DATABASE 2012-2024 ON ANTI-MUSLIM HATRED

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	2019	Netherlands / Supreme Court (Hoge Raad) (2019). Case no.17/03378 , 5 November 2019, ECLI:NL:HR:2019:1702 , available at: http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2019:1702	http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2019:1702	Religion	Supreme Court (Hoge Raad)	On 11 October 2015 during a Pegida demonstration a woman said during her speech: "Another reason to despise and hate Muslims is their insane ideology. Because it's never the religion of peace." Pegida is pan-European anti-Islam organisation. She placed her speech in written form on her Facebook-page. On 12 October 2016 the District Court Midden-Nederland (ECLI:NL:RBMNE:2016:5414) ruled that the woman has been guilty of: (1) incitement to hatred discrimination of Muslims and (2) group insult. She was sentenced to a fine of 1000 euro, of which 50% was conditional. On 30 June 2017, the Court of Appeal Arnhem-Leeuwarden ruled the woman not guilty on count no. 1 but maintained the verdict of the District Court on count no. 2. In this ruling the Supreme Court considers the decision of Court of Appeal on count no.2 on the following two points: (A) Does the statement in question constitute group insult as defined under article 137c of the Dutch Criminal Code? ; (B) Is the ruling of the Court of Appeal a permitted restriction of freedom of expression under article 10 of the ECHR? The Supreme Court confirms the ruling of the Court of Appeal under point A : The statement in question constitutes group insult under article 137c of the Criminal Code. Under point B the Supreme Court rules that the Court of Appeal has insufficiently substantiated its opinion why article 10(2) ECHR allows for the restriction of freedom of speech in this case. Therefore the Supreme Court refers this case back to the Court of Appeal on count no.2 (group insult) for a new ruling.	The public statement "Another reason to despise and hate Muslims is their insane ideology. Because it's never the religion of peace" constitutes group insult on the ground of religion under article 137c of the Dutch Criminal Code. But whether the article 10(2) ECHR allows for the criminalisation of this statement is insufficiently unsubstantiated by the Court of Appeal. The Court of Appeal has to reconsider its former ruling.	When assessing a statement in connection with its criminality for group insult within the meaning of article 137c of the Dutch Criminal Code, attention must be paid to the wording of that statement as well as to the context in which it was made. whether the offending statement can contribute to the public debate or is an expression of artistic expression. It should also be considered whether the statement in that context is unnecessarily offensive.	When assessing a statement in connection with its criminality for group insult within the meaning of article 137c of the Dutch Criminal Code, attention must be paid to the wording of that statement as well as to the context in which it was made. whether the offending statement can contribute to the public debate or is an expression of artistic expression. It should also be considered whether the statement in that context is unnecessarily offensive	"Bij de beoordeling van een uitlating in verband met de strafbaarheid daarvan wegens groepsbelediging in de zin van voormelde wettelijke bepaling, dient acht te worden geslagen op de bewoordingen van die uitlating alsmede op de context waarin zij is gedaan. Daarbij dient onder ogen te worden gezien of de gewraakte uitlating een bijdrage kan leveren aan het publiek debat of een uiting is van artistieke expressie. Tevens dient onder ogen te worden gezien of de uitlating in dat verband niet onnodig grievend is (Vgl. HR 16 december 2014, ECLI:NL:HR:2014:3583). 4.3 Tegen de achtergrond van hetgeen hiervoor is vooropgesteld heeft het Hof zijn oordeel dat sprake is van een op grond van art. 10, tweede lid, EVRM toegelaten beperking van de vrijheid van meningsuiting niet toereikend gemotiveerd. Daarbij neemt de Hoge Raad in het bijzonder in aanmerking dat het Hof in dit verband slechts in algemene bewoordingen heeft overwogen dat het Hof niet vermag in te zien "op welke wijze voornoemde uitlating een bijdrage levert of dienstig zou kunnen zijn aan het betreffende maatschappelijk debat" en dat de "context waarin de uitlating is gedaan en moet worden beoordeeld, (...) het beledigende karakter van de uitlating van verdachte niet weg [neemt]". Hiermee heeft het Hof onvoldoende duidelijk gemaakt wat die context - in het bijzonder wat betreft de inhoud van de toespraak in zijn geheel - in het onderhavige geval precies inhoudt en vanwege welke redenen die context, waaronder mede begrepen de omstandigheid dat de uitlatingen zijn gedaan tijdens een door een protestbeweging gehouden demonstratie, tot het oordeel van het Hof over de toelaatbaarheid van de beperking van de vrijheid van meningsuiting heeft geleid." "When assessing a statement in connection with its punishability for group insult within the meaning of the aforementioned legal provision, attention must be paid to the wording of that statement as well as to the context in which it was made. whether the offending statement can contribute to the public debate or is an expression of artistic expression. It should also be considered whether the statement in that context is unnecessarily offensive (Cf. HR 16 December 2014, ECLI: NL: HR : 2014: 3583). 4.3 Against the background of what has been stated above, the Court of Appeal ruled that there is a case based on art. 10, second paragraph, ECHR permitted restriction of freedom of expression not sufficiently motivated. Against the background of the foregoing, the Court of Appeal did not give sufficient reasons for its opinion that Article 10(2) of the ECHR allows for restriction of freedom of expression in this case. In doing so, the Supreme Court takes particular account of the fact that in this context the Court of Appeal has only considered in general terms that the Court is unable to see "how the aforementioned statement contributes or could be useful to the relevant social debate", and that "the context in which the statement was made and must be assessed, (...) does not remove the insulting nature of the statement of the accused". In so doing, the Court has not made it sufficiently clear what that context - in particular with regard to the content of the speech as a whole - entails in the present case and for what reasons that context, including the circumstance that the statements were made during a demonstration held by a protest movement led to the Court's ruling on the admissibility of the restriction on freedom of expression. " The Netherlands, Supreme Court (Hoge Raad) (2019), Case no.17/03378 , 5 November 2019, ECLI:NL:HR:2019:1702 , available at: http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2019:1702

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