

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 :

Belgium

YEAR(S) :

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

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
Belgium	2015	Belgium / Tribunal of First Instance of East-Flanders section Gent/ GE56.L2.3657/14/sw3	http://unia.be/files/Z_ARCHIEF/2015_02_...	Religion	Tribunal of First Instance of East-Flanders section Gent (Rechtbank van eerste aanleg Oost-Vlaanderen afdeling Gent)	In 2015, the Tribunal of Gent convicted a man for harassment and discrimination 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". The defendant invoked his freedom of expression, but the Tribunal argued that such freedom is limited by the respect of the constitutional freedoms of others.	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 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	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 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 erediens 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."

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Belgium	2016	Belgium / Tribunal of First Instance of Brussels	http://unia.be/files/Documenten/Rechtsp...	Nationality	Tribunal of First Instance of Brussels (Tribunal de première instance de Bruxelles)	In 2016, the Tribunal of Brussels convicted 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 mere insults do not constitute incitement to hatred; however, in this case, the call for murder demonstrated there was an intent to incite violence.	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 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.	Incitement to discrimination, hatred or violence requires that the author encourages, exhorts or 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.	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 entraîner autrui à se montrer violent à l'égard de la plaignante et que telle était bien la volonté du prévenu.'
Belgium	2017	Belgium / ECtHR / Application no. 37798/13 / Judgement / Belcacemi and Oussar v. Belgium	http://hudoc.echr.coe.int/eng/?i=001-17...	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 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 Constitutional Court. Their cases were dismissed by that court.	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 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.	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. France2, 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"."
Belgium	2017	Belgium / ECtHR / Application no. 4619/12 / Dakir v. Belgium	http://hudoc.echr.coe.int/eng/?i=001-17...	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. In August 2008, Ms Dakir, presenting herself as a Muslim who had decided on her own initiative to wear the niqab applied to the Conseil d'Etat (Council of State) for the annulment of the ban. She claimed, among other things, that the provision expressly concerned the Islamic clothing worn by her and that the resulting ban constituted an interference with her rights. She also contended that the interference had no legitimate aim as secularism was not a constitutional principle and the wearing of the veil could not be subject to a blanket ban.	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 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 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 was to pay Ms Dakir 800 euros (EUR) in respect of costs and expenses.	"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"."

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Belgium	2017	Belgium / ECtHR / Application no. 34367/14 / Belkacem v. Belgium	http://hudoc.echr.coe.int/eng/?i=001-175...	Religion	European Court of Human Rights, ECHR	The case concerned the conviction of Mr Belkacem, the leader and spokesperson of the organisation "Sharia4Belgium", which was dissolved in 2012, for incitement to discrimination, hatred and violence on account of remarks he made in YouTube videos concerning non-Muslim groups and Sharia. The Court noted that in his remarks he had called on viewers to overpower non-Muslims, teach them a lesson and fight them. The Court considered that the remarks in question had a markedly hateful content and that Mr Belkacem, through his recordings, had sought to stir up hatred, discrimination and violence towards all non-Muslims.	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 applicant, 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-discrimination 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, in accordance with Article 17 of the Convention, Mr Belkacem could not claim the protection of Article 10.	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-discrimination 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"."
Belgium	2017	Belgium / Court of Cassation / S.12.0062.N	http://jure.juridat.just.fgov.be/pdfapp...	Religion	Court of Cassation of Belgium (Hof van Cassatie van België)	A muslim receptionist was dismissed by the defendant as she refused to conform to the unwritten rule in force in the company, which imposed a prohibition on carrying outward signs of a political, philosophical or religious belief. The Labour Court of Antwerp had ruled that a security firm did not commit abuse of law by dismissing a receptionist who wanted to combine a modest headscarf with her uniform.	The Court of Cassation states that an employer is liable under civil law as soon as anti-discrimination law is violated. The Labour Court did not have to check whether the employer made a mistake or was negligent, but it had to test the employer's neutrality policy against the possibilities of justification under anti-discrimination law. Measures that discriminate indirectly can only be justified if three conditions are met: they must pursue a legitimate aim, the measures must be necessary and appropriate to reach that goal, and they must be proportionate to the pursued goal.	The Court confirmed that the dismissal based on neutrality policy does not constitute direct discrimination. This is in line with the judgment of 14 March 2017 of the Court of Justice, in response to a question from the Court of Cassation in this case. There, the Court of Justice ruled that the prohibition on wearing an Islamic headscarf, which results from an internal rule of a private company providing for a prohibition on the visible wearing of any political, philosophical or religious sign at work, does not constitute direct discrimination based on religion or belief within the meaning of Council Directive 2000/78 / EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.	The Court of Cassation set aside the judgment of the Labour Court of Antwerp of 23 December 2011, with the exception that the dismissal based on neutrality policy does not constitute direct discrimination. The case is referred to the Labour Court of Ghent.	"Bij gebrek aan een beoordeling in concreto van de vraag of er binnen de onderneming van verweerder daadwerkelijk behoefte bestond om ter vrijwaring van een vreedzame arbeidsomgeving maatregelen te nemen, enerzijds, en van de vraag of het hiertoe opgelegde verbod op het dragen van uiterlijke tekenen van religieuze overtuigingen op de werkvloer proportioneel is met het nagestreefde doel, anderzijds, kon het bestreden arrest bijgevolg niet wettig besluiten dat indien er sprake zou zijn van indirecte discriminatie, deze objectief en redelijk gerechtvaardigd is waardoor het hierop gesteunde ontslag van eerste eiseres niet onrechtmatig is en geen misbruik van ontslagrecht inhoudt." "In the absence of a specific assessment of whether there was a real need within the defendant's company to take measures to safeguard a peaceful working environment, and whether the prohibition imposed for that purpose on wearing external signs of religious beliefs in the workplace are proportional to the objective pursued, on the other hand, the judgment under appeal could not lawfully decide that if there were indirect discrimination, it would be objective and reasonably justified, so that the dismissal of the first plaintiff based on it would not be unlawful and would not abuse of dismissal law."

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Belgium	2018	Belgium / Court of First Instance of Ghent / Roll number 18G011567 - System number 18RG9098	https://www.unia.be/files/Documenten/Re...	Race/Ethnicity, Race/Ethnicity, Nationality, Religion	Court of first instance East-Flanders, department Ghent criminal matters (Rechtbank van eerste aanleg Oost-Vlaanderen, afdeling Gent strafzaken)	The facts of the case concern a wide range of inappropriate and racist remarks made on social media following the attacks in Istanbul (Turkey) on 1 January 2017. K.A. from Houthalen-Helchteren was killed in those attacks. The defendant, a Belgian national, repeatedly posted messages on the Internet, including on Facebook, targeting Muslims with a migrant background and replied to messages and videos posted by others from 18/09/2014 to 02/06/2017 included. The defendant denies the facts and claims his Facebook was hacked. He argues that the use of the word macaca ("makak") should not necessarily be interpreted as racist because it concerns a type of ape. The case was brought by the Prosecutor's Office in Ghent, UNIA and the parents, the sister and the brother of K.A. joined the case as civil parties.	The Court finds the defendants' arguments completely implausible, considering the inconsistencies in the defendant's declarations and the complete lack of evidence of hacking. The Court argues that there can be no doubt about the defendant's "special will to incite hatred or violence", considering that he not only liked posts on other people's Facebook page, but also spreaded racist and hateful messages through his own Facebook profile.	The Court gave special consideration to the defendant's use of Facebook, the most well known and used online social network site, to spread racist messages. Not only is doing so from behind a computer considered cowardly and very reprehensible behaviour, the defendant denied his online statements when confronted with them in the real world. According to the Court, this demonstrated the defendant's true attitude and raises questions regarding his insight in his errors and the associated possibility of recidivism.	The Court found the defendant guilty and imposed sanctions with a preventive and repressive objective. The defendant was ordered to pay the symbolic amount of 1 euro of compensation to the plaintiffs and to UNIA as well as their litigation costs (180 euro each). Furthermore, the defendant received 6 months in prison and a 4.000 euro fine (or 1 month and 15 days in prison). He was also ordered to pay 200 euro to the Fund to help victims of intentional acts of violence and occasional rescuers, 20 euro to the Budget fund for legal second-line assistance, 53,58 euro for the management costs in criminal cases, and litigation costs (28,46 euro) of the office of public prosecutor.	"De beklagde heeft duidelijk een gebrek aan respect voor anderen waarbij hij vulgair en racistisch taalgebruik niet schuwt. Het gedrag van beklagde is totaal onverantwoord en draagt bij tot een polarisering in de huidige samenleving. De samenleving wordt reeds geconfronteerd met onverdraagzaamheid en extremisme dat aanzet tot haat en het gebruik van geweld. (...) Het is zeer verontrustend om te lezen hoeveel mensen, al dan niet anoniem, net als beklagde haatdragende en racistische boodschappen verspreiden via sociale media. "The defendant clearly has a lack of respect for others and does not avoiding vulgar and racist language. The behaviour of the defendant is totally irresponsible and contributes to polarization in today's society. Society is already confronted with intolerance and extremism that incites hatred and the use of violence. (...) It is very disturbing to read how many people, whether or not anonymously, like defendant spread hate and racist messages through social media"

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Belgium	2018	Belgium / Court of First Instance of Brussels / Judgment number 2018/6234 - Roll number 18F033246 - System number 16R83630	https://www.unia.be/files/Documenten/Re...	Religion, Race/Ethnicity	French-speaking Court of First Instance of Brussels, 61st penal chamber (Tribunal de première instance francophone de Bruxelles, 61e chambre correctionnelle)	A female pharmacist is asked in a very aggressive tone by a client to give more information about a prescription he had received ten days earlier from one of her colleagues. During her reply, the pharmacist is interreputed by the client who says he does not want to talk to her but to someone else, because "with the thing you wear on your head, you are not a scientist". The pharmacist wears a veil at work and has never had any problem with other customers or her colleagues. The pharmacist's manager intervenes to defend her employee. The client replies that the manager is an accomplice to let "such people" work here and the woman should go to Saudi Arabia or Qatar. The woman is scared what the client might do to her in the future and fears for her physical integrity. She files a complaint.	The defendant does not understand the complaint. He merely wanted his treatment and addressed the pharmacist in a nice way. The defendant told the police and repeated at the court hearing that he did nothing wrong. The only thing he is sorry for is that he may have spoken too loudly because he was feeling unwell. At the time, he was in distress and feeling very bad due to the chemotherapy he was receiving, yet the complainant did not act as required by a representative of the medical profession. He has no problem with her wearing a veil, so there can be no racism or hatred. The Court does not follow this reasoning. It would be surprising that the pharmacist would be unable to perceive that a customer is suffering and go through the trouble to go to the police 5 days later. The pharmacist's manager intervened because of the noise and tone and the offensive and discriminating remarks made by the defendant.	The defendant argued that it could not be proven that he said the things he is accused of saying by the complainant, because the pharmacist's complainant's manager did not repeat the words when she was heard in the case. The Court determined that this is not necessary, because the manager interrupted her own work to intervene, because she heard the man raise his voice and tone. It is not surprising that the manager does not remember the exact statements made by the defendant, because the facts took place in August 2016 and the manager was heard in the case only in December 2016. While not remembering the exact wording, the manager did remember that the defendant's remarks were offensive and discriminating. The Court also argued that not feeling well, does not justify the statements made to the pharmacist.	The defendant is found guilty. In determining the punishment to impose, the Court took into account the defendant's unacceptable behaviour, his total absence of regrets and his attitude during the court procedures, which demonstrate that he still minimizes the facts and pities on his personal case, as well as his lack of a criminal record. The Court hoped that the punishment will be of such a nature to make the defendant truly aware of the fact that his remarks about the victim are not tolerable in society. The Court condemned the defendant to a fine of 900 euro (to be replaced by a subsidiary imprisonment of 15 days if not paid). Additionally, he has to pay 200 euro to the Special Fund to help victims of intentional acts of violence and occasional rescuers, a compensation of 53.58 euro, 20.00 euro to the Budget Fund for second-line legal aid, and 30.87 euro for the expense of public action.	De plus, la responsable de la pharmacie, B. C. , si elle ne répète pas les propos tenus par le prévenu, indique néanmoins qu'elle a abandonné la tâche qu'elle effectuait pour aller voir ce qu'il se passait car elle avait entendu la voix d'un homme et que le ton montait. Elle signale que les propos étaient injurieux et discriminants. D ne fait aucun doute que s'il ne s'était rien passé, elle aurait poursuivi ce qu'elle faisait et il serait très surprenant qu'elle aurait embrayé dans le sens de la plaignante. Elle aurait tout simplement déclaré qu'elle n'avait pas été témoin des faits dénoncés par la plaignante. Tel n'est pas le cas en l'espèce, bien au contraire. Il faut aussi remarquer qu'elle a été entendue en décembre 2016 alors que les faits se sont déroulés en août 2016 de sorte qu'il ne peut lui être reproché de ne pas se souvenir mot à mot des termes utilisés par le prévenu. 'Moreover, the head of pharmacy, BC, if she does not repeat the words of the accused, nevertheless indicates that she abandoned the task she was performing to see what was happening because she had heard the voice of a man and that the tone rose. She points out that the remarks were offensive and discriminating. There is no doubt that if nothing had happened, she would have continued what she was doing and it would be very surprising that she would have gotten in the way of the complainant. She would have simply stated that she had not witnessed the facts complained of by the complainant. This is not the case here, quite the contrary. It should also be noted that she was heard in December 2016 when the facts took place in August 2016 so that it can not be blamed for not remembering verbatim the terms used by the defendant."

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

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