



# Civic Space Legal Framework

Brazil • Finland • Morocco • Tunisia

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# Brazil

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**SUMMARY** Brazil's Constitution guarantees those residing in the country access to information; freedom of expression, assembly, and association; the right to privacy; press freedom; and equality. Some of these guarantees are further regulated by federal law. An open internet is regulated by a law that establishes principles, guarantees, rights, and duties for the use of the internet in the country. A law regulating data protection recently entered into force for the purpose of protecting the fundamental rights of freedom and privacy, and the free development of the personality of natural persons.

## I. Constitutional Principles

Article 5 of the Brazilian Constitution states that everyone is equal before the law, with no distinction whatsoever, guaranteeing to Brazilians and foreigners residing in the country the inviolability of the rights to life, liberty, equality, security, and property.<sup>1</sup> The law must punish any discrimination attacking fundamental rights and liberties.<sup>2</sup>

### A. Access to Information

The right to information is guaranteed by article 5(XXXIII) of the Constitution, which determines that all persons have the right to receive information in their private interest, or of collective or general interest, from public agencies. Such information must be furnished within the period established by law, under penalty of liability, except for information whose secrecy is essential to the security of society and the state.<sup>3</sup> The Constitution further determines that the law must regulate the forms of user participation in direct and indirect public administration, specifically regulating<sup>4</sup> user access to administrative registries and information about governmental acts, observing the provisions of article 5(X) and 5(XXXIII) of the Constitution.<sup>5</sup>

It is the responsibility of the public administration, as provided by law, to maintain governmental documents and take measures to make them available for consultation by those who need to do so.<sup>6</sup>

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<sup>1</sup> Constituição Federal [C.F.] art. 5, <https://perma.cc/M27W-YDDQ>.

<sup>2</sup> Id. art. 5(XLI).

<sup>3</sup> Id. art. 5(XXXIII).

<sup>4</sup> Id. art. 37(§ 3).

<sup>5</sup> Id. art. 37(§ 3)(II). Article 5(X) determines that personal intimacy, private life, honor, and reputation are inviolable, guaranteeing the right to compensation for pecuniary or moral damages resulting from the violation thereof.

<sup>6</sup> Id. art. 216(§ 2).

Law No. 12,527 of November 18, 2011, establishes procedures to be followed by the Union, states, Federal District, and municipalities, in order to ensure access to information under articles 5(XXXIII), 37(§ 3)(II), and 216(§ 2) of the Constitution.<sup>7</sup>

According to article 5 of Law No. 12,527, the state has the duty to guarantee the right of access to information by objective and streamlined procedures explained in clear and transparent language.<sup>8</sup> Any interested party may request information from the Union, states, Federal District, and municipalities by submitting an application that identifies the applicant and specifies the required information.<sup>9</sup> According to the Law, “[f]or access to information of public interest, the identification of the applicant may not contain requirements that impede the request.”<sup>10</sup> Agencies and public entities must also provide means to receive information requests on their official websites,<sup>11</sup> and are prohibited from requiring applicants to provide the reasons for their requests.<sup>12</sup>

## B. Freedom of Expression

Article 5 of the Constitution sets forth several principles related to freedom of expression:

II - no one shall be compelled to do or refrain from doing something except by force of law;

IV - manifestation of thought is free, but anonymity is forbidden;

V - the right of reply is assured, in proportion to the offense, as well as compensation for pecuniary or moral damages or damages to reputation;

IX - expression of intellectual, artistic, scientific, and communication activity is free, independent of any censorship or license;

XIII - the exercise of any job, trade or profession is free, observing the professional qualifications that the law establishes;

XIV - access to information is assured to everyone, protecting the confidentiality of sources when necessary for professional activity;

XLI – the law must punish any discrimination attacking fundamental rights and liberties.<sup>13</sup>

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<sup>7</sup> Lei No. 12.527, de 18 de Novembro de 2011, art. 1, <https://perma.cc/2MX7-L8VP>. Decreto No. 7,724 of May 16, 2012, regulates, under the federal executive branch, procedures for ensuring access to information and for the classification of information under access restriction, observing the degree and term of confidentiality, according to the provisions of Law 12,527. Decreto No. 7.724, de 16 de Maio de 2012, art. 1, <https://perma.cc/8RC7-VB4P>.

<sup>8</sup> Lei No. 12.527, art. 5.

<sup>9</sup> Id. art. 10.

<sup>10</sup> Id. art. 10(§ 1) (all translations by author).

<sup>11</sup> Id. art. 10(§ 2).

<sup>12</sup> Id. art. 10(§ 3).

<sup>13</sup> C.F. art. 5.

Article 220 further determines that the expression of thoughts, creation, speech, and information, through whatever form, process or vehicle, must not be subject to any restrictions, observing the provisions of the Constitution.<sup>14</sup>

### **C. Freedom of Assembly**

Pursuant to article 5(XVI) of the Constitution, all persons may hold peaceful meetings, without weapons, in places open to the public, without need for authorization, so long as they do not interfere with another meeting previously called for the same place, subject only to prior notice to the proper authority.<sup>15</sup>

### **D. Freedom of Association**

The Constitution states that there is total freedom of association for lawful purposes, but any paramilitary association is prohibited.<sup>16</sup>

### **E. Right to Privacy**

Under article 5(X) of the Constitution, personal intimacy, private life, honor, and reputation are inviolable, and the right to compensation for pecuniary or moral damages resulting from the violation thereof is guaranteed.<sup>17</sup>

### **F. Press Freedom**

As mentioned above, the expression of thoughts, creation, speech, and information, through whatever form, process, or vehicle, must not be subject to any restrictions, observing the provisions of the Constitution.<sup>18</sup> Any legal provision that may constitute an impediment to full freedom of the press, in any medium of social communication, is prohibited, observing the provisions of article 5(IV), (V), (X), (XIII), and (XIV) of the Constitution.<sup>19</sup> Any and all censorship of a political, ideological, or artistic nature is forbidden.<sup>20</sup>

### **G. Anti-Discrimination**

One of the fundamental objectives of the Federative Republic of Brazil is to promote the well-being of all, without prejudice as to origin, race, sex, color, age, or any other forms of

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<sup>14</sup> Id. art. 220.

<sup>15</sup> Id. art. 5(XVI).

<sup>16</sup> Id. art. 5(XVII).

<sup>17</sup> Id. art. 5(X).

<sup>18</sup> Id. art. 220.

<sup>19</sup> Id. art. 220(§ 1).

<sup>20</sup> Id. art. 220(§ 2).

discrimination.<sup>21</sup> Repudiation of terrorism and racism are among the principles that govern the country's international relations.<sup>22</sup>

As mentioned above, article 5 of the Brazilian Constitution states that everyone is equal before the law and that

I. men and women have equal rights and duties under the terms of the Constitution;

...

VIII - no one shall be deprived of any rights because of religious beliefs or philosophical or political convictions, unless invoked in order to be exempted from a legal obligation imposed upon all by one refusing to perform an alternative service established by law;

...

XLI - the law must punish any discrimination attacking fundamental rights and liberties; [and]

XLII - the practice of racism is a non-bailable crime with no statute of limitations and is punishable by imprisonment, as provided by law.<sup>23</sup>

The family, society, and government have a duty to ensure that children, adolescents, and youth have the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, liberty, and family and community harmony, in addition to safeguarding them against all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression.<sup>24</sup> Regardless of whether born in or out of wedlock or adopted, children have the same rights and qualifications, prohibiting any discrimination with respect to filiation.<sup>25</sup>

1. *Law No. 12,288 of July 20, 2010*

Law No. 12,288 of July 20, 2010, created the Racial Equality Statute (Estatuto da Igualdade Racial), designed to guarantee to the black population the realization of equal opportunities, defense of the individual, and collective and diffuse ethnic rights, and support for the fight against discrimination and other forms of ethnic intolerance.<sup>26</sup>

For the purposes of Law No. 12,288, any distinction, exclusion, restriction, or preference based on race, color, descent, or national or ethnic origin whose object is to annul or restrict the equal recognition, enjoyment, or exercise of human rights and fundamental freedoms in the political, economic, social, cultural, or other fields of public or private life is considered racial or ethnic-racial discrimination.<sup>27</sup>

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<sup>21</sup> Id. art. 3(IV).

<sup>22</sup> Id. art. 4(VIII).

<sup>23</sup> Id. art. 5.

<sup>24</sup> Id. art. 227.

<sup>25</sup> Id. art. 227(§ 6).

<sup>26</sup> Estatuto da Igualdade Racial, Lei No. 12.288, de 20 de Julho de 2010, art. 1, <https://perma.cc/CFQ6-B7V6>.

<sup>27</sup> Id. art. 1(sole para.).

2. *Law No. 9,029 of April 13, 1995*

The adoption of any discriminatory and restrictive practice for the purpose of accessing or maintaining an employment relationship is prohibited when based on sex, origin, race, color, marital status, family situation, disability, professional rehabilitation, or age, among others, except as necessary to provide labor protections to children and adolescents under article 7(XXXIII) of the Federal Constitution,<sup>28</sup> which prohibits nighttime, dangerous, or unhealthy work for those under eighteen years of age, and any work for those under the age of sixteen except as an apprentice starting at the age of fourteen.

The following discriminatory practices constitute a crime and are punishable with imprisonment for one to two years and a fine:

I - the requirement for testing, examination, expertise, report, certificate, declaration or any other procedure related to sterilization or pregnancy status;

II - the adoption of any measures, of the employer's initiative, that involve;

a) inducing or instigating genetic sterilization;

b) promotion of birth control, thus not considering the provision of services and family counseling or planning, carried out through public or private institutions, subject to the rules of the Unified Health System.<sup>29</sup>

3. *Law No. 7,716 of January 5, 1989*

Under the terms of Law No. 7,716 of January 5, 1989, crimes resulting from discrimination or prejudice based on race, color, ethnicity, religion, or national origin are punishable.<sup>30</sup> The Law further defines the crimes and corresponding punishments resulting from race- or color-based discrimination.<sup>31</sup>

## H. Equality

Another fundamental objective stated in the Constitution is to eradicate poverty and substandard living conditions, and to reduce social and regional inequalities.<sup>32</sup>

As discussed above, article 5 of the Brazilian Constitution states that everyone is equal before the law, with no distinction whatsoever, guaranteeing to Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security, and property.<sup>33</sup>

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<sup>28</sup> Lei No. 9.029, de 13 de Abril de 1995, art. 1, <https://perma.cc/EF4H-WMDR>.

<sup>29</sup> Id. art. 2.

<sup>30</sup> Lei No. 7.716, de 5 de Janeiro de 1989, art. 1, <https://perma.cc/CC9Z-UN89>.

<sup>31</sup> Id. arts. 3 et seq.

<sup>32</sup> C.F. art. 3(III).

<sup>33</sup> Id. art. 5.

1. *Law No. 13,146 of July 6, 2015*

The Brazilian law for the inclusion of persons with disabilities (Statute of Persons with Disabilities) was enacted on July 6, 2015, for the purpose of ensuring and promoting the equal exercise of fundamental rights and freedoms by persons with disabilities, aiming at their social inclusion and citizenship.<sup>34</sup> A “person with a disability” is defined as someone who has a long-term physical, mental, intellectual, or sensory impairment, which, in interaction with one or more barriers, can obstruct his or her full and effective participation in society on equal terms with others.<sup>35</sup>

Every person with a disability has the right to equal opportunities similar to others and may not be subjected to any kind of discrimination.<sup>36</sup> Discrimination on the ground of disability is considered to be any form of distinction, restriction, or exclusion, by act or omission, that has the purpose or effect of harming, preventing, or nullifying the recognition or exercise of the fundamental rights and freedoms of a disabled person, including the refusal of reasonable accommodation and provision of assistive technologies.<sup>37</sup>

A disabled person is legally protected from all forms of negligence, discrimination, exploitation, violence, torture, cruelty, oppression, and inhuman or degrading treatment.<sup>38</sup> For the purposes of this protection, disabled children, adolescents, women, and the elderly are considered especially vulnerable.<sup>39</sup>

2. *Law No. 12,288 of July 20, 2010*

According to article 2 of Law No. 12,288 of July 20, 2010, the Racial Equality Statute, it is the duty of the state and society to guarantee equal opportunities, recognizing that every Brazilian citizen, regardless of ethnicity or skin color, has the right to participate in the community, especially in political, economic, business, educational, and cultural activities and sports, defending their dignity and their religious and cultural values.<sup>40</sup>

In addition to the constitutional rules relating to fundamental principles, rights, and guarantees, and social, economic, and cultural rights, the Racial Equality Statute adopts as a political-legal guideline the inclusion of victims of ethnic-racial inequality, the valorization of ethnic equality, and the strengthening of the Brazilian national identity.<sup>41</sup> It also lists initiatives to promote the

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<sup>34</sup> Estatuto da Pessoa com Deficiência, Lei No. 13.146, de 6 de Julho de 2015, art. 1, <https://perma.cc/7BFX-WSNR>.

<sup>35</sup> Id. art. 2.

<sup>36</sup> Id. art. 4.

<sup>37</sup> Id. art. 4(§ 1).

<sup>38</sup> Id. art. 5.

<sup>39</sup> Id. art. 5(sole para.).

<sup>40</sup> Estatuto da Igualdade Racial, Lei No. 12.288, de 20 de Julho de 2010, art. 2.

<sup>41</sup> Id. art. 3.

participation of the black population under conditions of equal opportunity in the economic, social, political, and cultural life of the country.<sup>42</sup>

The National System for the Promotion of Racial Equality (Sistema Nacional de Promoção da Igualdade Racial) was created<sup>43</sup> to achieve the objectives of the Racial Equality Statute and to implement the federal government's policies and services designed to overcome ethnic inequalities in the country.<sup>44</sup>

## II. Open Internet

On April 24, 2014, Brazil published Law No. 12,965, which establishes principles, guarantees, rights, and duties for the use of the internet in Brazil and sets forth guidelines for the actions of the Union, the states, the Federal District, and the municipalities in relation to this matter.<sup>45</sup>

### A. Basis for Regulation of Internet Use

The regulation of the use of the internet in Brazil is based, among other things, on respect for freedom of expression, human rights, personality development, the exercise of citizenship in digital media, plurality and diversity, openness and collaboration, free enterprise, free competition, consumer protection, and the social purpose of the internet.<sup>46</sup>

### B. Rights and Guarantees

According to Law No. 12,965, internet access is essential to the exercise of citizenship. For this purpose, the Law lists the rights of and the guarantees to internet users, which include, inter alia, the inviolability of intimacy and privacy, and protection and compensation for property or moral damages resulting from such violation;<sup>47</sup> the inviolability and secrecy of the flow of a person's communications through the internet, except by court order, as provided by law;<sup>48</sup> and the inviolability and secrecy of a person's private communications that have been stored, except by court order.<sup>49</sup>

The guarantee of the right to privacy and freedom of expression in communications is a condition for the full exercise of the right to access the internet.<sup>50</sup> Contractual clauses that violate these provisions are null and void, such as those that

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<sup>42</sup> Id. art. 4.

<sup>43</sup> Id. art. 5.

<sup>44</sup> Id. art. 47.

<sup>45</sup> Lei No. 12.965, de 23 de Abril de 2014, art. 1, <https://perma.cc/GMT3-7URY>.

<sup>46</sup> Id. art. 2.

<sup>47</sup> Id. art. 7(I).

<sup>48</sup> Id. art. 7(II).

<sup>49</sup> Id. art. 7(III).

<sup>50</sup> Id. art. 8.

I - imply an offense to the inviolability and confidentiality of private communications, over the internet; or

II - in an adhesion contract, do not offer the Brazilian jurisdiction as an alternative to the contracting party to resolve disputes arising from services provided in Brazil.<sup>51</sup>

### III. Data Protection

Law No. 13,709 of August 14, 2018, provides for the processing of personal data, including in digital media, by a natural person or by a legal person under public or private law, with the objective of protecting the fundamental rights of freedom and privacy and the free development of the personality of the natural person.<sup>52</sup>

#### A. Definitions

For the purposes of Law No. 13,709, the following definitions apply:

I - personal data: information related to an identified or identifiable natural person;

...

X - processing: any operation performed with personal data, such as those referring to the collection, production, reception, classification, use, access, reproduction, transmission, distribution, processing, archiving, storage, elimination, evaluation or control of information, modification, communication, transfer, diffusion or extraction.<sup>53</sup>

#### B. Application

Law No. 13,709 applies to any processing operation carried out by a natural person or a company (*peessoa jurídica*) under public or private law, regardless of the medium, the country of its headquarters, or the country where the data is located, provided that

I - the processing operation is carried out in the national territory;

II - the processing activity has as its objective the offer or supply of goods or services or the processing of data from individuals located in the national territory; or

III - the personal data subject to the treatment have been collected in the national territory.<sup>54</sup>

Personal data is considered to have been collected in the national territory where the holder was in Brazil at the time of collection.<sup>55</sup>

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<sup>51</sup> Id. art. 8(sole para.).

<sup>52</sup> Lei No. 13.709, de 14 de Agosto de 2018, art. 1, <https://perma.cc/5Q7E-KLGL>.

<sup>53</sup> Id. art. 5.

<sup>54</sup> Id. art. 3.

<sup>55</sup> Id. art. 3(§ 1).

### C. Exceptions

According to article 4, Law No. 13,709 does not apply to the processing of personal data

- I - performed by a natural person for exclusively private and non-economic purposes;
- II - carried out for purposes [that are] exclusively:
  - a) journalistic and artistic; or
  - b) academic, applying articles 7 (legitimate purposes) and 11 (sensitive personal data) of this Law;
- III - carried out for the exclusive purposes of:
  - a) public security;
  - b) national defense;
  - c) State security; or
  - d) investigation and prosecution of criminal offenses; or
- IV - coming from outside the national territory and that are not object of communication, shared use of data with Brazilian processing agents or object of international data transfer with a country other than the country of origin, provided that the country of origin provides a degree of protection of personal data appropriate to the provisions of Law No. 13,709.<sup>56</sup>

The processing of personal data provided for in article 4(III) must be governed by specific legislation, which must provide for proportional and strictly necessary measures to serve the public interest, observing due legal process, the general principles of protection, and the rights of the holder provided for in Law No. 13,709.<sup>57</sup>

Private companies are prohibited from processing the data referred to in article 4(III), except in procedures involving public companies, which will be the subject of a specific report to the national authority and must observe the limitation imposed in article 4(§ 4) of Law No. 13,709 (which limits the amount of personal data that can be processed by a private company).<sup>58</sup>

### D. Principles

The activities of personal data processing must observe good faith and the principles listed in article 6 of Law No. 13,709, which include, but are not limited to, purpose, adequacy, transparency, security, and accountability.<sup>59</sup>

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<sup>56</sup> Id. art. 4.

<sup>57</sup> Id. art. 4(§ 1). The mentioned specific law has yet to be enacted.

<sup>58</sup> Id. art. 4(§ 2). Article 55-A of Law No. 13,709 created the National Data Protection Authority, and its competence is listed in article 55-J.

<sup>59</sup> Id. art. 6.

### **E. Consent**

Article 7 defines the situations where the processing of personal data can be carried out, including, *inter alia*, with consent of the person and the fulfillment of a legal or regulatory obligation by the controller.<sup>60</sup>

### **F. Entry into Force**

Articles 55A to 55-L, 58A, and 58B of Law No. 13,709 entered into force on December 28, 2018. Articles 52 through 54 will enter into force on August 1, 2021. The remaining articles entered into force in August 2020.<sup>61</sup>

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<sup>60</sup> Id. art. 7.

<sup>61</sup> Id. art. 65.

# Finland

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**SUMMARY** Civic space protections, such as the right to access government information, freedom of expression, freedom of assembly, freedom of association, the right to privacy and data protection, and freedom of the press are protected in Finland’s Constitution, as well as in Finnish national law. Upholding these freedoms is also part of Finland’s obligation as a European Union (EU) member state, and as a State party to the European Convention on Human Rights. Access to the internet is guaranteed by law, albeit not in Finland’s Constitution. The Finnish Constitution also protects against discrimination based on sex, age, origin, language, religion conviction, opinion, health, disability, or “any other reason relating to his or her person.”

The Constitution applies to anyone present in Finland, as well as all Finnish citizens and residents of Finland not present in Finland. The rights are not absolute, but any exceptions or exemptions must be set out in law. For example, the right to access government information does not include a right to access documents that are protected by secrecy laws, the right to freedom of expression exempts hate speech, the right to assembly can be limited for the sake of health or security, the freedom of association does not include the right to form militias, the right of privacy can be limited for the purpose of investigating certain crimes, and the right to an open internet may be limited in order to preserve network security.

Finland’s Supreme Court and the European Court of Human Rights have ruled on several limitations to constitutionally protected freedoms. The legal requirement for all exemptions and exceptions is that they are proportional and prescribed by law; that the laws are precise and carefully defined; and that the limitations are acceptable and do not derogate from the essence of a fundamental freedom or right, constitute an adequate legal protection, and are consistent with Finland’s human rights obligations. Often, limitations to one constitutionally protected right are the result of another constitutionally protected right. For instance, the right to freedom of expression is limited by the right to privacy.

The Constitution has only been amended once since 2017, on the topic of protection of privacy. Most other laws regulating limits to the constitutional freedoms have also remained largely the same since 2017. The Law on Coercive Measures, which includes provisions that limit the right to privacy, has seen the most revisions, with 10 amendments during the last three years. Amending the Constitution requires that special voting rules be adhered to, including that Parliament vote on the amendment before and after a general election, and that the final vote be approved by a two-thirds majority.

Changes to EU law, including the proposed terrorism filter, also apply in Finland but EU developments are not extensively covered in this report.

## I. Introduction

Under Finland's Constitution,<sup>1</sup> several rights and freedoms that may be considered as necessary for citizens and civil society to access information, speak, associate, organize and participate in public life are protected, including: access to governmental information,<sup>2</sup> freedom of expression,<sup>3</sup> freedom of assembly,<sup>4</sup> freedom of association,<sup>5</sup> the right to privacy and data protection,<sup>6</sup> and press freedom protections.<sup>7</sup> The Constitution does not include an explicit provision protecting an open internet.

In 1999, the four constitutional Finnish texts were consolidated into one Finland Constitution, replacing Regeringsformen, Riksdagsordningen, Lag angående rätt för riksdagen att granska legaliteten av medlemmarna av statsrådet och justitiekanslerns ämbetsåtgärder, and Lag om riks rätt.<sup>8</sup> Since then, the Constitution has been amended four times: in 2007 (twice), 2012, and 2018.<sup>9</sup> The Constitution of 1999 clarified that Finland is bound by international treaties pertaining to human rights, including the European Convention on Human Rights (ECHR).<sup>10</sup> In addition, Finland is a member of the European Union (EU) and bound by the fundamental rights and freedoms guaranteed in the Charter of Fundamental Rights of the EU.<sup>11</sup> Both the ECHR and the Charter on Fundamental Rights of the European Union include rights that are also found in Finland's Constitution.<sup>12</sup> Thus, decisions about what constitutes a constitutionally protected right are made by Finland's Supreme Court, the European Court of Human Rights (ECtHR), and the European Court of Justice.

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<sup>1</sup> Finlands grundlag (FFS 731/1999), <https://perma.cc/Q4R6-BJX8>.

<sup>2</sup> See Section I A *infra*.

<sup>3</sup> See Section II B *infra*.

<sup>4</sup> See Section II C *infra*.

<sup>5</sup> See Section II D *infra*.

<sup>6</sup> See Section II E *infra*.

<sup>7</sup> See Section II F *infra*.

<sup>8</sup> Rd GrUB 10/1998 rd- RP 1/1998 rd Grundlagsutskottets betänkande 10/1998 rd Regeringens proposition med förslag till ny Regeringsform för Finland, <https://perma.cc/322T-QYYZ>.

<sup>9</sup> Lag om ändring av 35 och 90 § i Finlands grundlag (FFS 596/2007), <https://perma.cc/K7GJ-Y5B2>; Lag om ändring av 9 och 38 § i Finlands grundlag (802/2007), <https://perma.cc/HGP8-75E9>; Lag om ändring av Finlands grundlag (FFS 1112/2011), <https://perma.cc/Z3P3-48A2>; Lag om ändring av Finlands grundlag (FFS 817/2018), <https://perma.cc/2NMZ-SPFD>.

<sup>10</sup> 1 § Finlands grundlag; Convention on the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221, [https://www.echr.coe.int/Documents/Convention\\_Eng.pdf](https://www.echr.coe.int/Documents/Convention_Eng.pdf).

<sup>11</sup> Charter of Fundamental Rights of the European Union, 2012 O.J. (C 326/391), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:12012P/TXT>.

<sup>12</sup> Convention on the Protection of Human Rights and Fundamental Freedoms, *supra* note 10; Charter of Fundamental Rights of the European Union (2012/C 326/02), [https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights\\_en](https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights_en), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>.

All exceptions and exemptions to the constitutional rights must be proportional and be prescribed in law.<sup>13</sup> The general conditions for limiting fundamental freedoms require that such limitations are prescribed by law; that the prescribing laws are precise and carefully defined; and that the limitations are acceptable, proportional, and do not derogate from the essence of a fundamental freedom or right, constitute an adequate legal protection, and are consistent with Finland's human rights obligations.<sup>14</sup> The aim of these qualified restrictions on exceptions and exemptions is to limit them to those that are strictly necessary.<sup>15</sup>

All amendments to the Constitution must be adopted in the following manner:<sup>16</sup>

[The] proposal on the enactment, amendment, or repeal of the Constitution or limited exceptions to the Constitution shall during the second reading with a majority of the votes be approved to be left in abeyance until the first meeting of the Parliament that is held following the next upcoming national election to Parliament. The proposal shall then, after each respective committee has issued its report on the matter, be approved unchanged in plenum in one meeting by a decision approved by at least two thirds of the votes cast.

The proposal may be declared urgent by a decision approved by at least five sixths of the votes cast. The proposal is then not left in abeyance but may be voted on and passed with at least two thirds of the votes cast.<sup>17</sup>

## II. Constitutional and Legally Protected Freedoms

### A. Access to Government Information

#### 1. Scope

Finland first enjoyed legally protected access to government documents by adoption of a Press Freedom Act in 1766, when Finland was part of Sweden.<sup>18</sup> Article 10 of that act provided for access to public archives.<sup>19</sup>

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<sup>13</sup> Regeringens proposition RP 198-2017 rd till riksdagen med förslag till lag om ändring av 10 § i Finlands grundlag, <https://www.finlex.fi/sv/esitykset/he/2017/20170198.pdf>; see also GrUB 25/1994 rd, 5-6, [https://www.eduskunta.fi/SV/vaski/Mietinto/Documents/grub\\_25+1994.pdf](https://www.eduskunta.fi/SV/vaski/Mietinto/Documents/grub_25+1994.pdf).

<sup>14</sup> Regeringens proposition RP 198-2017 rd till riksdagen med förslag till lag om ändring av 10 § i Finlands grundlag; see also GrUB 25/1994 rd, 5.

<sup>15</sup> Regeringens proposition RP 198-2017 rd till riksdagen med förslag till lag om ändring av 10 § i Finlands grundlag.

<sup>16</sup> 73 § Finlands grundlag.

<sup>17</sup> Id.

<sup>18</sup> Kongl. Maj:ts Nådige Förordning, Angående Skrif- och Tryckfriheten; Gifwen Stockholm i Rådskammaren den 2. December.1766 [His Royal Majesty's Gracious Ordinance Relating to Freedom of Writing and of the Press, Delivered at Stockholm in the Council on December 2, 1766], <https://perma.cc/9NTW-XA76>; see also Elin Hofverberg, *250 Years of Press Freedom in Sweden*, In Custodia Legis (Dec. 19, 2016), <https://perma.cc/UP2Q-SC5A>.

<sup>19</sup> Article 10 of the Act provided that "free access should be allowed to all archives, for the purpose of copying such documents in loco or obtaining certified copies of them." (Translation by author.)

Today, Finland's Constitution guarantees access to government information in article 12, which is also the freedom of expression clause.<sup>20</sup> The right to government information, which is further regulated in law, includes a right to access all information, regardless of the type of media that it is contained in, when held by the government and its agencies and applies to anyone present in Finland.<sup>21</sup> Thus, Finnish citizens, Finnish residents, and even tourists with a legitimate purpose have a right to access public information.<sup>22</sup> Specifically, article 12 paragraph 2 of the Constitution states: "Documents and recordings that are held by government agencies are public, unless limited by compelling reasons through law. Everyone has a right to access public documents and recordings."<sup>23</sup>

Access to government information is further regulated by the Law on Transparency of Government Activity.<sup>24</sup> It provides that, as a general principle, every government document is public, unless otherwise protected by secrecy law.<sup>25</sup> For the purpose of access to information, government agencies include: state administrative authorities and other state offices and institutions, courts and other judicial law institutions, state business offices, municipal authorities, the Bank of Finland, and the Finnish Financial Supervisory Authority as well as the Kela (Finland's social security administration) and other independent public institutions, agencies, and institutions of the Parliament, authorities of the province Åland when the province performs tasks that fall on the national authorities, committees, delegations, commissions, working groups, administrators and auditors in municipalities and joint municipalities as well as other comparable bodies that, as provided for by law, regulation, or other administrative decision have been created to independently perform a delegated task.<sup>26</sup>

## 2. *Exceptions and Exemptions*

A number of government documents are covered by secrecy laws, and thus are not public, including: documents covered by secrecy (*Handlingssekretess*), documents covered by a duty of confidentiality and prohibition on exploitation (*Tystnadsplikt och förbud mot utnyttjande*), and special government documents covered by secrecy (*Sekretessbelagda myndighetshandlingar*).<sup>27</sup> Government documents covered by secrecy are the most broadly defined exception, with more than 30 enumerated grounds for secrecy.<sup>28</sup>

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<sup>20</sup> 12 § Finlands grundlag.

<sup>21</sup> Id.; Lag om offentlighet i myndigheternas verksamhet (1999/621), <https://perma.cc/V3UQ-W9NC>; Förordning om offentlighet och god informationshantering i myndigheternas verksamhet (FFS 12.11.1999/1030), <https://perma.cc/4ZBP-FZG9>.

<sup>22</sup> 12 § Finlands grundlag.

<sup>23</sup> Art. 12 Finlands grundlag. (Translation by author.)

<sup>24</sup> Ministry of Justice, *Act on the Openness of Government Activities*, <https://perma.cc/GAQ2-XYT7>.

<sup>25</sup> 1 § Lag om offentlighet i myndigheternas verksamhet (1999/621).

<sup>26</sup> Id. 4 §.

<sup>27</sup> 6 kap. Lag om offentlighet i myndigheternas verksamhet.

<sup>28</sup> Id. 6 kap. 24 §.

In addition, the government may collect fees to make copies of public documents and may refuse to copy public documents without first collecting such fees.<sup>29</sup>

### 3. *Recent Amendments*

The access to information provision of the Finnish Constitution has not been amended since the 1999 constitutional overhaul. The Law on Transparency of Government Activity has been amended several times since 1999, with six amendments entering into force on or after January 1, 2017.<sup>30</sup> The most recent amendment (622/2020) entered into force on September 1, 2020.<sup>31</sup> The amendment added to the types of documents that are presumed to be covered by secrecy laws, and thus are not public, adding new paragraphs 5, 24 and 31 c, as follows:

5) documents that includes information on the Police, Border Patrol, Customs Control, Prison Guard Agencies and Migration Agency's tactical and technical methods and plans, if the supply of the information from the documents would; jeopardize prevention and investigation of crimes, maintaining of public order and security or the security at a penitentiary, or the reliability of the Migration Agency's investigation on an alien.

24) documents concerning the need of international protection, the conditions for an alien's entry and residence in the country or the basis for them or the acquisition or loss of Finnish citizenship or the decision on citizenship status, if it is not obvious that the delivery of the information contained within will not jeopardize the safety for the party or the family of the party,

31 c) documents that concern an alien who is present in Finland, if there are grounds to suspect that the delivery of the information of the documents jeopardizes the safety of the party or the party's next of kin.<sup>32</sup>

Before 2020, the Law on Transparency of Government Activity was amended twice in 2019, with both amendments taking effect on January 1, 2020.<sup>33</sup> These amendments related to the transfer of public documents between government agencies.<sup>34</sup> Amendment (907/2019) amended provisions

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<sup>29</sup> Id. 6 kap. 34 §.

<sup>30</sup> Lag om ändring av 11 § i lagen om offentlighet i myndigheternas verksamhet (FFS 1400/2016), <https://perma.cc/U3LR-YXNW>; Lag om ändring av 24 § i lagen om offentlighet i myndigheternas verksamhet (FFS 808/2017), <https://perma.cc/KF8A-5FRW>; Lag om ändring av lagen om offentlighet i myndigheternas verksamhet (FFS 604/2018), <https://perma.cc/M42V-YPCW>; Lag om ändring av 24 § i lagen om offentlighet i myndigheternas verksamhet (FFS 277/2019), <https://perma.cc/EF7C-J9Q5>; Lag om ändring av lagen om offentlighet i myndigheternas verksamhet (FFS 907/2019), <https://perma.cc/HED7-KDFY>; Lag om ändring av 24 § i lagen om offentlighet i myndigheternas verksamhet (FFS 622/2020), <https://perma.cc/VE9G-26AB>.

<sup>31</sup> Lag om ändring av 24 § i lagen om offentlighet i myndigheternas verksamhet (FFS 622/2020), entered into force on Sept. 1, 2020, <https://perma.cc/VE9G-26AB>.

<sup>32</sup> Id. (Translation by author.)

<sup>33</sup> Lag om ändring av 24 § i lagen om offentlighet i myndigheternas verksamhet (FFS 277/2019), <https://perma.cc/L35Q-7278>; Lag om ändring av lagen om offentlighet i myndigheternas verksamhet (FFS 907/2019), <https://perma.cc/WKV5-F5RL>.

<sup>34</sup> Lag om ändring av lagen om offentlighet i myndigheternas verksamhet (FFS 907/2019); Lag om ändring av 24 § i lagen om offentlighet i myndigheternas verksamhet (FFS 277/2019).

2, 3, 15, 16, 25, and 36 on transfer of public documents.<sup>35</sup> Amendment 277/2019 amended provision 24 relating to intra-government agency transfer of information pertaining to criminal information on inmates as well as those prosecuted.<sup>36</sup> Amendment 1400/2016 amended provision 11 on the right to public information during public procurements, amendment 808/2017 amended provision 24 on the secrecy of certain psychological evaluations related to the judiciary, and amendment 604/2018 amended provisions 11, 24, and 26 related to accessing public information related to public procurements.<sup>37</sup>

## B. Freedom of Expression

### 1. Scope

The right to freedom of expression is guaranteed in article 12 of the Finnish Constitution:<sup>38</sup>

Everyone as a right to freedom of expression. The right to freedom of expression includes the right to provide, disseminate, and receive information, opinions, and other messages without someone's prior censorship. Additional rules on freedom of expression are issued in law. Rules on limitations with regard to picture programs that are necessary to protect children are issued by law.<sup>39</sup>

As a State-party to the ECHR, Finland is also bound to ensure protection of the right to freedom of expression as stated in article 10 of the ECHR, specifically:

#### Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.<sup>40</sup>

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<sup>35</sup> Lag om ändring av lagen om offentlighet i myndigheternas verksamhet (FFS 907/2019).

<sup>36</sup> Lag om ändring av 24 § i lagen om offentlighet i myndigheternas verksamhet (FFS 277/2019).

<sup>37</sup> Lag om ändring av 11 § i lagen om offentlighet i myndigheternas verksamhet (FFS 1400/2016); Lag om ändring av 24 § i lagen om offentlighet i myndigheternas verksamhet (FFS 808/2017); Lag om ändring av lagen om offentlighet i myndigheternas verksamhet (FFS 604/2018).

<sup>38</sup> 12 § Finlands grundlag.

<sup>39</sup> 12 § 1 para Finlands grundlag.

<sup>40</sup> ECHR art. 10.

The European Court of Human Rights (ECtHR) has, on a number of occasions, found Finland in violation of Article 10. For example, Finland has lost cases before the ECtHR for punishing speech too harshly, including with prison sentences.<sup>41</sup> In *Nikula v. Finland*, the Court found that the conviction of Anne Nikula, a lawyer convicted for defamation for criticizing a prosecutor for a decision in a criminal proceeding in which the lawyer was representing one of the defendants, violated Article 10 of the Convention. According to the ECtHR, the restriction on the lawyer's freedom of speech had a potential chilling effect and there was a lack of "pressing social need."<sup>42</sup>

In *Goussev and Marenk v. Finland*,<sup>43</sup> the Court held that the seizure of documents from the plaintiffs, who were suspected of defamation, during a search conducted for investigation of another crime violated article 10 of the Convention because the interference was not deemed to be "prescribed by law."<sup>44</sup> Following the ruling, Finland has enacted the Act of Exercise of Freedom of Expression in the Mass Media to clarify certain provisions.<sup>45</sup>

The ECtHR found no violation of article 10 of the Convention in *Pentikäinen v Finland*.<sup>46</sup> The Court assessed whether the fact that a press photographer reporting on a demonstration was apprehended, placed in police custody, and subsequently convicted for disobeying the police violated article 10 of the Convention. The photographer had not been prevented from reporting on the event, and disobeyed the police's order by staying with the demonstrators, who had been ordered to disperse, instead of reporting from a designated press area. Because it was unclear whether the photographer had identified himself properly as a member of the press and because the photographer was convicted without penalty, the ECtHR (Grand Chamber) found there had been a "fair balance" of competing interests and, thus, no violation of the Convention.<sup>47</sup>

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<sup>41</sup> For example, *Niskasaari v. Finland*, App. No. 37520/07, Eur. Ct. H.R. (2010), <https://perma.cc/K7LQ-FMNX>; see also European Court of Human Rights Factsheet, *Hate Speech* (Mar. 2019), <https://perma.cc/884L-7BKA>.

<sup>42</sup> *Nikula v. Finland*, App. 31611/96, Eur. Ct. H.R. (2002), <http://hudoc.echr.coe.int/eng?i=001-60333>.

<sup>43</sup> *Goussev and Marenk v. Finland*, Appl. No. 35083/97, Eur. Ct. H.R. (2006), [https://hudoc.echr.coe.int/eng#22itemid22:\[22001-72035-22\]](https://hudoc.echr.coe.int/eng#22itemid22:[22001-72035-22]).

<sup>44</sup> *Id.* ¶ 56.

<sup>45</sup> *Id.* ¶ 38.

<sup>46</sup> *Pentikäinen v. Finland*, (App. No. 11882/10), Eur. Ct. H.R. (Grand Chamber) (Oct. 20, 2015), <https://perma.cc/L5TX-EADR#/22itemid/22:/22001-158279/22>.

<sup>47</sup> *Id.* ¶¶ 61-64.

## 2. Exceptions and Exemptions

### a. Secrecy Laws and Legally Mandated Duty of Confidentiality

Certain individuals may not be able to exercise their freedom of expression freely, for instance, a number of professions are bound by secrecy and a legally mandated duty of confidentiality, including doctors,<sup>48</sup> nurses,<sup>49</sup> lawyers,<sup>50</sup> clergy,<sup>51</sup> police,<sup>52</sup> and civil servants and officials.<sup>53</sup>

### b. Libel and Defamation

The right to freedom of expression does not include speech that is designated in law as illegal.<sup>54</sup> This includes libel and defamatory speech (*Om kränkning av integritet och frid samt om ärekränkning*) such as: harassing communications (*Brott mot kommunikationsfrid*),<sup>55</sup> dissemination of information violating personal privacy (*Spridande av information som kränker privatlivet*),<sup>56</sup> aggravated dissemination of information that violates the right to privacy (*Grovt spridande av information som kränker privatlivet*),<sup>57</sup> defamation,<sup>58</sup> and “aggravated defamation.”<sup>59</sup> Freedom of expression is also limited by public order violations,<sup>60</sup> such as breach of the sanctity of religion (*Brott mot trosfrid*).<sup>61</sup>

Finland criminalizes defamation and aggravated defamation.<sup>62</sup> Aggravated defamation occurs when the defamation causes great suffering or “especially great harm.”<sup>63</sup> Defamation is

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<sup>48</sup> 15 § Lag om klientens ställning och rättigheter inom socialvården (FFS 22.9.2000/812), <https://perma.cc/893G-998X>; 17 § Lag om yrkesutbildade personer inom hälso- och sjukvården (FFS 28.6.1994/559), <https://perma.cc/62V2-H5MA>.

<sup>49</sup> 5 § Lag om klientens ställning och rättigheter inom socialvården; 17 § Lag om yrkesutbildade personer inom hälso- och sjukvården.

<sup>50</sup> 5c § Lag om advokater (FFS 12.12.1958/496), <https://perma.cc/2L8S-XZJ8>.

<sup>51</sup> 28 § Kyrkolag (FFS 26.11.1993/1054), <https://perma.cc/4KB4-MVUR>.

<sup>52</sup> 7 kap. 1 § Polislag (FFS 22.7.2011/872), <https://perma.cc/WPZ9-BAWH>.

<sup>53</sup> 23 § Lag om offentlighet i myndigheternas verksamhet.

<sup>54</sup> 24 kap. Strafflagen (FFS 19.12.1889/39), <https://perma.cc/LQB9-WZS5>.

<sup>55</sup> Id. 24 kap. 1a §.

<sup>56</sup> Id. 24 kap. 8 §.

<sup>57</sup> Id. 24 kap. 8 a §.

<sup>58</sup> Id. 24. kap. 9 §.

<sup>59</sup> Id. 24 kap. 10 §.

<sup>60</sup> Id. 17 kap.

<sup>61</sup> Id. 17 kap. 10 §.

<sup>62</sup> Id. 24 kap. 9-10 §§.

<sup>63</sup> Id. 24 kap. 10 §.

punishable with monetary fines, and aggravated defamation with up to two years of imprisonment.<sup>64</sup> The legislation is “medium neutral,” meaning defamation may occur either verbally, in print, through broadcasts, or online.<sup>65</sup>

### c. Hate Speech and Incitement to Commit Criminal Acts

Moreover, freedom of expression does not extend to acts that constitute “hate speech” (*hets mot folkgrupp*, literally, “agitation against an ethnic group”) and other hate crimes (*hatbrott*).<sup>66</sup> For example, in 2012, a politician was found guilty of derogatory writings about Islam and Somali nationals, resulting in monetary fines.<sup>67</sup> A monetary fine is the minimum sentence issued for hate speech, which carries a maximum sentence of two years of imprisonment.<sup>68</sup> Speech that qualifies as an “aggravated agitation against an ethnic group” crime carries a minimum sentence of four months of imprisonment and a maximum sentence of four years of imprisonment.<sup>69</sup> Finnish courts have so far not tried cases with hateful speech targeted against the majority population. Recently, the national prosecutor has been reluctant to prosecute members of Parliament for defamatory language used against journalists or minority groups, if used in connection with a political topic.<sup>70</sup>

Freedom of expression also does not protect incitement to criminal acts.<sup>71</sup> Thus, speech that incites others to commit criminal acts, including violence, when uttered in a mass gathering, in print, or online, may result in monetary fines or no more than two years of imprisonment.<sup>72</sup>

### d. Contractual Agreement and Trade Secrets

Employees can voluntarily limit their right to free speech, even when their profession would not otherwise legally mandate them to secrecy. Business secrets and trade secrets are automatically

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<sup>64</sup> Id. 24 kap 9-10 §.

<sup>65</sup> See id.

<sup>66</sup> 11 kap. 10 § Stafflagen (*Hets mot folkgrupp*); 11 kap. 10a § Strafflagen (*Grovt hets mot folkgrupp*).

<sup>67</sup> KKO:2012:58, <https://perma.cc/QPR5-Y4V8>; Press Release, Högsta Domstolen, Politiker dömd för kränkande skrivelser om islam och somalier (June 8, 2012), <https://perma.cc/LR92-W6EX>.

<sup>68</sup> 11 kap. 10 § Strafflagen.

<sup>69</sup> Id. 11 kap. 10a §.

<sup>70</sup> For instance, the Finnish Prosecutor General decided not to prosecute the Finnish Member of Parliament (MP) Juho Eerola for a comment he made on Facebook. The MP was suspect of having committed “agitation against a protected group” (*hets mot folkgrupp*) by publishing comments on his Facebook page. The prosecutor found that because he was commenting on a big drug case in Finland, the comment should be seen in this political context, and that such political discussions were important, and thus the comment was not a crime. Press Release, Riksåklagarämbetet, *Riksåklagaren väckte inte åtal mot riksdagsmannen Juho Eerola i brottsärendet rörande Facebook-skriviet* (Apr. 6, 2018), <https://perma.cc/UY9K-FUCW>.

<sup>71</sup> 17 kap. 1 § Strafflagen.

<sup>72</sup> Id.

secrets by nature of the employment relationship.<sup>73</sup> However, the dissemination of information covered by trade secret protections if done in the public interest in order to reveal wrongdoings or unlawful activity, or if it otherwise does not exceed what may be accepted as an exercise of one's freedom of expression, is permissible.<sup>74</sup>

### 3. *Recent Amendments*

Article 12 of the Constitution has not been amended within the three last years.<sup>75</sup> The EU is currently considering adding a legal requirement that hosting services providers employ a "terrorism filter" to limit the dissemination of terrorism content online.<sup>76</sup> Article 4 of the proposal includes a requirement that hosting service providers remove or disable access to terrorism content within one hour of receipt of a removal order by the competent national authority.<sup>77</sup> The Government (*Statsrådet*) reported to the Parliament on the matter,<sup>78</sup> noting that the proposed changes might necessitate changes to Finnish national law.<sup>79</sup> For example, Finland would have to pass a law authorizing administrative sanctions, and designate a supervisory authority.<sup>80</sup>

## C. Freedom of Assembly and Freedom of Association

### 1. *Scope*

Article 13 of Finland's Constitution guarantees freedom of assembly and freedom of association for anyone present in Finland.<sup>81</sup> Specifically:

Everyone has a right to arrange gatherings and demonstrations as well as participate in such events.

Everyone has a right to freedom of association. The right to freedom of association includes a right to, without a prior permit, form associations, belong to or not belong to associations, and participate in the associations' activities. The freedom of labor associations and the freedom to organize in order to monitor other interests are also ensured.

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<sup>73</sup> 3 kap. 4 § Arbetsavtalslag (FFS 26.1.2001/55), <https://perma.cc/2RE6-6LL7>; 4 § Lag om företagshemligheter (FFS 10.8.2018/595), <https://perma.cc/K5H4-FSXA>.

<sup>74</sup> 5 § Lag om företagshemligheter.

<sup>75</sup> Finlands grundlag, list of amendments at bottom of Act.

<sup>76</sup> Proposal for a Regulation of the European Parliament and the Council on Preventing the Dissemination of Terrorist Content Online A Contribution from the European Commission to the Leaders' Meeting in Salzburg on 19-20 September 2018, COM/2018/640 final, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52018PC0640>.

<sup>77</sup> Id.

<sup>78</sup> Statsrådets U-skrivelse [U 98 2018 rd] Statsrådets skrivelse till riksdagen om kommissionens förslag till Europaparlamentets och rådets förordning om förhindrande av spridning av terrorisminnehåll online (Nov. 7, 2018), <https://perma.cc/L9YZ-8NJL>.

<sup>79</sup> Id.

<sup>80</sup> Id.

<sup>81</sup> 13 § Finlands grundlag.

Additional provisions on the freedom of assembly and the freedom of association are provided in law.<sup>82</sup>

In addition, the right to freedom of movement is guaranteed in article 9 of the Constitution.<sup>83</sup>

The right to assembly is further regulated in the Act on Assemblies.<sup>84</sup> A fundamental principle is that assemblies and public events must be:<sup>85</sup>

organized under peaceful practices in order for the participant's or outsiders' safety not to be jeopardized or their rights violated. When such events are organized, one must ensure that the assembly does not cause considerable drawbacks for the environment.

When a public assembly or a public event is organized, no one may, without acceptable reasons, be put in an unequal position because of any reason attributable to his or her person.<sup>86</sup>

It is the responsibility of the public (police and municipality) to ensure that such meetings can occur in a safe manner.<sup>87</sup>

## 2. *Exceptions and Exemptions to Freedom of Assembly*

Exemptions to the right of freedom of assembly can be found in law, including the Public Ordinance Law,<sup>88</sup> the Contagious Disease Act,<sup>89</sup> the Emergency Preparedness Law,<sup>90</sup> and the Criminal Code.<sup>91</sup> For example, the Public Ordinance Law grants police the right to limit the right to assemble when such assembly would be dangerous for traffic, health, or other reasons (*Äventyrande av ordning och säkerhet samt orsakande av störning*).<sup>92</sup> The law also prohibits performance in public spaces, if it violates the law, or if it causes health risks, damage to property or considerable disruption of the public order.<sup>93</sup>

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<sup>82</sup> Id. (Translation by author).

<sup>83</sup> 9 § Finlands grundlag.

<sup>84</sup> Lag om sammankomster (FFS 22.4.1999/530), <https://perma.cc/PF45-9Z2M>.

<sup>85</sup> 3 § Lag om sammankomster.

<sup>86</sup> Id. 3 §.

<sup>87</sup> Id. 4 §.

<sup>88</sup> Ordningsslag (FFS 27.6.2003/612), <https://perma.cc/YX4F-6CWN>.

<sup>89</sup> Lag om smittsamma sjukdomar (FFS 21.12.2016/1227), <https://perma.cc/4QQP-BYMR>.

<sup>90</sup> Beredskapslagen (FFS 29.12.2011/1552), <https://perma.cc/UFB8-2LQ5>.

<sup>91</sup> Stafflagen (FFS 19.12.1889/39), <https://perma.cc/LQB9-WZS5>.

<sup>92</sup> 3 § Ordningsslagen.

<sup>93</sup> Id. 7 §.

Finland has limited the freedom of movement (constitutionally protected in article 9), the freedom of assembly (constitutionally protected in article 10), and other freedoms during the COVID-19 pandemic.<sup>94</sup>

### 3. *Exceptions and Exemptions to Freedom of Association*

The freedom of association may be limited by law.<sup>95</sup> Additional requirements and limitations for when an association may be formed are set forth in the Finnish Association Act,<sup>96</sup> which requires that:

- The association cannot “violate law or good practice” (art. 1).
- Military groups, such as armed militias, are prohibited (art. 3).
- Groups that include weapons training and that are not solely for hunting require prior approval (art. 4).
- Members always have a right to leave the association (art. 13).
- An association may be dissolved when it violates the law, when the association violates its own bylaws, or when it violates permits obtained (such as for weapons) (art. 43).

### 4. *Recent Amendments*

There have been no amendments to article 13 of Finland’s Constitution during the three most recent years.<sup>97</sup> The Finnish Associations Act was most amended in 2017,<sup>98</sup> and again in 2020.<sup>99</sup> This most recent update to the Act was on how to properly maintain membership records in light of the General Data Protection Regulation (GDPR)<sup>100</sup> and the Data Protection Act.<sup>101</sup>

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<sup>94</sup> *Restrictions During the Coronavirus Epidemic*, Government of Finland, <https://perma.cc/GD33-KHJB>.

<sup>95</sup> 13 § Finlands grundlag.

<sup>96</sup> Föreningslag (FFS 26.5.1989/503), <https://perma.cc/Q3TX-JAEB>; <https://perma.cc/WQ89-HBS2> (unofficial English translation).

<sup>97</sup> See list of amendments in Finlands grundlag.

<sup>98</sup> Lag om ändring av föreningslagen (FFS 462/2017) entered into force on Sept. 16, 2019, <https://perma.cc/Z77T-5S6M>; see also RP 228/2016, <https://perma.cc/X3EG-KU3A>.

<sup>99</sup> Lag om ändring av 11 och 47 § i föreningslagen (FFS 336/2020) entered into force on June 1, 2020, <https://perma.cc/4PWL-EN7J>; see also RP 2/2020, <https://perma.cc/95AJ-4QGH>.

<sup>100</sup> Consolidated text: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation), <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1532348683434&uri=CELEX:02016R0679-20160504>.

<sup>101</sup> Lag om ändring av 11 och 47 § i föreningslagen (FFS 336/2020).

## D. Right to Privacy and Data Protection

### 1. Scope

Finland's Constitution guarantees the right to privacy to everyone present in Finland in article 10.<sup>102</sup> In addition, as mentioned above, Finland is bound by the ECHR.<sup>103</sup> The ECHR guarantees the right to privacy in article 8.<sup>104</sup> Specifically, article 10 of Finland's Constitution provides that:

Everyone is guaranteed a right to privacy, honor and sanctity of the home. More detailed provisions on the protection of personal information is issued in law.

The secrecy of correspondence, telephony and other confidential communications is inviolable.

Measures that limit the sanctity of the home may be prescribed through legislation if necessary to guarantee the fundamental freedoms and rights or to investigate crimes. (5.10.2018/817).<sup>105</sup>

Both Finland's Supreme Court and the ECtHR have weighed in on what constitutes privacy. For example, in a 2018 decision, Finland's Supreme Court found that the publication on Facebook of a picture of a man who was convicted of sexual assault of a child violated the right to privacy, resulting in monetary fines.<sup>106</sup> In a 2019 Supreme Court decision, the publication of a picture and name of a man together with a description of him as an internet snitch and protector of pedophiles, insinuating that the man himself was a pedophile, was deemed a violation of privacy and resulted in the issuance of daily fines.<sup>107</sup> In 2019, the Supreme Court held that a petitioner's right to request the deletion of allegedly unlawful materials online (under Section 23 of the Act on Freedom of Expression in Mass Communications) was independent of the prosecutor's decision to make such a request or to discontinue the investigation.<sup>108</sup> In *HD 2009:3*, the Supreme Court upheld the verdict of a lower court in which a father and his acquaintance were convicted of disseminating information that violated personal privacy by publishing a video online showing his children being taken into custody by the social services.<sup>109</sup>

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<sup>102</sup> 10 § Finlands grundlag.

<sup>103</sup> See Section I above.

<sup>104</sup> ECHR art. 8.

<sup>105</sup> 10 § Finlands grundlag. (Translation by author.)

<sup>106</sup> R2016/319, 10.7.2018, KKO 2018:51; Press Release, Högsta Domstolen, Publiceringen av en gärningsmans foto på Facebook kränkte skyddet för privatlivet – följden var bötesstraff (July 10, 2018), <https://perma.cc/63Z4-997E>.

<sup>107</sup> HD 2019:81, <https://perma.cc/GKW9-KKV3>.

<sup>108</sup> HD 2019:39, <https://perma.cc/N6CR-4EAL>.

<sup>109</sup> HD:2009:3, <https://perma.cc/AS6E-JJDS>; Press Release, Högsta domstolen, *Domen för publicering av ett videoklipp där man såg hur två barn omhändertogs ändrades inte* (December 4, 2018), <https://perma.cc/4R9M-MDU2>.

Finland is bound by ECtHR rulings, however, only verdicts against Finland are directly binding.<sup>110</sup> The ECtHR found Finland in violation of article 8 of the ECHR in 2013 when it upheld a strict deadline for applying for a paternity determination and in 2014 when it forced an inmate to wear an “observation jumpsuit,” which wearers cannot take off themselves, when in isolation.<sup>111</sup> In 2008, Finland was found to have violated article 8 of ECHR in two cases: In *K.U. v Finland*,<sup>112</sup> the ECtHR found that Finland had violated its positive obligation to offer a criminal law remedy against the offender, which was contrary to the right to private life. In the case, a stranger posted a profile of a boy who was 12 years of age on a dating site but the boy had no criminal law remedy against the offender.<sup>113</sup> In *I. v. Finland*, the ECtHR found that Finland violated the right to a private life under article 8 when an HIV-positive person had not received sufficient protection of the person’s medical records.<sup>114</sup>

As a member of the European Union, Finland is bound by the GDPR. Finland’s Office of the Data Protection Ombudsman oversees compliance with the GDPR,<sup>115</sup> and it has issued several orders in 2020.<sup>116</sup> For example, in May, it imposed an administrative fine for deficiencies in personal data processing.<sup>117</sup> Also in May, it ordered Google to delete search results that included individuals who had been convicted of criminal offenses.<sup>118</sup> In June, it held that personal identity codes (similar to social security numbers) cannot be used on invoices.<sup>119</sup> In addition to the GDPR, which applies directly in Finland, Finland has adopted the Data Protection Act.<sup>120</sup>

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<sup>110</sup> ECHR art. 46. (“The High Contracting parties undertake to abide by the final judgment of the Court in any case to which they are parties.”)

<sup>111</sup> Press Release, Statsradet, Europadomstolens dom i ett mål om rätt till skydd för privatliv (2013), <https://perma.cc/DA55-LPAV>; Press Release, Statsradet, Europadomstolens dom i ett mål om rätt till skydd för privatlivet, (2014), <https://perma.cc/36NA-ARQL>.

<sup>112</sup> *K.U. v Finland* (Appl. No. 2872/02) Eur. Ct. H.R. (Dec. 2, 2008), [https://perma.cc/NRH6-FKBC#/22itemid/22:\[/22001-89964%22\]](https://perma.cc/NRH6-FKBC#/22itemid/22:[/22001-89964%22]).

<sup>113</sup> *I v. Finland* (Appl. No. 20511/03) Eur. Ct. H.R. (July 7, 2008), [https://perma.cc/GT2S-ZBAS#/22itemid/22:\[/22001-87510/22\]](https://perma.cc/GT2S-ZBAS#/22itemid/22:[/22001-87510/22]).

<sup>114</sup> *Id.* ¶¶ 35-49.

<sup>115</sup> 8 § Dataskyddslag (FFS 5.12.2018/1050), <https://perma.cc/VTW8-RTW8>.

<sup>116</sup> Dataombudsmannen byrå, *Aktuellt*, <https://perma.cc/666B-KUHV>.

<sup>117</sup> Press Release, Office of the Data Protection Ombudsman, Office of the Data Protection Ombudsman’s sanctions board imposes administrative fine for several deficiencies in personal data processing (May 29, 2020), <https://perma.cc/AV6Z-6M5F>.

<sup>118</sup> Press Release, Office of the Data Protection Ombudsman, Deputy Data Protection Ombudsman Ordered Google to Delete Search Results (May 7, 2020), <https://perma.cc/WNW5-T368>.

<sup>119</sup> Press Release, Office of the Data Protection Ombudsman, Personal Identity Codes Not to Be Used on Invoices (June 1, 2020), <https://perma.cc/VH87-NT2P>.

<sup>120</sup> Dataskyddslag (FFS 5.12.2018/1050), <https://perma.cc/VTW8-RTW8>.

## 2. *Exceptions and Exemptions*

Article 10 of the Constitution states that exceptions and exemptions to the right of privacy may be prescribed in law for the purpose of ensuring other constitutional rights or to investigate crimes.<sup>121</sup> Specifically:

it may be prescribed in law regarding such limitations in the secrecy of communications that are necessary during the investigation of crimes that jeopardize the individual's or the society's safety or the sanctity of the home, during trial, at safety controls and during detention as well as to collect information on military activity or such other activity that seriously threatens the national security.<sup>122</sup>

Thus, Finland allows limits on the right to a private life in order to apply certain coercive measures, as needed, to investigate and prosecute crimes.<sup>123</sup> For example, the Act on Coercive Measures allows for electronic surveillance, and travel restrictions, when a person is a suspect in a crime that punishable by at least one year of imprisonment.<sup>124</sup> In contrast, home surveillance may only be used for suspects in specified serious crimes that include genocide, sexual abuse of children, and terrorism.<sup>125</sup> Use of any coercive measure requires that the measure be in proportion with the severity of the crime. Whether the suspect's or another person's rights would be violated, and whether there are other material circumstances, must be evaluated before applying coercive measures. The least invasive coercive measure must always be used first.<sup>126</sup>

As provided for in the Act on Electronic Communication Services, traffic data must be retained for six to 12 months depending on the means of communication, but may only be accessed in a limited number of enumerated instances, including when investigating upon reasonable suspicion certain crimes in accordance with the Act on Coercive Measures.<sup>127</sup>

## 3. *Recent Amendments*

The privacy protection provision (article 10) in the Constitution was amended in 2018 by amending article 10 paragraph 3 and adding a fourth paragraph stating that:<sup>128</sup>

It may be prescribed in law that measures which affect domestic peace and which are necessary for the enforcement of fundamental freedoms and rights, or for crimes to be investigated.

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<sup>121</sup> Lag om ändring av 10 § i Finlands grundlag (FFS 817/2018), <https://perma.cc/KY93-WNA4>; RP 198-2017 rd, <https://perma.cc/JE25-H958>.

<sup>122</sup> 10 § Grundlagen, amended through Lag om ändring av 10 § i Finlands grundlag (FFS 817/2018).

<sup>123</sup> Tvångsmedelslag (FFS 22.7.2011/806), <https://perma.cc/C2FL-7ZPM>.

<sup>124</sup> Id. 5 kap. 1 §, and 10 kap. 1 and 3 §§.

<sup>125</sup> Id. 10 kap. 17 §.

<sup>126</sup> Id. 1 kap. 2 and 3 §§.

<sup>127</sup> 157 and 322 §§ Lag om tjänster inom elektronisk kommunikation (FFS 2014/917), <https://perma.cc/G59J-6WNG>; see also 10 kap. 6 § Tvångsmedelslag.

<sup>128</sup> RP 198-2017 rd, <https://perma.cc/JE25-H958>.

It may be prescribed in law regarding such restrictions on the secrecy of communications that are necessary for the investigation of such crimes that jeopardize the security of the individual or society or peace at home, at trial, in security checks and during detention, and to collect information on military activities or such other activities that seriously threaten the national security.<sup>129</sup>

The Coercive Measures Act has been amended 10 times in the last three years:

- Amendment FFS 667/2016, which entered into force on January 1, 2017, amended provision 5 ch. 2, 3 §§, making changes to the provision on travel prohibitions.<sup>130</sup>
- Amendment FFS 434/2017, which entered into force on July 3, 2017, amended provision 7 ch. 21 and transposed Directive 2014/41/EU on the European Parliament and of the Council of 3 April 2014 regarding the European investigation order in criminal matters.<sup>131</sup>
- Amendment FFS 101/2018, which entered into force on January 1, 2019, amended provisions 2 ch. 12 §; and 5 ch. 1a, 2a, 4 §§ on pretrial detention and prohibitions on travel.<sup>132</sup>
- Amendment FFS 112/2018, which entered into force on April 1, 2018, amended provisions 5 ch. 2 §, 10 ch. 1, 39, 47, 48, 46, 57, and 65 §§ on travel prohibitions and secret coercive measures and the law on crime prevention within the Customs and Borders Control.<sup>133</sup>
- Amendment FFS 875/2018, which entered into force on November 15, 2018, amended provisions 10 ch. 3, 6, 7, 12, 17 §§ on changes to when coercive measures (such as electronic surveillance, systematic observation, and home surveillance) can be used.<sup>134</sup>
- Amendment FFS 323/2019, which entered into force on June 11, 2019, amended provisions 2 ch. 11, 12 §§ on when a minor may be detained.<sup>135</sup>
- Amendment FFS 488/2019, which entered into force on April 15, 2019, amended provisions 10 ch. 3, 17 §§ on changes to electronic and home surveillance.<sup>136</sup>
- Amendment FFS 509/2019, which entered into force on May 1, 2019, amended provision 11 ch. 4 §, 2 ch. 12, 2k §§, and 5 ch. 5 §, related to electronic monitoring during detention, wanted persons, and prohibition on travel.<sup>137</sup>

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<sup>129</sup> RP 198-2017 rd, <https://perma.cc/9DK4-6VW9>.

<sup>130</sup> Lag om ändring av 5 kap. 2 och 3 § i tvångsmedelslagen (FFS 667/2016), <https://perma.cc/4HNR-LM3W>.

<sup>131</sup> Lag om ändring av 7 kap. 21 § i tvångsmedelslagen (FFS 434/2017), <https://perma.cc/G42F-DD85>.

<sup>132</sup> Lag om ändring av tvångsmedelslagen (FFS 101/2018), <https://perma.cc/SF9V-66ML>.

<sup>133</sup> Lag om ändring av tvångsmedelslagen (FFS 112/2018), <https://perma.cc/LSR2-F37Y>.

<sup>134</sup> Lag om ändring av 10 kap. i tvångsmedelslagen (FFS 875/2018), <https://perma.cc/62A4-EBTE>.

<sup>135</sup> Lag om ändring av 2 kap. 11 och 12 § i tvångsmedelslagen (FFS 323/2019), <https://perma.cc/Q4DC-U6NY>.

<sup>136</sup> Lag om ändring av 10 kap. 3 och 17 § i tvångsmedelslagen (FFS 488/2019), <https://perma.cc/BQ2H-UXSE>.

<sup>137</sup> Lag om ändring av tvångsmedelslagen (FFS 509/2019), <https://perma.cc/LW2J-5CF5>.

- Amendment FFS 587/2019, which entered into force on June 1, 2019, amended provisions 2 ch. 9 § and 10 ch. 3, 6, 39 §§, on officials with the power to make an arrest and on electronic surveillance and its conditions and sources of information and the possibility of controlled use of informational sources.<sup>138</sup>
- Amendment FFS 624/2019, which entered into force on June 1, 2019, amended provisions 9 ch. 4 §; 10 ch. 57 and 62 §§ on secret coercive measures, deletion of information, and limits to the right to information for parties in certain cases.<sup>139</sup>

## E. Freedom of the Press

### 1. Scope

Finland is historically known for its freedom of the press. Finland, while part of Sweden, became one of the first countries in the world to recognize press freedom by legislation in 1766.<sup>140</sup> Reporters Without Borders ranked Finland second worldwide in press freedom in 2020.<sup>141</sup> Nevertheless, Finnish reporters are reportedly not immune to “state and social pressures” on their reporting.<sup>142</sup>

Press freedom is considered part of the right to freedom of expression regulated in article 12 of the Constitution.<sup>143</sup> In addition, press freedom is recognized in article 10 of the ECHR and through specific legislation, the Act on Freedom of Expression in Mass Communications.<sup>144</sup>

Everyone has a right to freedom of expression. The right to freedom of expression includes the right to present, disseminate, and receive information, opinions, and other messages without someone’s prior censorship. Additional rules on freedom of expression are issued by law. Rules on limitations with regard to picture programs that are necessary to protect children are issued by law.<sup>145</sup>

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<sup>138</sup> Lag om ändring av 2 och 10 kap. i tvångsmedelslagen (FFS 587/2019), <https://perma.cc/T9N4-TE66>.

<sup>139</sup> Lag om ändring av tvångsmedelslagen (FFS 624/2019), <https://perma.cc/WLL3-AUYH>.

<sup>140</sup> Kongl. Maj:ts Nådige Förordning, Angående Skrif- och Tryckfriheten; Gifwen Stockholm i Rådkammaren den 2. December.1766 [His Royal Majesty’s Gracious Ordinance Relating to Freedom of Writing and of the Press, Delivered at Stockholm in the Council on December 2, 1766], <https://perma.cc/9NTW-XA76>; see also Elin Hofverberg, *250 Years of Press Freedom in Sweden*, In Custodia Legis (Dec. 19, 2016), <https://perma.cc/UP2Q-SC5A>.

<sup>141</sup> *2020 World Press Freedom Index*, Reporters Without Borders, <https://perma.cc/JTX8-4ZWX>; *Finland*, Reporters Without Borders, <https://perma.cc/D9JA-G68L>.

<sup>142</sup> *Press Freedom 2020: Journalists in Finland Not Immune to Pressure*, YLE News (Apr. 21, 2020), <https://perma.cc/HJG4-CJU7>.

<sup>143</sup> See Section II.B. above.

<sup>144</sup> Lag om yttrandefrihet i masskommunikation (FFS 13.6.2003/460), <https://perma.cc/G826-BXHC>. For an overview of how Finland protects journalists, see Elin Hofverberg, *Finland in Laws Protecting Journalists from Online Harassment*, Law Library of Congress (Sept. 2019), <https://perma.cc/R5JN-8BKK>.

<sup>145</sup> 12 § 1 Finlands grundlag (translation by author).

The Supreme Court of Finland has ruled on the limits of press freedoms in a number of binding cases, including in 2013, when the Supreme Court held that convicting an editor and the editor-in-chief of defamation and dissemination of information violating personal privacy did not violate their right to freedom of expression under the Constitution or the ECHR, when they had released the names of suspected white collar criminals via television, as they had wrongfully presented the suspects as having been convicted of the crimes in question.<sup>146</sup> In 2019, it allowed a search at the home of a journalist to proceed.<sup>147</sup> In another decision, also from 2019, the Supreme Court held that a USB-memory device confiscated at the home of a journalist could not be searched or used as part of the preliminary investigation in a criminal case.<sup>148</sup>

As a State party to the ECHR, Finland is also bound to ensure protection of the right to freedom of expression as stated in article 10, which includes the freedom of the press.<sup>149</sup> Specifically, as provided in article 10:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.<sup>150</sup>

As mentioned above in Section I.B., the ECtHR has, on a number of occasions, found Finland in violation of article 10. For example, in *Niskasaari v. Finland*, the ECtHR found that Finnish courts had gone beyond what was “necessary in a democratic society” when it punished a reporter with 40 daily fines as well as damages for misreporting on (and thereby defaming) the Child Ombudsman.<sup>151</sup> According to the ECtHR, the Finnish courts had not “paid sufficient attention to the ‘journalistic’ hue of the case,”<sup>152</sup> and failed to balance the reporter’s freedom of expression

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<sup>146</sup> HD:2013:100, <https://perma.cc/6RZH-G7SJ>.

<sup>147</sup> HD:2019:67, <https://perma.cc/W33A-KJVJ>; Press Release, Högsta domstolen, *HD Ändrade Inte Hovrättens Beslut om Husrannsakan som Gjordes Hemma hos en Journalist* (Aug. 13, 2019), <https://perma.cc/6Z3L-PXDA>.

<sup>148</sup> HD:2019:112, <https://perma.cc/WZJ4-TH3Z>; Press Release, Högsta domstolen, *Den minnespinne som beslagtogs hemma hos en journalist fick inte undersökas eller utnyttjas vid förundersökningen* (Dec. 20, 2020), <https://perma.cc/9N39-N5AT>.

<sup>149</sup> ECHR art. 10.

<sup>150</sup> *Id.*

<sup>151</sup> *Niskasaari v. Finland*, *supra* note 41. However, see also *Pentikäinen v. Finland*, *supra* note 46 (finding no violation when police asked a photographer to leave a demonstration).

<sup>152</sup> *Id.* ¶58.

against the conflicting right to reputation of the Child Ombudsman.<sup>153</sup> Absent the striking such a balance, the Finnish courts' reasoning was not "sufficient to show that the interference complained of 'was necessary in a democratic society,'" and was therefore contrary to article 10 of the ECHR.<sup>154</sup>

In *Saaristo and others v. Finland*,<sup>155</sup> the ECtHR found that Finland had violated article 10 of the ECHR. Finnish courts had convicted a journalist and an editor-in-chief for violating the right to a private life of the communications manager for the presidential campaign of Esko Aho, when they in print claimed that the manager had a romantic relationship with the presidential candidate. The ECtHR concluded that, in view of the communications manager's public role (as contrasted with private persons) and the importance of the press in a democratic society, the sanctions imposed by the Finnish courts (criminal liability and an order to pay fines, damages, and plaintiff's legal fees, etc.) was disproportionate and thereby violated ECHR.<sup>156</sup>

The ECtHR has also allowed restrictions on the freedom of the press, for example, in *Pentikäinen v. Finland*,<sup>157</sup> discussed above in Section II.B.1. on freedom of expression. In *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*,<sup>158</sup> the ECtHR found that restraining a newspaper and message service that published and supplied information on taxable income that was otherwise public information was not a violation of article 10 of the ECHR and that the Finnish court had struck a fair balance between the right to freedom of expression and the right to respect for private life.<sup>159</sup>

## 2. Exceptions and Exemptions

Press freedom may be limited in accordance with the law.<sup>160</sup> Press freedom is limited by the same exemptions as the freedom of expression,<sup>161</sup> for example, the laws against libel, defamation, and hate speech.<sup>162</sup> However, the weighing of different interests and the striking of a balance between what is allowed and what is a violation of the freedom of the press encompass different considerations than when determining the extent of freedom of expression — as seen in the ECtHR

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<sup>153</sup> Id.

<sup>154</sup> Id. ¶¶ 59-60.

<sup>155</sup> *Saaristo and Others v. Finland* (Appl. No. 184/06), Eur. Ct. H.R. (Oct. 12, 2010), <https://perma.cc/YC5F-TRAR>.

<sup>156</sup> Id. ¶¶ 70-72.

<sup>157</sup> *Pentikäinen v. Finland*, *supra* note 46.

<sup>158</sup> *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* (Application No. 931/13), Eur. Ct. H.R. (June 27, 2017), <https://perma.cc/P4C7-UN23>.

<sup>159</sup> *Satakunnan Markkinapörssi Oy and Oy v. Finland* at ¶ 69.

<sup>160</sup> 12 § Finlands grundlag.

<sup>161</sup> See section I.B.2. above.

<sup>162</sup> 24 kap. 8-10 § Strafflagen; 23 § Lag om yttrandefrihet i masskommunikation.

cases discussed above. The only limitation explicitly specified in Finland's Constitution is the limitation on programs that may be damaging to children.<sup>163</sup>

### 3. *Recent Amendments*

Neither the constitutional provision on Press Freedom nor the Act on Freedom of Expression in Mass Communications has been amended recently. The most recent amendment to the Act on Freedom of Expression in Mass Communication took effect in 2016.<sup>164</sup>

## F. Open Internet

### 1. *Scope*

Open internet (i.e., measures to ensure a free, neutral, decentralized internet) is not specifically addressed in the Finnish Constitution.<sup>165</sup> However, access to the internet is a legal right in Finland.<sup>166</sup> Under Finnish law, Internet Service Providers (ISPs) are obliged to provide access to the internet throughout Finland, at a reasonable price, as the internet qualifies as a public utility.<sup>167</sup> Specifically:

Telecommunications operators that Finnish Traficom has designated as universal public service providers for internet services, as specified in article 85, must provide – regardless of the geographical location – at a reasonable price from the perspective of the user – a subscription to the public internet at the place where the user or subscriber permanently resides or is located. The telecommunications corporation must provide the subscription within a reasonable time from the time of the order.

The subscription must be such that all users and subscribers may obtain an expedient internet connection, considering the transfer speed that most users and subscribers have as well as the technical feasibility and costs.

Provisions on the minimum speed for an expedient internet connection is issued in regulations by the Ministry of Transport and Communications. Before the regulation is issued Traficom shall, as necessary, produce a report on the market for data transfer services, including what transfer speed most users and subscribers use, as well as the technical developmental level, and in addition make an evaluation on the [proposed] provisions' financial consequences for the tele corporations.

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<sup>163</sup> 10 § Grundlagen; see also Rd GrUB 10/1998 rd- RP 1/1998 rd Grundlagsutskottets betänkande 10/1998 rd Regeringens proposition med förslag till ny Regeringsform för Finland, <https://perma.cc/322T-QYYZ>.

<sup>164</sup> See Lag yttrandefrihet i masskommunikation; Lag om ändring av 17 § i lagen om yttrandefrihet i masskommunikation (FFS906/2015), <https://perma.cc/4APA-ZGE5>.

<sup>165</sup> See Finlands grundlag, e contrario.

<sup>166</sup> See also BBC, *Finland Makes Broadband a "Legal Right"* (July 1, 2010), <https://perma.cc/X32H-2UAG>.

<sup>167</sup> 87 § Lag om tjänster inom elektronisk kommunikation (FFS 2014/917), <https://perma.cc/G59J-6WNG>. ((23.11.2018/1003))

Traficom may issue additional regulations on how connections technically must be performed and what technical specification they must meet.<sup>168</sup>

Moreover, open internet is also regulated under EU law.<sup>169</sup> Being directly applicable in Finland, the EU's regulation "establishes common rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-users' rights."<sup>170</sup> Providers are not allowed to block, slow down, restrict, or otherwise discriminate between or interfere with specific services, applications, or content. The regulation also requires providers to include in their contracts information on, among other things, volume limitations, speed, and quality of internet access.<sup>171</sup> In Finland, the supervisory authority for compliance with these provisions is the Finnish Transport and Communications Authority (Traficom).<sup>172</sup>

In addition, under the Act on the Provision of Digital Services,<sup>173</sup> the EU Web Accessibility Directive is transposed in Finland.<sup>174</sup> It applies to digital services provided by Finnish authorities, public sector bodies, providers of services that are essential to the public (water, electricity, transport, and mail services), credit institutions, payment service providers, etc. and requires them to ensure accessibility to their websites and mobile applications.<sup>175</sup> A digital service provider to which the act applies may only diverge from the accessibility requirement if it can show that compliance would impose a disproportionate burden on the provider, considering especially the needs of persons with disabilities using the service.<sup>176</sup>

## 2. *Exceptions and Exemptions*

As specified in law, ISPs need not supply internet access to persons who have been prosecuted for "disturbing the mail- and tele traffic" if that crime has been committed with the help of an ISP subscription, or if the subscriber has unpaid debt (unpaid, due, non-contentious, or undisputed debts) with the ISP.<sup>177</sup>

<sup>168</sup> 87 § Lag om tjänster inom elektronisk kommunikation.

<sup>169</sup> Consolidated text: Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 Laying Down Measures Concerning Open Internet Access and Retail Charges for Regulated intra-EU communications and Amending Directive 2002/22/EC and Regulation (EU) No 531/2012 (Text with EEA relevance), <https://perma.cc/7HBC-36GD>.

<sup>170</sup> Id. art. 1.

<sup>171</sup> Id. art. 3.

<sup>172</sup> *Open Internet or Net Neutrality*, Traficom, <https://perma.cc/8MH6-MKFS>.

<sup>173</sup> Lag om tillhandahållande av digitala tjänster (FFS 306/2019), <https://perma.cc/XYQ5-8TM8>.

<sup>174</sup> Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the Accessibility of the Websites and Mobile Applications of Public Sector Bodies, <https://eur-lex.europa.eu/eli/dir/2016/2102/oj>; see also Finansministeriet, *Myndigheternas Förpliktelse att Tillhandahålla E-Tjänster*, <https://perma.cc/PMD7-MAYL>.

<sup>175</sup> 3-6 §§ Lag om tillhandahållande av digitala tjänster.

<sup>176</sup> 8 §.

<sup>177</sup> 88 § 3 st Lag om tjänster inom elektronisk kommunikation.

In addition, an ISP need not supply internet to a geographically remote area at its own expense, if the cost for doing so is disproportional. In these cases, the ISP has a right to be reimbursed by the Finnish State.<sup>178</sup> The calculation of the size of the reimbursement is based on the:

- 1) size of the [ISP] corporation,
- 2) the activities pursued by the [ISP] corporation,
- 3) the turnover of the [ISP] corporation's tele activity, number service, and telephone catalog service, and
- 4) other circumstances that can be equated with those mentioned in items 1-3.<sup>179</sup>

The decision whether to reimburse, and if so, how much, is made by the Ministry of Transport and Communications, using a net cost calculation provide by Traficom.<sup>180</sup> The reimbursement, which requires an application, is retroactive for up to one year.<sup>181</sup>

Exceptions to the requirement of ISPs not to block, slow down, restrict, or otherwise discriminate between or interfere with specific services, applications, or content are laid down in article 3 of Regulation (EU) 2015/2120 on an Open Internet. The exceptions allow limited traffic management measures that are undertaken to comply with legislation, preserve network security, or prevent temporary congestion.<sup>182</sup>

### 3. *Recent Amendments*

There are no recent amendments to the Constitution regarding the right to internet access, but an amendment to the Act on the Provision of Digital Services is pending before Parliament.<sup>183</sup> The bill transposes the Directive on European Electronic Communications Code and the Audiovisual Media Service Directive.<sup>184</sup>

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<sup>178</sup> Id. 93-94 §§.

<sup>179</sup> Id. 94 §.

<sup>180</sup> Id.

<sup>181</sup> Id.

<sup>182</sup> Regulation (EU) 2015/2120, art. 3, supra note 169.

<sup>183</sup> Regeringens Proposition till Riksdagen med Förslag till Lagar om Ändring av Lagen om Tjänster inom Elektronisk Kommunikation och av Vissa Lagar som har Samband med den (RP RP 98/2020 rd) (June 12, 2020), <https://perma.cc/ZE7L-8959>; Edukstunta (overview page) P 98/2020 rd, <https://perma.cc/4NVT-UGLB>.

<sup>184</sup> RP 98/2020 rd, supra note 183.

## G. Discrimination

### 1. Scope

The Finnish Constitution protects against discrimination in chapter 2, section 6, which specifically states that:

Everyone is equal before the law. No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.

Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development.

Equality of the sexes is promoted in societal activity and working life, especially in the determination of pay and the other terms of employment, as provided in more detail by an Act.<sup>185</sup>

Discrimination as a criminal act is addressed in chapter 11, section 11 of the Penal Code, specifically.

#### **Discrimination**

Anyone who in business, professional practice, serves the public; performs a service or any other public assignment; or arranges a public event or a general meeting and without acceptable reason

- 1) does not serve any particular person on normal terms,
- 2) denies any access to the event or meeting or removes anyone therefrom, or
- 3) puts someone in a manifestly unequal or significantly worse position than others

because of his race, national or ethnic origin, skin color, language, sex, age, family relationship, sexual orientation, genetic heritage, disability or state of health or religion, social opinion, political or trade union activity or any other comparable circumstance, unless the act constitutes discrimination in working life or usury-like discrimination in working life, for discrimination is sentenced to a fine or imprisonment for a maximum of six months.<sup>186</sup>

Thus, the rules on discrimination also apply equally to foreign nationals.<sup>187</sup> However, requiring Finnish citizenship for certain government positions of trust, such as President,<sup>188</sup>

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<sup>185</sup> 2 kap. 6 § Finlands grundlag.

<sup>186</sup> 11 kap. 11 § Strafflagen.

<sup>187</sup> 2 kap. 6 § Finlands grundlag; see also Non-Discrimination Ombudsman, *The Rights of Foreign Nationals*, <https://perma.cc/5MWZ-V9DY>.

<sup>188</sup> 54 § Finlands grundlag.

members of Parliament,<sup>189</sup> members of the Cabinet,<sup>190</sup> and police officers,<sup>191</sup> is not considered discrimination.<sup>192</sup>

Finland is also bound by EU Directive 2000/43/EC of 29 June 2000, which implements the principle of equal treatment of people regardless of racial and ethnic origin.<sup>193</sup>

Discrimination is further regulated and addressed in several Finnish Acts, including the Discrimination Act,<sup>194</sup> and the Act on Equality Between Women and Men.<sup>195</sup>

In addition, under Finnish law, the Swedish language has the same legal standing as the Finnish language. Government information must be provided in Swedish as well as Finnish, and Swedish-speaking Finns have a right to use Swedish in dealing with the government and government agencies.<sup>196</sup> Likewise, Sami speakers have a right to use their language in dealing with the government.<sup>197</sup> In 2020, it was reported that some laws had not been accurately translated into Swedish.<sup>198</sup>

As of 2017, Finland's marriage definition is gender neutral, and it has recognized same-sex partnerships since 2002.<sup>199</sup>

#### a. Legal Precedent

The Supreme Court has ruled on discrimination in several cases, including in 2010 when it convicted a clergyman for refusing to work together with a female pastor.<sup>200</sup> All types of disparate treatment are not necessarily considered discrimination, however. For example, in 2013, the

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<sup>189</sup> Id. 27 §.

<sup>190</sup> Id. 60 §.

<sup>191</sup> 24 § Lag om Polisyrkeshögskolan (FFS 30.12.2013/1164), <https://perma.cc/396X-SKZN>.

<sup>192</sup> 11 § Diskrimineringslag (FFS 1325/2014), <https://perma.cc/5MHE-MK39>.

<sup>193</sup> Council Directive 2000/43 of June 29, 2000, Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial and Ethnic Origin, 2000 O.J. (L 180) 22, <https://perma.cc/MD5E-CJY4>.

<sup>194</sup> Diskrimineringslag (FFS 1325/2014), <https://perma.cc/5MHE-MK39>.

<sup>195</sup> Lag om jämställdhet mellan kvinnor och män (FFS 609/1986), <https://perma.cc/NM8P-JTNZ>. For a more complete list, see Finlex, <https://perma.cc/EJ56-45S6>.

<sup>196</sup> 17 § Finlands grundlag.

<sup>197</sup> Id.

<sup>198</sup> Pekka Palmgren, *Fel i Lagtexterna på Svenska Leder till Allvarliga Konsekvenser för Medborgarna - Endel Lagar Granskas inte alls på Svenska*, Svenska Yle (Sept. 27, 2020), <https://perma.cc/W9VG-J4AZ>. None of the laws mentioned in this report were reported as incorrectly translated.

<sup>199</sup> Äktenskapslag (FFS 13.6.1929/234); Lag om registrerat partnerskap (FFS); see also Elin Hofverberg, *Finland: Gender Neutral Marriage Act Enters Into Force* (Mar. 2, 2017), <https://perma.cc/58M6-AUBH>.

<sup>200</sup> Press Release, Högsta domstolen, *Böter åt Präst för Diskriminering på Grund av Kön* (Oct. 22, 2010), <https://perma.cc/L42E-S9FD>; see also Constance Johnson, *Finland: Supreme Court Decides Sex Discrimination Case*, Global Legal Monitor (Oct. 26, 2010), <https://perma.cc/5HNL-TKCB>.

Finnish Supreme Court held that paying a man and a woman differently as a result of their being covered by different collective agreements was not discriminatory.<sup>201</sup>

In 2014, the ECtHR ruled that Finland did not violate the ECHR when it refused to recognize a person as female because the person was still married to her wife.<sup>202</sup>

#### b. Parliamentary Ombudsman of Finland

The Parliamentary Ombudsman of Finland (JO)<sup>203</sup> is tasked with reviewing the activity of the government, including whether government agencies and public authorities adhere to discrimination laws.<sup>204</sup> Persons affected by discrimination may contact the JO directly to lodge a complaint.<sup>205</sup>

As a response to Black Lives Matter demonstrations held in Finland during 2020, the JO has received numerous complaints of activism by members of the police who participated in the demonstrations in uniform.<sup>206</sup> It is currently investigating these claims.<sup>207</sup>

#### c. Non-Discrimination Ombudsman

The Non-Discrimination Ombudsman is responsible for assisting persons subject to discrimination when their claim is heard, as well as assisting Finnish authorities, providers of education, and employers to plan measures to promote equality. It is also responsible for issuing general recommendations on the prevention of discrimination and the promotion of equal treatment and for taking measures to achieve settlements.<sup>208</sup>

In 2020, the Non-Discrimination Ombudsman published a report on the treatment of Finns with African heritage.<sup>209</sup> According to the report, the respondents to the survey had experienced widespread discrimination on the basis of their African heritage, ranging from micro-aggressions

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<sup>201</sup> Press Release, Högsta domstolen, *Löneskillnader Mellan Arbetstagare som Utförde Samma Arbete men Omfattades av Olika Kollektivavtal var Inte Diskriminerande* (Feb. 15, 2013), <https://perma.cc/R79L-YLKS>.

<sup>202</sup> Elin Hofverberg, *European Court of Human Rights; Finland: Court Rules on Change of Gender Issue*, Global Legal Monitor (Aug. 1, 2014), <https://perma.cc/8C5T-HGQX>.

<sup>203</sup> *The Work of the Ombudsman*, Parliamentary Ombudsman, <https://perma.cc/AP3T-RGAZ>.

<sup>204</sup> 1 kap. 2§ Lag om riksdagens justitieombudsman (FFS 14.3.2002/197), <https://perma.cc/M3GZ-XFJ6>.

<sup>205</sup> Id.

<sup>206</sup> Press Release, JO, *Numerous Complaints About Police Activities in the Black Lives Matter Demonstration* (July 8, 2020), <https://perma.cc/P8VX-S734>.

<sup>207</sup> Id.

<sup>208</sup> 19 § Diskrimineringslag.

<sup>209</sup> Press Release, Diskrimineringsombudsmannen, *Diskrimineringsombudsmannens Utredning: Rasism och diskriminering vardag för finländare med afrikansk bakgrund*, <https://perma.cc/P24T-G4XB>.

to violence.<sup>210</sup> However, 61% of the respondents stated that they had not reported incidents of discrimination, and only 37% of the persons responding to the survey believe they know their rights when being discriminated against.<sup>211</sup>

The Non-Discrimination Ombudsman has previously negotiated settlements for discrimination, including in 2015, when a restaurant was accused of discriminating against a party of Romani patrons by requiring them to pay for their meal in advance. According to the settlement, the restaurant was to issue an apology to the injured parties and pay €2,500 (about US\$2,950) for violating the prohibition on discrimination.<sup>212</sup> In 2017, after a store's employees prevented a group of people from entering the store without a security guard present because of the group's ethnic origin, the store and its employees were jointly fined €1,240 (about US\$1,460) and had to pay €3,000 (about US\$3,500) in compensation to the plaintiffs as well as €1,500 (about US\$1,770) for their suffering, plus legal costs.<sup>213</sup>

#### d. In the News

In 2020, a man accused security guards of racism when he was handcuffed in the Helsinki subway, but the Finnish police determined that he was not discriminated against, as they could find neither excessive use of force nor a racist motive for the action.<sup>214</sup>

### 2. Exemption and Exceptions

As mentioned above, the Discrimination Act and the Constitution both exempt differentiated treatment when motivated by "acceptable reasons."<sup>215</sup>

### 3. Recent Amendments

There have been no amendments to the constitutional provisions on discrimination, nor have there been any amendments to the Discrimination Act in the last three years.<sup>216</sup>

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<sup>210</sup> Diskrimineringsombudsmannen, Utredning om Diskrimineringsupplevelser hos Personer med Afrikanskt Ursprung, <https://perma.cc/BN7R-ANAD>.

<sup>211</sup> Id.

<sup>212</sup> Press Release, Diskrimineringsombudsmannen, *Tammerforsrestaurang Betalar Ersättning för Diskriminering* (Aug. 20, 2015), <https://perma.cc/TA6U-FB4Y>.

<sup>213</sup> Press Release, Diskrimineringsombudsmannen, *Klädaffär Dömd för Etnisk Diskriminering – Målsägande Får Både Gottgörelse och Skadestånd* (Sept. 25, 2017), <https://perma.cc/L9N4-YCVV>.

<sup>214</sup> Christoffer Gröhn, *Ordningsvakter och Biljettkontrollanter Anklagades för Rasism när Svart man Belades med Handfängsel – Inget Brott, Enligt Polisen*, Svenska Yle (Sept. 21, 2020), <https://perma.cc/295U-48LZ>.

<sup>215</sup> 2 kap. 6 § Finlands grundlag; 11 kap. 11 § Strafflag; 11 § Diskrimineringslag.

<sup>5</sup> See Finlands grundlag and Diskrimineringslag (amendments listed at bottom of each Act).

In 2019, the Finnish parliament revoked a previous law that exempted members of Jehovah's Witnesses from all form of military service because of their faith.<sup>217</sup> In accordance with Finland's Constitution, military service is mandatory for males who are 18 years of age, but persons who do not wish to perform weapons-based service may instead elect to serve in a civilian capacity.<sup>218</sup>

Refusal to serve in any capacity civil or criminal is punishable by up to one year of imprisonment.<sup>219</sup> As specified by law, Jehovah's Witnesses were exempt, as their faith forbade them from serving.<sup>220</sup> In revoking the exemption, the Finnish Parliament noted that the aim of the revocation was to ensure that persons of all faiths and beliefs would be treated equally and without discrimination, in accordance with the prohibition against discrimination in the Finnish Constitution.<sup>221</sup>

Under Finnish law, women, regardless of faith, are not required to serve, but may volunteer to serve.<sup>222</sup>

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<sup>217</sup> Lag om upphävande av lagen om befrielse för Jehovas vittnen från fullgörandet av värnplikt i vissa fall (FFS 330/2019), <https://perma.cc/9R29-J9UV>; see also Elin Hofverberg, *Finland: Parliament Revokes Law Exempting Jehovah's Witnesses from Mandatory Military Service*, Global Legal Monitor (Apr. 18, 2019), <https://perma.cc/TC7W-SDNY>.

<sup>218</sup> 127 § 1 st Finlands grundlag; 2 and 13 §§ Värnpliktslag (FFS 28.12.2007/1438), <https://perma.cc/7X8K-5RFC>.

<sup>219</sup> 118 §§ Värnpliktslag; 45 kap. 1 § Strafflagen.

<sup>220</sup> Lag om ändring av lagen om befrielse för Jehovas vittnen från fullgörandet av värnplikt i vissa fall (FFS 1261/1992), <https://perma.cc/97F9-4SUP>.

<sup>221</sup> Regeringens Proposition RP 139/2018 rd, <https://perma.cc/W7HX-7KVV>.

<sup>222</sup> Lag om frivillig militärtjänst för kvinnor (FFS 17.2.1995/194), <https://perma.cc/H34F-9E9A>.

# Morocco

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**SUMMARY** Morocco's Constitution and domestic legislation guarantee and protect a range of rights and freedoms related to civic space, but also create a number of exceptions to those rights and freedoms. In addition, the country is bound by international conventions protecting civic space rights and freedoms, such as the 1966 International Covenant on Civil and Political Rights.

Law No. 31.13 of 2018 establishes the scope of the right of access to information held by government agencies and elected institutions while Law No. 13.88 of 2016 regulates the press. However, both laws restrict these rights under a number of listed circumstances.

Law No. 76 of 2002 guarantees freedom of assembly and stipulates that public meetings may be held without prior permission. At the same time the Law imposes requirements that organizers of a public meeting must adhere to in order to hold the meeting.

Law No. 07.09 of 2009 regulates the right to establish nongovernmental associations subject to notice requirements and with some noted exceptions. For example, such associations cannot be formed for illegal purposes that damage Islam or national unity, insult the monarchy, or incite discrimination or public armed protest against the government.

Law No. 09.08 of 2008 on the Protection of Personal Data protects the release of personal data with the consent of the person owning such data. However, it creates a number of conditions under which release is permissible without the consent of the data owner.

Law No. 121.12 of 2019 regulates the means of telecommunications in the country. It ensures a solid infrastructure that allows internet services to reach all users in the country.

Law No. 70.03 of 2004 and Law No. 62-06 of 2007 regulate the principle of equality between Moroccan men and women in the field of family law and the acquisition of citizenship. These statutory rights are subject to Islamic law, however.

## I. Introduction

Morocco is bound by international conventions protecting rights and freedoms related to civic space, such as the 1966 International Covenant on Civil and Political Rights.<sup>1</sup> While Morocco's Constitution and domestic legislation create some exceptions to rights and freedoms related to civic space, they still guarantee and protect those rights and freedoms.

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<sup>1</sup> U.N. General Assembly, International Covenant on Civil and Political Right, Dec. 16, 1966, 999 U.N.T.S. 171.

## II. Legally Protected Freedoms

### A. Access to Government Information

#### 1. Constitution

The Constitution of Morocco of 2011 protects the right to access government information. It provides that Moroccan citizens have the right of access to information held by the public administration, elected institutions, and government bodies.<sup>2</sup> At the same time, the Constitution limits that right under an array of circumstances when the requested information is related to national defense, the internal and external security of the state, or the private life of persons. The Constitution also prohibits the exercise of the right to access information if access would infringe other fundamental freedoms and rights.<sup>3</sup>

#### 2. Domestic Legislation

Law No. 31.13 of 2018 on Access to Information establishes the scope of the right of access to information held by government agencies and elected institutions, identifying the conditions under which this right may be exercised.<sup>4</sup> It defines the term “government information” as data and statistics expressed in the form of numbers, letters, drawings, images, and audiovisual records used by government bodies. Such information may be in either paper or electronic format.<sup>5</sup> Likewise, the Law defines the term “government bodies” as the House of Representatives, the Consultative Council, government departments and agencies, courts, local municipalities, any legal entity governed by public law, and any institution that has a public service mission.<sup>6</sup>

The Law asserts the right of Moroccan citizens to access government information<sup>7</sup> and grants resident foreigners the right to access such information based on relevant international conventions that Morocco has ratified.<sup>8</sup> The person requesting the information may need to pay for the cost of reproducing or processing the information, as well as for shipping cost.<sup>9</sup>

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<sup>2</sup> Morocco Const. of 2011, art. 27, para. 1, <https://perma.cc/RCL3-JHWE> (in Arabic).

<sup>3</sup> Id. para. 2.

<sup>4</sup> Law No. 31.13 of 2018, art. 1, *Al-Jaridah Al-Rasmiyah*, vol. 6655, 12 Mar. 2018, <https://perma.cc/9EGT-YHHS> (in Arabic).

<sup>5</sup> Id. art. 2.

<sup>6</sup> Id. art. 2, para. 2.

<sup>7</sup> Id. art. 3.

<sup>8</sup> Id. art. 4.

<sup>9</sup> Id. art. 5.

Government bodies are required to publish on their websites or in paper reports the following relevant information:

- Relevant international conventions that were signed or ratified by Morocco
- Relevant legislative and regulatory texts
- Relevant draft laws
- The official budget and financial statements related to the wages of their managers
- Contact information
- Mission, structure, and objectives
- Services offered to the public
- Requirements to issue a specific permit or license
- Results of local and parliamentary elections
- Public projects, the entity that works on them, their budgets, and progress made in those projects
- Public tenders and their results
- Job announcements
- Economic statistics
- Social studies
- Regulations guaranteeing free, fair, and legal competition<sup>10</sup>

A person who requests to access government information must complete a form that includes the applicant's first and last name, mailing address, and national identity card number (or residency card number for foreign residents). The requestor must include a description of the requested information.<sup>11</sup> The government body then has 20 working days from the date of receiving the request to respond.<sup>12</sup>

Law No. 31.13 of 2018 restricts the exercise of the right to access government information if the release of such information may cause damage to

- bilateral relationships with foreign countries;
- monetary, economic, or financial policies of the state;

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<sup>10</sup> Id. art. 10.

<sup>11</sup> Id. art. 14.

<sup>12</sup> Id. art. 16.

- industrial property rights, copyright, or related rights of other persons; or
- the rights and interests of victims, witnesses, experts, and whistleblowers, concerning cases of bribery, corruption, embezzlement of public funds, and the abuse of a public position.<sup>13</sup>

The Law also bans government bodies from releasing specific information related to

- confidential deliberations within the Cabinet and governmental councils;
- ongoing investigations;
- ongoing court proceedings; or
- violations of the principles of free, equal, and fair competition.<sup>14</sup>

Furthermore, the Law provides that the government body may reject a request for government information if the requested information is not available, was already published and made available to the public, was previously provided to the requestor during the same calendar year, or is not complete or clear, or if the request was already filed with the Institution of the National Archives of Morocco.<sup>15</sup>

## **B. Freedom of Expression and the Press**

### *1. Constitution*

The Constitution of Morocco guarantees both freedom of the press and freedom of expression. It provides that the press may not be censored and that Moroccan citizens have the rights to express their ideas and opinions freely.<sup>16</sup>

### *2. Domestic Legislation*

Law No. 13.88 of 2016 on the Press defines the term “journalism” as the gathering of news or information and investigating issues in a professional way with the intention of writing or completing media material.<sup>17</sup> The Law provides that the state must ensure freedom of the press, democracy, and pluralism.<sup>18</sup> It protects the secrecy of the sources of information used by journalists, stating that those sources may only be disclosed by virtue of a judicial decision.<sup>19</sup>

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<sup>13</sup> Law No. 31.13 of 2018, art. 7, para. 1.

<sup>14</sup> Id. art. 7, para. 2.

<sup>15</sup> Id. art. 18.

<sup>16</sup> Morocco Const. of 2011, art. 28.

<sup>17</sup> Law No. 13.88 of 2016, art. 2, *Al-Jaridah Al-Rasmiyah*, vol. 6491, 15 Aug. 2016, <https://perma.cc/4VML-BTNT> (in Arabic).

<sup>18</sup> Id. art. 7.

<sup>19</sup> Id. art. 5.

Any person or entity holding more than 30% of the capital and/or voting rights within the administrative or management bodies of a press establishment must notify the National Press Council.<sup>20</sup>

Press establishments are prohibited from receiving funding from a foreign government or party for their own benefit, whether directly or indirectly. Violators are punishable with a fine of 60,000 to 400,000 dirhams (about US\$6,497 to \$43,318).<sup>21</sup>

The director of a press establishment must verify the credibility of the sources of information prior to the publication of news, articles, and photographs, and must also verify the identity of the authors of any articles published by the press establishment.<sup>22</sup>

The Law requires any newspaper to publish in each issue the names of the persons who own the newspaper. If the newspaper is owned by a legal person, the name of that entity and its address must be provided. The Law also requires each newspaper to publish the name of its director and editorial director as well as the number of copies printed for each issue.<sup>23</sup> Violators are punishable with a fine of 2,000 to 4,000 dirhams (about US\$214 to \$433).<sup>24</sup>

While Law No. 13.88 protects and guarantees freedom of the press, it also restricts the publication of classified information related to the national defense of the country<sup>25</sup> and sanctions any press establishment that publishes news considered an insult to the dignity of heads of state, heads of government, or ministers of foreign affairs of other countries. Violators are punishable with a fine of 100,000 to 300,000 dirhams (about US\$10,828 to \$32,485).<sup>26</sup>

The Law prohibits both print and electronic newspapers from publishing articles or news deemed an insult to the Islamic religion or the monarchy, incitements against the unity of the Kingdom, or disrespectful of the person of the King. It also proscribes any publications from inciting the public to commit felonies or misdemeanors, adopt any form of discrimination, or spread hatred within Morocco.<sup>27</sup> Likewise, the Law bans any foreign publications that insult the Islamic religion or the monarchical regime, incite actions against the territorial integrity of the Kingdom, or infringe on the personal privacy of the King, Crown Prince, or members of the royal family.<sup>28</sup> Any persons selling or distributing such foreign publications are punishable with a fine of 100,000 to 500,000 dirhams (about US\$54,141 to \$10,828).<sup>29</sup>

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<sup>20</sup> Id. art. 11.

<sup>21</sup> Id. art. 13.

<sup>22</sup> Id. art. 17.

<sup>23</sup> Id. art. 25.

<sup>24</sup> Id. art. 27.

<sup>25</sup> Id. art. 6.

<sup>26</sup> Id. art. 81.

<sup>27</sup> Id. art. 71.

<sup>28</sup> Id. art. 31, para. 1.

<sup>29</sup> Id. art. 31, para. 4.

Likewise, the Law bans any publication of news articles or reports about court cases involving defamation, insult of private individuals, or family disputes, in particular those addressing paternity and divorce.<sup>30</sup> The court has the right to issue a gag order to prohibit publication in some cases.<sup>31</sup> Violators are punishable with a fine of 50,000 to 500,000 dirhams (about US\$54,141 to \$5,414).<sup>32</sup>

Finally, under the law, any person, who publishes false news that leads to a disturbance of public order or causes panic, is punishable with a fine of 20,000 to 200,000 dirhams (about US\$2,165 to \$21, 656). If the published news had a negative impact on the morale of military personal, the person who published it is punishable with a fine of 100,000 to 500,000 dirhams. The same penalty applies if the published news

- is considered as direct incitement to commit the crimes of murder, terrorism, robbery, or sabotage;
- endorses war crimes, crimes against humanity, crimes of genocide, or crimes of terrorism; or
- is considered as direct incitement to hatred and discrimination against certain individuals or groups.<sup>33</sup>

## C. Freedom of Assembly

### 1. Constitution

The Constitution of Morocco protects freedom of assembly and peaceful demonstration. It also defers to relevant laws establishing the conditions for exercising this freedom.<sup>34</sup>

### 2. Domestic Legislation

#### a. Public Meetings

Law 76 of 2002 guarantees freedom of assembly.<sup>35</sup> However, it imposes certain requirements that the organizers of public meetings must adhere to in order to hold such meetings.

First, the law states that any public meeting must be preceded by a notice to authorities indicating the date, subject, and exact time and place of the meeting. The notice must be signed by three meeting organizers residing in the province where the meeting will occur. In addition, it must include the names, professions, and addresses of the organizers, as well as a certified copy of their

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<sup>30</sup> Id. art. 75, para. 2.

<sup>31</sup> Id. art. 76.

<sup>32</sup> Id. art. 78.

<sup>33</sup> Id. art. 72.

<sup>34</sup> Morocco Const. of 2011, art. 29.

<sup>35</sup> Law No. 76 of 2002 amending Law 1.73.284 of 1973 regulating Public Assemblages, *Al-Jaridah Al-Rasmiyah*, vol. 5046, 10 Oct. 2002, <https://perma.cc/4XJZ-DGQC> (in Arabic).

national identity cards. The notice must be submitted to the government of the province where the meeting will take place in exchange for a stamped receipt of acknowledgment.<sup>36</sup>

The Law also imposes requirements concerning the location and time of public meetings, stating that such meetings may not be held on public roads or go beyond midnight or the time set in the advance announcement of the meeting.<sup>37</sup>

In addition, the organizers must ensure that the meeting is not held in violation of any laws, public order, or public morals, and that it does not incite the commission of a crime. Any discussions outside the subject of the meeting as described in the advance notice to the authorities are prohibited.<sup>38</sup>

The administrative provincial authority that receives the notice of the meeting may appoint one of its employees to attend the meeting to monitor discussions. This person has the right to dissolve the meeting if it results in clashes among the participants.<sup>39</sup>

Law No. 76 of 2002 provides that violators of its provisions are punishable by a fine of 2,000 to 5,000 Moroccan dirhams. Repeat offenders are punishable with a term of imprisonment of one to two months, a fine of 2,000 to 10,000 dirhams, or both.<sup>40</sup>

#### b. Street Demonstrations

The right to organize a street demonstration is limited to political parties, trade unions, professional groups, and registered associations only. Organizers of street demonstrations must submit to the provincial administrative authorities an advance notice of the demonstration.<sup>41</sup> Individuals who stage a street demonstration without providing advance notice and those who deliberately include incorrect information in such notice are punishable with a term of imprisonment of one to six months, a fine of 1,200 to 5,000 dirhams (about US\$129 and \$541), or both.<sup>42</sup>

If the provincial administrative authority determines that the demonstration is likely to disturb public security, it has the power to ban it but must inform the organizers of the demonstration of its decision in writing.<sup>43</sup>

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<sup>36</sup> Id. art. 3.

<sup>37</sup> Id. art. 4.

<sup>38</sup> Id. art. 6.

<sup>39</sup> Id. art. 7.

<sup>40</sup> Id. art. 9.

<sup>41</sup> Id. art. 11.

<sup>42</sup> Id. art. 14.

<sup>43</sup> Id. art. 13.

Finally, the Law bans any type of gatherings in public. It stipulates that any person who joins a gathering and not abandon such gathering after receiving a warning from the authorities must be punished with a term of imprisonment of one to three months, a fine of 1,200 dirhams, or both.<sup>44</sup>

## **D. Freedom of Association**

### *1. Constitution*

The Constitution of Morocco protects freedom of association, stipulating that civil society organizations may not be dissolved without a court decision. Moreover, the Constitution encourages civil society organizations to participate in the decision-making process of the elected institutions.<sup>45</sup>

### *2. Domestic Legislation*

Law No. 07.09 of 2009, amending Royal Decree no. 1.58.376 of 1958, regulates and protects the right to establish nongovernmental associations.<sup>46</sup>

Every nongovernmental association must submit a notice to the provincial administrative authority of its activities. The administrative authority will forward such notice to the public prosecution at the First Instance Court that has geographical jurisdiction over the location of the nongovernment association's headquarters.<sup>47</sup> Directors of a nongovernmental association who pursue a different purpose from the one mentioned in the notice submitted to the authorities are punishable with a fine of 1,200 to 5,000 Moroccan dirhams.<sup>48</sup>

The notice submitted to the provincial administrative authority must include the following information:

- The name and purpose of the nongovernmental association
- The names, nationalities, ages, dates, places of birth, professions, and residential addresses of all founders of the association
- The mailing address of the association's headquarters
- A list of the managers of the association
- Copies of the national identification cards of the managers<sup>49</sup>

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<sup>44</sup> Id. art. 21.

<sup>45</sup> Morocco Const. of 2011, art. 12.

<sup>46</sup> Royal Decree No. 1.58.376 of 1958, art. 2, as amended, *Al-Jaridah Al-Rasmiyah*, vol. 2404, 27 Nov. 1958, <https://perma.cc/2PSA-YYMV> (in Arabic).

<sup>47</sup> Id. art. 5, para. 1.

<sup>48</sup> Id. art. 36.

<sup>49</sup> Id. art. 5, para. 2.

Any nongovernmental association has the right to receive private and government funding as well as collect private donations and membership fees.<sup>50</sup> Any persons who accept donations or funding without submitting notice of the association's activities to the provincial administrative authority are punishable with a fine of 1,200 to 5,000 Moroccan dirhams. Repeat offenders are subject to a term of imprisonment of one to six months and a fine of 20,000 to 100,000 Moroccan dirhams (about US\$2,165 and \$10,828).<sup>51</sup> A nongovernmental association that was established for political purposes has no right to receive donations directly or indirectly from the government.<sup>52</sup> Nongovernmental associations that receive foreign funding must submit to the General Secretariat of the Cabinet a notice stating that the association receives foreign funding, specifying the amounts of such funding and its source. The Law grants the authorities the right to dissolve a nongovernmental association if it fails to submit the required notice to the Cabinet.<sup>53</sup>

Military personnel, judges, civil servants, police officers, prisons guards, and customs officials are prohibited from joining any nongovernmental association that is established for political purposes.<sup>54</sup> Violators are punishable with a fine of 1,200 to 10,000 Moroccan dirhams (about US\$129 to \$1,082).<sup>55</sup>

Foreign nongovernmental associations cannot be established or pursue their activities without submitting a notice to the provincial administrative authority that has a jurisdiction over the geographical location of the association's headquarters.<sup>56</sup>

The director of a nongovernmental association who incites other members to commit a felony or misdemeanor during one of the association's meetings is punishable with a term of imprisonment of three months to two years, a fine of 1,200 to 50,000 Moroccan dirhams, or both.<sup>57</sup>

The Law's authorization to create nongovernmental associations is not without limits; such associations may not be established for illegal purposes that damage public morals, the Islamic religion, or the unity of the national territory, or that insult the monarchy or incite discrimination.<sup>58</sup> Moreover, the Law bans any nongovernmental association from inciting public armed protests against the government.<sup>59</sup> Violators of such prohibitions are punishable with a term of imprisonment of one to five years and a fine of 20,000 to 100,000 Moroccan dirhams.<sup>60</sup>

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<sup>50</sup> Id. art. 6.

<sup>51</sup> Id. art. 8.

<sup>52</sup> Id. art. 18.

<sup>53</sup> Id. art. 32(bis).

<sup>54</sup> Id. art. 17(4).

<sup>55</sup> Id. art. 20.

<sup>56</sup> Id. art. 23.

<sup>57</sup> Id. art. 35.

<sup>58</sup> Id. art. 3.

<sup>59</sup> Id. art. 29(1).

<sup>60</sup> Id. art. 30.

## E. Right to Privacy and Data Protection

### 1. Constitution

The Moroccan Constitution protects the confidentiality of private communications and the right to privacy as well as the privacy of one's place of residence.<sup>61</sup>

### 2. Domestic Legislation

#### a. Law No. 121.12 of 2019 amending Law No. 24-96 on Telecommunications

Law No. 121.12 of 2019 amends Law No. 24-96 to stipulate that telecommunications companies and their employees are required to protect the confidentiality of private correspondence and the privacy of their clients' personal data.<sup>62</sup>

#### b. Law No. 09.08 on Protection of Personal Data

Law No. 09.08 defines the term "personal data" as any information of any nature that may assist in identifying a person. Such information may reveal the person's physical, physiological, genetic, psychological, economic, cultural, or social identity.<sup>63</sup> Moreover, it defines the term "the processing of personal data" as the collection, recording, organization, storage, adaptation, modification, extraction, use, transmission, dissemination, or deletion of personal data.<sup>64</sup>

Personal data must be

- processed fairly and legally;
- collected for explicit and legitimate, defined purposes;
- processed accurately in a way that prevents any future errors; and
- maintained for an adequate period of time to assist in identifying the person who owns the data.<sup>65</sup>

Entities that process personal data must notify the data owner before processing<sup>66</sup> and data owners must grant their prior permission for processing to occur<sup>67</sup> unless the processing of personal data

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<sup>61</sup> Morocco Const. of 2011, art. 24.

<sup>62</sup> Law No. 121.12 of 2019 amending Law No. 24-96, art. 26, *Al-Jaridah Al-Rasmiyah*, vol. 6753, 18 Feb. 2019, <https://perma.cc/V2YP-25EJ> (in Arabic).

<sup>63</sup> Law No. 09.08 of 2009, art. 1(1), *Al-Jaridah Al-Rasmiyah*, vol. 5711, 23 Feb. 2009, <https://perma.cc/YN3B-6J87> (in Arabic).

<sup>64</sup> Id. art. 1(2).

<sup>65</sup> Id. art. 3.

<sup>66</sup> Id. art. 5.

<sup>67</sup> Id. art. 4, para. 1.

- is legally required or a law allows processing without consent;
- is due to a contract signed by the data owner;
- is needed to protect the best interest of the person owning the data if he or she is unable to grant consent;
- achieves a mission that supports the public interest or falls within the competence of a public authority;
- is for the purpose of protecting national defense or the internal and external security of the state;
- is for the purpose of crime prevention and investigation; or
- is being carried out exclusively for journalistic, artistic, or literary purposes.<sup>68</sup>

Processing entities must adopt all adequate measures and technology to prevent the accidental destruction, loss, alteration, dissemination, and transmission of the data being processed.<sup>69</sup>

The Law also creates what is known as the National Commission to Monitor the Protection of Personal Data. The Commission drafts laws regulating the protection and recording of personal data<sup>70</sup> and has the authority to grant personal data processing entities permission to carry out their operations. Additionally, the Commission has the power to receive complaints from individuals whose personal data was wrongly processed.<sup>71</sup>

While the Law gives the Commission the right to cooperate with other foreign bodies in charge of protecting personal data in other countries,<sup>72</sup> it prohibits the transfer of personal data to foreign countries unless such countries guarantee the protection of the data.<sup>73</sup> The entity in charge of processing personal data may transfer the data if the data owner explicitly approves of such transfer or for the purpose of protecting the data owner's life.<sup>74</sup>

Finally, articles 54 through 63 of the Law subject violators to a term of imprisonment of three months to one year, a fine of 10,000 to 300,000 Moroccan dirham (about US\$1,084 to \$32,544), or both.

The Law does not apply to the processing of personal data for personal use, national defense involving the internal and external security of the state, or crime prevention.

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<sup>68</sup> Id. art 4, para. 3.

<sup>69</sup> Id. art. 23.

<sup>70</sup> Id. art. 27.

<sup>71</sup> Id. art. 28.

<sup>72</sup> Id. art. 28(4).

<sup>73</sup> Id. art. 43, para. 1.

<sup>74</sup> Id. art. 44, para. 1.

c. Law No. 22.01 of 2019 on the Code of Criminal Procedures

Law No. 22.01 of 2019 on the Code of Criminal Procedures guarantees the privacy of a person's home. It prohibits law enforcement officers from conducting home searches before six o'clock in the morning and after nine o'clock at night,<sup>75</sup> unless the matter relates to a crime of terrorism or evidence will be lost in which case the search may be conducted at any time.<sup>76</sup>

## F. Open Internet

### 1. Background

The National Agency for Telecommunications is the main government agency regulating internet and telecommunication guidelines.<sup>77</sup> The Agency ensures fair competition among telecommunication companies.<sup>78</sup> The three main telecommunication companies in Morocco are Maroc Telecom, Orange Morocco, and Inwin Maroc.<sup>79</sup> Furthermore, the Agency for Telecommunications requires internet service providers to provide their clients with a high quality of service<sup>80</sup> and offer competitive pricing.<sup>81</sup>

According to Freedom House, internet access in Morocco has slowly increased in recent years. The internet penetration rate grew from 52% in 2010 to nearly 65% in 2018. Individuals in urban areas have greater internet access than those who live in rural areas.<sup>82</sup>

Finally, the Moroccan government has not blocked or filtered any political, social, or religious websites. Social media and communication services, including YouTube, Facebook, and Twitter, are available in the country.<sup>83</sup>

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<sup>75</sup> Law No. 22.01 of 2019 on Code of Criminal Procedures, art. 62, *Al-Jaridah Al-Rasmiyah*, vol. 6796, 18 July 2019, <https://perma.cc/YK4M-UGDZ> (in Arabic).

<sup>76</sup> *Id.* art. 62, para. 3.

<sup>77</sup> *Mission*, National Agency to Regulate Telecommunications (ANRT), <https://perma.cc/P23T-RV5M> (in Arabic).

<sup>78</sup> Law No. 121.12 of 2019, art. 8, *Al-Jaridah Al-Rasmiyah*, vol. 6753, 18 Feb. 2019, <https://perma.cc/CX8R-U6L8> (in Arabic).

<sup>79</sup> *Freedom on the Net 2019: Morocco*, Freedom House, pt. A3, <https://perma.cc/3HR9-DJA7>.

<sup>80</sup> Prime Minister, Memoranda for General Instructions on the Development of the Telecommunications Sector in the Year 2018, § 4.1.2. (Apr. 10, 2015), <https://perma.cc/K259-24ZM> (in Arabic).

<sup>81</sup> *Id.* § 5.1.2.

<sup>82</sup> *Freedom on the Net 2019: Morocco*, *supra* note 79, pt. A2.

<sup>83</sup> *Freedom on the Net 2019: Morocco*, *supra* note 79, pt. B1, para. 1.

## 2. *Domestic Legislation*

Law No. 121.12 of 2019 amending Law No. 24-96 regulates the means of telecommunications and ensures a solid infrastructure that allows internet services to reach all users in the country.<sup>84</sup>

The telecommunications network is in the public domain. The Ministry of Communication must grant permission to telecommunications companies to use the network to offer their services. In addition, telecommunications companies must adhere to relevant international conventions signed and ratified by Morocco, national defense and public security requirements, and the orders of the judicial authority.<sup>85</sup>

According to Freedom House, the King appoints the director and administrative board of the Moroccan National Agency for Telecommunications via royal decree, leaving the agency open to charges of politicization. However, international organizations such as the World Bank have not criticized the agency's neutrality.<sup>86</sup>

## **G. Anti-Discrimination and Gender Equality**

### 1. *Constitutional Provisions*

The 2011 Moroccan Constitution guarantees the principle of equality, stipulating that men and women enjoy equal civil, political, economic, social, cultural, and environmental rights and freedoms.<sup>87</sup> The Constitution also requires the state to facilitate the equal access of Moroccan citizens to healthcare, education, decent housing, public services such as water and electricity, and employment opportunities.<sup>88</sup>

### 2. *Domestic Legislation*

#### a. Law on Inheritance

While the Constitution promises equality, Arab countries such as Morocco apply Islamic law, which provides in Quranic verse no. 11 of Surat An-Nisaa that a woman's share of an inheritance is half that of a man.

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<sup>84</sup> Law No. 121.12 of 2019 amending Law No. 24-96, art. 1(27), *Al-Jaridah Al-Rasmiyah*, vol. 6753, 18 Feb. 2019, <https://perma.cc/CX8R-U6L8> (in Arabic).

<sup>85</sup> *Id.* art. 10.

<sup>86</sup> *Freedom on the Net 2019: Morocco*, *supra* note 79, pt. A5, para. 2.

<sup>87</sup> Morocco Const. of 2011, art. 19.

<sup>88</sup> *Id.* art. 31.

b. Law No. 70.03 of 2004 on Family Law

Law No. 70.03 on Family Law, which is known as the “Al-Moudawana,” follows the regulations of Islamic law, making polygyny legal.<sup>89</sup> Quranic verse 4:4 of Surat al-Nsa allows Muslim males to marry up to four wives simultaneously.<sup>90</sup>

Husbands entering polygynous unions must guarantee before a judge that they will treat all of their wives and children equally. A woman also has the right to stipulate a condition in the marriage contract barring her husband from taking another wife.<sup>91</sup>

If the husband decides to have a second wife while he is married to the first wife, the family court summons the first wife to obtain her consent to the second marriage.<sup>92</sup> The court must also inform the second wife that the man she is about to marry is already married to another woman.<sup>93</sup>

c. Law No. 62-06 of 2007 on Citizenship

Law No. 92-06 of 2007 on Citizenship provides Moroccan mothers with equal treatment regarding their children’s acquisition of Moroccan citizenship. Under the Law, similar to a child born to a Moroccan father of a foreign wife, a child born to a Moroccan mother of a foreign husband is considered a Moroccan citizen as well.<sup>94</sup>

d. Law on Age of Marriage

Law No. 70.03 of 2004 on Family Law treats males and females equally by providing the same minimum age of marriage for both genders. Both males and females must be 18 years of age to marry.<sup>95</sup>

The religious courts have the power to authorize the marriage of a person under 18 years of age (of either sex) if a court finds marriage is in “the best interest of the couple.” Giving such authorization is also conditional upon the “physical ability to marry.”<sup>96</sup>

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<sup>89</sup> Law No. 70.03 of 2004, *Al-Jaridah Al-Rasmiyah*, vol. 5184, 5 Feb. 2004, <https://perma.cc/A546-3ZVH> (in Arabic).

<sup>90</sup> Quranic verse 4:4, <https://perma.cc/GE7B-LZ8U>.

<sup>91</sup> Law No. 70.03 of 2004, art. 40.

<sup>92</sup> *Id.* art. 43, para. 1.

<sup>93</sup> *Id.* art. 46.

<sup>94</sup> Law 62-06 of 2007, art. 6, *Al-Jaridah Al-Rasmiyah*, vol. 5513, 2 Apr. 2007, <https://perma.cc/GP53-CAKA> (in Arabic).

<sup>95</sup> Law No. 70.03 of 2004, art. 19.

<sup>96</sup> *Id.* art. 20.

# Tunisia

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**SUMMARY** Tunisia is bound by international conventions protecting civic rights and freedoms, such as the 1966 International Covenant on Civil and Political Rights. The Tunisian Constitution and legislation guarantee and protect those civic freedoms.

The right to access information in government documents is governed by two main legislative instruments: Decree Law No. 41 of 2011 on the access to the administrative documents of public bodies and Law No. 22 of 2016 on the right to access information.

Law No. 115 of 2011 on freedom of expression and the press regulates freedom of expression in the field of publications, artistic works, books, and periodicals. While the Law protects and guarantees freedom of expression and the press, it also identifies a number of criminal punishments against an array of acts that the Law calls “offenses committed by the press or by any other means of publication.” Likewise, articles 121 and 128 of the Penal Code impose restrictions on publishing or disseminating certain information deemed false or harmful.

Decree Law No. 88 of 2011 regulates the establishment and work of civil society organizations, while Law No. 69-4 of 1969 regulates marches, public meetings, rallies, demonstrations, and assemblies.

Law No. 63 of 2004 on the protection of personal data is the main instrument regulating the right to privacy and protection of personal data. The Code of Criminal Procedures also regulates the privacy of a residence. Both legal instruments impose some restrictions on the right to privacy and protection of personal data. Moreover, Law No. 61 of 2016 punishes anyone who conducts illegal surveillance operations.

Decree No. 4773 of 2014 regulates internet neutrality and the conditions and procedures for granting authorization to supply internet services.

## I. Introduction

Tunisia is bound by international conventions protecting rights and freedoms related to civic space, such as the 1966 International Covenant on Civil and Political Rights.<sup>1</sup> Tunisia’s Constitution and domestic legislation create some exceptions to rights and freedoms related to civic space while also guaranteeing and protecting those rights and freedoms.

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<sup>1</sup> International Covenant on Civil and Political Right, Dec. 16, 1966, 999 U.N.T.S. 171.

## II. Legally Protected Rights and Freedoms

### A. Right to Access Government Information

#### 1. *Constitutional Provisions*

The 2014 Tunisian Constitution grants all Tunisian citizens the right to access government information and stipulates that the state is the guarantor of this right.<sup>2</sup>

#### 2. *Domestic Legislation*

In addition to the Constitution, the Tunisian government guarantees the right to access information held by the government through two main legislative instruments: Decree Law No. 41 of 2011 on Access to Administrative Documents of Government Bodies and Law No. 22 of 2016 on the Right to Access Information.

##### a. Decree Law No. 41 of 2011

Decree Law No. 41 of 2011 consists of 24 articles,<sup>3</sup> which define the principles and rules governing access to the administrative documents of government bodies.<sup>4</sup> The Law grants any natural or legal person the right to access such documents by submitting a written request for information.<sup>5</sup> It also requires government entities to regularly publish the following:

- Information about its organizational structure, functions, tasks, and policies
- Important decisions and policies that affect the public
- The procedures followed during the decision-making process
- A list of the employees of such government entity and their tasks
- Regulations and manuals related to the government entity
- A description of services and programs offered by the government entity
- A guide to help citizens on how to request administrative documents from the government entity<sup>6</sup>

Any application regarding a request for information of public documents must include the first and last name of the individual requesting the information and his/her mailing address. If a legal entity is requesting the information, it must include the address of its registered office. Also, the

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<sup>2</sup> Tunisia Const. of 2014, art. 32, <https://perma.cc/A5YX-UHG3> (in Arabic).

<sup>3</sup> Law No. 41 of 2011, *Al-Jaridah Al-Rasmiyah*, vol. 039, 31 May 2011, <https://perma.cc/9W8T-TFMZ> (in Arabic).

<sup>4</sup> Id. art. 1.

<sup>5</sup> Id. arts. 3 & 7.

<sup>6</sup> Id. art. 4.

application must include the name of the government body and the necessary information pertaining to the requested administrative documents and data.<sup>7</sup>

Under Decree Law No. 41 of 2011, a government entity may refuse to respond to a request for information to issue specific administrative documents if those documents are protected by the law on personal data and the rights of literary and artistic property or by a judicial decision, or are confidential documents.<sup>8</sup> Furthermore, the government entity may refuse to issue an administrative document when the document

- concerns a bilateral relationship between the state of Tunisia and other countries or international organizations,
- concerns national security and defense,
- is related to an ongoing criminal investigation,
- is related to the arrest and trial of an accused person,
- violates the process of public procurement, or
- will damage the commercial or financial legitimate interests of such government entity.<sup>9</sup>

b. Law No. 22 of 2016

Law No. 22 of 2016 regulates the right to access government information.<sup>10</sup> The Law requires all government bodies, public institutions, and all institutions that receive public funding to furnish government information upon request, including organizational charts, legal texts, state agreements, public policies and programs, procurement processes, statistics, and any information relating to public finances, including detailed budget-related data at the central, regional, and local levels.<sup>11</sup>

Law No. 22 of 2016 is similar to Law Decree No. 41 of 2011 in terms of the information the requestor must include in the application to request government information.<sup>12</sup> The government body must respond to any request to access government information within a period not exceeding twenty days from the date of receipt of the request.<sup>13</sup> If the public entity rejects the request for information it must provide the requestor with a written justification for doing so.<sup>14</sup> The requestor then has the right to challenge the rejection by filing a petition for reconsideration

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<sup>7</sup> Id. art. 8.

<sup>8</sup> Id. art. 16.

<sup>9</sup> Id. art. 17.

<sup>10</sup> Law No. 22 of 2016, *Al-Jaridah Al-Rasmiyah*, vol. 26, 29 Mar. 2016, <https://perma.cc/ME9H-45ZH> (in Arabic).

<sup>11</sup> Id. art. 6.

<sup>12</sup> Id. art. 10.

<sup>13</sup> Id. art. 14.

<sup>14</sup> Id. art. 14, para 3.

with the entity within 20 days of being notified with the rejection.<sup>15</sup> If the entity rejects the petitions, an appeal may be lodged before the Access to Information Authority (see below).

The Law grants any person the right to access government information free of charge. However, if the government entity must incur some costs to provide the information it will inform the requestor in advance of the need to pay such costs.<sup>16</sup>

Pursuant to Law No. 22 of 2016, a government entity may refuse to provide specific government information to the requestor when such information pertains to national security and defense, international relations, the rights of a third party to privacy and the protection of his/her personal data, and the protection of intellectual property.<sup>17</sup> Moreover, the right to access government information does not include the right to access data regarding the concealed identity of whistleblowers who have reported abuse or cases of corruption.<sup>18</sup>

The Law requires the government entity to disclose any information related to serious violations of human rights, war crimes, and the prosecution of perpetrators of such crimes, provided that such disclosure does not endanger the supreme interest of the Tunisian state.<sup>19</sup>

Finally, the Law establishes an entity called the Access to Information Authority.<sup>20</sup> The objectives of the Authority are to

- adjudicate law suits submitted by requestors after a government entity's rejection of a request to disclose information,
- monitor the obligations of government entities under Law No. 22 of 2016,
- promote the principle of the right to access government information in coordination with nongovernmental organizations via public awareness campaigns, and
- prepare annual reports on the activities of the Authority.<sup>21</sup>

The Law also identifies the structure of the Authority,<sup>22</sup> the number of its board members,<sup>23</sup> and its financial resources.<sup>24</sup>

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<sup>15</sup> Id. art. 29.

<sup>16</sup> Id. art. 23.

<sup>17</sup> Id. art. 24.

<sup>18</sup> Id. art. 25.

<sup>19</sup> Id. art. 26.

<sup>20</sup> Id. art. 37.

<sup>21</sup> Id. art. 38.

<sup>22</sup> Id. art. 40.

<sup>23</sup> Id. art. 41.

<sup>24</sup> Id. art. 56.

## B. Freedom of Expression and the Press

### 1. Constitutional Provisions

The Tunisian Constitution protects freedom of expression and the press. It provides that freedom of opinion, thought, expression, information, and publication must be guaranteed by the Tunisian state. Moreover, these freedoms must not be subject to any prior censorship.<sup>25</sup> It also states that freedom of creative expression is guaranteed by the Tunisian state.<sup>26</sup>

### 2. Domestic Legislation

#### a. Law No. 115 of 2011

Law No. 115 of 2011 on the freedom of expression and the press consists of 80 articles.<sup>27</sup> Its main purpose is to regulate freedom of expression in the field of publications, artistic works, books and periodicals. The Law provides that the right to freedom of expression includes the free flow of ideas, opinions, and information of all kinds; their publication; their reception; and their exchange.<sup>28</sup> Additionally, the Law stipulates that freedom of expression is guaranteed and exercised in accordance with the provisions of the International Covenant on Civil and Political Rights and other relevant international conventions ratified by the Republic of Tunisia.<sup>29</sup>

The Law defines the term “journalist” as an individual seeking the collection and dissemination of news, views, and ideas who transmits them to the public on a primary and regular basis. The Law requires that a journalist hold a bachelor’s degree or equivalent in science and work for a daily or periodical news agency or agencies, or for audiovisual media and electronic media outlets, and receive a salary from such institutions.<sup>30</sup>

The Law provides special protection to journalists’ sources. Yet, those sources of news may be revealed through a judicial order for reasons related to state security or national defense.<sup>31</sup>

The Law guarantees freedom of expression by allowing the free publication of new periodicals without any prior authorization.<sup>32</sup> However, before issuing the first news periodical, the manager

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<sup>25</sup> Tunisia Const. of 2014, art. 31.

<sup>26</sup> Id. art. 42.

<sup>27</sup> Law No. 115 of 2011, *Al-Jaridah Al-Rasmiyah*, vol. 84, 4 Nov. 2018, <https://perma.cc/CR9R-HP2C> (in Arabic).

<sup>28</sup> Id. art. 1, para. 2.

<sup>29</sup> Id. art. 1, para. 1.

<sup>30</sup> Id. art. 7.

<sup>31</sup> Id. art. 11.

<sup>32</sup> Id. art. 15.

of the news outlet must file a statement before the First Instance Court with the name of the news periodical and the printing house where it will be printed.<sup>33</sup>

The Law requires any newspaper to publish in each issue the names of the persons who own the newspaper; if the newspaper is owned by a legal person the publication must include the name of the legal entity owning the newspaper, the address of its registered office, and the names of the newspaper's legal representatives. The Law also mandates that each newspaper publish the name of its director and editorial director as well as the number of copies printed for each issue.<sup>34</sup>

Finally, the Law grants persons the right to request the correction of any article containing incorrect information, provided they have a direct and legitimate interest in such rectification. The corrected text must not exceed the length of the original article. The newspaper that publishes the correction must do so for free in one of the three issues following the date of its receipt of the request for the correction.<sup>35</sup>

Law No. 115 of 2011 protects and guarantees freedom of expression and the press. However, it identifies a number of criminal punishments against an array of acts that the Law calls "offenses committed by the press or by any other means of publication." To illustrate, under the Law anyone who incites the public, through a publication, to commit the crime of homicide, physical assault on a person, rape, looting, war crimes, crimes against humanity, or cooperation with an enemy of the state must be sanctioned with a term of imprisonment of one to three years and a fine of 50,000 Tunisian dinars (about US\$18,000).<sup>36</sup>

Similarly, the Law provides that any person who uses any publication (printed or electronic) to call for discrimination against a specific race, religion, or population or uses propaganda to incite violence against a race, religion, or population, is punishable by a term of imprisonment of one to three years and a fine of 1,000 to 2,000 Tunisian dinars (about US\$364 to \$728).<sup>37</sup> Any person who publishes, either electronically or in print, "false news" that disturbs the public peace is punishable with a fine of 2,000 to 5,000 Tunisian dinars (about US\$728 to \$1,820).<sup>38</sup>

The Law defines the term "defamation" as any false accusation or imputation of information that is likely to damage the honor and integrity of a particular person. Such person must be targeted personally and suffer direct damage as a result of the publication of this false information or accusation.<sup>39</sup> The author of an article published in a print or electronic publication who is convicted of defamation is punishable with a fine of 1,000 and 2,000 Tunisian dinars.<sup>40</sup>

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<sup>33</sup> Id. art. 18.

<sup>34</sup> Id. art. 23.

<sup>35</sup> Id. art. 39.

<sup>36</sup> Id. art. 51.

<sup>37</sup> Id. art. 52.

<sup>38</sup> Id. art. 54.

<sup>39</sup> Id. art. 55.

<sup>40</sup> Id. art. 56.

A person who publishes the identity of a minor victim of rape or sexual assault is punishable with a term of imprisonment of one to three years and a fine of 3,000 to 5,000 Tunisian dinars (about US\$1,092 to \$1,820).<sup>41</sup> The Law also prohibits the publication of documents concerning ongoing investigations absent the court's permission. Violators are punishable with a fine of 1000 to 2000 Tunisian dinars.<sup>42</sup>

## b. Penal Code

As previously mentioned, the 2014 Tunisian Constitution protects and guarantees freedom of expression and the press. However, article 128 of the Penal Code punishes any person who publishes in the press any false information against a government official or publically issues false accusations against a government official with a term of imprisonment of two years and a fine of 120 Tunisian dinars (about US\$43).<sup>43</sup> According to Human Rights Watch, on September 13, 2018, the First Instance Court of Ben Arous in northeastern Tunisia sentenced blogger Amina Mansour to a suspended two-month term of imprisonment for a Facebook post in which she claimed that the Prime Minister's alleged war against corruption is not true, applying article 128.<sup>44</sup>

The Penal Code also penalizes anyone who disseminates news that could cause harm to public order or public morals with a term of imprisonment of six month to five years and fine of 120 to 1200 Tunisian dinars (about US\$43 to \$436).<sup>45</sup> According to Amnesty International, on January 15, 2018, Kais Bouazizi was arrested in the City of Sidi Bouzid of Tunis, the capital of Tunisia, after posting on Facebook a call for protests against the government's economic and financial measures.<sup>46</sup>

## C. Freedom of Association

### 1. Constitutional Provisions

The Tunisian Constitution protects the freedom to establish nongovernmental associations.<sup>47</sup>

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<sup>41</sup> Id. art. 60.

<sup>42</sup> Id. art. 61.

<sup>43</sup> Penal Code of 1913, as amended, art. 128, <https://perma.cc/CU3N-QMCP> (in Arabic).

<sup>44</sup> Human Rights Watch, *World Reports of 2019: Tunisia*, <https://perma.cc/3DJV-W4BC>.

<sup>45</sup> Penal Code of 1913, as amended by Law No. 43 of 2001, art. 121(3), *Al-Jaridah Al-Rasmiyah*, vol. 36, 4 May 2001, <https://perma.cc/93ZM-JD6A> (in Arabic).

<sup>46</sup> *Tunisia: Attack on Freedom of Expression Must End*, Amnesty International (Feb. 2, 2018), <https://perma.cc/K2JX-83TX>.

<sup>47</sup> Tunisia Const. of 2014, art. 35.

## 2. Domestic Legislation

### a. Decree Law No. 88 of 2011

Decree Law No. 88 of 2011 regulates the establishment and work of nongovernmental associations.<sup>48</sup> The Law guarantees the freedom to create nongovernmental associations and supports the role of civil society and its activities.<sup>49</sup> The Law defines the term “non-governmental association” as an agreement between two or more persons by virtue of which they operate permanently to achieve objectives that do not include the realization of profits.<sup>50</sup>

A nongovernmental association’s activities and funding must adhere to the principles of rule of law, democracy, plurality, transparency, equality, and human rights and conform to international conventions regulating those principles.<sup>51</sup> A nongovernmental association is prohibited from engaging in incitement to violence, hatred, fanaticism, or discrimination, or from carrying out commercial activities to benefit its members or evade taxes.<sup>52</sup>

Nongovernmental associations have the right to access government information, evaluate the performance of government institutions, and submit recommendations to improve their performance. Nongovernmental associations are also allowed to organize meetings, demonstrations, conferences, and workshops, and engage in all types of civil activities; publish reports and other information materials; and conduct opinion polls.<sup>53</sup> Public authorities are barred from directly or indirectly hindering or slowing down the activities of nongovernmental associations.<sup>54</sup> The Tunisian state is required to make all necessary arrangements to ensure that individuals working in nongovernmental associations are protected from violence, threats, or any coercive measures while performing their work.<sup>55</sup>

Both Tunisian nationals and foreign residents of Tunisia have the right to establish civil society organizations,<sup>56</sup> so long as they are at least sixteen years old.<sup>57</sup>

Nongovernmental associations must obtain permission before starting work.<sup>58</sup> Individuals interested in establishing a nongovernmental association must send a registered letter of

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<sup>48</sup> Decree Law No. 88 of 2011, *Al-Jaridah Al-Rasmiyah*, vol. 74, 30 Sept. 2011, <https://perma.cc/GS7T-SQCY> (in Arabic).

<sup>49</sup> *Id.* art. 1.

<sup>50</sup> *Id.* art. 2.

<sup>51</sup> *Id.* art. 3.

<sup>52</sup> *Id.* art. 4.

<sup>53</sup> *Id.* art. 5.

<sup>54</sup> *Id.* art. 6.

<sup>55</sup> *Id.* art. 7.

<sup>56</sup> *Id.* art. 8.

<sup>57</sup> *Id.* art. 8(2).

<sup>58</sup> *Id.* art. 10(1).

notification to the Secretary General of the Cabinet and a copy of the letter to the Official Gazette of Tunisia for publication.<sup>59</sup> The letter must contain a declaration providing the title, purpose, objectives, and address of the association and any branches it may have.<sup>60</sup> If the founders of the association are Tunisian citizens, they must include copies of their national identification cards with the letter to the Cabinet. If they are foreigners, they must submit copies of their residency permits.<sup>61</sup>

The letter must also include two original copies of the bylaws of the organization and the following information:

- The official name of the organization in Arabic and in any foreign language if appropriate
- The address of the organization's headquarters
- A statement of the organization's objectives and how those objectives will be implemented
- Membership and termination criteria and the rights and duties of each member
- A statement of the organizational structure, method of election, and powers of each administrative body of the organization
- Identification of the body within the organization that has the power to amend the internal bylaws and make decisions regarding dissolution, merger, or division
- Definition of the decision-making methodology and mechanisms of dispute resolution
- The amount of the monthly or annual membership fees, if any<sup>62</sup>

Individuals who are interested in joining a nongovernmental association must not be less than 13 years of age.<sup>63</sup> The Law allows foreign nongovernmental associations to open branches in Tunisia.<sup>64</sup> Foreign associations must show in their notification letters to the Cabinet that they are legally established in their countries of origin as well.<sup>65</sup>

Any nongovernmental association that receives funding from a foreign source must notify the Secretary General of the Cabinet via a registered letter of the amount and source of funding, as well as the purpose of such funding. This notification letter must be published by a newspaper in writing and posted on the organization's website.<sup>66</sup>

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<sup>59</sup> Id. art. 10(2).

<sup>60</sup> Id. art. 10(2)(a).

<sup>61</sup> Id. art. 10(2)(b).

<sup>62</sup> Id. art. 10(C).

<sup>63</sup> Id. art. 17(2).

<sup>64</sup> Id. art. 20.

<sup>65</sup> Id. art. 21(7).

<sup>66</sup> Id. art. 41.

The Law grants the First Instance Court the power to suspend the activities of a nongovernmental association if it has violated any provisions of Law No. 88 of 2011.<sup>67</sup>

b. Law No. 52 of 2018

Law No. 52 of 2018 on the National Registry of Associations requires nongovernmental associations to register with a National Registry created by the Tunisian authorities.<sup>68</sup> The registration must include the association's name, headquarters' address, nature of its activities, and date of establishment.<sup>69</sup> Failure to register may result in a year of imprisonment and a fine of 10,000 Tunisian dinars (about US\$3,641).<sup>70</sup>

## **D. Freedom of Assembly**

### *1. Constitutional Provisions*

The Constitution guarantees the right of assembly and peaceful demonstration.<sup>71</sup>

### *2. Domestic Legislation*

a. Law No. 69-4 of 1969

Law No. 69-4 of 1969 regulates marches, public meetings, rallies, demonstrations, and assemblies.<sup>72</sup> The Law grants individuals the right to conduct and organize public meetings without obtaining the government's authorization.<sup>73</sup> However, individuals planning to conduct public meetings must notify the governorate or municipality where the public meeting will take place indicating the place, date, and time of the meeting. This notification must be provided three to fifteen days prior to the public meeting.<sup>74</sup> The notification must also specify the theme and purpose of the meeting.<sup>75</sup> Moreover, peaceful marches, rallies, and demonstrations are allowed with prior permission.<sup>76</sup>

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<sup>67</sup> Id. art. 45(3)

<sup>68</sup> Law No. 52 of 2018, art. 7(7), *Al-Jaridah Al-Rasmiyah*, vol. 89, 6 Nov. 2018, <https://perma.cc/D73F-X7V8> (in Arabic).

<sup>69</sup> Id. art. 20(3).

<sup>70</sup> Id. art. 53, para. 2.

<sup>71</sup> Tunisia Const. of 2014, art. 37.

<sup>72</sup> Law No. 69-4 of 1969, *Al-Jaridah Al-Rasmiyah*, vol. 28, 31 June 1969, <https://perma.cc/ZZP4-AKQH> (in Arabic).

<sup>73</sup> Id. art. 1.

<sup>74</sup> Id. art. 2.

<sup>75</sup> Id. art. 3.

<sup>76</sup> Id. art. 9.

Despite the fact that Law No. 69-4 of 1969 guarantees freedom of assembly, security authorities are required to appoint representatives to attend public meetings. Such representatives have the right to terminate the meeting if its organizers have requested termination. Additionally, security representatives have the right to terminate a meeting if there is a quarrel or violence erupts during the meeting.<sup>77</sup> Each public meeting must have a governing committee, comprising a minimum of three persons, to maintain public order and prevent violations of any law. The governing committee has the power to prohibit speeches during public meetings that are capable of disturbing public security and good morals or inciting the audience to commit unlawful acts.<sup>78</sup>

The municipality or the governorate may refuse to authorize public meetings that will violate national security or disturb public order.<sup>79</sup> Furthermore, public meetings must not take place in the streets.<sup>80</sup>

Armed marches, rallies, and demonstrations are prohibited.<sup>81</sup> Similarly, the Law prohibits marches, rallies, and demonstrations from endangering public security or disturbing public order.<sup>82</sup>

Articles 23 through 31 impose on individuals violating the provisions of this Law criminal penalties ranging from one month to two years of imprisonment and the payment of a fine.

b. Order No. 50 of 1978 & Order No. 54 of 2020

Order No. 50 of 1978 applies when the president declares a state of emergency<sup>83</sup> and imposes restrictions on freedom of assembly. The Order grants power to the Minister of Interior (homeland security) to close any location where public meetings take place during a state of emergency. Likewise, the Minister has the power to ban any meetings deemed a violation of public order.<sup>84</sup> Violators are punishable with a term of imprisonment of six months to two years, a fine of 2,500 Tunisian dinars (about US\$910), or both.<sup>85</sup>

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<sup>77</sup> Id. art. 6.

<sup>78</sup> Id. art. 5.

<sup>79</sup> Id. art. 7.

<sup>80</sup> Id. art. 8.

<sup>81</sup> Id. art. 11.

<sup>82</sup> Id. art. 12.

<sup>83</sup> Order No. 50 of 1978, *Al-Jaridah Al-Rasmiyah*, vol. 7, 24 Jan. 1978, <https://perma.cc/PD6L-LX4H> (in Arabic).

<sup>84</sup> Id. art. 7.

<sup>85</sup> Id. art. 8.

Presidential Order No. 54 of 2020 extends the declaration of the current COVID-19-related state of emergency in Tunisia for six months, from May 30, 2020, through November 30, 2020.<sup>86</sup> The emergency was first declared in April 2020.<sup>87</sup>

## E. Right to Privacy and Protection of Personal Data

### 1. Constitutional Provisions

The rights to privacy and the protection of one's personal data are protected by the same constitutional provision, article 24 of the Tunisian Constitution of 2014. The Constitution provides that the state must protect the right to privacy and personal information, and the privacy of a person's residence.<sup>88</sup>

### 2. Domestic Legislation

#### a. Law No. 63 of 2004

Law No. 63 of 2004 provides that all Tunisian citizens have the right to privacy and the protection of their personal data.<sup>89</sup> The Law asserts that the processing of personal data must respect the right to privacy and preserve human dignity.<sup>90</sup>

The Law defines the term "personal data" as any private personal data that identifies the data owner.<sup>91</sup> Such identification could be through revealing information related to the physical, physiological, genetic, psychological, social, economic, or cultural characteristics of a person.<sup>92</sup> Moreover, the Law defines the term "processing of personal data" as obtaining, recording, storing, organizing, altering, using, distributing, disseminating, or destroying personal data.<sup>93</sup>

The Law requires that any processing of personal data must follow the principles of privacy and public freedoms. The Law also prohibits any attempt to infringe on the right to privacy of individuals by causing harm to their reputation.<sup>94</sup> The entity collecting and processing personal data must exclusively collect such data for a lawful and clear purpose.<sup>95</sup>

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<sup>86</sup> Order No. 54 of 2020, *Al-Jaridah Al-Rasmiyah*, vol. 54, 29 May 2020, <https://perma.cc/LU9Z-VRGP> (in Arabic).

<sup>87</sup> *Id.*

<sup>88</sup> Tunisia Const. of 2014, art. 24.

<sup>89</sup> Law No. 63 of 2004, *Al-Jaridah Al-Rasmiyah*, vol. 061, 30 July 2004, <https://perma.cc/52HG-PRMF> (in Arabic).

<sup>90</sup> *Id.* art. 1.

<sup>91</sup> *Id.* art. 4.

<sup>92</sup> *Id.* art. 5.

<sup>93</sup> *Id.* art. 6.

<sup>94</sup> *Id.* art. 9.

<sup>95</sup> *Id.* art. 10.

The Law creates a government body known as the National Authority for Protection of Personal Data,<sup>96</sup> which must approve the processing of any type of personal data.<sup>97</sup> The Law prohibits any type of processing of personal data that reveals, directly or indirectly, the racial and genetic origins or the religious, political, or philosophical beliefs of a person without the National Authority's permission.<sup>98</sup>

The Law requires the permission of the National Authority for Protection of Personal Data for the use of video surveillance.<sup>99</sup> The use of video surveillance equipment must be restricted to public entrances; car parking facilities, train stations, other public transportation stations, seaports, airports; and places of collective work such as factories and warehouses. A public sign must be posted to inform individuals about the presence of video surveillance.<sup>100</sup>

The Law requires any individual and legal entity who directly or indirectly carries out the processing of personal data to ensure the safety of the data and prevent any third party from changing, modifying, or erasing it without prior authorization of the person who owns the data.<sup>101</sup> The processing of personal data of a minor must be carried out with the consent of his/her guardian or after obtaining authorization from the juvenile and family court judge.<sup>102</sup>

Individuals who carry out personal data processing must be Tunisian citizen, reside in Tunisia, and have no criminal record.<sup>103</sup>

Finally, articles 86 through 100 of the Law impose an array of criminal punishments ranging from a term of imprisonment of one month to two years to paying a fine of 1,000 and 100,000 Tunisian dinars against individuals violating the provisions of this law.

The processing of personal data may be carried out without the consent of the person who owns it under the following circumstances:

- Processing is being carried out to achieve the best interests of the data owner
- The person who owns the data cannot be contacted
- The entity carrying out the processing would have to go through exhaustive efforts in order to obtain the consent of the data owner

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<sup>96</sup> Id. art. 75.

<sup>97</sup> Id. art. 7.

<sup>98</sup> Id. art. 15.

<sup>99</sup> Id. art. 69.

<sup>100</sup> Id. art. 70.

<sup>101</sup> Id. art. 18.

<sup>102</sup> Id. art. 28.

<sup>103</sup> Id. art. 22.

- A law or contract signed by the data owner allows the processing of his/her personal data<sup>104</sup>

Personal data related to the health sector may be processed without the authorization of the person who owns the data in the following circumstances:

- Data processing is required by law
- Data processing is necessary for the development and protection of public health
- Data processing is required to monitor the health condition of the person who owns the data for the purpose of medical treatment<sup>105</sup>

The Law prohibits sharing video recordings collected for surveillance purposes, except where the person under surveillance (or his/her guardian in the case of a minor) has given consent; the public authorities conducting surveillance need to share such recordings in order to complete their mission; or sharing the video recordings is important in the investigation, discovery, and prosecution of criminal offenses.<sup>106</sup>

#### b. Code of Criminal Procedures

The Code of Criminal Procedures guarantees the privacy of a person's home. It prohibits law enforcement officers from conducting house searches before six o'clock in the morning and after eight o'clock at night.<sup>107</sup> However, it allows law enforcement officers to conduct a house search at any time without the permission of the owner of the house when it is necessary to enter the house to arrest an accused person or an escaped prisoner, or when a crime is in progress.<sup>108</sup>

#### c. Decree No. 4506 of 2013

Under Decree No. 4506 of 2013 the Technical Authority for Telecommunication is affiliated with the Ministry of Communication.<sup>109</sup> One of the Authority's main objectives is to carry out communications surveillance operations based on the request of prosecution to collect data that may later serve as evidence before the criminal courts.<sup>110</sup>

The Technical Authority of Telecommunication must receive permission from the judicial authority in order to begin the surveillance operations on private communications.<sup>111</sup>

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<sup>104</sup> Law No. 63 of 2004, art. 29.

<sup>105</sup> Id. art. 62.

<sup>106</sup> Id. art. 73.

<sup>107</sup> Law No. 23 of 1968 on Code of Criminal Procedures, as amended, art. 95, *Al-Jaridah Al-Rasmiyah*, vol. 31, 24 July 1968, <https://perma.cc/4NJK-WR8D> (in Arabic).

<sup>108</sup> Id. art. 95.

<sup>109</sup> Decree No. 4506 of 2013, art. 1, *Al-Jaridah Al-Rasmiyah*, vol. 090, 12 Nov. 2013, <https://perma.cc/XFG9-VW45> (in Arabic).

<sup>110</sup> Id. art. 2.

<sup>111</sup> Id. art. 6, para 2.

d. Decree No. 5 of 2018

Decree No. 5 of 2018 on the conditions controlling the installation of video surveillance equipment was issued on September 5, 2018, by the National Authority for Protection of Personal Data.<sup>112</sup> It regulates the circumstances under which ordinary individuals may install video surveillance equipment.<sup>113</sup> The Decree prohibits the installation of any type of video surveillance equipment in any way that harms the right to privacy of Tunisian citizens.<sup>114</sup> Every person who is subject to video surveillance has the right to request the recordings collected by the surveillance.<sup>115</sup>

If an owner of a condominium in an apartment building wants to install video surveillance equipment, he/she must obtain the permission of the homeowner's association before installing such equipment. Surveillance equipment cannot cover the entrances and windows of other apartments.<sup>116</sup>

Video surveillance equipment cannot be installed inside classrooms, dining rooms, bathrooms, and changing rooms of schools and child daycare centers.<sup>117</sup> Likewise, in workplaces, video surveillance cannot be installed in locations designated for eating, resting, or changing clothes; bathrooms; individual offices; or spaces where union meetings are held.<sup>118</sup> Finally, video surveillance cameras cannot be installed in patients' rooms and exam rooms in health clinics and hospitals.<sup>119</sup>

e. Law No. 61 of 2016

Law No. 61 of 2016 punishes any person who intentionally intercepts personal communications and correspondence or carries out audiovisual surveillance without obtaining judicial permission with a term of imprisonment of five years and a fine of 5,000 dinars.<sup>120</sup>

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<sup>112</sup> Decree No. 5 of 2018, issued on September 5, 2018, National Authority for Protection of Personal Data, <https://perma.cc/W8RA-9VPT> (in Arabic).

<sup>113</sup> Id., intro.

<sup>114</sup> Id. art. 4.

<sup>115</sup> Id. art. 23.

<sup>116</sup> Id. art. 6.

<sup>117</sup> Id. art. 7.

<sup>118</sup> Id. art. 8.

<sup>119</sup> Id. art. 10.

<sup>120</sup> Law No. 61 of 2016, art. 42, *Al-Jaridah Al-Rasmiyah*, vol. 66, 12 Aug. 2016, <https://perma.cc/HFG9-2KUH> (in Arabic).

## F. Right to Open and Neutral Internet

### 1. Background

The infrastructure of the communications network, allowing affordable access to the internet, is expanding outside major Tunisian cities. The government has some control over internet companies through its ownership of stocks in the country's major tech companies.<sup>121</sup> Blocking social media websites is uncommon in Tunisia. Social media websites such as Facebook, YouTube, and Twitter are freely accessible.<sup>122</sup>

### 2. Domestic Legislation: Decree No. 4773 of 2014

Decree No. 4773 of 2014, issued by the Prime Minister on December 26, 2014, regulates the conditions and procedures for granting authorization to supply internet services.<sup>123</sup> The Decree requires internet service providers to obtain prior authorization from the Minister of Communication before providing any type of internet services to the public.<sup>124</sup>

The providers of internet services must use the infrastructure and location of interconnection links, and the telecommunications public utility networks offered and approved by the National Telecommunications Authority.<sup>125</sup> Internet providers must also

- provide the Ministry of Telecommunications and the National Telecommunications Authority with all information related to the technical, operational, and financial resources that it uses to offer internet services;
- provide to the National Telecommunications Authority a copy of the service contract signed by the clients of such service provider;
- adhere to all requirements imposed by government bodies related to the national defense, security, and public safety; and
- adhere to all international conventions ratified by the Tunisian state.<sup>126</sup>

A provider of internet services must be committed to offering internet access to all and must assist its customers to easily access all the types of internet service that it offers.<sup>127</sup> It must adopt necessary measures to ensure the neutrality of its services<sup>128</sup> and protect, secure, and maintain

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<sup>121</sup> *Freedom on the Net 2019: Tunisia*, Freedom House, <https://perma.cc/6B2R-6R2H>.

<sup>122</sup> *Id.*

<sup>123</sup> Decree No. 4773 of 2014, *Al-Jaridah Al-Rasmiyah*, vol. 07, 23 June 2015, <https://perma.cc/C98L-S9PH> (in Arabic).

<sup>124</sup> *Id.* art. 2, para 2.

<sup>125</sup> *Id.* art. 9.

<sup>126</sup> *Id.* art. 11.

<sup>127</sup> *Id.* art. 13.

<sup>128</sup> *Id.* art. 14(1).

the confidentiality of the personal data of its clients.<sup>129</sup> It must also ensure secure web browsing for children on the internet.<sup>130</sup>

Finally, a provider of internet services is required to guarantee the continuity of services offered to its customers by using all necessary technical tools and software. The internet services it offers must be of a good quality.<sup>131</sup>

## **G. Anti-Discrimination and Gender Equality**

### *1. Constitutional Provisions*

The 2014 Tunisian Constitution protects and guarantees the principle of equality among citizens and between genders. It stipulates that all citizens, male and female, have equal rights and duties, and are equal before the law without any discrimination.<sup>132</sup>

### *2. Domestic Legislation*

#### *a. Law on Inheritance*

Arab countries such as Tunisia apply Islamic law rules to inheritance matters. Verse 11 of Surat An-Nisaa of the Qur'an states that a woman's share of an inheritance is half that of a man. The cabinet of Tunisia approved a bill on November 22, 2019, which, for the first time in the nation's history, would require that male and female heirs receive equal inheritance shares. If enacted, Tunisia would be the first among the Arab countries to adopt such a law. The cabinet has referred the bill to the Tunisian Parliament for debate and voting;<sup>133</sup> it has not yet become law.<sup>134</sup>

#### *b. Law on Citizenship*

Law No. 55 of 2010 on Citizenship provides Tunisian mothers with equal treatment regarding their children's acquisition of Tunisia citizenship. Under the Law, similar to a child born to a Tunisian father of a foreign wife, a child born to a Tunisian mother of a foreign husband is considered a Tunisian citizen as well.<sup>135</sup>

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<sup>129</sup> Id. art. 14(3).

<sup>130</sup> Id. art. 14(11).

<sup>131</sup> Id. art. 15.

<sup>132</sup> Tunisia Const. of 2014, art. 21.

<sup>133</sup> *Tunisia Becomes the First Arab Nation to Approve Gender Equality in Inheritance Law*, DhakaTribune (Nov. 25, 2018), <https://perma.cc/U7RW-EB83>.

<sup>134</sup> *Tunisia: New Parliament's Rights Priorities*, Hum. Rts. Watch (Nov. 13, 2019), <https://perma.cc/R7LA-H7EX> (in Arabic).

<sup>135</sup> Law No. 33 of 2010, art. 6, *Al-Jaridah Al-Rasmiyah*, vol. 097, 3 Dec. 2010, <https://perma.cc/ZG8A-AXHF> (in Arabic).

c. Law No. 32 of 2007

Law No. 32 of 2007 treats males and females equally by providing the same minimum age of marriage for both genders. Both males and females must be 18 to marry.<sup>136</sup>

d. Family Law No. 70 of 1958

Qur'anic verse 4:4 of Surat al-Nsa allows Muslim males to marry up to four wives simultaneously.<sup>137</sup> However, Tunisian family law treats both females and males equally by banning polygamy, making it a crime punishable by one year of imprisonment when a man marries a second wife while still married to his first wife.<sup>138</sup>

e. Law No. 50 of 2018 on Combating All Forms of Racial Discrimination

Law No. 50 of 2018 defines racial discrimination as any distinction, exclusion, restriction or preference based on race, color, ancestry, or other discrimination that leads to the obstruction or prevention to exercise basic freedoms and rights.<sup>139</sup>

The Law punishes anyone who commits an act constituting racial discrimination or makes a racist statement, with a term of imprisonment between one month and one year or a fine of 500 to 1,000 Tunisian dinars.<sup>140</sup> The Law also punishes whoever incites others to hate, commit acts of violence, or discriminate against specific individuals or groups with a term of imprisonment of three years and a fine of 1,000 to 5,000 Tunisian dinars.<sup>141</sup>

Finally, the Law creates “the National Committee to Combat Discrimination”.<sup>142</sup> The Committee publishes an annual report on combating racial discrimination. It will submit its report to the parliament on an annual basis.<sup>143</sup>

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<sup>136</sup> Law No. 32 of 2007, art. 5, *Al-Jaridah Al-Rasmiyah*, vol. 042, 14 May 2007, <https://perma.cc/5P73-KPD8> (in Arabic).

<sup>137</sup> Qur'anic verse 4:4, <https://perma.cc/GE7B-LZ8U>.

<sup>138</sup> Law No. 70 of 1958, art. 18, issued July 4, 1958, <https://perma.cc/A7YZ-76RH> (in Arabic).

<sup>139</sup> Law No. 50 of 2018, art. 2, *Al-Jaridah Al-Rasmiyah*, vol. 86, 26 Oct. 2018, <https://perma.cc/PPF3-4RZV> (in Arabic).

<sup>140</sup> *Id*, art. 8.

<sup>141</sup> *Id*, art. 9.

<sup>142</sup> *Id*, art. 11.

<sup>143</sup> *Id*, art. 11, para. 2.