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) and/or 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	2017	Austria - Supreme Court - 15Os125/17i Decision (Entscheid) 2017-12-20000015-15-1i001.rtf	https://www.ris.bka.gv.at/Dokumente/Justiz/JJT_20171220_OGH0002_0150OS00125_17I0000_000/JJT_20171220_OGH0002_0150OS00125_17I0000_000.pdf	Racial or ethnic origin	Supreme Court (Oberster Gerichtshof)	The case concerns a posting of incitement to hatred and violence. More concretely, the respondent [J.H.] was indicted because of a posting on Facebook showing Muslim asylum seekers lying in a trench with machine guns, with the comment: "The federal government's policy of promoting Islam in Germany ... rejects 1,400 requests per minute".	The Supreme Court ruled that the judgement of the Regional Criminal Court Graz had misapplied the law. The impugned decision of the law, which was opposed by the Prosecutor's General Office (Generalprokuratur), was thus to be determined.	The Supreme Court found that asylum seekers are covered by § 283 StGB. Through the amending law concerning the Criminal Code, it was explicitly determined that a protected group can be defined both positively and negatively by inserting the word sequence "existing or missing".	One of the key issues was about whether the impugned derogatory statement (i.e. posting on his Facebook page a photograph of a Muslim asylum seekers, including the inscription "The federal government's policy of promoting Islam in Germany ... rejects up to 1,400 requests per minute") constitutes incitement to hatred in terms. Concretely, the issue is about whether "asylum seekers" as a group are covered by § 283 StGB.	"Mit dem StRÄG 2015 sollte durch Einfügung der Wortfolge "bestehenden oder fehlenden" (Kriterien) in Abs 1 leg cit klargestellt [sic] werden, dass eine geschützte Gruppe sowohl positiv als auch negativ definiert werden kann [...] Somit kommt eine Gruppe gerade der Gruppe der „Ausländer" im Allgemeinen den zutreffen [...] Ebenso wie auch das Fehlen eines der in § 283 Abs 1 StGB genannten Kriterien (etwa einer bestimmten Staatsangehörigkeit) nicht dazu führt, dass eine geschützten Gruppe nicht [...] Schließlich hat auch durch das Einfügen der Wortfolge „bestehenden oder fehlenden" in § 283 Abs 1 StGB keine Änderung dahingehend stattgefunden, dass eine Gruppe nicht [...] Thus, incitement against a group of "foreigners" generally falls within the scope of the offence, once the respective group fulfils the criteria (e.g. a certain nationality) [...] Nevertheless, § 283 para 1 StGB is sufficient to define a protected group."

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