

Cases and rulings

Country Code	Year	Reference details title	Reference details URL	Hate Bias motivation	Court / Body	Key facts of the case	Results (sanctions, outcome) and key consequences or implications of the case	Main reasoning / argumentation	Key issues (concepts, interpretations) clarified by the case	Key quotation in original language and translated into English with reference details
Luxembourg	2022	Luxembourg First Instance Court of Luxembourg City, 1005/2022	https://www.eur-lex.europa.eu/eli/tribl/2022/0001/01/20220314_T1416_1005_p0001ymfr/0/CMS/49_accessible.pdf	Racial or ethnic origin	First Instance Court of Luxembourg City (Tribunal d'arrondissement de Luxembourg) [tribunal]	On the 6th of July 2019, the Anti-Terrorism Section of the judicial Police Service was informed of the existence of a comment on Facebook which contained xenophobic remarks. The comment related to an article published on the Facebook page of RTL, Lëtzebuerg. The investigation later revealed that the Facebook profile associated with the comment belonged to the defendant. The comment read: "In my years I was stationed in Saudi Arabi, in Libya and in Bahrain. These people are not like us, they are like monkeys. I was there for 3 years. I know what I'm talking about." The accused admitted to having made the comment and declared that, when using the expression "like monkeys", he was referring to refugees. The comment was visible to all Facebook users.	The Court concluded that the defendant had committed a crime of hate or violence under articles 437.1 and 434 of the Criminal Code. As such, the defendant was sentenced to imprisonment of six months and to a €1,000 fine.	In view of the fact that the defendant qualifies refugees as being "like monkeys", the Court considers that his comments were aimed at a group of persons on the basis of their origin. Furthermore, it concludes that, given the unambiguous and degrading terms that were used, the comments constitute messaging likely to provoke feelings of deep dislike, contempt, rejection and hostility towards refugees among the public. Finally, the Court declares that, by publishing an object comment on Facebook, aimed at refugees, saying that these are not human beings but monkeys, his aim none other than to provoke a feeling of hatred towards refugees.	In its reasoning, the Court interprets the constituting elements of the crime of incitement to hatred or violence. Firstly, the controversial statement must be public. This includes comments freely accessible to any Facebook user. Secondly, the statement needs to be of such a nature as to cause hostility or rejection. The writings must therefore be likely to cause harm or a violent feeling of wanting to harm or a deep dislike, contempt, rejection and hostility. Thirdly, the statement needs to be aimed at a person, a group or a community because of one of the protected characteristics referred to in Article 434 of the Criminal Code relating to discrimination. Fourthly, there needs to be a deliberate intention of the perpetrator to provoke a reaction of hatred in the public mind based on a discriminatory motivation.	"L'auteur doit avoir la volonté délibérée de provoquer dans l'esprit du public une réaction de haine. Il doit avoir agi avec une volonté discriminatoire consistant dans un délit spécial. En effet, un énoncé publié sur Facebook un commentaire accessible à tout utilisateur de Facebook. Deuxièmement, l'énoncé doit être de nature à provoquer une hostilité ou un rejet. Les écrits doivent donc être susceptibles de causer un préjudice ou une violence. Troisièmement, l'énoncé doit être adressé à une personne, un groupe ou une communauté en raison d'une des caractéristiques énumérées à l'article 434 du Code pénal relatives à la discrimination. Quatrièmement, il faut qu'il y ait une intention délibérée de provoquer une réaction de haine dans l'esprit du public en raison d'une motivation discriminatoire."

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