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

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Luxembourg	2019	Luxembourg / Administrative Court of Luxembourg (3rd Chamber) / Case no. 40948	https://ja.public.lu/40001-45000/40948.pdf	Religion	Administrative Court (Tribunal Administratif du Grand-Duché de Luxembourg)	A Luxembourgish citizen of Muslim religion submitted her application for the renewal of her driving license with a passport photo with her head covered by a veil. The administrative authority informed her that the processing of her request was only possible if she submits a complete application, namely, an application containing a 45/35 cm passport type photo on which her head is uncovered. The applicant, after several exchanges of letters with the authorities, decided to challenge the decision before the administrative court.	In the absence of any justification of the “urgent” law-making process, the administrative court declared the provision relating to the characteristics of the photograph to be affixed to the driving license illegal and thus inapplicable in the case. The contested administrative decision must be set aside and the previous version of the relevant law-decree must be applied to the applicant’s request for the renewal of her driving license.	On the merits, the applicant argued that she was a Luxemburgish citizen of Muslim faith who, as such, covered her hair with a veil/hijab. Her face remains uncovered. Her hair is an element of her intimacy. Thus, having to dispose her hair on a photo that is not private is inconceivable. For her, this constitutes a violation of her privacy and private life, let alone, her freedom to practice her religious belief. On the procedural part, she argued that the domestic legislation under which the authorities had denied processing her request had been based on the transposition of Directive 2006/126/EC, which transposition had taken place, without any proper justification, in an “urgent” law-making process, thus the Council of State (Conseil d’Etat) had had no opportunity to form its opinion on the bill.	The administrative court, having dealt only with the procedural arguments, held that the transposition of the relevant EU directive had taken place within a framework of an “urgent” law-making process. The fact that an infringement proceedings had been launched against Luxembourg owing to the delay of the transposition of the directive’s certain provisions could have served, by itself, as justification of an urgent process. However, the infringement proceedings did not concern the disputed provisions on the photograph. The application of such “urgent” process was devoid of any justification in respect of the provision relating to the characteristics of the photograph to be affixed to the driving license.	"[…], force est au tribunal de constater que la modification […] ayant trait aux caractéristiques de la photographie à apposer sur le permis de conduire, tend à redresser des « imperfections » apparues dans la législation nationale et n’était pas visée par la Commission européenne dans le cadre de sa procédure d’infraction […] aucune motivation quant au recours à la procédure d’urgence n’a été avancée par la partie étatique […] L’illégalité de l’article […] ayant ainsi été constatée par le tribunal, il doit être déclaré inapplicable en l’espèce, par application de l’article 95 de la Constitution." "[…], it is for the court to find that the amendment […] relating to the characteristics of the photograph to be affixed to the driving license, tends to correct "imperfections" appeared in the national legislation and was not targeted by the European Commission within the framework of its infringement procedure […] no reasoning for the use of the urgency procedure has been advanced by the State party […] The illegality of Article […] has thus been found by the court, it must be declared inapplicable in this case pursuant to Article 95 of the Constitution."

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