

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	2017	Austria / Supreme Court / 150s129/17k (150s130/17g) / ECLI:AT:OGH0002:2017:RS0131720	https://www.ris.bka.gv.at/Dokumente/justiz/IT_20171122_OGH0002_01500500129_17k0000_000/IT_20171122_OGH0002_01500500129_17k0000_000.pdf	Religion	Supreme Court (Oberster Gerichtshof)	The case concerns online incitement to hatred and violence. In 2016, C. K. posted a publicly accessible picture on Facebook showing a flock of sheep and several dark-skinned people. The picture was headlined "Swinger-Club for Muslims" and the subtitle was "A new point of contact for this perverse sodomy rabble". The Regional Court convicted C. K. for incitement to hatred. In this context, the competent Regional Court and later on also a Higher Regional Court did not regard the posting as a continuous offence (Dauerdelikt). The General Prosecutor's Office filed a nullity appeal for observance of the law against this legal assessment.	The Supreme Court found that the judgments by the Regional Court Krems an der Donau and the Higher Regional Court Vienna violated the law. This finding serves mainly the clarity and uniform application of the law. The decision of the Supreme Court has no effect on the defendant.	The Supreme Court challenged the legal assessment according to which incitement to hatred does not constitute a continuous offence (Dauerdelikt). The Court argued that maintaining access to incriminated statements (even by omission, e.g. by not deleting them) increases the number of potential recipients and thus extends the violation of a protected legal interest. The Court argued that C. K. committed the offence of incitement to hatred (§ 283 (1) 2° and (2) Criminal Code) until he requested the deletion of the incriminated posting on Facebook.	The Supreme Court clarified that incitement to hatred pursuant to §§ 283 (1), (2) and (4) of the Austrian Criminal Code is a continuous offence (Dauerdelikt), which implies that the offence may also entail the continuance of a certain behaviour. In other words, incitement to hatred covers the (first) publication of an inciting statement, but also the act or omission of maintaining public access to an incriminated statement.	"The offences of § 283 (1), (2) and (4) of the Austrian Criminal Code are conceptualised as continuous offence, in case publicity [...] is also given beyond the moment of publication."

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