

ESTONIA				
QUESTION	ANSWER	SOURCE OF LAW\ INFORMATION	ADDITIONAL INFORMATION/DEFINITIONS	COURT RULINGS
<i>Where is online hate speech established as a criminal offence?</i>	According to the Penal Code, activities which publicly incite to hatred, violence or discrimination are prohibited.	Article 151 of the Penal Code of 2002, as amended up to 2015 ^A		
<i>What is the punishment for online hate speech?</i>	The punishment is a fine of up to three hundred fine units or a detention.	Article 151 of the Penal Code of 2002, as amended up to 2015 ^A	"Fine unit"- according to Article 47 of the Penal Code a fine unit is a base amount for a fine and is equal to four euros.	
<i>Is there a law-based obligation for intermediaries to monitor?</i>	Service Providers that transmit information and provide access to public data communications network (ISP), temporary store information in cache memory and provide information storage services (Hosting service providers) have no obligation to monitor or actively seek fact or circumstances indicating illegal activity. However, they are required to promptly inform the competent supervisory authorities of alleged illegal activities.	Article 11 of the Information Society Services Act of 2004 ^B	According to the Estonian Newspaper Association's rules of online comments, news pages may impose preventive methods such as word filters and blocking of offenders' IP addresses and identification via reliable methods. (Source: International Legal Research Group on Online Hate Speech, Final Report.)	In <i>Delfi AS v. Estonia</i> , the European Court of Human Rights established a new paradigm for participatory online media. In the judgment, the Court required online news platforms to filter or monitor certain kind of users' comments for content of an extreme nature in order to prevent possible liability. Publishing news articles and making reader comments on them public was part of Delfi's professional activities and its advertising revenue depended on the number of readers and comments. Since it had been Delfi's decision to publish non-registered users' comments they Delfi had in effect assumed a certain responsibility for such comments. ²⁹ Therefore intermediaries could be held responsible for third-party content

²⁹ ECHR (Grand Chamber), 16 June 2015, 64569/09, *Delfi AS v. Estonia*. [http://hudoc.echr.coe.int/eng/?i=001-155105#{ "itemid":\["001-155105"\]](http://hudoc.echr.coe.int/eng/?i=001-155105#{).

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				published, even if they delete the content upon receiving notification.
<i>Who is responsible to remove hate speech?</i>	An Internet Service Provider must remove or block illegal internet content if: It has knowledge either of the removal or blocking of content at the initial source, or of an order by a court or the police supervisory authority requiring suppression of the content; or, if the ISP becomes aware of the facts of the unlawful nature of the activity or content. If the ISP or the Service Provider do not remove the content, the official oversight authority may report this to police. The police may then take measures to identify the offender and seize the server to prevent access to the illegal content.	Information Society Services Act ^B	"Supervisory authority" in this case would be the Technical Surveillance Authority. "Service Provider" - a party that has an access to the server.	
<i>What are the time frames for removing hate speech?</i>	Service Providers have to "expeditiously" remove or disable access to the information.	Articles 9 and 10 of the Information Society Services Act ^B		
<i>Is the intermediary liable for hate speech posted on website?</i>	The internet service provider is not liable for the automatic, intermediate and temporary storage of information under certain conditions, including that it did not modify the information, and that it acted expeditiously to remove or to disable access to the information once being made aware of its	Articles 8, 9 and 10 of the Information Society Services Act ^B	Act of transmission and provision of access – including the automatic, intermediate and transient storage of the information in question. (Information Society Services Act, Art. 8)	In <i>Delfi AS v. Estonia</i> , the European Court of Human Rights held that a media publisher running an internet news portal could, under certain circumstances, be deemed liable under domestic law for unlawful comments posted on the portal, and that a claim may be made against the company or the

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	<p>illegality.</p> <p>The hosting service provider is not liable for the information stored under certain conditions, including that it did not know of the contents and was not aware of the illegal activity or information, and that it acted expeditiously to remove or disable access to the information.</p>			commentator. (ECHR (Grand Chamber), 16 June 2015, 64569/09, <i>Delfi AS v. Estonia.</i>)
<p><i>When is the offence considered to have been committed within the territory\ under the country's jurisdiction?</i></p>	<p>The Penal Code is applicable on offenses committed on the territory of Estonia, against an Estonian citizen, and regardless of the territory and citizenship if the act is punishable according to international obligations to which Estonia is bound.</p>	<p>Article 6, 7 and 8 of the Penal Code^A</p>		
<p><i>Is there an obligation to disclose data of hate speech offenders?</i></p>	<p>Internet service providers and hosting service providers are required to provide information to the authorities enabling the identification of their service recipients with storage agreements.</p>	<p>Article 11 of the Information Society Services Act^B</p>	<p>"Single request" - a request for the personal data of the recipient of services and for the fact of transmission of transmitted information, and the duration, method and format of transmitted information of the recipient of services in connection with a particular electronic mail, a particular electronic commentary or another communication session related to the transmission of a single message.</p>	

ESTONIA APPENDIX

A. Penal Code of 2002, as Amended up to 2015³⁰

Article 6 - Territorial applicability of penal law

“(1) The penal law of Estonia applies to acts committed within the territory of Estonia.

(2) The penal law of Estonia applies to acts committed on board of or against ships or aircraft registered in Estonia, regardless of the location of the ship or aircraft at the time of commission of the offence or the penal law of the country where the offence is committed.”

Article 7 - Applicability of penal law by reason of person concerned

“(1) The penal law of Estonia applies to an act committed outside the territory of Estonia if such act constitutes a criminal offence pursuant to the penal law of Estonia and is punishable at the place of commission of the act, or if no penal power is applicable at the place of commission of the act and if:

1) the act is committed against a citizen of Estonia or a legal person registered in Estonia; or

2) the offender is a citizen of Estonia at the time of commission of the act or becomes a citizen of Estonia after the commission of the act, or if the offender is an alien who has been detained in Estonia and is not extradited.

(2) The penal law of Estonia applies:

1) to an act committed outside the territory of Estonia if such act constitutes a criminal offence pursuant to the penal law of Estonia and the offender is a member of the Defence Forces performing his or her duties;

2) to grant, acceptance or arranging receipt of gratuities or bribes or influence peddling committed outside the territory of Estonia if such act was committed by an Estonian citizen, Estonian official or a legal person registered in Estonia, or an alien who has been detained in Estonia and who is not extradited, or such person participated therein. [RT I, 05.07.2013, 2 - entry into force 15.07.2013]”

Article 8 - Applicability of penal law to acts against internationally protected legal rights

“Regardless of the law of the place of commission of an act, the penal law of Estonia shall apply to any acts committed outside the territory of Estonia if punishability of the act arises from an international obligations binding on Estonia. [RT I, 05.07.2013, 2 - entry into force 15.07.2013]”

Article 151 – Incitement of hatred

“1. Activities which publicly incite to hatred, violence or discrimination on the basis of nationality, race, colour, sex, language, origin, religion, sexual orientation, political opinion, or financial or social status if this results in danger to the life, health or property of a person is punishable by a fine of up to three hundred fine units or by detention.

2. The same act, if:

1) it causes the death of a person or results in damage to health or other serious consequences; or

2) committed by a person who has previously been punished by such act; or

3) [repealed - RT I, 23.12.2014, 14 - entry into force 01.01.2015]

is punishable by a pecuniary punishment or up to three years' imprisonment.

3. An act provided for in subsection (1) of this section, if committed by a legal person, is punishable by a fine of up to 3200 euros.

4. An act provided for in subsection (2) of this section, if committed by a legal person,

is punishable by a pecuniary punishment.”

B. Information Society Services Act of 2004³¹

³⁰ Penal Code, passed 06 June 2001, RT I 2001, 61, 364, entered into force 01 September 2002, as amended up to 01.01.2015. Available at: <https://www.riigiteataja.ee/en/eli/522012015002/consolide>

³¹ Information Society Services Act, passed on 14.04.2004, entered into force on 01.05.2004, as amended up to 16.01.2011. English version available at <https://www.riigiteataja.ee/en/eli/50412013008/consolide>.

Article 8 - Restricted liability upon mere transmission of information and provision of access to public data communications network

"(1) Where a service is provided that consists of the mere transmission in a public data communication network of information provided by a recipient of the service, or the provision of access to a public data communication network, the service provider is not liable for the information transmitted, on condition that the provider:

- 1) does not initiate the transmission;
- 2) does not select the receiver of the transmission;
- 3) does not select or modify the information contained in the transmission.

(2) The acts of transmission and of provision of access in the meaning of subsection (1) of this section include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the public data communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission."

Article 9 - Restricted liability upon temporary storage of information in cache memory

"Where a service is provided that consists of the transmission in a public data communication network of information provided by a recipient of the service, the service provider is not liable for the automatic, intermediate and temporary storage of that information, if the method of transmission concerned requires caching due to technical reasons and the caching is performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:

- 1) the provider does not modify the information;
- 2) the provider complies with conditions on access to the information;
- 3) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used in the industry;
- 4) the provider does not interfere with the lawful use of technology, widely recognised and used by the industry, to obtain data on the use of the information;
- 5) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court, the police or a state supervisory authority has ordered such removal."

Article 10 - Restricted liability upon provision of information storage service

"(1) Where a service is provided that consists of the storage of information provided by a recipient of the service, the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:

- 1) the provider does not have actual knowledge of the contents of the information and, as regards claims for the compensation of damage, is not aware of facts or circumstances from which the illegal activity or information is apparent;
- 2) the provider, upon obtaining knowledge or awareness of the facts specified in clause 1) of this section, acts expeditiously to remove or to disable access to the information.

(2) Subsection (1) of this section shall not apply when the recipient of the service is acting under the authority or the control of the provider."

Article 11 - No obligation to monitor

"(1) A service provider specified in §§ 8–10 of this Act is not obligated to monitor information upon the mere transmission thereof or provision of access thereto, temporary storage thereof in cache memory or storage thereof at the request of the recipient of the service, nor is the service provider obligated to actively seek facts or circumstances indicating illegal activity.

(2) (...); (3) Service providers are required to promptly inform the competent supervisory authorities of alleged illegal activities undertaken or information provided by recipients of their services specified in articles 8–10 of this Act, and to communicate to the competent authorities information enabling the identification of recipients of their service with whom they have storage agreements.

(4) In order to establish the truth, service providers shall submit information at their disposal concerning the recipients of their information storage services to the Prosecutor's Office and investigative body, on the bases and pursuant to the procedure prescribed in the Code of Criminal Procedure, and to a security authority and a surveillance agency, on the bases and pursuant to the procedure provided by law, within the term specified thereby. (5) In order to establish the truth, service providers shall provide the court, on the basis of single written requests thereof and on the bases and pursuant to the procedure prescribed in the Code of Civil Procedure, with information at their disposal on recipients of their information storage services within the term specified by the court. For the purposes of this section, single request is a request for the personal data of the recipient of services and for the fact of transmission of transmitted information, and the duration, method and format of transmitted information of the recipient of services in connection with a particular electronic mail, a particular electronic commentary or another communication session related to the transmission of a single message."

Article 12 - State supervisory authority

"Supervision over compliance with the requirements provided for in this Act for information that must be provided concerning service providers shall be exercised by the Technical Surveillance Authority".