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
Italy	2015	Italy / Court of Cassation / Decision no. 36906	http://www.asgi.it/wp-content/uploads/2015/09/Corte-di-Cassazione-sezione-III-sentenza-n.-36906-del-14-settembre-2015-pres.-Franco-est.-Pezzella-Salm%C3%A8-Stefano.pdf	Racial or ethnic origin, Religion	Italian Court of Cassation (Corte di Cassazione)	The Court of Appeal of Trieste stated that the complainant's electoral propaganda was to be considered a dissemination of racist and discriminatory ideas and convicted him for the criminal offences of 13 October 1975. A candidate for the 2013 EU Parliament election distributed a leaflet showing images and slogans aimed at supporting the idea that immigrants and other ethnic minorities are culturally more inclined to commit crimes. He stressed that his intention was to point out his political commitment to contrast crimes and delinquency.	The complaint has to be considered legitimate: the decision of the Court of Appeal of Trieste is to be considered not valid.	According to the Court of Cassation the decision of the Court of Appeal of Trieste erred in law and the complainant could not be ascribed the criminal offence of propaganda and dissemination of racist ideas. In fact, the concept of propaganda is less generic than the concept of "ideas dissemination", since the first also includes the aim of manipulating recipients' mentality, behaviours and psychology and of gathering consensus towards such ideas. In this respect, the complainant's behaviour can be labelled as propaganda because its aim was to foster public consensus and to be elected; nonetheless, the propaganda was not directed against specific minority groups but against the criminal conducts of some of their members. Of course the political idea on which the propaganda was based was that those groups are more inclined at committing such crimes but this opinion is conveyed in a particular context, that is the electoral campaign. For this reason, the Court of Cassation - having to balance the right to non-discrimination with the right of expression of opinions and ideas - decided not to consider the complainant's conduct as racist propaganda.	This decision is important because the Court contributed to the interpretation of the concept of "racist propaganda" and to set boundaries to the conducts that can be considered criminally relevant. Moreover, the Court recalled the most important decisions concerning this issue of both Italian and European courts. Finally, the Court set criteria for the correct balance of the right to express ideas and opinions, the protection of human dignity and the right to non-discrimination.	Point 11 of the decision: "Appare evidente, infatti, che il messaggio del volantino era quello di propagandare un'avversione non verso i soggetti sullo stesso raffigurati in maniera caricaturale, ma verso le attività illecite dagli stessi posti in essere. Siamo di fronte, evidentemente, ad un messaggio politico che risente di un pregiudizio per cui determinate attività delittuose vengono poste in essere prevalentemente dai membri di determinate etnie [...] Tuttavia, nel necessario bilanciamento di interessi costituzionalmente protetti di cui si è detto, da operare di volta in volta rispetto al caso concreto, appare nell'occasione prevalere il diritto alla libera manifestazione del proprio pensiero politico, nell'ambito di una competizione elettorale [...] L'odierno ricorrente non appare pregiudizialmente ostile a determinate etnie in quanto tali. Nella sua visione lo è perché ricollega alle stesse lo svolgimento di determinate attività illecite" "In fact, it seems evident that the message conveyed by the leaflet was to propagandise an aversion not towards the subjects portrayed on it, but towards the criminal activities they carry out. This is glaringly a political message based on the prejudice that some criminal activities are carried out mainly by the members of specific ethnic groups [...] nonetheless, in the necessary balance between constitutionally guaranteed interests, which has to be assessed case by case, it seems that in this occasion the right to the expression of political opinions has to prevail, in the context of an electoral competition"

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