

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
Austria	2013	Austria / Higher Regional Court Innsbruck/ 118s110/13h ECLI:AT:OJ.G0819:2013:01108500110.13h.0430.000	http://www.ris.bka.gv.at/Dokument.wxe?Anfrage=justrz6;Dokumentnummer=JIT_20130430_OJ.G0819_01108500110.13h0000_000	Racial or ethnic origin	Higher Regional Court (Oberlandesgericht)	The case concerns online incitement to violence or hatred. More concretely, on 25 April 2012 the defendant made comments on facebook and other social media networks as follows (roughly translated): "Why are there no sperm donors in Turkey? Because all the jerks are here with us."	The Higher Regional Court of Innsbruck acquitted the defendant of charges related to the crime of violence or hatred according.	The Higher Regional Court of Innsbruck found that the defendant's statement in social networks did not constitute unlawful speech as it did not exceed the boundaries provided by law. According to the Court, the defendant has not attempted to bring a group (Turks) in contempt by hating or insulting them in a manner that violates human dignity. Bringing someone in contempt is if a person presents another person as unworthy or undeserving, thus exposing him/her to their contempt, whereby the perpetrator must act with (at least) a conditional intent (dolus eventualis).	One of the key issues is about whether the defendant's despicable statement constitutes incitement to violence or hatred. According to the Higher Regional Court of Innsbruck, the defendant has not exceeded the boundaries of a 'qualified libel' within that meaning.	"Im gegebenen Zusammenhang werden in erster Linie wörtliche Beschimpfungen in Betracht kommen, denkbar sind aber auch solche in Form bildlicher Darstellungen. Das Beschimpfen muss jedoch in einer die Menschenwürde verletzenden Weise erfolgen. Die Menschenwürde wird verletzt, wenn durch die Tathandlung den Angehörigen der angegriffenen Gruppe unmittelbar oder mittelbar das Recht auf Menschsein schlechthin abgesprochen wird, indem ihnen etwa das Lebensrecht als gleichwertiger Bürger bestritten wird oder sie als minderwertige oder wertlose Teile der Gesamtbevölkerung dargestellt werden, oder wenn sie sonst einer unmenschlichen oder erniedrigenden Behandlung unterworfen werden. Richtet sich der Angriff bloß gegen einzelne Persönlichkeitsrechte (z.B. die Ehre), so wird damit noch nicht die Menschenwürde verletzt. Maßgebend ist vielmehr, dass die der betreffenden Menschen im unverschämten Kernbereich ihrer Persönlichkeit getroffen werden." "In the present context, verbal insults are considered at first, however pictorial representations are conceivable as well. The insult has to be undertaken in a manner which is infringes human dignity. The human dignity is infringed if the right to humanity is directly or indirectly denied to the members of the attacked group by denying, for instance, their right to life as an equivalent citizen or are presented as inferior or worthless parts of the total population, or if they are subjected to other inhumane or degrading treatment. If the attack is directed only against individual personality rights (for example, honor), the human dignity is not yet infringed. What is decisive is rather that the people belonging to the group in question are affected in the indispensable core of their personality."

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