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 / 15Os25/17k RS0127.OGH0003.193.7.0.20000000_171.Os25_00	https://www.ris.bka.gv.at/Dokumente/Justiz/JJT_20170613_OGH0002_0150OS00025_17K0000_000	Migrant status	Supreme Court (Oberster Gerichtshof)	The case concerns a post inciteement to hatred and violence. More concretely, the defendant (JA) was indicted for having on Facebook showing Syrian snipers lying in a field with machine guns, with the comment "The fastest way to get a pleasure in Germany ... rapists ... 1,400 request per ... torture".	The Supreme Court ruled that, by failing to consider asylum seekers' status, the Court Graz had misapplied the law. The interpretation of the law, which was opposed by the Prosecutor's General Office (Generalprokuratur), was thus determined.	The Supreme Court found that asylum seekers are covered by § 283 of the CC. 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".	The key issue was whether "asylum seekers" as a group are covered by the provision against incitement to hatred under § 283 of the Austrian Criminal Code.	"Mit dem StRÄG 2015 sollte durch Einfügung der Wortfolge "bestehenden oder fehlenden" (Kriterien) in Abs 1 2 klargestellt werden, dass eine geschützte Gruppe sowohl positiv als auch negativ definiert werden kann [...]. Somit kann auch eine Gruppe die Gruppe der „Ausländer" im Allgemeinen den Schutz entfalten, weil auch das Fehlen eines der in § 283 Abs 1 Z 1 genannten Kriterien (etwa einer bestimmten Staatsangehörigkeit) eine negativ definierte geschützten Gruppe rechtfertigt. Durch die anlassfällig bei concerning the Criminal Code (StRÄG 2015), it was explicitly determined that a protected group can be defined both positively and negatively by inserting the word sequence "existing or missing". Thus, incitement against a group of "foreigners" generally falls within the scope of the offence, since the absence of one of the criteria (e.g. a certain nationality) mentioned in § 283 para 1 StGB is sufficient to define a protected group."

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