

## 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                                                                                                                                                                                                                                                                                                                                                                                         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| Serbia       | 2017 | <a href="#">Serbia / National Court/Court of Appeal in Belgrade/ K2 841/17</a> |                       | Religion             | Court of Appeal in Belgrade I | A group of 11 people cheered at the sporting event, „Zaklaćemo ovih dana 300 muslimana (We are going to slaughter 300 Muslims these days)“. The Higher Court in Belgrade (trial court) ruled that they were guilty, in complicity, of incitement to national, racial and religious hatred. The defense attorneys as well as the Higher Public Prosecutor in Belgrade appealed against the first instance decision before the Court of Appeal in Belgrade. The defense argued that defendants cannot be guilty since the trial court had missed to establish all elements of the crime. The Higher Public Prosecutor requested the Court of Appeal to revoke the suspended prison sentence and to sentence all defendants to straight imprisonment. | The Court of Appeal in Belgrade upheld the first instance decision. Defendants were sentenced to suspended prison of 4 months, respectively, provided they do not commit another criminal offense within one year following the date of the final decision. | The Court of Appeal in Belgrade rejected the appeals and reaffirmed the first instance decision in whole. The Court of Appeal found that the trial court established correctly that defendants had acted with direct intention, that they sought the commission of the crime and its consequences. Hence, they were guilty pursuant to Article 317 para. 1 in conjunction with Article 33 of the Criminal Code. | The key issue was what are the elements of the offense incitement to national, racial and religious hatred or intolerance. It was particularly contentious what kind of perpetrator's mental state and result constitute this offense. First, the defense attorneys argued that defendants did not act with direct intention to incite national, racial and religious hatred or intolerance. Second, according to the defense attorneys, the trial court did not establish against whom concretely the offense was directed since no Muslims were present at the sporting event, which means that there was no concrete result of defendants' unlawful acts. In addition, the trial court did not establish that the hatred or intolerance actually resulted from the acts of defendants. Hence, the defense claimed that there is no criminal offense. The Court of Appeal found that defendants acted with direct intention to incite national and religious hatred and that they sought the commission of this crime. Moreover, the Court of Appeal was of view that the criminal offense in question can be committed with both direct and indirect intention. The Court of Appeal was of view that incitement to hatred and intolerance is an offense against the constitutional order of the Republic of Serbia which is based on the principle of tolerance and prohibition of discrimination. The Court specified that the elements of this crime neither warrant a concrete result nor a concrete victim. So, the result of this crime is an abstract danger imposed on the constitutional order. It is not necessary that a person or a group of persons had suffered any harm or that the national and religious hatred or violence were actually provoked. For this offense to be committed, the very propagation of national or religious hatred suffices. | "Pravilno je prvostepeni sud zaključio da postojanje pojedinca ili grupe prema kojoj je usmereno protivpravno ponašanje, tj. postojanje oštećenog u krivično-procesnom smislu nije neophodno za postojanje ovog krivičnog dela, jer je krivično delo propisano kao delo protiv ustavnog uređenja i bezbednosti Republike Srbije, s obzirom da su Ustavom utvrđeni principi zabrane diskriminacije po osnovu nacionalne pripadnosti i veroispovesti, neprikosnovenost prava na život i zabrane izazivanje rasne, nacionalne i verske mržnje, u konkretnom slučaju radnja izvršenja nije preduzeta iz ličnog revolta ili drugog ličnog motiva u odnosu na pojedine predstavnike muslimanske etničke zajednice, već je u pitanju izazivanje animoziteta prema muslimanskoj verskoj i etničkoj zajednici kao takvoj, a istovremeno je nesporno da okrivljeni nisu pripadnici te zajednice, pri čemu je radnja izvršenja preduzeta od strane više saizvršilaca i pred većim brojem ljudi prisutnim na javnom skupu. [...] Dakle posledica krivičnog dela je apstraktna opasnost za ustavno uređenje i bezbednost Republike Srbije, pa samim tim nije neophodno da je usled radnje izvršenja došlo do nastupanja konkretnih štetnih posledica za određeno lice ili grupu lica ili do nereda, nasilja ili drugih posledica po zajednički život naroda [...] Radnja nije odvojena od posledice, već je u pitanju posledična radnja [...] a to je u konkretnom slučaju nesumnjivo bila javno upućena pretnja ubistvom velikom broju muslimana [...]". (pages 4-5)<br>"The trial court concluded correctly in the terms of criminal procedure that this criminal offense does not warrant an unlawful act directed towards a person or a group, because this criminal offense is prescribed as an act against the constitutional order and security of the Republic of Serbia, since the prohibition of discrimination on the basis of nationality or religion, as well as sacrosanctity of the right to life and prohibition of incitement to national, racial and religious hatred are inherent in the Constitution, in the concrete case the crime was not committed out of personal revolt or out of other personal motive against any particular member of Islamic community, it was rather committed out of animosity towards Muslims as such, whereas it is uncontested that defendants are not members of Islamic community and that the offense was committed in concurrence and before the large group of people present at the sporting event. [...] So the result of this offense is an abstract danger to the constitutional order and security of the Republic of Serbia [...] The act is not separate from the result, it is rather a consequential act, so this offense can be committed with any act by which it is possible to achieve the result, that is to incite national or religious hatred among people [...] and in the present case that act was undoubtedly the publicly expressed death threat directed to the large number of Muslims [...]". |

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<http://fra.europa.eu/en/databases/anti-muslim-hatred/>

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