

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
Germany	2023	Germany / regional court Hamburg / 621 Ks 12/23 / ECU/DE/LGHH/2023-1214.621KS12.23.00	https://gerichtsentscheidungen.brandenburg.de/gerichtsentscheidung/22139	Migrant status	Regional Court Hamburg, 21. criminal division with lay judges	The defendant was convicted of attempted murder because he fired a gun at his neighbors' door, a Muslim couple from Pakistan. The defendant believed that there were people behind the door. When the shots were fired, the wife and her mother-in-law were inside the apartment; the husband was absent. No one was hurt. When the two women noticed the hole in the door and saw the defendant with his weapon through the door's peephole, they called the police. The defendant explained his offence with noise nuisance, allegedly caused, for example, by the fact that the victims got up early in the morning during Ramadan to eat their meals.	The defendant was sentenced to 7 years imprisonment. In addition to the perfidious perpetration, the "base motives" of the perpetrator, including the bias against the victims, make for the classification as aggravated murder (Sec. 211 Criminal Code) rather than murder (Sec. 212 Criminal Code). The Federal High Court of Justice found no legal errors to the defendant's disadvantage during the review on the defendant's appeal (5 StR 128/24). The judgement of the regional court is therefore final. A compensation of € 773,50 to be paid by the perpetrator was awarded to the victim via adhesion proceedings.	The Hamburg Regional Court found that the aggravated murder criterion of "base motives" under Section 211, Group 3 of the Criminal Code was met, among other things, because of the perpetrator's xenophobic attitude. This criterion can mark the difference between aggravated murder (Sec. 211) and murder (Sec. 212). In messages prior to the crime he had called the victims "headscarf-girls and knife-men" ("Kopftuch-Mädchen und Messer-Männer"), Taliban and terrorists. Right before the attack, the defendant had recorded his weapon, yelling "Fucking canacks, you're about to die!"	There was no doubt that the perpetrator had xenophobic attitudes and that his criminal behaviour was motivated by a bias regarding the victims' migrant status. However, in this case it had to be discussed to what extent this was actually the motive for the crime. The crime was preceded by several personal problems for the perpetrator (deteriorating health conditions, job loss, noise pollution from previous tenants). The verdict therefore also found that the "base motives" were also fulfilled by an outburst of anger and frustration.	"Zur Annahme von niedrigen Beweggründen bedarf es der Prüfung, ob die Beweggründe ihrerseits auf einer niedrigen Gesinnung beruhen, beispielsweise, weil ein nachvollziehbarer Grund für die Tat fehlt und der Angeklagte seine Lage selbst verschuldet hat. Neben dem sittlich-moralisch verachtenswerten und auf tiefster Stufe stehenden Motiv der Fremdenfeindlichkeit ist ein niedriger Beweggrund nach der Rechtsprechung regelmäßig auch dann begründet, wenn sich das aufgestaute Frustrations- und Aggressionspotential beim Täter entlädt, ohne dass das Opfer hierzu Anlass gegeben hat (Anschluss BGH, Urteil vom 19. Oktober 2001 - 2 StR 259/01). Dies ist anzunehmen, wenn zwar die Vermieter Ruhestörungen verursacht hatten, die aktuell in der Wohnung lebenden Flüchtlinge jedoch nicht." "In order to assume base motives, it must be examined whether the motives themselves are based on a base attitude on the part of the accused, for example because there is no comprehensible reason for the crime and the accused is responsible for his situation himself. In addition to the morally and morally despicable and at the lowest level motive of xenophobia, according to case law a base motive is also regularly justified if the pent-up frustration and aggression is released in the perpetrator without the victim having given cause for this (in connection with the Federal Court of Justice, judgment of October 19, 2001 - 2 StR 259/01). This can be assumed if the previous tenants had caused a disturbance, but the refugees currently living in the apartment had not."

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