Criminal Detention in the EU Conditions and Monitoring

Cases and rulings

Country Code	Year	Reference details title	Reference details URL	Hate Bias motivation	Court / Body	Key facts of the case	Results (sanctions, outcome) and key consequences or implications of the case	Main reasoning / argumentation	Key issues (concepts, interpretations) clarified by the case	Key quotation in original language and translated into English with reference details
Malta	2013	Malta / Criminal Court of Appeal / 98/2011 / Judgement / Police vs Norman Lowell	https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&CaseJudgementId=82392	Racial or ethnic origin	Criminal Court of Appeal	Mr Norman Lowell had been 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 which allegedly constituted racial hatred. In the speeches and the online article, Mr Lowell made use of terms such as 'vicious Sudanese', he referred to Jews as 'parasites' and suggested that if he were in power he would be the first to order the shooting of 'Negros' that try to reach Malta's shores. Additionally, Mr Lowell insulted and criticized the President of Malta whilst making racist remarks. The investigating police authorities believed that these speeches and the online article amounted to the offence of inciting racial hatred.	At first instance, the accused was convicted of inciting racial hatred. He was 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.	The first court (Court of Magistrates) held that freedom of expression is applicable not only 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.	The Court of Criminal Appeal noted that the offence of incitement to racial hatred 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 rights of others.	"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 tipprova tiddixxerni dak li cittadin t'intelligenza ordinarja u normali, jifhem meta jaqra 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) - "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. "

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http://fra.europa.eu/en/databases/criminal-detention/

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