

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
Netherlands	2018	Netherlands / Supreme Court / Case no. 16/01810, ECLI:NL:HR:2018:539	https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2018:539	Racial or ethnic origin, Religion	Supreme Court (Hoge Raad)	A supporter of Dutch politician Geert Wilders made in a documentary about Geert Wilders several derogatory statements about Muslims and/or Arabs. He spoke about Arabs as 'fervent butt bangers' who also 'fuck little boys', 'that is normal in their culture'. He was charged with group insult on basis of article 137c of the Dutch Criminal Code. The Court of Appeal acquitted him on 9 March 2016 (ECLI:NL:GHAMS:2016:828). The Court of Appeal was of the opinion that the disputed statements on their own terms are clearly insulting to Muslims. But it ruled that these statements were made in the public debate and that they are not so insulting that they incite hatred, violence, discrimination or intolerance. It acquitted the defendant. The Supreme Court ruled that the Court of Appeal used a too limited assessment framework by only looking at whether the statements of the accused incited hatred, violence, discrimination or intolerance. In addition, the Court of Appeal insufficiently explained why the statements of the accused are not unnecessarily hurtful in view of the wording thereof.	The trial in which a person who made derogatory statements about Muslims and Arabs was acquitted must be done again by the Court of Appeal.	The Supreme Court ruled that the Court of Appeal used in its judgement of 9 March 2016 (ECLI:NL:GHAMS:2016:828) a too narrow assessment framework in their decision about whether statements derogatory to Muslims and Arabs constituted group insult as made criminal by article 137c of the Dutch criminal code	Courts should when assessing whether a statement is insulting in a criminal sense (on basis of article 137c of the Dutch Criminal Code) take the wording of that statement and the context in which it was made into account. It should also be examined whether the statement can contribute to the public debate and whether it is not unnecessarily offensive.	"Voor zover het Hof met zijn hiervoor onder 4.4 samengevatte oordeel tot uitdrukking heeft gebracht dat die uitspraken van de verdachte, nu deze door hem zijn gedaan in het kader van het publieke debat, uitsluitend strafbaar zouden kunnen zijn indien deze 'zodanig kwetsend [zijn] dat zij moeten worden beschouwd als aanzet tot haat, geweld, discriminatie of onverdraagzaamheid' en niet indien deze uitspraken (anderszins) onnodig grievend zijn, geeft het blijk van een onjuiste uitleg van het hiervoor onder 4.3 weergegeven beoordelingskader, in het bijzonder ook omdat het Hof ten onrechte toepassing heeft gegeven aan de daarin op uitspraken van politici toegesneden overwegingen. Voor zover het Hof van oordeel was dat de uitspraken van de verdachte niet onnodig grievend waren, is dat oordeel - mede geleid op de bewoordingen waarin de verdachte zich heeft uitgedrukt, waarbij onder meer sprake is van 'kontenbonkers' en van het 'neuken [van] kleine jongetjes' - niet zonder meer begrijpelijk." Netherlands, Court of Appeal Amsterdam (Gerechtshof Amsterdam) (2018), Case No. 23-001502-18, ECLI:NL:GHAMS:2018:3942, 25 October 2018, available at: http://despleink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHAMS:2018:3942 "Insofar as the Court of Appeal expressed with its opinion summarized above under 4.4 that those statements made by the defendant, now that they were made by him in the context of the public debate, could only be punishable if they are 'so offensive that they should be regarded as inciting hatred, violence, discrimination or intolerance' and not if these statements are (otherwise) unnecessarily offensive, it shows an incorrect interpretation of the above under 4.3, in particular also because the Court of Appeal wrongly applied the considerations tailored to the statements made by politicians. Insofar as the Court of Appeal was of the opinion that the statements made by the defendant were not unnecessarily hurtful, that opinion - also in view of the wording in which the defendant expressed himself, in which, among other things, there is talk of 'butt bangers' and of 'fucking [of] little boys' - is not immediately understandable." The Netherlands, Supreme Court (Hoge Raad) (2018), Case no. 16/01810, 10 April 2018, ECLI:NL:HR:2018:539, available at: https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2018:539

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