

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
France	2023	France / ECHR / Application n°45581/15 / Sanchez	https://hudoc.echr.coe.int/fre?i=001-224958	Religion	European Court of Human Rights	The case related to the plaintiff's criminal conviction, at the time a local elected representative and candidate in parliamentary elections, for incitement to hatred or violence against a group of people or a person on the grounds of a particular religion, for failing to promptly remove comments published by third parties on their Facebook account "wall".	The Court concluded that there had been no infringement of the Convention, holding that, "having regard to the respondent State's margin of appreciation, (...) the decisions of the domestic courts were based on relevant and sufficient grounds, both as regards the plaintiff's responsibility, as a politician, for the unlawful comments published during the election period on the wall of their Facebook account by third parties, who were themselves identified and prosecuted as accomplices, and as regards their criminal conviction".	After pointing out at length the principles of its jurisprudence on freedom of speech, the Court emphasized the following points: - The comments, aimed specifically at Muslims, were insulting and hurtful, especially in an electoral context, even if they reflected a desire to denounce local malfunctions. - The political context and Mr Sanchez's special responsibility for comments published by third parties: liability for acts committed by third parties may vary according to the type of control or filtering required of Internet users who are defined as "producers" by law, and who are simply users of social media or accounts with no commercial purpose. In this case, because of their special status and place in society, politicians are more likely to influence voters, or even incite them, directly or indirectly, to adopt positions and behaviours that may prove illegal, which explains why we should expect them to be "all the more vigilant". - The measures applied by the plaintiff, who chose not to restrict access to their Facebook "wall" or delete the disputed comments, but simply called on their authors to "monitor the content of their comments". - The consequences of the domestic procedure for the plaintiff: the plaintiff's fine had no deterrent effect on the use of their right to freedom of speech or on their subsequent political career.	The question was whether the plaintiff's conviction infringed their right to freedom of speech.	"184. As the Internet has become one of the principal means of exercising freedom of speech, the Court considered that interference with the exercise of the right to freedom of speech must be examined particularly carefully, since it is liable to have a dissuasive effect, entailing a risk of self-censorship. However, the denunciation of such a risk should not obscure the existence of other dangers to the exercise and enjoyment of fundamental rights and freedoms, in particular those likely to be caused by the use of illegal, defamatory, hateful or violence-inducing language, which can be disseminated as never before. For this reason, in principle, the possibility for people injured by defamatory statements or other types of illicit content to bring an action for liability must be considered as it constitutes an effective remedy against such alleged infringements. 185. The Court noted that, at the time of the incidents, the holder of a Facebook account used for non-commercial purposes did not have full control over the management of comments. In addition to the fact that there was no prior filtering procedure available to them, apart from making their account non-public, the effective monitoring of all comments, in particular for an account with a very large number of visitors, was likely to require significant, if not considerable, availability of resources. However, relieving producers of all liability could facilitate or encourage abuses and excesses, from hate speech and calls to violence to manipulation, lies and misinformation. In the Court's view, while the professionals who create and make social media available to other users necessarily have obligations, this should be a liability shared by all the players involved, if necessary by providing for the level of liability and the terms of its commitment to be graduated according to the objective situation of each player. 186. The Court also noted that French law is in line with this approach, with the "producer" having shared liability subject to the conditions of the law, while hosts, like Facebook, have limited liability. 187. Moreover, in this case, the domestic courts used the plaintiff's status as a politician to infer the existence of a special obligation incumbent on them. It is true that, generally speaking, a political figure has duties and responsibilities, in addition to the fact that a high profile and a high degree of representativeness give greater resonance and authority to the words or deeds of their author. 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