

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
Spain	2014	Spain / Santa Cruz de Tenerife Provincial High Court, Section 2 / No. 107/2014	https://www.iberley.es/jurisprudencia/sentencia-penal-n-107-2014-ap-tenerife-sec-2-rec-150-2014-07-03-2014-14330631	Nationality	Santa Cruz de Tenerife Provincial High Court (Audiencia Provincial de Santa Cruz de Tenerife)	The Santa Cruz High Court decision confirms the ruling of the Santa Cruz de Tenerife No. 2 bis Criminal Court, 10 October 2013 convicting the author of a xenophobic poem of a crime of incitement to hatred according to article 510 Criminal Code. The author had incited the Canary population through a xenophobic poem to attack and expel the immigrants from the Canary Islands. The poem entitled "Decimas", dated on the 12/02/2008, had been sent for publication in a journal named "EL DIA" with the purpose of being selected for publication. The newspaper had a large readership in the Tenerife province (Canary Islands). It was finally published on the 4/04/2008 in the culture section of the journal. There were no proof of exact knowledge of the content by the Director and the Editor of the publication.	This Santa Cruz High Court decision ratifies the sentence of the Santa Cruz de Tenerife No. 2 bis Criminal Court, 10 October 2013 (Juzgado de lo Penal núm. 2 bis de Santa Cruz de Tenerife de 10 de octubre de 2013) against the author of the xenophobic poem. And it does share the criteria previously adopted, concluding that writing and sending that poem would be the typical conduct described in article 510 of the Criminal Code. The freedom of expression and ideology cannot protect statements or expressions intended to disparage or to generate feelings of hostility against certain ethnic groups.	The previous judgment appealed considered that the poem's xenophobic content was not protected by the freedom of expression. It did refer to the freedom of expression covered under the Art. 20.1 of the Spanish Constitution as well as to the Constitutional Judgements STC 235/2007 and STC 214/1991 declaring that the freedom of expression cannot protect statements or expressions intended to generate hostile feelings against certain ethnic groups. This Santa Cruz High Court decision considers that Article 510 of the Criminal Code does not require proof of the existence of a direct incitement.	It does establish a jurisprudential criteria in line with a current jurisprudence that considers that Article 510 - Hate Provocation (provocación al odio) of the Spanish Criminal Code does not require the evidence of the existence of a direct incitement to conclude that a crime has been committed.	"...las intenciones del autor de los versos de dirigirse a través de un medio de comunicación de gran difusión en la provincia a sus conciudadanos, va más allá de la mera expresión de opiniones despectivas o humillantes respecto de un grupo social al que entiende debe repelerse para impedir una invasión ..." "...the intentions of the author of the verses of means of communication widespread in the province for refer to their fellow citizens" "...it goes beyond the mere expression of degrading or humiliating views with regard to a social group that understands must be repel to prevent an invasion ..."

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