DATABASE 2012-2024 ON ANTI-MUSLIM HATRED

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
Poland	2014	Poland / Constitutional Tribunal / SK 65/12 / Framework Decision on Racism (2008/913/JHA) or of the Racial Equality Directive (2000/43/EC)		Racial or ethnic origin, Nationality, Racial or ethnic origin, Religion	Constitutional Tribunal	The applicant, B.R., submitted a motion to the Constitutional Tribunal claiming that Article 256 of the Criminal code, in some of its provisions, violates the Constitution. Article 256 of the Criminal code prohibits incitement to hatred on the grounds of racial, national and ethnic origin, religion or lack of belief. Furthermore, Article 256 of the Criminal code prohibits praising Nazi, communist or any other totalitarian system. In the opinion of the applicant those provisions ('incitement to hatred' and 'any other totalitarian system') are vague and, as a consequence, violate freedom of speech.	The Constitutional Tribunal stated that Article 256 of the Criminal code does not violate the Constitution.	The Constitutional Tribunal stated that it is unavoidable to use vague expressions in legal acts, since they are created on the basis of common language. Since the merits of this case concerned the issue of ambiguous phrases used in the text of legal acts, the Constitutional Tribunal found it important to analyse the standards of law making. Within this analysis, the Constitutional Tribunal analysed the rule "nullum crimen sine lege poenali anteriori" and noted that this rule is deeply rooted not only in the Polish Constitution, but also UN acts and the EU Charter of Fundamental Rights. Furthermore, the Constitutional Tribunal stated that the analysis of judgements concerning incitement to hatred passed by Polish courts does not give reasons to claim that Article 256 and the expression 'incitement to hatred' violate freedom of expression.	The Constitutional Tribunal stated that Article 256 of the Criminal code limits freedom of expression. However, this limitation fulfils the Constitutional criteria of proportionality, meaning that they are necessary in a democratic state in order to protect national safety and security as well as public order and citizens' rights.	"Kryminalizacja nawoływania do nienawiści na tle różnic narodowościowych, etnicznych, rasowych, wyznaniowych albo ze względu na bezwyznaniowość jest bez wątpienia ograniczeniem wolności słowa, jednej z podstawowych wolności człowieka, istotnej dla jego rozwoju i samorealizacji oraz mającej podstawowe znaczenie dla demokracji. Ograniczenie to spełnia wymóg ustawowej regulacji i jest konieczne w państwie demokratycznym [...] Znajduje ono silne uzasadnienie aksjologiczne na gruncie obowiązującej Konstytucji: w zasadzie przyrodzonej i niezbywalnej godności człowieka (art. 30 Konstytucji) oraz zakazie istnienia partii politycznych i innych organizacji odwołujących się w swoich programach do totalitarnych metod i praktyk działania nazizmu, faszyzmu i komunizmu, a także tych, których program lub działalność zakłada lub dopuszcza nienawiść rasową i narodowościową (art. 13 Konstytucji)." "Criminalisation of incitement to hatred on the basis of national, ethnic or racial origin, religion or lack of belief is undoubtly a limitation of freedom of speech, which is one of the fundamental human freedoms, crucial for development and self-fulfilment, and having fundamental meaning for democracy. This limitation fulfils the legal requirements and is necessary in a democratic state. It has a strong justification on the basis of the Polish Constitution: it is grounded in the rule of inherent and inalienable dignity of the human being (Article 30 of the Constitution) and in the prohibition of political parties and any other organisations referring in their programmes to totalitarian methods and practices of Nazism, fascism and communism, but also those whose programmes or activity allow racial and national hatred (Article 13 of the Constitution)."

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