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
Austria	2015	Austria / Supreme Court / 15Os75/15s ECLI:AT:OGH0002:2015:RS0130193	https://www.ris.bka.gv.at/Dokumente/Justiz/JJT_20150722_OGH0002_0150OS00075_15S0000_000/JJT_20150722_OGH0002_0150OS00075_15S0000_000.pdf	Religion, Nationality, Sex/Gender, Migrant status, Racial or ethnic origin	Supreme Court (Oberster Gerichtshof, OGH)	The Supreme Court has ruled on a case confirming the lower court sentence of 30 year old Turkish barber who had been sentenced to two years on probation for publishing antisemitic postings on Facebook. He had dignified the Holocaust and in the context of last years Gaza war he wrote "I could kill all Jews. But I 'd leave some alive to show you why I killed them" and said that Hitler "was the king of all real men and nobody achknowdlegded him". Taking into consideration the settled case law that incitement constitutes an aggravating factor, the Supreme Court clarified the legal question of the relation between prohibition of incitement and the aggravating factors for punishment, as well as the prohibition of double-jeopardy, which means that a person cannot be criminally charged for a crime that he or she has been already convicted or acquitted of. The court stated that since incitement does not require motivation as an element to be qualified as crime, such a motivation can be taken into consideration as an aggravating element in the measurement of the punishment.	The court stated that because the crime of incitement does not include its motivation, the application of the aggravating motive can be applied in the measurement of the punishment.	The motive for incitement is not an element of the crime, as the matter of fact incitement does not require acting on racist grounds. Therefore, the application of aggravation of punishment does not violate the principle of the prohibition of 'double-jeopardy', which means that a person cannot be criminally charged for a crime that he or she has been convicted or acquitted of. The suggestion that circumstances which are 'typically' connected with the crime would be 'consumed' concerning its punishment and thus, would violate the prohibition of double-utilisation, is not covered by the respective law.	Aggravation in punishment can be applied in cases of incitement. This landmark decision can have a large impact on future cases and on the criminal statistics as there were hardly any cases on the motivations for incitement.	Rechtssatz: "Das Doppelverwertungsverbot ergibt sich aus dem in § 32 Abs 2 erster Satz StGB enthaltenen Gebot, Erschwerungs- und Milderungsgründe nur soweit bei der Bemessung der Strafe zu berücksichtigen („gegeneinander abzuwägen"), als sie „nicht schon die Strafdrohung bestimmen". Für letztere bestimmend sind nur subsumtionsrelevante Umstände, zu denen das Tatmotiv idR – wenn es nicht ausnahmsweise im Tatbestand genannt ist – nicht zählt." Dictate of justice: "The prohibition of multiple punishment allows for aggravating or extenuating causes to be taken into account in the measurement of the punishment consider if they do not determine the thread of punishment. The thread of punishment is only determined by circumstances relevant for subsumption. The motive is no such element, except when it is explicitly mentioned as an element of the crime."

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