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
Poland	2019	Poland / Court of Appeals/IIAKa 198/19	http://orzeczenia.ms.gov.pl/details/$N/153000000001006_II_AKa_000198_2019_Uz_2019-10-29_001	Religion	Court of Appeals in Lublin	The defendants were found guilty by the District Court in Radom of using physical violence and unlawfully threatening of burning down the restaurant run by people of Pakistani origin, and verbally insulting them because of their national and religious affiliation as well as violating their physical integrity. One of the perpetrators was sentenced to a 1 year of imprisonment suspended for a probationary period of 2 years and a fine, as well as an obligation to repair the damage and a ban on approaching the victims, and the other perpetrator was sentenced to 4 months of imprisonment suspended for a probationary period of 1 year as well as a fine and a ban on approaching the victims. The prosecutor demanded a higher penalty for the perpetrators, indicating the crime should be classified as "hooliganism", i.e. conducted for no reason (Article 115 § 21 of the Polish Criminal Code), because the victims did not provoke the perpetrators in any way, did not have any conflicts with them earlier, and were only attacked because they were of a different nationality and religion.	The prosecutor's appeal was rejected by the Court of Appeals.	The Court of Appeals found that the "hooliganism" provision could not be applied. The Court pointed out that, unlike the offenses listed under Article 190 § 1 or 217 § 1 of the Criminal Code, which concern violence not motivated by racist or discriminatory reasons where the maximum penalty is 2 years of imprisonment, in the case of racist or discriminatory violence, the legislator resorted to a much more severe sanction (an offense under Article 119 of the Criminal Code is punishable by imprisonment for up to 5 years). Moreover, for this category of crimes a public prosecution procedure was guaranteed, while the offense under Article 190 of the Criminal Code is prosecuted upon victim's request, and the one under Article 217 of the Criminal Code is prosecuted on private prosecution. According to the Court of Appeals it shows that the legislator does not underestimate the behavior undertaken for racist, xenophobic or discriminatory reasons. On the contrary, he distinguishes them into a special category of offenses, impose more severe sanctions on them and introduce a public prosecution procedure. Therefore, it is not possible to assume that the actions of the perpetrators attacking for the rasist or discriminatory reasons were actions undertaken "for no reason or for an obviously trivial reason" within the meaning of the "hooliganism" provision.	Since the racist, discriminatory or xenophobic motivation of the perpetrator is included in the Article 119 and 257 of the Criminal Code, penalizing acts of violence due to national, ethnic, racial, political, or religious affiliation of a victim, this means that it is not possible to simultaneously assume that the crime was committed "for no reason or for an obviously trivial reason" within the meaning of Article 115 § 21 of the Criminal Code.	"Skoro z woli ustawodawcy motywacja rasistowska, dyskryminacyjna, ksenofobiczna, wykluczająca, stała się znamieniem występków z art. 119 k.k. i 257 k.k., penalizujących akty agresji z powodu przynależności narodowej, etnicznej, rasowej, politycznej, wyznaniowej lub bezwyznaniowości danej osoby lub grupy osób, to oznacza, że nie jest możliwe jednoczesne przyjęcie, że zostały one popełnione " bez powodu lub z oczywiście błahego powodu" w rozumieniu art. 115 § 21 k.k. " "Since the racist, discriminatory or xenophobic motivation of the perpetrator is included in Article 119 and 257 of the Criminal Code, penalizing acts of violence due to national, ethnic, racial, political, or religious affiliation of a victim, this means that it is not possible to simultaneously assume that the crime was committed "for no reason or for an obviously trivial reason" within the meaning of Article 115 § 21 of the Criminal Code."

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