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
Luxembourg	2017	Luxembourg / Court of Appeal (10th Chamber) / Case no. 304/17		Migrant status	Luxembourg Court of Appeal (Cour d'appel)	On 14 October 2015 the accused, via his social media profile, commented on an article from a newspaper about a former military site (Ordensburg Vogelsang). The article said that "In this ex-Nazi-Ordensburg, Cologne will bring 900 refugees to Germany" and "In Cologne refugees are to be accommodated in the area of the former National Socialist Ordensburg. 900 people should be staying in a single floor..." The accused posted the following comment: "Vogelsang is actually a listed building ... let's see what remains of it, if this garbage (in German: Gesindel) lives there".	The Court of first instance acquitted the accused. The Court of appeal upheld the judgment.	Public Prosecutor argued that the use of the term "Gesindel" by the accused was to target refugees. The term "Gesindel" (a word with a very pejorative meaning, referring to "garbage people") referred to a group of people, in this case refugees, certainly has a negative connotation and therefore it can constitute incitement to hatred. At the same time, the defense of the accused invoked freedom of expression and freedom of opinion, relying on Article 10 of the ECHR.	In order to find a violation of article 457-1 of the Criminal Code, both the material and the moral elements of the crime must be established. The Court of first instance argued that in the absence of other elements calling for the stigmatization of refugees, the accused's comment had not had a sense of hostility or rejection and had concluded that the material element of incitement to hatred was therefore not established. The Court of appeal then argued that the remarks made by the accused were not likely to create in the mind of the person who conceives them shock, hatred or violence. Concerning the moral element, it further argued that it had not been established that the accused deliberately intended to provoke the public and thereby triggering a reaction of hate or violence against refugees.	(of the summary of the judgment provided by the Legal Documentation Service) "Cependant, les propos tenus ne sont pas de nature à créer dans l'esprit de celui qui les conçoit un choc incitatif à la discrimination, à la haine ou à la violence. [...] La Cour considère également quant à l'élément moral de l'infraction d'incitation à la haine qu'il n'est pas établi que A ait voulu de façon délibérée provoquer dans l'esprit du public une réaction de discrimination de haine ou de violence à l'égard des réfugiés, respectivement qu'il aurait dû entrevoir que ces propos pourraient avoir un tel effet." "However, the remarks made are not likely to create in the mind of the person who conceives them an incentive shock to discrimination, hatred or violence. [...] The Court also considers as to the mental element of the offense of incitement "to hatred that it has not been established that A deliberately intended to provoke in the mind of the public a reaction of hate discrimination or of violence against refugees, respectively, that he should have foreseen that such remarks could have such an effect."

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