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NEWS REPORT

Country:	Belgium
Title:	A Police Commissioner who made a racist joke is not convicted because its intent to incite to racial hatred is not sufficiently proven
Date:	24 May 2018
Expert:	Bribosia, Emmanuelle
<u>Context</u>	
Issue at stake:	No conviction possible when the intent of incitation to racial hatred is not proven
Ground of discrimination:	Race/ethnic origin
Source:	Judgment of the criminal tribunal of Mechelen of 14 May 2018
Field:	Other
Applicable law:	Federal Act of 10 May 2007 amending the Act of 30 July 1981 criminalising certain acts inspired by racism or xenophobia

Content

Case: A Police Commissioner of Mechelen published a racist message on social media, where he wrote, under the picture of one of his colleague: "Why should I give you the hand? I don't like your colour".

The picture with its comment circulated among the Police, later in the city of Mechelen and finally in the media. The Mayor of the city asked for a disciplinary investigation on this matter. The Police Commissioner defended himself underlying that it was "simply" a joke. A criminal file was opened by the public prosecutor on the ground of incitement to racial hatred (Article 20 of the Federal Act of 10 May 2007 amending the Act of 30 July 1981 criminalising certain acts inspired by racism or xenophobia).

The judgment of the criminal tribunal of Mechelen of 14 May 2018 cleared the defendant. According to the judgment, the message had, indeed, a racist character. However, it was not sufficiently proven by the prosecution that the Commissioner had the intent to incite to racial hatred. The judge recalled that such a racist act could not, as such, be punished, without the evidence of the moral element consisting in the intention to incite to racial hatred. The burden of proof moreover lays on the public prosecutor. An appeal can still be made by the prosecution.

Key points of analysis: According to this judgment of the criminal tribunal of Mechelen which classically applies the law on the incitation to hatred, the material fact of having circulated a racist joke does not suffice to entail the conviction of the author of the joke. It must in addition and as a necessary condition be proved that the author of this joke had an intent to stirring up racial hatred.

Internet link source: https://www.rtbf.be/info/article/detail_le-commissaire-n-est-pas-raciste-mais?id=9918024.