

## Cases and rulings

This section covers significant international, European and national case law and decisions. It also covers findings issued by UN human rights bodies and national human rights bodies relating to anti-Muslim hatred incidents, such as violence, property offences, incitement to violence or hatred, other forms of hate speech, discrimination, harassment.

Filter the database by:

**COUNTRY :**

Luxembourg

**YEAR(S) :**

2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019

**HATE BIAS MOTIVATION :**

Ethnic origin, Race, Religion, Nationality, Gender, Migrant status

**COURT / BODY TYPE :**

UN Human Rights Committee, UN CERD Committee, European Court of Human Rights, National Higher Court, National Court, Equality Body, Ombudsman, High regulatory authority

**CRIME TYPE(S) :**

Homicide, Physical violence, Arson, Vandalism, Property offence, Threat of violence, Incitement to violence or hatred, Other forms of hate speech, Discrimination, Harassment

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
Luxembourg	2019	Luxembourg / Administrative Court of Luxembourg (3rd Chamber) / Case no. 40948	<a href="http://www.ja.etat.lu/40001-45000/40948...">http://www.ja.etat.lu/40001-45000/40948...</a>	Religion	Administrative Court (Tribunal Administratif du Grand-Duché de Luxembourg)	A Luxembourgish citizen of Muslim religion submitted her application for the renewal of her driving license with a passport photo with her head covered by a veil. The administrative authority informed her that the processing of her request was only possible if she submits a complete application, namely, an application containing a 45/35 cm passport type photo on which her head is uncovered. The applicant, after several exchanges of letters with the authorities, decided to challenge the decision before the administrative court.	On the merits, the applicant argued that she was a Luxembourgish citizen of Muslim faith who, as such, covered her hair with a veil/hijab. Her face remains uncovered. Her hair is an element of her intimacy. Thus, having to dispose her hair on a photo that is not private is inconceivable. For her, this constitutes a violation of her privacy and private life, let alone, her freedom to practice her religious belief. On the procedural part, she argued that the domestic legislation under which the authorities had denied processing her request had been based on the transposition of Directive 2006/126/EC, which transposition had taken place, without any proper justification, in an "urgent" law-making process, thus the Council of State (Conseil d'Etat) had had no opportunity to form its opinion on the bill.	The administrative court, having dealt only with the procedural arguments, held that the transposition of the relevant EU directive had taken place within a framework of an "urgent" law-making process. The fact that an infringement proceedings had been launched against Luxembourg owing to the delay of the transposition of the directive's certain provisions could have served, by itself, as justification of an urgent process. However, the infringement proceedings did not concern the disputed provisions on the photograph. The application of such "urgent" process was devoid of any justification in respect of the provision relating to the characteristics of the photograph to be affixed to the driving license.	In the absence of any justification of the "urgent" law-making process, the administrative court declared the provision relating to the characteristics of the photograph to be affixed to the driving license illegal and thus inapplicable in the case. The contested administrative decision must be set aside and the previous version of the relevant law-decree must be applied to the applicant's request for the renewal of her driving license.	"[...] force est au tribunal de constater que la modification [...] ayant trait aux caractéristiques de la photographie à apposer sur le permis de conduire, tend à redresser des « imperfections » apparues dans la législation nationale et n'était pas visée par la Commission européenne dans le cadre de sa procédure d'infraction [...] aucune motivation quant au recours à la procédure d'urgence n'a été avancée par la partie étatique [...] L'illégalité de l'article [...] ayant ainsi été constatée par le tribunal, il doit être déclaré inapplicable en l'espèce, par application de l'article 95 de la Constitution." "[...], it is for the court to find that the amendment [...] relating to the characteristics of the photograph to be affixed to the driving license, tends to correct "imperfections" appeared in the national legislation and was not targeted by the European Commission within the framework of its infringement procedure [...] no reasoning for the use of the urgency procedure has been advanced by the State party [...] The illegality of Article [...] has thus been found by the court, it must be declared inapplicable in this case pursuant to Article 95 of the Constitution."

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Luxembourg	2017	Luxembourg / Court of Cassation / Case no. 58/2017 (3868)	<a href="https://justice.public.lu/content/dam/j...">https://justice.public.lu/content/dam/j...</a>	Religion, Race/Ethnicity	Court of Cassation (Cour de Cassation)	<p>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 Muslims in particular, were accused of destroying the country and its natural resources, negatively affecting Luxembourgish citizens' rights and living conditions. These groups were also accused of being responsible for the "end" of the Luxembourgish school system. The case was first reported by the Luxembourg Judicial Police.</p>	<p>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 government's immigration policies, and not against migrants. The courts (i.e. first instance, court of appeal and court of cassation) 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).</p>	<p>Broad interpretation made of Article 457-1 of the Criminal Code, which covers racist and xenophobe comments. All three instances confirmed that the conviction of the accused for violation of article 457-1 of the Criminal Code (incitement to hatred or violence) had not been in breach of the accused's fundamental right to freedom of expression as set forth by Article 10 of the ECHR.</p>	<p>The accused was convicted by 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 euros fine (judgment no. 596/16 V of 6 December 2016). The judgment was then upheld by the Court of Cassation.</p>	<p>"Les propos de X 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. Travesti sous l'apparence d'une critique politique du gouvernement, qui rentrerait dans l'exercice de la liberté d'expression, le pamphlet, pris dans son intégralité, contient en dehors de cette critique également des propos stigmatisant les étrangers, [...]."</p> <p>"The words of X are certainly likely to give a disturbing picture of the Muslim community as a whole, as well as of the foreign population in general, and to arouse, particularly among the least informed public, a sense of rejection and antagonism and hostility. Under the guise of a political criticism of the government, which would fall within the exercise of the freedom of expression, the pamphlet, taken in its entirety, contains besides this criticism also remarks stigmatizing the foreigners, [...]."</p>

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Luxembourg	2017	Luxembourg / Court of Appeal (10th Chamber) / Case no. 304/17		Migrant status	Luxembourg Court of Appeal (Cour d'appel)	On 14 October 2015 the accused, via his social media profile, commented on an article from a newspaper about a former military site (Ordensburg Vogelsang). The article said that "In this ex-Nazi-Ordensburg, Cologne will bring 900 refugees to Germany" and "In Cologne refugees are to be accommodated in the area of the former National Socialist Ordensburg, 900 people should be staying in a single floor..." The accused posted the following comment: "Vogelsang is actually a listed building ... let's see what remains of it, if this garbage (in German: Gesindel) lives there".	Public Prosecutor argued that the use of the term "Gesindel" by the accused was to target refugees. The term "Gesindel" (a word with a very pejorative meaning, referring to "garbage people") referred to a group of people, in this case refugees, certainly has a negative connotation and therefore it can constitute incitement to hatred. At the same time, the defense of the accused invoked freedom of expression and freedom of opinion, relying on Article 10 of the ECHR.	In order to find a violation of article 457-1 of the Criminal Code, both the material and the moral elements of the crime must be established. The Court of first instance argued that in the absence of other elements calling for the stigmatization of refugees, the accused's comment had not had a sense of hostility or rejection and had concluded that the material element of incitement to hatred was therefore not established. The Court of appeal then argued that the remarks made by the accused were not likely to create in the mind of the person who conceives them shock, hatred or violence. Concerning the moral element, it further argued that it had not been established that the accused deliberately intended to provoke the public and thereby triggering a reaction of hate or violence against refugees.	The Court of first instance acquitted the accused. The Court of appeal upheld the judgment.	(of the summary of the judgment provided by the Legal Documentation Service) "Cependant, les propos tenus ne sont pas de nature à créer dans l'esprit de celui qui les conçoit un choc incitateur à la discrimination, à la haine ou à la violence. [...] La Cour considère également quant à l'élément moral de l'infraction d'incitation à la haine qu'il n'est pas établi que A ait voulu de façon délibérée provoquer dans l'esprit du public une réaction de discrimination de haine ou de violence à l'égard des réfugiés, respectivement qu'il aurait dû entrevoir que ces propos pourraient avoir un tel effet." "However, the remarks made are not likely to create in the mind of the person who conceives them an incentive shock to discrimination, hatred or violence. [...] The Court also considers as to the mental element of the offense of incitement "to hatred that it has not been established that A deliberately intended to provoke in the mind of the public a reaction of hate discrimination or of violence against refugees, respectively, that he should have foreseen that such remarks could have such an effect."

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Luxembourg	2017	Luxembourg / District Court (Correctional Chamber) / Case no. 2065/2017		Religion	Luxembourg District Court (Tribunal d'arrondissement)	An anonymous reporting on 22 September 2016 through the Bee Secure Stoptline platform has made the police authorities aware of a comment posted by the defendant via her Facebook account. The comment was made in respect of an article that related to a German railway agent who had been insulted and threatened of being thrown off the train by some illegal passengers during a check of tickets. The defendant's comment, in a rather confused Luxembourgish language, indicated that she had been looking forward to the day when these "mentally impaired animals" will encounter someone who will resort to violence against them till their "pedo-Prophet" comes out of their ears.	The accused explained that she had not taken the time reading the article on which she commented, but in the majority of cases the perpetrators of such crimes reported by the media are people of Muslim origin, so she had assumed that this had been the case again. Her intention was to express her contempt for the perpetrators without directly targeting their religion. The court, however, held that the commentary of the defendant had targeted implicitly but necessarily the Muslims. Further, the defendant used extremely pejorative terms when describing her target ("mentally impaired animals") and desired aggression against them, thus violated article 457-1 of the Criminal Code (incitement to hatred or violence).	The court clarified that the comment "pedo-Prophet" implicitly but necessarily referred to Mohamed Prophet and thus the defendant targeted the group of people belonging to the Muslim religion. Further, the court emphasized that it was not necessary that the comment in question contain a call to hatred, violence or discrimination. For the offense to be constituted, it is sufficient for the comments to be such as to arouse those feelings.	The defendant was convicted, she was sentenced to payment of EUR 500 criminal fine.	"Le commentaire de la prévenue vise implicitement mais nécessairement les musulmans puisqu'il est fait référence au prophète Mohamed (« de pedo-Prophet »). La prévenue a dès lors visé des personnes qui en raison de leur appartenance à une communauté se distinguent par leur religion. [...] En l'espèce l'auteur du commentaire [...] insinue gratuitement qu'il doit nécessairement s'agir de musulmans et attend avec impatience le jour où ils se heurteront à quelqu'un qui aura recours à la violence à leur égard. Il va de soi que ces propos incitent à la haine et à la violence contre les musulmans [...]." "The commentary of the defendant aims implicitly but necessarily the Muslims since it refers to the prophet Mohamed ("pedo-Prophet"). The defendant has therefore targeted persons who because of their membership of a community are distinguished by their religion. [...] In this case the author of the commentary [...] suggests that it must necessarily be Muslims and looks forward to the day when they will encounter someone who will resort to violence against them. It goes without saying that these words incite to hatred and violence against Muslims [...]."

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Luxembourg	2017	Luxembourg / District Court (16th Chamber) / Case no. 3257/2017		Religion, Migrant status	Luxembourg District Court (Tribunal d'arrondissement)	In September 2015, violent comments were posted about two articles concerning the refugee crisis that have been shared on the Facebook page of Radio Latina, a Portuguese-speaking radio station in Luxembourg. One was about an NGO worker being outraged by the comments of incitement to hatred on Facebook. The other was about Differdange, a city in Luxembourg, being open to welcome up to 60 refugees. On these articles, a number of people expressed their opinions: "when they start beheading and bombing in the name of God, that will be the families and those who welcome them"; "what these people did to Catholics at home, they killed complete families and now they want people to be in their favor"; "these people have no culture, no citizenship, they have no education, the only thing they see is evil, nothing more. They are cold-blooded criminals, looters, outlaws and rapists"; "Once your daughter is raped or stoned by one..."	In the course of the police investigation all defendants claimed that they might have misrepresented themselves and that they had nothing against refugees in general, but they were rather against the terrorists. The court, however, held that all five defendants had violated article 457-1 of the Criminal Code (incitement to hatred or violence).	The court clarified that even though two of the defendants had actually resided in France when posting the relevant comments, the Criminal Court of Luxembourg had been still competent to hear their case since Article 457-1 of the Penal Code provides for the criminalization of acts that have partially taken place abroad.	All five defendants were convicted to one-year suspended imprisonment.	"[...] que l'article 457-1 3) a été introduit pour « tenir compte de certains comportements d'organisations racistes internationales qui tentent de profiter des lacunes législatives de certains Etats, en faisant parvenir leur matériel à connotation raciste à un public déterminé, en échappant à l'incrimination prévue par les différentes législations nationales [...]. [...], il a fallu recourir à un libellé très vaste de ce texte permettant d'atteindre le résultat voulu, c'est-à-dire l'incrimination des faits en question, même s'ils ne se déroulent que partiellement sur le territoire luxembourgeois." "[...] that Article 457-1 3) was introduced to "take into account certain behaviors of international racist organizations which attempt to take advantage of the legislative shortcomings of certain States, by sending their racist material to a particular public, by escaping the criminalization provided for by different national laws [...]. [...] it was necessary to resort to a very broad wording of this text to achieve the desired result, that is to say the incrimination of the facts in question, even if they only take place partially on Luxembourg territory."
Luxembourg	2016	Luxembourg / Court of Appeal (5th Chamber), Case no. 596/16 V / Judgement / The Public Prosecutor v. A.		Religion, Race/Ethnicity	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 Muslims in particular, were accused of destroying the country and its natural resources, negatively affecting Luxembourgish citizens' rights and living conditions. These groups were also accused of being responsible for the "end" of the Luxembourgish school system. The case was first reported by the Luxembourg Judicial Police.	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." "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."

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Luxembourg	2015	Luxembourg / District Court (13th Chamber) / Case no. 1448/2015 / Judgment / The Public Prosecutor v. X		Nationality, Race/Ethnicity	Luxembourg District Court (Tribunal d'arrondissement)	This case differs from the more "typical" case law regarding incitement to hatred, 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, with the aim of provoking a negative reaction and inciting hatred against foreigners and migrants.	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 Court argued that the defendant, through his comments, sought to provoke a racist reaction against foreigners.	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 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.	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." "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."

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Luxembourg	2013	Luxembourg / District Court / Case no. 577/2013 / Judgement / The Public Prosecutor v. A, B, C, D	<a href="http://justice.public.lu/fr/actualites/...">http://justice.public.lu/fr/actualites/...</a>	Religion, Race/Ethnicity	Luxembourg District Court (Tribunal d'arrondissement)	This case 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 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.	The four authors of the comments, who 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.	Broad interpretation made of Article 457-1 of the Criminal Code, which covers racist and xenophobic comments.	Three of the defendants were convicted to 6 months suspended prison sentences, while one of the defendants was convicted to 6 months in prison.	"En ce qui concerne l'élément matériel, il y a lieu de retenir que les propos 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 « débarasser » l'Allemagne des juifs pendant la 2 <sup>ème</sup> 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." "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 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."

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Luxembourg	2013	Luxembourg / Court of and in the Luxembourg arrondissement, court of first instance (16th chamber) / no. 17461/12/CD		Nationality, Race/Ethnicity	The Court of and in the Luxembourg arrondissement, court of first instance 16th chamber (Le Tribunal d'arrondissement de et à Luxembourg, seizième chambre correctionnelle)	When RTL 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 persona, who would cleanse the country.	The law criminalises 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.	No new interpretations or explanations.	Mrs J., Mrs G. and Mr H. were 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.	
Luxembourg	2012	Luxembourg / Court of and in the Luxembourg arrondissement (12th chamber) / No. 31604/10/CD		Nationality	The Court of and in the Luxembourg arrondissement, 12th chamber (Le Tribunal d'arrondissement de et à Luxembourg, douzième chambre)	Mr S. sent two emails to the Ministry of education inciting racial hatred towards the Portuguese community living in Luxembourg, stating that the Portuguese youth were not ready to integrate. He also threatened the employees of the ministry with a bomb attack if the Portuguese language became 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.	Mr S. violated article 455 on hatred towards a community on the basis of any factor. He also anonymously threatened an attack on people and property.	Mr S. attempted to threaten officials on the grounds of his racial hatred towards the Portuguese community in Luxembourg. He had however no prior convictions, which played in his favour in the sentencing.	Mr S. was sentenced to a penalty of 600€ and 3 months in prison on probation.	

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