

Criminalising the denial of serious international crimes in Finland

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A significant change or mere symbolism?

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Abstract

In Finland, the government has proposed the addition of a new Section 10b to Chapter 11 of the Criminal Code, under which a person would be criminally liable if they publicly deny, condone or grossly trivialise genocide, crimes against humanity, the crime of aggression, or war crimes as established by a final judgment of an international court, in a manner conducive to inciting violence or hatred against a group protected under the provision on agitation against a population group, and conducive to disturbing public order. Whereas Sweden introduced a similar provision criminalising the denial of a serious international crime in 2024, the criminal codes of Denmark and Norway do not contain such a provision.

In this article, I examine the extent to which the legislative reform will change the scope of punishable hate speech in Finland. I approach my research question by analysing the current legal framework through preparatory legislative materials and especially case law concerning agitation against a population group. In this way, I examine what kinds of acts related to the denial of serious international crimes have already been punishable under the existing provision on agitation against a population group. I then analyse, based on the government proposal, which acts will become punishable under the new provision.

The denial, justification or gross trivialisation of international crimes appeared only rarely in the research material. Such statements were often embedded in broader expressions targeting Jews, immigrants, or people of colour, making it difficult to assess whether the denial itself would have been punishable under previous legislation. However, since the denial, condoning or gross trivialisation of a serious international crime must be carried out in a manner conducive to inciting violence or hatred and conducive to disturbing public order, denial alone will not be punishable under the new provision either.

The new offence has been narrowly defined to protect freedom

of expression and to uphold the principle of legality. While this approach avoids penalising, for example, scientific discussion of historical events, it also sets a high threshold for criminal liability. As a result, acts that will be punishable under the new provision have, as a general rule, already fallen within the scope of criminal liability under the previously applicable law. In the future, such acts would merely be prosecuted under a different offence title. Thus, the significance of the new criminalisation lies primarily in its symbolic value and in providing greater legal clarity.

Sammandrag

I Finland har regeringen föreslagit att ett nytt 10 b § ska fogas till 11 kap. i strafflagen. Enligt förslaget ska den som på ett sätt som är ägnat att uppmåna till våld eller hat mot en i 10 § avsedd grupp eller en medlem av gruppen och att störa den allmänna ordningen offentligen förnekar, ursäktar eller allvarligt förringar ett sådant folkmord, ett sådant brott mot mänskligheten, ett sådant aggressionsbrott eller en sådan krigsförbrytelse som fastställts genom ett lagakraftvunnet avgörande av en erkänd internationell domstol, dömas för förnekelse av allvarligt internationellt brott till böter eller fängelse i högst två år. Medan en bestämmelse som kriminaliserar förnekelse av allvarliga internationella brott trädde i kraft i Sverige år 2024, saknas motsvarande bestämmelser i Danmarks och Norges strafflagar.

I denna artikel undersöker jag i vilken utsträckning den föreslagna lagändringen kommer att påverka omfattningen av straffbar hatretorik i Finland. Forskningsfrågan behandlas genom en analys av den gällande rättsliga regleringen med stöd av förarbeten och särskilt rättspraxis rörande hets mot folkgrupp. På detta sätt analyserar jag vilka gärningar som hänför sig till förnekelse av allvarliga internationella brott som redan har varit straffbara enligt den nuvarande bestämmelsen om hets mot folkgrupp. Därefter analyserar jag, med utgångspunkt i regeringens proposition, vilka gärningar som kommer att omfattas av straffansvar enligt den nya bestämmelsen.

Förnekelse, ursäktande eller allvarligt förringande av internationella brott förekom endast sällan i forskningsmaterialet. Sådana uttalanden var ofta inbäddade i bredare uttryck riktade mot judar, invandrare eller personer med utländsk bakgrund, vilket försvårade bedömningen av om själva förnekelsen hade varit straffbar enligt tidigare lagstiftning. Eftersom förnekelse, ursäktande eller allvarligt förringande av ett allvarligt internationellt brott enligt förslaget måste ske på ett sätt som är ägnat att uppmåna till våld eller hat och att störa den allmänna ordningen, kommer inte heller förnekelse i sig att vara straffbar enligt den nya bestämmelsen.

Den nya straffbestämmelsen har utformats snävt i syfte att skydda yttrandefriheten och upprätthålla legalitetsprincipen. Medan denna

lösning undviker att kriminalisera exempelvis vetenskaplig diskussion om historiska händelser, innebär det också en hög tröskel för straffansvar. Följaktligen har gärningar som kommer att vara straffbara enligt den nya bestämmelsen i regel redan omfattats av straffansvar enligt tidigare gällande rätt. I framtiden kommer dessa gärningar endast att åtalas under en annan brottsrubricering. Den nya kriminaliseringens betydelse ligger därför främst i dess symbolvärde och i att den skapar större rättslig klarhet.

Keywords

hate speech, denial of a serious international crime, agitation against a population group, Holocaust denial, symbolic criminal law
hatretorik, förnekelse av allvarligt internationellt brott, hets mot folkgrupp, förnekelse av Förintelsen, symbolisk straffrätt

1. Introduction

1.1 Background

The Holocaust turned thousands of sites across Europe – where atrocities were committed – into crime scenes. One of its enduring legacies is the extensive and complex body of physical evidence it left behind, which has historically been accorded considerable significance (Colls, 2015, p. 3). Despite convincing evidence, a contemporary manifestation of antisemitism includes denying the historical fact, scale, mechanisms – such as the use of gas chambers – or the intentional nature of the genocide perpetrated by National Socialist Germany and its allies during World War II. Another example is the accusation that Jewish people as a collective, or the State of Israel, have fabricated or exaggerated the Holocaust (Jikeli, 2015, p. 284; Chakraborti & Garland, 2015, p. 40-43).

Approval, glorification, minimisation and denial of the Holocaust are forms of Holocaust-based racism, which uses the Holocaust itself as a tool to harass, discredit or demonise Jews (Bleich, 2011, p. 45-46).¹ The Holocaust is sometimes dismissed as relatively minor, having targeted only a handful of cultures and having ended after just a few years when the Nazi regime was defeated by forces opposed to the genocide (Moshman, 2001, p. 436). Some individuals deny or trivialise the Holocaust on the grounds that they would only accept, for instance, a personal confession from Hitler over tea as sufficient evidence. In doing so, they demand an impossible standard of 'proof' for historical events (Jikeli, 2015, p. 176-177).

Content related to Holocaust denial is disseminated, for instance, through online communities (Klein, 2010, p. 107-115). In contrast to Western societies, where Holocaust denial is largely restricted to a marginal and disreputable segment of the radical Right, in the Arab world, it is more commonly found in

1 On antisemitism and Judaism, see e.g., Rubenstein, 1992; Kuparinen, 1999; Myllykoski & Lundgren, 2006; Eriksen et. al., 2019.

the intellectual and political mainstream. This includes influential politicians, senior religious authorities, academics and members of the press (Litvak & Webman, 2010, p. 243-244).

The European Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law was adopted unanimously on 28 November 2008 after seven years of complicated negotiations (see European Commission, 2014, p. 2). Under Article 1(1) of the Framework Decision, each Member State shall take the measures necessary to ensure that the following intentional conduct is punishable:

c) publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, 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 when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group.

Article 1(1)(d) of the Framework Decision, in turn, requires that corresponding denial, condoning, or gross trivialisation of crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945 be made punishable. The obligation to criminalise Holocaust denial is therefore based on point (d), as the prosecution of crimes committed by the Nazis during the Nuremberg Trials was grounded in Article 6 of the Charter, which established the jurisdiction of the Tribunal to adjudicate crimes against peace, war crimes, and crimes against humanity.

Chapter 11 Section 10 (511/2011) of the Criminal Code of Finland (39/1889) provides that a person who makes available to the public or otherwise disseminates among the public or keeps available to the public such information, an opinion or other message where a certain group is threatened, defamed or insulted on the basis of its race, colour, descent, national or ethnic origin, religion or belief, sexual orientation or disability or on another comparable basis shall be sentenced for agitation against a population group to a fine or to imprisonment for at most two years.

In 2014, the European Commission estimated that several member states, including Finland, Sweden and Denmark, had not fully or correctly transposed all the provisions of the Framework Decision, namely in relation to the offences of denying, condoning and grossly trivialising certain crimes (European Commission, 2014, p. 9-10). The Norwegian and Danish criminal codes do not contain specific provisions criminalising the denial of international crimes.² In contrast, a second paragraph concerning the denial of international crimes was added to Chapter 16, Section 8 of the Swedish Criminal Code (1962:700)

2 See e.g., Vestergaard et al., 2018, p. 298-304 and Elholm et al., 2022, p. 615-620 on the criminalisation of hate speech under Section 266 b of the Danish Criminal Code, and Matningsdal, 2017, p. 200-212 and Haugen & Sverdrup Efstad, 2019, p. 199-201 regarding the corresponding provision in Section 185 of the Norwegian Criminal Code.

by Act 2024:340, which entered into force on 1 July 2024 (see chapter 3.2 in this article).

As Norway is not a member of the European Union, it is not bound by the obligations set forth in the EU Framework Decision. Unlike Sweden and Finland, Denmark has refrained from participating in the development of EU criminal law under the Lisbon Treaty. This is attributable to Denmark's opt-out from Title V of the Treaty on the Functioning of the European Union (TFEU), which concerns the Area of Freedom, Security and Justice. The framework decisions adopted under the Treaty on European Union now constitute an integral part of supranational EU law, pursuant to Protocol No. 36 on transitional provisions to the Lisbon Treaty. In the Danish legal context, these framework decisions continue to be regarded as instruments of international law (see Verdoner, 2025, p. 109-111; Baumbach, 2014, p. 301). The purpose of this article is not to provide a comprehensive analysis of the framework decision or of the measures it entails in various Nordic countries.

1.2 *A new criminalisation proposed in Finland*

In February 2021, the European Commission initiated infringement proceedings against Finland concerning the implementation of the Framework Decision. According to the Commission, the criminalisation of the denial of genocide and other crimes against humanity was insufficiently addressed in Finnish criminal legislation. In January 2023, the Commission sent Finland a second formal notice on the matter. To meet the requirements of the Framework Decision, the Finnish Government submitted a legislative proposal to Parliament on 15 May 2025, under which the denial of a serious international crime would become punishable as a separate offence. The proposed legislation is intended to enter into force in the autumn of 2025 (see Government Proposal 47/2025, p. 1-3, 35, 39-41).

The proposed new Chapter 11 Section 10b of the Criminal Code is as follows:

A person who publicly denies, condones or grossly trivialises genocide, crimes against humanity, crimes of aggression or war crimes established by a final decision of a recognised international court of justice in a manner conducive to inciting violence or hatred against a group or a member of a group referred to in Section 10 and to disturbing public order shall be sentenced to a fine or imprisonment for a maximum of two years *for the denial of a serious international crime*.³

3 The English version is the author's own translation. The provision is legally binding only in its Finnish and Swedish versions. The Swedish wording is: Den som på ett sätt som är ägnat att uppmäna till våld eller hat mot en i 10 § avsedd grupp eller en medlem av gruppen och att störa den allmänna ordningen offentligen förnekar, ursäktar eller allvarligt förringar ett sådant folkmord, ett sådant brott mot mänskligheten, ett sådant aggressionsbrott eller en sådan krigsförbrytelse som fastställts genom ett lagakraftvunnet avgörande av en erkänd internationell domstol ska för förnekelse av allvarligt internationellt brott dömas till böter eller fängelse i högst två år.

The objective of the proposal is to clarify Finnish criminal legislation so that it unambiguously fulfils the obligations set out in the Framework Decision. In addition, the proposal aims to promote equality among population groups living in Finland and combat racism. A specific penal provision prohibiting the denial of serious international crimes is considered necessary as such crimes may be regarded as a distinct form of hate speech (Government Proposal 47/2025, p. 11, 21).

It is noted in the Government Proposal that a considerable number of victims of the persecution of Jews are still alive, and denying or trivialising the occurrence of the Holocaust causes them harm and diminishes the suffering they have endured. Holocaust denial also offends the memory of those who perished in the persecution. Hence, the legal interest protected by the offence of denial is understood to include, at the very least, human dignity. It may also serve to protect the identity of the targeted group or of individual members thereof. In addition, the offence of denial serves to safeguard public order (Government Proposal 47/2025, p. 11).

The criminalisation in question, on the other hand, is considered to have implications particularly for freedom of expression, but also for the freedom of the arts and sciences (Government Proposal 47/2025, p. 9). However, freedom of expression does not constitute an absolute right, and legislation restricting its scope may be enacted, provided that the criteria established by the Constitutional Law Committee of the Finnish Parliament are fulfilled (Melander, 2017, p. 59-61). According to these requirements, criminalisation must be based on an Act of the Parliament and be defined with sufficient precision and clarity. These requirements derive also from the principle of legality in criminal law, as safeguarded by Section 8 of the Finnish Constitution (731/1999) and Chapter 3, Section 1 of the Criminal Code. Criminalisation must be justified by a compelling societal need and a constitutionally acceptable rationale. The proportionality requirement, in turn, demands an assessment of whether criminalisation is necessary to protect the underlying legal interest, and whether the same objective could be achieved by less intrusive means. Furthermore, each fundamental right is considered to have a core area of protection, within which conduct cannot be made punishable (see Statement of the Constitutional Law Committee of the Finnish Parliament 23/1997, p. 2; Melander, 2017, p. 60-61; Tapani & Tolvanen, 2016, p. 35-44).

1.3 *Research question and methodology*

Criminal law has traditionally been regarded as a predominantly national field of law, reflecting the authority and sovereignty of the state (see e.g., Kettunen, 2015, p. 50-57; Miettinen, 2015, p. 1-24; Helenius, 2016, p. 5-11). Accordingly, Asp and Suominen (2022) consider that EU criminal law primarily refers to the doctrine concerning the effects of EU law on national criminal law and criminal procedure. The substantive criminalisations that form the basis for punishment

remain at national level, and there is no EU-level court with jurisdiction to impose criminal sanctions (p. 116-117).

Holocaust denial laws can be regarded as good examples of symbolic politics – they are passed by legislatures eager to demonstrate a country's abhorrence of anything linked to Nazism (Bleich, 2011, p. 51). According to Elholm and Colson (2016), the symbolic function of criminal law becomes particularly evident when there is little evidence that new legislation has any tangible effect, even where domestic criminal law has been amended as a consequence of EU legislation. While the EU legislator consistently emphasises the need for new measures to effectively prevent and combat crime, empirical support for the impact of EU criminalisation directives on national legislation is often lacking. Member States may introduce specific provisions to comply with EU law, yet the core elements of criminalisation frequently remain unchanged (p. 8).

In this article, I examine the extent to which the legislative reform will change the scope of punishable hate speech in Finland. I approach the research question through the following sub-questions:

- 1) What kinds of acts related to the denial of serious international crimes have already been punishable under the existing provision on agitation against a population group? (chapter 2 in this article)
- 2) Which acts will become punishable under the new criminalisation, and to what extent have they already been subject to criminal liability under the existing provision? (chapter 3)

Nuotio (2023) has emphasised that Holocaust denial constitutes a specific issue. The idea behind memory laws is to acknowledge past wrongs and to ensure that those wrongs remain present in contemporary society and politics. Memory criminal laws go beyond ordinary memory laws: they criminalise the denial, mitigation, or trivialisation of historical truths. Memories of this kind fall outside of what has usually been protected by means of criminal law. Holocaust denial stands out as a more symbolic criminalisation than agitation against a population group. The Nordic countries have a well-established tradition of safeguarding freedom of expression, which may partly explain the limited traction that memory laws have gained in the region. Moreover, within the Nordic legal tradition, the rationale for restricting Nazi symbols is grounded in the broader commitment to safeguarding democracy, human rights and the principle of non-discrimination (p. 9-10, 19-20).⁴

Thus, the criminalisation of denying international crimes has, at least to some extent, become a contested issue in the Nordic countries. For this reason, I find it important to present the current Finnish legislative proposal to a Nordic readership, alongside relevant case law concerning the denial of international crimes. Particular attention is paid to problematic aspects of

4 For Holocaust denial from a historical perspective, see e.g., Löytömäki, 2015; Simonsen, 2021; Miklóssy, 2021.

the proposed criminal provision, which might also inform the development of hate speech legislation in other Nordic jurisdictions.

I analyse the current legal framework through preparatory legislative materials and especially case law concerning agitation against a population group. My research material includes all district and court of appeal judgments issued between 17 March 2015 and 17 March 2025⁵ in which the principal offence has been agitation against a population group. No convictions for aggravated agitation against a population group were issued during these years.

I have analysed all 188 available judgments, of which 150 were issued by District Courts and 38 by Courts of Appeal. I then selected, for closer examination, the judgments in which the act forming the basis of the charge involved denial, condoning or gross trivialisation of the Holocaust or other grave international crimes. My research material includes a total of five judgments based on statements denying the Holocaust. In addition, the material contains ten judgments in which genocide or Nazi actions are glorified or trivialised in a more indirect manner. The purpose of analysing the case law is to determine what kinds of statements have previously led to criminal liability under existing legislation and to assess the extent to which the legislative amendment would alter the scope of punishable conduct.

Thus, this study adopts a doctrinal legal approach with a forward-looking perspective. While *de lege lata* legal analysis sets out the law as currently in force, *de lege ferenda* considers the normative direction legislation ought to take (see e.g., Gunnarsson et al., 2018, p. 107). My research combines both *de lege lata* and *de lege ferenda* approaches. I conduct a doctrinal analysis of the scope of application of both the provision currently in force and the proposed provision. Based on this analysis, as well as on the comparative legal assessment I have carried out in relation to the corresponding Swedish provision, I evaluate the effects of the legislative amendment and highlight problematic aspects of the proposed provision. My forward-looking approach thus refers to sub-question 2, through which I aim to define the conduct that would fall within the scope of criminal liability in the future.

2. Which acts have already been punishable?

2.1 Criminalisation of hate speech in Finland

Hate speech itself has not been criminalised in Finland, but agitation against a population group⁶ is a key criminalisation of hate speech (see e.g., Nuotio, 2015, p. 139-141; Hyttinen, 2019, p. 91-96; Koskela & Neuvonen, 2024, p. 174-181). Threatening a population group means serious threats, such as threats of violent crime or property crime. Defamatory messages refer to misleading

5 The docket information of court judgments is available from the Finnish Legal Register Centre for a maximum period of the preceding ten years.

6 See the wording of the provision in section 1.2.

and generalising statements. For example, it could be falsely alleged that an ethnic group has committed crimes or other reprehensible acts. Even truthful messages presented with the intent to insult can be classed as insulting messages. At least half-truths, coloured truths, insulting facts or slanderous words could be considered punishable messages (Nuotio, 2022, p. 312-314).

The preparatory works of the provision on agitation against a population group highlight that racist and xenophobic acts which express approval of or defend genocide or crimes against humanity may fall within the scope of the offence. Unfounded trivialisation, made in contradiction to historical facts, may offend or threaten the group that was the target of such atrocities. However, communication concerning international crimes that adheres to journalistic standards, or historical research that meets scientific criteria, should be permitted. It is nevertheless stated that certain historical events, such as the genocide committed against the Jews by the Third Reich, are so unequivocally established that they cannot be legitimately disputed (Government Proposal 317/2010, p. 20-22).

2.2 Case law concerning Holocaust denial

Judgment A in my research material concerned a case in which the defendant had affixed posters to the wall of a kiosk that contained derogatory content about Jewish people and referenced antisemitic conspiracy theories. The posters alleged, among other things, that Jews or Zionists were behind the 9/11 attacks and that Jewish psychopaths rule the world. Moreover, the defendant had published posts on their public Facebook page which included claims that the Holocaust never occurred, that Jews started the Second World War and that Hitler was a puppet of the Jews rather than the perpetrator of the Holocaust. The defendant also claimed that the Nazis were themselves Jewish.

The District Court found that the publications contained false and misleading claims about Jewish people. When assessed as a whole, the publications constituted hate speech that is not protected under the right to freedom of expression. The publications violated the human dignity of Jewish people and were characterized by intolerance and hostility. The court thus based its judgment on an overall assessment and did not specifically evaluate individual Holocaust-denying statements as constituting agitation against a population group.

In case B, the accused had published several writings and edited images on the Internet that threatened, slandered and insulted people such as black people, Muslims and Jews. In one picture, a robot has a Nazi flag attached to it and the picture has the text: “#Holohoax, The Holocaust did not happen #Traitor, Every traitor deserves a bullet in his skull, #Negros, Every Negro fucking from Finland.” The caption of another picture is: “Hello, my name is Jutkubotti⁷. I’ve been programmed to lie and censor people while promoting my products.”

7 This Finnish word refers to a Jewish robot.

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In this case as well, the court did not separately assess whether Holocaust denial, in itself, constituted a punishable act. Instead, the District Court evaluated the matter as a whole and found that the messages described in the indictment clearly insulted, defamed and threatened people of African descent, asylum seekers, immigrants and Jewish individuals.

In contrast, in judgments C and D, which concerned the same statement made by different defendants, the denial of the Holocaust was central to the case. Accordingly, the court was required to assess whether Holocaust denial constitutes a punishable form of agitation against a population group. Judgments related to the speech are quoted below.

“On 27 January, the so-called Day of Remembrance for the Victims of Persecution is celebrated around the world. At the heart of the celebrations is the claim that six million Jews were murdered during World War II in the Holocaust. The Holocaust is a religion, as no solid evidence has been presented to support the claim of genocide. To date, investigators have not found any bodies of Jews killed with poison gas, nor have they found orders or plans to carry out the massacre. The internal records of Auschwitz and other camps show that even in the most miserable moments of the war, Jews received treatment from German doctors that saved countless lives, so the so-called hard evidence speaks against the Holocaust myth. The only evidence for the historicity of the Holocaust is propaganda publications of Germany’s enemy states and the eyewitness accounts of so-called Holocaust survivors, which have turned out to be contradictory lies. It is time to expose the lies of the enemies and fight for Finnish Finland against cultural Marxism and open borders.”

In both judgments C and D, the District Court noted that the Criminal Code does not contain an explicit provision criminalising the denial of the Holocaust. Therefore, the punishability of the conduct had to be assessed in light of Chapter 11, Section 10 of the Criminal Code. The speech described in the indictment falsely denied the occurrence of the Holocaust and further claimed that Holocaust survivors were liars. Such statements were therefore conducive to arousing contempt, intolerance and even hatred towards Jews. Consequently, the District Court held that the content of the speech fulfilled the elements of agitation against a population group.

Judgment E concerned trivialising the Holocaust as part of a series of messages containing hate speech published on a Twitter account. The convicted person trivialised the Holocaust as follows:

“I don’t think a nigger or a bastard belongs in Finland. The Holocaust has at least been exaggerated to make it a driving force to eradicate the unity of white countries stemming from nationalism. In my opinion, refugee ships should be received with machine guns. Greetings to the police.”

According to the prosecutor, the statement in question constituted incitement to violence, as well as threat-like agitation of hatred comparable to such incitement. The court similarly found that the statements could have conveyed the impression that violence ought to be directed against groups protected

under criminal law. The messages did not form part of any legitimate societal or political discourse, nor were they presented within a scientific or artistic context. Accordingly, they could not be justified or protected under the right to freedom of expression.

2.3 Case law concerning sympathy towards Nazism

In addition to the five cases described above, my material included acts in which the denial, condoning or trivialisation of an international crime was more indirect. In case F, the defendant was convicted of agitation against a population group. They had published text that glorified the Holocaust as part of a statement containing threats of violence:

“Fuck the negroes, fuck the Jews, fuck the Muslims – - we’re going to slaughter all of you now, you shit won’t destroy our life anymore – - “I’m a proud Aryan and I’ll rise up in resistance, non-white Christians are the lowest shit – - I’ll gas you for sure, you won’t get help from the immigrant, I’ll twist and hurt you and you know how to put the shit” – - “Fuck the negroes and the Jews in the oven”.

In case G, the defendant had published several writings, including the following: ‘If we take in Non-White immigrants, Auschwitz happens for Whites.’ The Holocaust was thus invoked as a threat allegedly resulting from the reception of immigrants with darker skin. The District Court found that the writings were defamatory and insulting towards Muslims and Africans as population groups, strongly generalising in nature and conducive to inciting intolerance, contempt and hostility towards Muslims and Africans.

Jikeli (2015) points out that some individuals may express approval of the mass killing of Jews, or at least sympathy toward Hitler, through statements such as “I like Hitler” or “Hitler was a great guy” (p. 206). In case H, the defendant was convicted for statements involving threats of violence in which they emphasised their self-identification as a Nazi:

“Well, let’s start spreading the holy word (and I don’t mean any storybook stuff) to the corners of the south and increase extreme right (read PATRIOTIC because if you are patriotic, the Nazi card will rise immediately, and in my case it is right, I have been a Nazi and I will always be, blood obliges) activity and try to increase violence and kill immigrants”.

An interesting legal question also arises as to whether the Nazi flag can be regarded as symbolising the Holocaust or the defamation of Jewish people to such an extent that it would constitute agitation against a population group. Nuotio (2023) argues that the Nazi flag is not merely a general symbol but a specific emblem of a particular political regime. Displaying it in public conveys messages to observers, evoking historical memories, associations and sensitivities. It represents the regime responsible for the atrocities of the Holocaust and other crimes (p. 13).

In case I in my research material, three individuals carried Nazi flags during a public demonstration held on Finland's Independence Day, while two others participated in the protest in other ways. The District Court noted that the flags in question were not merely swastika symbols but specifically the state flags of Nazi Germany, which are commonly associated with the ideology of National Socialism promoted by Hitler and his associates between 1935 and 1945. However, the court also observed that the swastika flag is not prohibited in Finland. Without a broad interpretation of the defendants' conduct and expressions, in 2018, it could not be concluded that the ideology of Nazi Germany and Hitler extended, in a manner giving rise to criminal liability, to threatening or defaming immigrant groups. The charges of agitation against a population group were therefore dismissed.

In contrast, the Court of Appeal, acting as the second instance, convicted all five defendants as co-perpetrators of agitation against a population group in judgment J. The court held that weight should also be given to the ideology represented by the swastika flag from a historical perspective – an ideology characterised by mass mobilisation, state-led persecution and serious violations of fundamental rights. According to the Court of Appeal, the swastika flag in itself symbolised the kind of threatening conduct referred to in the provision on agitation against a population group. The Supreme Court did not grant leave to appeal, and the judgment thus became final.

Section 185 of the Norwegian Penal Code explicitly provides that the use of symbols may be assessed as a discriminatory or hateful statement amounting to incitement to hatred. Such symbols may include, for example, the swastika and the Nazi salute. However, their legal assessment must be conducted on a case-by-case basis, taking into account both the symbolic meaning and the specific context in which they are used (see Matningsdal, 2017, p. 201-203).

In case Tfk 2013.967 V, the Danish High Court addressed the scope of section 266 b of the Danish Criminal Code. In this case, two members of the National Socialist Movement of Denmark (DNSB) were charged after affixing stickers bearing swastikas and the slogan "Denmark for Danes" to the window of an Indian restaurant. One of the individuals also possessed additional stickers with similar imagery and the phrase "Racial mixing is genocide." The High Court held that the category "persons who are not Danes" did not, in itself, constitute a "particular group of people" within the meaning of the provision. The Court noted that the presence of swastikas and the fact that the stickers were placed on the window of an ethnic restaurant were not, in themselves, sufficient to bring the conduct within the scope of section 266 b (see also Vestergaard et al., 2018, p. 299).

3. Scope of application of the new provision

3.1 *Criminalising denial or incitement?*

According to the proposed criminal provision, the public denial, condoning or gross trivialisation of certain serious international crimes would be punishable

when committed on racist grounds as specified in the provision on agitation against a population group, in a manner conducive to inciting violence or hatred against a group or individual referred to in Section 10, and to disturbing public order. Legal persons may also be held criminally liable for such conduct. If an act, such as an individual written statement, were to also fulfil the elements of agitation against a population group, the perpetrator would, as a rule, be convicted only of the denial of a serious international crime, which is intended to function as a special provision (Government Proposal 47/2025, p. 21, 35).

The criminal provision would require, first and foremost, a public expression in which the international crimes specified in the provision are denied, condoned or grossly trivialised. Denial refers to disputing the occurrence of the crime, such as asserting that genocide against the Jews did not take place. A condoning statement, in turn, seeks to legitimise the acts referred to in the provision. Gross trivialisation aims to diminish either the significance or the gravity of the act, or the suffering it caused. The trivialisation must, when assessed in its entirety, be substantial, as indicated by the additional requirement that it be “gross”. The act may be committed either in the physical world or through electronic communication channels (Government Proposal 47/2025, p. 30-31).

In addition, three further conditions must be met for the act to be punishable. First, the statement must be motivated by a racist or discriminatory intent, based on the protected characteristics listed in Chapter 11, Section 10, which include race, skin colour, descent, national or ethnic origin, religion or belief, sexual orientation, or disability, as well as other comparable grounds. Second, the act must be conducive to inciting hatred or violence. Hatred does not merely refer to an emotional state, but to a hostile attitude towards others that may pose a danger to its target(s). Incitement refers to conduct that provokes or encourages such attitudes or actions. Third, the act must be carried out in a manner conducive to disturbing public order (Government proposal 47/2025, p. 22, 33-34). According to the preparatory works concerning offences against public order, such offences are typically characterised by their capacity to provoke public indignation, distress, or irritation to such an extent that intervention by the authorities is deemed necessary (see Government Proposal 6/1997, p. 95).

The provision on agitation against a population group does not include any requirement concerning the consequences or dangerousness of the act. By contrast, the proposed provision includes the conditions that the act must be conducive to inciting hatred or violence and, in addition, to disturbing public order. This means that the act typically incites hatred or violence, or disrupts public order (Government proposal 47/2025, p. 33-34).

In research on Holocaust denial, a distinction is sometimes made between ‘hard’ and ‘soft’ deniers. ‘Hard’ deniers claim, for example, that the entire genocide is a hoax concocted after the war. ‘Soft’ deniers, instead, may state

that Jews were imprisoned in camps but died in limited numbers as a result of illness or other wartime deprivations (Eaglestone, 2004, p. 227). Some forms of provocation are not delivered through heated rhetoric, but rather through calculated and composed expression – such as tracts promoting Holocaust denial or so-called ‘scientific’ racism (Heinze, 2017, p. 22). According to Parekh (2012), hate speech is even an unsatisfactory term “because it stresses hatred, an extremely strong emotion” (p. 40).

I find it particularly problematic that the draft legislation does not clearly specify the required intensity of incitement of hatred for criminal liability to arise, nor whether the denial, condoning or gross trivialisation of a serious international crime could, in itself, constitute hate speech that incites hatred and disturbs public order. Instead, the Government Proposal (47/2025) states, rather ambiguously, that “Such incitement may take the form of explicit calls for violence or hatred, but *other types of instigation may also be relevant*” (p. 33). Moreover, it is mentioned that “An act disturbing public order must also reach a certain threshold of seriousness. Thus, not every inappropriate outburst on the internet or social media necessarily fulfils the elements of the offence in question, unless it is of such gravity that it would typically – i.e., objectively – provoke indignation, distress, or irritation among a broader audience than merely the person or persons directly affected” (p. 34).

To safeguard freedom of expression, I consider it justified that not all questioning of historical events should give rise to criminal liability (see also Government Proposal 47/2025, p. 22, 34). However, the threshold for criminal liability is very high if, in addition to denying a serious international crime, the perpetrator must also express other statements inciting hatred and endangering public order. The punishable conduct would not primarily consist of the denial, condoning or gross trivialisation of a serious international crime as such, but rather in the incitement of hatred conveyed through such statements – particularly when groups protected under criminal law are threatened, defamed or insulted. Despite the statutory offence title, the offence would not so much concern the denial of an international crime, *per se*, but rather constitute an instance of agitation against a population group.

As a result, acts that would be punishable under the new provision are, for the most part, already criminalised under existing law. For symbolic reasons, certain acts would merely be punished under the new offence title of denial of a serious international crime, thereby fulfilling the minimum requirements of EU law. The symbolic significance of the legislative reform is expressed quite clearly in the Government Proposal (47/2025), which states: “The proposed legislative amendment is not intended to materially expand the scope of criminalised conduct, but rather to clarify the legislation in so far as the denial, condoning or gross trivialisation of serious international crimes is punishable under certain conditions” (p. 38).

3.2 *Comparison with the Swedish provision*

The offence would apply only where a serious international crime has been established by a final decision of a recognised international criminal court whose jurisdiction is recognised by Finland. The aim is to prevent domestic courts from being used as instruments for the legal assessment of politically contentious acts. In this context, 'international court' includes not only the historical Nuremberg and Tokyo tribunals, but also the International Criminal Court (ICC), and former tribunals such as those for the former Yugoslavia, Rwanda, Sierra Leone, Cambodia, and East Timor. Any future special tribunals established with jurisdiction over such crimes would likewise fall within the scope of the provision (Government Proposal 47/2025, p. 21-22, 32-33).

In Sweden, the crime subject to denial may also be based on a final judgment rendered by a Swedish court. Moreover, unlike the corresponding Finnish provision, the Swedish regulation does not require that the act be conducive to disturbing public order (see Prop. 2023/24:93, p. 39-42).

Chapter 16, Section 8 of the Criminal Code of Sweden (1962:700) provides that a person who, in a statement or other disseminated communication, incites violence against, threatens, or expresses contempt for a population group, another such collective of individuals, or an individual belonging to any of these groups, on the basis of race, skin colour, national or ethnic origin, religious belief, sexual orientation, or gender identity or expression, shall be convicted of agitation against a population group and sentenced to imprisonment for a term not exceeding two years.

According to the second paragraph, a person shall likewise be convicted of agitation against a population group if, in a statement or other disseminated communication, they deny, condone or grossly trivialise a crime that constitutes or is equivalent to genocide, a crime against humanity, a war crime or the crime of aggression, as determined by a final judgment rendered by a Swedish court or a recognised international tribunal for violations of international law, provided that the act is conducive to inciting violence against, threatening or expressing contempt for such a group or individual as referred to in the first paragraph.

I prefer the wording used in the Swedish provision: "ägnad att uppmåna till våld mot, hota eller uttrycka missaktning". The requirement that the act is conducive to inciting violence, hatred, or contempt is sufficient to ensure that, for example, the questioning of historical facts for scholarly purposes is not subject to criminal liability. In contrast, the Finnish approach, which additionally requires that the act is conducive to disturbing public order, may exclude from criminal liability certain statements inciting hatred that are presented to a relatively small audience in a moderate tone. Such statements nevertheless also disseminate misleading information that disparages, for example, Jewish people.

Criminalising the denial of a serious international crime as a separate offence may better emphasise the symbolic value of the provision. However, since denial alone does not suffice for criminal liability, but liability also requires incitement of violence or hatred – that is, "agitation" – it would be more appropriate to consider denial as one mode of commission under the offence of

agitation against a population group. In this respect as well, I find the Swedish provision preferable to the Finnish solution.

However, this approach is considered problematic as the Finnish provision on agitation against a population group protects only groups, not individuals. Article 1(1)(c) of the Framework Decision, in turn, requires that the criminalisation of the denial of certain international crimes must extend to conduct directed against both a group of persons and a member of such a group, defined by reference to race, colour, religion, descent, or national or ethnic origin. Consequently, it would not be possible to incorporate the criminalisation of the denial of serious international crimes into the existing provision without expanding its scope to cover individual members of protected groups (Government Proposal 47/2025, p. 23).

The reasoning provided is unconvincing, as the Swedish provision on agitation against a population group was simultaneously amended to include statements directed not only at groups but also individuals (see Prop. 2023/24:93, p. 37-42). In a report for the Ministry of Justice, Melander (2024) actually proposes that the Finnish provision on agitation against a population group be comprehensively revised for greater clarity. At the same time, the provision would be amended so that acts directed at individuals belonging to protected groups would also be punishable as agitation, whereas such acts are currently only punishable as defamation (p. 57-60).

4. Conclusion

The denial, condoning or gross trivialisation of international crimes has appeared only infrequently in my research material. All cases concerned the Holocaust. The denial of serious international crimes in the material often formed part of a broader set of statements targeting Jews, immigrants or people of colour. This complicates the assessment of whether the denial of a serious international crime would have been basically punishable under the previously applicable legislation. This observation underscores, firstly, the necessity of clarifying the legal framework to ensure that the judiciary can apply a provision in which the denial of a serious international crime is explicitly criminalised as a distinct offence. Secondly, it supports the conclusion that the denial of the Holocaust or other serious international crimes constitutes a natural component of hate speech, which may encompass multiple dimensions, even within the writings of a single individual.

The adoption of the provision in a narrowly defined form has been justified by the need to safeguard freedom of expression and the principle of legality in criminal law (Government Proposal 47/2025, p. 22, 37). The narrowly defined scope of criminalisation reflects a central challenge in the criminal law response to hate speech: public discourse cannot be curtailed by penalising individuals who question historical facts in a reasoned and respectful manner.

However, by requiring the incitement of hatred and disturbance of public order, the threshold for criminal liability is set so high that the new offence provision has only a limited independent scope of application.

To conclude, the criminalisation of the denial of serious international crimes will probably not constitute a substantial expansion of conduct punishable as hate speech under Finnish law. On the other hand, the symbolic dimension of the criminalisation may also carry societal significance: by explicitly criminalising the denial of serious international crimes, the law affirms the importance of protecting the victims of such crimes, as well as their close relatives, from false and defamatory claims (see also Government Proposal 47/2025, p. 11). However, the approach, whereby criminal liability requires that the act is conducive to inciting violence or hatred and to disturbing public order, conveys the message that the denial, condoning or gross trivialisation of a serious international crime does not, in itself, constitute reprehensible speech.

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