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

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Sweden	2016	Sweden / Svea Court of Appeal / Case no. B4509-16	https://rattsinfosok.domstol.se/lagrummet/index.jsp	Religion	Svea Court of Appeal (Svea Hovrätt)	Svea Court of Appeal (Svea hovrätt) found a man guilty of incitement of hatred in a post on a facebook page of a local branch of the Sweden Democrats (Sverigedemokraterna). The perpetrator, S.V. posted a copy of a message stating that "horny Muslims" have "sick, devilish lusts". The District Court dismissed the charges against S.V. since the post had only been available for everybody during a maximum of 14 hours. Even though the post was degrading in nature, the District Court did not consider it necessary or proportionate to restrict S.V.'s freedom of expression. The Court of Appeal found S.V. guilty of incitement of hatred based on the fact that S.V.'s post was drafted in an offensive manner that did not open up for a critical discussion on religions, which, according to the Court, of course must be allowed.	Svea Court of Appeal changed the ruling of the District Court and sentenced S.V. to a conditional sentence (vilkorlig dom) and a day fine (dagsböter) of 50 SEK (5.2 Euro) for a period of 60 days, a total sum of 3,000 SEK (315 Euro).	The Court of Appeal argued that the penalty regulations regarding incitement of hatred must be interpreted in the context of, and in accordance with general provisions on human rights and freedom of expression in the Swedish Constitution and the ECHR. The Court underlined that the Penal Code is based on a balance between the freedom of expression and the protection of vulnerable groups. Thus, the interpretation of the freedom and rights of the ECHR cannot only focus on the protection of the right of individuals to exercise their freedom of expression. Rather, the interpretation must be done in the light of the legislator's overall intentions, also in cases concerning freedom of expression that generally enjoy strong protection in Sweden. The Court of Appeal found S.V.'s post to be drafted in an offensive and degrading manner that did not open up for a critical discussion on religions, which must be allowed. Consequently the Court found S.V. guilty of incitement of hatred.	The key issue of the case concerns whether a post containing degrading statements against Muslims and Islam published on a public Facebook page should be interpreted as part of a critical debate on religions and be protected by the freedom of expression – or if it should be interpreted as incitement of hatred and be prosecuted as hate speech. The District Court argued that since the post only had been available for everybody during a maximum of 14 hours it could not consider it necessary or proportionate to restrict the poster's freedom of expression even though the post was insulting and degrading. The Court of Appeal focused on the intent of the poster and found that the post was drafted in such an offensive manner that it was not opening up for a critical discussion on religions, which, according to the Court, of course must be allowed. The Court of Appeal considered the posting as incitement of hatred based on the clear intent of the poster.	"Sett till sin helhet ger inlägget emellertid uttryck för att personer av muslimsk trosuppfattning, som befinner sig i Sverige på grund av krig eller andra oroligheter, generellt skulle anse sig berättigade att utöva sexuellt våld mot kvinnor. Inlägget, särskilt dess avslutande delar, är dessutom utformat på ett kränkande sätt. Uttalandet inbjuder därmed inte till en religionskritisk diskussion - vilket det självfallet måste finnas utrymme för - utan uttrycker just sådan missaktning som bestämmelsen om hets mot folkgrupp avser att träffa. Mot denna bakgrund finner hovrätten, vid en samlad bedömning, att S.V. ska dömas för hets mot folkgrupp enligt 16 kap. 8 § första stycket brottbalken. " "In summary, the post suggests that people of Muslim beliefs, who are in Sweden because of war or other unrest, generally would consider themselves entitled to exert sexual violence against women. The post, in particular its closing parts, is furthermore designed in an offensive manner. Thus, the statement does not invite a religion-critical discussion - which there obviously has to be room for - but expresses such disregard that the regulation of incitement of hatred is aimed at. Against this background, the Court of Appeal finds that S.V. shall be sentenced for incitement of hatred in accordance with chapter 16, section 8, first paragraph, of the Penal Code." Sweden, Svea Court of Appeal (Svea hovrätt), case number B 4297-16. The case is not available online but can be requested by the court in question using the case number.

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