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
Austria	2019	Austria / European Court of Human Rights / E.S. v. Austria (Application no. 38450/12)	https://hudoc.echr.coe.int/eng#{"itemid":["001-187188"]}	Religion	European Court of Human Rights	E.S. held several seminars entitled "Basic Information on Islam" at the right-wing Freedom Party Education Institute. Several statements she had made during these (public) seminars had been directed against the doctrines of Islam, which essentially conveyed the message that Muhammad had had paedophilic tendencies. She was convicted of disparaging religious doctrines, pursuant to § 188 of the Criminal Code. The Austrian Courts found her guilty of publicly disparaging an object of veneration of a domestic church or religious society – namely Muhammad, the Prophet of Islam – in a manner capable of arousing justified indignation (geeignet, berechtigtes Ärgernis zu erregen).	The European Court of Human Rights found that the Austrian domestic courts did not overstep their margin of appreciation when convicting E.S. of disparaging religious doctrines pursuant to § 188 of the Austrian Criminal Code. The European Court of Human Rights ruled that there has been no violation of Article 10 of the European Convention on Human Rights.	E.S. alleged that her criminal conviction for disparaging religious doctrines had given rise to a violation of Article 10 of the European Convention on Human Rights. The Court found that the impugned statements were not phrased in a neutral manner aimed at making an objective contribution to a public debate concerning child marriages, but amounted to a generalisation without a factual basis. The Court found that the Austrian courts comprehensively assessed the wider context of the the statements in question, and carefully balanced her right to freedom of expression with the rights of others to have their religious feelings protected and to have religious peace preserved in Austrian society.	The Court noted that the subject matter is of a particularly sensitive nature, and that the (potential) effects of the impugned statements depend, to a certain degree, on the situation in the country where the statements were made at the time and the context in which they were made. The Court therefore considers that the domestic authorities had a wide margin of appreciation in the instant case, as they were in a better position to evaluate which statements were likely to disturb the religious peace in their country.	"Therefore, the Court considers that the domestic courts did not overstep their – wide – margin of appreciation in the instant case when convicting the applicant of disparaging religious doctrines. Accordingly, there has been no violation of Article 10 of the Convention."

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