 65803/2012](#), the Slovenian Supreme Court ruled that it is not required that the 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 endangering or disturbing public order and peace.

## Slovakia

Holocaust denial, as well as fascist and communist ideological propaganda have been a criminal offense since 2001 (see the 2005 amendment to the Slovak [Criminal Code No 485/2001 Coll.](#)). According to § 422(d) of the Criminal Code, 'whoever **publicly denies, questions, approves or seeks 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 which seeks to suppress fundamental rights and freedoms of persons by violence, threat or other serious harm**, shall be punished by **imprisonment for a term of six months to three years**'. The Slovak anti-Nazi and Holocaust denial law was not always strictly interpreted in the past. In 2016, representative for the far-right 'People's Party – Our Slovakia' (ĽSNS) Milan Mazurek [was not prosecuted](#) for denying the Holocaust on a social network. The then Justice Minister Lucia Žitňanská (centre-right) said that 'this is a phase when it's no longer a question of legislation, but about how the police, prosecutors and ultimately the courts are able to operate with this legislation'. 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'. 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 ĽSNS. In October 2020, Marian Kotleba [was found guilty](#) of promoting a movement and ideology that aims to suppress civil rights and democracy. The case is still pending, as Kotleba [appealed](#) to the Supreme Court of Slovakia.

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## ENDNOTES

- <sup>1</sup> For the definition of the term 'Holocaust', see [Recommendations for teaching and learning about the Holocaust](#), International Holocaust Remembrance Alliance (IHRA), 2019, pp 7–8.
- <sup>2</sup> E. Fronza, [Memory and punishment: Historical denialism, free speech and the limits of criminal law](#), International Criminal Justice Series, T.M.C. Asser Press, 2018, pp. 7–8.
- <sup>3</sup> E. Fronza, p. 12.
- <sup>4</sup> S. van der Poel, [Memory crisis: The Shoah within a collective European memory](#), *Journal of European Studies*, August 2019.
- <sup>5</sup> Prosecution is carried out by the Belgian Centre for Equal Opportunities and Opposition to Racism, renamed [Unia](#) in 2016, 'as well as any association that at the time of the facts had a legal personality for at least five years, and which, on the grounds of its statutes, has the objective of defending moral interests and the honour of the resistance or the deported'.
- <sup>6</sup> Decision in Case 1 BvR 23/94, Federal Constitutional Court, 13 April 1994; Judgment in Case 1 StR 179/93, Federal Supreme Court, 15 March 1994; Judgment in Case VI ZR 140/78, Federal Supreme Court, 18 September 1979; Decision in Case 1 StR 387/57, Federal Supreme Court, 28 February 1958; critically J. Eisele and U. Schittenhelm, '§ 185 StGB', in A. Schönke and H. Schröder, *Strafgesetzbuch Kommentar*, 2019, para. 3.
- <sup>7</sup> Judgment in Case 1 StR 179/93, Federal Supreme Court, 15 March 1994.
- <sup>8</sup> Article [607](#) of the Penal Code, modified and indexed as 'Crimes against genocides', establishes the penalty against those who follow the purpose of totally or partially destroying a national, ethnic, racial, or religious group or a group determined by the disability of its members.
- <sup>9</sup> J. Lechholz-Zey, [The laws banning holocaust denial](#), *GPN Original*, Issue 9, 2012.
- <sup>10</sup> K. Palka, [Wpływ polityki na prawo karne na przykładzie prób penalizacji kłamstwa oświęcimskiego](#), *Acta Erasmiana*, 2019, pp. 202–205; See also K. Palka, [Co to znaczy 'zaprzeczać zbrodniom'? Uwagi na tle wykładni językowej w prawie polskim i zagranicznym w perspektywie prawoporównawczej](#), *Konteksty Społeczne*, volume 8, no 1(15), 2020.
- <sup>11</sup> A. Kichelewski, [\(Re\)faire l'histoire par la loi ? Débats autour de la «loi sur la Shoah» en Pologne, janvier-juin 2018](#), *Revue d'histoire politique* 2020/3, pp 203–210.
- <sup>12</sup> In Portuguese: 'ou na valorização do bem jurídico fundamental que está em causa, tutelando-o com o recurso á criminalização'.

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## Annex 1 – Summary of provisions in the selected Member States

Country	Legal basis	Key elements of the offence	Length of punishment
Belgium	Negationism Law of 23 March 1995	Standalone offence; Specific reference to denial, gross minimisation, attempts of justification, or approval of the genocide committed by the German National Socialist regime during the Second World War	8 days to 1 year and a fine
Czechia	Art. 405 Act No 40/2009 Coll. c.c.	Standalone offence; Public denial, questioning, approving and justifying Nazi, communist or other genocide or Nazi, communist or other crimes against humanity or war crimes or crimes against peace	6 months to 3 years
Germany	Sections 185, 189 and 130(3) c.c.	Sec. 185 requires (i) the intentional (ii) proclamation of (iii) defiance or disregard for an individual or members of a collective and (iv) the comprehension thereof by a recipient Sec. 189 requires the (i) intentional (ii) defamation or a particularly serious insult of the memory of a deceased and (iii) the comprehension thereof by a recipient Sec. 130(3) requires the (i) intentional and (ii) public or intra-assembly (iii) approval, denial or downplay of an (iv) act committed under the rule of National Socialism (v) of the kind indicated in section Section 6(1) of the Code of Crimes against International Law (vi) in a manner that is suitable for causing a disturbance of the public peace	Sec 189: an insult without physical interference is penalised with a maximum prison sentence of 1 year or a fine Sec. 189: maximum prison sentence of two years or a fine Sec. 130(3): maximum prison sentence of five years or a fine
Greece	Articles 2, 3 and 4 of Law 927/1979 (as amended by laws 4285/2014 and 4491/2017)	Standalone offence; Specific reference to genocide, war crimes, crimes against humanity, the Holocaust and the Nazi crimes recognized by decisions of international courts or the Hellenic Parliament	3 months to 3 years and a fine
Spain	Art. 510(1)(c) c.c.	No specific mention of Holocaust denial but reference, under crimes of genocides, to diffusion by any means of ideas or doctrines that deny, trivialise or justify the crimes of genocides	1 to 4 years
France	Law of 29 July 1881 on the freedom of press,	Standalone offence;	1 year

	Art. 24 <i>bis</i> as created by 1990 Gayssot Act	No direct reference to the Holocaust, but reference to crimes against humanity as defined by Article 6 of Charter of International Military Tribunal	
Italy	Law 654/1975; Art. 604 <i>bis</i> c.c.	Aggravating circumstance; Specific mention of Shoah denial	2 to 6 years
Lithuania	Art. 170(2) c.c.	No specific reference to the Holocaust, but to public condoning, denial or gross trivialisation of the crimes of genocide or other crimes against humanity or war crimes recognised under legal acts of Lithuania or the EU, or an effective judgement passed by Lithuanian or international courts. It also includes such crimes committed by the Soviet Union or Nazi Germany in the territory of the Republic of Lithuania or against the inhabitants of Lithuania.	Up to 2 years
Luxembourg	Art. 457(3) c.c	No specific reference to the Holocaust but contesting, minimising, justifying and denying the existence of genocide, crimes against humanity or a war crimes	8 days to 2 years and a fine
Hungary	333. § of the Act C. 2012	The word 'Holocaust' removed from the relevant provision when amended; The prohibited conduct: publicly denying, putting in doubt, portraying in insignificant colours, or justifying the fact of genocide or other acts against humanity committed by the National Socialist or communist regimes;	Up to 3 years
Netherlands	Articles 137c, 137d and 137e c.c.	No specific reference to the Holocaust, but Holocaust denial is treated under the crimes of group insult (Article 137c), incitement of hatred (Article 137d) and distribution of such material (Article 137e) where these discriminated on the basis of race, religion or belief, heterosexual orientation, physical, psychological or mental disability	6 months to 2 years or a fine; 1 to 4 years or a fine if it is a repeat offence or if the person has made a habit or profession out of the conduct or it was done by two or more persons in association
Austria	§ 3(g) and § 3(h) Prohibition Act 1947	Denying, approving or seeking to justify the National Socialist genocide or other National Socialist crimes against humanity in a printed work, on	1 to 10 years; in severe cases up to 20 years

		the radio, in another medium or publicly in a way that makes it accessible to many people	
Poland	Article 55 of the Act on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation	No specific reference to the Holocaust; The criminalised conduct is the denial of crimes enumerated in Article 1 of the Act, including Nazi crimes.	Up to 3 years
Portugal	Art. 240(2) c.c.	No specific reference to the Holocaust; Making an apology, denying or grossly trivialising crimes of genocide, war or against peace	6 months to 5 years
Romania	Emergency Ordinance no 31/2002, approved by Law 107/2006 as modified by Law 217/2015	Standalone offence; Current version of the law refers to denial, contestation, approval, justification or minimisation in an obvious way through any means in public of the Holocaust. The law also criminalises: a) promoting fascist, racist or xenophobic symbols; b) the cult of persons guilty of genocide or war crimes; c) setting up fascist, racist or xenophobic organisations.	6 months to 3 years or a fine; 6 months to 5 years if a computer system is used
Slovenia	Art. 297 c.c.	Reference to denial, diminishing the significance of, approval, disregard, making fun of, or advocating genocide, the Holocaust, crimes against humanity, war crime, aggression, or other criminal offences against humanity	2 to 5 years
Slovakia	§ 422(d) c.c.	Reference to public denial, questioning, approval or justification of the holocaust, the crimes of a regime based on fascist or communist ideology, or the crimes of another similar movement seeking to suppress fundamental rights and freedoms of persons by violence, threat or other serious harm.	6 months to 3 years

Source: Compiled by the authors, EPRS.

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