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
Spain	2021	Spain. Provincial Court of Madrid, Second Section (Audiencia Provincial de Madrid, Sección Segunda) Judgment No. 631/2021, Nº of Appeal: 939/2021 (Sentencia núm. 631/2021, Nº Recurso: 939/2021), 1 July 2021 (ROJ: AAP M 3302/2021- ECLI:ES:APM:2021:3302	https://www.poderjudicial.es/search/AN/openDocument/60d9d92b35a1d81a/20211007	Racial or ethnic origin, Migrant status	Provincial Court of Madrid, Second Section (Audiencia Provincial de Madrid, Sección Second)	The decision responds to the appeal filed by the Public Prosecutor's Office and the PSOE party against the Order of the Judge of Madrid on April 22, 2021, who agreed to deny the request for the precautionary measure to remove a poster in the Sol station of the Madrid Metro, in which the far-right political party Vox, which showed on one side an old woman and the other a young dark-skinned migrant with her face covered and a text reading "A MENA 4,700 euros a month, your grandmother 426 euros pension/month". MENA the is acronym in Spanish for unaccompanied foreign minors.	The Court dismisses the appeal filed by the Public Prosecutor's Office, which has been joined by the PSOE, and declares the costs ex officio. This decision is final and does not admit any appeal.	The decision points out that the objective of Vox with this message was to "expose ideas in a visual form and of unquestionable impact (...) in which the importance of the security of citizens in general and the economic protection of the elderly is highlighted". On the consideration as a possible hate crime of article 510 of the Penal Code, the Court cites the judgment of the 2nd SAP of Barcelona nº 259/2010 to argue that it is not possible to criminally punish "the simple public externalization of an opinion, however socially ethically reprehensible it may be." The Court places the case in the legitimate ideological-partisan dispute in an electoral context in which, as experience shows, there are verbal excesses committed by one or the other political actors. In addition, the Court considers that the controversial poster may be "interpreted as an electoral message aimed at a much broader group than unaccompanied migrant minors (MENAS)".	The Court expounds that hate crime is "circumstantial," so it must be interpreted "in context." "It cannot be a mere transgressor of freedom of expression," it adds. In this sense, he assures that he dismisses the various appeals with the support of the jurisprudence of the European Court of Human Rights, Constitutional Court, Supreme Court, and other provincial courts. Despite recognizing that this is a message against the group of unaccompanied foreign minors, he affirms that it is not only addressed to them but also an electoral message that appeals to pensioners. Therefore, the broadcasting of specific ideas cannot be considered criminal, unless their purpose is to threaten, insult, or belittle, i.e., even if it is a criticism, it is legitimate if it is expressed in a way that does not pursue such unlawful purposes.	"En efecto, el cartel también puede interpretarse como un mensaje electoral a un colectivo mucho más numeroso que el de los "Menas", en el que se presenta una crítica gráfica y directa sobre la cuantía de las pensiones - en particular de jubilación o viudedad- en contraste con lo que se gasta en otras atenciones o finalidades, como es el sostenimiento de dichos jóvenes que con independencia de si las cifras que se ofrecen son o no veraces, representan un evidente problema social y político, incluso con consecuencias o efectos en nuestras relaciones internacionales, como resulta notorio". Fundamento Jurídico, Primero. "In effect, the poster can also be interpreted as an electoral message to a much larger group than the "Menas," in which a graphic and direct criticism is presented on the amount of pensions - particularly retirement or widowhood pensions - in contrast to what is spent on other attentions or purposes, such as the support of these young people who, regardless of whether the figures offered are true or not, represent an obvious social and political problem, even with consequences or effects on our international relations, as is well known". Legal Basis, First.

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