




Cases and rulings

This database section allows to search here for international, European and national case law and rulings as well as decisions by courts, and decisions, reports, findings by human rights or equality bodies and organisations, relating to hate crime and incitement to hate speech, hate crime and discrimination against Muslims.

MS	YEAR	Reference details title	Reference details URL	HATE BIAS	Court / Body	KEY FACTS	Main reasoning / argumentation	Key issues (concepts, interpretations) clarified by the case	Results (sanctions, outcome) and key consequences or implications of the case	Key quotation in original language and translated into English with reference details
	2017	Slovakia / The Council for Broadcasting and Retransmission	http://www.rvr.sk/cms/data/moudules/download/1493924782_zapisnica_07_2017-04-25.pdf	Ethnic origin, Religion	The Council for Broadcasting and Retransmission (Rada pre vysielanie a retransmisiu (RVR))	The Council for Broadcasting and Retransmission (RVR) fined the broadcaster of Žilina-based Radio Frontinus for a talk show attended by Milan Mazurek, MP	Frontinus Ltd. violated the Section 19 1b) of the Law no. 308/2000 Coll. On broadcasting and retransmission by broadcasting a program Discussion via phone call on its radio service of Radio Frontinus on 2 October 2016 around 9:34, within which the prohibition of hidden forms of incitement was violated by statements representing Muslim immigrants as a danger.	The body (Council for Broadcasting and Retransmission) interpreted the statements presented on radio broadcasting as incitement to hatred.	The radio received a sanction - fine in the amount of 15,000Euros. Mr Mazurek (MP) has been also investigated by the police for his statements on Radio Frontinus.	"... že dňa 2. 10. 2016 o cca 9:34 hod. odvysielal na rozhlasovej programovej službe Rádio Frontinus program Debata na telefón, v ktorom došlo vvyjadrení o nebezpečenstve, ktoré predstavuje skupina islamských imigrantov k porušeniu zákazu skrytou formou podnecovať nenávisť na základe viery a náboženstva." "by broadcasting a program Discussion via phone call on its radio service of Radio Frontinus on 2 October 2016 around 9:34, within which the prohibition of hidden forms of incitement was violated by statements representing Muslim immigrants as a danger. "

of the far-right People's Party – Our Slovakia (ĽSNS). The talk show was broadcast on 2 October 2016. The RVR claimed it was not impartial as Mazurek was the only guest. Moreover, RVR also sanctioned the radio with a notice of law violation for Mazurek's offensi


						ve state ments again st Roma and Musli m migma nts.				
	2017	ECtHR / Applicatio n no. 34367/14 / Belkacem v. Belgium	http://hudoc.echr.coe.int/eng?i=001-175941	Relig ion	Euro pean Court of Hum an Right s, ECH R	The case concer ned the convict ion of Mr Belkac em, the leader and spoke spers on of the organi sation "Shari a4Bel gium", which was dissol ved in 2012, for incite ment to discri minati on, hatred and violen	The Court was in no doubt as to the markedly hateful nature of Mr Belkacem's views, and agreed with the domestic courts' finding that the applic ant, through his recordings, had sought to stir up hatred, discrimination and violence towards all non-Muslims. In the Court's view, such a general and vehement attack was incompatible with the values of tolerance, social peace and non-discrimi nation underlying the Convention.	With particular reference to Mr Belkacem's remarks concerning Sharia, the Court reiterated that it had ruled that the fact of defending Sharia while calling for violence to establish it could be regarded as "hate speech". The Court considered that Mr Belkacem had attempted to deflect Article 10 of the Convention from its real purpose by using his right to freedom of expression for ends which were manifestly contrary to the spirit of the Convention. Accordingly, the Court held that,	The Court therefore rejected the application, finding that it was incompatible with the provisions of the Convention and that Mr Belkacem had attempted to deflect Article 10 of the Convention from its real purpose by using his right to freedom of expression for ends which were manifestly contrary to the spirit of the Convention.	The Court noted at the outset that, while its case-law enshrined the overriding and essential nature of freedom of expression in a democratic society, it also laid down its limits by excluding certain statements from the protection of Article 10 of the Convention. In the Court's view, such a general and vehement attack was incompatible with the values of tolerance, social peace and non-discrimi nation underlying the Convention. With particular reference to Mr Belkacem's remarks concerning Sharia, the Court reiterated that it had ruled that the fact of defending Sharia while calling for violence to establish it could be regarded as "hate speech".

					ce on account of remarks he made in YouTube videos concerning non-Muslim groups and Sharia .		in accordance with Article 17 of the Convention, Mr Belkacem could not claim the protection of Article 10.			
	2017	ECtHR / Application no. 37798/13 / Judgment / Belcacemi and Oussar v. Belgium	http://hudoc.echr.coe.int/eng/?i=001-175141	Religion	European Court of Human Rights, ECHR	The case concerned the ban on the wearing in public of clothing that partly or totally covers the face. Ms Belcacemi and Ms Oussar present	The Court found in particular that the restriction sought to guarantee the conditions of “living together” and the “protection of the rights and freedoms of others” and that it was “necessary in a democratic society”.	The Court found that the concern to ensure respect for the minimum guarantees of life in society could be regarded as an element of the “protection of the rights and freedoms of others” and that the ban was justifiable in principle, solely to the extent that it sought to guarantee the conditions of “living together”. It was a matter of protecting a condition of interaction between individuals which, for the	The European Court of Human Rights held, unanimously, that there had been: no violation of Articles 8 (right to respect for private and family life) and 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights, and no violation of Article 14 (prohibition of discrimination) taken together with Articles 8 and 9.	Secondly, the Court found that the drafting history of the Belgian Law used three aims to justify the ban in Belgium: public safety, gender equality, and a certain conception of “living together” in society. It noted that, as it had found in S.A.S. v. France ² , the concern to ensure respect for the minimum guarantees of life in society could be regarded as an element of the “protection of the rights and freedoms of others” and that the ban was justifiable in principle solely to the extent that it sought to guarantee the conditions of “living together”.



themselves as Muslims who have decided on their own initiative to wear the niqab on account of their religious convictions.

On 26 July 2011, Ms Belcacemi and Ms Oussar brought actions for the suspension and annulment of the law before the Consti

State, was essential to ensure the functioning of a democratic society. The question whether the full-face veil was to be accepted in the Belgian public sphere was thus a choice of society.

						tutional Court. Their cases were dismissed by that court.				
	2017	ECtHR / Application no. 4619/12 / Dakir v. Belgium	http://hudoc.echr.coe.int/eng/?i=001-175139	Religion	European Court of Human Rights, ECHR	The case concerned a by-law adopted in June 2008 by three Belgian municipalities (Pepinster, Dison and Verviers) concerning a ban on the wearing in public places of clothing that conceals the face.	The Court found in particular that the ban imposed by the joint by-law of the municipalities in the Vesdre police area could be regarded as proportionate to the aim pursued, namely the preservation of the conditions of “living together” as an element of the “protection of the rights and freedoms of others. It therefore held that the contested restriction could be regarded as “necessary” “in a democratic society”, and that the question whether or not it should be permitted to wear the full-face veil in public places in Belgium constituted a choice of society.	The Court found in particular that the ban imposed by the joint by-law of municipalities in the Vesdre police area could be regarded as proportionate to the aim pursued, namely the preservation of the conditions of “living together” as an element of the “protection of the rights and freedoms of others. It therefore held that the contested restriction could be regarded as “necessary” “in a democratic society”, and that – similarly to the situation which had previously arisen in France (S.A.S. v. France2) – the	The European Court of Human Rights held, unanimously, that there had been: no violation of Articles 8 (right to respect for private and family life) and 9 (right to freedom of thought, conscience and religion) of the European Convention on Human Rights, no violation of Article 14 (prohibition of discrimination) , taken together with Articles 8 and 9 of the Convention, and a violation of Article 6 § 1 (right of access to a court). The Court held that Belgium	The Court noted, firstly, that the contested ban had a legal basis – the joint by-law of the municipalities included in the Vesdre police area – and thus met the criteria set out in its case-law concerning Articles 8 and 9 of the Convention. Secondly, as in the case of S.A.S. v. France2, the Court considered that the aim of ensuring the observance of the minimum requirements of life in society could be considered as part of the protection of the rights and freedoms of others, and that the contested ban could be regarded as justified in its principle solely in so far as it sought to guarantee the conditions of “living together”.

									question whether or not it should be permitted to wear the full-face veil in public places in Belgium constituted a choice of society.	was to pay Ms Dakir 800 euros (EUR) in respect of costs and expenses.	
--	--	--	--	--	--	--	--	--	--	---	--


	2017	R v Pelham Case no. U20170377/T20170114 ...	http://www.thelawpages.com/courts/cases/Nigel-Christopher-Pelham-20309-1.law	Religion	Blackfriars Crown Court	The defendant posted a number of hateful posts of Facebook including comments such as, 'what this country needs is a bomb a mosque day' and 'we must burn mosques to the ground'.	The defendant pleaded guilty to all eight counts.	This case, and the few cases like it, are significant owing to low number of prosecutions brought for this offence which can only be prosecuted with consent of Attorney General.	The defendant received a 20 month custodial sentence	
	2017	Estonia / Court Ruling of the Harju County Court / 1-17-3604-15	http://www.riigiteataja.ee/kohtulahendid/detailid.html?id=208230159	Nationality	Harju County Court (Harju Maakohus)	The Harju County Court convicted a man for	Revo Pehlak is accused of attacking another client on 8 December 2016 at the lobby of Zelluloosi sports club, violating requirements for	None that are applicable to the subject of the information request.	The court convicted Revo Pehlak with imprisonment for 1 year and exclude Revo Pehlak from imprisonment conditionally if	"Seega Revo Pehlak pani toime avalikus kohas käitumise üldnõuete rikkumise, mis on toime pandud vägivallega s.o KarS § 263 lg 1 p 1 järgi kvalifitseeritava kuriteo." English translation (unofficial): "Thus, Revo Pehlak committed a violation of the general conduct of public place conduct,


attacking and beating a male Pakistani citizen at a sports club. The victim suffered external injuries on the face, neck, arms and legs, but ambulance was not required. The fight was witnessed by the victim's partner and one of the sports club's members.

public conduct: it is prohibited in a public place to behave in a manner which disturbs or endangers another person and above all to hit or shove another person, fight, throw things at another person or an animal or item by endangering them, or behave violently in another manner or to insult, intimidate or threaten another person by words, gestures or otherwise, and public place is a territory, building, room or a part thereof given to an unspecified number of persons for use or used by an unspecified number of persons, and also a public transport vehicle.

Revo Pehlak does not commit a new, deliberate crime during a probation period of 2 years. The trial period of Revo Pehlak started from the moment when the judgment was pronounced on 25 May 2017. Prohibition of leaving the place of residence imposed on Revo Pehlak to be cancelled when the judgment enters into force.

which has been committed with violence, that is to say, a criminal offence under Article 263 (1) 1) of the Penal Code."

	2017	Austria / Regional Court Korneubur g / 505 Hv 109/16y	Natio nality	Regi onal Court (Lan desg ericht)	The defen dant poste d on severa l facebo ok pages the followi ng: "Adolf Hitler neede d to be alive and instea d of killing innoc ent Jews, he shoul d put all asylu m seeke rs into a large hall and burn them alive." In additio n, in respo nse to an online newsp aper article	Not publicly available	Not publicly available	Sentenced to 3 months imprisonment on probation (duration of probation: 3 years)	Not publicly available
--	------	--	-----------------	--	--	---------------------------	---------------------------	--	------------------------

						referring to 45 refugees being abandoned on the motorway, he posted a comment stating: "Away with the muck!!!".				
	2017	Hungary / Constitutional Court / Decision no. 7/2017	http://publi.c.mkab.hu/dev/dontesek.nsf/0/d768be12d61723fbc1257d01004ca59d/\$FILE/9_2017%20AB%20hat%20C3%A1rozat.pdf	Religion	Constitutional Court (Alkotmánybíróság)	The Local Government of Ásotthalom, a town at the Serbian-Hungarian borders, adopted Local Governmental Decree no. 12/20	The Commissioner for Fundamental Rights (Alapvető Jogok Biztosa) turned to the Constitutional Court (Alkotmánybíróság) claiming that the local governmental decree of Ásotthalom violated Paragraph (3) of Article I. of the Fundamental Law of Hungary (Magyarország Alaptörvénye) that stipulates: 'The rules relating to fundamental rights and obligations shall be laid down in act of	The Constitutional Court had to decide whether the legislative power of local authorities to adopt local ordinances and decrees to manage local matters extends to matters closely related to fundamental rights. Moreover, the Constitutional Court had to clarify whether local governments could restrict the exercise of	The Constitutional Court found that the local decree violated fundamental rights and was discriminative in nature. The Court emphasised that local governments could never use their power to restrict the practice of fundamental rights, and such restrictions would also be discriminative	Article 43 of the Decision: 'Amennyiben a települési önkormányzat nem helyi közügyet, hanem közvetlenül alapjogot érintő kérdést szabályoz rendeletében, úgy jogalkotói hatalmát alkotmányellenesen alkalmazza.' 'In case the local government adopts decrees not regulating local matters but matters in direct relations to fundamental rights, the local government uses its legislative power unconstitutionally.'

14. on 23 November 2016 on the 'General rules of community coexistence'. The decree contained a prohibition on Islamic call to prayer activities, and wearing Muslim headscarves, chador, niqab, or burkini in the town of Ásotthalom. The decree also included

Parliament'. The Commissioner also claimed that the decree had violated the fundamental right to freedom of religion (Article VII of the Fundamental Law of Hungary).



fundamental rights at the local level on the ground of maintaining 'public safety'.

in nature. As a result of the procedure, the Constitutional Court annulled the local decree.

						ed a ban on the construction of any mosques and minarets in the town.				
	2017	Portugal / Portuguese Data Protection Authority / Opinion 21/2017	http://app.parlament.pt/webutils/docs/docs/path=6148523063446f764c324679626d56304c334e706447567a4c31684a53556c4d5a5763765130394e4c7a464451554e45544563765247396a6457316c626e527663306c7561574e7059585270646d46446232317063334e68627938784e5756694d6a686a4d4330355a6a42694c5451344e7a63744f4451304e5330	Ethnic origin, Race, Religion, Nationality, Gender, Migrant status	Portuguese Data Protection Authority	The Parliament introduced amendments to the national laws regulating the principle of equal treatment and the prohibition of discrimination.	Providing on-line information on discriminatory practices by natural persons, within administrative offence proceedings or in the civil court proceedings, is excessive because it involves the risk of perpetuating information beyond the necessary time, undermining the principle of proportionality.	The internet dissemination of data relating to natural persons, including injured parties themselves, in the context of administrative offence proceedings relating to conduct of discrimination, will have to consider the risks that such disclosure to the public will entail in relation to the protection of personal data. Online publication of data relating to natural persons will have to be reported to the Commission as it involves the processing of personal data. The internet	The Portuguese Data Protection Authority has recommended to the Parliament to take into consideration the risks associated with the dissemination on the internet of information relating to natural persons. The Portuguese Data Protection Authority was concerned about the internet dissemination of information relating to discriminatory practices carried out by natural persons because it involves the risk of perpetuating	"A disponibilização na internet de informação relativa a práticas discriminatórias levadas a efeito por pessoas singular, seja em sede de processo de contraordenação seja no âmbito de um processo de natureza cível, afigura-se excessiva, na medida em que este meio de comunicação implica uma difusão em larga escala e o risco de perpetuação da informação mesmo para além do momento em que ela é necessária, pondo em risco o princípio da proporcionalidade". The internet dissemination of information relating to discriminatory practices carried out by natural persons, whether in the context of administrative offence proceedings or in the context of a civil procedure, seems excessive because it involves the risk of perpetuating information apart from the necessary time, undermining the principle of proportionality.

			794e6d51345a54597a596a5269595459756347526d&fich=15eb28c0-9f0b-4877-8445-26d8e63b4ba6.pdf&inline=true					<p>dissemination of information on discriminatory practices by natural persons, within administrative offence proceedings or in the civil court proceedings, is excessive because it involves the risk of perpetuating information beyond the necessary time, undermining the principle of proportionality.</p>	<p>information apart from the necessary time, undermining the principle of proportionality. The Parliament followed this recommendation and only mentioned in the text of the law the internet dissemination of information concerned legal persons.</p>	
	2017	<p>Austria / Supreme Court / 15Os25/17s ECLI:AT:OGH0002:2017:0150 OS00025.17S.0405.000</p>	http://www.ris.bka.gv.at/Dokument/ResultFunktion?Token=44292f90-7c90-42e0-ad90-0d7e2263a822&Position=1&Abfrage=Justiz&Gericht=&Rechtsatznummer=&Rechtssatz=&Fuendstelle=&AenderungSeit=Undefiniert&SucheNachRechtssatz=True&	Race	Supreme Court (Oberster Gerichtshof)	<p>The case concerns online incitement to hatred and violence. More concretely, the defendant (J.H.) was indicted for posting an image</p>	<p>The Supreme Court found that asylum seekers are covered by § 283 StGB. Through the amending law concerning the Criminal Code, it should be explicitly determined that a protected group can be defined both positively and negatively by inserting the word sequence "existing or missing".</p>	<p>One of the key issues was about whether the defendant's despicable statement (i.e. posting on his Facebook page a picture of two snipers lying in a trench with machine guns, including the imprint "The fastest asylum procedure in Germany ... rejects up to 1,400 requests per minute") constitutes incitement to violence or hatred in terms. Concretely, the</p>	<p>The Supreme Court ruled that the judgement of the Higher Regional Court Graz misapplied the law. The misapplication of the law, which was opposed by the Prosecutor's General Office (Genrealprokurator), was thus to be determined.</p>	<p>Mit dem StRÄG 2015 sollte durch Einfügung der Wortfolge „vorhandenen oder fehlenden“ (Kriterien) in Abs 1 Z 1 ausdrücklich festgelegt werden, dass eine geschützte Gruppe sowohl positiv als auch negativ definiert werden kann [...] Somit erfüllt das Hetzen gegen die Gruppe der „Ausländer“ im Allgemeinen den aktuellen Tatbestand, weil auch das Fehlen eines der in § 283 Abs 1 Z 1 StGB genannten Kriterien (etwa einer bestimmten Staatsangehörigkeit) zur Definition einer geschützten Gruppe reicht.</p> <p>Through the amending law concerning the Criminal Code (StRÄG 2015), it should be explicitly determined that a protected group can be defined both positively and negatively by inserting the word sequence "existing or missing" (criteria) in para 1 Z1. [...] Thus, incitement against the group of "foreigners" generally falls within the scope of the offence, since the absence of one of the criteria (e.g. a certain</p>

		SucheNachText=True&GZ=&VonDatum=&BisDatum=03.07.2017&Norm=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=Rassismus&Dokumentnummer=JJT_20170405_OGH002_01500S00025_17S000_000	on Facebook showing two snipers lying in a trench with machine guns, with the caption "The fastest asylum procedure in Germany ... rejects up to 1,400 requests per minute".	issue is about whether 'asylum seekers' as such are covered by § 283 StGB.		nationality) as defined in § 283 para 1 StGB is sufficient to define a protected group.
--	--	---	--	--	--	---

	2017	France / Court of cassation / Decision No. 15-87415 ECLI:FR:CASS:2017:CR00492	http://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEX T000034337695&fastReqId=1431728072&fastPos=1	Religion	Court of cassation (Cour de cassation)	Following the publication, on 1 March 2013, on the site www.bvoltaire.com of a text entitled 'What do we do with Muslims once the Koran has been banned?', the public ministry ordered Mr.	The Court of cassation considered that the Court of Appeal justified its decision, since it stated that the publication of a text targeting Muslims and describing a situation, dreamed by the author according to the passage which precedes it, of a State where the public practice of their religion would be banned and those who would not comply with this rule would be expelled from the country, constituted an offence and that the exercise of the freedom of expression can be subjected to restrictions or sanctions which constitute, as in this case, measures necessary, in a democratic company, for the protection of public order and the protection of the rights of others.	Actions constituting the offence of incitement to discrimination, hatred or violence with regard to a person or of a group of people on grounds of their origin or their membership or their non-membership of an ethnic group, a nation, a race or a given religion.	The Court of cassation upheld the ruling of the Court of Appeal convicting the director of publication and the author to €1000 fine.	<p>La publication d'un texte visant les musulmans et décrivant la situation, rievée par l'auteur ...d'un Etat où serait proscrite la pratique publique de leur religion et expulsés du territoire national ceux qui ne respecteraient pas cette prescription, constituait le délit prévu par l'article 24, alinéa 8, devenu l'alinéa 7, de la loi du 29 juillet 1881 et que l'exercice de la liberté d'expression, proclamée par l'article 10 de la CEDH, peut être soumis à des restrictions ou sanctions qui constituent ... des mesures nécessaires, dans une société démocratique, à la défense de l'ordre et à la protection des droits d'autrui.</p> <p>The publication of a text aimed at Muslims and describing the situation which the author had dreamed of ...a State in which the practice of their religion was prohibited and expelled from the country those who do not respect this rule constitutes the offence provided for in Article 24, paragraph 8, which became paragraph 7, of the Act of 29 July 1881, and that the exercise of freedom of expression, proclaimed by Article 10 of The ECHR, may be subject to restrictions or sanctions which ... constitute necessary measures in a democratic society for the protection of public order and the protection of the rights of others.</p>
	2017	Malta / Civil Court of Appeal (Inferior) / No. 328/2006 /	http://justiceservices.gov.mt/courtservices/Judgements/script_g	Ethnic origin	Civil Court of Appeal (Inferior)	The Court of Civil Appeal heard	The Court of Civil Appeal quoted the ECtHR decision <i>Brosa v Germany</i> (5709/09, 17 April 2014) and held that	The Court of Civil Appeal held that even though Freedom of Speech is a	The Court of Civil Appeal rejected Mr Lowell's appeal and confirmed the	"Fil-fehma tal-qorti il-kelma neo-Nazi fil-kuntest li ntuzat, hi value judgment." EN: " It is the opinion of the Court that the word neo-Nazi in the context it was used, is a value judgment."

Norman Lowell v Savior Balzan, Kurt Sansone and Matthew Vella

[et_judgement.document.aspx?CaseJudgmentID=105712](#)


or)

the appeal filed by Mr Norman Lowell who was suing three journalists working for the national newspaper Malta Today for libel damages. During the night of the 12th and 13th of May 2006, unknown persons set fire to an independent journalist's residential home after

there is indeed proof that leaves no doubt that Mr Lowell was against migration and migrants. According to the Court of Civil Appeal, any reasonable reader can derive racism, xenophobia and hatred from Mr Lowell's political messages.

right that belongs to everyone, including politicians and public figures, this does not give them the licence to encourage hostility and violence against any particular group in society- especially such public figures who have widespread influence on society. The term 'neo Nazi' can clearly be elicited from the public political persona of Mr Lowell and his extreme far right remarks.

first Court's ruling in that the article was not held to be libellous

						she had written a number of articles against Mr Lowell. On that same night, Mr Lowell was holding a barbecue for his right-wing organization very close to where the arson was committed.				
	2017	CJEU - C-157/15 / Judgment / Samira Achbita and Centrum voor gelijkheid van kansen en voor	http://curia.europa.eu/juris/liste.jsf?num=C-157/15	Religion	European Court of Justice	The case concerns G4S' dismissal of S.A. because of her refusal	The Court of Justice found that G4S's internal rule refers to the wearing of visible signs of political, philosophical or religious beliefs and therefore covers any manifestation of such beliefs	The concept of a blanket ban on religious clothing does not constitute direct discrimination, however, it could constitute indirect discrimination if it puts	The Court therefore found that there was no direct discrimination, whilst emphasising that the national court hearing the case has sole jurisdiction to	Article 2(2)(a) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the prohibition on wearing an Islamic headscarf, which arises from an internal rule of a private undertaking prohibiting the visible wearing of any political, philosophical or religious sign in the workplace, does not constitute direct discrimination based on religion

racismebe
strijding v
G4S
Secure
Solutions
NV

I to
remov
e her
Islami
c
heads
carf.
S.A., a
Musli
m,
was
emplo
yed by
G4S at
a time
when
the
comp
any
had
an
unwritt
en
rule
that
prohib
ited
emplo
yees
from
wearin
g
visible
signs
of their
politic
al,
philos
ophica
l or
religio
us
beliefs
in the
workpl
ace.
Sever
al
years
later



without distinction.
The rule thus treats
all employees of
the undertaking in
the same way,
notably by requiring
them, generally and
without any
differentiation, to
dress neutrally. It is
not evident from the
material in the file
available to the
Court that that
internal rule was
applied differently
to Ms Achbita as
compared to other
G4S employees.
Accordingly, such
an internal rule
does not introduce
a difference of
treatment that is
directly based on
religion or belief, for
the
purposes of the
directive.

members of a
certain religion
at a particular
disadvantage
unless it is
justified by a
legitimate aim
that is
appropriate and
necessary.

determine
whether, and to
what extent, the
internal rules
meet the
criteria of the
directive.

or belief within the meaning of that
directive.

						G4S approved the rule. After this, Ms Achbita was dismissed because she refused to comply with the rule not to wear the Islamic headscarf at work.			
--	--	--	--	--	--	--	--	--	--

	2017	CJEU - C-188/15 / Judgment / Asma Bougnaoui v. Micropole SA	http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc836e281341ab9941e888b7f56eff.e34KaxiLc3qMb4ORchOSaxYMb90?text=&docid=188853&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=237614	Religion	Court of Justice (Grand Chamber)	The case concerns the Micropole Univer's SA's ('Micropole') dismissal of Ms Bougnaoui because of her refusal to remove her Islamic headscarf when she was sent on assignment. Ms Bougnaoui considered the dismissal to be discriminatory.	According to the Court, it is only in very limited circumstances that a characteristic related, in particular, to religion may constitute a genuine and determining occupational requirement. Such a characteristic may constitute only 'by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out'. Consequently, the willingness of an employer to take account of the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic headscarf cannot be considered a genuine and determining occupational requirement within the meaning of that provision.	The concept of a 'genuine and determining occupational requirement', within the meaning of that provision, refers to a requirement that is objectively dictated by the nature of the occupational activities concerned or of the context in which they are carried out. It cannot, however, cover subjective considerations, such as the willingness of the employer to take account of the particular wishes of the customer.	The Court ruled that Article 4(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the willingness of an employer to take account of the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic headscarf cannot be considered a genuine and determining occupational requirement within the meaning of that provision.	"Consequently, the answer to the question put by the referring court is that Article 4(1) of Directive 2000/78 must be interpreted as meaning that the willingness of an employer to take account of the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic headscarf cannot be considered a genuine and determining occupational requirement within the meaning of that provision."
	2017	Slovakia / Supreme Court of	http://www.supcourt.gov.sk/data/	Religion	The Supreme	The defen	Since the case of the Supreme Court	N/A	Only relates to custody, which	N/A

Court of
the Slovak
Republic

[Ov.sk/uda/
att/63490
subor.pdf](#)

enne
Court
of the
Slova
k
Repu
blic
(Najv
yšší
súd
Slove
nskej
Repu
bliky)


dant
was
accus
ed of
makin
g a
publicl
y
availa
ble
video
where
she
publicl
y
threat
ened
a
group
of
perso
ns
with
death
and
grave
injury
or
other
harm
based
on
their
religio
n. She
was
also
accus
ed of
incite
ment
to
hatred
and
public
defam
ation
again
st a
group


of The Slovak
Republic involves
mainly the question
of defendant's
custody and
annulment of the
court order for
preparatory
proceedings, there
is no further
argumentation
outside the scope
of the key facts of
the case.

The case of the
lower court -
Specialized
Criminal Court,
since being in a
form of preparatory
proceedings is not
anonymized, and
therefore not
publicly available.

was replaced
by probation.

Note: Since the
defendant
violated the
conditions of
her probation,
she was sent
to prison in
April 2017.


						of persons by making extremist materials.				
	2017	Slovakia / Supreme Court of the Slovak Republic	http://www.supcourt.gov.sk/data/at/63195_subor.pdf	Race, Ethnic origin	The Supreme Court of the Slovak Republic (Najvyšší súd Slovenskej Republiky)	The defendant in this case was accused of attacking a French citizen of migrant origin, constituting a criminal offence of damage on health with a specific racially-biased motive. The racial motivation of the	The Supreme Court examined the formal and material conditions of the imprisonment and concluded there is a low intensity of reasonability and merits of the suspicion of a crime, absence of evidence for a specific motive - a racial motive. The Supreme Court therefore ordered defendant's release from prison.	"liking" of a Facebook page as evidence for race-biased motivation: The Specialized Criminal Court argued that by liking a Facebook page, the defendant showed sympathy towards groups that do not respect the values of liberal democracy, which plays a substantial role in assessing the crimes with specific motives. The Supreme Court countered by telling there is no possibility to ascertain the accused liked the page, or the motivation for liking the page.	The accused was found guilty of a criminal offence of damage on health, with a specific motive (Hatred to a group of persons or an individual for their actual or alleged membership to any race, nation, nationality, ethnic group, their true or presumed origin, color, sexual orientation, political belief or religion) according to Art. 156/1,2/b and Art. 140/e of the Criminal Code and riotous conduct (Art. 364/1/a, 2/a and art. 140/e). The accused was sentenced to prison by a Specialized	"Lajknutie samo osebe, bez neprípustnej a účelovo-špekulatívnej doplňujúcej úvahy a výkladu sudcu, nezakladá ani dôvodné podozrenie z naplnenia formálneho znaku „osobitný motív z rasovej nenávisťi“ podľa § 140 písm. e) Tr. zák." "Liking alone, without an inadmissible and purpose-speculative supplementary consideration and the interpretation of the judge does not establish a reasonable suspicion that fulfill formal sign of a 'special motive of racial hatred' according to § 140 let. e) of the Criminal Code."

						attack was also considered by reference to additional evidence - by "liking" the Facebook page of a certain group. The Supreme Court revoked the decision of the lower court for lack of evidence.			Criminal Court in February 2017. The Supreme Court revoked the decision and released the defendant in March 2017.	
	2017	Austria / Supreme Court / 14 Os 9/17f ECLI:AT:OGH0002:2017:0140 OS00009.17F.0228.000 Austria: Regional Court (Landesr	https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20170228_OGH0002_0140009_17F0000_000	Nationality	Supreme Court (Oberster Gerichtshof)	The case concerns online incitement to hatred and violence. The	The Constitutional Court has found that the defendant has failed to provide any reasons for nullity (repealing the lower court's judgement and ordering a reconsideration of the case by a lower court).	The key issue is about deciding upon whether there are any significant reasons for nullity.	Appeal for nullity has been dismissed. The case has been sent back to the Higher Regional Court Linz in order to get to a decision regarding the sentence.	The present case does not provide for any significant key quotation.

(Landesgericht),
Ried/20
Hv 33/16k

[uu](#)

defendant posted the following on Facebook [roughly translated:] "No sending back. You can open Mauthausen [.] having a little showering or dragging rocks at the death stairs[.] there are some fine things one can do there @ lowlives" and "Negro = target[.] we could shoot them

						a little with softgu ns © haha".				
	2017	Latvia / Tukums District Court / Case No. 11390001416		Nationality	Tukums District Court (Tukuma rajona tiesa)	The defendant posted public calls to violence and threats towards migrants on his Facebook profile. Initially, the defendant called to violence against migrants at a specific address in town. Later he engaged in discuss	The defendant pleaded guilty to incitement to hatred (against migrants) and agreed for the case to be reviewed without the examination of the evidence. The Court established that it was proven that the actions committed by the defendant are aimed at the incitement to hatred due to a person's social status.	The Court found the defendant guilty of incitement to hatred due to a person's social status (being a migrant). As the defendant pleaded guilty, there were no concepts or interpretations clarified by the case.	The defendant found was guilty and sentenced to 160 hours of community service.	(Tiesa atzīst, ka kriminālprocesā iegūtas pietiekošas ziņas par faktiem, kas izslēdz saprātīgas šaubas un apliecina, ka apsūdzētais /pers. A/ veica darbības, kas ir vērstas uz nauda un nesaticības izraisīšanu atkarībā no personas sociālā statusa (tas ir citu pazīmju dēļ), kas saistītas ar vardarbību un draudiem, tādēļ tiesa kvalificē apsūdzētā /pers. A/ darbības pēc Krimināllikuma 150.panta trešās daļas.) The Court agrees that information acquired during criminal procedure is sufficient in order to exclude reasonable doubts and confirm that the actions committed by the defendant /person A/ are aimed at incitement of hatred and enmity depending on person's social status (on any characteristics), that is related to violence and threats, therefore, the Court qualifies defendant's /person A/ actions according to Section 150 Paragraph 3 of the Criminal Law."

						sions with other social network users by posting two more comments containing threats and an indication of being prepared to use violence against migrants.				
	2017	Spain / Social Courthouse: Palma de Mallorca / No. 31/2017	https://www.iberley.es/jurisprudencia/sentencia-social-no-31-2017-iso-palma-mallorca-sec-1-rec-478-2016-06-02-2017-47703786	Religion, Gender	Social Courthouse: Palma de Mallorca	The social court of Palma de Mallorca ruled against an airline company which had sanctioned	The use of the hijab is a manifestation of religious belief of the employee. The ban was based on a purely aesthetic requirement. The company's manual about the dress code was not provided to the Committee members. Therefore the company did not provide to have in place any relevant	Violation of the fundamental right to religious freedom recognized under the Article 16 of the Spanish Constitution It was not comparable to the use of mere adornments to the use of the veil. Related to	It declared the existence of a violation of the fundamental right to religious freedom of Mrs Daniela (article 16 of the Spanish Constitution), and consequently the invalidity of sanctions imposed by the company The company	(la existencia de vulneración del derecho fundamental a la libertad religiosa de la Sra. Daniela (artículo 16 de la Constitución), y consiguientemente la nulidad de las sanciones impuestas por la empresa) "the existence of a violation of the fundamental right to religious freedom of Mrs Daniela (article 16 of the Constitution), and consequently the invalidity of sanctions imposed by the company"


several times a female staff member for wearing a hijab, allegedly based on the minor offence of "lack of cleanliness" of the person or uniform and the serious offence of disobeying orders. She was finally fired for wearing the hijab at work. The applicant requested the

rule restricting the use of symbols religious.


discrimination by gender at employment

is requested for an immediate cessation of the action and the restoration of the plaintiff on the integrity of their right and to be replaced as at the initial moment, together with the pending payment of 449,142 euros and the payment of a compensation for the damages caused calculated in 7.892 euros.

						court to invalidate the sanctions imposed by the company.				
+	2017	Finland / District Court of Espoo / R 16/249		Ethnic origin	The District Court of Espoo (Espoon käräjäoikeus / Esbo tingsrätt)	The victim was attacked by three men while walking on the street in the city of Espoo. These men were unknown to the victim. The men were shouting racist insults at the victim. The victim was targeted	The court considered that the victim's account of the events is credible and that all three men had participated in assaulting and chasing the victim. They all had shouted racist insults at him. The court concluded that the crime had a racist motive for which an aggravated penalty must be applied.	Applying of aggravated penalty due to racist motive	A was sentenced to 70 day fines (420 euros) B was sentenced to 60 day fines (420 euros) C was sentenced to 70 day fines (630 euros)	"Vastaajat eivät ole tunteneet [A:ta]. Rassistiset solvaukset ovat alkaneet heti, kun he ovat nähneet [A:n]. Esiin ei ole tullut, että [A] olisi millään tavalla provosoinut vastaajia. [...] Vastaajat eivät ole osanneet kertoa teolleen muuta motiivia kuin sen, että [A] on ollut tummaihoisen ulkomaalainen." "The defendants did not know [A] beforehand. The racist insults had begun immediately after the defendants had seen [A]. Nothing suggests that [A] had in any way provoked the defendants. [...] The defendants have not given any other motive to their actions than [A] being a dark-skinned foreigner. "

						because of his dark skin colour. The three men were convicted of assault.				
	2017	Finland / District Court of Oulu / R 16/2412		Religion	The District Court of Oulu (Oulun käräjäoikeus / Uleåborgs tingsrätt)	The leader of the Finns Party Youth, Sebastian Tynkkynen, was convicted of incitement to hatred and the breach of the sanctity of religion. In his Facebook-writing, Mr. Tynkkynen dema	Incitement to hatred: The court stated that the defendant could have presented his opinion without making defaming and insulting generalisations concerning Muslims. Moreover, the demand for removal of Muslims from Finland has created a threat of unlawful actions against Muslims. Breach of the sanctity of religion: in his Facebook-writings Mr. Tynkkynen described Allah as a monster and also referred to a "paedophile prophet". The district court found this defaming and insulting.	The court referred to the case law of the European Court of Human Rights and stated that political parties have the right to present their views about problems related to immigration in public even if these views might offend, shock or disturb someone. However, it is essential that politicians refrain from making public statements which are likely to foster intolerance.	Mr. Tynkkynen was sentenced to 50 day fines (300 euros).	"Yhteenvetona voidaan todeta, että perustuslain 12 §:n 1 momentin sekä ihmisoikeussopimuksen 10 artiklan takaama sananvapaus ei siis tarkoita sitä, että jokaisella olisi vapaa oikeus sen nojalla esimerkiksi julkisesti uhata, panetella tai solvata jotakin ihmisryhmää heidän uskontonsa perusteella." "In summary, it can be concluded that the freedom of expression guaranteed in Section 12 subsection 1 of the Constitution [of Finland] and in Article 10 of the [European] Convention on Human Rights does not mean that freedom of expression would give everyone the right to, for example threaten, defame or insult in public a group of people on the basis of their religion."

						<p>ended that Muslims be rooted out from Finland and stated that every Muslim is a potentially aggressive criminal.</p>				
	2017	Hungary / District Court of Szeged	http://szegeditorveny.szek.birosag.hu/sajtokozelemeny/20170113/tajekozatas-nem-jogeros-iteletrol-garazdasag-vetsege	Nationality	District Court of Szeged (Szegedi Járási Bíróság)	<p>On 8 September 2015, the camerawoman of an alt-right TV channel was filming at the collection point at Röske close to the Hungarian-Serbian border</p>	<p>The prosecutor in the criminal procedure argued that the defendant's action was a hate crime given her affiliation to the alt-right TV channel (N1 TV), and the fact that the kicking was intentional and could not qualify as self-defence. The defence attorney argued that the Police wanted to stop the victims, and when this attempt proved to be unsuccessful, the defendant practically assisted the Police to stop the asylum seekers when kicking them in the knee.</p>	<p>The Court had to decide whether the affiliation of the defendant alone can be an indicator of her motive, or other circumstances are also necessary to prove the hate crime motive.</p>	<p>The Court found the defendant guilty of vandalism, and sentenced her to a 3-year long probation. The Court emphasised the defendant's racist/xenophobic motive could not have been proven given that her actions targeted asylum seekers who were subjects to unsuccessful police apprehension. The Court stressed the defendant's act</p>	<p>The decision has not been published yet, only a press release of the Court is available.</p>

					where the Police apprehended irregular migrants arriving from Serbia. Some 400 asylum seekers broke out of the collection point and started to run toward the corn fields. The camerawoman was standing in their way.			was in fact violent and against moral standards, however, it did not cause personal injury to the victims.		
	2017	Finland / District Court of Keski-Suomi / R 16/2618		Religion	The District Court of Keski	A member of the Finnish	The court stated that the defendant has in his text generalised that all Muslims are	The court concluded that even harsh criticism of immigration	The court concluded that as compared to other similar crimes and	"Teuvo Hakkaraisen laatimassa ja yleisön saataville asettamassa facebook-viestissä on väitetty, että kaikki terroristit ovat muslimeja. Tällä väitteellä vastaaja on yleistäen väittänyt

-
Suomi
(Keski-Suomen kärjäoikeus / Mellersta Finlands tingsrätt)

h Parliament, Teuvo Hakkarainen, published a text in Facebook in which he stated that all terrorists are Muslims. Moreover, he demanded that all Muslims be removed from Finland and their entry into the country must be restricted. Mr. Hakkarainen was convicted of incitement to


criminals and that he could have presented his criticism of immigration policy without making this kind of defaming generalisation. Moreover, the demand for removal of Muslims from Finland and the banning of their entry to the country has created a threat of unlawful actions against Muslims. The court concluded that even harsh criticism of immigration policy does not as such constitute a criminal offence. However, threatening, defaming and insulting a group of people is punishable.


policy does not as such fulfil elements of a crime. However, threatening, defaming and insulting a group of people is punishable.


verdicts, this case is less severe. The Facebook posting was a sudden reaction to the terrorist attack in Nice and Mr. Hakkarainen has himself admitted that the statement was inconsiderate. The court sentenced Mr. Hakkarainen to 20 day fines (1,160 euros) and ordered that the Facebook-text is deleted. (After the verdict Mr. Hakkarainen continues to be a member of Parliament and he was recently elected one of the vice chairpersons of the Finns Party.)

islaminuskoa tunnustavia ihmisiä rikollisiksi. Vastaja olisi pystynyt esittämään mielipiteensä ja ilmaisemaan maahanmuuttopolitiikkaan kohdistuvan arvostelunsa ilman tällaista panettelevaa ja herjaavaa yleistystä."

"In the Facebook posting written and made available to the public by Teuvo Hakkarainen it is claimed that all terrorists are Muslims. By making this claim the defendant has made a generalisation of all Muslims as criminals. The defendant could have presented his opinion and criticism of immigration policy without making this kind of defaming and insulting generalisation."

					hatred .					
	2016	Austria / Regional Court Salzburg / 47 Hv 73/16k		Natio nality	Regi onal Court (Lan desg ericht)	The case concer ns online incite ment to hatred and violen ce. The defen dant comm ented on a video on Faceb ook by stating [rough ly transl ated:] "A storm gun and some magaz ines solve these proble ms in secon ds. I do not under stand why the geneti	Not publicly available	Not publicly available	Sentenced to 10 months imprisonment on probation (duration of probation: 3 years); in addition: fine of 180 daily rates á € 4	Not publicly available

						c specia l waste is not being fired at imme diately ".				
	2016	Sweden / Svea Court of Appeal / Case no. B4509-16	http://www.rattsinfosok.dom.se/agrummet/Detail_Ram.jsp?detaljTyp=detalj&detaljTitel=B4509-16%20Svea%20hovr%C4tt&tmppWebLasare=Netscape	Religion	Svea Court of Appeal (Svea Hovrätt)	Svea Court of Appeal (Svea hovrätt) found a man guilty of incitement of hatred in a post on a facebook page of a local branch of the Sweden Democrats (Sverigedemokraterna). The perpetrator, S.V.	The Court of Appeal argued that the penalty regulations regarding incitement of hatred must be interpreted in the context of, and in accordance with general provisions on human rights and freedom of expression in the Swedish Constitution and the ECHR. The Court underlined that the Penal Code is based on a balance between the freedom of expression and the protection of vulnerable groups. Thus, the interpretation of the freedom and rights of the ECHR cannot only focus on the protection of the right of individuals to exercise their freedom of expression. Rather, the interpretation must be done in the light of the legislator's overall	The key issue of the case concerns whether a post containing degrading statements against Muslims and Islam published on a public Facebook page should be interpreted as part of a critical debate on religions and be protected by the freedom of expression – or if it should be interpreted as incitement of hatred and be prosecuted as hate speech. The District Court argued that since the post only had been available for everybody during a maximum of 14 hours it could not consider it necessary or	Svea Court of Appeal changed the ruling of the District Court and sentenced S.V. to a conditional sentence (vilkorlig dom) and a day fine (dagsböter) of 50 SEK (5.2 Euro) for a period of 60 days, a total sum of 3,000 SEK (315 Euro).	Sett till sin helhet ger inlägget emellertid uttryck för att personer av muslimsk trosuppfattning, som befinner sig i Sverige på grund av krig eller andra oroligheter, generellt skulle anse sig berättigade att utöva sexuellt våld mot kvinnor. Inlägget, särskilt dess avslutande delar, är dessutom utformat på ett kränkande sätt. Uttalandet inbjuder därmed inte till en religionskritisk diskussion - vilket det självfallet måste finnas utrymme för - utan uttrycker just sådan missaktning som bestämmelsen om hets mot folkgrupp avser att träffa. Mot denna bakgrund finner hovrätten, vid en samlad bedömning, att S.V. ska dömas för hets mot folkgrupp enligt 16 kap. 8 § första stycket brottbalken. In summary, the post suggests that people of Muslim beliefs, who are in Sweden because of war or other unrest, generally would consider themselves entitled to exert sexual violence against women. The post, in particular its closing parts, is furthermore designed in an offensive manner. Thus, the statement does not invite a religion-critical discussion - which there obviously has to be room for - but expresses such disregard that the regulation of incitement of hatred is aimed at. Against this background, the Court of Appeal finds that S.V. shall be sentenced for incitement of hatred in accordance with chapter 16, section 8, first paragraph, of the Penal Code.

						<p>posted a copy of a message stating that "horny Muslims" have "sick, devilish lusts". The District Court dismissed the charges against S.V. since the post had only been available for everybody during a maximum of 14 hours.</p>	<p>intentions, also in cases concerning freedom of expression that generally enjoy strong protection in Sweden. The Court of Appeal found S.V.'s post to be drafted in an offensive and degrading manner that did not open up for a critical discussion on religions, which must be allowed. Consequently the Court found S.V. guilty of incitement of hatred.</p>	<p>proportionate to restrict the poster's freedom of expression even though the post was insulting and degrading. The Court of Appeal focused on the intent of the poster and found that the post was drafted in such an offensive manner that it was not opening up for a critical discussion on religions, which, according to the Court, of course must be allowed. The Court of Appeal considered the posting as incitement of hatred based on the clear intent of the poster.</p>		<p>Sweden, Svea Court of Appeal (Svea hovrätt), case number B 4297-16. The case is not available online but can be requested by the court in question using the case number.</p>
	2016	Netherlands / District Court The Hague / Case no. 09/837304	http://deep.link.rechtspraak.nl/uitspraak?id=ECLI%3AANL%3ARRDHA%	Race, Ethnic origin	District Court The Hague (Rec)	On 19 March 2014 elections for municipalities	Insulting a group because of their race or inciting discrimination against a group are punishable under	The verdict clarified two key issues. First of all the concept of 'race' in the sense of the	Political actors are not allowed under Dutch criminal law to make discriminatory	"Naar het oordeel van de rechtbank hebben de uitlatingen van verdachte van 19 maart 2014 een discriminatoir karakter. De strekking van de uitlatingen is namelijk onmiskenbaar om een onderscheid te maken tussen


pal government were held. The political party PVV of Geert Wilders participated in those election in two municipalities: Almere and the Hague. On the election night Wilders asked his audience during a meeting of party followers in the Hague: "do you want more

Dutch law criminal law. When on 19 March 2014, Wilders asked his audience "do you want more or less Moroccans in this city and in the Netherlands?" and the audience - which was instructed beforehand - answered chanting "less", he singled out an entire group of citizens without making any distinction. This statement affects the dignity of Moroccans as a group because of their race or national origin. The statements of 19 March 2014 also made a distinction between the Moroccan population and other population groups in the Netherlands. Because of their offensive character these statements incited other people to discriminate people of Moroccan origin.

Dutch Criminal Code includes the term 'Moroccans'. The legal definition of race is much broader than its common definition in everyday language and scientific research. The defense argued that Moroccans are solely a nationality and are not protected against incitement to discrimination because of that. The freedom of expression may be restricted in cases foreseen by the law. Dutch criminal law allows for the restriction of freedom of speech when persons insult a group because of their race. Politicians are not exempted from prosecutions for statements they make in public.

or insulting statements about racial or ethnic groups. Statements insulting racial groups or inciting to discrimination of racial groups are criminal under respectively Article 137c of the Dutch criminal code and 137d of the Dutch Criminal Code. Moroccans are a racial group under Dutch criminal law and therefore protected by these Articles.

Marokkanen en andere bevolkingsgroepen in Nederland. Hiermee kunnen die uitlatingen, mede gelet op de reeds meermalen besproken omstandigheden waaronder deze zijn gedaan en in het bijzonder gelet op het opruiende karakter ervan, worden aangemerkt als uitlatingen die anderen aanzetten tot discriminatie van personen met een Marokkaanse afkomst." In the opinion of the court, the statements of the accused of 19 March 2014 have a discriminatory character. The thrust of his remarks was, clearly, to distinguish between Moroccans and other groups in the Netherlands. These statements, in view of the already considered circumstances under which they were made and, in particular, given the incendiary nature of these statements, must be regarded as statements that incite others to discriminate against persons of Moroccan descent." "Met zijn uitlatingen op 19 maart 2014 tijdens een verkiezingsbijeenkomst heeft verdachte bijgedragen aan een verdere polarisatie binnen de Nederlandse samenleving. Dit terwijl juist in onze pluriforme maatschappij het gelijkheidsbeginsel en het respecteren van (rechten van) anderen van groot belang zijn. Dat verdachte zegt zich gesteund te voelen door mogelijk miljoenen mensen, maakt niet dat hem geen verwijt kan worden gemaakt. Groepsbelediging en aanzetten tot discriminatie zijn strafbaar. Daar staat tegenover dat het hoofddoel van dit strafproces de beantwoording van de vraag is of verdachte zich schuldig heeft gemaakt aan deze strafbare feiten. Met dit vonnis is die vraag beantwoord en daarmee is de in ons rechtsstelsel voor iedereen geldende norm bevestigd: je kunt niet met een beroep op de vrijheid van meningsuiting groepen beledigen of aanzetten tot discriminatie. Dat geldt ook voor een politicus. With his


					or less Moroccans in this city and in the Netherlands?". In response, the audience - which was instructed before hand - repeatedly chanted "less".					statements on 19 March 2014 during an election rally the accused contributed to further polarization in Dutch society although in our plural society the principle of people and the practice of respecting the (rights) of other people are of the utmost importance. The fact that the accused claims he feels supported by millions of people, does not mean he cannot be blamed. Insulting a group of people and incitement to discrimination are punishable. However, the primary objective of this trial to answer the question whether the accused is guilty of these offenses. This judgment has answered that question and in this way it confirms the following legal standard in our legal system: you cannot appeal on the right to freedom of expression groups when insult groups or incitement to discrimination. This also applies to a politician."
	2016	France / Public Defender of Rights / Decision no. MDE-ML-MSP-2016-292	https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=15900	Ethnic origin	Public Defender of Rights (Défenseur des droits)	The Public Defender of Rights was referred to in December 2015 by associations on the situation of families and children of	Letters, leaflets and posters produced and distributed by the collectives of villagers to the population with the objective of the "expulsion the illegal immigrants", and specifically targeting people because of their origin are likely to be classed as inciting discrimination, hatred or violence. These illegal evictions resulted depriving nearly 200 people of their	Actions constituting the offence of incitement to discrimination, hatred or violence with regard to a person or of a group of people on grounds of their origin or their membership or their non-membership of an ethnic group, a nation, a race or a given religion.	The Public Defender of Rights recommended to the Prefect of Mayotte to prevent any unlawful demonstration or meeting whose objective is to organize the eviction from their homes of persons on account of their supposed or actual belonging to an origin,	Le manque de mobilisation des pouvoirs publics, portant dûment informés, au niveau local et national, a permis l'organisation et la réalisation d'expulsions illégales ayant eu pour conséquence notamment d'exposer les personnes expulsées à des atteintes graves à leurs droits fondamentaux, et notamment au respect de la vie privée et familiale, de leur domicile, d'exposer des enfants à des violences et d'interrompre leur scolarité. The lack of action from the authorities, who were however duly informed, at the local and national level, allowed the organization and the execution of illegal evictions resulting in exposing the evicted persons to serious breaches of their fundamental rights, and in particular respect of private life, the home, and exposing children to


Comorian origin who had been evicted from their residences, because of their origin, by collectives of villagers, in two villages dependent on the Commune of A. in Mayotte. The police present at the time of these actions prevented neither the destruction of the dwellings nor expulsions.

residence. Physical and psychological violence constitute a breach of the fundamental right of people to live in safety, and are an attack on their dignity. The Public Defender of Rights noted that the lack of action from the authorities, who were however duly informed, at the local and national level, allowed the organization and the execution of illegal evictions resulting in exposing the evicted persons, and particularly children, to serious breaches of their fundamental rights.

ethnic group, nation, or race; to the mayors to enforce public order in this territory.

violence and interrupting their schooling.


						ions of the people.				
	2016	Luxembourg / Court of Appeal (5th Chamber), Case no. 596/16 V / Judgement / The Public Prosecutor v. A.		Religion, Ethnic origin	Luxembourg Court of Appeal (Cour d'appel)	Between October and November 2015, the accused distributed flyers in several municipalities in Luxembourg containing hate speech messages inciting to hatred against foreigners living in Luxembourg. Migrants in general, and Musli	The accused argued that he was acting in accordance with the law, in particular within the framework of the right to freedom of opinion and expression as set forth by Article 10 of the European Convention on Human Rights (ECHR). Furthermore, he claimed that his accusations were directed against the Luxembourgish authorities and their policies, and not against migrants. The court (both in first instance and in the court of appeal) dismissed his arguments and held that the messages distributed on the flyers were clearly directed against migrants in general, and against the Muslim community in particular, and consequently violated article 457-1 of the Criminal Code (incitement to hatred or violence).	Broad interpretation made of Article 457-1 of the Criminal Code, which covers racist and xenophobic comments. Both the court of first instance and the court of appeal do not consider Article 10 of the ECHR, regarding freedom of expression, to have been breached.	The accused was convicted in the Court of first instance (judgment 1579/2016 of 26 May 2016) and sentenced to eight months of prison. The accused then appealed the decision and the Court of appeal transformed the sentence into a 7000 euro fine.	"Les propos de A sont assurément de nature à donner une image inquiétante de la communauté musulmane dans son ensemble, ainsi que de la population étrangère en général, et à susciter, particulièrement parmi le public le moins averti, un sentiment de rejet, d'antagonisme et d'hostilité." Unofficial translation: "A's remarks are certainly likely to draw a disturbing picture of the Muslim community as a whole, as well as of the migrant population in general, and to arouse, particularly among the less informed public, a feeling of rejection, antagonism, and hostility."

						ms in particular, were accused of destroying the country and its natural resources, negatively affecting Luxembourgish citizens' rights and living conditions.				
	2016	Greece / Piraeus five-member Court of Appeal / Decision no. / Walid Taleb case		Ethnic origin, Migrant statuses	Court of Appeal	The Court of Appeal of Piraeus upheld the first-degree judgment convicting Walid Talib's former	The Court endorsed in essence the penalties imposed by the Court of first instance and the accused expressed no repentance for their actions. The Prosecutor confirmed that the perpetrators had racist motives. She based her assessment on the facts of the case, namely the preparatory acts of the crimes and the	The first-instance decision did not make any reference to racist bias. Given that the Appeal Judgement has not yet been published it is hard to tell whether the court took into consideration the racist character of the crimes. The Prosecutor	The group was sentenced to between nine and 13 years in prison. The son of Walid's former boss, who was just 19 at the time of the attack, was given a five year suspended sentence after the court upheld the mitigating circumstance of his youth	N/A. The text of the judgement has not been published yet and therefore quotation cannot be provided.


boss, and two of his friends for his abduction, inflicting grievous bodily harm with intent, and robbery. Walid was an Egyptian national without legal documents who was attacked in November 2012 and subsequently, robbed, tortured and assaulted.

particularly humiliating and degrading modus operandi. However, she argued that Article 81A of the Criminal Code, which provides for the crime with racist characteristics, is not applicable, as it was not in force at the critical time of the commission of the crimes.

confirmed that the perpetrators had racist motives, however, argued that Article 81A CC, which provides for the crime with racist characteristics, is not applicable, as it was not in force at the critical time of the commission of the crimes.

	2016	Poland / I instance: Regional Court Poznan-Grunwald and Jezyce in Poznan / Ref. no. III K 109/16 / II instance: District Court in Poznan / Ref. no. XVII Ka 1098/16	Religion	I instance: Regional Court Poznan, II instance: District Court in Poznan	On September 12, 2015 during the football match, the accused used a loudspeaker and publicly insulted Muslims. He was encouraging other football fans to sing an insult song about Muslim refugees using words commonly considered as vulgar, which	The Regional Court established that the crime fell under Article 257 of the Criminal Code (public insult to a group of people or an individual because of their nationality, ethnic origin, race or religion). The Court was not convinced by the defender of the accused that when singing about "Islamists" he was referring to Muslim terrorist only and not to Muslims in general. The District Court upheld the ruling.	-	The accused was sentenced to 7 months of the restriction of liberty and 20 hours of the community work every month during this period.	<p>"(...) użycie w przyśpiewce słowa "islamista" a nie "terrorysta" dobitnie wskazuje na chęć znieważenia i poniżenia przez oskarżonego grupy osób, jako wyznawców islamu, co potwierdza również druga część zawartego w przyśpiewce zdania odnosząca się do uchodźców, pomiędzy którymi, a osobami wyznającymi ideologię opartą na fundamentalizmie islamskim, w imię której dopuszczają się aktów terroru, znaku równości postawić nie można."</p> <p>[English: "(...) the use of the word "Islamist" rather than "terrorist" in the song, clearly indicates the intention of the accused to insult and humiliate the group of people who are Muslims. It is also confirmed by the second part of the song, referring to the refugees, between whom and the Islam fundamentalists, in the name of which they commit the acts of terror, the sign of equality cannot be put"].</p>
--	------	---	----------	--	---	--	---	--	---

					they did.					
♦ ■	2016	Malta / Court of Magistrates as a Court of Criminal Judicature , Police v. Eric Cuschieri, Court of Magistrates as a Court of Criminal Judicature , Police v. Chris Pisani		Ethnic origin	Court of Magistrates as a Court of Criminal Judicature	In February 2015, a photo of an African man lying in a hospital bed at Mater Dei hospital was posted on the Facebook page entitled 'Daqs hekk ghall-Immigrazzjonni Llegali f'Malta' ('No More Illegal Immigration to Malta') . Two men, Eric Cuschieri		None, for the reasons explained earlier.	The men were arraigned in Court after a screenshot of the comments was handed over to the Police Cybercrime Unit. Both of the accused pleaded guilty and were fined 3,000 EUR.	


						and Christopher Pisani, left disparaging comments on the post. Eric Cuschieri wrote the words 'burn him' while Pisani suggested that he would replace the man's saline drip with hydrochloric acid.				
	2016	Netherlands / District Court Overijssel / Case no. 08/952265-16 ECLI:NL:RBOVE:2016:4134	http://deep.link.rechtspraak.nl/uitspraak?id=ECLI%3AANL%3ARBOVE%3A2016%3A4134	Religion	District Court Overijssel (Rechtbank Overijssel)	On 27 February 2016, five extreme right men attacked a mosque in the city	The court decided that the accused acted with terrorist motives when they decided to burn a mosque with molotov cocktails. They were inspired by extreme right wing and racist thoughts and wanted to cause major anxiety	This verdict clarifies that attacks on Muslim targets like mosques, which are motivated by inspiring fear, are terrorist attacks and carry heavy penalties.	Attacks to inspire fear like in this case constitutes an arson attack on a mosque and thus, carry heavy penalties. In this case, all of the accused were punished by	"Verdachte en zijn medeverdachten hebben gezamenlijk besloten om de moslimgemeenschap en de gemeente Enschede angst aan te jagen met als doel de gemeente te laten afzien van de komst van een asielzoekerscentrum in Enschede. Daartoe hebben zij geprobeerd om met molotovcocktails een moskee in brand te steken. Door op deze wijze hun rechts-extremistische en racistische gedachtengoed uit te dragen hebben zij een grote angst teweeg gebracht zowel bij de

of
Ensch
ede by
throwi
ng
Moloto
v
cockta
ils.
Approx
imatel
y 30
peopl
e,
includi
ng
childre
n,
were
inside
the
mosq
ue at
that
time.
Nobod
y was
injure
d in
the
attack
and it
did not
cause
seriou
s
dama
ge to
the
mosq
ue.
Motivat
ion for
these
attack
s was
to
cause
anxiety
amon

among mosque-
goers in Enschede
in particular and
within the Dutch
Muslim community
in general. Their
attempt to burn a
mosque
constituted an act
of terrorism.

imprisonment:
The court
convicted four
of the five men
to four years
imprisonment
one of which
was
conditionally
suspended.
The fifth man
has two years
of his prison
sentence
conditionally
suspended
because he
showed
remorse.
The lawyer of
the accused
asked for a
lower
sentence,
arguing that
the incident
was not an act
of terrorism.
He pointed to
the clumsy way
the arson was
carried out - no
one was
injured and
one of the
persons
present in the
mosque
managed to
extinguish the
fire before
serious
damage was
done. But the
court did not
follow the
argument of
the defendant's
lawyer.


moskeegangers te Enschede in het
bijzonder als bij de Nederlandse
moslimgemeenschap in het algemeen.
Dat het bij een poging brandstichting is
gebleven is niet de verdienste van
verdachte en zijn medeverdachten
geweest, maar van een alerte
voorbijganger die de brand heeft weten
uit te trappen. Brandstichting betreft,
gelet op het gevaar zettende en
onvoorspelbare karakter ervan, een zeer
ernstig misdrijf dat levens en
eigendommen bedreigt en bovendien
grote maatschappelijk onrust doet
ontstaan. Verdachte heeft bij het plegen
van de feiten op geen enkele wijze
rekening gehouden met de risico's
waaraan anderen daardoor zijn
blootgesteld. Feiten als deze houden
een ernstige beschadiging en
ontregeling van de rechtsorde in, met
name als die worden gepleegd met een
terroristisch oogmerk."
"The accused and the other accused
have decided to incite fear to Muslim
community in Enschede with the clear
intention to stop the arrival of a
reception centre for asylum seekers in
Enschede. To this end, they tried to burn
a mosque with Molotov cocktails. By
venting their extremist and racist
ideology in this way, they have caused a
great fear to the visitors of the Enschede
mosque and the Dutch Muslim
community in general. The fact that this
attempt at arson did not cause a major
fire is only due to a passer-by who
stopped the fire. Arson, in view of its
perilous and unpredictable nature, is a
very serious crime that threatens life
and property and causes major social
unrest. The suspect did not taken into
account in any way the risks to which
others have been exposed by his
attempt at arsons. Acts like these
involve serious damage and disruption
of the rule of law, especially if
committed with a terrorist purpose." The
Netherlands, District Court Overijssel
(Rechtbank Overijssel) (2016), case No.


						g Muslims and to stop the municipality opening a new reception centre for asylum seekers.				08/952265-16, ECLI:NL:RBOVE:2016:4134, 27 November 2016, available at: http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBOVE:2016:4134
	2016	France / Court of cassation / Decision No. 15-25.873 ECLI:FR:CASS:2016:C101245	https://www.courdecassation.fr/jurisprudence_2/premiere_chambre_civile_568/1245_9_35468.html	Ethnic origin	Court of cassation (Cour de cassation)	Pursuant to the requests of the public prosecutor, the police services carried out an identity check on Mr. X. which led to no legal or administrative procedure	An identity check is discriminatory in nature if it is carried out according to criteria drawn from physical characteristics associated with origin, real or supposed, without any prior justified objectives. It falls upon those who claim to be a victim to provide evidence demonstrating a difference in treatment leading to discrimination, and, if necessary, it falls upon the administration to show either the absence of a difference in treatment, or that such treatment is justified by objective elements devoid of any	Elements constituent of a discriminatory identity check.	The appeal of the State legal authority was rejected, the ruling of the Court of Appeal according to which it was ordered to pay €1,500 to Mr. X. as compensation for non-material damages, remained in force.	La faute lourde résultant de l'inaptitude du service public de la justice à remplir la mission dont il est investi doit être regardée comme constituée lorsqu'il est établi qu'un contrôle d'identité présente un caractère discriminatoire ; que tel est le cas, notamment, d'un contrôle d'identité réalisé selon des critères tirés de caractéristiques physiques associées à une origine, réelle ou supposée, sans aucune justification objective préalable. Il appartient à celui qui s'en prétend victime d'apporter des éléments de fait de nature à traduire une différence de traitement laissant présumer l'existence d'une discrimination, et, le cas échéant, à l'administration de démontrer, soit l'absence de différence de traitement, soit que celle-ci est justifiée par des éléments objectifs étrangers à toute discrimination. Serious misconduct resulting from the inability of the public justice service to fulfil the role it has must be regarded as constituted when it is established that an identity check presents discriminatory characteristics; that such is the case, in particular, of an identity

edings.
Citing failing
s of the
public justice
service
resulting in
the discriminatory
nature of the
identity
check on
grounds of
his origin,
his physical
appearance
or his membership
of an ethnic
group,
Mr. X. filed
legal proceedings
against the
State legal
authority
claimi

discrimination. As
such, elements
were provided
which were likely to
result in a
difference in
treatment leaving
one to suppose the
existence of
discrimination.

check, carried out according to criteria
drawn from physical characteristics
associated with origin, real or
supposed, without any prior justified
objectives. It falls upon those who claim
to be a victim to provide evidence
demonstrating a difference in treatment
leading to suppose the existence of
discrimination, and, if necessary, it falls
upon the administration to show either
the absence of a difference in treatment,
or that such is justified by objective
elements devoid of any discrimination.

						ng comp ensati on for non- materi al dama ges.				
	2016	Lithuania / Kaunas District Court / Judgment of in the criminal case no. 1-384- 240/2016	http://liteko .teismai.lt/ viesaspren dimupai es ska/teksta s.aspx? id=51068e a6-0026- 4f16- 9a23- 6f9b8cb1f b78	Natio nality	Kaun as Distri ct Court	L.K. and V.K. were accus ed of incite ment to discri minati on, violence and physic al violent treatm ent again st a group of perso ns on groun ds of natio nality and social status (Article 170 (parag raphs 2 and 3) of	The accused and experts had different interpretations of the text on the posters, therefore, the court decided that it could not be confirmed that the accused understood the content of the posters as incitement to violence, violent treatment, discrimination against a group of persons on grounds of nationality and social status	For the crime of incitement to hatred it is required that person unambiguously and clearly shall point out one of the groups of persons described by law and to express his/her negative, contemptuous or degrading opinion, inciting and urging negative feelings, hatred of other members of the society against particular group of persons or a person belonging thereto, discrimination of such persons.	Both accused were acquitted	"<...> pasisakantis asmuo nedviprasmiškai ir visiems suprantamai turi nurodyti vieną iš įstatyme apibrėžtų žmonių grupių ir išreikšti jos atžvilgiu savo neigiamą, niekinantį ar žeminantį požiūrį, skatindamas ir kurstydamas kitų visuomenės narių (jo viešų pareiškimų respondentų) neigiamus jausmus, neapykantą nurodytai asmenų grupei ar jos nariui, tokių asmenų diskriminaciją." <...> person unambiguously and clearly shall point out one of the groups of persons described by law and to express his/her negative, contemptuous or degrading opinion, inciting and urging negative feelings, hatred of other members of the society against particular group of persons or a person belonging thereto, discrimination of such persons.

						<p>the Criminal Code, because they displayed posters with the statement "SÜDENGRUKLADERTUOKVIRIUSYBERIMGRANTAWELCOME!" ("Burn Rukla deport Government immigrants welcome") in public places.</p>				
	2016	Germany / Federal Constitutional Court / 1 BvR 354/11 ECLI:DE:BVerfG:2016	http://www.bverfg.de/urk20161018_1bvr035411.html	Religion	Federal Constitutional Court (Bundesver	A Muslim day care nurse was reprimanded	The Federal Constitutional Court argued that forbidding someone to wear a headscarf is an infringement of the freedom of religion,	According to the Federal Constitutional Court, fundamental rights of children and their parents	The ban of headscarves in kindergarten and school teaching was ruled unconstitutional and therefore	"Die Einzelnen haben in einer Gesellschaft, die unterschiedlichen Glaubensüberzeugungen Raum gibt, allerdings kein Recht darauf, von der Konfrontation mit ihnen fremden Glaubensbekenndungen, kultischen Handlungen und religiösen Symbolen verschont zu bleiben." (Rn. 64)

6:rk20161
018.1bvr0
35411

erfas
sung
sgeri
cht)


by her
emplo
yer for
wearin
g a
religio
us
heads
carf
during
work.
This
woma
n is a
Germ
an
citizen
who
was
born
in
Turkey
. At the
time of
the
incide
nt , the
state
of
Baden
-
Württe
mberg
had a
legal
ban of
religio
us
heads
carves
in
child
day
care.
The
woma
n took
the
issue
to the


which is a basic
human right. It was
further argued that
wearing religious
headscarves in
child daycare
centres is not
reasonable danger
towards children
rights. The wearing
of such
headscarves has
no sufficient effects
on converting to or
adverting a religion.
Headscarves have
become a common
symbol in everyday
life of society and
are therefore not an
unusual sight.


are not
endangered by
teachers who
wear Muslim
headscarves,
as was
previously
argued by the
Federal Labour
Court
(Bundesarbeits
gericht).

had to be lifted.
It was also
clarified that no
one has a right
to be spared
from exposure
to other
religious
beliefs and
symbols.

“Individuals however, have no right to be
spared from the confrontation of other
beliefs, cultural behaviour and religious
symbols in a society that provides
space to different beliefs.” (para. 64)

					Federal Labour Court (Bundesarbeitsgericht), but her case was rejected.					
	2016	Latvia / Riga District Court / Case No. 11840000316		Religion	Riga District Court (Rīgas rajona tiesa)	The defendant published a comment on the internet in response to an article about a Latvian woman who converted to Islam. The comment contained insults and aggressive language	The defendant partially pleaded guilty. He acknowledged he had published the comment in a state of anger. He blamed the state for bringing Muslims to the country and for disseminating information about Muslims. The Court agreed with the [external] expert opinion that the comment is incitement to religious hatred against Muslims. The Court highlighted that the defendant was an adult who could or should have been aware that the comment is hostile towards Muslims.	According to the Section 78 Paragraph 2 of the Criminal Law, composition of criminal offence is formal. Thus, criminal liability is not bound with criminal consequences, but with commitment of adverse action.	The defendant was found guilty and punished with 140 hours of community service.	(Tiesa uzskata, ka ievietot pret islāma reliģijai piederīgajiem vērstu naidīgu komentāru, Apsūdzētājs, būdams pilngadīga persona, varēja un viņam vajadzēja apzināties, kā šādā veidā iespējams, tiks veicināts interneta vidē nereti sastopamais naidis un neiecietības pret islamticīgajiem, apzinoties, ka ievietotājs komentārs ir pieejams neierobežotam interneta lietotāju lokam.) The Court believes that the defendant as adult person in mental competency, when posting hostile comment towards persons belonging to Islam religion, could and should have been aware that this action, possibly, will incite hatred and intolerance towards Muslims that is quite widespread in Internet environment and understand that the posted comment is available to unlimited number of Internet users.

						toward s Musli m wome n living in Latvia. The defen dant was accus ed of incite ment to religio us hatred under Sectio n 78 (2) of the Crimin al Law.				
	2016	Lithuania / Kedainiai district court / penal order in the criminal case no. 1-303- 836/2016	http://liteko .teismai.lt/ viesaspre ndimupai ska/teksta s.aspx? id=ef87f83 9-db6d- 41c6- 95ad- 6a142c87 afe3	Relig ion, Ethni c origi n	Keda iniai distri ct court	M.J. from Lithua nia publicl y wrote two comm ents on the online article "The fat is in the fire: refuge e	M.J. fully admitted his guilt. The Court ruled that the discriminatory character of the activities was obvious.	not applicable	M.J. was given a fine of €1129.80, but the fine was reduced to €753.20 on the ground that the case has ended by the court penal order and the accused fully admitted his guilt. Under the Code of Criminal Procedure, it is permitted to	"BK 170 straipsnyje įtvirtintas draudimas pagrįstas Lietuvos Respublikos Konstitucijos 25 straipsnio 4 dalies nuostata, pagal kurią laisvė reikšti įsitikinimus ir skleisti informaciją nesuderinama su nusikalstamais veiksmiais – tautinės, rasinės, religinės ar socialinės neapykantos, prievartos bei diskriminacijos kurstymu, šmeižtu ir dezinformacija." Prohibition provided in Article 170 of the Criminal Code is based on the provisions of Article 25(4) of the Constitution of the Republic of Lithuania, according to which the freedom to express convictions and to impart information shall be incompatible with criminal actions— incitement to national, racial, religious,

						Basir tricked Lithua nia” („Yla išlindo iš maišo : pabėg ėlis Basira s apgav o Lietuv ą“) on the news portal “ www.1rytas.lt ”. A court of first instan ce decide d that by writing the comm ents, M.J.			deviate from the model of general criminal procedure and the criminal procedure can be ended by means of a court penal order when the stipulated conditions are met.	or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation.
	2016	Netherlan ds / District Court Midden- Nederland / Case no. 16/652077 -16 ECLI:NL:R BMNE:201 6:5414	http://deep link.rechts praak.nl/ui tspraak? id=ECLI% 3ANL%3A RBMNE% 3A2016% 3A5414	Relig ion	Distri ct Court Midd en- Nede rland (Rec htban k Midd en- Nede	On 11 Octob er 2015 during a Pegid a demo nstrati on a woma n said	The court decided that the accused made public statement inciting hatred and discrimination of Muslims.	This verdict clarifies that public statements expressing hatred of Muslims and/or inciting discrimination of Muslims carry a penalty under Dutch criminal law.	Making public statements insulting and inciting	“Verdachte gebruikt in haar uitlating letterlijk de woorden “verachten” en “haten” en maakt daarbij anders dan door de verdediging is betoogd, geen onderscheid tussen religie en ideologie. Deze termen zijn, zeker in combinatie gebruikt, zo krachtig dat daarmee aangezet wordt tot haat. Door de uitlating van verdachte worden moslims als groep weggezet en in een kwaad daglicht gesteld.De rechtbank acht derhalve wettig en overtuigend bewezen dat verdachte zich in het



erland
)

during her speech: "Another reason to despise and hate Muslims is their insane ideology. Because it's never the religion of peace." She placed her speech in written form on her Facebook-page. The Court decided that that the woman has been publicly guilty of insult,

openbaar schuldig heeft gemaakt aan het aanzetten tot haat tegen en de discriminatie van moslims wegens (ten minste: mede) hun godsdienst."

"The accused literally uses the words "despise" and "and hate" and makes no distinction between religion and ideology as argued by the defence. These terms, especially used in combination, are so powerful that they incite to hate. The statement of the accused puts Muslims as a group in bad daylight. The court therefore decides that the suspect is guilty of inciting hatred and discrimination against Muslims because of (at least: in part) their religion."

						incite ment to hatred , and the discri minati on of Musli ms.				
--	--	--	--	--	--	---	--	--	--	--

	2016	France / Bobigny Court / Criminal judgment		Nationality	Bobigny Court (Tribunal de grande instance de Bobigny)	Ms. Zhang was followed by three people and was struck her on the head; she fell to the ground and her bag was stolen from her. One of the perpetrators punched her brother-in-law in the left eye.	Article 132-76 of the Criminal Code provides that the sentences incurred for a crime or an offence are increased when the offence committed is based on the membership or the non-membership, real or supposed, of the victim to an ethnic group, a nation, a race or a given religion. The aggravating circumstance in this case was not the object of any argument on behalf those accused. It was noted that the three persons accused had recently been found guilty over a recent period of several offences committed in a gang on victims of Asia-Pacific origin. The way the accused operated in the present case reveals selection and a prior identification of victims.	The conditions necessary for aggravating circumstances when the offence is committed on the grounds of the membership or of the non-membership, real or supposed, of the victim to an ethnic group, a nation, a race or a given religion.	Two perpetrators were sentenced to a twelve month prison sentence and one perpetrator was sentenced to an eighteen month prison sentence for gang theft, with non-incapacitating violence on another person on the grounds of the race or the ethnic group of the victim, in this case the Asia-Pacific community	<p>Le mobile raciste relatif à l'intention des auteurs présumés de l'infraction doit être analysé à l'aune du choix effectué le cas échéant de s'en prendre au membre de tel ou tel groupe, ou en raison de l'appartenance, vraie ou supposée, de la victime à ce même groupe ethnique, religieux, national.</p> <p>The racist motive relating to the accused must be analyzed in light of the choice made, if this is the case, to attack a member of a certain group, or because of the membership, real or supposed, of the victim to this ethnic, religious, or national group.</p>
	2016	Spain / Mataro Criminal Court No.2 / No. 254/2016	http://www.sosracisme.org/wp-content/uploads/2016/10/Sentencia_discriminacion	Race, Ethnic origin	Mataro Criminal Court	The Mataro Criminal Court sentenced a nightcl	An offence of discriminatory denial of access to goods and services in the private sphere based on the Article 512 of the Criminal Code	It's an exceptional case where the article 512 of the Criminal Code is applied in the courts, even though	It was stated the direct civil responsibility of the insurance company of the nightclub and the subsidiary	<p>("Entiende completamente acreditada la responsabilidad civil directa de la compañía... , en virtud de las lesiones sufridas por... ocasionadas directamente por el portero del local")</p> <p>"Understands fully accredited direct liability of the company..., pursuant to</p>

[minaci%C3%B3-discoteca-i-agresivo-C3%B3_Oct2016.pdf](#)


club named as Titus Masnou and the club did not let him in, although he did allow another young white man accom


and a crime of injury laid down in article 147.1 the Criminal Code. The right protected is the right to equality and non-discrimination enshrined in article 14 of the Spanish Constitution. The question under discussion was whose liability it was to cover the damage in respect of civil liability

there are many evidences that the refusal of entry to venues and nightclubs for discriminatory reasons is a very common practice. Article 512 of the Criminal Code does integrate the list of crimes relating to the exercise of fundamental rights and public freedoms guaranteed by the Constitution and a precept included within the category "hate crimes".

liability of the company owner of the discotheque. 1 year of penalty of disqualification as a private security professional based on the article 512 of the Criminal Code. And 6-months fine with daily fee of 8 euros based on an injury crime laid down in the article 147.1 the Criminal Code.

the injuries sustained by... caused directly by the local goalkeeper"

						panying him to enter, saying : "the black does not enter".				
	2016	France / Court of cassation / Decision No. 15-83070 ECLI:FR:CASS:2013:CR03515	http://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEX000033143735&fastReqId=276387227&fastPos=5	Religion	Court of cassation (Cour de cassation)	Upon the request of the public minister, Mr. X. was ordered to appear before the criminal court because of the remarks he made on 18 December 2010 at a public meeting called 'International meetings on the	The Court of cassation upheld the ruling of the Court of Appeal according to which the remarks of Mr. X. were aimed at all immigrants of the Islamic religion and led to, both in their meaning and their scope, inciting others to discrimination, hatred or violence. These remarks, under the pretext of a legitimate debate on the consequences of immigration and the place of Islam in France, presented all the members of the group thus concerned, as being part of 'banditry' and the 'organized crime', as criminals colonizing and controlling France through violence, and claimed that this situation could not be left to 'police action or that of the	Actions constituting the offence of incitement to discrimination, hatred or violence with regard to a person or of a group of people on grounds of their origin or their membership or their non-membership of an ethnic group, a nation, a race or a given religion.	The Court of cassation upheld the ruling of the Court of Appeal which sentenced Mr. X. to a €4000 fine.	...Propos poursuivis ... visaient l'ensemble des immigrés de religion musulmane, ... lesdits propos, au prétexte d'un débat légitime sur les conséquences de l'immigration et la place de l'islam en France, en ce qu'ils présentaient tous les membres du groupe ainsi visé, assimilé au " grand banditisme " et au " crime organisé ", comme des délinquants colonisant et asservissant la France par la violence, ... tendaient, tant par leur sens que par leur portée, à provoquer autrui à la discrimination, à la haine ou à la violence. ... Continuing remarks... aimed at all Muslim immigrants, ... the aforementioned remarks, under the pretext of a legitimate debate on the consequences of immigration and the place of Islam in France, in which they presented all the members of the group thus concerned as being involved in 'large-scale banditry' and 'organised crime', like criminals colonizing and enslaving France by violence,... were likely, both in their meaning and their scope, to incite others to discrimination, hatred or violence

					Islami zation of our countri es'. The crimin al court found him guilty of the offenc e of incitin g discri minati on, hatred or violen ce toward s a group of peopl e on the groun ds of their memb ership of a given religio n.	courts', since the laws and the institutions charged with upholding the law were powerless to protect the 'independence of the country' and the 'freedom of the people'.				
	2016	Sweden / Svea Court of Appeal / Case no. B 4297-16		Race	Svea Court of Appeal (Svea hovrätt)	Stockholm District Court (Stockholms tingsrätt)	Svea Court of Appeal (Svea hovrätt) found that the statements of the injured parties (målsägandena) and the witnesses clearly proved that	The key issue in focus concerned the interpretation of what kind and level of insults that should be considered to	Svea Court of Appeal (Svea Hovrätt) affirmed the Stockholm District Court's (Stockholms tingsrätt) ruling	Utredningen i hovrätten är densamma som i tingsrätten och föranleder inte hovrätten att göra några andra bedömningar än de som tingsrätten gjort, varken i fråga om skuld, påföljd eller skadestånd. Hovrätten har även beaktat bestämmelsen i 29 kap 2 § sjunde punkten brottsbalken.

found a man guilty of insult (förolämpning) and abuse (miss handling). The offender had called two women degrading statements (e.g. "negro" and similar words) when an argument escalated. In addition, the offender hit the woman and a third person, who tried to stop the argument, with

O.C. had made degrading statements with the intent to insult women on the grounds of their ethnic origin. Furthermore, the witness statements proved that the offender had used his fists to abuse the women. The Court of Appeal affirmed the District Court's ruling regarding guilt (skuld), sentence (påföljd) and compensation (skadestånd).


be an aggravated circumstance that can affect the sentence. In this case, the Svea Court of Appeal did not change the sentence, since the punishment was considered reasonable also when including chapter 29, section 2, paragraph 7 of the Penalty Act (Brottsbalken) in its deliberations.[1]


and O.C. was sentenced to 75 hours of community service (samhällstjänst). In addition, O.C. was sentenced to pay damages to all three injured parties, 9,400 SEK (985 Euro) to M.B., 12,600 SEK (1321 Euro) and 5,000 SEK (524 Euro) to Z.D.

Tingsrättens dom ska inte ändras. O.C:s inkomstförhållanden är sådana att han ska betala tillbaka delar av kostnaderna för försvarare och målsägandebiträde i domstolarna.

The investigation in the Court of Appeal is the same as in the District Court and does not give the Court of Appeal any reason to make any assessments than those made by the District Court, either in the case of guilt, penalty or damages. The Court of Appeal has also taken into account the provision in chapter 29, section 2, and paragraph 7 of the Penal Code. The District Court's verdict shall not be changed. O.C's income is such that he shall pay back parts of the costs for the defence lawyer and legal aid in the courts.

Sweden, Svea Court of Appeal (Svea hovrätt), case number B 4297-16. The case is not available online but can be requested by the court in question using the case number.

						his fists.					
	2016	Cyprus / Anti-discrimination Authority / Public Position of the Anti-discrimination Authority regarding the incident of racist conduct by a member of the police / Ref. 69/2016	http://www.ombudsm.gov.cy/Ombudsmansman.nsf/All/05D0D6A841C8E9AC225801B0037D9E3/\$file/%CE%91%CE%A169_2016_23082016.doc?OpenElement	Religion, Race, Nationality	Anti-discrimination Authority	The Equality Body published a report condemning an incident at the Menouia Detention Centre, posted on social media, showing a police woman using extreme and intensely racist, aggressive and Islamophobic expressions insulting the ethnic	The seriousness of this racial incident is heightened by the fact that it took place within a police detention centre. The violation of individual freedoms and the humiliating and racist treatment of detainees undermines the relation between the police and the individual, since it negates the role of the police as the guardian of the legal order. It is therefore necessary that the police acts speedily and effectively to develop effective mechanisms of accountability and checks in order to prevent a climate of reluctance and, eventually, impunity. The investigation by the police authorities should not be exhausted in treating this as an isolated incident; the situation is far more complex and serious and should be a cause for concern beyond the individual attribution of blame.	The Equality Body report states that the conditions in a detention centre where persons are held for the purpose of their deportation are undoubtedly difficult and staff members are likely to be faced with insulting or aggressive behaviour by detainees under the pressure of awaiting deportation and of prolonged detention, however the handling of these reactions are a major part of the exercise of police duties and in no way does it justify the adoption of insulting behaviour. Police detention premises are, by definition, spaces of limited visibility and monitoring and, as such, extra measures must be taken to ensure that they are free	The report was submitted to the Minister of Justice and to the Chief of Police for their further actions. The police woman was suspended from duty shortly after the incident, pending a disciplinary and criminal probe against her. Once the probe was concluded, the suspension was lifted and she was moved to another post, until the disciplinary and criminal cases against her are heard. The accountability mechanism in detention centres which was proposed by the Equality Body was not set up.	Σε κάθε περίπτωση, τέτοια περιστατικά δεν εκτυλίσσονται στο κενό. Λαμβάνουν χώρα σε ένα χώρο όπου κρατούνται μετανάστες υπό απέλαση και όπου οι κίνδυνοι αυθαιρεισιών είναι αυξημένοι, συστημικοί και πιο εδραιωμένοι. Οι μετανάστες βρίσκονται σε καθεστώς απέλασης και ως δυνητικά θύματα παραβίασης των δικαιωμάτων τους έχουν μειωμένες δυνατότητες διεκδίκησης και διασφάλισης τους. Υπό αυτές τις συνθήκες υπάρχει πάντα ο κίνδυνος δημιουργίας απαράδεκτων, ευτελών και ανεξέλεγκτων πρακτικών απαξίωσης της ανθρωπίνης αξιοπρέπειας χωρίς την αίσθηση της ευθύνης ή της λογοδοσίας [para. 10]. In any case, such incidents do not unfold in a vacuum. They take place in an area where deported migrants are detained and where the risks of arbitrariness are increased, systemic and more entrenched. Immigrants are in deportation status and, as potential victims of violation of their rights, have fewer opportunities to claim and safeguard them. Under these circumstances there is always the risk of creating unacceptable, vague and uncontrolled practices of depreciating human dignity without a sense of responsibility or accountability	

						origin, religion and family of detainees. The detention centre houses migrants awaiting deportation. The video shows other police officers present in the room listening to the racial abuse without any reaction.		from views and practices which insult the dignity and violate the rights of migrant detainees.		
	2016	Cyprus / Radio and Television Authority / Self-initiated investigation into possible	http://www.crtac.org.cy/decisions/app/web/upload/ad713528473cfc3d29ffde50dd9fe9	Religion, Race, Nationality	Radio and Television Authority	Three independent public bodies, the Equality	The Equality Body found that freedom of speech is not an absolute right and can be restricted to safeguard tolerance and respect for the dignity of all, as the	The decision of the Radio and Television Authority stated that freedom of expression is not absolute nor does it give the right to	The Radio and Television Authority held the TV channel guilty for broadcasting views containing provocation on	Ο Νομοθέτης, δίνοντας ιδιαίτερη βαρύτητα στο συγκεκριμένο θέμα, έχει συμπεριλάβει, όχι ένα, αλλά δύο ξεχωριστά άρθρα στην Νομοθεσία (άρθρο 18B και 19(3)) για να διασφαλίσει ότι η δημόσια ραδιοτηλεοπτική υπηρεσία που παρέχεται δεν προκαλεί την δημιουργία αισθημάτων μίσους λόγω διαφορών στη φυλή, το φύλο, τη

violations by the Cyprus Broadcasting Corporation (TV Channel RIK 2) / Case No. 80/2016(69)

[16.pdf](#)


Body, the Journalistic Ethics Committee and the Radio Television Authority, investigated and condemned the screening by a state TV channel of an interview with Greek singer Sfakianakis that contained racial hate speech. During the interview, the singer used strong racist

cornerstone of a democratic society. The Media Complaints Commission found that the TV Channel failed in its duty to protect groups who are vulnerable to hate propaganda, adding that the effort to shift the responsibility on society to accept or reject ideas was an effort on the part of the TV Channel to avoid its own responsibilities. The Radio and Television Authority found that the state TV channel's duty to screen all views and promote pluralism had to be exercised within the framework set by national and EU legislation, clarifying that the preaching of xenophobia and racism did not amount to freedom of expression nor did it promote pluralism. The narrative expressed during the interview was targeting entire social, religious and racial groups, encouraging or creating the preconditions for violence against them. As such, the singer's views were not protected

broadcast hatred. Freedom of expression, as safeguarded in the Cypriot constitution may be subject to restrictions in the interest of public order and safety and hate speech poses a serious public safety risk. It concluded that such phenomena cannot be tolerated, especially at a time when Europe is faced with the refugee crisis and extremist forces are exploiting this situation by preaching hatred.

the basis of race, religion or nationality, in violation of the Law on the Cyprus Broadcasting Corporation and imposed an administrative fine for each screening of the interview, totalling €26,000. The TV channel paid the fine but filed an application in Court for judicial review of Authority's decision, claiming that this contained an error in law for infringing freedom of expression. At the time of writing, the case had not been tried yet.

θρησκεία ή την ιθαγένεια. Πέραν τούτου, η σημασία των εν λόγω προνοιών μεγιστοποιείται από το γεγονός ότι ο Νομοθέτης έχει καθορίσει ρητώς όπως η συμμόρφωση με τις συγκεκριμένες πρόνοιες της νομοθεσίας είναι εκ των ων ουκ άνευ όσον αφορά τα ποιοτικά χαρακτηριστικά που πρέπει να έχει η Δημόσια Ραδιοτηλεόραση, και λαμβάνεται σοβαρά υπόψη κατά την σύνταξη της Ετήσιας Έκθεσης Ποιοτικού Ελέγχου του Ραδιοφωνικού Ιδρύματος Κύπρου από την Αρχή και η οποία υποβάλλεται κατόπιν στον αρμόδιο Υπουργό, ώστε να διαφανεί κατά πόσον το ΡΙΚ πληροί τις πρόνοιες της νομοθεσίας όσον αφορά την παροχή δημόσιας ραδιοτηλεοπτικής υπηρεσίας. [English translation] The legislator, with a particular focus on this issue, has included not one, but two separate Articles in the legislation (Article 18B and 19 (3)) to ensure that the public media service provided does not cause feelings of hatred on the grounds of race, sex, religion or nationality. Furthermore, the importance of these provisions is maximized by the fact that the Lawmaker has explicitly stated that compliance with the specific provisions of the legislation is a sine qua non for the quality features that the Public Broadcasting Company must have and is taken seriously into account in the preparation of the Annual Quality Control Report of the Cyprus Broadcasting Corporation by the Authority, which is then submitted to the competent Minister, in order to clarify whether the RIK complies with the provisions of the legislation regarding the provision of a public broadcasting service.

						language, describing migrants as rapists of his country and arguing they are all rich people colonising Greece as part of a plan orchestrated by Turkey to 'Islamise' Greece.	by freedom of expression but amounted to a direct violation of the law.			
	2016	Bulgaria / Supreme Court of Cassation / Decision no. 71 of 28 July 2016 on criminal case no. 123/2016	http://www.vks.bg/Reshenia/2NOR71_28_07_2016.pdf	Religion	Supreme Court of Cassation (Върховен касационен съд)	The case is about 13 Muslims charged with incitement to hatred and partici	The first and the second instance courts justified their decision to sentence the defendants for incitement to hatred by pointing out that, being an antidemocratic ideology, the Salafi movement embedded hatred to everything that was not in line with its ideology.	The case clarifies the concept of when the preaching of certain religious ideas can be considered incitement to religious hatred. According to the decision, the preaching of an antidemocratic religious	The Supreme Court of Cassation (SCC) repealed the sentence and returned the case to the second instance court for another hearing by a different panel of judges.	„Въззивният съд не е посочил фактите и обстоятелствата, въз основа на които е приел реализирано от подсъд. А. престъпление по чл. 164, ал. 1 от НК. Направил е съждение, че подсъдимият е "... проповядвал омраза на религиозна основа чрез слово, изразяваща се във враждебност и отричане на всичко, несъобразено с идеологията на салаfizма, чрез разпространение на религиозни идеи по време на петъчни молитви в джамиите, лекции, проповеди, срещи в кафенетата". Чрез кои конкретно посочени действия на подсъдимия е направен


pation in an organization preaching antide mocratic ideology (the Salafi movement within Islam) . The first and second instance courts on the case, the Pazardzhik District Court (PDC), and the Plovdiv Court of Appeal (PCA) respectively, convicted the defendants. One of them had to


According to the Supreme Court of Cassation (SCC) that reasoning was insufficient. The supreme court judges pointed out that the Salafi movement was not among the ideologies undoubtedly considered as antidemocratic.


ideology alone does not constitute incitement to hatred. Instead, concrete ideas and actions, by which the person has incited to hatred, must be identified and duly supported by evidence.

този извод съдът не е описал в съдебния си акт. Чрез кои доказателства е обоснован този извод - съдът не е дал отговор, нито ги е посочил. Чрез кои религиозни идеи е проповядвана омразата – същор.”

The court of appeal did not state the facts and circumstances, based on which it accepted that the defendant A. had committed the crime under Art. 164, para. 1 of the Criminal Code. It made a judgment that the defendant was "...preaching hatred on religious grounds through speech, expressed in hostility and denial of everything that was not in compliance with to the ideology of Salafism, through the dissemination of religious ideas during Friday prayers at mosques, lectures, sermons, meetings in cafes". Which specifically mentioned actions of the defendant has lead the court to this conclusion is not described in the judicial act. What evidence have justified this conclusion – the court has not given an answer, nor has it indicated them. By which religious ideas the hatred has been preached – [is not indicated] too.”

						serve a prison sentence, two others received suspended sentences and the rest fines.				
	2016	Netherlands / District Court North Holland / Case no. 15-155584-15 (P) ECLI:NL:RBNH:2016:6338	http://deep.link.rechtspraak.nl/uitspraak?id=ECLI%3ANL%3ARBNH%3A2016%3A6338	Religion	District Court North Holland (Rechtbank Noord-Holland)	A Facebook user placed statements on a public Facebook page that were insulting to a group of people because of their religion (in particular Muslims), as evidenced	Making insults on public social media which hurt social groups based on their religion (or race, gender, sexual orientation and disability) is criminal behaviour. Such statements create a social climate which encourages discrimination of religious groups. Therefore, such statements are forbidden under Dutch criminal law.	This verdict makes clear that certain groups of persons are protected by Dutch criminal law against insulting and hurting statements made on social media which are accessible to the general public.	The court decided to convict the suspect to a fine of 300 Euro under article 137c of the Dutch Criminal Code which criminalizes insult on the ground of religion	“Verdachte heeft zich schuldig gemaakt aan het beledigen van een groep mensen wegens hun godsdienst, namelijk moslims, op een openbare Facebookpagina. Deze uitlatingen zijn zeer kwetsend, hetgeen ook blijkt uit enkele reacties die daarop gekomen zijn van andere Facebookgebruikers. Het krenken van anderen vanwege ras, godsdienst of seksuele geaardheid – kortom het wezen van een persoon – is verwerpelijk en past niet binnen een samenleving waarin iedereen zich – ongeacht ras, geaardheid, godsdienst of geloofsovertuiging – veilig moet kunnen voelen en in vrijheid de hem of haar toekomstige burgerrechten moet kunnen genieten hetgeen de noodzaak tekent van het bestrijden van discriminatie op basis van godsdienst. De uitlatingen van verdachte dragen daarentegen bij aan een klimaat waarin de kans op een discriminerende en gewelddadige bejegening van moslims groter wordt. Dit is verdachte kwalijk te nemen, zodat de op te leggen straf verdachte duidelijk dient te maken hoezeer de samenleving zijn uitlatingen veroordeelt en verafschuwt. Tevens dient deze straf ter algemene preventie.”

						ced by the reaction of other Facebook users.				“The accused is guilty of insulting a group of people because of their religion, namely Muslims, on a public Facebook page. His statements are very hurting, as evidenced by some of the reactions that have come to them by other Facebook users. Hurting others because of race, religion or sexual orientation - in short, the essence of a person - is reprehensible and does not fit in a society where everyone - regardless of race, sexual orientation, religion or belief - should be able to feel safe and enjoy his or her civil rights , all of which show the necessity of combating discrimination based on religion. The statements of the suspect, on the other hand, contribute to a climate which increases the likelihood of discrimination and violent abuses of Muslims. The suspect deserves to be held responsible for creating such a climate. The penalty imposed on the criminal suspect should make clear how much society condemns and abhors his statements. The penalty is also intended for general prevention.”
	2016	UN, International Covenant on Civil and Political Rights / No. 2124/2011 / Mohamed Rabbae, A.B.S and N.A. v. The Netherlands	http://juris.ohchr.org/Search/Detailed/2153	Religion, Nationality	International Covenant on Civil and Political Rights	The claimants, Muslims and Moroccan nationals, joined the criminal proceedings as an aggrieved party	The Committee notes the claimants' comments in this respect that their claim is about the lack of an effective prosecution. In this respect, the Committee considers that, for the purpose of admissibility, the claimants have sufficiently substantiated their claims. Regarding the claimants' allegations the	The Committee recalls in this regard that freedom of expression embraces even expression that may be regarded as deeply offensive. Moreover, the free communication of information and ideas about public and political issues between citizens, candidates and	The Committee is of the view that the facts before it do not reveal a breach of any provision of the Covenant.	The Committee notes the authors' comments in this respect that their claim is about the lack of an effective prosecution. In this respect, the Committee considers that, for the purpose of admissibility, the authors have sufficiently substantiated their claims. Regarding the authors' allegations the Committee considers that the authors have not adduced specific arguments in support of their claims under these provisions, distinct from their claims. Accordingly, the Committee considers this part of the communication as insufficiently substantiated and declares it inadmissible.

						and claimed a symbolic compensation of EUR 1 against Geert Wilders, a Member of Parliament and the founder of the extreme right-wing political Party for Freedom. They joined the criminal proceedings as alleged injured parties.	Committee considers that the claimants have not adduced specific arguments in support of their claims under these provisions, distinct from their claims. Accordingly, the Committee considers this part of the communication as insufficiently substantiated and declares it inadmissible.	elected representatives is essential to the promotion and protection of free expression.		
	2016	Poland / I		Relig	!	In the	The Regional Court	The right to	The accused	"Nie jest absolutnie intencją Sądu

		<p>instance: Regional Court in Bialystok / Ref. no. VII K 285/14 / II instance: District Court in Bialystok / Ref. no. VIII Ka 157/16</p>		<p>ion</p>	<p>Instance: Regional Court in Bialystok, II instance: District Court in Bialystok</p>	<p>period of 2009-2011, the accused was posting offensive statements on various Internet websites, inciting hatred towards Chechens and insulting them due to their religion, nationality and migration status (refugees and asylum-seekers).</p>	<p>established that comments of the accused posted on the Internet directly concerned Chechens and that words used by the accused in the public discourse were clearly pejorative and abusive within the meaning of Article 257 of the Criminal Code. The accused aimed at discrediting the Chechen minority as a nation and to demonstrate the superiority of the Polish nation over them. The accused lodged an appeal. However, the District Court upheld the judgement of the I instance court.</p>	<p>freedom of expression is not unlimited.</p>	<p>was sentenced to 3 months of imprisonment. The sentence was suspended for the probation period of 2 years.</p>	<p>Odwoławczego w niniejszej sprawie kwestionowanie bądź odbieranie oskarżonemu (...) prawa do krytyki oraz do wolności wyrażania i głoszenia poglądów (art. 54 Konstytucji RP), tym nie mniej jednak wyrok niniejszy winien być czytelnym i jasnym sygnałem, iż owo fundamentalne prawo obywatela, nie może być uznawane za prawo w żaden sposób i niczym nieograniczone."</p> <p>[English: "It is not an intention of the Court to deprive the accused of (...) the right to criticism and the freedom of expression (Article 54 of the Constitution of the Republic of Poland). However, this verdict must be a clear signal that this fundamental right of a citizen cannot be considered as unrestricted".]</p>
--	--	---	--	------------	--	---	---	--	---	--



2016

United Kingdom / (Court of Appeal) Onu v. Akiwu and another [2014] EWCA Civ 279

<https://www.supremecourt.uk/cases/docs/uksc-2014-0105-judgment.pdf>

Nationality

United Kingdom Supreme Court

The claimants were Nigerian women who came to the United Kingdom on migrant domestic worker visas to work as domestic servants. They were treated badly by their employers, many of their employment rights were denied and they were subjected to abuse and

The relevant provision of the Equality Act 2010 prohibits discrimination "because of" a person's race, which included a person's nationality.

The court first looked at whether the discrimination had been "because of" the immigration status of the claimants. The court accepted that the immigration status of the claimants was not in itself the primary reason for their mistreatment: the respondents were not hostile to, or prejudice against, holders of domestic worker visas as such. Instead, the claimants' vulnerability deriving from their immigration status afforded an opportunity for the respondents to mistreat them for other reasons. As such, the claimants' immigration status significantly influenced the respondents' mental processes which was


The key issue was whether discrimination against an employee because he or she is a vulnerable migrant worker constituted either direct or indirect racial discrimination.

The court held that it was not.

The consequence of the case is that vulnerable migrant workers who are mistreated because of their status as a vulnerable migrant cannot bring claims of race-based discrimination.

As the appellants lost, there were no sanctions. The Supreme Court failed the appeals.

Supreme Court held that "neither appellant has suffered race discrimination because the reason for their abuse by the respondents was not nationality but their vulnerability as a particular kind of migrant worker". Court of Appeal: "It is now well-established that discrimination on a particular ground will only be treated as discrimination on the grounds of a protected characteristic if that ground and the protected characteristic exactly correspond. (...) There is no such exact correspondence in the present case." [Lord Justice Underhill, paras 49-50]


						<p>exploitation. They brought proceedings in the Employment Tribunal for, among others, racial discrimination, harassment and victimisation.</p> <p>sufficient to find that the mistreatment was "because of" their immigration status.</p> <p>The court then looked at whether discrimination because of "immigration status" was a form of discrimination because of "nationality". The court held that immigration status was not synonymous with "nationality", and that the mistreatment had not, therefore, been because of their nationality. The court therefore rejected the appeals.</p>			
	2016	United Kingdom / Joint appeals of Taiwo (Appellant) v. Olaigbe and another (Respondents) and Onu (Appellant) v. Akwiwu and another (Respondents) [2016] UKSC 31	http://www.bailii.org/uk/cases/UKSC/2016/31.html	Nationality, Race	United Kingdom Supreme Court	<p>The two appellants, Ms Taiwo and Ms Omu, are both Nigerian nationals who came to work in the UK on</p> <p>Under the Equality Act 2010, race as a protected characteristic includes nationality. The appellants argued that their claim fell within the remit of the Equality Act as immigration status is a function of nationality and that immigration status and nationality are unable to be dissociated. They further argued that in other contexts, such as the definition of "racial</p>	Whether discrimination on the basis of immigration status amounts to discrimination on grounds of race, which includes nationality, under the Equality Act 2010.	The appeals were dismissed and the Supreme Court held that neither appellant suffered race discrimination. The Court held that the reason for the abuse of the appellants by the respondents was not because of their nationality but rather their vulnerability	"No doubt, if these employers had employed British nationals to work for them in their homes, they would not have treated them so badly. They would probably not have been given the opportunity to do so. But equally, if they had employed non-British nationals who had the right to live and work here, they would not have treated them so badly. The reason why these employees were treated so badly was their particular vulnerability arising, at least in part, from their particular immigration status. As Mr Rahman pointed out, on behalf of Mr and Mrs Akwiwu, it had nothing to do with the fact that they were Nigerians. The employers too were non-nationals, but they were not vulnerable in the same way." At paragraph 26.


domestic work visas. They were both forced to work excessive hours and severely mistreated by their employers, including being starved and physically and mentally abused. Both appellants claimed to have been discriminated against owing to their immigration

group" for the purposes of racially aggravated offences, a more flexible approach to the concept of nationality had been taken.

owing to their particular status as migrant workers.

In concluding her Judgment Lady Hale highlighted that the current law can only redress some of the harms suffered by the appellants despite the fact that they deserve remedies for all the grievous harm suffered.

						status.				
	2016	Poland / I instance: District Court in Legnica / Ref. no. III K 88/16 and II instance: Appellate Court in Wrocław / Ref. no. II Aka 131/17		Race	I instance: District Court in Legnica, II instance: Appellate Court in Wrocław	On August 2 2016, in the premises of an oriental restaurant, two Polish citizens used physical violence and insulted two Pakistani nationals. The attack was motivated by the victims' nationality and race. Perpetrators threw a glass bottle at their victim	The Regional Court established that the attack was motivated by the race and nationality of victims. Therefore, the Court sentenced one of the accused for one year and 6 months of imprisonment and another one for 6 months. The defender of the accused lodge an appeal. He demanded to reduce the penalty. The Appellate Court upheld the decision of the Regional Court. The Court indicated that the hate crime is extremely threatening phenomena and the number of such offences in Poland is growing therefore the Courts shall severely punish the perpetrators.	-	The Court sentenced one of the accused for one year and 6 months of imprisonment and another one for 6 months.	"Polska jest także stroną szeregu aktów prawa międzynarodowego, odnoszących się do walki z dyskryminacją (...). Troska społeczności międzynarodowej stanowi jedną z ważnych przesłanek uznania społecznej szkodliwości przestępstw dyskryminacyjnych w warunkach państwa demokratycznego. Po wtóre, zjawiska dyskryminacyjne są niezwykle groźne społecznie, o czym świadczy narastająca liczba przestępstw na tym tle na terenie naszego kraju." [English: "Poland is a party to a number of international instruments combating discrimination (...). The concern of the international community is one of the important reasons for recognizing the social harm of hate crimes. Moreover, discrimination is extremely threatening to the society, as the number of such offences is constantly growing in our country."]



						s and hit them in their heads and bodies. They were using insulting words, referring to the colour of their skin and foreign nationality. They were demanding that their victims went back to their country.				
	2016	German / Local Court Duisburg / 81 Ds 78/16	http://www.justiz.nrw.de/nrwe/la/ags/duisburg/j2016/81_Ds_78_16_Urteil_20160610.html	Nationality	Local Court (Amtsgericht)	The defendant published untrue claims that refugees had	The assertions published by the defendant may disturb public peace and incite hate against parts of the population, in this case against refugees. His assertions have been consciously	Sedition; difference of freedom of speech, untrue assertion of alleged facts, and sedition for hate against parts of the population endangering	Sentence to nine months prison, confiscation of the laptop. Sentence suspended.	"Also considering the general context, his untrue assertion of facts intends not to contribute to the opinion formation protected by the constitution, but intends to propagate untrue facts for slurring refugees living in Germany and for inciting hate against refugees." GER: "Es handelt sich daher auch unter der Berücksichtigung des Gesamtkontextes lediglich um eine

kidnap
ped
and
raped
five
Germ
an
girls
betwe
en the
ages
of
eight
to ten
on his
intern
et
blog.
He
further
publis
hed
the
untrue
assert
ion
that
the
school
author
ity of
Northr
hine-
Westp
halia
publis
hed
an
official
warnin
g
relate
d to
the
case.

made for this
purpose, and he
was fully aware that
they were untrue.
This constitutes
sedition according
to §130 Abs. 1
Criminal Law.

public peace.

unwahre Tatsachenbehauptung, die
nicht zu einer verfassungsrechtlich
gewährleisteten Meinungsbildung
beitragen kann und soll, sondern die
einzig dazu dient falsche Tatsachen als
wahre Fakten darzustellen, um die in
Deutschland lebenden Flüchtlinge
verächtlich zu machen und zum Hass
gegen diese aufzustacheln."

	2016	Czech Republic / Supreme Administrative Court / 11 Kss 6/2015 - 53 / Decision of the Disciplinary Chamber	http://nssoud.cz/files/SOUDNI_VYKON/2015/000611_Kss_1500_053A_prev.edeno.pdf	Religion	Supreme Administrative Court	A judge was officially reprimanded by the Disciplinary Chamber for publishing several sarcastic and offensive articles on the migration crisis and about migrants, Muslims and humanitarian workers.	The Disciplinary Chamber argued that the freedom of speech of judges is limited by their duty to uphold the dignity of the office of a judge. A judge has to abstain from any activity that diminishes the dignity of the office and the public's trust in the independence of judges. A judge may present his/her opinions publicly, but in a moderate way that does not give the impression that he/she may be biased in decision-making.	A judge may present his/her opinions publicly, but in a moderate way that does not give the impression that he/she may be biased in decision-making.	The judge was officially reprimanded.	Soudci je nicméně zapovězeno vyjadřovat veřejnou podporu konkrétnímu politickému subjektu či programu, případně podporovat či šířit myšlenky, které jsou v rozporu s principy demokratické společnosti. Korektivem jeho počínání musí být hranice, za níž by mohl vyvolat dojem, že jím prezentované názory by mohly mít vliv na výkon jeho soudcovské funkce. TRANSLATION: A judge must not publicly support a political subject or a programme or support or spread ideas that are not in compliance with democratic principles. He / she must not cross the line beyond which his / her activities would create the impression that the opinions expressed could influence his/her performance of the judicial duty.
	2016	Belgium / Tribunal of First Instance of Brussels	http://unia.be/files/Documenten/Rechtspraak/2016_05_31_Corr_Bruxelles.pdf	Nationality	Tribunal of First Instance of Brussels (Trib	In 2016, the Tribunal of Brussels convicted	The Tribunal said that asking why a person is still in Belgium, is merely an insult; it does not constitute incitement to hatred, violence or	Incitement to discrimination, hatred or violence requires that the author encourages, exhorts or	The accused is given a suspended six month prison sentence.	"The content of the comment itself is sufficient to consider that it is inciting others to become violent towards the plaintiff and that this was the intention of the accused." 'Le contenu même du commentaire suffit à considérer qu'il était de nature à


Unal
de
première
instance
de
Bruxelles)

ed a person for incitement to hatred and violence based on the victim's nationality. The accused had posted public messages on Facebook containing racist insults towards the Turkish victim and her son and calling for her murder. The Tribunal considered that

discrimination. Considering that nationality is a protected ground and that asking why a person has not yet been put down, is likely to incite others to be violent towards that person, the accused was found to have had the intention to incite readers to violence and hatred towards the plaintiff and her son.

instigates others to adopt a different behaviour towards the victim and with the intention to incite to discrimination, hatred or violence. Without such intention, it would fall under freedom of expression. By posting a message on Facebook asking how has someone not yet been killed, the author shows that he considers that the person should already have been killed, showing his intention of wanting others to kill the person. There is an incitement to violence and the intention is clearly demonstrated.

entraîner autrui à se montrer violent à l'égard de la plaignante et que telle était bien la volonté du prévenu.'


						mere insults do not constitute incitement to hatred ; however, in this case, the call for murderer demonstrated there was an intent to incite violence.				
	2016	Hungary / District Court of Bicske / Decision no. B.162/2014/49	http://ukp.birosag.hu/portal-frontend/stream/birosagKod/0702/hatarozatAzonosito/B.162_2014_49//	Race	District Court of Bicske (Bicskei Járás bíróság)	An African refugee accommodated in the Bicske Open Refugee Camp was waiting at the train station	The Police started a criminal investigation and found the perpetrators. The victim's lawyer argued the defendants' action constituted the crime of violence against a member of the community due to the fact the incident happened close to the open refugee camp in Bicske, and that the yelling clearly indicated a	The Police treated the case as assault and battery, and refused to investigate the racist/xenophobic motive of the defendants while the defendants' clothing and hairstyle suggested they were part of the skinhead movement, and the yelling clearly referred	The Court found the racist/xenophobic motive of the defendants, and found them guilty of assault and battery, and of violence against a member of the community. The Court emphasised that the defendants had rap	Excerpt of the reasoning of the decision: 'Bár a vádlottak tagadták, hogy rasszista, szélsőjobboldali nézeteket vallanának, kisebbséggyűlölő személyek lennének, és azt is, hogy származása miatt bántalmazták a sértettet, a bántalmazásra semmilyen más okuk nem volt.' 'While the defendants denied they had racist and alt-right motivation or that they were skinheads, and they claimed they did not assault the victim due to his race and ethnic origin, the court decided the perpetrators had no other motive to act violently to the victim than the racist motive.'


to catch a train to Budapest in the evening hours. Two Hungarian men approached the victim, and severely injured him while they yelled at him: 'Black man go back to Africa, here it is Hungary, it's not Africa'. The victim started to run back to the refugee camp, while

racist/xenophobic motive.

to the African origin of the victim.

sheets, and they had been punished earlier for hate crimes. The Court stressed the clothing and the hairstyle of the defendants, and the yelling proved the racist/xenophobic motive. The Court sentenced the perpetrators to a two-year long imprisonment, suspended for four years in execution.

						the perpetrators started to chase him, and kicked him and hit him with a stick.				
	2016	Finland / Eastern Finland Court of Appeal / R 16/28, 16/121898 and Finland / District Court of Kymenlaakso, 15/150275, R 15/1907 (20 November 2015)		Ethnic origin	The Eastern Finland Court of Appeal (Itä-Suomen hovioikeus / Östra Finlands hovrätt)	In September 2015, the defendant prepared a petrol bomb and threw it towards an emergency accommodation unit where asylum seekers were staying. The guard and the residence	The defendant was convicted of attempted criminal mischief, not for attempted aggravated criminal mischief, because the court considered that the act was conducive to causing general danger to life or health and not a concrete and probable danger to life and health. An aggravated penalty was applied because the court found that the criminal act had a racist motive and it was to some extent premeditated. (see key issues)	The defendant admitted having prepared and thrown the bomb. However, he contested that there was a racist motive behind the act. He claimed that he only wanted to protest against the current refugee policy of Finland. The defendant had posted an insulting message on his Facebook-page a few days before the criminal act which was presented as evidence in court. Moreover, a witness had heard the defendant say (right after he had thrown the	The defendant was sentenced to one year (unconditional) imprisonment for attempted criminal mischief.	(Kymenlaakson käräjäoikeus:) "[X] on kuitenkin kohdistanut vihansa myös majoitusyksikköön ja siellä oleskeleviin turvapaikanhakijoihin. Rassistista motiivia tukevat [X]n kirjoitukset omalla facebook-sivullaan muutamia päiviä ennen ryhtymistään tekoon." (The District Court of Kymenlaakso:) "[X] has nevertheless directed his anger also at the accommodation unit and asylum seekers that are staying there. The racist motive is backed up by [X]'s writings on his own Facebook-page a few days before committing the criminal act."

					nts of the unit managed to extinguish the bomb. Another similar bomb was later found at the defendant's apartment. The District Court of Kymenlaakso convicted the defendant of attempt of criminal mischief on 20 November 2015.		bomb) that he objects to the immigration policy and wants everybody away from here and wants to kill them. The defendant used an insulting term when referring to asylum seekers. The district court concluded that the defendant's behaviour and writings indicate that there was at least a partial racist motive behind the crime. The Eastern Finland Court of Appeal accepted the statement of reasons of the district court and did not change the outcome of the district court's judgement.			
	2016	Denmark / Eastern High Court / U.2016.3158Ø		Religion	Eastern High Court	The Higher Court acquitted a	The Higher Court stated that an ideology is not protected under the Danish criminal	This was the first case where the higher court made it clear that there is a	Lower court: 4 daily penalties of 400 DKK or 4 days of	Danish: "Efter ordlyden af udtalelsen, der indeholder ordene »ideologien Islam« og »Islamister«, finder landsretten i overensstemmelse med tiltaltes forklaring, at udtalelsen var rettet

man of incitement to hatred (hate speech). The defendant had an open Facebook profile and compared the ideology of Islam with Nazism and wrote that the migration of Islamists was destructive for the Danish society. The Higher Court did not find that the ideolo

code in contrast to a religion.


difference between the ideology of Islam and the religion itself.


prison

Higher court:
Acquitted

mod islamisk ideologi og islamister. Da beskyttelsen i straffelovens § 266 b, stk. 1, efter ordlyden og bestemmelsens forarbejder ikke omfatter forhånelser mv. af en gruppe af personer på grund af deres ideologi, frifindes tiltalte for den rejste tiltale."

English: After the wording of the statement that contains the words "the ideology Islam" and "Islamists" the Higher Court finds in accordance with the accused's testimony, that the statement was targeting Islamic ideology and Islamists. After the wording and the legislative history the Danish criminal code does not protect hate speech towards a group of persons because of their ideology. Therefore the accused must be acquitted.

						gy of Islam was protected as such by the Danish Criminal Code and therefore acquitted him. The lower court had found him guilty.				
* 	2016	Malta / Court of Magistrates as a Court of Criminal Judicature v. Vincent Debono 1/2016	http://www.justiceservices.gov.mt/courtservices/Judgements/cript_get_judgment_document.aspx?CaseJudgmentID=100559	Ethnic origin	Court of Magistrates as a Court of Criminal Judicature	In October 2015, a prison warden and former police man, Vincent Debono, posted the comment 'I hope it's burning with them	The Court held that the accused's comment clearly went beyond the limits of what was enshrined in freedom of expression, as it was an expression aimed at causing damage, dejection, vexation or offence to others. However, the defence pointed out that Maltese law defines racial hatred as an act that is carried out against a person or a group of persons in Malta. Therefore, the accused could not be found guilty of racial hatred	Under Maltese law, racial hatred is defined as an act that is carried out against a person or persons in Malta. The Court suggested that the legislator should amend the current law to also include persons who are not present in Malta where the person expressing the hatred is, at least, in Malta.	The accused was found guilty of misuse of electronic equipment and fined 5,000 EUR. He was acquitted of the charge of inciting racial hatred on the grounds that the relevant legal provision was only applicable if the crime was carried out against persons present in Malta.	Huwa ċar li l-intenzjoni tal-Leġislatur kienet, u stante li t-tifsira ta' "vjolenza jew mibgheda" tinkludi r-referenza lejn "persuna jew grupp ta' persuni f'Malta" u b'hekk dan ir-reat jista' jiġi meqjus integrat biss jekk issir riferenza għal vjolenza jew mibgheda kontra persuna jew grupp ta' persuni li jkunu jinsabu f'Malta. (EN) It is clear that the intention of the legislator, when defining 'violence or hatred' includes a reference to 'persons or groups of persons in Malta', therefore this offence can only be considered to be complete if it is committed against a person or a group of persons that are present in Malta.

						inside' , below an article being share d on Faceb ook entitle d '3rd refuge e centre torche d in Swed en in 6 days'. The article report ed that a string of suspe cted arson attack s had hit three faciliti es intend ed to house asylu m seeke rs in Swed en.	because his comment was clearly directed against persons in Sweden.			
	2016	Belgium / Tribunal of First	http://unia.be/files/Documenten/	Race	Tribu nal of First	In 2016, the	The Tribunal found a violation of the law of 30 July 1981	/	The accused was condemned to	"Article 444 of the Criminal Code set the conditions for incitement to hatred or violence against a person, in this case

Instance of Gent

[Rechtspraak/2016_04_19_Corr_Gand.pdf](#)

Instance of Gent (Rechtbank van Eerste Aanleg te Gent)


Tribunal of Gent convicted a person for incitement to hatred. After fighting with a Somali man, the accused shouted various racist insults such as "dirty black" and "go back to your country" while the Somali man was describing his account of the event

on racism and xenophobia and held that the conditions of incitement to hatred or violence in Article 444 of the Criminal Code were met in this case when the accused shouted at the victim in public - in the presence of a police officer and bystanders - with the intention to harm the victim. Also, the accused did not dispute the facts and the incitement to hatred against the victim based on the latter's origin or skin colour was clearly established in the police findings.

four months of prison plus an additional fine and contributions to the Fund for assistance to the Victims of intentional acts of violence.

H.K, based on one of protected criteria here being the race, the colour of the skin and the origin, and even beyond the domain of Article 5 (Article 20-2), in this case in public, in the presence of the verbalising police officer and various passers-by, shouting 'dirty black - return to your country - it's those blacks again', with the clear intention to set the passers-by against the victim."

'In een van de in art 444 van het strafwetboek bedoelde omstandigheden te hebben aangezet tot haat of geweld jegens een persoon, namelijk jegens H. K., wegens een van de beschermde criteria zijnde een zogenaamd ras, huidskleur en afkomst, en dit zelfs buiten de in artikel 5 bedoelde domeinen (artikel 20-2)", Namelijk door in het openbaar, in aanwezigheid van de verbalisanten en verschillende omstaanders 'vuile zwarte - ga terug naar uw land - 't is weer diene zwarten' te roepen, duidelijk met de bedoeling om de omstaanders op te jatten tegen het slachtoffer.'

						to a police man. The tribunal considered that the accused clearly had the intent to incite bystanders to violence and hatred towards the victim.				
	2016	Sweden / Scania and Blekinge Court of Appeal / Case number T 1157-15		Religion	Scania and Blekinge Court of Appeal (Hovrätten över Skåne och Blekinge)	A health care provider was found guilty of discrimination on the ground of religion after an incident where a	The Court of Appeal of Skåne and Blekinge found discrepancies in the statements of the Muslim patient and her friend that accompanied her. For example, the Court mentioned that while the plaintiff stated that she did not speak when she was in the examination room; her friend stated that the plaintiff said "hi". Furthermore, the Court questioned the reliability of the	The key issue concerned to what extent discriminated parties have to prove that it is likely that another person or company has discriminated against them, when one person's word stands against another's. The differences between the rulings of the District Court and the Court of Appeal show	The Court of Appeal changed the verdict of the District Court and dismissed the Ombudsman's action. The Court released the health care company from the obligation to reimburse the Discrimination Ombudsman for the costs of the processing in the District Court. Instead,	I 6 kap. 3 § diskrimineringslagen finns en bestämmelse om bevisbördan i diskrimineringsmål. Bestämmelsen innebär att den som anser sig ha blivit diskriminerad ska visa omständigheter som ger anledning att anta att han eller hon har blivit diskriminerad. Därefter går bevisbördan över till den som påstås ha diskriminerats, som då har att visa att diskriminering inte har förekommit. Avsikten är att den som anser sig ha blivit diskriminerad ska åtnjuta bevislättnad. Chapter 6, Section 3 of the Discrimination Act contains a provision on the burden of proof in discrimination cases. The provision stipulates that the person who considers him-/herself discriminated against must show circumstances that give grounds for

doctor did not examine a Muslim woman when she did not shake his hand because of her faith. The Discrimination Ombudsman (Diskrimineringsombudsmannen) sued the employer of the doctor, a health care company, for discrimination on the grounds of religio

interpreter's witness statement since the sequence of events was of short duration. The Court stated that the interpreter most likely had been primarily focused on the interpretation. According to the ruling of the Court, the Discrimination Ombudsman had not been able to show that the doctor had indeed discriminated the plaintiff, that is, the Ombudsman had not been able to convince the Court of the probability of the alleged crime. The charges against the health company were dismissed.

that the same case material can be interpreted so differently that the first instance finds that the plaintiff had been discriminated on the grounds of her religion, while the second level finds minor discrepancies in the statements supporting the claim of the injured party sufficient to consider that it has not been proven that the incident was a case of discrimination. The legal counsel of the Discrimination Ombudsman commented that the ruling showed the difficulty to bring a discrimination case before the court when the only evidences are the statements of the parties and the witnesses.


the Discrimination Ombudsman was obligated to reimburse the health care company for its costs for the processing in the District Court with 335,243.50 SEK (35,047 Euro) and another 75,000 SEK (7,841 Euro) for its costs for the processing in the Court of Appeal.

believing that he or she discriminated. Thereafter, the burden of proof moves to the allegedly discriminating person, who has to show that the discrimination did not occur. The intention is that the person who considers him-/herself discriminated against should not bear the burden of proof.



Sammantaget anser hovrätten att Diskrimineringsombudsmannen inte har visat omständigheter som ger anledning att anta att Z.B. blivit diskriminerad på det sätt som påstås.

In summary, the Court of Appeal finds that the Discrimination Ombudsman has not shown any circumstances that give the court reason to assume that Z.B. have been discriminated in the manner stated.

Sweden, Scania and Blekinge Court of Appeal (Hovrätten över Skåne och Blekinge), case number T 1157-15. The case is not available online but can be requested from the court in question using the case number.

						n.				
	2016	Slovakia, Regional Court in Bratislava Šamko, P. (2016), 'Prime Minister, Freedom of Speech and a Compact Muslim Community' (Predseda vlády, sloboda prejavu a ucelená moslimská komunita), Právne listy	http://www.pravnelisty.sk/rozhodnutia/a452-predseda-vlady-sloboda-prejavu-a-ucelena-moslimska-komunita	Religion	Regional Court in Bratislava	The complainant in the criminal complaint brought to the Prosecutor's Office argued that the Slovak Prime Minister committed a crime of public defamation; incitement to hatred and intimidation. The complaint referred to public statements of the PM calling	The Regional Prosecutor refused the criminal complaint for the lack of grounds to initiate prosecution. The Prosecutor's reasoned by assessment of the context of the whole PM's speech (migration crisis and terrorist attacks) and assessing the limits of freedom of speech. The Prosecutor concluded that even if the speech might be perceived as degrading to some, it is still within the limits of freedom of expression (as also according to jurisprudence of the ECtHR or Federal Constitutional Court of Germany)	Freedom of expression - even if the PM's speech might be seen as degrading to some people, it is still within the limits of freedom of expression.	No sanctions. The initiation of prosecution has been refused.	"Freedom of speech is thus protected independently of whether the statement is rational or emotional, justified or unreasonable, or whether it is considered by others to be useful or harmful, valuable or worthless. Constitutional protection is not limited to only valuable opinions, or views that are politically correct, or eventually shared by the majority of the population or the majority in the media space." "Sloboda prejavu je teda chránená nezávisle na tom, či je vyjadrenie racionálne alebo emotívne, odôvodnené alebo bezdôvodné, respektíve, či je ostatnými prijímané ako užitočné alebo škodlivé, hodnotné alebo bezcenné. Ústavná ochrana sa neobmedzuje iba na cenné názory, respektíve iba na názory, ktoré sú politicky korektné, prípadne, ktoré zdieľa väčšina obyvateľstva alebo väčšinová časť mediálneho priestoru." (Slovakia, Šamko, P. (2016), 'Predseda vlády, sloboda prejavu a ucelená moslimská komunita', Právne listy, 06 April 2016, p. 3, available at http://www.pravnelisty.sk/rozhodnutia/a452-predseda-vlady-sloboda-prejav...

						for preventing the formation of a "compact Muslim community" and stating "we do not want our women to be harassed in public space". The Regional Prosecutor refused the criminal complaint.				
--	--	--	--	--	--	---	--	--	--	--

	2016	Finland / District Court of Keski-Suomi / R 15/3178		Ethnic origin	The District Court of Keski-Suomi (Keski-Suomen käräjäoikeus / Mellersta Finlands tingsrätt)	A couple (A+B) made a video in which B incites their child to violence using a toy monkey which he refers to as a refugee. The video was uploaded to the couple's public Facebook pages and to an anti-refugee website.	The court concluded that it is not plausible that in the video the child would only have been taught how to defend her/himself against attackers in general as was claimed by the defence. The video was published on an anti-refugee website called "Keep Finland clean" that had been set up by B. The court concluded that the publishing of the video on this website indicates that the purpose of the act was to threaten, defame and insult refugees as a group of people on the basis of their race, skin colour, birth status, national or ethnic origin and their refugee status.	The court concluded that since the video was published on an anti-refugee website that has been set up by B it is not plausible that the purpose of the video was only to teach how to defend against attackers in general as was claimed by the defence.	The couple (A+B) was convicted of incitement to hatred (ethnic agitation). A was sentenced to pay a fine of 240 euros (40 day fines) and B 300 euros (50 day fines). Moreover, the tablet computer used in the crime was confiscated.	<p>Videon julkaiseminen mm. vastaaja(n) [...] perustamalla ja ylläpitämällä pakolaisvastaisella Pidä Suomi puhtaana -sivustolla osoittaa, että menettelyn tarkoituksena on ollut nimenomaan uhata, panetella ja solvata pakolaisten muodostamaa ihmisryhmää näiden rodun, ihonvärin, syntyperän, kansallisen tai etnisen alkuperän sekä pakolaisaseman vuoksi."</p> <p>"The publishing of the video on an anti-refugee website "Keep Finland clean" set up and maintained by the defendant [...] indicates that the purpose of the act was specifically to threaten, defame and insult refugees as a group of people on grounds of their race, skin colour, birth status, national or ethnic origin and their refugee status."</p>
	2016	France / Court of cassation / Decision	http://www.legifrance.gouv.fr/affichJuriJudi	Nationality	Court of cassation	On 30 March 2014, in	The Court of Appeal found that the expression "Turkish filth" was	Elements constituting non-public insult on	The Court of cassation upheld the ruling of the	La Cour d'appel a retenu que l'expression " saloperie de turc " présentait le caractère d'une injure à raison de l'origine. Les juges du

No. 15-83619
ECLI:FR:CASS:2017:CR00492

[do?](#)
[oldAction=rechJuriJudi&idTexte=JURITEX T000032413071&fastRegId=895596172&fastPos=9](#)

(Cour de cassation)


Montbéliard, at the end of the second round of the local elections, at a private evening which took place at the headquarters of the socialist party in the presence of about fifty people, Mr. X., lead candidate and outgoing mayor, who was not re-elected, on several occasions

an insult on grounds of origin and set aside the excuse of provocation claimed by the accused. The Court of Appeal found that there was neither proportionality, neither proximity, nor correlation between the supposed provocation and the accused's verbal response, which was repeated, excessive and inappropriate, and that the accused did not provide direct or indirect evidence of provocation emanating from Mr. Z.

grounds of origin. Conditions to apply the excuse of provocation.

Court of Appeal which sentenced the accused to a €500 fine for non-public racial slandering.

second degré, pour écarter l'excuse de provocation invoquée par le prévenu ... relèvent qu'il n'y a ni proportionnalité, ni proximité, ni corrélation entre la provocation hypothétique invoquée et la riposte verbale, réitérée, excessive et déplacée reprochée au prévenu, et que celui-ci n'apporte pas la preuve d'une provocation directe ou indirecte émanant de M. Z.
It follows that after having held that the expression "Turkish filth" was an insult on the grounds of origin, the judges of the second degree, in order to set aside the excuse of provocation claimed by the accused ... find that there is neither proportionality, neither proximity, nor correlation between the supposed provocation and the accused's verbal response, which was repeated, excessive and inappropriate, and that the accused does not provide direct or indirect evidence of provocation emanating from Mr. Z...

						<p>ons called Mr. Ulker Z., one of his opponents, as "Turkish filth". Due to these comments the latter took Mr. X. before the police court on the grounds of non-public racial insult.</p>				
	2016	<p>Netherlands / Supreme Court / Case no. 15/00599 ECLI:NL:HR:2016:510</p>	<p>http://deep.link.rechtspraak.nl/uitspraak?id=ECLI%3A3ANL%3A3A2016%3A510</p>	Race	<p>Supreme Court (Hoge Raad)</p>	<p>During a demonstration in Enschede on 28 May 2011, a member of the extreme-right party</p>	<p>Making a public statement like "Ali B. en Mustapha, ga toch terug naar Ankara" [Ali B. and Mustapha, move to Ankara], in context with a statement like "Vandaag demonstreren we tegen de multiculturele terreur en voor een totale immigratiestop". [today we demonstrate</p>	<p>The Supreme Court clarified in its decision that making a statement like "Ali B. en Mustapha, ga toch terug naar Ankara" [Ali B. and Mustapha, move to Ankara], in context with a statement like "Vandaag demonstreren we tegen de</p>	<p>Political actors are not allowed under Dutch criminal law to make discriminatory or insulting statements about racial or ethnic groups. Statements insulting racial groups or inciting to discrimination of racial groups are</p>	<p>"Het Hof heeft geoordeeld dat deze uitlating van de verdachte, waarbij het kennelijk - en terecht - ook de context van het geval mede van betekenis heeft geacht, het aanzetten tot discriminatie oplevert. Dat oordeel geeft niet blijk van een onjuiste rechtsopvatting en is evenmin onbegrijpelijk, mede in aanmerking genomen de hiervoor onder 2.3 weergegeven overweging van het Hof dat met de uitlating tot uitdrukking is gebracht dat personen van niet-Nederlandse afkomst niet welkom zijn in Nederland. De bewezenverklaring is dan ook naar de eis der wet met redenen omkleed." The Court of Appeal has judged that this</p>


Dutch Peoples-Union (Nederlandsche Volksunie) shouted in public: "Ali B. en Mustapha, ga toch terug naar Ankara" [Ali B. and Mustapha, move back to Ankara]. He also said by megaphone: "Vandaag demonstreren we tegen de multiculturele terreur en voor een

against the multicultural terror and for a total immigration stop"] constitutes a criminal offence under Dutch criminal law.

multiculturele terreur en voor een totale immigratiestop". ["today we demonstrate against the multicultural terror and for a total immigration stop"] constitutes incitement to discrimination on the ground of race and incitement to hatred on the ground of race that amount to criminal offence under Article 137d of the Dutch Criminal Code and insult on the ground of race criminalised by Article 137c of the Dutch Criminal Code.

criminal under respectively article 137c of the Dutch criminal code and 137d of the Dutch Criminal Code. These articles do not only protect persons against discrimination because of their racial or ethnic background, but also because of their gender, sexual orientation, disability, and religion.

statement of the suspect, the judgement of which was informed, justifiable, by the context of the statement, constitutes incitement to discrimination. This judgement does not entail any incorrect view of law and is not incomprehensible, taking into account the consideration of the Court under point 2.3 that the statement expresses the view that persons of non-Dutch origins are not welcome in the Netherlands."The Netherlands, Supreme Court (Hoge Raad) (2016), Case No. 15/00599, ECLI:NL:HR:2016:510, 29 March 2016

						totale immigratiestop". ["today we demonstrate against the multicultural terror and for a total immigration stop"].				
	2015	Denmark / District Court of Svendborg	https://vidensbasen.aanklagemyndigheden.dk/api/portals(6e302527-f0b3-4a5e-889a-668aa67e5491)/Print/h/6dfa19d8-18cc-47d6-b4c4-3bd07bc15ec0/VB/0adc60f2-504d-4270-bd8c-2e41e4f3aee0	Religion	District Court of Svendborg	The District Court of Svendborg found the defendant guilty of incitement to violence (hate speech). The defendant had participated in a debat	The District Court argued that the defendant's statements targeted citizens with a Muslim background. The court found the fact that the statements were intended to reach a broader audience to be an aggravating circumstance.	No key issues can be drawn on the basis of this particular case.	5 daily penalties of 500 DKK	Danish: "Retten fandt, at udtalelsen var en trussel mod mennesker med muslimsk baggrund. Retten lagde ved straffastsættelsen i skærpende retning vægt på, at T's udtalelser kom ud til en vid kreds af mennesker. I formildende retning lagde retten vægt på, at T selv trak udtalelsen tilbage indenfor 1-2 timer" English: "The Court found that the statement was a threat towards persons with a Muslim background. When assessing the case the court took into consideration on the one hand that the statements reached a broad audience and on the other hand the accused deleted the statement within 1 or 2 hours."

					<p>e on the Facebook page of a group that was against mosques in Denmark, writing : "Jubiiii i death on all Muslims". The defendant was accused of violating the law by making a statement that threatens, degrades or demeans a group of persons.</p>					
	2016	Netherlands / Court	http://deep link rechts	Religion	Court of	In a	The Court	A statement	Statements	"Ten slotte dient onder ogen te worden

us / Court
of Appeal
Amsterda
m / Case
no. 23-
003966-
13
ECLI:NL:G
HAMS:201
6:828

<http://deemlink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHAMS:2016:3A2016%3A828>

of
Appeal
Amsterda
m
(Gerechtsh
of
Amsterda
m)


documentary about the Dutch politician Geert Wilders a man, presented as a follower of Geert Wilders, spoke about Arabs as “fervent assassiners” (fervent bonkers), who also “fuck young boys”. According to him this is “normal in their culture”. The Court of


considered that the statements made by the accused were unmistakably insulting. The Court also considered, on the other hand, that the statements of the accused were made during a public debate, more specifically during an interview before an anti-Islam demonstration. According to the Court it cannot be said that these kinds of statements serve no useful purpose in public debate. The question was ultimately whether the expressions used were gratuitously offensive. If so, the context of the public debate overrides the insulting character of the statements. The Court answered that question in the negative, stating that everyone who wants to raise topics of common interest should be free to do so, even if the statements are offensive, shocking or disturbing.

about a group is insulting if it impairs the self-respect or honour of the group, or discredits the group, because it belongs to a particular race, religion or belief. The context is particularly important for the determination of liability under Article 137c Sr. If the statements were made in the context of, for example, a public debate, this can reduce the punishable insulting-character of the statement. However, this is only when the statements are not gratuitously offensive. The Court decided that these statements were not gratuitously offensive. The Court answered that question in the negative, stating that everyone who wants to raise topics of common

which are insulting to a religion are not punishable under Article 137c of the Penal Code if these statements serve a purpose in public debate and are not gratuitously offensive.

gezien of de uitlatingen in dat verband onnodig grievend zijn te noemen. Het hof beantwoordt deze vraag ontkennend. Degene die, zoals hier, in een politieke context zaken aan de orde wenst te stellen die in zijn ogen van algemeen belang zijn, dient daartoe daadwerkelijk in staat te zijn, ook als zijn uitlatingen kunnen kwetsen, choqueren of verontrusten. Het gaat in dit geval weliswaar om niet onderbouwde, door de verdachte veronderstelde feitelijkheden over moslims in het algemeen die hij in onsmakelijke bewoordingen te berde heeft gebracht – en dat dat laatste ook zijn bedoeling was, is onmiskenbaar –, maar het maatschappelijke debat in dezen kenmerkt zich wel vaker door provocerend en onsmakelijk taalgebruik van de deelnemers aan dat debat." "Finally, it has to be considered whether or not the statements of the accused are gratuitously offensive. The court answers this question in the negative. The person who want to address matters he deems of the public interest, should actually be able to do so, even if his statements can hurt, choke or disturb. Even when the statements of the accused lack substance and the accused uses, on purpose, distasteful words, the public debate concerning Islam and Muslims is often characterized by provocative and distasteful language." The Netherlands, Court of Appeal Amsterdam (Gerechtshof Amsterdam) (2016), Case No. 23-003966-13, ECLI:NL:GHAMS:2016:828, 9 March 2016, available at: <http://deemlink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHAMS:2016:828>

						Appeal decided that these statements do not constitute an insult of Muslims on the ground of their religion, under Article 137c of the Dutch Criminal Code.		interest should be free to do so, even if the statements are offensive, shocking or disturbing.		
	2016	Ireland / Court of Appeal / DU 580/14 / The People at the Suit of the Director of Public Prosecutions v. Aaron Shattock	http://www.courts.ie/Judgments.nsf/0/6817D189D7E31CD580257F7300454EAD	Race	IECA, Court of Appeal	This case relates to the conviction of a man for an assault on another man perceived to be a third country nation	The Court noted that mitigation in this case was so extensive that the sentencing judge remarked that the appellant had "perfect mitigation".	There are no key concepts clarified by this case. From the report it cannot be determined if the racist element within the case was considered by the Court when sentencing. The Court of Appeal said very little regarding the racist element, except to observe that the appellant was not the initiator of the racial	The court reduced the original sentence of 3.5 years with the final 18 months suspended to 3.5 years with the final two years suspended.	"Although the court accepts that the appellant did not intend the outcome and was not the initiator of the racial abuse that formed a backdrop to this attack, this was a case that required to be marked by an immediate prison sentence."

					al or migrant following altercation in which the victim and his friend had been tainted with racist language. The assault resulted in the victim sustaining a serious injury to his eye resulting in loss of sight in that eye.		abuse.		
	2015	ECtHR / Application no. 64846/11 / Ebrahimian v. France	http://hudoc.echr.coe.int/eng?i=001-158878	Religion	European Court of Human Rights – Grand	The case concerned the decision not to	The Court considered that the national courts had afforded greater weight to the principle of secularism-	The necessity of protecting the rights and liberties of others – that is, respect for everyone's freedom of	There had been no violation of Article 9 of the Convention.

d
Cha
mber



renew
the
emplo
yment
contra
ct of a
hospit
al
social
worker
becau
se of
her
refusa
l to
stop
wearin
g the
Musli
m veil.

Christi
ane
Ebrahi
mian
was
recruit
ed on
a
fixed-
term
contra
ct
within
the
public
hospit
al
servic
e. The
Direct
or of
Huma
n
Resou
rces
inform
ed the
emplo
yee

neutrality and the
State's interest
than to Ms
Ebrahimian's
interest in not
having the
expression of her
religious beliefs
restricted did not
cause a problem
with regard to the
Convention. The
Court concluded
that the interference
with the exercise of
her freedom to
manifest her
religion had been
necessary in a
democratic society.

religion – had
formed the
basis of the
decision in
question.

						that her contra ct would not be renew ed, on accou nt of her refusa l to remov e her headg ear and followi ng compl aints from patient s.				
--	--	--	--	--	--	---	--	--	--	--

	2016	Spain, National Ombudsman (Defensor del Pueblo) (2016), 2015 National Report (Informe anual 2015), pp.300-301	https://www.defensordelpueblo.es/wp-content/uploads/2016/02/Informe2015.pdf	Race, Nationality, Ethnic origin	National Ombudsman (Defensor del Pueblo)	The report of the Ombudsman reflected that citizens raised concerns about the way a newspaper reported on the Melilla events stirring fear to migrants in what could be a crime of incitement to hatred under article 510 CC.	It was concluded that discrimination and provocation to hatred against foreign nationals for racist reasons, as of art.510 of the Criminal Code, may be taking place. This is in line with a previous Ombudsman recommendation (action nº 15009544) addressed to the Ministry of the Interior on security citizen's protection and Rights of the foreigners within the return (devoluciones en caliente) process .	The case investigated discrimination and incitement to hatred against foreign nationals for racist reasons, as of art.510 of the Criminal Code, regarding the attempts of irregular entry of immigrants in the Melilla fence. the Ombudsman questioned the legality and constitutionality of the special regime applicable in Ceuta and Melilla at the moment of the foreigners return (devolución) process and the protection of the immigrants' rights, asking for a regulatory development of the special regime for Ceuta and Melilla (action nº 15009544) and for stopping the illegal expulsions.	The Ombudsman reported on the case as completed after submission of recommendations to the public authority. The Melilla Area Public Prosecutor reported that pre procedural proceedings had not been initiated. Informations published in the 2015 Spanish Ombudsman National Report (Informe anual 2015 Defensor del Pueblo), pp.301	(La Fiscalía de Área de Melilla informó de que no se habían incoado diligencias preprocesales y el Defensor del Pueblo concluyó sus actuaciones) "The Melilla Area Public Prosecutor reported that pre procedural proceedings had not been initiated and the Ombudsman concluded its actions"
	2016	Slovakia / District	https://obc.gov.sk	Ethnic	District	The	The Court case	N/A	By publishing	N/a

District
Court
Žilina /
29T/71/20
15

[an.justice.
sk/infosud
/-
/infosud/i-
detail/rozh
odnutie/3c
2f3ffb-
25db-
49a3-
a536-
f204f3a55
0ef%3A0fc
69a39-
8c33-
4c73-9f58-
0203b7ec
657f](#)

c
origi
n,
Relig
ion,
Race
,
Natio
nality


ct
Court
Žilina
(Okre
sný
súd
Žilina
)


defen
dant
made
a
public
adverti
seme
nt in
2015
offerin
g a job
stating
-
"shoot
ing of
immig
rants
in the
accom
modat
ion
facility
for 25
Eur/pe
rson".
In
additio
n, he
publis
hed a
video
on his
social
media
profile
voicin
g
hateful
speec
h
again
st
migra
nts,
specifi
cally
Musli
ms
and

concerns the
approval of a plea
bargain (including
waiver of defendant
's right to a public
trial) between the
prosecutor and the
defendant in its
wording - the
accused pleaded
guilty of incitement
to limitations of
rights and
freedoms of a
particular nation
and nationality and
pleaded guilty of
public defamation
of a religious group
and making of an
extremist material.

the
advertisement
inciting to
killing of
migrants, the
accused was
found guilty of
incitement to
limitation of
rights and
freedoms of a
particular
nation and
nationality and
committed so
publicly (as to
Art. 424/1 and
424/3/b of the
Criminal
Code). By
publishing the
video file. the
accused was
found guilty of
public
defamation of
a religious
group, making
of an extremist
material and
disseminating
it publicly (as to
Art. 423/1/b, Art.
422a/1, Art.
422b/1, Art.
422b/2/b of the
Criminal
Code). The
court
condemned
him to 3 years
of prison, with
a conditional
sentence.

Note: Since the
defendant
violated the
conditions of
his probation,

						people of migrant origin (including Syrians and Libyans).			he was sent to prison in March 2016.	
	2016	United Kingdom / England and Wales High Court / EWHC 464 (Admin) / Henderso n v. Crown Prosecutio n Service	http://www.bailii.org/ew/cases/EWHC/Admin/2016/464.html	Race , Religion	Engl and and Wales High Court	The appell ant had been convicted for three offences of harassment and for three offences of racially aggravated harassment . Both sets of convictions concerned the same victims and arose from the same facts	The question for the court was what the proper course of action should be when a defendant is found guilty of a racially or religiously aggravated offence when they had been charged with an underlying offence arising from the same facts.	Defendants should not be convicted for both underlying offences and aggravated offences that arise from the same set of facts. The underlying offences should be adjourned sine die and the convictions should be based on the aggravating offences. Furthermore plea offers for underlying offences should not be accepted at the expense of aggravating offences.	The court held that, as a matter of principle, where there are two charges which are properly characterised as alternatives there should not be findings of guilt on both charges. Accordingly, in such circumstances a Magistrate should adjourn the trial of the underlying offences sine die. The appellate judge also held that in cases where a defendant is offering a guilty plea to the underlying offences but wishes to contest the aggravated offence, that plea should not be taken.	As a matter of principle where there are two charges which are properly characterised as alternatives (as were the charges in the present case) there should not be findings of guilt on both charges; and it is not open to a Magistrates' Court to make a finding of guilt on an alternative underlying offence having made a finding of guilt on the aggravated offence.


						but the two offences had been characterised as alternatives. Despite having been found guilty of the underlying offences the court imposed no separate penalty for them.			The appeal was therefore allowed and the defendant's convictions for the underlying offences were quashed.	
	2016	Ireland / Court of Appeal / No. 162/15 / The People at the Suit of the Director of Public Prosecutions v. Kris Collins	http://www.courts.ie/Judgments.nsf/0/4AE8189DB42B8D9280257F5D003E4485	Race	IECA, Court of Appeal	This case relates to the previous conviction of a man of Irish descent for a sudden physical assault	In relation to the judge taking account of the fact that the offence may have been racially motivated, it was reported that the judge in the original trial had been prompted to do this by a sentence in the probation report which quotes the appellant as saying "he says he watched two foreign nationals	The issue of anti-migrant bias as an aggravating factor and its subsequent impact on sentencing has been acknowledged as factor for consideration. However, it cannot be determined from the court report if this had an actual	The original conviction resulted in a sentence of eight years imprisonment. In assessing a number of mitigating factors thought to have been improperly taken into account at the original sentencing hearing, the judge reduced	"It is not clear what role, if any, this concern about a possible racist motivation had when it came to the selection of sentence. Undoubtedly it is the case that if an offence is racially motivated that would be regarded as an aggravating factor."

It on a person perceived to be a foreign national. The assault resulted in the victim suffering serious life-threatening head injuries and in need of surgery. This case was an appeal against the severity of a sentence of eight years imprisonment that was imposed on the

cross the road to his girlfriend". By reference to this sentence the judge said that he felt that it was highly probable that the attack had some element of racism to an unspecified degree.

impact on the severity of the sentence.

the sentence from eight years to five years and suspended the final 12 months of the custodial sentence subject to the appellant entering into a bond to keep the peace for a period of two years following his release from custody.

						appellant. The victim was a Kurdish born 24-year-old man, a Muslim, who had recently become an Irish citizen.				
	2016	Greece / Single Member Misdemeanour Court of Rethymno / Decision 2383/2015		Nationality	Misdemeanour Court of Rethymno	The Misdemeanour Court of Rethymno acquitted Professor Richter and put an end to his prosecution for denying, under mining and approving	By adding as element of the crime the condonation, humiliation or denial or “crimes recognized by parliament decisions”, the legislature has exceeded its function, violating the constitutional principle of the legality of criminal offences and attempting to substitute judicial authority. Equally, it has violated the freedom of speech and academic freedom, and also breached the duty to promote mutual and loyal	Constitutional control and interpretation of the law in the light of the rule of law, the principle of separation of powers and the freedom of expression and academic freedom. The provision is unconstitutional in the punishment of the denial of genocides and war crimes “recognized by Parliament”. Clarification of the scope of application and purposes of	The provision of the law that refers to genocide and crimes against humanity “recognized by Parliament” is contrary to the Constitution and European law, thus invalid and inapplicable. The defendant is acquitted of all charges. Richter was the first to be prosecuted under this provision. The case has provoked intense public dialogue in	<p>“.. ο νομοθέτης... δεν θεμελίωσε το αξιόποινο αποκλειστικά σε κανόνα δίκαιου ως όφειλε, αλλά στην αναγνώριση και το νομικό χαρακτηρισμό γεγονότων του παρελθόντος ως εγκλημάτων με νόμο, υποκαθιστώντας έτσι τη δικαστική κρίση... παραβίασε την ελευθερία του λόγου και την ακαδημαϊκή ελευθερία, δοθέντος ότι οι νόμοι που «αναγνωρίζουν» (ή θεσπίζουν) ιστορικά γεγονότα, ακόμη κι αν εκφράζουν την πλειοψηφία, δεν μπορούν σε μια δημοκρατική και πλουραλιστική κοινωνία ...να αποτελούν τη βάση δεσμευτικών κανόνων που να συνεπάγονται νομικές απαγορεύσεις και κυρώσεις... παραβίασε το καθήκον αμοιβαίας και πιστής συνεργασίας της Συνθήκης της ΕΕ., διότι...εξάρτησε το αξιόποινο από «αποφάσεις της Βουλής» το οποίο η ίδια σαφώς απέκλειε.”</p> <p>..... the legislature ...did not base the offense only a legal rule, but in the recognition and legal characterisation of past events as offenses, substituting, in</p>


ing the war crimes committed by Germans in Crete during the Nazi occupation in his book "The Battle of Crete". This was the first case to examine hate speech in light of the Council Framework Decision 2008/913/JHA, of 28 November, on combating certain


cooperation between EU member states, deviating substantially from the provisions and the purposes of Framework Decision 2008/931/JHA which this law transposed in the Greek legal system.

Framework Decision. The phrase "recognised by the Parliament" is beyond the scope of the Framework-Decision, which refers only to the recognition of war crimes by decisions of international or/and national courts.

both mass and social media. The acquittal of the professor was characterised as a victory for the freedom of speech and has reopened the dialogue on the abolishment of the article.

this way, the courts' judgment.... violated the freedom of speech and academic freedom, because even if the laws which "recognize" (or adopt) historical events, represent the will of the majority, they cannot, in a modern democratic and pluralistic society... form the basis of binding legal prohibitions and sanctions.(the legislature) breached the duty of a mutual and loyal cooperation between EU member states, deviating substantially from the provisions and the purposes of the Framework Decision, because..... it based the offense on the "decisions of the Parliament" something the Framework Decision precluded clearly.


						forms and expressions of racism and xenophobia by means of criminal law.				
	2016	Denmark / Eastern High Court / Decision no. U.2016.2066Ø		Religion	Eastern High Court	The Higher Court convicted a well-known Danish politician for incitement to violence (hate speech). The politician wrote the following statement on Twitter: "The Muslims continue	Both the lower and higher courts found that the statements were publicly available as they were published on an open Twitter account. Furthermore, they found that even though the law provides much space for opinions voiced in the context of political debate, these statements were degrading towards a minority and therefore not protected by the right to freedom of expression. Therefore, his statements were not within the limits of the freedom of speech and a part of the political debate.	The defendant was a well-known politician and the judgement was relevant in regard to the balance between a free and open political debate on one hand and the protection of - in this case - a religious minority.	10 daily penalties of 800 DKK	Danish: "Ved udmålingen af straffen må der - ud over udtalelsernes grovhed - lægges vægt på, at tiltalte er en kendt politiker, og at udtalelserne er fremsat via Twitter, hvorefter tiltalte må have indset, at udtalelserne, der var kontroversielle, ville nå bredt ud i offentligheden. English: "When assessing the case, it must be taken into account - besides from the severity of the statements - that the accused is a well-known politician and that the statements were written on Twitter, after which the accused must have realised that the statements, which were controversial, would reach a broad audience."

					where Hitler left. The situation will only change if they get the same treatment as Hitler". The defendant had already been convicted by a lower court.					
	2016	United Kingdom / Attorney General's Reference (Nos 143 and 144 of 2015) EWCA Crim 21		Religion	England and Wales Court of Appeal	Two offenders pleaded guilty to offences of religiously aggravated intentional harassment, alarm or distress	The Attorney General referred to the Court of Appeal that the sentences were unduly lenient sentences. In his opinion, only an immediate custodial sentence would suffice owing to the serious nature of the elements of religious and racial hostility present in the case.	Imprisonment is a matter of judicial discretion in such cases.	Whilst acknowledging the conduct of the offenders was offensive and disgusting and was based on race and religion with the intention of causing maximum offence, the Court of Appeal held the sentencing judge had a discretion whether or not to impose a custodial	The recorder perhaps took a merciful decision. He had ... been very critical of this offending. But in deciding to suspend the sentence it plainly is to be seen that the recorder had given weight to the [offenders] personal circumstances ... The recorder was entitled to give weight to these matters. It may be that some judges ... may have decided to impose an immediate custodial sentence ... But it does not follow at all that this recorder was obliged to do so ... Perhaps these sentences were merciful ... the fact that a judge exercises mercy is not in any way ... to be equated with the outcome being unduly lenient.

and received suspended sentences with rehabilitation activity requirements. Whilst intoxicated in a park the offenders had verbally abused a Muslim family whilst they prayed with statements such as, "If those Muslim c*nts start to pray, I'm going to p*ss in front of them.


sentence. He noted that a sentencing judge is entitled to take into account mitigated factors when making their decision.

	2016	Cyprus / Anti-discrimination authority / Report regarding the incident of racist name-calling and its handling by the police/ File no. AKR 121/2012	http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/5445AB8AB7161269C2257F5B0048127D/\$file/AKR_121_2012_07012016.doc?OpenElement	Race	Anti-discrimination authority	The Equality body investigated a complaint about persistent racial abuse against a woman of African origin by neighbours, including racist posts of Facebook, and found that its handling by the police was inappropriate. The victim's husband had repeatedly compl	The Equality Body decision stated that ECtHR rulings have established that the state has a duty to investigate potentially racist elements of a violent act, using every endeavour to reveal the potential racist motivation or the existence of racial hatred or prejudices which could have played a role in the incident. The investigation of a racial motive became especially crucial by the law transposing Framework Decision on Racism and Xenophobia, which rendered racist motive as an aggravating factor. The duties of the state include the obligation to investigate, prosecute, record and punish racist offences and at the same time to empower and support the victims, who derive rights from the Victims Directive irrespective of their residence status.	Racial violence is defined as violence against persons or goods including verbal insults, which are motivated by racism, including crimes such as homicide, assault or insult as well as conduct of less gravity which, had it not been for the racist motive, would probably not amount to a crime. At the same time, although racial hatred or prejudice is the main reason for selecting the victim, this may not necessarily be the only reason for targeting the victim, as racial motivation may coexist with other motives.	The Equality Body did not impose sanctions but offered recommendations, mainly towards police training. The same incident was however tried in court at various instances, as both the victim and her husband were prosecuted for various offences (threat, assault, public insults etc). At first instance the court ignored the racial element even though this featured prominently in the witnesses' testimonies. The husband was given a prison sentence; the victim was given a suspended prison sentence; the Court did not find that the racist abuse amounted to provocation (Case No. 5987/2013,	Η Αστυνομία, συνεπώς, παρότι είχαν τεθεί υπόψη της όλα τα στοιχεία που της το επέτρεπαν, δεν μπόρεσε να ανταποκριθεί στη διπλή αποστολή της, σε σχέση με τις ρατσιστικές συμπεριφορές: Μέσα από την έγκαιρη ανίχνευση και την αποτελεσματική ανταπόκριση, αφενός, να προστατεύσει το πρόσωπο που δέχτηκε τις ρατσιστικές προσβολές και, αφετέρου, να αποτρέψει επέκταση, εξάπλωση και γενίκευση της βίας. [English translation] The police, therefore, despite having taken into account all the elements that enabled it, proved unable to respond to its dual mission in relation to racist behaviours: on the one hand, to protect the person who was the target of the racist insults through timely detection and effective response, and, on the other, to prevent the spreading and generalisation of violence.
--	------	---	---	------	-------------------------------	--	--	--	--	--

						ained to the police, who concluded that it was a 'misunderstanding' and outside its jurisdiction.			03/03/2016). The husband successfully appealed his sentence and secured its suspension: The Appeal Court found that the trial court had erred in its judgement that the racial motive did not constitute provocation for the assault (Criminal Appeal No. 41/16, 14/04/2016).	
	2015	Germany / Labour Court Gelsenkirchen/ 5 Ca 1444/15	https://openjur.de/u/879863.html	Ethnic origin	Labour Court (Arbeitsgericht)	A gardener in public employment published hate speech posts against migrants on Facebook. He was summoned to the staff	The dismissal complied fully with legal requirements. The Facebook postings constitute a disrespect towards migrants and indigenous persons having contact with migrants; irrespective of fulfilling the criteria for sedition, this justifies an extraordinary dismissal due to severe damage to the trust relationship with the employee.	Criteria for hate speech; damage to the image of the employer and the trust relationship with the employee.	Rejection of the claim; extraordinary dismissal has been upheld.	"Right-wing, racist and xenophobic statements on an employee on the private Facebook page naming also the public employer constitute a gross violation of collateral duties of the work contract, thus being a serious ground for an extraordinary dismissal according to § 626 Abs 1." GER: "Rechtsradikale, rassistische und ausländerfeindliche Äußerungen eines Arbeitnehmers auf seiner privaten Facebook-Seite, die auch seinen Arbeitgeber des öffentlichen Diensts nennt, stellt eine schwerwiegende Nebenpflichtverletzung im Arbeitsverhältnis dar, die einen wichtigen Grund für eine außerordentliche Kündigung nach § 626 Abs 1 darstellt."

council, which immediately terminated his employment contract. He claimed that he was not the author of the hate speech postings and that someone had hacked into his Facebook account. He filed a criminal complaint for defamation and hacking. The claimant also filed a petition


						n to the Labour Court asking for an annulment of his employment contract termination.				
+	2015	Finland / District Court of Kymenlaakso / 15/150275 R 15/1907		Ethnic origin	The District Court of Kymenlaakso	In September 2015, a suspect prepared a petrol bomb and threw it towards an emergency accommodation unit where asylum seekers were residing. The guard and the	The suspect was convicted of attempted criminal mischief not for aggravated criminal mischief, because the Court considered it unlikely that there was a concrete and probable danger caused to life and health. An aggravated penalty was applied because the court saw that the criminal act had a racist motive and it was somewhat premeditated.	An aggravated penalty was applied because the court found that the criminal act had a racist motive and it was somewhat premeditated.	The suspect was sentenced to one year imprisonment for attempted criminal mischief. The case has been appealed in the High Court.	X. on kuitenkin kohdistanut vihansa myös majoitusyksikköön ja siellä oleskeleviin turvapaikanhakijoihin. Rassistista motiivia tukevat [X]n kirjoitukset omalla facebook-sivullaan muutamia päiviä ennen ryhtymistään tekoon. "Terroristit tulee läpi lännen rajoista et painukoot vittuun koko poppoo, nyt perustettava joka kuntiin omat suomalaisia suojelevat joukot esim estetään keltakankaalla ruuan jako kuolkoovittu nälkään täältä pois ei auteta terroristeja, kaikki joukolla mukaan..." X. has nevertheless directed his anger also at the accommodation unit and asylum seekers that are staying there. The racist motive is backed up by [X]'s writings on his own Facebook-page a few days before committing the criminal act."The terrorists come here through western borders, they all should fuck off, now we should establish a force protecting Finns in every municipality, for example we should prevent the food distribution in Keltakangas, they can fucking starve to death, away from here, let's not help terrorists, come on everybody..."


						residents of the unit managed to extinguish the bomb. Another similar bomb was later found at suspect's apartment.				
	2015	Greece / Three-member Misdemeanour Court of Thessaloniki / Decision on Appeal / Public Bus Driver case		Race , Ethnic origin	Misdemeanour Court of Thessaloniki	The three-member Misdemeanour Court of Thessaloniki sentenced, following an appeal, a driver of OASTH (Organisation of	Examining the case on appeal, the court found the driver guilty—the same as during the first instance- of denial of service based on racist reasons, but compared with the previous trial, the court reduced the sentence by two months. The penalty is suspended for three years, which means that if he does not commit any crime or offense any other crime during this period of time the penalty will not be imposed.	This decision creates a legal precedent for courts and makes clear that antidiscrimination law may only be applied if citizens that witness this kind of behaviour report them to the authorities, along with the complementary support of the antifascist and antiracist movement. It also constitutes the first case of	The three-member Misdemeanour Court of Thessaloniki sentenced a driver of OASTH (Organisation of Public Transport in Thessaloniki) to eight months' imprisonment, a suspension for three years and a fine of 1000 euros. In the first instance, the driver had been convicted by the one-	N/A. The decision is not available. Details of the case are based on a Flash Report of the European Network of Legal Experts in gender equality and non-discrimination, available at: http://www.equalitylaw.eu/downloads/2956-conviction-of-bus-driver-for-di... , last accessed on 30/08/2017.

Public Transport in Thessaloniki) to eight months' imprisonment, a suspension for three years and a fine of 1000 euros for discriminatory behaviour and denying services to two black passengers on a bus. This was the first case where a violation of anti-discriminati

an ex officio prosecution for the violation of anti-discrimination law.

member Misdemeanour Court of Thessaloniki to 10 month imprisonment and a 1000 euro fine.

						on law was prosecuted on the initiative of the prosecutor, i.e.				
	2015	Sweden / Court of Appeal for Southern Norrland / Case no. B 906-15		Race	Court of Appeal for Southern Norrland (Hovrätten för nedre Norrland)	The Court of Appeal of Southern Norrland (Hovrätten för nedre Norrland) found three high school boys guilty of incitement of hatred (hets mot folkgrupp) and thus overruled the Ångermanland District Court	The Court of Appeal reviewed witness statements from the hearings in the District Court and found that the number of people present during the incident was high enough to meet the dissemination requirement regarding incitement to hatred and hate speech threshold. The Court argued that the boys' insults were indeed, intended to be heard and were heard by other people than those of the so-called private sphere (interna sfären). Consequently, the three boys were found guilty of incitement to hatred. However, the Court of Appeal kept the penalty value low due to the limited number of persons that were able to hear the statements.	The key issue concerns the dissemination prerequisite that must be met for a crime to be interpreted as incitement to hatred. The two courts differed in their assessment of what should be considered to be dissemination beyond the private sphere. The District Court found that the prerequisite was not met since the racist expressions were only heard by 10 fellow pupils in the school, which the Court considered to be too little. The Court of Appeal focused more on the intent to disseminate the expressions and argued that	The Court of Appeal sentenced the boys for incitement to hatred/hate speech in accordance with Chapter 16, Section 1 of the Penal Code (Brottsbalk [1962:700])[1]. The penalty for E.S. and N.L. was limited to fines. A.K.'s sentence for abuse (misshandel) according to Chapter 3, Section 5 of the Penal Code (Brottsbalk [1962:700])[2] was affirmed by the Court of Appeal that argued that since A.K. was a minor the sentence could should include the penalty for incitement of hatred.	Hovrätten ansluter sig till tingsrättens bedömning att det varit fråga om uttalanden som uttrycker missaktning mot en grupp av individer med en viss hudfärg och ursprung. The Court of Appeal agrees with the District Court's assessment that the statements in question expressed contempt for a group of individuals with a certain colour and origin. Hovrätten ansluter sig till tingsrättens bedömning att det inte är utrett att det var fler än tio personer i skolkorridoren som kunde uppfatta vad som yttrades av A., N. och E. Nio personer har således kunnat uppfatta vad var och en av de tilltalade yttrat. Yttrandena var avsedda att uppfattas av och har också nått andra än personer i den interna sfären. Hovrätten anser till skillnad från tingsrätten att så många personer fått del av yttrandena att kravet på spridning är uppfyllt. A.K., N.L. och E.S. ska därför dömas för hets mot folkgrupp i enlighet med åtalet. Med hänsyn till att ett förhållandevis begränsat antal personer har kunnat uppfatta uttalandena bör brottet emellertid bedömas som ringa. The Court of Appeal agrees with the District Court's assessment that it is not clear that there were more than ten people in the school corridor who could hear what was uttered by A., N. and E. Nine persons have thus been able to hear what each of the defendants uttered. The expressions were intended to be heard by and have also been


						(Ånger manla nd tingsr ätt) ruling that had freed all three boys from this charge. The boys had shout ed the word "negro " in a school corrid or in front of 10 other perso ns.		it was clear that the offenders' intent was clearly to make their statements heard by others. Both, the intent together with the fact that the expressions were heard by others constituted incitement to hatred. According to the Court of Appeal, the number of persons that actually heard the expressions should not influence the crime classification. However, the number should influence the extent of the given fine.		heard by persons outside the internal sphere. Unlike the District Court, the Court of Appeal considers that as many persons heard the expressions for the dissemination prerequisite to be met. A.K., N.L. and E.S. should therefore be sentenced for incitement of hatred accordance with the prosecution. However, since a relatively limited number of people have been able to hear the expression, the offense should be regarded as petty. Sweden, Court of Appeal for Southern Norrland (Hovrätten för nedre Norrland), case number B 906-15. The case is not available online but may be requested from the court in question using the case number.
	2015	Denmark / District Court of Hillerød	https://vidensbasen.anklagemyndigheden.dk/api/portals(6e302527-f0b3-4a5e-889a-668aa67e5491)/Print/h/6dfa19d8-18cc-47d6-b4c4-3bd07bc15ec0/VB/0	Religion	District Court of Hillerød	The District Court of Hillerød convicted a man of incitement to hatred (hate speech)	The District Court found the statements to be very severe and capable of being visible by a broader audience.	The court assessed the question of whether statements published on private Facebook accounts could be addressed towards a broader audience and therefore a violation of the criminal code.	10 daily penalties of 400 DKK	Danish: "Det fremgik af sagen, at den pågældende Facebook-profil var lukket, men at udtalelserne var blevet udbredt til mindst 68 personer. Byretten lagde ved strafudmålingen vægt på udtalelsernes grovhed sammenholdt med omfanget af den kreds af personer, der umiddelbart blev bekendt hermed." English: "It appeared from the case that the accused's Facebook profile was private, but the statements had been spread to at least 68 persons. When assessing the case the City Court took into account the severity of the


[adc60f2-504d-4270-bd8c-2e41e4f3aee0](#)


h). The man had written a longer statement on his private Facebook page where he commented on Muslims and among others compared them to monkeys. The District Court found that the statements could be read by a broader audience even though they

The statements written by the defendant were published on his private and closed Facebook profile where he had 68 friends. The court found that to be enough in regard to meeting the criteria of a broader audience.

statements and the number of persons who immediately became familiar herewith."

						were published on a private Facebook page and therefore found him guilty.			
	2015	Poland / I instance: District Court in Lodz / Ref.no. XVIII K 29/15 / II instance: Appellate Court in Lodz / Ref.no. II Aka 167/15		Nationality	I instance: District Court in Lodz, II instance: Appellate Court in Lodz	On December 20, 2014 the accused entered the restaurant and used physical violence towards a Vietnamese citizen, working at this restaurant, due to his race. He threw a bottle	The District Court established that the attack was motivated by the victim's nationality and therefore classified this act under Article 119 § 1 of the Criminal Code (physical violence motivated by victim's nationality, ethnic origin, race, political affiliation or religion). When attacking, the accused was verbally insulting the victim, shouting that he should return to his own country and threatening to kill him. The defender lodged an appeal, asking for the acquittal of the accused. The Appellate Court upheld the verdict of the District Court.	-	The accused was sentenced with 3 years and 4 months of imprisonment.

						toward his victim and destroyed five chairs, a table, and glass vessels as well as damaged the buffet. The case was reported to the police and perpetrator was accused under Article 119 § 1 of the Criminal Code.				
	2015	United Kingdom / Employment Tribunals / Case no. 3400174/2	http://www.equalrightstrust.org/ertdocumntbank/Tirkey%20v%20Chando	Religion, Ethnic origin	Employment Tribunal	The Court found that the Claimant argued that there had been multiple breaches of her employment rights as well as	The case further clarifies the scope of "ethnic or national origin" within the	The Employment Tribunal found that the Respondents had violated	206. It is clear to us and we find that the Claimant was acceptable to the Respondents as their domestic servant not because of her skills but because she was by birth, by virtue of her inherited position in society, and by	

		013 / Tirkey v Chandok and another	k%20Judg ment%20 17.09.15.p df			ant was a victim of haras sment on groun ds of her race and indirec t discri minati on on groun ds of her religio n. She was an Indian nation al emplo yed by the Respo ndent as a live-in dome stic worker betwe en 2008 and 2012 after being recruit ed in India.	discrimination because of her race and religion. With regards to “race”, the Claimant argued that she was treated less favourably due to the fact that she belonged to the Adivasi caste which in India is believed to be a “low caste” and a “servant class”. The Employment Appeals Tribunal had previously found in an earlier consideration of this case, that the categories of “caste” and “ethnic origin” overlapped. The Employment Tribunal in the present case concluded that it was clear that the Respondents had hired the Claimant not because of her skills but because “by virtue of [the Claimant’s] upbringing – i.e. [sic] because of her ethnic origins” she occupied a position where she expected to be servile and subservient.	protected characteristic of “race” in the Equality Act 2010. The case confirms that while discrimination because of “caste” is not expressly protected by the Equality Act 2010, many instances of discrimination which raise “caste considerations” would fall within the scope of “ethnic or national origin” and therefore would be protected by the 2010 Act. In the context of domestic service when an individual is unable to raise a grievance and because of their caste have received less favourable treatment resulting in not being paid the National Minimum Wage they may be entitled to receive the full sum of what is owed to them.	the Claimant’s legal employment rights in numerous way. In addition, it found that the Claimant had been the victim of harassment on grounds of her race and indirect discrimination on grounds of her religion. The Employment Tribunal ordered that the Claimant be paid the sum of £183,773.53 in respect of the shortfall between the wages received and the National Minimum Wage.	virtue of her upbringing – ie [sic] because of her ethnic origins – a person whose expectations in life were no higher than to be a domestic servant.”
	2015	Italy /	http://www.	Race	Italia	The	According to the	This decision is	The complaint	Point 11 of the decision: “Appare

Court of Cassation / Decision no. 36906

asgi.it/wp-content/uploads/2015/09/Corte-di-Cassazione-sezione-III-sentenza-n.-36906-del-14-settembre-2015-pres.-Franco-Pezzella-Salm%C3%A8-Stefano.pdf

, Religion

n Court of Cassation (Corte di Cassazione)

Court of Appeal of Trieste stated that the complainant's electoral propaganda was to be considered a dissemination of racist and discriminatory ideas and convicted him for the criminal offences of 13 October 1975. A candidate for the 2013 EU Parliament


Court of Cassation the decision of the Court of Appeal of Trieste erred in law and the complainant could not be ascribed the criminal offence of propaganda and dissemination of racist ideas. In fact, the concept of propaganda is less generic than the concept of "ideas dissemination", since the first also includes the aim of manipulating recipients' mentality, behaviours and psychology and of gathering consensus towards such ideas. In this respect, the complainant's behaviour can be labelled as propaganda because its aim was to foster public consensus and to be elected; nonetheless, the propaganda was not directed against specific minority groups but against the criminal conducts of some of their members. Of course the political idea on which the propaganda was based was that

important because the Court contributed to the interpretation of the concept of "racist propaganda" and to set boundaries to the conducts that can be considered criminally relevant. Moreover, the Court recalled the most important decisions concerning this issue of both Italian and European courts. Finally, the Court set criteria for the correct balance of the right to express ideas and opinions, the protection of human dignity and the right to non-discrimination.

has to be considered legitimate: the decision of the Court of Appeal of Trieste is to be considered not valid.

evidente, infatti, che il messaggio del volantino era quello di propagandare un'aversione non verso i soggetti sullo stesso raffigurati in maniera caricaturale, ma verso le attività illecite dagli stessi posti in essere. Siamo di fronte, evidentemente, ad un messaggio politico che risente di un pregiudizio per cui determinate attività delittuose vengono poste in essere prevalentemente dai membri di determinate etnie [...] Tuttavia, nel necessario bilanciamento di interessi costituzionalmente protetti di cui si è detto, da operare di volta in volta rispetto al caso concreto, appare nell'occasione prevalere il diritto alla libera manifestazione del proprio pensiero politico, nell'ambito di una competizione elettorale [...] L'odierno ricorrente non appare pregiudizialmente ostile a determinate etnie in quanto tali. Nella sua visione lo è perché ricollega alle stesse lo svolgimento di determinate attività illecite"


"In fact, it seems evident that the message conveyed by the leaflet was to propagandise an aversion not towards the subjects portrayed on it, but towards the criminal activities they carry out. This is glaringly a political message based on the prejudice that some criminal activities are carried out mainly by the members of specific ethnic groups [...] nonetheless, in the necessary balance between constitutionally guaranteed interests, which has to be assessed case by case, it seems that in this occasion the right to the expression of political opinions has to prevail, in the context of an electoral competition"


					<p>ment election distributed a leaflet showing images and slogans aimed at supporting the idea that immigrants and other ethnic minorities are culturally more inclined to commit crimes.</p>	<p>those groups are more inclined at committing such crimes but this opinion is conveyed in a particular context, that is the electoral campaign. For this reason, the Court of Cassation - having to balance the right to non-discrimination with the right of expression of opinions and ideas - decided not to consider the complainant's conduct as racist propaganda.</p>				
	2015	Denmark / City Court of Glostrup / SS 1706/2015		Religion	City Court of Glostrup	<p>A Danish politician was found guilty of incitement to</p>	<p>To be convicted for racist remarks, the remarks have to be degrading and stated in a public forum. The politician argued in court that he assumed the post would only be visible to his 67 followers on</p>	<p>All cases are required to have this dual assessment: was the statement severe enough to be considered degrading and hurtful, and were they made</p>	<p>The politician was found guilty and sentenced to pay a fine of DKK 8000.</p>	<p>No material from the court case itself is available. The statement in question was as follows: "About the situation of the Jews in Europe: The Muslims are continuing where Hitler left off. Only the treatment Hitler received, will change the situation"</p>


violence or hatred. The former member of the Danish Parliament and the European Parliament, and currently a member of the City Council of Glostrup, had made a post on social media, Twitter, comparing Muslims to the Holocaust and concluding that they

Twitter, and that this meant that he had not made the statement in a public forum.

in a public forum. In this case, the politician argued mostly that the statement was not made in a public forum, and that the basic right of freedom of speech should protect him.

						should be treated the same.				
	2015	United Kingdom / / R v. O'Leary [2015] EWCA Crim 1306	http://www.bailii.org/ew/cases/EWCA/Crim/2015/1306.html	Race	England and Wales Court of Appeal	Over the course of one evening the appellant repeatedly intimidated two victims causing them physical injuries and psychological harm. During one attack, while brandishing a knife, the appellant told his victim that he wanted	Owing to the fact he had not been convicted of a racially aggravated offence, the appellant argued that the trial judge should not have been able to treat racial motivation as a factor which elevated the seriousness of his offence and thus increased the sentence he received.	In cases where a defendant has been convicted of an unlawful wounding without a racially aggravating factor, a sentencing judge can take into account racial motivation as a factor that elevates the seriousness of the offence and thus can increase the sentence.	The court held that there was clear evidence on which the trial judge had been entitled to conclude to the criminal standard that the offence was racially motivated. Accordingly, the trial judge was entitled to treat the racial motivation as a factor that increased the seriousness of the offence and thus led to a higher sentence. The court was conscious however to highlight that its judgement was not an endorsement of the view that the prosecution had been relieved of their duty to consider the indictment. Owing to the seriousness of racially aggravated	We have considered whether in addition to these factors, and in the absence of a conviction for racially aggravated unlawful wounding, the judge was entitled to take into account, as a further factor increasing the seriousness of the offence, that it was racially motivated ... Our conclusion upon this issue should not be taken as any endorsement for the view that the prosecution are thereby relieved of their duty to consider the indictment with care. On the contrary, in the majority of cases where the evidence supports an aggravated form of assault, then it should be placed upon the indictment.

						d to kill a Muslim. The appellant was convicted of unlawful wounding but not racially aggravated unlawful wounding.			offences, in the majority of cases where the evidence supports an aggravated element the prosecution should place it on the indictment.	
	2015	Denmark / District Court of Randers	https://vidensbasen.anklagemyndigheden.dk/api/portals(6e302527-f0b3-4a5e-889a-668aa67e5491)/Print/h/6dfa19d8-18cc-47d6-b4c4-3bd07bc15ec0/VB/0adc60f2-504d-4270-bd8c-2e41e4f3aee0	Religion	District Court of Randers	The District Court of Randers found the defendant guilty of incitement to hatred (hate speech). The defendant participated in a	The District Court found him guilty of incitement to hatred as the statements targeted not only the victim, but Muslim citizens of Arabic descent in general.	No key issues can be drawn on the basis of this particular case.	Suspended sentence of 20 days with the condition of 40 hours of community service	Danish: "Byretten lagde vægt på, at udtalelserne var fremsat på Facebook som led i den offentlige debat, og at udtalelserne var rettet både direkte mod forurettede men også mere generelt mod en gruppe af personer af arabisk afstamning med muslimsk religion bosat i Danmark og med en anden etnisk oprindelse end dansk" English: "The City Court took into account that the statements were posted on Facebook as part of the public debate and they were targeting not only the victim but also more generally a group of persons with Arabic descent and Muslim religion residing in Denmark and with another ethnic origin than Danish."

						debat e on the Faceb ook page of a Danis h newsp aper and wrote amon g other things the followi ng to the victim; "Fuck you, you Quran fascist " and contin ued with a longer rant.				
	2015	Austria / Supreme Court / 15Os75/1 5s ECLI:AT:O GH0002:2 015:RS01 30193	https://www.ris.bka.gv.at/Dokument/Juris/JJT_20150722_OGH0002_01500S000_000/JJT_20150722_OGH0002_01500S00075_15S0000	Ethnic origin, Race , Religion, Nationality , Gender, Migrant	Supreme Court (Oberster Gerechtshof, OGH)	The Supreme Court has ruled on a case confirming the lower court sentence of	The motive for incitement is not an element of the crime, as the matter of fact incitement does not require acting on racist grounds. Therefore, the application of aggravation of punishment does not violate the principle of the prohibition of	Aggravation in punishment can be applied in cases of incitement. This landmark decision can have a large impact on future cases and on the criminal statistics as there were hardly any cases on the	The court stated that because the crime of incitement does not include its motivation, the application of the aggravating motive can be applied in the measurement of the punishment.	Rechtssatz: Das Doppelverwertungsverbot ergibt sich aus dem in § 32 Abs 2 erster Satz StGB enthaltenen Gebot, Erschwerungs- und Milderungsgründe nur soweit bei der Bemessung der Strafe zu berücksichtigen („gegeneinander abzuwägen“), als sie „nicht schon die Strafdrohung bestimmen“. Für letztere bestimmend sind nur subsumtionsrelevante Umstände, zu denen das Tatmotiv idR – wenn es nicht ausnahmsweise im Tatbestand genannt ist – nicht zählt.

[_000.pdf](#)


status

30 year old Turkish barber who had been sentenced to two years on probation for publishing anti-Semitic postings on Facebook. He had dignified the Holocaust and in the context of last year's Gaza war he wrote "I could kill all Jews. But I'd leave some alive to show you

'double-jeopardy', which means that a person cannot be criminally charged for a crime that he or she has been convicted or acquitted of. The suggestion that circumstances which are 'typically' connected with the crime would be 'consumed' concerning its punishment and thus, would violate the prohibition of double-utilisation, is not covered by the respective law.


motivations for incitement.


Dictate of Justice: The prohibition of multiple punishment allows for aggravating or extenuating causes to be taken into account in the measurement of the punishment consider if they do not determine the thread of punishment. The thread of punishment is only determined by circumstances relevant for subsumption. The motive is no such element, except when it is explicitly mentioned as an element of the crime.


						why I killed them" and said that Hitler "was the king of all real men and nobody acknowledged him".				
	2015	Hungary / General Attorney's Office /Decision		Nationality	General Attorney's Office (Legfőbb Ügyészség)	On 21 July 2015, during the peak of the migration crisis in Hungary, a Facebook user posted the following: "Who would like to be involved in some hunting	The Hungarian Criminal Code (Act C of 2012 on the Criminal Code, 2012. évi C. törvény a Büntető Törvénykönyvről) orders the court to punish the attempt of all crimes; however, it is possible to reduce or even neglect the punishment that is otherwise imposed on the perpetrators of finished crimes in the Code (Article 10). The Civil Liberties Union argued that an attempt requires intentional preparatory actions in order to commit a crime, and since the comments contained	The Attorney General had to decide whether the post and the related comments indicating place and time and methods of execution for violent acts against refugees and asylum seekers constitute an attempted violence against a member of the community.	The Attorney General rejected the Union's appeal stressing that there was no indication of violent actions in the comments, and the victims were not properly identified by the Facebook users.	As the Attorney General's decisions and the records of the criminal investigation are not in the public domain, there is no original text available to the decision.

g? If you are in the mood, drop me a message!'. The comments related to the post - coming from men and women users of Facebook - suggested the preparation of an attempted hate crime targeting refugees and asylum seekers at the southern borders of

agreements on places and time for committing various violent actions against the asylum seekers, they constituted an attempt.

					Hungary.					
	2015	Finland / District Court of Helsinki / R 15/4669		Religion, Ethnic origin	The District Court of Helsinki (Helsingin kärjäoikeus /Helsingfors tingsrätt)	Two men entered into a restaurant at closing time and started insulting and assaulting two restaurant workers. Victim A was hit on the head with a fist and victim B was hit and kicked various times (including kicks to the victim's head) and	With respect to victim B, the court concluded that the assault was especially cruel and has led to serious bodily injury. The defendants had attacked the victim because of his ethnic origin and religion and no other motive has been demonstrated in the case. Aggravated penalty was not applied as such in the case. However, the court concluded that the motive behind the crime (ethnic origin and religion) among other factors has been taken into account in sentencing.	Aggravated penalty was not applied as such in the case. However, the court concluded that the motive behind the crime (ethnic origin and religion) among other factors has been taken into account in sentencing.	Defendant H was sentenced to 2 years and 10 months of imprisonment. Defendant T was sentenced to 3 years and 2 months of imprisonment. (other crimes taken into account) H and T have to pay 300 euros damages to victim A and 10,300 euros damages to victim B.	"Kärjäoikeus on ottanut huomioon rangaistuksen määrää mitatessaan, että Hossaan ja myös Takamaahan nähden täysin ulkopuolinen pizzariatyöntekijä [B] on työssään, ilman mitään syytä tai ainoana syynä etninen alkuperä ja uskonto, joutunut kahden humalaisen miehen jahtaamaksi ja useaan otteeseen pahoinpitelemäksi, niin, että häneltä on viimeisen potkun jälkeen mennyt hetkeksi taju." "In assessing the penalty, the district court has taken into account that [victim B] who works at the pizzeria is previously unknown to [the defendants] Hossa and Takamaa and has, in his work, with no reason or solely because of his ethnic origin and religion, been chased by two drunken men and has been repeatedly assaulted so that after the last kick he has lost his consciousness for a moment. "

					he was also thrown through a glass door. The men were convicted of assault, aggravated assault and other crimes.					
	2015	Croatia / County Court in Zagreb / Kž-573/15-3		Race	County Court in Zagreb (Županijski sud u Zagrebu)	The High Court convicted the offender of hate crime on the basis of race. In a shop owned by the victim, the offender made offensive comments	The accused filed a complaint accepting that he smashed victim's property, however denying that his acts were motivated by hatred or intolerance towards persons of another race. The high court ruled that the first instance court correctly assessed all the facts and circumstances and that the first instance court provided substantiated reasoning for its assessment.	The High Court upheld the First Instance court's decision in qualifying this offence as an aggravated form of physical injury due to hatred on the bases of race and as a property offence in connection to hate crime as an aggravating circumstance . The High Court refers to the first instance decision for detailed reasoning without elaborating on what is hatred	Eight months of imprisonment substituted with work for common welfare in a way that one day of imprisonment is substituted with 2 hours of work.	N/A

						based on race, for no other reason than his intolerance for persons of another race. After that, he pulled the victim by her hair and injured her. He also smashed the glass door of the shop.		on the bases of race and how the offence qualifies as hate crime.		
	2015	Greece / Third Single-Member Felony Appeals Court of Athens / Third Single-Member Felony Appeals		Ethnic origin	Third Single-Member Felony Appeals Court of Athens	The Felony Appeals Court of Athens in May 2015 found three	Even though the racist motive was not mentioned during the sentencing of the defendants, the text of the decision made clear reference to racist motives which led the defendants to target two women	The decision contained elements of reminiscent a hate crime as defined by international and national theory. The Court concluded that there was a	Two of the defendants were sentenced to incarceration for 14 years and 10 months and the third for 15 years and 6 months. None were granted	"οι κατηγορούμενοι και λοιποί συναυτουργοί τους επέδειξαν σε βάρος των δύο μεσηλικών γυναικών, τις οποίες δε γνώριζαν καν, ιδιαίτερη σκληρότητα, βιαιότητα και αναληγσία, παντελή έλλειψη συναισθημάτων, ηθικού ή ψυχικού φραγμού, υποκινούμενοι αποκλειστικά και μόνο από ρατσιστικό κίνητρο, στοχοποιώντας τις λόγω της καταγωγής τους ως ανεπιθύμητες αλλοδαπές, συνεπεία δε τούτου τα ένομα αγαθά τους όπως η αξιοπρέπεια, η

Appeals Court of Athens / Bademi and others case

5

men guilty of attacking two women during a national parade on October 28, 2011 because they were considered "foreigners". Throughout the trial their links to the Golden Dawn party were considered a determining factor for establishing a racist motive behind the


they deemed unwanted just because they appeared foreign. The reasoning of the decision described in the most characteristic way what is known in international theory and practice as "hate crime".

clear racist motive because a) the defendants carried out particularly cruel, violent and painful acts against two middle-aged women, b) whom they even did not know, c) with a total lack of emotional or moral qualms, d) targeting them because of their descent as unwanted foreigners, e) they demonstrated power and superiority over all by carrying the above criminal offences during day-time, in the middle of the street and a densely populated area of Athens.

suspension of their sentence, an indication that the Court took into consideration the racist nature of the crimes.

περιορισμένη περιουσία τους ακόμα δε και η σωματική τους ακεραιότητα δεν είχαν γι' αυτούς οποιαδήποτε αξία, επιδεικνύοντας ισχύ και υπεροχή έναντι πάντων, αφού προέβησαν στην παραπάνω εγκληματική δραστηριότητά τους, κατά τη διάρκεια της ημέρας, εν μέση οδώ, σε πυκνοκατοικημένη περιοχή των Αθηνών. Πρέπει συνεπώς να κηρυχθούν ένοχοι των ανωτέρω εγκλημάτων κατά τα στο διατακτικό οριζόμενα, με την επιβαρυντική περίπτωση του άρθρου 81 Α ΠΚ"


The defendants and co-perpetrators carried out particularly cruel, violent and painful acts against two middle-aged women, whom they even did not know, with a total lack of emotional or moral qualms, motivated solely and only by racist bias, targeting them because of their descent as unwanted foreigners and as a consequence, protected virtues such as their dignity, their small property and even their physical integrity were of no value to them [the defendants]. Instead they demonstrated power and superiority over all by carrying the above criminal offences during day-time, in the middle of the street and a densely populated area of Athens. Therefore they should be declared guilty of the above offences under the aggravating circumstance of article 81A [of the Criminal Code]. Decision 3045/2015, Third Single-Member Felony Appeals Court of Athens (Γ Μονομελές Εφετείο Κακουρηγημάτων Αθηνών)(There is no access to the text of the decision, however excerpts were published by the Greek Council of Refugees in Greek at: <http://www.gcr.gr/index.php/en/news/press-releases-announcements/item/56...>, last accessed on 12/10/2017).


						offences. This was the second time a Greek Court condemned perpetrators for carrying out a crime with a bias motive (the first was the Luqm an Decision above)				
	2015	United Kingdom / [2015] EWCA Crim 1414 / R v. Cooke (Steven)		Religion	England and Wales Court of Appeal	The appellant, a member of the far-right English Defence League (EDL) who opposes	The appellant argued that there were no grounds on which to infer that the public disorder he committed was religiously aggravated as he had not been one of the EDL members chanting or flag burning and thus the starting point for sentencing had been set too high by the trial	Willingness to join in violent disorder which is clearly motivated by hostility towards a religious group is, in principle, enough to imply a religiously motivated element under of Section 28(1) (b) of the Crime and Disorder Act 1998.	The court concluded that, whilst there was no evidence that he had partaken in the anti-Muslim chanting, he had joined in the violence which was clearly aggravated by religious hostility and the judge had	It seems to us that in principle it was open to the judge in the present case to infer, if the evidence was there, that the appellant was motivated by religious hostility from his willingness to join in this violent disorder when it was plain to him ... that the offence was motivated by hostility towards members of a racial or religious group ... We think the judge was entitled to look at the evidence as a whole ... The whole thrust of the violence and abuse was religiously motivated ... It is immaterial whether the hostility is based to any extent on any other factor which is not racial or religious hostility.

e the
"Islam
ificatio
n" of
Engla
nd,
plead
ed
guilty
to an
offenc
e of
violent
disord
er
after
taking
part in
a
seriou
s
episo
de of
public
disord
er.
During
a
demo
nstrati
on,
EDL
memb
ers
chante
d
racist
and
anti-
Musli
m
chants
, burnt
flags
and
comm
itted
seriou
s
violen

judge. The
appellant was
attempting to get
his sentence
reduced on two
grounds, (i) the trial
judge was incorrect
to infer a religiously
aggravated
element from his
actions (ii) his role
in the incident with
regard to the level
of violence was not
significant enough
to warrant the
sentence and he
also had positive
and powerful
personal mitigating
factors that would
support a lesser
sentence.

been entitled to
look at the
event as a
whole. The
court noted that
the appellant
had tried to
throw objects
at UAF
members, who
were mainly of
Asian ethnicity,
and had stated
that he wanted
to fight them.
This was
therefore
enough to
establish a
religiously
aggravated
element in the
offence.
Accordingly,
the court
allowed the
appeal the
second ground
and reduced
the appellant's
sentence.

						ce toward s the police and counte r United Again st Fascis m demo nstrat ors, who were mainly young peopl e of Asian origin.				
	2015	Austria / Supreme Court / 15Os40/1 5v ECLI:AT:O GH0002:2 015:0150 OS00040. 15V.0610. 000	http://www.ris.bka.gv.at/Dokument.wxe?ResultFunktion=b6881613-69cd-46e1-8158-1e05f3e2b573&Position=1&Abfrage=Justiz&Gericht=&Rechtssatznummer=&Rechtssatz=&Funktion=&AenderungenSeit=Undefined&SucheNachRechtssat	Race , Ethnic origin, Religion	Supreme Court (Oberster Gerichtshof)	The case concerns online incitement to violence or hatred . The defendant alleged that every Muslim is a possible terrorist. He also stated	The Supreme Court found that the argument that the defendant cited only scientific studies without his own assessment, is not a ground for annulling the verdict ("stirring up hatred", "insulting").	One of the key issues is whether citing scientific studies (or 'pseudo scientific studies') without one's own assessment may fall under incitement to hatred.	The defendant's appeal for nullity has been rejected and the files are being sent to the Higher Regional Court Vienna (Oberlandesgericht Wien - OLG Wien) for it to decide upon the appeals.	Das Vorbringen zu II.C., der Angeklagte habe nur wissenschaftliche Studien ohne eigene Wertung zitiert, hält ebenso nicht am Wahrspruch in objektiver und subjektiver Hinsicht fest („gehetzt“, „beschimpft“) wie die Überlegungen zu III., der Blasphemie- Tatbestand (§ 188 StGB) sei generell zu hinterfragen und im konkreten Fall sei eindeutig der satirische Aspekt des Beitrags im Vordergrund gestanden. The argument to II.C., that the defendant cited only scientific studies without his own assessment, does not substantiate the verdict in both objective and subjective terms ("stirring up hatred", "insulting"), likewise on III, the blasphemy section (§ 188 StGB) should be questioned in general and, in the specific case, that the satirical aspect of the contribution was clearly in the foreground.

			z=True&SucheNachText=True&GZ=&VonDatum=&BisDatum=03.07.2017&Norm=&ImRisSeite=Undefined&ResultPageSize=100&Suchworte=Verhetzung&Dokumentnummer=JJT_2015_0610_OGH0002_0150OS0004_0_15V0000_000			<p>"Let us finally wake up and remove this cancer from our people's body!". He also posted a comment on facebook stating that one has "to prevent the infiltration of primitive races, such as the Negro race and the Turks and Muslims.</p>				
	2015	Sweden / Scania and Blekinge		Ethnic origin	Court of Appeal for	The Court of	The Court of Appeal found that since the degrading	The key issue concerns the interpretation of	The Court of Appeal set aside the	Straffbestämmelsen om hets mot folkgrupp tar dock sikte på angrepp som riktas mot kollektivt bestämda

Swedish
Court of
Appeal /
Case no.
B 1697-14

Swedish
Court of
Appeal for
Western
Sweden
(Hovrätten
för
västra
Sverige)

Appeal for Western Sweden (Hovrätten för Västra Sverige) overruled Gothenburg District Court's (Göteborgs tingsrätt) verdict regarding the crime classification of the abuse against a woman, P.A. was subjected to on a public bus. The perpetrator spat in her face and called her "Chinese

statements made by F.P. were directed to P.A and her friends as individuals and not as members of a group the insults could not be considered to be hate speech even if they were uttered in a public place among other people. Neither could the aim of F.P. be said to have been to persuade others to hate a specific group. However, the Court of Appeal did not find any reason to doubt that F.P. had abused P.A. both in words and actions (by spitting in her face). Consequently, F.P. was found guilty of abuse (ofredande) but not of incitement of hatred


hate speech in relation to the situation in question, especially in relation to the dissemination prerequisite. The District Court found that the racist insults should be considered to have been disseminated outside the personal sphere, since they were shouted to the plaintiff in a crowded bus. Thus, the District Court considered the incident as incitement of hatred. The Court of Appeal focused on the intent and direction of the insults and argued that even though the insults were uttered in a crowd, they were directed to one particular person and were not uttered with the intent to incite hatred. This being the case, the Court of Appeal did not consider the fact that the racist insults


District Court's sentence concerning the charge of hate speech and affirmed its sentence concerning the charge of abuse. Thus, the penalty was limited to a) a probationary period of two years; and b) to pay P.A. 5,000 SEK (525 Euro) in damages. The reasoning of the Court of Appeal did not include any reference to the racist nature of the degrading statements.

grupper och kollektiv av sådana grupper, medan enskilda identifierbara individer inte skyddas av bestämmelsen Eftersom F.P med sina uttalanden riktat sig direkt mot P.A och de två männen, kan han därmed inte dömas för hets mot folkgrupp.

The penalty clause against incitement of hatred is however aimed at attacks against collectively defined groups and collectives of such groups, whereas individual identifiable individuals are not protected by the provision. Since F.P.'s statements were directed directly against P.A and the two men, he cannot be sentenced of incitement of hatred.

Sweden, Court of Appeal for Western Sweden (Hovrätten för västra Sverige), case number B 5049-14 The case is not available online but have to be requested from the court in question using the case number

					se whore ” referring to P.A.’s Asian facial features. The District Court found the perpetrator, F.P.		were uttered loudly and in a public place to meet the dissemination prerequisite.		
	2015	ECtHR / Application no. 30587/13 / Judgment / Karaahmed v. Bulgaria	http://hudoc.echr.coe.int/eng/?i=001-141791	Religion	European Court of Human Rights, ECHR	Members of a far right party held a demonstration against Friday prayer sounds being broadcast from a mosque through loudspeakers. Muslim worshippers	The Court found that the failure by the domestic authorities to strike a proper balance in the steps they took to ensure the effective and peaceful exercise rights of the demonstrators and the rights of the applicant and the other worshippers to pray together, as well as their subsequent failure properly to respond to those events, meant that there had been a failure of the State to comply with its positive obligations under Article 9.	The Court found that the failure by the domestic authorities to strike a proper balance in the steps they took to ensure the effective and peaceful exercise rights of the demonstrators and the rights of the applicant and the other worshippers to pray together, as well as their subsequent failure properly to respond to those events, meant that there had been a failure of the State to comply with its positive obligations	"In sum, the failure by the domestic authorities to strike a proper balance in the steps they took to ensure the effective and peaceful exercise rights of the applicant and the other worshippers to pray together, as well as their subsequent failure properly to respond to those events, means there has been a failure of the State to comply with its positive obligations under Article 9. There has accordingly been a violation of that article."


						were insulted and attacked. Karaahmed, a Muslim, was nearby when this incident took place and argued that he suffered psychological harm as a result of the demonstration.				under Article 9.
	2015	Luxembourg / District Court (13th Chamber) / Case no. 1448/2015 / Judgment / The Public Prosecutor v. X	Nationality, Ethnic origin	Luxembourg District Court (Tribunal d'arrondissement)	This case differs from the more "typical" case law regarding incitement to hatred	The defendant was accused of disseminating, through the social media platform Facebook, hate speech against non-Luxembourgish persons living in Luxembourg, by pretending to be a foreigner attacking Luxembourg and its people. The	The Court held that in order to determine whether a comment constitutes incitement to hatred, it must be analysed whether or not such a feeling (i.e. hatred) can be conceived in the minds of people from	The defendant was convicted to a 12 months suspended prison sentence.	"en se faisant passer pour un non-Luxembourgeois qui publierait sur le réseau social électronique facebook des commentaires absolument abjectes à l'adresse de tous les Luxembourgeois, dans le but exclusif de provoquer un sentiment de haine auprès des ressortissants luxembourgeois à l'égard de la communauté étrangère installée au Grand-Duché, prétendument raciste envers ses hôtes, P.1.) a incité à la haine à l'égard de personnes en raison de leur non-appartenance à la nation luxembourgeoise."	

, in that it concerns a defendant with links to the extreme right who deliberately created a fake alias on a social media platform pretending to be a foreigner attacking Luxembourg. He published threats and hate comments against the Luxembourgish people, nation and language.

Court argued that the defendant, through his comments, sought to provoke a racist reaction against foreigners.

reading the written text. To do so, the text as a whole must be taken into consideration, each sentence of which is part of the broader text. The Court held that, read together, the comments posted by the defendant had clearly incited to hatred against persons on the basis of their non-belonging to the Luxembourgish nation.


Unofficial translation: "by pretending to be a non-Luxembourgish national who would publish absolutely abject comments on the social network Facebook addressed to the Luxembourgish people as a whole, with the sole aim of provoking a feeling of hatred amongst the Luxembourgish people, allegedly racist towards its guests, against foreigners living in the Grand Duchy, {the defendant} incited to hatred against persons based on their non-belonging to the Luxembourgish nation."

						age, with the aim of provoking a negative reaction and inciting hatred against foreigners and migrants.				
	2015	Poland / I instance: District Court in Warsaw / Ref.no. XVIII K 100/14 / II instance: Appellate Court in Warsaw / Ref. no. II Aka 60/15		Race	I instance: District Court in Warsaw, II instance: Appellate Court in Warsaw	On February 13, 2013 two Polish citizens used physical violence against a Nigerian citizen which was motivated by his race and nationality. The	The District Court established that the attack was motivated by the victim's nationality and race and classified it under Article 119 § 1 of the Criminal Code. The defender lodged an appeal arguing that one of the accused was certainly not prejudiced against foreigners since he had some previous contacts with persons of a different colour of skin and he participated in some foreign integration trips, therefore the crime was not racially motivated. The Appellate Court	The perpetrator of the hate crime does not necessarily have to belong to a specific, antagonistic group, nor to be guided by any ideology. The decisive factor is that the motive of the violence was victim's nationality or race.	One of the accused was sentenced to 8 months of imprisonment and the punishment was suspended for the 2 years of the probation period. The second of the accused was sentenced to 6 months of imprisonment.	"(...) podmiotem przestępstwa z art. 119 § 1 KK może być każdy, nie ma bowiem wymogu aby sprawca należał do określonego, antagonistycznego wyznania, sekty, zgrupowania politycznego lub, co dotyczy sprawy niniejszej, aby kierował się jakąś ideologią. Dlatego też dla oceny prawnej zachowań oskarżonych nie mają znaczenia ewentualne ich kontakty z obcokrajowcami, teraz czy też w przeszłości, czy to rodzinne, czy też koleżeńskie." [English: "(...) the subject of a crime enshrined in Article 119 § 1 of the Criminal Code may be anyone and the perpetrator does not have to belong to a specific, antagonistic group nor to be guided by any ideology. Therefore, for the assessment of the conduct of the accused, his contacts with foreigners, now or in the past, whether they are his family or friends, is irrelevant."]

perpetrators were beating the victim, punching him in the face and hitting with plastic bottles

, which posed a threat to foreigner's life and health. Moreover, perpetrators publicly insulted their victim with abusive words referring to his skin colour and nationality, for example

upheld the ruling of the District Court, indicating that the perpetrator not necessarily has to belong to a specific, antagonistic group, nor to be guided by any ideology. The decisive factor is that the motive of the violence was victim's nationality or race.

						le they called him a "monkey".				
	2015	Croatia / County Court in Slavonski Brod / KŽ-220/14-4		Race	County Court in Slavonski Brod (Županijski sud u Slavonском Brodu)	The High Court convicted two offenders of inflicting grave physical injury with the aggravated circumstance of hate crime. The offenders physically attacked the victim. The court held that the offence was motivated on the basis of race because the	The first accused filed a complaint stating that the first-instance court incorrectly assessed that the offence was racially motivated explaining that he stated "discriminatory words" only once. Nevertheless, the high court stated that the fact that the "discriminatory words" were stated only once is irrelevant. The content of "discriminatory words" is not mentioned in the high court judgement.	In this judgement it is significant that the high court, following the standard set by the first-instance court, held that to qualify an offence as a hate crime it is sufficient to state "discriminatory words" only once. However it is not clear why the hate crime element was deemed as an aggravating circumstance rather than characterising the offence as an aggravated form of physical injury due to hatred for which higher punishment is provided.	Eight months of imprisonment substituted with 480 working hours of work for common welfare.	"Nije povjerovao obrani (...) da spram oštećenika nije postupao iz mržnje zbog rasne pripadnosti (...) jer je (...) inkriminirane riječi uputio samo jednom" "It is not to be accepted that the accused' acts were not motivated by racial hatred only because (...) he directed the discriminatory words only once."


						<p>offenders directed "discriminatory words" towards the victim. The content of "the discriminatory words" was not disclosed in its ruling.</p>				
	2015	Spain / Barcelona Criminal Court, Section 1 / Rec 312/2012	https://www.iberley.es/jurisprudencia/sentencia-penal-jp-barcelona-sec-1-rec-312-2012-16-03-2015-47625695	Ethnic origin, Gender	Barcelona Criminal Court	The Barcelona criminal court no.1 convicted a man of a crime of bodily harm with the aggravating circumstance of	"hatred towards different people" The prosecution asked initially for two years and nine months in prison for the defendant - one year and nine months for an injury against the moral integrity, but finally the criminal judge lowered the sentence and applied the mitigating circumstance of drunkenness and the mitigating	The hate towards different people was concluded as the racist motivation and the reason of rejection behind the attack towards the victim's couple of foreign origin. For the first time in Spain a racist attack where the victim is not an immigrant but a Spanish national was condemned. For the first time in Spain there	6 months prison time for crime of injury with the mitigating circumstance of drunkenness and aggravating circumstance of racism 4 months prison time for offence against moral integrity, concurring the mitigating circumstances of drunkenness. 2 years	(Concorre la circunstancia del Artículo 22.4 respecto del delito de lesiones por cuanto el móvil por el que le agredió fue racista, de rechazo a la pareja de origen dominicano de la víctima. El odio hacia las personas distintas fue lo que motivó la agresión). "...Participates the circumstance of the article 22.4 with respect to the offence crime insofar as the motivation behind his attack was racist and of rejection towards the victim's couple of Dominican origin. The hate towards different people was the reason behind the attack"


racism by association - it was the first time a court applied an aggravating circumstance based on bias by association. On the night of September 5, 2010 a man, who was drunk and singing the fascist anthem "Cara al sol", came into a bar, where a man of Spanish nation

circumstance of the undue delay (article 21.6 of the Criminal Code)

was a judgement for discrimination by association, in which injuries occur to a person for his relationship with a member of a discriminated group, in this case an immigrant.

prohibition of approaching the victim for no less than a thousand meters. Compensation to the victims, of 7.650 euros each.

						ality was with his partner, a mulatto woman of Dominican origin.				
	2015	Hungary / County Court of Kecskemét / Decision no. 5.B.154/2013/58	http://ukp.birosag.hu/portal/frontend/stream/birosagKod/0300/hatarozatAzonosito/B.154_2013_58/	Nationality	County Court of Kecskemét (Kecskeméti Törvényszék)	The defendant was a guard at the Alien-Police Detention Facility of Bács-Kiskun County. Thirty-eight asylum seekers were detained in the facility as of 7 October 2011. In the morn	The main question was whether the guard's behaviour was an act of revenge or hate, and whether the yelling proved a discriminatory, racist or xenophobic motive of the perpetrator.	While it was obvious that the perpetrator committed the crime of assault and battery, and the crime of mistreatment in official proceedings, the court had to examine whether the term 'damn dreadlocks' constitutes a racist/xenophobic motive.	The court decided the defendant used the term 'damn dreadlocks' only to refer to the hairstyle of the victim and not to discriminate against him based on his race. The court emphasised that, based on the testimony of several witnesses, the victim was often called 'dreadlocks' by his cellmates, therefore, the guard's action was due to the grudge he felt because of the morning's incident, and did not constitute a hate crime.	Excerpt from the reasoning of the decision: 'A gúnyolódásból nem lehet arra következtetni, hogy a vádlott a sértett közösséghez tartozását akarta kifejezni, illetve, hogy valamely közösséghez tartozása miatt bántalmazta.' 'The mocking was not due to the victim's discrimination based on his race, therefore, the defendant did not assault him because of his race.'

						<p>ng, the detain ed peopl e starte d a riot, and rejecte d the orders of the guard s, attem pted to escap e, and dama ged furnitu re in their cells. Four detain ees (Suda nese and Libian nation als) were locked into solitar y cells after the riot was over.</p>				
	2015	Belgium / Tribunal of First Instance of Brugge / BG43.L5.5	http://unia.be/files/Z_ARCHIEF/2015_02_25_corr_bruaag.pdf	Ethni c origi n, Race	Tribu nal of First Insta nce of	In 2015, the Tribun al of	The three men were accused of incitement to hatred based on the victim's nationality,	/	For the crime of bodily harm causing incapacity, the first two men	"On the basis of the data in the criminal record and the hearing of the case by the tribunal, it cannot be established with sufficient certainty that one of the driving forces of the hits and wounds

987-12 -
DJ

[regge.pa.](#)

Brugge (Rechtbank van Eerste Aanleg te Brugge)

Bruges convicted a person for incitement to hatred based on the victim's ethnic origin. The victim, a migrant, was assaulted by two men and racially insulted by a third person. On the basis of the police report of the incident, the Tribunal considered that the accused



race, skin colour, descent or national or ethnic origin. The Tribunal acquitted the first two men due to lack of evidence. On the other hand, the witness' statement and the police's statement were considered sufficient to establish hatred by the third man towards the victim.

were sentenced to six and eight months of prison respectively, and to pay fines. For the crime of damaging property and for the crime of incitement to hatred on basis of a person's nationality, so-called race, skin colour, descent or national or ethnic origin, the third man was sentenced to sixty hours of community work plus fines.

caused by the first and second defendants was the hate, contempt or hostility against G. Nassine based on his skin color or his origin. [...] Based on the data of the investigation and the hearing, the indictment C of the third defendant is substantiated. The tribunal refers to the statements of the third defendant at the time of his interception as noted by the police officer."

'Op grond van de gegevens van het strafdossier en de behandeling van de zaak ter zitting van deze rechtbank kan niet met voldoende zekerheid worden vastgesteld dat een van de drijfveren van de door de eerste en de tweede beklaagde toegebrachte slagen en verwondingen bestond in de haat tegen, het misprijzen van of de vijandigheid tegen G. Nassine wegens zijn huidskleur of zijn afkomst. [...] Door de gegevens van het opsporingsonderzoek en door het onderzoek ter terechtzitting is de tenlastelegging C in hoofde van de derde beklaagde bewezen. De rechtbank verwijst terzake naar de uitlatingen van de derde beklaagde op het ogenblik van zijn interceptie en zoals genoteerd door de verbalisanten.'

						intend ed to incite hatred .				
--	--	--	--	--	--	--	--	--	--	--

	2015	Denmark / Board of Equal Treatment / KEN no. 10425		Religion	Board of Equal Treatment	The Board of Equal treatment found that the defendant had harassed the claimant on the ground of race/ethnic origin. The claimant had responded to a sales advert for a car, to which the defendant replied "Fuck you Muslim".	The Board of Equal Treatment found harassment on the ground of race/ethnic origin and reasoned that the defendant knew the name of the claimant, when he wrote "Fuck you Muslim". Therefore it was harassment within the scope of the Racial Equality Directive.	This was the first case where the Board of Equal Treatment found harassment on the ground of race/ethnic origin, regarding access to and supply of goods and services.	Compensation of 5,000 DKK	<p>Danish: "Da indklagede skrev "Fuck dig din muslim" til klager, var han bekendt med klagers navn. Der er for nævnet ikke tvivl om, at udtalelsen er udtryk for chikane af klager på grund af dennes etnicitet."</p> <p>English: "When the defendant wrote "Fuck you Muslim" till the claimant, he was familiar with the claimant's name. Therefore, The Board of Equal Treatment has no doubt as to whether the statement should be considered harassment of the claimant on the ground of his ethnic origin "</p>
	2015	Spain / Barcelona Provincial High Court.		Race , Nationality	Barcelona Provincial High	The Barcelona Provin	The accused were considered promoters and active members of	The conjunction and the simultaneous applicability of	The three neo-Nazis members of the group were	("confrontación con grupos ideológicamente rivales o la búsqueda de objetivos o víctimas seleccionados por su origen, raza, etnia u orientación

Supreme Court
Tenth Section /
No. 115/2015

Supreme Court
Ethnic Origin

Supreme Court

Supreme Court convicted 3 members of a band made up of young nazi skinheads, the "White Rebels" (WRB), of the crime of conspiracy, incitement to hatred and discrimination, bodily harm, threats and possession of prohibited weapons. This band had spread its

an unlawful association and a criminal organization against especially vulnerable groups such as immigrants or ethnic minorities (articles 515.5 & 517 & 570 bis of the CC).

The actions that were also published online were considered as a form of incitement to discrimination, hatred or violence – art. 510.1 CC.

The injuries provoked were aggravated by the concurrence of an abuse of superiority - art. 22.2 CC and an ideological discrimination- art. 22.4 CP.

The possession of prohibited weapons – art. 563 CC as well as the Threats occurred - 169.1.2 CC were taken into consideration.


many of the articles addressing hate crimes and hate speech scattered around and within the Spanish Criminal Code.

The level of violence manifested by the neo Nazi group made it very relevant too as well as the presence on the Social networks - still in place.

condemned to prison sentences between two and five years on charges of conspiracy, incitement to hatred and discrimination, injuries, threats and possession of prohibited weapons.

sexual")

"confrontation with ideological rival groups or the search of targets or victims selected by their origin, race, ethnicity or sexual orientation."

						<p>ideology through the internet and organized attacks against immigrant shops, worship centers, using weapons and dangerous instruments seized at the accused homes.</p>				
	2015	Belgium / Tribunal of First Instance of East-Flanders section Gent/ GE56.L2.3 657/14/sw 3	http://unia.be/files/ZARCHIEF/2015_02_02_corr_ovl.pdf	Religion	Tribunal of First Instance of East-Flanders section Gent (Rechtbank	In 2015, the Tribunal of Gent convicted a man for harassment and discrimination	The accused argued that he was using his right to freedom of expression. The tribunal said that he cannot rely on freedom of expression. The latter is limited by the constitutional freedoms of others. In this case, it was limited by the	One cannot rely on freedom of expression in the case of hate speech. Freedom of expression is limited by the constitutional freedoms of others, like freedom of religion, and criminal law.	The accused is sentenced to one hundred and sixty hours of community work and to pay 494,45 euro of compensation fee.	The messages on the streets, the posters, the stickers and banners incite discrimination - this is a rejection, a disadvantage and a negative treatment - towards a group (muslims) on the basis of their religious belief. The message calling on restricting or prohibiting their constitutional rights to freedom of religion. In view of the declarations of the accused and the above findings, such as the dissemination by him as the leader of (...) of the press releases, there is no doubt that he has spread


k van
eerste
aanleg
Oost-
Vlaanderen
afdeling
Gent)


mination because he ordered and distributed flyers, the painting of slogans on the road, and the hanging up of posters with discriminatory messages such as "STOP ISLAM", "NO JIHAD IN OUR STREET" and "STOP THE RITUAL HALAL SLAUGHTER = 100% BARBARIC".


freedom of religion, criminal law, and anti-discrimination law. Based on Article 22 of the law of 10 May 2007 on anti-discrimination, the Tribunal found the accused guilty of discrimination, any form of intentional direct discrimination, intentional indirect discrimination, order of discrimination and harassment on the ground of belief or philosophical convictions

and helped the spread of those messages. The accused cannot be believed when he says he only hung a few banners and posters. The accused cannot rely on the freedom of expression. That freedom is limited by the constitutional freedom of others and by the criminal law, in this case the anti-discrimination law.

'De boodschappen op de straten, de affiches, klevers en spandoeken beogen de discriminatie - dit is een verwerpende onderscheiding, een achterstelling, een negatieve behandeling — van een groep (moslims) omwille van diens geloofsovertuiging. De boodschappen roepen op om de grondwettelijke vrijheid van eredienst te beperken of te verbieden. Gelet op de verklaring van de beklaagde en op de bovenstaande vaststellingen, zoals de verspreiding door hem als actieverantwoordelijke van (...), van de persmededeling, lijdt het geen twijfel dat hij mede die boodschappen heeft verspreid en helpen verspreiden. De beklaagde is ongeloofwaardig wanneer hij zegt enkel de spandoeken en affiches te hebben gehangen. De beklaagde kan zich niet beroepen op de vrijheid van meningsuiting. Die vrijheid wordt immers begrensd door de grondwettelijke vrijheden van anderen en door de strafwet, in deze de Antidiscriminatiewet.'


	2015	Spain / High Court of Catalonia, Contentious Administrative Court Section 5	https://dad.es.naciodigital.cat/reaccio/arxius/documents/1423227185361-14_autosuspensions.pdf	Religion, Gender	High Court of Catalonia, Contentious Administrative Court (Tribunal Superior de Justicia de Catalunya)	The Civic Behaviour Ordinance of the city of Reus (Tarragona, Catalonia), approved on 21 July 2014, established that it was not allowed to access municipal buses or facilities wearing "the full veil, burka, niqab, balaclava, integral veil (...) or other clothing or access	<p>The fundamental argument contained in the judgment was that the use of the veil by some women is part of their religious freedom, which is a fundamental right recognized by the Spanish Constitution (Art. 16), that can only be further regulated by parliament legislation.</p> <p>The Catalonia High Court noted that the Ordinance of Civic Behaviour of Reus is equal to the Ordinance of Lleida City Council (see STS 693/2013).</p> <p>The judgment nullified the City Council Ordinance because the City Council did not have the authority to limit freedom of religion.</p>	<p>The associations (especially Islamic cultural associations) requested the suspension of these articles because they violate their right to religious freedom and discriminate against them.</p> <p>All municipal ordinances prohibiting the wearing of the burka in public spaces are thus deemed to be unconstitutional.</p>	<p>The High Court of Catalonia has decided to suspend those two articles (10.4 and 44) of the Civic Behaviour Ordinance of the city of Reus.</p> <p>The Court noted that there was no change in the legislation and it therefore applied the reasoning of the Supreme Court's ruling in a similar case in Lleida that cancelled the Lleida City Council Ordinance banning the wearing of full-face veils in public city spaces.</p>	<p>(por vulneración del derecho de libertad religiosa, art. 16.1 CE, al no existir Ley previa con base a la que pudiera limitarse el ejercicio de tal libertad en lo relativo al uso del atuendo cuestionado..... tanto en cuanto al reconocimiento de la competencia del Ayuntamiento de Lleida para establecer tal limitación, como a las razones materiales para aceptar dicha limitación)</p> <p>"...for violation of the right to freedom of religion, article 16.1 SC, there is no prior law as basis which might constrain the exercise of such freedom with regard to the use of the questioned attire, being rejected .." "... both in terms of the recognition of the jurisdiction of the Lleida City Council to establish such limitation, and the material reasons for accepting such limitation ..."</p>
---	------	---	---	------------------	--	--	---	--	---	---


						sories that prevent or hinder identification (...)".				
	2015	Germany/ Federal Constitutional Court Karlsruhe / 1 BvR 471/10 and 1 BvR 11181/10	https://www.hensch.de/Arbeitsrecht_Urteile_Kopftuchverbot_Schulen_Karlsruhe_kippt_Kopf_tuchverbot_an_Schulen_BVerfG_1BvR471-10_1BvR181-10.html	Religion	Federal Constitutional Court (Bundesverfassungsgericht)	(I) A Northrhine-Westphalia (NW) social education worker for conflict mediation (German born in a Turkish family) has been wearing a headscarf at work since 1997. A 2006 amendment to NW school law lead to	The amended NW school law refers to Christian and occidental cultural values; this constitutes an unequal treatment on grounds of religion. The previous court decisions did not evaluate a potential concrete risk for the school situation caused by the scarf; as a general rule without consideration of the specific circumstances, the law and the court rulings impaired constitutional rights of both petitioners.	Negative freedom of religion versus constitutional right for practicing religion. Risk for conflicts in the school situation: Infringement of constitutional rights by a general assumption instead of consideration of the concrete circumstances in each case.	Cancellation of all previous rulings in both cases. Annulment of § 57 Abs. 4 Satz 3 SchulG NW (amended NW school law) due to its incompatibility with Art. 3 Abs. 3 (no discrimination) and Art. 33 Abs. 3 (access to public functions irrespective of religious confession, no disadvantage due to religion) German Basic Law.	The constitutional right of freedom of religion guarantees as well the freedom of teachers in public non-confessional schools to comply with dressing requirements on religious grounds like wearing an islamic scarf. A general ban of religious demonstration (as in §57 (4) NW school law) is disproportionate. A appropriate balance between the freedom of religious expression by teachers versus the neutrality of the school and the negative freedom of religion requires at least a concrete risk for the school situation in the individual case. GER: "Der Schutz des Grundrechts auf Glaubens- und Bekenntnisfreiheit (Art. 4 Abs. 1 und 2 GG) gewährleistet auch Lehrkräften in der öffentlichen bekenntnisoffenen Gemeinschaftsschule die Freiheit, einem aus religiösen Gründen als verpflichtend verstandenen Bedeckungsgebot zu genügen, wie dies etwa durch das Tragen eines islamischen Kopftuchs der Fall sein kann. Ein landesweites gesetzliches Verbot religiöser Bekundungen (hier: nach § 57 Abs. 4 SchulG NW) durch das äußere Erscheinungsbild schon wegen der bloß abstrakten Eignung zur Begründung einer Gefahr für den Schulfrieden oder die staatliche Neutralität in einer öffentlichen bekenntnisoffenen Gemeinschaftsschule ist unverhältnismäßig, wenn dieses Verhalten nachvollziehbar auf ein als

						the school prohibiting heads carved at work: she objected and received written warnings. She filed a court case to void the written warnings; courts at two instances rejected her claim.				verpflichtend verstandenes religiöses Gebot zurückzuführen ist. Ein angemessener Ausgleich der verfassungsrechtlich verankerten Positionen - der Glaubensfreiheit der Lehrkräfte, der negativen Glaubens- und Bekenntnisfreiheit der Schülerinnen und Schüler sowie der Eltern, des Elterngrundrechts und des staatlichen Erziehungsauftrags - erfordert eine einschränkende Auslegung der Verbotsnorm, nach der zumindest eine hinreichend konkrete Gefahr für die Schutzgüter vorliegen muss."
	2015	Germany / Federal Court of Justice, Karlsruhe / 5 StR 435/14	http://www.hrr-strafrecht.de/hrr/5/14/5-435-14.php	Ethnic origin	Federal Court of Justice (Bundesgerichtshof)	Two residents of Polish origin harassed passerby in the Berlin city centre. An African was	The attackers did not stop the assault on the unconscious victim regardless of first interventions by passer-bys and stopped the assault only after loud and decisive intervention by witnesses.	Indicators for condoning homicide: Continuation of potentially deadly assault notwithstanding first interventions by witnesses; disdainful attitude and utterances towards the victim during the previous	Voiding of the previous ruling of the Regional Court Berlin. Obligation to consider the indicators for condoning homicide in a revised ruling.	"The fact that the offender did not stop the assault voluntarily, but only after loud intervention by passer-bys, constitutes a strong indicator for the attitude of the offender regarding a potential homicide of the victim." GER: "Der Tatsache, dass der Täter nicht freiwillig, sondern erst nach lautstarker Aufforderung von sich nähernden Passanten mit der Misshandlung des Opfers aufhörte, kann ein hoher Indizwert für die innere Einstellung der Täter gegenüber einer möglichen Tötung des Opfers zukommen."

called "Nigger" in Polish language. A Russian speaking witness understood the insult and intervened in Russian. The insulters physically attacked the Russian speaking witness and both continued with potentially deadly kicks on the unconscious victim. Other passersby interve

court procedure.

						ned and stopped the assault.				
	2015	Spain / Supreme Court Civil Chamber / STS 545/2015	http://www.poderjudicial.es/search/content.action?action=contentpdf&atabasematch=TS&reference=7312340&links=Los%20doce%20imanes%20de%20la%20Yihad&optimize=20150304&publicinterface=true	Religion	Supreme Court Civil Chamber (Tribunal Supremo, Sala de lo Civil)	The Supreme Court ruled against Telemadrid TV Channel for attacking the honor of two religious leaders. In October 2010, the Telemadrid TV Channel had broadcasted a report entitled "Twelve magnets of Jihad in	The ruling confirmed unlawful prejudice to the honour and the image of the plaintiffs, since it referred to Mr. Attaouil as a "radical Salafist magnet" and to Mr. Rachid Menda, as having links with the terrorism.	The judgment of the Supreme Court exposes the motives by which the freedom of information does not prevail in this case, as "the unquestionable strength and preponderance of freedom of information yields in the absence of proven accuracy of the news and the seriousness of the information that is disseminated".	The Supreme Court ruled against Telemadrid TV Channel for attacking the honor of two religious leaders. The court confirmed the compensation of 10,000 euros to each appellant imposed by the previous Girona Provincial Court ruling.	("la indiscutible intensidad y preponderancia de la libertad de información cede, sin embargo, ante la ausencia de veracidad contrastada de la noticia y la gravedad de las propias informaciones que se difunden, de indudable incidencia en la reputación de la persona de los recurridos"). "the unquestionable strength and preponderance of freedom of information however gives in because of the absence of proven truthfulness of the news and the gravity of the own information disseminated, that do have an unquestionable impact on complaints person's reputation.

						Spain” (Los doce imanes de la yihad en España). It linked two well-known Muslim leaders based in Catalonia with "Islamist" terrorism.				
	2014	Cyprus / Equality Body / Self-initiated intervention of the Anti-discrimination Authority regarding the racial incident against footballer and the combating of racism in sports / Ref. AKR/AYT. 4/2014	http://www.ombudsman.gov.cy/Ombudsman/nsf/All/3FEAC507101D9879C2257E7B00294E81/\$file/%CE%91%CE%9A%CE%A1-%CE%91%CE%A5%CE%A44.14.doc?OpenElement	Race	Equality Body	The Equality Body condemned the inadequate response of the authorities to repeated incidents of racial abuse by club	The Equality Body stressed that the impunity created by the authorities' inaction following the first incident led to further racial harassment of the victim two weeks later. It added that the spreading and reinforcing of racist tendencies or behaviours may not only create a hostile climate against groups with common collective identities but may also lead to serious forms of discrimination	The decision stated that an attack against a member of a group is also an attack against the group with whom the victim shares common characteristics, spreading to the group the same feelings of humiliation and fear experienced by the victim. Given that violence is endemic in all forms of	The racial incidents did not trigger a police investigation nor did they lead to any condemning statements from sports officials or football actors. The Equality Body submitted its report to the police with instructions to investigate possible criminal offences under	Οι συζητήσεις και απόψεις που εκφράστηκαν σε σχέση με το περιστατικό κινήθηκαν σε σταθμίσεις ως προς τις συνθήκες και τη σοβαρότητά του, την αναγκαιότητα ενασχόλησης με αυτό, τη συμπεριφορά του ίδιου του ποδοσφαιριστή ή και με τις ενδεχόμενες συνέπειες του περιστατικού. Προτού, όμως, αξιολογηθούν οι πιο πάνω παράγοντες που εγκλωβίζουν το χειρισμό του περιστατικού σε ψευτοδιλήμματα του τύπου «αν και πόσο ρατσιστικό είναι το περιστατικό» είναι σημαντικό να γίνει αντιληπτό ότι το κύριο διακύβευμα σε τέτοιες περιπτώσεις είναι ο σεβασμός της ανθρώπινης αξίας που είναι θεμελιώδης και αδιαπραγμάτευτος. The debates and views expressed in relation to the incident concerned the circumstances and gravity and the need to deal with the behavior of the player



fans against a black African football player during two consecutive matches. No arrests or prosecutions were made and the authorities had failed to take measures against the perpetrators.

against them and to extreme forms of violence. For this reason, the state has an increased duty to act in order to prevent manifestations of racism and protect its potential victims.

racism, the spreading of racist tendencies may result in the creation of a hostile climate against groups with common collective identities, potentially leading to severe discrimination and extreme forms of violence. The failure of the authorities to take action against racial incidents leads to a failure to restore the damage to the victims' dignity, whilst at the same time it provides fertile ground for the reproduction, accentuation and perpetuation of such conduct.

the law transposing the Framework Decision on Racism and Xenophobia as well as under national legislation for the prevention of violence in sports. No prosecutions took place in relation to these incidents.

himself or even the possible consequences of the incident. However, before assessing the above factors that entrap the handling of the incident in pseudo-dilemmas such as "whether and how much racist the incident was", it is important to understand that the main stakes in such cases are respect for human value, which is fundamental and non-negotiable.

	2014	Bulgaria / Sofia Regional Court / Decision of 19 November 2014 on administrative case no. 7631 of 2014	https://legacts.justice.bg/Search/Details?actId=Pgm3a7Sc0%3D	Nationality	Sofia Regional Court (Софийски районен съд)	The political party Ataka (Атака) was sanctioned with a fine of BGN 3,000 (approximately €1,500) for inciting intolerance against refugees.	The court concluded that, by describing Syrian refugees as 'killers' and 'cannibals', the TV host created the impression that all refugees from Syria were dangerous potential criminals. According to the court, such statements, made through a national TV channel, could reach a broad audience, cause strong negative feelings to the viewers and encourage them to engage in unlawful acts against the refugees. The court also referred to other statements, made during the show, in which the journalist openly called for a 'rebellion' or 'uprising' to 'expel this Islamist mob'.	The court elaborated on the limitations of the freedom of expression, noting that this freedom, even when the person concerned is a journalist, should not be used controversially for the purpose of delivering harmful and dangerous messages to the society.	The court rejected the claim of political party Ataka (Атака) and confirmed the sanction imposed by the Council for Electronic Media (CEM) (Съвет за електронни медии, СЕМ).	<p>"На второ място, дори и да се приеме, че водещата е представяла своя гледна точка по някои от проблемите във връзка с бежанската вълна, то противно на наведеното от жалбоподателя твърдение, не става ясно, че се имат предвид вече публикувани и обсъждани в публичното пространство единични инциденти, а се създава впечатление, че абсолютно всички сирийци в страната ни, са реално опасни потенциални извършители на престъпления. Чрез твърденията, че те са масови убийци, че това са семейства на хора, които режат глави и изхвърлят мирно население от покривите на сградите, се внушава основателен страх у аудиторията."</p> <p>"</p> <p>Secondly, even if the TV host had given her point of view on some of the problems relating to the refugee wave, contrary to what the applicant claims, it is not clear that she refers to single incidents already published and discussed in the public domain; instead, it is implied that absolutely all Syrians in our country are really dangerous potential offenders. By claiming that they are mass murderers and that these are the families of people who cut heads and throw peaceful population from roofs of buildings, a legitimate fear in the audience is being created."</p> <p>Sofia Regional Court (Софийски районен съд), Decision of 19 November 2014 on administrative case No 7631 of 2014 (Решение от 19.11.2014 г. по ад. № 7631 от 2014 г.), 19 November 2014</p>
	2014	Ireland / Court of Appeal / No. 186/12 / The	http://www.courts.ie/Judgments.nsf/bce24a8184816f458850	Race	IECA, Court of Appeal	This case relates to the	The Court acknowledged that there had been a racist dimension to the attack and that	The issue of racism as an aggravating factor and its subsequent	The original conviction resulted in a sentence of five years	<p>"Among the very many aggravating factors present were that there was a racist dimension, an aspect that was very properly highlighted by the Circuit Court judge. It may be that as counsel</p>

The People at the Suit of the Director of Public Prosecutions v. Anthony Elders

[1580256et30048ca507c61391cfa0fba6880257dc50057ccd9?OpenDocument](#)


previous conviction of an Irish man in the Circuit Court for criminal damage and assault on another man of perceived Asian descent following an argument among a number of people. In the course of the assault, racist language was used and the

this had been an aggravating factor. The Court acknowledged that this had been considered in the original trial based on the facts of the case.

impact on sentencing has been acknowledged as factor for consideration.

imprisonment. While accepting the very serious nature of the offence, the Court of Appeal found that the sentencing court had failed to take appropriate account of the mitigating factors and suspended the final 12 months of the sentence, subject to an offer of €4000 compensation being paid to the injured party.

for the appellant said that this was not the case where someone was attacked because of their race, but that there was a racist dimension is nonetheless clear and that is an aggravated fact”.

						<p>victim sustained lacerations to his face and damage to property. The case was an appeal brought by the appellant against the severity of a sentence of five years imprisonment for assault causing harm and criminal damage.</p>				
	2014	Poland / I instance: Regional Court in Białystok /		Nationality	I instance: Regional	On August 25 2013	The Regional Court established that the crime fell under the scope of Article 257	"Public insult" is the one that can be perceived by an unlimited	The accused were sentenced with respectively: 3,	"Zgodnie z utrwalonym poglądem w doktrynie i orzecznictwie przez zachowanie "publiczne" należy rozumieć takie, które może zostać postrzeżone

Ref. no. VII
K 1018/13
/ II
instance:
District
Court in
Białystok /
Ref. no.
VIII Ka
577/14

Court
in
Białystok,
II
instance:
District
Court
in
Białystok

two
Chech
en
wome
n were
having
a walk
with
their
small
childre
n in
the
city.
When
they
were
passi
ng by
the
group
of 3
Polish
cizen
s, they
were
publicl
y insulte
d
becau
se of
their
nation
ality.
Perpet
rators
were
screa
ming
vulgar
words
such
as
"Chec
hen
whore
s!",
showi
ng


of the Criminal
Code (public insult
to a group of
people or an
individual because
of their nationality,
ethnic origin, race
or religion). The
defence of the
accused lodged an
appeal arguing that
the insult was not
"public" since it
was directed
towards the victims
only. The District
Court upheld the
ruling. The Court
highlighted that the
insult shall be
considered "public"
if it can be heard by
an unlimited
number of
recipients, for
example if it
happens in a place
generally
accessible to
indeterminate
number of persons.
Since the incident
took place on the
street near the
church where
some people were
sitting on the
benches, the insult
had to be
considered
"public".

number of
observers and
heard by an
indefinite
number of
persons.

4 and 5
months of
imprisonment.
The sentence
of one of the
accused was
suspended for
the probation
period of 2
years.

przez nieograniczony krąg adresatów,
czyli dostępne dla nieokreślonej liczby
osób. (...) Nie ma też wątpliwości, iż
znieważenia dotyczyły ich narodowości.
Jednoznacznie świadczą o tym
wypowiedziane wulgaryzmy z
podkreśleniem "czeczeńskie".

[English: "According to the doctrine and
well established case-law, "public"
behaviour is the one that being
perceived by an unlimited number of
observers, which means that it is
possible to be heard by an indefinite
number of persons. (...). There is also
no doubt that the insults concerned the
nationality of victims. It is clearly
confirmed by the vulgar words
emphasising "Chechen"].


						offensive gestures towards them and one of them spat in the face of one victim. Women run to the nearest church and called their relatives. An incident was reported to the police.				
	2014	Poland / I instance: District Court in O. / Ref. no. II K 237/12 / II instance: Appellate Court in Bialystok / Ref. no. II AKa 221/14		Race	I instance: District Court in O., II instance: Appellate Court in Bialystok	On June 29, 2012 four Polish citizens attacked on the street a group of foreign	The District Court established that an attack was motivated by victims' nationality and race and it should be particularly condemned because the reason of the violence was trivial - different nationality and race of the victims. The defence lodged an	If the reason of committing an offence is trivial it is classified as a "hooliganism" and the penalty is more severe. The Appellate Court did not agree with the defender who was arguing that victim's race or nationality is a	One of the accused was acquitted while the rest of them were fined and obliged to pay compensation to the victims.	"Zdaniem bowiem obrońcy, jeżeli objęte aktem oskarżenia zajście miało tło rasistowskie, to oskarżeni działali z „poważnego powodu”. (...). [Taki pogląd] może (...) liczyć jedynie na akceptację skrajnie nacjonalistycznych i szowinistycznych środowisk, (...). Bić kogoś tylko z tego powodu, że ma inny kolor skóry lub jest innej narodowości, to to samo, co bić z tej tylko przyczyny, że ktoś ma inną fryzurę, kolor oczu lub duży nos. Wszystkie te powody są równie oczywiście błahе, (...)" [English: "According to the defendant, if the incident occurred due to the racist reasons, it means that the accused


ners from the Republic of South Africa. They were hitting their victims with hands, beating, kicking and pushing them, which posed a threat to the victims' health. Moreover, perpetrators were using insulting words related to victims' nationality and race. Foreigners report

appeal to the Appellate Court arguing that the reason of committing an offense should not be classified as "trivial" since it was committed due to the serious reasons namely the victims' nationality and race which should result in the reduction of the penalty. The Appellate Court did not agree with that and upheld the ruling in the main part, acquitting just one of the accused who was clearly trying to prevent the attack.

serious reason of committing a crime. The Court found instead that victim's nationality or race is in fact "trivial reason" or "no reason at all" to attack a person. Therefore, it should be considered "hooliganism".

acted due to a "serious reason". (...). [Such view] can (...) only be supported by extreme nationalist and chauvinistic circles, (...). To beat someone just because they have a different skin colour or a different nationality, is the same thing as to beat someone because of their different hairstyle, eye colour or big nose. All these reasons are equally trivial, (...)."]

						ed the incident to the police.				
	2014	Sweden / Court of Appeal for Western Sweden / Case no. B 5049-14		Ethnic origin	Court of Appeal for Western Sweden (Hovrätten för västra Sverige)	The Court of Appeal for Western Sweden (Hovrätten för Västra Sverige) overruled Gothenburg District Court's (Göteborgs tingsrätt) verdict regarding the crime classification of the abuse a woman, P.A. was subjected to on a public bus.	The Court of Appeal found that since the degrading statements made by F.P. were directed to P.A and her friends as individuals and not as members of a group the insults could not be considered to be hate speech even if they were uttered in a public place among other people. Neither could the aim of F.P. be said to have been to persuade others to hate a specific group. However, the Court of Appeal did not find any reason to doubt that F.P. had abused P.A. both in words and actions (by spitting in her face). Consequently, F.P. was found guilty of abuse (ofredande) but not of incitement of hatred	The key issue concerns the interpretation of hate speech in relation to the situation in question, especially in relation to the dissemination prerequisite. The District Court found that the racist insults should be considered to have been disseminated outside the personal sphere, since they were shouted to the plaintiff in a crowded bus. Thus, the District Court considered the incident as incitement of hatred. The Court of Appeal focused on the intent and direction of the insults and argued that even though the insults were uttered in a crowd, they were directed to one particular	The Court of Appeal set aside the District Court's sentence concerning the charge of hate speech and affirmed its sentence concerning the charge of abuse. Thus, the penalty was limited to a) a probationary period of two years; and b) to pay P.A. 5,000 SEK (525 Euro) in damages. The reasoning of the Court of Appeal did not include any reference to the racist nature of the degrading statements.	<p>Straffbestämmelsen om hets mot folkgrupp tar dock sikte på angrepp som riktas mot kollektivt bestämda grupper och kollektiv av sådana grupper, medan enskilda identifierbara individer inte skyddas av bestämmelsen Eftersom F.P med sina uttalanden riktat sig direkt mot P.A och de två männen, kan han därmed inte dömas för hets mot folkgrupp.</p> <p>The penalty clause against incitement of hatred is however aimed at attacks against collectively defined groups and collectives of such groups, whereas individual identifiable individuals are not protected by the provision. Since F.P.'s statements were directed directly against P.A and the two men, he cannot be sentenced of incitement of hatred.</p> <p>Sweden, Court of Appeal for Western Sweden (Hovrätten för västra Sverige), case number B 5049-14 The case is not available online but have to be requested from the court in question using the case number</p>

						<p>The perpetrator spat in her face and called her “Chinese whore” referring to P.A.’s Asian facial features. The District Court found the perpetrator, F.P.</p>		<p>person and were not uttered with the intent to incite hatred. This being the case, the Court of Appeal did not consider the fact that the racist insults were uttered loudly and in a public place to meet the dissemination prerequisite.</p>		
	2014	Greece / Mixed Jury Court of Athens /Decision 398/2014 / Shehzad Luqman Case		Race , Religion, Ethnic origin	Mixed Jury Court of Athens	<p>The Mixed Jury Court of Athens convicted two men with alleged ties to the Golden Dawn party for murder</p>	<p>The Court’s reasoning underlined the qualitative elements and the special circumstances under which the murder was committed. It relied on testimonies of NGOs and experts referring to a pattern of attacks against migrants by Golden Dawn supporters which were motivated by racism. During the reading of its</p>	<p>The Mixed-Member Court unanimously rejected pleas by the defendants that the case was “a quarrel”, stating that the circumstances of the case such as the numerical superiority of perpetrators – at midnight – attack against an individual unknown to them, targeted</p>	<p>The Mixed Jury Court of Athens in a unanimous verdict, found Dionysis Liakopoulos, 26, and Christos Stergiopoulos, 30, guilty of his murder. They received an additional 32 months each for additional gun-related charges. It was the first time a racist crime</p>	<p>“η ανθρωποκτόνος πρόθεση των κατηγορουμένων, οι οποίοι από κοινού αφαίρεσαν τη ζωή του LUQMAN SHEHZAD λόγω της διαφορετικότητας των εξωτερικών του χαρακτηριστικών, της εθνικής του καταγωγής και της θρησκείας του επιβεβαιώνεται και από το γεγονός ότι δεν υπήρξε εκ μέρους του θύματος οποιαδήποτε μορφή πρόκλησης είτε λεκτική... είτε έμπρακτη... η κατοχή 4 σελίδων με την αναγραφή ΠΟΛΕΜΟΣ ΣΤΟ ΣΥΣΤΗΜΑ www.XAgr.net – ΛΑΪΚΟΣ ΣΥΝΔΕΣΜΟΣ ΧΡΥΣΗ ΑΥΓΗ και 117 φυλλαδίων με την αναγραφή “ΓΙΑΤΙ ΘΑ ΨΗΦΙΣΩ ΧΡΥΣΗ ΑΥΓΗ” εκ μέρους του πρώτου κατηγορουμένου και συνακόλουθα η ύπαρξη των ακραίων πολιτικών πεποιθήσεων του δεν αρκεί από μόνη της για να προσδοθεί</p>

ring Shehzad Luqman, a 27 year-old worker from Pakistan on his way to work. The Judgment of the Court was the first to examine the elements capable of establishing a racist motive such as the circumstances of the attack, the vulnerability and identity of the victim and


verdict, the court did not classify the act as a racist crime, however, the sentencing took into consideration the aggravating circumstance of racist motive based on article 79CC.

as a Pakistani migrant, with the use of knives, in an area frequented by migrants and the possession of far-right pamphlets indicate that the offences committed were carried out with a racist motive.

had ever been examined before a court in Greece.

ρατσιστικός χαρακτήρας στην αξιόποινη συμπεριφορά αμφοτέρων των κατηγορουμένων, όμως οι ειδικές περιστάσεις υπό τις οποίες τελέστηκε το έγκλημα (επίθεση από υπέρτερους αριθμητικά δράστες – μεταμεσονύκτια ώρα – κατά αγνώστου ανθρώπου που στοχοποιήθηκε ως Πακιστανός μετανάστης, με τη χρήση μαχαιριών, σε περιοχή που συχνάζουν αλλοδαποί μετανάστες και είναι ευχερής ο εντοπισμός του θύματος, χωρίς προηγούμενη πρόκληση από αυτό, πλήξη με αλλεπάλληλες μαχαιριές, διαφυγή με λήψη των πειστηρίων και απόκρυψη των διακριτικών γνωρισμάτων του μεταφορικού μέσου, κίνηση χωρίς το φόβο του εντοπισμού και της σύλληψης, όπως αναπτύχθηκαν ανωτέρω) δεν καταλείπουν καμία αμφιβολία στο Δικαστήριο για τη διάπραξη του εγκλήματος υπαγορευόμενου από αισθήματα ρατσιστικού μίσους... η πράξη τους τελέστηκε από μίσος προκαλούμενο λόγω της διαφορετικότητας των εξωτερικών χαρακτηριστικών του θύματος, της θρησκείας του, της εθνικής και εθνοτικής του καταγωγής, σύμφωνα με το άρθρο 79 παρ. 3 εδ. τελ. ΠΚ, όπως ισχύει”.

The murderous intent of the defendants who killed Shehzad Luqman... due to the difference in his appearance, his ethnic origin and religion is confirmed by the fact that the victim did not provoke them either orally nor physically,... the possession of 4 pages with the title “WAR AGAINST THE SYSTEM www.XAgr.net - GOLDEN DAWN” and 117 pamphlets on “WHY I WILL VOTE FOR GOLDEN DAWN” by the first defendant and the existence of extreme political views does not alone offer a racist character to the criminal actions of each defendant, however the special circumstances under which the crime was committed (numerical superiority of perpetrators – at midnight- attack

					the modus operandi of the perpetrators.					against an individual unknown to them, who was targeted as a Pakistani migrant, with the use of knives, in an area frequented by migrants and the identification of the victim was easier, without any provocation by the victim, repeated stabs, escape by removing the evidence and hiding the distinctive features of the vehicle, moving ahead without fear of localization and arrest) leave no further doubt to the Court that the crime was perpetrated based on feelings of racist hatred... the offence was carried out due to hate based on the differences in the victim's appearance, his religion and ethnic origin.
	2014	Sweden / Scania and Blekinge Court of Appeal / Case no. B 1243-14		Religion	Scania and Blekinge Court of Appeal (Hovrätten över Skåne och Blekinge)	Scania and Blekinge Court of Appeal (Hovrätten över Skåne och Blekinge) overruled a verdict by Malmö District Court (Malmö tingsrätt) changing the legal classification	The Scania and Blekinge Court of Appeal found that the witness statements showed that R.Å. had approached the injured parties with intent. The Court of Appeal found the perpetrator's statement "you are ruining the country" as well as other witness statements confirming that R.Å. had made degrading statements about Muslims to be evidence of intent to harm the victims on the grounds of their religion. The Court of Appeal argued that since no other possible motive for the assault had been established, the	The key issue concerns the requirements that must be fulfilled for a crime to be interpreted as a hate crime. The two courts differed in their assessment of the content of the witness statements. The District Court did not find that the witness statements were evidence of R.Å.'s intent to attack the two injured parties because of their ethnic origin and/or faith. According to the Court of Appeal, the same witness statements	The Court of Appeal affirmed the District Court's sentence of 75 hours of community service (samhällstjänst). Because of the assault's degrading nature, the damages to S.I. and M.I. were increased. R.Å. was liable to pay 15,000 SEK (1,575 Euro) to S.I. and 10,000 SEK (1,050 Euro) to M.I.	Av utredningen framgår att såväl S.I. som M.I. bar slöja vid tillfället. Det har också framkommit att det var R.Å som aktivt sökte upp dem då de kom ut från akutmottagningen. C.O. och V.M. har berättat om hur R.Å. uttalat sig nedsättande om muslimer samt att det, enligt honom, var muslimer som orsakat hans skador och att kvinnorna han mött utanför akutmottagningen var likadana. De har också samstämmt redogjort för R.Å. agerande mot V.M på grund av att denne är muslim. C.O. har även berättat att R.Å. under händelseförloppet uttalat att det var muslimernas fel. Mot bakgrund av det anförda och då något annat tänkbart motiv för gärningen inte framkommit kan någon annan rimlig slutsats inte dras än att R.Å. angripit. S.I. och M.I. på grund av att de bar slöja, vilken är en tydlig symbol för deras trosbekännelse. Åtalet är således styrkt även i denna del. The investigation shows that both S.I. and M.I. were wearing headscarves at the time. It has also been found that it was R.Å who actively sought them out when they came out of the emergency room. C.O. and V.M. have recounted how R.Å. uttered disparaging


of a crime from assault to hate crime. The case concerned a man R.Å. that attacked two women with headscarves. The District Court did not find evidence of any intent to injure the woman on grounds of their religious attribute, e.g. the phrase "you are ruining the country" could


only reasonable conclusion must be that R.Å. attacked the two women because they wore headscarves, which are clear symbols of their religion. Since the assault was thus considered to be a hate crime, this increased the penal value of the crime.

proved that R.Å. had attacked M.I. and S.I. because of their ethnic origin and/or faith. Thus, the Court of Appeal considered the attack to be a hate crime, which is an aggravating circumstance that affects the penalty negatively and determined the sentence based on these interpretations.


statements about Muslims, and that he had said that it were Muslims who caused his injuries and that the women he met outside the emergency room were of the same kind. They have also coherently accounted for R.Å.'s actions against V.M. because of his identity as a Muslim. C.O. has also recounted that R.Å. during the course of events, explicitly stated that it was the Muslims' fault. Against this background and since no other possible motive for the act has been presented, no other reasonable conclusion can be drawn than that R.Å. attacked S.I. and M.I. because they were wearing headscarves, which is a clear symbol of their faith. The prosecution is thus affirmed also in this part.

Sweden, Court of Appeal for Western Sweden (Hovrätten för västra Sverige), case number B 5049-14 The case is not available online but have to be requested from the court in question using the case number.


						not be interpreted in as such intent.				
	2014	Greece / Athens Single-Member Court of Misdemeanours / Decision 65738/2014 / Case of Alexandros Plomaritis		Ethnic origin	Athen Court of Misdemeanours	The Athens Single-Members Court of Misdemeanours convicted a known Golden Dawn Member and MP candidate under article 1 of the Anti-Racist Law 927/1979, which punishes the public incitement of violence or	The Court found that the phrases used by Mr Plomaritis, even if exaggerated, demonstrated his views, especially for publicly inviting others to carry out actions to cause bodily harm to various foreigners, so as to convince them to leave the Greek territory. The Court noted that discrimination, hate and violence had been expressed, through outlawed and extreme behaviours, namely beatings and murders of foreigners, at the time investigated by the Greek Justice system.	The Court attempted to clarify the relationship between freedom of expression and hate-speech. It stated that the provisions of Law 927/1979 should be interpreted narrowly and strictly and that the foremost obligation of the state is the respect and protection of human value; the framework of which also includes the national and ethnic background of an individual, protected here through the adoption of Law 927/1979.	Through this Decision of the Athens Single-Member Court of Misdemeanours, Plomaritis was convicted to one year imprisonment and a three-year suspended sentence. This Decision was important, as it examined hate speech in light of the freedom of expression. It stipulated that Law 927/1979 has to be interpreted narrowly and strictly so as not to endanger the freedom of expression, yet the State must also always keep in mind its obligation to respect and protect human dignity, including race and nationality.	“Οι δε φράσεις που χρησιμοποιήθηκαν από τον ίδιο κατά τη διάρκεια της συζήτησης στο καφενείο επί της οδού Πιπίνου, έστω και αν περιείχαν υπερβολή, καταδεικνύουν τις απόψεις του, κυρίως στην πρόσκληση δημόσια σε διάφορους άλλους να προβαίνουν στον ξυλοδαρμό, να απειλούν, να εξυβρίζουν, να τραυματίζουν με πρόκληση σοβαρών σωματικών βλαβών διάφορους αλλοδαπούς, προκειμένου οι υπόλοιποι να πείθονται κατά τον τρόπο αυτό να εγκαταλείπουν το έδαφος της Ελληνικής Επικράτειας, ήταν δε ικανές οι φράσεις του και οι λέξεις του να προκαλέσουν διακρίσεις, αφού κατά τα λεγόμενά του κατηγορούμενο αυτοί φέρονται ως όντα κατώτερα, μίσος, διότι φέρονται ότι καταλαμβάνουν ζωτικό χώρο των Ελλήνων, και βία κυρίως κατά ομάδων και προσώπων με συγκεκριμένα φυλετικά χαρακτηριστικά που προσιδιάζουν σε διάφορες εθνοτικές ομάδες προερχόμενες από τις περιοχές της νότιας και νοτιοδυτικής Ασίας. Πρέπει δε να σημειωθεί ότι έστω και αν αυτό δεν απαιτείται για την πλήρωση της ειδικής υπόστασης της κρινόμενης πράξης του άρθρου 1 παρ. 1 του Ν 927/1979, οι διακρίσεις, το μίσος και η βία εκφράστηκαν ιδιαιτέρως, με έκνομες και ακραίες συμπεριφορές, συνιστάμενες σε ξυλοδαρμούς και ανθρωποκτονίες αλλοδαπών, που ερευνώνται ήδη από την Ελληνική Δικαιοσύνη.”
										The phrases used by him during the conversation at the coffee house on Pipinou street, even if exaggerated, demonstrate his views, especially for publicly inviting others to carry out beatings, threats, slandering,

						<p>hate. He was convicted to one year imprisonment and a three-year suspended sentence for referring to migrants, inter alia, as "sub-human" and "taints" during an interview for a documentary that was aired on Channel 4 with the title "The Cleaners".</p>				<p>assaulting in order to cause bodily harm to various foreigners, so as to convince others to leave the Greek territory, on the other hand these phrases and words were capable of triggering discrimination, since according to the defendant they [foreigners] are considered lesser beings, hate because they are presented as conquerors of the vital area of Greeks, and violence specifically against groups and individuals with specific racial characteristics which appear linked to various national groups originated from the areas of south and south-east Asia. It should be noted that even if this is not required for the fulfilment of the specific essence of the crime under question of article 1 para. 1 of Law 927/1979, discrimination, hate and violence have been expressed, through outlawed and extreme behaviours, namely beatings and murders of foreigners, currently investigated by the Greek Justice [system].</p> <p>Athens Single-Member Court of Misdemeanours, Decision 65738/2014 (The full text of the decision is not available, however the crucial excerpts have been made available online at the website "Jail Golden Dawn" which chronicles all cases tried and pending against Golden Dawn and its members. The excerpts were found in Greek at: https://jailgoldendawn.com/2015/02/20/%CE%BC%CF%80%CE%BB%CE%B7%CE%BC%CE%..., last accessed on 12/10/2017).</p>
	2014	Bulgaria /	https://leg	Natio	Burn	The	The court	The court	The court	"С оглед събраните доказателства



	2017	Burgas Regional Court / Decision no. 1429 of 28 July 2014 on administrative penal case no. 2455/2014	https://ec.europa.eu/justice/bulgaria/courts/decision/2014-07-28-1429-2455-2014	Nationality	Burgas Regional Court (Бургаски районен съд)	The court repealed a fine of BGN 3,000 (approximately €1,500), imposed on the TV channel SKAT (CKAT) for incitement to intolerance against ethnic Turks. The sanction was originally imposed for the broadcasting of a TV show, in which the participants argued that	the court concluded that none of the statements had incited confrontation between the Bulgarian and the Turkish nations. According to the court, the TV presenter was expressing his personal opinion without confronting different groups of the population and without inciting intolerance. His statements had not caused negative feelings, in particular, fear of aggression on the part of the Turkish nation.	The court elaborated on the degree to which the freedom of expression is restricted by the ban to incite intolerance and hatred. According to the court, as long as the expressed opinion does not cause, directly or indirectly, negative feelings such as fear and insecurity, which could turn to hatred and intolerance, the freedom of expression should not be restricted.	The court overruled the decision of the Council for Electronic Media (CEM) (Съвет за електронни медии, СЕМ) and repealed the imposed sanctions on the TV service provider.	След събраните доказателства съдът счита, че изявленията на водещия предаването представляват израз на правото му на лично мнение по определена тема [...] В конкретния случай изявлението на водещия предаването не внушава национална нетърпимост към еврейската и турската нация, поради което счита, че тези коментари не са форми на разпалване на вражда по смисъла на чл. 39, ал.2 от Конституцията на Република България. "In the light of the evidence gathered, the court considers that the statements of the TV presenter are an expression of his right to a personal opinion on a particular topic [...] In this case, the statement of the presenter does not incite to national intolerance against the Jewish and Turkish nations, and therefore [the court] considers that these comments are not forms of inflammation in the sense of Art. 39, para 2 of the Constitution of the Republic of Bulgaria."
--	------	--	---	-------------	--	---	--	--	--	--

						the Turks were planning to conquer Bulgaria and annihilate the Bulgarian population.				
	2014	Netherlands / Court of Appeal Amsterdam / Case no. 23-003039-12 ECLI:NL:GHAMS:2014:2752	http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHAMS:2014:2752	Race, Religion	Court of Appeal Amsterdam (Gerechtshof Amsterdam)	In 2010, a man in the city of Zaandam wrote texts in graffiti on a residential building insulting Muslims and Turks. Examples of the texts include "Muslim Murder is top",	The Court decided that the statements by the accused were gratuitously offensive. The Court considered the possibility that the statements by the accused contributed to the public debate. It ruled that the statement had no additional value for the public debate. The Court also considered the possibility that the statements were an expression of an artistic idea. However and according to the Court, this was not the case here.	This case makes clear that gratuitously offensive insults targeting the groups mentioned in Article 137 c of the Dutch Criminal Code are criminal. Groups mentioned are: religion, race, belief, hetero or homosexual orientation or their physical, mental or intellectual disability.	The perpetrator was ordered a community service of 60 hours.	"De vraag of de uitlatingen van de verdachte dienstig waren of bijdroegen aan enig maatschappelijk debat dan wel zijn gedaan in verband met een geloofsovertuiging of een artistieke expressie inhouden, moet naar het oordeel van het hof ontkennend worden beantwoord. De verdachte heeft in openbare ruimtes beledigende teksten aangebracht die geenszins opriepen tot enig debat noch kennelijk uit een geloofsovertuiging voortkwamen of als kunstuiting waren bedoeld, terwijl dat door de verdediging evenmin is aangevoerd." "The question whether the statements of the accused were useful or contributed to any social debate or being done in connection with a belief or artistic expression must be answered in the negative by the court. The accused has put abusive texts in public areas, which in no way called for any debate or apparently evidenced by a belief or was meant to be artistic, while the defense did not argue this either." The Netherlands, Court of Appeal Amsterdam (Gerechtshof Amsterdam) (2014), Case No. 14 July 2014, ECLI:NL:GHAMS:2014:2752, available at: http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHAMS:2014:2752

"Turks
stink"
etc.
The
Court
of
Appeal
decide
d that
these
texts
constit
uted
group
insult
as
crimin
alised
by
article
137c
of the
Dutch
crimin
al
code.
This
article
crimin
alizes
group
insults
on
severa
l
groun
ds
includi
ng
race
and
religio
n.
Turks
fall
under
the
definiti
on of

						race.				
	2014	Czech Republic / National Ombudsman / Report from investigation of the National Ombudsman office / 173/2013/DIS/EN	https://www.ochranc.e.cz/fileadmin/user_upload/DISKRIMINACE/Kauzy/vzdelavani/173-13-DIS-EN.pdf	Religion	National Ombudsman	The Ombudsman declared that rules prohibiting the wearing of any type of headwear at a medical nursing school constitutes indirect discrimination based on religion, since wearing a headscarf is an expression of the Islamic religion. Two asylum	The Ombudsman emphasised the freedom of religion and a general ban of discrimination, which is important especially at school, since education is compulsory for every child. Wearing a headscarf for a Muslim woman is an expression of her religion. This right could only be limited on the basis of public safety, public order, health, ethics or protection of someone else's rights. The Ombudsman also carried out a proportionality test and came to a conclusion that the ban of a headscarf is not proportionate and constitutes indirect discrimination.	Schools are not entitled to restrict the freedom of religion by their internal instructions.	Even before the investigation of the Ombudsman had ended, the school introduced a change in school rules that still bans wearing any type of headscarf, but also entitles students to apply for an exception, which can be granted by a school director. According to the Ombudsman, the actual version of school rules still contradicts the law: the performance of freedom of religion must not depend on an arbitrary decision of a school director. At the moment one of the asylum seeker demands compensation from the school, but she was not successful before the court of first instance.	Ustanovení školního řádu, které zakazuje nosit všechny pokrývky hlavy včetně muslimského šátku hidžábu v rámci teoretického vyučování na střední zdravotnické 16 škole, zakládá nepřímou diskriminaci z důvodu náboženského vyznání ve smyslu ustanovení § 3 odst. 1 antidiskriminačního zákona. Takové opatření nelze odůvodnit požadavkem na dodržování společenského chování, neboť dodržování společenských norem není legitimním cílem ve smyslu čl. 9 odst. TRANSLATION: A provision in the school rules that bans the wearing of any headwear (including hijab) in theory classes at a secondary-level medical (nursing) school represents indirect discrimination in terms of § 3, article 1 of the Antidiscrimination Act. This rule cannot be justified by etiquette, since etiquette is not a legitimate aim in terms of Article 9/2 of the ECHR and Article 16/4 of the Charter of Fundamental Rights and Freedoms.2 Úmluva čl. 16 odst. 4 Listiny.

seekers
studying
there
decided
to leave
the school
after the
director -
who originally
agreed on a
compromise
- asked
them to take
off their
heads
carves
.

	2014	ECtHR / Application no. 43835/11 / S.A.S v. France	http://hudoc.echr.coe.int/eng/?i=001-145466	Religion	European Court of Human Rights – Grand Chamber	The case concerned a law from 2010 which states that concealing the face in public arises from radicalisation and extremism, rather than from religious practices and is therefore prohibited.	The Court rejected the government's preliminary decision on the grounds that the applicant is a member of a category of persons who risk being directly affected by the legislation. The Court rejected the applicant's allegation of indirect discrimination. Although it could be said that the law had specific negative effects on the situation of Muslim women, the measure had an objective and reasonable justification.	The Court emphasised in particular that respect for the conditions of "living together" was a legitimate aim for the measure at issue and that, particularly as the State had a lot of room for manoeuvre ("a wide margin of appreciation") as regards this general policy question on which there were significant differences of opinion, the ban did not breach the Convention.	The Court rejected the applicant's allegation of indirect discrimination. Although it could be said that the law had specific negative effects on the situation of Muslim women, the measure had an objective and reasonable justification. After the Court's decision, two of the judges delivered a joint partially dissenting opinion finding that the rights of the applicant have been violated.	"Furthermore, admittedly, as the applicant pointed out, by prohibiting everyone from wearing clothing designed to conceal the face in public places, the respondent State has to a certain extent restricted the reach of pluralism, since the ban prevents certain women from expressing their personality and their beliefs by wearing the full-face veil in public. However, for their part, the Government indicated that it was a question of responding to a practice that the State deemed incompatible, in French society, with the ground rules of social communication and more broadly the requirements of "living together". From that perspective, the respondent State is seeking to protect a principle of interaction between individuals, which in its view is essential for the expression not only of pluralism, but also of tolerance and broadmindedness without which there is no democratic society. It can thus be said that the question whether or not it should be permitted to wear the full-face veil in public places constitutes a choice of society."
	2014	Belgium / Court of First Instance of Antwerp / No. AN56.LB.4 8751-12	https://lex.be/nl/doc/be/rechtspraak-antwerpen-afdeling-antwerpen-rechtbank-van-eerste-aanleg-vonnis-25-juni-2014-	Ethnic origin	Court of First Instance of Antwerp (Rechtbank van eerste aanleg)	The case concerns a suspended punishment for racism and discrimination.	The court considered the acts committed to be serious, and considered that cause individuals to feel as inferior citizens. The court observed that the accused had been willing to participate in mediation with the	No new interpretations or explanations.	The court decided to impose a suspended punishment under certain conditions because the parties had participated in mediation. The suspended punishment,	'De feiten zijn ernstig. Onze maatschappij bestaat uit vele individuen van verschillende origines die verder samen een toekomst moeten uitbouwen. Onze maatschappij heeft dan ook nood aan verzoenende en samenlevingsopbouwende initiatieven. Daden die ertoe leiden dat bepaalde personen zich als minderwaardige burgers behandeld voelen, brengen ernstig leed teweeg bij de betrokkenen, bemoeilijken het samenleven van de verschillende gemeenschappen, en

[Case C-101/14
ECLI:EU:C:2014:1062](#)

Uitspraak van het Gerecht van Antwerpen/Tribunal de première instance de Anvers)


on. A couple had been refused to rent a property by a real estate agency because of their origin (which was evident from their names). According to the couple, this was explicitly mentioned to them by a staff member of the agency. The agency manager denied the accus

victims of the racist act. In this context, the accused had provided statements indicating that discrimination is not acceptable. The court took this into account and decided to impose a suspended punishment under certain conditions.

for a period of 3 years, consisted of a monetary penalty of 4,200 EUR.

brenge ernstige schade toe aan het vaak nog broze evenwicht tussen de verschillende groepen.'

'The facts are serious. Our society consists of many individuals of different origins who need to build a future together. Our society therefore needs reconciling, constructive initiatives. Acts leading to a situation where certain individuals feel treated as inferior citizens cause severe suffering, hinder the coexistence of the different communities, and cause serious harm to the still often delicate balance between different groups.'

						ations. He argued that the apartment was rented to someone else who was on a waiting list.				
	2014	Sweden / Supreme Court / Case no. T 3592-13	http://www.rattsinfosok.dom.se/agrummet/Detalj_Ram.jsp?detaljTyp=detalj&detaljTitel=T3592-13%20H%F6gsta%20domstolen&tmpWebLasare=Netscape	Religion	Supreme Court (Högsta domstolen)	The Supreme Court found a bus company guilty of discrimination of two passengers through the actions of its employee. A woman with hijab and her husband sat on the	The Supreme Court found the discrimination and violation was of a serious nature and considered that it was clearly intended to offend the plaintiffs. The insults were also uttered in public. However, the discrimination was a one-time event and the Court argued that the incident could not be considered to have led to any lasting damages for the plaintiffs. Since award of damages is not a tradition in Swedish legal history, the Court argued that the prevention supplement (preventionspåslaget) should not be	The key issue concerned the determination of the discrimination award and especially the recommended size of the prevention supplement of the award. The Discrimination Ombudsman argued that in order for the discrimination award to become real preventive mechanism, the prevention supplement be much higher. The reparation compensation is important but the main reason of the introduction of a	The Supreme Court delivered its ruling on 26 June 2014. The Court found the discrimination serious enough to raise the reparation compensation from 10,000 SEK (1,049 Euro) to 15,000 SEK (1,573 Euro) each. However, the Court found insufficient reasons to increase the prevention supplements, which remained 10,000 SEK per person. Consequently, the total	I 6 kap. 3 § diskrimineringslagen finns en bestämmelse om bevisbördan i diskrimineringsmål. Bestämmelsen innebär att den som anser sig ha blivit diskriminerad ska visa omständigheter som ger anledning att anta att han eller hon har blivit diskriminerad. Därefter går bevisbördan över till den som påstås ha diskriminerats, som då har att visa att diskriminering inte har förekommit. Avsikten är att den som anser sig ha blivit diskriminerad ska åtnjuta bevislättnad. In summary, the Court of Appeal finds that the Discrimination Ombudsman has not shown any circumstances that give the court reason to assume that Z.B. have been discriminated in the manner stated. Sammantaget anser hovrätten att Diskrimineringsombudsmannen inte har visat omständigheter som ger anledning att anta att Z.B. blivit diskriminerad på det sätt som påstås. Chapter 6, Section 3 of the Discrimination Act contains a provision on the burden of proof in discrimination cases. The provision stipulates that the

bus when the driver stopped, pushed away the woman's knee from the stop button and shouted that they should return to "Taliban country". The Discrimination Ombudsman pressed charges for ethnic and religious discrimination and harassment (traka

so high that the reparation compensation (upprätelseersätningen) appears insignificant in comparison. To avoid this, the prevention supplement should be equal to the reparation compensation. Taking the characteristics of the discriminating act and its effects into account, the Supreme Court did not find sufficient reason to increase the prevention supplement of the Discrimination award.


discrimination award was to prevent actors from discriminating in the first place. Both the District Court and the Court of Appeal disagreed with the Discrimination Ombudsman based on the facts that Sweden had no legal tradition of large damages and the reparation compensation must be at equal level with the prevention supplement of the discrimination award.


discrimination awards that Veolia should pay to the injured parties amount to 20,000 SEK (2,098 Euro) to 25,000 SEK (2,622 Euro) per person.

person who considers him-/herself discriminated against must show circumstances that give grounds for believing that he or she discriminated. Thereafter, the burden of proof moves to the allegedly discriminating person, who has to show that the discrimination did not occur. The intention is that the person who considers him-/herself discriminated against should not bear the burden of proof.

Sweden, Supreme Court (Högsta domstolen), case number T 3592-13. The case can be found online by searching for the case number on the search engine for precedent rulings, available at: www.rattsinfosok.dom.se/lagrummet/index.jsp question using the case number

						<p>sserie r).</p> <p>A Danish politician and former MP, T. was found not guilty of racism. She had posted a picture on her Facebook profile of two women wearing Burqas standing next to two black garbage bags, alongside the text "hehe, remember trash</p>	<p>T. was charged with violating the Danish Penal Codes known as "the racism paragraph".</p>	<p>The "racism paragraph" requires a statement to be both degrading and humiliating and made with intent of publication. The question in this case was whether T. had intended for the statement to be made public. T. argued that the statement was posted on her private Facebook-profile.</p>	<p>T was found innocent. Three judges or jurors found that the statement was not suitably degrading or humiliating. Two judges or jurors found that the statement was suitable degrading or humiliating.</p>	<p>"Meddelelsen er lagt ud på den private facebook-profil, men efter oplysningerne om antallet af venner på denne profil og særligt under hensyn til, at tiltalte var bekendt med, at oplysninger fra den private profil kan blive udbredt til en videre, ubestemt kreds af personer, må meddelelsen anses for at være fremsat med forsæt til udbredelse i en videre kreds."</p> <p>"The message is posted on the private Facebook-profile, but after the information on the number of friends on this profile, and paying special attention to the fact that the defendant knew, that the information on the private profile could be distributed to a wider, unspecified group of people, the message must be considered as posted with intent of publication."</p>
--	--	--	--	--	--	---	--	--	--	---

						day tomorrow ;))) ...”				
	2014	Italy / Ordinary Court of Trento / Decision no. 508	http://www.asgi.it/wp-content/uploads/2014/07/14-sentenza-serafini.pdf	Race	Ordinary Court of Trento (Tribunale Penale di Trento)	The Public Prosecutor of Trento charged the accused for defamation aggravated by the purpose of disseminating racial hatred and racial discrimination. The accused published a racist status on his Facebook timeline again st the Italian Ministry of	According to the Court, the accused person's defence is to be considered untenable since he voluntarily decided to publish the status on Facebook using the public mode so that it could be read by all users and not only by his Facebook friends. Moreover, as to the content of the status, the accused person stated that it was to be considered as protected by his freedom of expression. According to the Court, even if one of the limits to the freedom of expression is the protection of other people's dignity: in this case, the content of the Facebook status was degrading and racist, compromising the dignity of the target, that is the former Ministry of Integration. The Ministry was targeted because of her ethnic origin and that is why the conduct besides	This decision is relevant because the Court contributed to the jurisprudence ruling the application of the traditional legislation concerning the contrast to racism and discrimination to the hate crimes and hate speech perpetrated through Internet and the social networks.	The accused person was condemned for defamation aggravated by the purpose of disseminating racial hatred; he was also condemned to a EUR 2,500 fine and to the compensation of the judicial proceeding expenses.	“A parere del collegio, la frase (...) se ne torni nella giungla dalla quale è uscita pubblicata su Facebook si è manifestata [...] come una consapevole esteriorizzazione, immediatamente percepibile, nel contesto in cui è maturata, avendo anche riguardo al comune sentire, di un sentimento di aversione o di discriminazione fondato sulla razza, l'origine etnica o il colore e cioè di un sentimento immediatamente percepibile come connotato alla esclusione di condizioni di parità. La pubblicazione, inoltre, ha dimostrato quella idoneità potenziale a conseguire lo scopo discriminatorio parametrata al dato culturale che l'ha connotata ...” “According to the Court, the phrase (...) she should go back to the jungle she came from published on Facebook represents [...] an aware exteriorisation, immediately perceivable, in the context it was produced in, also considering the public opinion, of an idea of aversion or discrimination based on race, ethnic origin or skin colour, that is an idea immediately perceivable as the exclusion of equality conditions. Moreover, the publication also showed the potential capability to attain the discriminatory purpose also considering its cultural context ...”

						Integration who was an Italian citizen of African origins. His status was also reported by a local newspaper. This racist conduct was reported to the authorities by certain Italian NGOs which became plaintiff in the proceeding.	being defamation has to be considered aggravated by the accused person's racist motive.			
	2014	Spain / Barcelona Provincial High Court Decision, Section 10 / Rec 314/2013	https://www.iberley.es/jurisprudencia/sentencia-penal-n-353-2014-ap-barcelona-2014-03-10	Nationality	Barcelona Provincial High Court Decision (Audiencia)	The Barcelona Provincial Court upheld a decision	It was irrelevant if all videos were or not done by association members, since the display of such images promoted discrimination, hate or violence	It distinguishes between hate speech and offensive or unpopular speech. The Art. 20 of the Spanish Constitution	It does confirm the condemnatory judgement of the Criminal Court No. 1 of Vilanova i la Geltrú July 13, 2013	("...és evident que la discriminació racial i provocació de l'odi previst en l' art. 510 CP no requereix imperativament l'existència d'una xarxa o associació , puix és un delictes que pot cometre qualsevol persona individual..." "... ambdues normes són aplicables en els termes que recull l'art. 77 del Codi, si bé la pena privativa de

[sec-10-rec-314-2013-20-03-2014-14279571](#)

encia
Provi
ncial
de
Barc
elona
)

on of
Crimin
al
Court
No. 1
of
Vilano
va i la
Geltrú
July
13,
2013
convict
ing
memb
ers of
the
skinhe
ad
group
Associ
ation
Young
Worke
r Front
of a
crime
of
illegal
associ
ation.
The
associ
ation
websit
e had
publis
hed
many
photo
graph
s that
reflect
the
Nazi
ideolo
gy,
rejecti
ng
immig

regardless of the author's identity.

The criteria applied for the penalty were the two years that the Association lasted and the publicity achieved, which reached a national level based on the participation on the website Forum.

The punishable conduct was the illegal association understood as an effective participation on the violation of the legally protected right under the article 510 together with the articles 515 and 517 of the CC.

does not guarantee the right to express and disseminate a particular understanding of history and any perception of the world with the deliberate aim to disparage and discriminate any persons or groups on grounds of a personal condition, ethnic or social circumstances (STC 214/1991, 11 Dec.). The Positions that underscore the Nazi genocide represent a racist incitement (STC 214/1991, 11 Nov. and 13/2001, 29 Jan.). The Association which incites to discrimination, is not only illegal but also the one which simply promotes it (STS 12/04/2011).

The sentence condemned the members of the group but no the association itself:

- 2 years and 6 months in prison,
- 18 months with a 3 euros daily fee fine,
- a subsidiary responsibility of 1 day in prison for each two unpaid fees,
- no possible access and/or exercise of public position during 9 years,
- payment of the 3/14 of the legal costs.

One of the accused did just maintain contact with other members, but he also was condemned as an illegal/illicit association founder (article 517.1 of the CC), based on his signature on the Association Constitution Act.


llibertat a imposar serà única...")

"... it is clear that the racial discrimination and incitement to hatred in the art. 510 CC does not require necessarily of the existence of a network or association, since it is a crime that can be committed by any individual person... " "... both rules are applicable in the terms as stated in the art. 77 of the code, while the sentence of imprisonment to be imposed only... "

Article 510 punishes those who incite discrimination, hate or violence against groups or associations, based on race, anti-Semitic or other based on ideology, religion, national origin, sex, sexual orientation, illness or disability, as well as those who, with knowledge of its falsity or reckless disregard to the truth, disseminating insulting information on groups or associations for the same reasons (ideology, religion, beliefs, etc.).

Article 515 refers to the unlawful associations and


Article 517 refers to the founders, directors, presidents, and active members of those unlawful associations.


						ration and multiculturalism, and blaming immigrants for taking housing and jobs away from young Spaniards.				
	2014	ECtHR / No. 26827/08 / Judgement / Abdu v. Bulgaria	http://hudoc.echr.coe.int/eng/?i=002-9392	Race	European Court of Human Rights, ECHR	The applicant and one of his friends, both Sudanese nationals, had been involved in a fight with two Bulgarian youths. During the fight the	The prosecuting authorities had concentrated their investigations and analysis on whether it had been the two Sudanese nationals or the two Bulgarians who had started the fight. They had therefore confined themselves to establishing the violent acts, merely noting the lack of evidence that the violence had been motivated by racist considerations. The authorities had therefore not deemed it necessary to question the witness about any remarks he might	Racially motivated acts of violence against other persons constituted a criminal offence punishable by imprisonment and a preliminary investigation.	Therefore, the legal remedies mentioned by the Government, namely a criminal prosecution for minor bodily injuries and an action for damages against those responsible, could not, in the circumstances of the present case, be considered appropriate to fulfil the State's procedural obligations, and the objection raised by the	In view of these considerations and the specific substantiated allegations voiced by the applicant during the criminal proceedings, the authorities had been in possession of plausible evidence pointing to a possible racist motive on the part of the applicant's attackers and had failed in their duty to take all reasonable steps to investigate whether the acts of violence had been racially motivated.

applicant was slightly injured. He alleged that his attackers, two skinheads, had assaulted him on racist grounds. The police conducted an investigation but were unable to ascertain who had started the fight or whether the assault was racially motivated. Their

have heard during the incident, or to question the two Bulgarian youths about a possible racist motive for their actions.

Government as to non-exhaustion of domestic remedies had to be rejected. Conclusion: violation (five votes to two). Article 41: EUR 4,000 in respect of non-pecuniary damage

						focus though was on establishing the violent acts and not on eventual racial motivation.				
	2014	Spain / Higher Court of Madrid (ninth section of the Administrative Litigation Division) / No. 306/2014		Nationality	Higher Court of Madrid	In March 2014 The government prohibited a planned demonstration by extreme right wing parties in Lavapiés, a multicultural neighbourhood in Madrid.	Banning a protest can be done when there are substantiated indications that it will create a disturbance of public order, with danger to people or property. The prohibition was based on objective data: during other demonstrations by right-wing groups in the same neighbourhood, serious public disorder occurred as a result of counter-demonstrations mobilised by left-wing groups; the same day an authorisation was requested for the demonstration, members of one of the organising parties lit a flare at the door of the NGO	Public order and danger to persons and goods as limit to fundamental right to assembly. The demonstration was planned for 8 March 2014, and shortly before, members of the convening organisations had been involved in serious altercations in the area. The place chosen for the demonstration is a neighbourhood of Madrid where most of the population is foreign and which is known	The appeal brought by the organisers was rejected and the ruling by the Government Delegate forbidding the protest was confirmed.	“La protección anticipada de derechos e intereses concurrentes integra el fin perseguible por la decisión de la autoridad gubernativa, con la necesaria utilización de un razonamiento prospectivo, en el que aparezcan como factores primordiales la correcta valoración de las circunstancias existentes que puedan estimarse indiciarias de una situación latente de riesgo para las personas o bienes, con relación a una posible alteración del orden público”. “The anticipated protection of competing rights and interests form the aim which requires the action of the law in the decision by the competent authority, with the necessary use of a prospective reasoning, in which the overriding factors are the correct evaluation of the circumstances which can be judged to indicate a latent situation of risk for people or property, with regards to a potential disturbance of public order.”

							SOS Racism office, located in Lavapies, and placed a placard against this NGO.	for its multicultural and multi-ethnic character. The violent actions and the xenophobic content of the calls and of the protests carried out by the organising bodies on occasions immediately prior to the request for authorisation, are circumstances which reveal the high likelihood that serious disturbance to public order may occur.		
	2014	Spain / Santa Cruz de Tenerife Provincial High Court, Section 2 / No. 107/2014	https://www.iberley.es/jurisprudencia/sentencia-penal-n-107-2014-ap-tenerife-sec-2-rec-150-2014-07-03-2014-14330631	Nationality	Santa Cruz de Tenerife Provincial High Court (Audiencia Provincial de Santa Cruz de Tenerife)	The Santa Cruz High Court decision confirms the ruling of the Santa Cruz de Tenerife No. 2 bis Criminal Court,	The previous judgment appealed considered that the poem's xenophobic content was not protected by the freedom of expression. It did refer to the freedom of expression covered under the Art. 20.1 of the Spanish Constitution as well as to the Constitutional Judgements STC 235/2007 and STC 214/1991 declaring that the freedom of expression cannot	It does establish a jurisprudential criteria in line with a current jurisprudence that considers that Article 510 - Hate Provocation (provocación al odio) of the Spanish Criminal Code does not require the evidence of the existence of a direct incitement to conclude that a	This Santa Cruz High Court decision ratifies the sentence of the Santa Cruz de Tenerife No. 2 bis Criminal Court, 10 October 2013 (Juzgado de lo Penal núm. 2 bis de Santa Cruz de Tenerife de 10 de octubre de 2013) against the author of the xenophobic poem. And it does share the	(...las intenciones del autor de los versos de dirigirse a través de un medio de comunicación de gran difusión en la provincia a sus conciudadanos, va más allá de la mera expresión de opiniones despectivas o humillantes respecto de un grupo social al que entiende debe repelerse para impedir una invasión ...) “...the intentions of the author of the verses of means of communication widespread in the province for refer to their fellow citizens” “...it goes beyond the mere expression of degrading or humiliating views with regard to a social group that understands must be repel to prevent an invasion ...”


10
October
2013
convicting the author of a xenophobic poem of a crime of incitement to hatred according to article 510 Criminal Code. The author had incited the Canarian population through a xenophobic poem to attack and expel the immigrants from the Canary


protect statements or expressions intended to generate hostile feelings against certain ethnic groups.


This Santa Cruz High Court decision considers that Article 510 of the Criminal Code does not require proof of the existence of a direct incitement.

crime has been committed.

criteria previously adopted, concluding that writing and sending that poem would be the typical conduct described in article 510 of the Criminal Code.
The freedom of expression and ideology cannot protect statements or expressions intended to disparage or to generate feelings of hostility against certain ethnic groups.

						Islands.					
	2014	Poland / Constitutional Tribunal / SK 65/12 / Framework Decision on Racism (2008/913/JHA) or of the Racial Equality Directive (2000/43/EC)		Race, Nationality, Ethnic origin, Religion	Constitutional Tribunal	The applicant, B.R., submitted a motion to the Constitutional Tribunal claiming that Article 256 of the Criminal code, in some of its provisions, violates the Constitution. Article 256 of the Criminal code prohibits its incitement to hatred on the grounds of racial,	The Constitutional Tribunal stated that it is unavoidable to use vague expressions in legal acts, since they are created on the basis of common language. Since the merits of this case concerned the issue of ambiguous phrases used in the text of legal acts, the Constitutional Tribunal found it important to analyse the standards of law making. Within this analysis, the Constitutional Tribunal analysed the rule "nullum crimen sine lege poenali anteriori" and noted that this rule is deeply rooted not only in the Polish Constitution, but also UN acts and the EU Charter of Fundamental Rights. Furthermore, the Constitutional Tribunal stated that the analysis of judgements concerning incitement to hatred passed by Polish courts does not	The Constitutional Tribunal stated that Article 256 of the Criminal code limits freedom of expression. However, this limitation fulfils the Constitutional criteria of proportionality, meaning that they are necessary in a democratic state in order to protect national safety and security as well as public order and citizens' rights.	The Constitutional Tribunal stated that Article 256 of the Criminal code does not violate the Constitution.	<p>"Kryminalizacja nawoływania do nienawiści na tle różnic narodowościowych, etnicznych, rasowych, wyznaniowych albo ze względu na bezwyznaniowość jest bez wątpienia ograniczeniem wolności słowa, jednej z podstawowych wolności człowieka, istotnej dla jego rozwoju i samorealizacji oraz mającej podstawowe znaczenie dla demokracji. Ograniczenie to spełnia wymóg ustawowej regulacji i jest konieczne w państwie demokratycznym [...] Znajduje ono silne uzasadnienie aksjologiczne na gruncie obowiązującej Konstytucji: w zasadzie przyrodzonej i niezbywalnej godności człowieka (art. 30 Konstytucji) oraz zakazie istnienia partii politycznych i innych organizacji odwołujących się w swoich programach do totalitarnych metod i praktyk działania nazizmu, faszyzmu i komunizmu, a także tych, których program lub działalność zakłada lub dopuszcza nienawiść rasową i narodowościową (art. 13 Konstytucji)."</p> <p>"Criminalisation of incitement to hatred on the basis of national, ethnic or racial origin, religion or lack of belief is undoubtedly a limitation of freedom of speech, which is one of the fundamental human freedoms, crucial for development and self-fulfilment, and having fundamental meaning for democracy. This limitation fulfils the legal requirements and is necessary in a democratic state. It has a strong justification on the basis of the Polish Constitution: it is grounded in the rule of inherent and inalienable dignity of the human being (Article 30 of the Constitution) and in the prohibition of political parties and any other organisations referring in their programmes to totalitarian methods and practices of Nazism, fascism and communism, but also those whose</p>	

						national and ethnic origin, religion or lack of belief. Furthermore, Article 256 of the Criminal code prohibits praising Nazi, communist or any other totalitarian system.	give reasons to claim that Article 256 and the expression 'incitement to hatred' violate freedom of expression.			programmes or activity allow racial and national hatred (Article 13 of the Constitution)."
	2014	Netherlands / District Court Amsterdam / Case no. 13-650167-13 ECLI:NL:RBAMS:2014:693	http://deep.link.rechtspraak.nl/uitspraak?id=ECLI%3A3ANL%3ARBAMS%3A2014%3A693	Race	District Court Amsterdam (Rechtbank Amsterdam)	The moderator of a website opened a thread in which internet users were invited to vent their	To disseminate images or cartoons which are very insulting and hurtful to black people on an Internet forum is forbidden under Dutch criminal law even if the suspects did not have the intention to offend people.	Disseminating racist statements (cartoons in this case) publicly on a website constitutes incitement to discrimination as prohibited by Article 137e of the Dutch Criminal Code. It also constitutes insult of a group of persons because of their	Owners or moderators of websites are not allowed under Dutch criminal law to make public any discriminatory or insulting statements about racial or ethnic groups, even when their intention is to demonstrate the stupidity of	"De rechtbank heeft bij de keuze tot het opleggen van de straf en bij de vaststelling van de hoogte daarvan laten meewegen dat verdachte op zijn internetforum voor negroïde personen zeer kwetsende afbeeldingen heeft geplaatst. Door deze op een openbaar internetforum te plaatsen, waren ze voor een ieder toegankelijk. Hoewel de rechtbank, meer dan de officier van justitie, rekening houdt met de omstandigheid dat verdachte niet de uitgesproken bedoeling had negroïde personen te beledigen, had hij beter moeten realiseren dat met het plaatsen van deze onnodig grievende afbeeldingen de waardigheid van

						<p>racist opinions. The owner and moderator of the website placed racist cartoons on this thread . Subsequently, internet users placed racist texts on this thread . The Dutch Complaints Bureau on Internet Discrimination reported this thread to the police.</p>		<p>race as made criminal by Article 137e of the Dutch Criminal Code. Even when the perpetrators had no intention to insult people because of their race or to incite discrimination because of their race, and tried to show the stupidity of racist statements, their actions are criminal under the Dutch Criminal Code.</p>	<p>these statements. The suspects in these case have been sentenced under Article 137e of Dutch criminal code to a fine of 500 Euro. Thus both owner and moderator were ordered to pay a fine of 500 euro. The verdict described here concerns the moderator.</p>	<p>negroïde personen in grote mate wordt miskend.” In its decision to impose a penalty and in its decision to determine the severity of the penalty, the court has taken into consideration that the suspect has put on an Internet forum images which are very hurtful to black people. By placing these images on a public Internet forum, they were accessible to everyone. Although the court, more than the public prosecutor, takes into account the fact that the suspect did not have the intention to insult black persons, he should have known better. The suspect should have realized that by placing these unnecessarily hurtful images he denied to a large extent the dignity of black people. The Netherlands, District Court Amsterdam (Rechtbank Amsterdam) (2014), Case No. 13-650167-13, ECLI:NL:RBAMS:2014:693, 18 February 2014, available at: http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2014:693</p>
	2014	Greece / First Instance Court of		Race	First Instance Court	In April 2013, a	The Court found the driver guilty of denial of access to		The driver was sentenced to ten months of	The decision is not available on line in competent Court web-site or in any other legal data base.

Thessaloniki


of Thessaloniki

public bus driver in Thessaloniki was accused of discrimination. He stopped the bus and ordered two African passengers to get off the bus, claiming that they were not holding valid tickets.

According to witnesses the actual motive was related to the racial origin of the two passengers,

services for racist motives, quoting Article 16 "Implementation of the principle of equal treatment regardless of ethnic or racial origin, religious or other belief, disability, age, sexual orientation".

imprisonment, suspended for three years, and given a fine of 1,000 euros.

						since, after they got off, the driver screamed that he was "chrysafigitis", i.e.				
	2013	Croatia / County Court in Pula / Kž-263/13		Ethnic origin	County Court in Pula (Županijski sud u Puli - Pola)	The High Court convicted a man of threatening a Serbian from an ethnic minority with violence, with the aggravating circumstance of targeting a person on the basis of ethnic origin. The	The high court held that mentioning the ethnic origin of the victim in his threats was not aimed only at provoking the victim, but shows hatred towards the members of that ethnic group.	The first-instance court did not qualify this case as motivated by hatred towards victims of Serb ethnicity. However, high court altered legal qualification, confirming that repeated insults on ethnic basis lead to conclusion that this was a hate crime.	Four months of imprisonment substituted with 40 working days of work for common welfare.	<p>"U situaciji kada optuženik izgovara riječi "Srbi, sasjeckat ću vas na komadiće, pobit ću vas sve" izražava svoju mržnju prema osobama srpske nacionalnosti, a vidljivo je da se ne radi samo o uobičajenoj prijetnji lišenjem života"</p> <p>"In the situation when the accused pronounces the words "Serbs, I will cut you in pieces, I will kill you all ", he expresses his hatred towards the people of Serb ethnicity, and it is obvious that this is not just about the usual threat of deprivation of life"</p>

					<p>offender repeatedly threatened the victim that he would kill all the Serbs and cut them in pieces and sexually assault the victim. In doing so the offender was holding a metal object and exposed his genitals, which disturbed and frightened the victim.</p>				
	2013	Luxembourg / Court of and in		Nationality	The Court of	When RTL	The law criminalises	No new interpretations	Mrs J., Mrs G. and Mr H. were

Grand in the Luxembourg arrondissement, court of first instance (16th chamber) / no. 17461/12/CD

Ethnic origin


Grand in the Luxembourg arrondissement, court of first instance 16th chamber, (Le Tribunal d'arrondissement de et à Luxembourg, seized chambre correctionnelle)

announced on its website that the Kehlen local authority would build a house for refugees, this led to a racial outburst on Facebook by Mrs G., Mr H., Mr I. And Mrs J. claiming that 'they' received everything and 'we' received nothing, even wishing the return of a Hitler-like perso

racism, revisionism and other agitations based on illegal discrimination. The criminal code qualifies as discrimination every distinction made between people due to their origin, their skin colour, their sex, their sexual orientation, their family situation, their health, their handicap, their traditions, their political or philosophical opinions, their union activities, their real or supposed ethnic origin, a nation, a race or a religion.



or explanations.

sentenced to 6 months imprisonment on probation, in the event of new breaches, 6 months will be added to this penalty. Mr I was sentenced to 6 months imprisonment.

						na, who would cleans e the countr y.				
	2013	United Kingdom / Central Criminal Court (Crown Court)/ Judgement / The Queen v. Pavlo Lapshyn	https://www.judiciary.gov.uk/judgments/pavlo-lapshyn-sentencing-remarks-25102013/	Religion	The Central Criminal Court (Crown Court)	Pavlo Lapshyn, a 24 year old Ukrainian engineering student on a working visa, was sentenced to minimum 40 years in prison for a murder and racially aggravated crime s. Just days after he arrived in the United Kingdom he stabb	The Court found that the accused was "acting alone and motivated by his own extreme and appalling prejudices." Therefore, the murder wasn't committed as part of a series of terrorist acts and it does not stand for a lifetime sentence.	The key issue was whether the murder was part of a series of terrorist acts alongside detonations close to several mosques or it was borne out of personal prejudices and extremist views.	Murder: Life imprisonment with a minimum period of 40 years before eligibility for parole. Causing an explosion with intent to endanger life: 12 years' imprisonment (concurrent); Engaging in conduct in preparation of terrorist acts: 12 years' imprisonment (concurrent). An order was made for the forfeiture and destruction of all the explosive ingredients and paraphernalia, and for the forfeiture of £2,000 of the cash to be used for the benefit of the West Midlands Police and for the community. There was	"You clearly hold extreme right wing white supremacist views, and you were motivated to commit the offences by religious and racial hatred in the hope that you would ignite racial conflict and cause Muslims to leave the area where you were living. Such views, hatreds and motivation are abhorrent to all right thinking people, and have no place whatsoever in our multi-faith and multi-cultural society."

ed
Moha
mmed
Salee
m, 81,
to
death.
He
had
also
been
planni
ng a
series
of
explos
ions at
mosq
ues in
the
United
Kingd
om.

also a
Notification
Order for 30
years.

	2013	United Kingdom / Bexley Magistrates Court		Religion	Bexley Magistrates Court	<p>On 29 June 2013, Tracey Davies, 46, started shouting racist remarks at a 55-year-old Somali woman who was wearing a burka whilst out shopping with her daughter in Woolwich town centre. Davies then hit the victim and punched her numerous times.</p>	<p>Detective Superintendent Parm Sandhu commented that "Davies' racist and repugnant remarks were simply triggered by seeing a woman in a burka... this attack was completely unprovoked and the result of sheer bigotry."</p>	No new interpretations or explanations.	Racially aggravated assault: £100 fine, £150 compensation, £105 to cover costs	
	2013	Denmark /		Relig	West	The	The Higher court	The question of	5 daily	Danish:

Western High Court / Decision no. U.2014.73 V

ion

ern High Court

Higher Court convicted a woman of incitement to hatred (hate speech) for a statement on the website 180grader.dk. In her statement, she wrote that Muslim men rape and kill their daughters based on a defect culture and religion. The lower court had previo

reasoned that the expression was an allegation of criminal behaviour targeting all Muslim men in general. Furthermore, the higher court found that the statements were the woman's own words as they were written on her own blog.


whether repeating the statements of others makes you responsible or not. In this case the court found that the statements were published online and therefore the person behind the blog could be held responsible.

penalties of 1.000 DKK

De påtalte udsagn fremstår som led i et debatindlæg. Bemærkningerne om voldtægt, mishandling og drab indeholder imidlertid set i sammenhæng med bemærkningerne om baggrunden, det budskab, at muslimske mænd generelt begår grov kriminalitet.

...Ved udformningen af indlægget har tiltalte ikke blot refereret en tidligere udtalelse, men gjort bemærkningerne om voldtægt, mishandling og drab til sine egne."

English: "The accused statements appear as part of an input to the debate. The statements regarding rape, mistreatment and homicide, however, must be read in context with the remark, that Muslim men in general commit serious crimes... In the phrasing of the input to the debate the accused has not just referred to a previous statement, but he has also made the remarks regarding rape, mistreatment and killing his own.

					usly acquitted the woman, finding the statements were not her own and that she had merely restated a previous statement by another critic of Islam. The Higher Court however found that she was guilty.					
	2013	UN International Covenant on Civil and Political Rights / Communi	http://www.refworld.org/docid/5264f73f4.html	Religion	International Covenant on Civil and Politi	The case relates to the right of freedom of religio	The HRC decides that prohibiting a Sikh to wear a turban on the identity photograph, without convincingly explaining how such a measure is necessary for	The right to freedom of religion. M.S.'s right to manifest his religion was breached by the French state. The CCPR completely	The decision is in favor of M.S. acknowledging that the State has violated his right to manifest his religion.	The Committee notes the author's allegation that the requirement to appear bareheaded on his passport's identity photograph is a violation of his right to freedom of religion under article 18 of the Covenant and is neither necessary nor proportionate when considered in the light of paragraph 3 of

cation No.
1928/2010
/ Mann
Singh v.
France


cal R
ights


n. On
8
Dece
mber
2005
M.S.
attem
pted to
renew
his
passp
ort for
the
fourth
time
and
submi
tted a
photo
graph
showi
ng
him
wearin
g his
turban
.
Howev
er, the
institut
ion
rejecte
d his
applic
ation,
stating
that
the
photo
graph
was
not in
confor
mity
with
the
provisi
ons of
the
law.

guaranteeing the
public safety,
violates the
individual's right to
manifest his
religion.

reversed that
decision and
acknowledged
that his rights
were violated.

that article.

						M.S. maintains that he has been a victim of a violation of his right to manifest his religion or belief.				
	2013	Italy / Criminal Court of Padua / Sentence no. 1615		Race , Ethnic origin	Criminal Court of Padua	A female district council member from the Northern League party in the municipality of Padua , posted on her Facebook page the following	The accused argued that there was no offensive or racist intent in her comment and that her reaction was due to a similar episode her daughter had suffered in the past from a 'non-Italian'. The judges considered the defence irrelevant and contradictory. The statement itself and the behaviour of the woman during trial showed that her post was motivated by racist-hatred. The defendant had not been able to explain in what other way the alleged attempted rape by a Somali man was	Incitement to rape and violence do not require the crime to be committed against the targeted person in order to be effective. The means used and the context in which the statement was made clearly demonstrate instigation; the comment was posted on Facebook and was followed by many other racist messages.	The defendant was convicted for violating art 1 (1) lett (b) of Mancino law.	Non è in conseguenza possibile alcuna interpretazione alternativa a quella di un preciso pregiudizio razzista estrinsecandosi in un invito esplicito allo stupro nei confronti della ministra in quanto "meritevole" di ciò per le sole circostanze, da un lato di condividere con il personaggio di Genova una (vaga e pure imprecisa) provenienza geografica e il colore della pelle e, dall'altro e in forza del suo ruolo pubblico, di rappresentare tutti i componenti di tale razza" No other interpretation is consequently possible other than that of a precise racist prejudice expressed in an explicit invitation to rape the minister who «deserved» such act for the only reason that she shares with the man in Genova a (vague and rather imprecise) geographical origin and skin colour ... and, in view of her public role, she represented all the members of that "race".

						comment, under a photo of the Minister of Integration Cecile Kyenge (who is of Congolese origin) : "But is there no one there who could rape her, just to let her understand how a victim of such a ferocious crime could feel? Shame!".	connected to the Minister except for the only reason that the minister shares with the man a vague and rather imprecise geographical origin and skin colour.			
* 	2013	Malta / Criminal Court of Appeal / 98/2011 / Judgement / Police	http://www.justiceservices.gov.mt/courtservices/Judgements/scripts/get_iud	Ethnic origin	Criminal Court of Appeal	Mr Norman Lowell had been	The first court (Court of Magistrates) held that freedom of expression is applicable not only	The Court of Criminal Appeal noted that the offence of incitement to racial hatred	At first instance, the accused was convicted of inciting racial hatred. He was	Ghalhekk jinghad li mhux rilevanti li l-Qorti tara x'kellu f' mohhu l-imputat meta tkellem bil-mod li tkellem, izda huwa t'importanza kbira li l-Qorti ttipprova tiddixxerni dak li cittadin t'intelligenza ordinarja u normali, jifhem meta jaqra

vs
Norman
Lowell

[gement_documento?CaseJudgmentID=82392](#)

convicted of inciting racial hatred. Throughout the year 2006, Mr Lowell had given a number of speeches in Malta wherein he made use of abusive words and threatening language, including towards the then President of Malta. He also uploaded an article written by himself


to information that is inoffensive but also to information that offends, shocks and disturbs the state or any sector of the population. It is the duty of an independent judiciary to decide whether the accused was within his right to freedom of expression or whether he had gone beyond what is allowed under that right. The Criminal Court of Appeal confirmed this reasoning. The Court of Criminal Appeal went on to state that the words used by the accused are, in themselves, offensive when addressed to third parties that subscribe to different political and religious beliefs. In such instances, the intent to cause harm is presumed.


foreseen in Article 82A of the Criminal Code constitutes two elements to it, the actus reus (the act of doing something) and mens rea (the intention); and it held that effectively causing racial hatred and violence is not a requisite for the offence to be considered to have been committed and held that the words used and the tone of the speech was enough to infer intention. The Court of Criminal Appeal also delved into the issue of freedom of speech and referred to various case law with regards to charges of racial hatred and hate speech. It held that persons lose their right to freedom of speech when their statements become racist and hence impinge on the

sentenced to two years imprisonment suspended for four years and ordered to pay a fine of 500 EUR. The Court of Appeal upheld the decision of the Court of Magistrates on the counts of inciting racial hatred, it revoked the part of the decision that found the accused guilty of insulting the President of Malta and consequently amended the fine awarded to him to imprisonment for 15 months suspended for three years.

l-artikolu nkriminanti jew jisma l-imputat fid-diskors li jaghmel. (p. 43 of the decision given by the Court of Magistrates on the 27th March 2008) -

EN Therefore it is irrelevant that the Court should try to determine the intent of the accused when he spoke those words (referring to the racial hatred). However it is very important that the Court tries to discern that which citizens of normal and ordinary intelligence would have understood when reading or hearing the words written or spoken by the accused.

						If which allegedly constituted racial hatred .		rights of others .		
	2013	France / Court of cassation / Decision No. 12-84790 ECLI:FR:CASS:2013:CR03515	http://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEX000027700789&fastReqlId=1583463424&fastPos=2	Race	Court of cassation (Cour de cassation)	On 20 September 2009, Mr. Z. and Mr. A. committed a violent assault on Mr. X, leading to his incapacity to work for over eight days. The investigating judge, after having charged the perpetrators with the offence of aggravated	The aggravating circumstance is committed when the offence is preceded, accompanied by or followed by words, writing, images, objects or acts of any nature which cause injury to the character or refer to the victim or of a group of people which the victim is part because of their membership or of their non-membership, real or supposed, to a ethnic group, a nation, a race or a religion. As the ruling of the Court of Appeal, after having recognised that Mr. Z. and Mr. A. used racist insults at the time of the violence committed, stated that the aggravating circumstance, should not have been retained in the absence of sufficient objective evidence to show that the victim	The conditions for the aggravating circumstance: when the offence is preceded, accompanied by or followed by words, writing, images, objects or acts of any nature which cause injury to the character or refer to the victim or of a group of people which the victim is part because of their membership or of their non-membership, real or supposed, to a ethnic group, a nation, a race or a religion.	The Court of cassation overturned the ruling of the Court of Appeal and sent the case and the parties before the investigation chamber of the Montpellier Court of Appeal.	Il résulte de la combinaison de ces textes que la circonstance aggravante visée au 5° bis de l'article 222-12 du code pénal est constituée lorsque l'infraction est précédée, accompagnée ou suivie de propos, écrits, images, objets ou actes de toute nature portant atteinte à l'honneur ou à la considération de la victime ou d'un groupe de personnes dont fait partie la victime à raison de leur appartenance ou de leur non-appartenance, vraie ou supposée, à une ethnie, une nation, une race ou une religion déterminée. It follows from the combination of these laws that the aggravating circumstance referred to in subparagraph 5b of Article 222-12 of the Criminal Code is committed when the offence is preceded, accompanied by or followed by words, writing, images, objects or acts of any nature which cause injury to the character or refer to the victim or of a group of people which the victim is part because of their membership or of their non-membership, real or supposed, to a ethnic group, a nation, a race or a religion.

						<p>violence, in particular because of the membership of Mr. X. of a particular race, finally ordered them to be sent before the criminal court without retaining the aggravating circumstance. Mr. X. appealed this decision.</p>	<p>suffered violence due to the colour of his skin, the Court of Appeal misinterpreted the law, since it had noted the existence of racist remarks made by the accused before and during the assault.</p>			
	2013	France / Paris Court of appeal , Ordinance	http://www.gouvernement.fr/sites/default/files/contenu/piece-jointe/2014/10/arret_de_la_cour_dappel	Religion	Paris Court of appeal (Cour d'appel de Paris)	The Paris Court (TGI) ordered the company Twitter	Twitter has not executed the decision of the court of first instance to set up a specific device or to communicate the data allowing for the identification of	Whether the obligation to communicate the data allowing the identification of the authors of the illegal tweets deprive	Twitter was ordered to set up an accessible and visible device to inform Twitter of illegal content and to	Si la communication des données personnelles ordonnée est irréversible, il convient de rappeler que la poursuite de l'exécution provisoire se fait aux risques et périls de celui qui la poursuit, et qu'en cas d'infirmité, il encourt une condamnation au paiement de dommages-intérêts ;... Elle (la société Twitter) ne saurait

[l'appel de paris du 12 juin 2013 - uejf et autres c. twitter.pdf](#)

,
to communicate to plaintiffs the data in its possession in order to allow them to identify whoever contributed to the creation of clearly unlawful tweets . It also ordered Twitter to set up an easily accessible and visible device allowing any person to bring to their attention on any


the authors of the illegal tweets and it has not proven the impossibility of its execution or any manifestly excessive consequences attached to its provisional execution. Thus, under article 526 of the Code of civil procedure, the appeal was rejected.

the respondent of the appeal system.

communicate the data allowing for the identification of the authors of the illegal tweets. The Court of Appeal of Paris ordered the annulment of the appeal made by Twitter.

prétendre être privée du double degré de juridiction du fait de l'obligation de communiquer les données permettant l'identification des auteurs des tweets illicites.


If the disclosure of the personal data ordered is irreversible, it should be borne in mind that the continuation of the provisional execution is carried out at the risk and peril of the person prosecuting it and that, it is liable to pay damages ; ...It (company Twitter) can not claim to be deprived of the appeal system because of the obligation to communicate the data allowing the identification of the authors of the illegal tweets.

						illegal content classified as condoning crimes against humanity and inciting racial hatred. Twitter appealed this decision.			
	2013	Belgium / Correctional Court Oudenaarde / Public Prosecution v. V. Ismael and T. Francis Frans Francois	https://www.unia.be/files/Z_AR_CHIEF/2013_06_03%20Corr%20%20Oudenaarde.pdf	Ethnic origin	Correctional Court Oudenaarde, (Correctionele Rechtbank Oudenaarde)	The case concerns physical violence based on racist motives. Three men, V. Ismael, T. Francis and M.R. Joao were	The defendants admitted to inflicting personal injury to M.R. Joao, leading to his inability to work. They stated, however, that their acts were not motivated by racism or xenophobia. The Court found that there was not sufficient evidence to support that M.R. Joao had been a victim of violence caused by racist motives and that therefore aggravating circumstances did		The Court convicted the first defendant, V. Ismael, to imprisonment of 6 months (which was suspended) and a fine of 300 Euro. The Court convicted the second defendant, T. Francis, to imprisonment of 6 months (which was suspended) and a fine of 300 Euro. The Court also awarded moral damages to

involved in a fist fight. M.R. Joao, who is of foreign origin claimed that the other two had inflicted personal injury on him based on racist motives. The victim, M.R. Joao and the Centre for Equal Opportunities and Opposition to Racism were civil parties to the crimin

not apply to this case.

M.R. Joao (325 Euro in total) and reimbursement of medical costs (99,18 Euro).

						al proce eding s.				
	2013	Finland / District Court of Northern Karelia / R 13/315		Natio nality , Ethni c origi n	The Distri ct Court of North ern Karel ia (Pohj ois- Karja lan Käräj äoike us/N orra Karel ens Tings rätt)	A man was found guilty of incite ment to hatred after he publis hed a mess age on his Faceb ook page contai ning insults and sland er again st Somal i nation als, includi ng state ments that they live on social welfar e benefit s and that	The court found that the defendant was guilty of spreading information, in which a certain group (Somali nationals) was threatened, defamed or insulted on the basis of their national or ethnic origin, available to the public. Freedom of expression may be subject to limitation in such a case. Thus the defendant was found guilty for the crime of incitement to hatred prohibited by the Criminal Code.	Freedom of expression cannot prevail when its exercise violates other values to which the law provides adequate protection. These values arise from the need to defend equality established in the constitutional order.	The defendant was ordered to pay 30 day fines (1 980 euros).	

						<p>"they rape women". The prosecution stated that it is not acceptable to spread such views in public. The defendant claimed that the message was a commentary on a news article, and as such, it should not be interpreted out of context.</p>				
	2013	Austria / Higher Regional Court Innsbruck/	http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=J	Ethnic origin	Higher Regional Court	The case concerns online	The Higher Regional Court of Innsbruck found that the defendant's statement in social	One of the key issues is about whether the defendant's despicable	The Higher Regional Court of Innsbruck acquitted the defendant of	Im gegebenen Zusammenhang werden in erster Linie wörtliche Beschimpfungen in Betracht kommen, denkbar sind aber auch solche in Form bildlicher Darstellungen. Das

11Bs110/
13h
ECLI:AT:O
LG0819:2
013:0110
BS00110.
13H.0430.
000

[ustiz&Dokumentnummer=JJT20130430_OLG0819_0110BS00110_13H0000_000](#)

(Ober
lande
sgeri
cht)

incite
ment
to
violence
or
hatred
. More
concre
tely,
on 25
April
2012
the
defen
dant
made
comm
ents
on
facebo
ok and
other
social
media
networ
ks as
follow
s
[rough
ly
transl
ated:]
"Why
are
there
no
sperm
donor
s in
Turkey
?
Beacu
se all
the
jerks
are
here
with
us."

networks did not
constitute unlawful
speech as it did not
exceed the
boundaries
provided by law.
According to the
Court , the
defendant has not
attempted to bring
a group (Turks) in
contempt by hating
or insulting them in
a manner that
violates human
dignity. Bringing
someone in
contempt is if a
person presents
another person as
unworthy or
undeserving, thus
exposing him/her to
their contempt,
whereby the
perpetrator must
act with (at least) a
conditional intent
(dolus eventualis).


statement
constitutes
incitement to
violence or
hatred.
According to the
Higher
Regional Court
of Innsbruck,
the defendant
has not
exceeded the
boundaries of a
'qualified libel'
within that
meaning.

charges
related to the
crime of
incitement to
violence or
hatred
according.

Beschimpfen muss jedoch in einer die
Menschenwürde verletzenden Weise
erfolgen. Die Menschenwürde wird
verletzt, wenn durch die Tathandlung
den Angehörigen der angegriffenen
Gruppe unmittelbar oder mittelbar das
Recht auf Menschsein schlechthin
abgesprochen wird, indem ihnen etwa
das Lebensrecht als gleichwertiger
Bürger bestritten wird oder sie als
minderwertige oder wertlose Teile der
Gesamtbevölkerung dargestellt werden,
oder wenn sie sonst einer
unmenschlichen oder erniedrigenden
Behandlung unterworfen werden.
Richtet sich der Angriff bloß gegen
einzelne Persönlichkeitsrechte (z.B. die
Ehre), so wird damit noch nicht die
Menschenwürde verletzt. Maßgebend ist
vielmehr, dass die der betreffenden
Gruppe angehörenden Menschen im
unverzichtbaren Kernbereich ihrer
Persönlichkeit getroffen werden.

In the present context, verbal insults are
considered at first, however pictorial
representations are conceivable as
well. The insult has to be undertaken in
a manner which is infringes human
dignity. The human dignity is infringed if
the right to humanity is directly or
indirectly denied to the members of the
attacked group by denying, for instance,
their right to life as an equivalent citizen
or are presented as inferior or
worthless parts of the total population,
or if they are subjected to other
inhumane or degrading treatment. If the
attack is directed only against individual
personality rights (for example, honor),
the human dignity is not yet infringed.
What is decisive is rather that the
people belonging to the group in
question are affected in the
indispensable core of their personality.

+	2013	Finland / Eastern Finland Court of Appeal / R 12/492		Nationality, Ethnic origin	The Eastern Finland Court of Appeal (Itä-Suomen hovioikeus / Östra Finland Hovrätt	The Court of Appeal amended the decision by the District Court of Northern Karelia concerning defendant Rynnänen and increased the severity of the punishment according to the prosecution's demands. The defendants had posted defam	The court considered that the defendant was guilty of making available to the public information wherein a certain group (immigrants) was threatened, defamed or insulted on the basis of their national or ethnic origin. Freedom of expression may be subject to limitation in such a case. Thus the defendants were found guilty for the crime of incitement to hatred prohibited by the Criminal Code. The Court of Appeal considered that when an incitement crime includes incitement to violence or threat of violence, the deed cannot be expiated by a fine because of its harmful and dangerous nature. Thus one of the defendants was sentenced to imprisonment.	The Court of Appeal considered that when an incitement crime includes incitement to violence or threat of violence, the deed cannot be expiated by a fine because of its harmful and dangerous nature.	The Court of Appeal amended the decision concerning defendant Rynnänen and increased the severity of the punishment according to the prosecution's demands, with the result that Rynnänen was convicted to 60 days of imprisonment, which was converted to 57 hours of community service. The Court of Appeal amended the decision concerning defendant Turunen and decreased the severity of the punishment from 60 to 50 days of imprisonment, which was converted to 47 hours of community service.
---	------	--	--	----------------------------	--	---	---	--	--

						atory state ments as mess ages on a discus sion board on the Faceb ook websit e. Furthe rmore, one of the defen dants had create d the discus sion board in questi on and had titled it "Unce nsore d discus sion on immig ration (Lieks a)".				
	2013	Italy / Court of Cassation / Decision no.	http://www.asgi.it/wp-content/uploads/public/cassaz	Race	Italia n Court of Cass	The accus ed was	The Court of Cassation considered the decision of the	The decision is relevant because it is one of the first	The Ordinary Court of Rome's decision to	Point 4 of the decision: "... il legislatore italiano ha punito come delitto la diffusione di idee fondate sulla superiorità o sull'odio razziale, nonché

33179/13

[33179_2013.pdf](#)

ation
(Corte di
Cassazione)

the owner and manager of a website whose aim was to disseminate racist hate speech and violent discourse. He was charged for incitement to discrimination or violence based on racist grounds. According to him, this accusation is illegitimate because the website


Ordinary Court of Rome legitimate and confirmed the sentence against the complainant. More specifically, the Court stressed that Italian Courts are in charge of judging this case even though the website's server is based in the USA, because the criminal conduct was organised and implemented in Italy; most of the criminal actions have been perpetrated in Italy and the website's users are mostly based in Italy. Moreover, the current use of the Internet and of the social media is a further possibility of perpetration of certain criminal conducts, including hate speech and hate crimes. For this reason, the concerned legislative disposition can be applied also in those cases where racist groups and organisations whose aim is to disseminate hate speech and racial discrimination are organised and act on the Internet.

Italian Court's decisions ruling criminal conducts perpetrated on the Internet. The Court stressed the crucial importance of social media in current days and the additional possibilities they offer for criminal conducts, especially in case of discriminatory discourses and hate speech.

condemn the complainant is confirmed by the Court of Cassation.

l'incitamento a commettere atti di discriminazione o di provocazione alla violenza nei confronti di persone perché appartenenti a un gruppo nazionale, etnico o razziale [...]. È stato affermato che la norma incriminatrice [...] configura un delitto di pura condotta, consistente nella propaganda razzista o nella istigazione a commettere atti di discriminazione razzista, che si perfeziona indipendentemente dalla circostanza che la propaganda o la istigazione siano raccolte dai destinatari. Ed è anche delitto con dolo generico, integrato dalla mera coscienza e volontà di propagandare idee razziste o di istigare alla discriminazione razzista, giacché la norma non richiede nell'agente uno scopo eccedente rispetto all'elemento materiale del reato [...] la propaganda si qualifica come diffusione di messaggi volta a influenzare le idee e i comportamenti dei destinatari, e la stessa è tanto più efficace quanto più si affida alle nuove tecnologie di comunicazione, quali i social network e i siti web"



"racist propaganda or incitement to racist discrimination actions[...] can be assessed without considering if the propaganda or the incitement are actually received by the recipients. Moreover, it has to be considered a generic criminal offence, based on the mere awareness and will of disseminating racist ideas and inciting to racist discrimination [...] the propaganda includes the dissemination of messages aimed at influencing the ideas and behaviours of the recipients, and it is even more efficacious if it is perpetrated through the new communication technologies, such as social networks and websites"

						e's server is based in the USA and because the dissemination of such content on the Internet did not have the potential of creating a political group fostering racial hatred.				
	2013	Belgium / Court of Appeal Gent / City and Centre for Equal Opportunities and Opposition to Racism v. V.D.V. Marc Frans Gustaaf	https://www.unia.be/files/Z_AR_CHIEF/2013_03_05%20Gent.pdf	Ethnic origin	Court of Appeal Gent (Hof van Beroep te Gent)	The case concerns incitement to hatred and discrimination. In 2005, the local	According to the Court, the term "incitement" means more than providing information or expressing criticism, i.e. the defendant must have the intention to incite to hate. The Court went on to say that providing incorrect information	Incitement to violence or hatred must mean more than just expressing criticism. One must have the intention to incite hatred.	The Court of Appeal annulled the judgment of the Court of First Instance and acquitted the appellant of all charges.	

magazine of a political party in Sint-Niklaas published an article in which it accused young persons of foreign origin of desecrating graves. The article stated "(..) is that the perpetrators, all of them young teenagers, were of foreign ethnicity. A culture that

regarding the identity or ethnic origin of the perpetrators of a crime in itself does not necessarily imply that the person responsible for the incorrect information acted with the intent to create feelings of hatred or violence. The Court thus came to the conclusion that there was insufficient evidence to support the claim that the appellant had the intention to incite to hate, violence and discrimination.

						has no respe ct anymo re for the dead or the symbo ls of anoth er religio n is a deran ged culture ."				
--	--	--	--	--	--	---	--	--	--	--

	2013	Spain / Supreme Court Contentious-Administrative court, Section 7 / STS 693/2013	http://www.poderjudicial.es/segch/doAction?action=contentpdf&atabasematch=TS&reference=6650443&links=velo%20integral&optimize=20130308&publicinterface=true%20156	Religion, Gender	Supreme Court	In February 2013 the Supreme Court declared void a decision of the City Council of Lleida (Catalonia, Spain) in 2010 to prohibit people who wear the full veil (burka or niqab) from accessing or remaining in public spaces.	The fundamental argument in the judgment was that the use of the veil by some women is part of their religious freedom. The Lleida municipal ordinance was previously upheld by a Spanish appeals court which found that the law was permissible for identification and security purposes. But the Supreme Court found that the city of Lleida had not adequately established that the ban on veils would improve security and that the law prevented individuals from practicing religious traditions.	Religious freedom is a fundamental right recognised in the Spanish Constitution (Art. 16) that can only be further regulated by a law passed in Parliament. Thus, the City Council did not have the power to limit the freedom of religion by imposing a ban on wearing the full veil. But, the Court's ruling did not preclude the possibility for the legislator (the Spanish Parliament) to consider as appropriate a regulation on the wearing of the full veil. This was the first Spanish ban of the full veil.	The Spanish Supreme Court struck down a city ban on wearing veils over the face in municipal buildings, finding that the law infringes on religious freedom. It does override the ruling of the Justice High Court in Catalonia which considered appropriate the right of the municipal Ordinance of the Lleida City Council that limited or prohibit the access to spaces or offices of public service to people with full-face veil. The Supreme Court found that instead of serving to the extinction of discrimination, it could contribute to increase it if public spaces are closed to those women.	(La finalidad de proteger derechos y libertades ajenos, no puede así justificar la limitación de un derecho constitucional de una persona que tenga como finalidad la protección de los derechos de ésta, pues éstos no son derechos y libertades ajenos) "the aim to protect others' rights and freedoms cannot justify the limitation of a constitutional right of a person that is intended for the protection of the rights, as these are not rights and freedoms of others"
	2013	Luxembourg / District Court /	http://justice.public.lu/fr/actualite	Religion, Ethnicity	Luxembourg	This case	The four authors of the comments, who	Broad interpretation	Three of the defendants	"En ce qui concerne l'élément matériel, il y a lieu de retenir que les propos

Court /
Case no.
577/2013 /
Judgement / The
Public
Prosecutor v. A, B, C,
D

[tr/actualites/2013/02/jugement-incitation-haine/index.html?highlight=haine](http://actualites/2013/02/jugement-incitation-haine/index.html?highlight=haine)

Ethnic
origin

urg
District
Court
(Tribunal d'arrondissement)

differs from the general case law regarding incitement to hatred. The case concerns a defendant with a link to the extreme right movement who deliberately created a fake alias on a social media platform, pretending to be a foreigner attacking Luxembourg. He published

admit to having written the messages, are accused of having disseminated, by the use of a mobile phone, written messages inciting hatred against specific groups or communities, based on their real or perceived belonging, to an ethnic group, a nation or a given religion.


made of Article 457-1 of the Criminal Code, which covers racist and xenophobic comments.

were convicted to 6 months suspended prison sentences, while one of the defendants was convicted to 6 months in prison.

reprochés aux prévenus B, C, D et A ont été publiés sur la page Facebook du professionnel de la presse RTL Group, de sorte qu'il y a eu mise en circulation sur le territoire luxembourgeois et transition sur le territoire luxembourgeois de différents textes contenant des propos discriminatoires. {...} Quant à C {...} il fait référence à la deuxième guerre mondiale avec l'idée, qui ne lui déplairait d'ailleurs pas {...} de débarrasser le pays des personnes de nationalités étrangères, à savoir des demandeurs d'asile, et de celles appartenant à une autre religion, les musulmans, faisant explicitement référence aux actions entreprises par Hitler {...} pour « débarrasser » l'Allemagne des juifs pendant la 2^{ème} guerre mondiale {...} Il ne fait donc pas de doute que le contenu de ces propos, mis dans le contexte de la deuxième guerre mondiale, est susceptible d'inciter à la haine raciale et à la violence contre ces personnes alors qu'« C expose entre autre que le Luxembourg sera occupé dans un proche avenir par les demandeurs d'asile et des musulmans. » Unofficial translation: "As regards the material element, it should be noted that the allegations against accused B, C, D and A were published on the Facebook page of the RTL Group press, so that texts containing discriminatory remarks were circulated on the territory of Luxembourg. {...} As for C {...}, he refers to the Second World War with the idea, which would not displease him [...] to rid the country of people of foreign nationalities, namely asylum seekers, and those belonging to another religion, Muslims, making explicit reference to the actions undertaken by Hitler to "rid" Germany of the Jews during the Second World War. {...} There is no doubt, therefore, that the content of these remarks, put in the context of the Second World War, is

threats and hate comments against Luxembourgish people, nation and language, with the aim to provoke a negative reaction and to incite hatred against foreigners and migrants.

likely to incite racial hatred and violence against these persons, since C states, inter alia, that Luxembourg will be occupied in the near future by asylum seekers and Muslims.

	2013	Belgium / Court of First Instance of Dinant / X. and the public prosecution v. X	https://www.unia.be/files/Z_AR_CHIEF/2013_02_07%20Trib%20%20Dinant.pdf	Ethnic origin	Court of First Instance (Tribunal de première instance de Dinant)	The case concerns physical violence with racist motives. In 2009, the defendants, who had been drinking, physically assaulted a person on the basis of ethnic origin. They were charged with intentional infliction of personal injury motivated by racism.	The Court found that the police reports sufficiently proved that the defendants had inflicted intentional injury with racist motives.		The defendants were given a prison sentence of 3 months (which was suspended) and had to pay 150 Euro to the Fund for Aid to Victims of Intentional Acts of Violence (Fonds spécial d'aide aux victimes d'actes intentionnels de violence). The victim (who was a civil party to the proceedings) was awarded 500 Euro in damages.	
--	------	--	---	---------------	---	---	---	--	--	--



2013

Finland /
Kouvola
Court of
Appeal / R
12/385,
Number
103

Relig
ion,
Ethni
c
origi
n


The
Kou
vola
Court
of
Appe
al
(Kou
olan
hovio
ikeus
/Kou
vola
hovrä
tt)


The
defen
dant
appe
aled
to
the
Kouvol
a
Court
of
Appea
l
again
st the
judge
ment
of the
Kyme
nlaaks
o
Distric
t Court
on 30
March
2012,
by
which
he
was
convict
ed for
incite
ment
to
hatred
. The
defen
dant
was
convict
ed for
publis
hing
the
followi
ng
insulti
ng
mess

According to the judgement, the statement insults the religion of all those belonging to this religious group. It is irrelevant whether the defendant himself consider them humoristic or whether the statements made are considered political in their nature.

The defendant was ordered to pay 35 day fines (420 euros).

"Kirjoituksensa toisessa virkkeessä van Wouterghem on pitänyt muslimityön tappamista myönteisenä nimenomaan tämän uskonnon perusteella. Hovioikeus katsoo tämän lausuman olevan omiaan levittämään vihamielisyyttä islamin uskoa tunnustavia kohtaan. Samalla kirjoitus on kaikkien kyseiseen uskontokuntaan kuuluvien uskontoa loukkaava."
"In the second sentence of his statement, van Wouterghem has considered the killing of a Muslim girl as a positive act, specifically because of her religion. The Court of Appeal considers this statement to be likely to incite hatred toward Muslims. At the same time, the statement insults the religion of all those belonging to this religious group."

					age on the Uusi Suomi website: "I don't mind what the Saudis do in their own country, it's none of our business. The positive thing is that when a Muslim girl is killed, there is one potential Muslim child-bearer less."					
	2013	Italy / Court of Cassation / 4879		Race , Ethnic origin	Corte di cassazione	Two men were prosecuted for the crime of apology	The Court argued that there were sufficient elements to suspect that the two men were responsible for the crime of apology of fascism and that there was a risk	It is the competence of the judicial authority and not of the administrative authority to apply security measures.	They were subjected to security measures.	Il tribunale ... ha apprezzato, con motivazione adeguata e coerente scevra da violazioni della logica e del diritto, le esigenze cautelari senza invadere le competenze preventive dell'autorità amministrativa" The Tribunal ... has established, with adequate and coherent motivation

						gy of fascism (promoting fascist ideology or symbols) and for being part of the group Milizia, which has among its aims, to instigate discrimination or violence on racial and ethnic grounds. They were subjected to security measures.	they would commit the same kind of crime again, considering the continuity of the illegal conduct and the crimes of the same nature they had already committed.			based on logic and the law, the need to adopt security measures without interfering with the competences of the administrative authority.
	2013	Hungary / County Court of Miskolc / Decision	http://ukp.birosag.hu/portal-frontend/stream/biro	Religion	County Court of Misk	The defendant informed the	The prosecutor pressed charges on the grounds of threatening with public	The key issue was whether using the name of 'Muslim brothers' in a	The Court found the defendant guilty of threatening of	Excerpt from the reasoning of the decision: 'Tekintettel arra, hogy a vádlott fenyegetése nélkülözötte a konkrétágot, sőt, kifejezetten komolytalan volt,

no.
B.1725/20
12/14

[sagKod/0500/hatarozatAzonosito/B.1725_2012_14//](#)

olc
(Miskolci
Törvénytörvény
szék)

authorities
anonymously
over the phone
that bombs
had been placed
some where
in town
by his 'Muslim
brothers',
and that these
Muslims would
detonate the
bombs unless
the authorities
released certain
people from
prison. The
authorities soon
realised that
it was an
empty


endangerment;
however, civil
society organisations (e.g.
Working Group
Against Hate-crimes) argued that
the defendant's action could also
qualify as 'incitement to
hatred against a member of a
community' since the defendant used
the name of Muslims to
pressure the authorities.

threat of public
endangerment
could qualify as
incitement to
hatred against
the Muslim
community.


public
endangerment,
while it did not
find the charges on
incitement to
hatred against
a member of a
community legitimate.
While the defendant
certainly used
the common misconception
of connecting terrorism to
Muslims, the Court found
that the defendant's
intention was not to commit a
hate crime, but to make his
story more credible to the
authorities.


cselekménye kizárólag a közveszéllyel
való fenyegetés vétségeként
minősülhet.

'Given that the defendant's action was
without any grounds, in fact, it was not
even sincere, he only committed the
misdemeanour of threatening of public
endangerment'.

						threat, and that the defendant used the cover of the alleged 'Muslim brothers' as a decoy.				
	2012	Germany / Higher Regional Court Frankfurt a.M. / 20 W 12/08		Religion	Higher Regional Court (Oberlandesgericht)	The owner community of a real estate complex refused to give part-ownership of the complex for the purpose of creating a Muslim community centre. Part	A mere label in the plan ("Supermarket") does not constitute a binding agreement on permissible use of the part-ownership. If the owner community statutes provide for commercial use without explicit permission by the community trustee, the use for a Muslim community centre is a lawful change of use since no major disturbances are to be expected compared to other commercial uses. Thus, there is no right of the owner community to an injunctive relief.	Disturbances caused by a Muslim community centre (mosque) do not exceed those of any commercial use of a part-ownership real estate.	Cancellation of the decision of the owner community assembly confirmed by two previous rulings in lower courts.	The use as an supermarket for as reference for comparison [in ruling of the previous instance] constituted a legal error." "The intended use as Muslim community centre [compared to a commercial use] in the currently planned extent does not constitute an increased and consequently compromising use." GER: "[Das Landgericht hat]... rechtsfehlerhaft die Nutzung als Supermarkt als Vergleichsmaßstab angenommen. ... [im Vergleich einer kommerziellen Nutzung] mit einer Nutzung als muslimisches Gemeindezentrum, stellt sich Letztere in dem vorliegend geplanten Umfang jedenfalls nicht als intensivere und damit beeinträchtigendere Nutzung dar."


owner
ship
was
initially
confer
red to
the
group
for the
purpo
se of
openi
ng a
super
marke
t; the
owner
comm
unity
revers
ed its
decisi
on
once it
had
beco
me
clear
that
the
space
would
be
used
to
create
a
Musli
m
comm
unity
centre.
The
applic
ants
applie
d for
voidin
g the
decisi

						on of the owner community.				
	2012	Germany / Administrative Court Meiningen / 2 E 355/12 Me	http://www.thovg.thue.ringen.de/webthfj/webthfj.nsf/B64BD249C1257A4C002B2A72/\$File/12-2E-00355-B-A.pdf?OpenElement	Religion	Administrative Court (Verwaltungsgericht)	Application by the right-wing party NPD for a public demonstration close to a mosque with the slogan "Stop foreign infiltration - no mosque in E." was rejected by the competent authorities because the gathering posed a	The competent authority may ban a public meeting or demonstration or may require the compliance with specific conditions, if at the time of the decision according to recognisable circumstances public safety is directly endangered by the event. The risk assessment by the authority requires material grounds, which should, after sound analysis, indicate a sufficient probability of risks. Mere suspicion or assumptions of risk do not meet this requirement.	Right to public gathering and freedom of speech versus risk of sedition against specific groups.	Cancellation of the ban by the competent authority in an urgency decision. Authorisation to raise conditions (shorten the time span for the gathering, dislocation to another place). Rejection of a comparison with bans of public gatherings against Jewish institutions due to the special case of persecution of Jews during WWII.	"The ban of a public meeting in direct proximity to a mosque with the slogan "Stop foreign infiltration - no mosque in E." is unlawful because no concrete signs for endangering public safety had been present. The case does not constitute a sedition prohibited by law. The ban is cancelled." "The authorisation for the public gathering is restored under the condition of dislocation to another meeting place more distant to the mosque." GER: "Das Verbot einer Versammlung in unmittelbarer Nähe eines islamischen Gebetsraums unter dem Motto "Überfremdung stoppen - keine Moschee in E.!" ist rechtswidrig, weil keine konkreten Anhaltspunkte für eine Gefährdung der öffentlichen Sicherheit vorliegen. Das Motto erfüllt nicht den Tatbestand der Volksverhetzung." "Die aufschiebende Wirkung des Widerspruchs des Antragstellers vom 20.07.2012 gegen das Versammlungsverbot der Antragsgegnerin im Bescheid vom gleichen Tag wird unter folgender Auflage wiederhergestellt: Der Kundgebungsort wird auf die J... - aus Richtung S... kommend rechtsseitig hinter den Pollern in Richtung G... verlegt."


						threat to public safety. The applicant asked for reversing the prohibition in an urgency appeal.				
	2012	ECtHR / No. 47159/08 / Judgment / B.S. v. Spain	http://hudoc.echr.coe.int/eng/?i=002-5579	Race	European Court of Human Rights, ECHR	In its B.S. vs. Spain ruling of 24 July 2012 the European Court of Human Rights found a violation of Article 3 and of Article 14 in conjunction with Article 3 of	In her complaints, the applicant had mentioned possible racist motives. Her arguments had not been examined by the domestic courts, which had also not taken into account her special vulnerability inherent in her situation as an African woman working as a prostitute. The authorities had thus failed to satisfy their obligation to take all possible measures to ascertain whether or not a discriminatory attitude might have played a role in the events.	Article 14 in conjunction with Article 3 (procedural aspect) of the European Convention on Human Rights: The European Court of Human Rights reiterated that the authorities' duty to investigate whether there was any link between racist attitudes and an act of violence was an aspect of their procedural obligations under Article 3, but could also be seen as implicit in their responsibilities under Article 14	EUR 30,000 in respect of non-pecuniary damage	In her complaints the applicant had mentioned possible racist motives. Her arguments had not been examined by the domestic courts, which had also not taken into account her special vulnerability inherent in her situation as an African woman working as a prostitute. The authorities had thus failed to satisfy their obligation to take all possible measures to ascertain whether or not a discriminatory attitude might have played a role in the events.

the European Convention on Human Rights. The applicant was a woman of Nigerian origin who worked as a prostitute at the time. In July 2005, she was stopped and questioned by authorities on three occasions; she alleged that she was beaten and racially

to secure without discrimination the observance of the fundamental value enshrined in Article 3. Owing to the interplay of these two Articles, issues such as those in the present case could fall to be examined under one of the two Articles only, with no separate issue arising under the other, or could require examination under both Articles.

						abused on each occasion.				
	2012	Portugal / Supreme Court of Justice / Case no. 48/12.2YR.EVR.S1	http://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814727e7cf080257a45002f6679?OpenDocument	Race, Nationality, Religion	Supreme Court of Justice	A German citizen was sentenced in Germany to 2 years and 9 months in prison for turmoil against segments of the population, including racism, xenophobia and insult to religious communities. The Portuguese Supreme	The applicant argued in defence of his non-extradition to Germany: (i) that there is no freedom of expression in Germany; (ii) that he is politically persecuted in Germany; (iii) his connection to the Portuguese State. The Supreme Court of Justice considered that the conduct that denies the existence of war crimes or against peace and humanity cannot fall into the protective scope of the freedom of expression. The court also considered that extradition would not amount to a breach of the applicant's connection to Portugal which deserved a special consideration.	Freedom of expression cannot prevail when its exercise violates other values and interests protected by law. These values arise from the need to defend legal values established in the constitutional order and to safeguard values which are fundamental for the legal community of which Portugal is a member, in particular the European Community.	The court denied the applicant's claim, maintaining the decision of his extradition to Germany.	"A liberdade de expressão não é, não pode ser, a possibilidade de um exercício sem quaisquer limites alheio à possibilidade de colisão com outros valores de igual ou superior dignidade constitucional. Em Portugal, tal como na Alemanha, existem limites ao exercício do direito de exprimir, e divulgar, livremente o pensamento, e a sua violação pode conduzir à punição criminal ou administrativa. Esses limites visam salvaguardar os direitos ou interesses constitucionalmente protegidos de tal modo importantes que gozam de protecção, inclusive, penal". Freedom of expression is not, it cannot be, exercised without limits especially when it collides with other values of equal or superior constitutional weight. In Portugal, as in Germany, there are limits to the exercise of the right to express and freely disseminate one's thought, and their violation may lead to criminal or administrative punishment. These limits are intended to safeguard the constitutionally recognised rights or interests which are so important that they enjoy protection, including protection by criminal law.

me
Court
of
Justic
e
decide
d
about
the
execut
ion of
a
Europ
ean
Arrest
Warra
nt
issue
d by a
Germ
an
Court
which
concer
ned a
convict
ion
relatin
g to
Holoc
aust
denial.
This
condu
ct is
define
d in
Article
240
(2) (b)
of the
Portug
uese
Penal
Code
as a
denial
of a
crime
again

						st huma nity.				
	2012	Netherlands / Supreme Court / Case no. 11/00864 ECLI:NL:HR:2012:BW9189	http://deep.link.rechtspraak.nl/uitspraak?id=ECLI%3AANL%3A2012%3ABW9189	Race , Religion	Supreme Court (Hoge Raad)	In this case, the Supreme Court confirmed the judgment of the Court of Appeal convicting a man who put texts comparing Muslims and people of Turkish descent with monkeys, cockroaches, rats and rapists on his own website. The	The Supreme Court confirms the reasoning of the Court of Appeal that the statements of the accused were insulting to Muslims and people of Turkish origin. The statements were gratuitously offensive. The Court considered the possibility of whether the statements made by the accused contributed to the public debate or were an expression of an artistic or humourist endeavor. Ultimately, the Court rejected this possibility.	An appeal to artistic expression (satire) does not preclude the criminality of statements which are obviously insulting to people because of their religion or race.	The Supreme Court confirms the fine the accused received from the Court of Appeal: a fine of 1000 Euro of which 500 Euro were conditional.	<p>"Het hof is van oordeel dat de tenlastegelegde uitlatingen op zichzelf beschouwd al beledigend zijn voor moslims en mensen van Turkse afkomst nu zij daarin worden vergeleken met berberapen respectievelijk kakkerlakken, ratten en verkrachters. Maar ook in de context van de artikelen waarin de desbetreffende uitlatingen zijn opgenomen, zijn die uitlatingen onmiskenbaar beledigend voor groepen personen wegens hun ras en/of godsdienst. Hoewel in die artikelen hier en daar wordt gesproken van radicalen, terroristen, racisten en extremisten, zijn het overduidelijk steeds moslims (en Turken) die als collectief worden aangesproken, getuige bijvoorbeeld de aanduiding van het aantal moslims in Nederland (een miljoen)."</p> <p>The court is of the opinion that the alleged statements on themselves are already offensive to Muslims and people of Turkish origin as they are compared monkeys and cockroaches, rats and rapists respectively. But in the context of the articles in which these statements are incorporated, these statements are undeniably offensive to groups of people because of their race and / or religion. Although these articles include some offensive statements about radicals, terrorists, racists and extremists, it is obvious that most statements address Muslims (and Turks), witness, the indication of the number of Muslims in the Netherlands (one million).</p>

						<p>Court of Appeal convicted the accused under Article 137c of the Dutch criminal code which criminalizes group insult. Any claim by the owners that these texts were permissible because of their humorous character were rejected.</p>				
+	2012	Finland / Supreme Court / KKO:2012:58, R2010/1101	http://www.finlex.fi/fi/oikeus/kko/ko/2012/20120058	Religion, Ethnic origin	Supreme Court (Korkein oikeus / Högsta domstolen)	The Supreme Court convicted a Finnish	The Supreme Court referred to various cases of the European Court of Human Rights, in particular to Feret vs. Belgium. The	The judgment clarifies the concept of hate speech and its relationship to freedom of expression. The	The defendant (Mr. Halla-aho) was sentenced to a 50 day fines (300 euro). The court ordered	"[...] lausumat ovat omiaan herättämään suvaitsemattomuutta, halveksuntaa ja mahdollisesti jopa vihaa niiden kohteena olevaa kansanryhmää kohtaan. Ne ovat siten ymmärrettävissä niin sanotun vihapuheen kaltaisiksi lausumiksi, jotka

noys
ta
dom
stole
n)


h MP of incitement to hatred (ethnic agitation) and breach of the sanctity of religion for an article he wrote in his blog in 2008. In this blog entry he described Islam as a paedophile religion and wrote that theft and leading a parasitic life by living off welfare is a nation


court concluded that the claim made about Somalis as a group is defamatory and insulting. The defendant stated that the intention of the blog entry was to provide critique of the press and authorities. The court stated that such an intention does not justify defaming and insulting. The court concluded that the defendant has clearly understood the defamatory and insulting nature of the text, although part of it was written in a sarcastic style. The statements were likely to arouse intolerance, contempt, and possibly even hatred. Therefore the statements can be understood as "hate speech" that does not enjoy the protection of the freedom of expression.

Supreme Court states that the defendant's intention may well have been to provide a critique of the press and authorities. However, such an intention does not justify defaming and insulting. The court concluded that the defendant has clearly understood the defamatory and insulting nature of the text, although part of it was written in a sarcastic style. In addition, the Supreme Court states that the defendant has been actively involved in politics and this position has to be taken into account in exploring the boundaries between freedom of expression and its restrictions.

the parts of the blog text that include incitement to hatred/ethnic agitation to be deleted. As a consequence of the judgment Mr. Halla-Aho had to resign from the chairmanship of the Administration Committee of Parliament. At first, Mr. Halla-aho refused to resign, but gave in on 13 June 2012 after the leaders of all political party groups in Parliament, with the exception of the Finns Party, unanimously voiced the view that he cannot continue in the post. (In 2017, Mr. Halla-aho was elected chairman of the Finns Party.)

eivät nauti sananvapauden suojaa." "[...]the statements are likely to arouse intolerance, contempt, and possibly even hatred. They can be categorised as hate speech, which does not enjoy the protection afforded to freedom of expression."

						al and maybe even genetic characteristic of Somalis.				
	2012	Italy / Court of Cassation / Decision no. 19265	http://www.tuttostranieri.org/sentenze/sentenza-n-19265-del-21-maggio-2012-corte-di-cassazione/	Race, Ethnic origin	Italian Court of Cassation (Corte di Cassazione)	The Court of Cassation had to assess the legitimacy of the decision of the Court of Appeals of Trieste which had condemned the complainant for false report and menaces aggravated by reasons of	According to the Court of Cassation the complaint cannot be accepted and the decision of the Court of Appeal of Trieste is to be considered legitimate since the complainant's conduct even though not aimed at damaging a specific person but an institution can in any case be ruled by the anti-discrimination legislation since it was aimed at causing alarm and disseminating racial hatred.	This decision is relevant because the Court of Cassation contributes to the correct interpretation of the meaning and field of application of the anti-discrimination and racism legislation. More specifically, the Court stressed that to apply the aggravating factor based on the attempt to discriminate or disseminate racial, ethnic, religious and national hatred, as envisaged by art. 3 of the Law No. 205 of 25 June 1993, is not necessary that the criminal conduct is potentially able to publicly disseminate its	The decision of the Court of Appeal of Trieste is to be considered legitimate and the complainant's conviction is valid.	Point 3 of the decision: "per la configurazione dell'aggravante della finalità di discriminazione o di odio etnico, nazionale, razziale o religioso [...], non sia necessario che la condotta di incriminata sia destinata o, quantomeno, potenzialmente idonea a rendere percepibile all'esterno ed a suscitare il riprovevole sentimento o, comunque, il pericolo di comportamenti discriminatori o di atti emulativi, giacché ciò varrebbe ad escludere la aggravante in questione in tutti i casi in cui l'azione lesiva si svolgono in assenza di terze persone" "in order for the aggravating factor based on the attempt to discriminate or disseminate racial, ethnic, religious and national hatred [...] to be applicable, it is not necessary that the criminal conduct is destined, or at least potentially able to propagandise or raise the reprehensible feeling or, in any case, discriminatory actions or emulative behaviours, since it would exclude the application of the aggravating factor to all those cases when the damaging actions are perpetrated in the absence of third external subjects"

					ethnic hatred . The accused person sent threatening letters to a public institute – whose name is omitted in the decision – containing a white powder – similar to anthrax – and several degrading and racist phrases and menaces.			hatred and discriminatory content- It can be applied also to those conducts which are perpetrated between private subjects and not perceived by others.		
	2012	Luxembourg / Court of and in the Luxembourg		Nationality	The Court of and in the	Mr S. sent two emails to	Mr S. violated article 455 on hatred towards a community on the basis of any factor.	Mr S. attempted to threaten officials on the grounds of his racial hatred	Mr S. was sentenced to a penalty of 600€ and 3 months in prison on	

rg
arrondiss
ement
(12th
chamber) /
No.
31604/10/
CD


Luxe
mbo
urg
arron
disse
ment,
12th
cham
ber,
(Le
Tribu
nal
d'arr
ondis
sem
ent
de et
à
Luxe
mbo
urg,
douzi
ème
cham
bre)

the
Ministr
y of
educat
ion
incitin
g
racial
hatred
toward
s the
Portug
uese
comm
unity
living
in
Luxem
bourg,
stating
that
the
Portug
uese
youth
were
not
ready
to
integr
ate.
He
also
threat
ened
the
emplo
yees
of the
minist
ry with
a
bomb
attack
if the
Portug
uese
langu
age
beca

He also
anonymously
threatened an
attack on people
and property.

towards the
Portuguese
community in
Luxembourg.
He had
however no
prior
convictions,
which played in
his favour in the
sentencing.



probation.

						me part of the national curriculum. Mr S. admitted to this and said he was sorry for his actions, but also that it was caused by his depression.				
	2012	Denmark / Supreme Court / U.2012.2361H		Religion	Danish Supreme Court (Højesteret)	The defendant is a journalist and was the chair of the Freedom of Press Association. He was interviewed	The defendant's attorney argued that the relevant paragraph in the Danish Criminal Code, known as "the racism paragraph" (Racismeparagraffen) requires the statement in question to be both "degrading[or similar]" and "in public or with intent to be made public". The previous ruling from the Danish High Court had established that	The question of whether a person should be trialled under "the racism paragraph" which requires a statement to be both degrading and humiliating and made with intent of publication.	The Supreme Court found that the defendant had made degrading statements, but that he had not intended for those statements to be made public.	

in 2009 by an online magazine. During this interview, he made several degrading remarks about Islam and Muslims, including: "When a Muslim man rapes a woman, it is his right to do so. When Swedish girls are raped, gang-raped, etc., etc., there is nothing

while the defendant had not intended for the statements to be made public, he should have realised, based on the facts of the case, that they would be made public. The Supreme Court rejected this line of argument, pointing out that the racism paragraph required intent, and as this intent to make public was lacking, acquitted the defendant.

						wrong with that, from a Muslim perspective – that's your right." "They rape their own children. You hear that all the time.				
--	--	--	--	--	--	---	--	--	--	--

	2012	Germany/ Labour Court Berlin / 55 Ca 2426/12	https://openjur.de/u/547890.html	Religion	Labour Court (Arbeitsgericht)	During a job interview for the position of dental assistant, a female Muslim interviewee was asked to refrain from wearing her headscarf during work as a condition for the job. She refused and received a rejection via email.	The petitioner was fully qualified for the job and was rejected only due to her refusal to wear a headscarf on the job. The court considered this clear discrimination on religious grounds.	Exclusion from the pool of candidates only due to a refusal to not wear headscarf; the headscarf is a genuine expression of the petitioner's religiosity.	Payment of a compensation of 1.470€ by the employer to the rejected applicant (three monthly gross wages of the job offer).	<p>"The scarf is no general clothing which may be subject to restrictions by the instructor on the grounds of workplace safety, aesthetics equal treatment or norms of working garment." "The voluntary exclusion of persons confessing to and practicing the Muslim faith is a compelling unequal treatment due to religion."</p> <p>GER: "Dieses Kopftuch stellt nicht ein gewöhnliches Kleidungs- oder Schmuckstück dar, bei welchem der Ausbilder aus Gründen der Arbeitssicherheit, der Ästhetik, der Gleichbehandlung oder der Normsetzung im Rahmen einer Kleiderordnung das Ablegen begehren könnte." "Der gewollte Ausschluss von Personen, die sich zum Islam bekennen und ihn auf ihre Art leben, stellt zwingend eine Andersbehandlung wegen der Religion dieser Personen dar."</p>
	2012	Italy/ Ordinary Court of Milan / Decision no. 16945	http://old.asgi.it/public/parser_download/save/trib_milano_ord_22032012	Ethnic origin	Ordinary Court of Milan (Tribunale)	The director and the manager	According to the Court, the conduct of the perpetrators is to be considered racial harassment to the detriment of	This case is relevant because it is one of the first judicial decision which	The company were condemned for racial harassment and to a EUR	"I predetti comportamenti integrano sicuramente delle molestie o, quantomeno, dei comportamenti indesiderati a sfondo razziale aventi lo scopo e, sicuramente, l'effetto di violare la dignità personale del ricorrente e

di
Milano)

nt board of a bank discriminated and used hate speech against the complainant and other colleagues because of their ethnic origins on several occasions. This conduct, besides being an example of discrimination and hate speech, contributed to the creatio


the complainant. In fact, such conduct has been proven with sufficient certainty and contributed to the creation of an unsafe environment at the workplace.

applies the EU Directive 2000/43/EC. Moreover, the Court stressed the potential impact of discriminatory conduct in the workplace also considering the power employers have compared to their employees. Moreover, the Court stressed a crucial principle of the above-mentioned directive (art. 8), that is "it shall be for the respondent to prove that there has been no breach of the principle of equal treatment". In this case, the perpetrators could not prove that their conduct could not be considered discriminatory.

5,000 fine to be paid to the victim. The company was also condemned to the compensation of the judicial proceeding expenses. The Court also decided that the legal representative of the company is compelled to ensure that the racist conduct is stopped and to affix in the company's offices a public notice condemning any form of racist and discriminatory conduct.


delle altre persone di colore o, comunque, straniere presenti in azienda, creando nel contempo un clima lavorativo umiliante e offensivo tenuto conto del loro diretto ed esplicito riferimento alla razza e al colore del ricorrente e ai conseguenti minori diritti riconoscibili ... in capo allo stesso [...] la sussistenza e la rilevanza giuridica di tali condotte e del conseguente clima offensivo e umiliante creatosi nell'ambiente lavorativo della resistente trova ulteriore conferma nelle posizioni apicali ricoperte dai soggetti agenti, di per sé sole idonee a condizionare anche l'operato e i comportamenti degli altri dipendenti sia italiani che stranieri"


"The above-mentioned conducts surely represent harassment or, at least, unwanted racist conducts having the purpose and, surely, the effect of violating the personal dignity of the complainant and of the other people of colour or, in any case, foreigners working for the company, at the same time creating a work environment that was humiliating and offensive also considering the direct and explicit reference to the race and colour of skin of the complainant and to the inferior rights he could benefit from"

						n of an threat ening enviro nment on the workpl ace, also consid ering the role and power of the perpet rators comp ared to the positio n of the discri minat ed emplo yee.				
	2012	UN, Internation al Conventio n on the Eliminatio n of All Forms of Racial Discrimin ation / Communi cation No. 46/2009 / Mahali Dawas and Yousef Shava	http://www2.ohchr.org/english/bodies/ced/docs/jurisprudence/CERD-C-80-D-46-2009_en.pdf	Ethnic origi n	Intern ation al Conv entio n on the Elimi natio n of All Form s of Raci al Discr imina tion	This case relate s to discri minati on, physic al violen ce and vandal ism. In 2004 a group of 15- 20 youths attack	The Committee is of the view that in circumstances as serious as those in this case, where the petitioners were subjected, in their own house, to a violent assault by 35 offenders, some of them armed, enough elements warranted a thorough investigation by public authorities into the possible racist nature of the attack against the family. Instead, this		The Committee recommended that the State party grant the petitioners adequate compensation for the material and moral injury caused by the above- mentioned violations of the Convention.	The Committee is of the view that the investigation into the events was incomplete. In the light of such failure to effectively protect the petitioners from an alleged act of racial discrimination, and to carry out an effective investigation, which consequently deprived the petitioners from their right to effective protection and remedies against the reported act of racial discrimination, the Committee concludes their rights have been violated.

ed the petitioners' house . One managed to break into the house , and both petitioners were subjected to violence, including beatings. Other attackers outside the house shouted "go home!", as well as other slogans of an offensive nature . After this attack, the family, including all

possibility was set aside at the level of the criminal investigation, thereby preventing the issue from even being adjudicated at the criminal trial. The Committee considers that the burden was on the State party to initiate an effective criminal investigation, instead of giving the petitioners the burden of proof in civil proceedings.

						eight children, had to flee the house.				
	2012	Italy / Ordinary Court of Padua / Decision no. 206	http://old.sgi.it/public/parser_download/save/sente_nza.del.tribunale.di.pado.va.n.206.2012.d.17.02.2012.pdf	Race	Ordinary Court of Padua (Tribunale di Padova)	The Public Prosecutor of Padua accused the complainants of insults and defamation aggravated by the purpose of disseminating racial hatred and discrimination. On 4 August 2010 two delegates of an Italian trade union visited	The Court of Padua accepted the charges proposed by the Public Prosecutor of Padua considering that the complainants' version of the events was confirmed by several witnesses. Moreover, the Court agreed to aggravate the charges considering the clearly racist and discriminatory purpose of the constructors' conduct, as envisaged by art. 3 of the Law No. 205 of 25 June 1993 on "Urgent measures concerning racial, ethnic and religious discriminations" (Legge 25 giugno 1993, n. 205 "Misure urgenti in materia di discriminazione razziale, etnica e religiosa"). According to the Court, in order to recognise the aggravating factor,	On the one hand, this decision the Court confirmed the necessary criteria to apply the aggravating factor envisaged by the Law No. 205 of 25 June 1993. Moreover, the Court confirmed that the use of the degrading word "nigger" - used several times by the two building contractors in this specific episode - cannot be considered a word merely describing the colour of the skin of another person; this word is rather a racist insult considering its origin and history.	The two constructors were condemned for the charges proposed by the Public Prosecutor to 8 months and 2 months of detention. The two constructors were also condemned to compensate to the victims the costs of the judicial proceeding.	"La circostanza aggravante della finalità di discriminazione o di odio etnico, nazionale, razziale o religioso è integrata quando ... l'azione si manifesti come consapevole esteriorizzazione, immediatamente percepibile nel contesto in cui è maturata, avuto anche riguardo al comune sentire, di un sentimento di aversione o di discriminazione fondato sulla razza, l'origine etnica o il colore" "the aggravating factor concerning the purpose of discrimination or ethnic, national, racial or religious hatred is applicable when ... the conduct is expressed as an aware exteriorisation, immediately perceivable in the context it is perpetrated, also considering the common opinion, of a feeling of aversion or discrimination based on the race, the ethnic origin or the colour"

					the construction site of two Italian buildings constructed in order to provide the labourers with information concerning their rights. They were repeatedly insulted by the building contractors for the colour of their skin.	it is sufficient that the conduct clearly expresses the discriminatory idea that some people are inferior to others because of their racial, ethnic or religious belonging and it is not relevant if the racist conduct can potentially influence other people in perpetuating the racist conduct.				
	2012	Spain / Vigo Criminal Court / No. 22/2012	https://www.iberley.es/jurisprudencia/penal-n-22-2012-jp-vigo-sec-2-rec-262-2011-	Ethnic origin	Vigo Criminal Court (Juzgado de lo Penal de Vigo)	The two defendants, Ceferino and Justino,	The reasoning behind the application of article 607.2 of the Criminal Code (hereinafter CC) was based on the dissemination of expressions on	The article 607.2 of the CC applied in line with the Constitutional judgment (STC 235/2007). This judgment requested that if	Ceferino is condemned under the article 607.2 of the Criminal Code, that contains the prohibition of disseminate	("unos mismo hechos no pueden suponer una incitación indirecta a la discriminación (art. 607.2 del CP) y una incitación directa a los mismos fines y por las mismas razones (art. 510 del CP). Ello determina la absolución del Ceferino como autor de un delito del art. 510 del CP.")

[24-01-2012-13873631](#)

both followers of Nazi ideology, were acquitted of incitement to hatred (article 510 of the Criminal Code), but Ceferino was condemned under a different provision of the Criminal Code for disseminating ideas or doctrines that justify genocide (article 607.2 of the Criminal


Code), with a degrading content towards other groups identified by their colour or ethnicity, and to undermine their dignity and to promote the establishment of Governments based on the Nazism national socialist ideology.

The argumentation followed also stated that even though the article 510 of the CC punishes those who cause discrimination, hatred or violence against groups or associations, it'd be necessary at least a direct incitation, that was not concluded in this case.

a dissemination of views denying the genocide were penalized it should be enough to create an attitude of hostility towards the affected group. The VÍGO's Court found this was the case. The article 510 CC was not applied because the judgement follows the legal doctrine that states that the meaning and extension of the term "provocation" should imply a direct incitement and publicity, and does not consider that the "simple" aim of the incitement should be punishable.

ideas or doctrines that justify the genocide. With a penalty of 1 year and 6 months in prison. Ceferino is acquitted of a crime against fundamental rights and public liberties under the art. 510 CC. Justiniano is absolved of both crimes: the one against the fundamental rights and public freedoms (article 510 of the CC) and of a crime of disseminate ideas or doctrines that justify the genocide (article 607 of the CC).

Same facts cannot qualify as an indirect incitement to discrimination (article 607.2 of the CC) and a direct incitement to the same purpose, and for the same reasons (art. 510 CP). This determines Ceferino to be absolved as author of a crime of the article 510 of the CC.

					al Code).					
	2016	Austria / Regional Court Vienna / 112 Hv 66/16w		Natio nality	Regi onal Court (Lan desg ericht)	The defen dant was found guilty for postin g a comm ent on Faceb ook (referri ng to sexual assau lts comm itted by asylu m seeke rs again st wome n and girls) [rough ly transl ated]: "We need a little Breivic k who snipe s away such bstar ds[.] they	Not publicly available	Not publicly available	Sentenced to 3 months imprisonment on probation (duration of probation: 3 years)	Not publicly available

					come out of prison after 8-9 month s and take the next girl or boy[.] this must not be suppo rted with food or a warm room by tax money].] and deport ing and then he come s back"				
--	--	--	--	--	---	--	--	--	--

The information presented here is collected under contract by the FRA's research network FRANET. The information and views contained do not necessarily reflect the views or the official position of the FRA.

<https://fra.europa.eu/en/databases/anti-muslim-hatred/home>

Copyright © 2020 European Union Agency for Fundamental Rights