

Unlimited freedom of opinion?

Freedom of opinion was anchored in the Luxembourg Constitution in 1848 and guarantees the freedom of expression. It is, however, not unlimited.

M1

Freedom of expression and its limits

Article 24 of the Luxembourg Constitution:

The freedom to manifest, through speech, one's opinion on all matters, and the freedom of the press are guaranteed, save the repression of offences committed on the occasion of the exercise of these freedoms. Censorship may never be established. (*Révision du 2 juin 1999*) (translated)

Article 19 of the Universal Declaration of Human Rights:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, regardless of frontiers.

Criminal Code: Chapter VI - Racism, revisionism and other discriminations (translated)

Art. 457-1 (adapted article)

Anyone who infringes this law is punishable by imprisonment from eight days to two years, and/or a fine of €251 to €25.000:

- either by speeches, shouts or threats made in public places or meetings,
- either by writing, printing, drawing, engraving, painting, emblems, images or any other medium of writing, speech or image sold or distributed, offered for sale or displayed in public places or meetings,
- either by placards or posters displayed to the public,
- or by any means of audiovisual communication, encourages (...) hatred or violence against a person, whether natural or legal (...)

Art. 457-2 whoever belongs to an organisation whose objectives or activities consist of committing one of the acts provided for in paragraph 1) of this article; (...)

Art. 457-3 (...) who (...) contested, minimised, justified or denied the existence of one or more genocides (...), crimes against humanity and war crimes (...)

Criminal Code: Chapter VI - Racism, revisionism and other discrimination (translated)

Art. 454 (adapted article)

Any distinction made between natural or legal persons based on the following reasons constitutes discrimination:

- their origins
- their skin colour,
- their sex,
- their sexual orientation,
- their family status,
- their health status,
- their disability,
- their morals,
- their political or philosophical opinions,
- their trade union activities,
- their belonging or not belonging, truly or supposedly, to an ethnic group, a nation, a specific race or religion.

Does this still count as freedom of opinion?

On 22 June 2012, a Luxembourg media house published an article with the title: 'Gemeng Kielen: Haus fir Flüchtlinge kaaft' (eng.: 'Kielen Municipality: House bought for Refugees'). As a result, the following xenophobic comments appeared on the media house's Facebook page:

Online comments (translated)

Person B - 22.06.2012

This house should be burnt down. Same goes for all the other houses that are bought for a lot of money only so that scum can go and live in them; pfffff! just burn it down

report reply

Person C - 22.06.2012

I'm afraid it won't even last another 20 years before someone with a moustache uses the power of the word to hypnotise people and to clean up... with the difference that it won't be the Jews this time...!) maybe I'm not actually afraid of it, either)

report reply

Person A - 22.06.2012

I could puke when I read stuff like this!! We don't get anything and they get everything handed to them on a plate!!! They should get a rocket up the a ... and be sent back where they came from!!! How could one not become a racist! I really want to puke when I see this injustice towards the people of Luxembourg...

report reply

Person D - 22.06.2012

More and more women get raped. Did that happen before? In buses and trains, conductors get beaten up. Old people are being robbed for €5. Robberies here and there, kids get their phones and money stolen etc... it's a fact, and it was proven on CCTV cameras and police reports; THESE ARE IMMIGRANTS!!!! That's how we get robbed!!! And the more of those get in, the more we will get robbed!

report reply

Legal consequences

Six days later, the public prosecutor's office informed the police of these xenophobic statements. The police were now to determine the identity of the authors. The accused were summoned and admitted to having written these comments. They stated that they did not know that their statements would fall under criminal law. They merely published their own opinion in response to this article.

Source: <https://justice.public.lu/fr/actualites/2013/02/jugement-incitation-haine.html>

The verdict:

A, B and D are each sentenced to 6 months of imprisonment on probation; They must not become criminally liable in the next five years. C is sentenced to 6 months imprisonment without probation.

- Analyse M1. Which texts express general principles and which deal with the specific implementation of these principles?
- Draw a table based on article 454 of the Luxembourg Criminal Code in which you give an everyday example for each reason for discrimination.
- Evaluate the statements in M2. Do they still fall under freedom of opinion or not? Compare with M1. On what points do the comments violate the law?
- Comment on the judgment: do you think the penalties are appropriate? Justify your opinion!