

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	2020	Netherlands / Court of Appeal The Hague (Gerechtshof Den Haag) (2020). Case no. 22-000007-17, 4 September 2020, ECLI:NL:GHDHA:2020:1606, available at: https://uitspraken.rechtspraak.nl/inziedocument?id=ECLI:NL:GHDHA:2020:1606	http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHDHA:2020:1606	Racial or ethnic origin	Court of Appeal The Hague (Gerechtshof Den Haag)	On 19 March 2014 elections for the municipal councils were held. The political party PVV of Geert Wilders participated in these elections in two municipalities: Amersfoort and the Hague. On the election night Wilders asked his audience during a meeting of party followers in the Hague: "do you want more or less Moroccans in this city and in the Netherlands?". In response, the audience - which was instructed beforehand - repeatedly chanted "less". Subsequently more than 6,000 people pressed charges about racial or ethnic groups. The Public Prosecution Service decided to prosecute Wilders. The Hague District Court convicted Wilders under Article 137c of the Dutch Criminal Code (incitement to discrimination and hatred). The Court of Appeal in this verdict maintains the conviction of Wilders for group insult but exonerates Wilders for incitement to discrimination and hatred.	Political actors are not allowed under Dutch criminal law to make insulting statements about racial or ethnic groups. Statements insulting racial groups are criminal under Article 137c of the Dutch Criminal Code. Moroccans are a racial group under Dutch criminal law and therefore convicted by the District Court for "incitement to hatred or discrimination" but the Court of Appeal acquitted Wilders on this charge because Wilders' intent was not aimed at encouraging his public to do so.	The Court of Appeal ruled that Wilders' statement, even if it was made in the context of the political debate, was unnecessarily offensive. By doing so the Court of Appeal confirmed the verdict by the District Court. The Court of Appeal emphasized the importance of the right to freedom of expression, particularly that of a politician, but also stated that this does not preclude conviction in this case. Wilders was also prosecuted and convicted by the District Court for "incitement to hatred or discrimination" but the Court of Appeal acquitted Wilders on this charge because Wilders' intent was not aimed at encouraging his public to do so.	The verdict clarifies two key issues. First of all the concept of 'race' in the sense of the Dutch Criminal Code includes the term 'Moroccans'. The legal definition of race is much broader than its common definition in everyday language and scientific research. The defense argued that Moroccans are solely a nationality and are not protected against incitement to discrimination because of that. Secondly the freedom of expression may be restricted in cases foreseen by the law. Dutch criminal law allows for the restriction of freedom of speech when a person insults a group because of their race. Politicians are not exempted from prosecution for making statements. Making statements which affects a minority like the Moroccans in the Netherlands in its self-esteem and undermine the respect for the equality of others as the foundation of a democratic and pluralistic society is criminal under Dutch law.	"Toch heeft hij [Wilders] er bij zijn uitspraak op 19 maart 2014 van afgezien om in de generaliserende aanduiding 'Marokkanen' enige nuance of enig gedragkenmerkend onderscheid aan te brengen. Aldus werd de Marokkaanse gemeenschap in Nederland in haar geheel in discrediet gebracht en in haar eigenwaarde aangetast. Weliswaar deed de verdachte zijn uitspraak op een (partij)bijeenkomst naar aanleiding van de binnenkomende uitslagen van de gemeenteraadsverkiezingen en was in zoverre sprake van een politieke context, maar dat ontlaast de verdachte niet van zijn bijzondere verantwoordelijkheid als politicus om uitspraken te vermijden die voeding kunnen geven aan intolerantie en die het respect voor de gelijkwaardigheid van anderen als het fundament van een democratische en pluralistische samenleving ondergraven. Dat geldt naar het oordeel van het hof temeer als de uitspraak, zoals hier, voeding geeft aan de negatieve beeldvorming ten aanzien van een bevolkingsgroep die binnen de Nederlandse samenleving een minderheid vormt." "Nevertheless, in his statement on March 19, 2014, he [Wilders] refrained from introducing any nuance or any behavioural distinction to the generalizing designation 'Moroccans'. Thus, the Moroccan community in the Netherlands as a whole was discredited and its self-esteem affected. It is true that the suspect made his statement at a (party) meeting in response to the incoming results of the municipal elections and there was a political context to that extent, but that does not relieve the defendant of his special responsibility as a politician to avoid statements that could generate intolerance and undermine the respect for the equality of others as the foundation of a democratic and pluralistic society. In the opinion of the Court of Appeal, this applies all the more if the statement, as here, generates a negative image of a population group that is a minority in Dutch society." The Netherlands, Court of Appeal The Hague (Gerechtshof Den Haag) (2020). Case no. 22-000007-17, 4 September 2020, ECLI:NL:GHDHA:2020:1606, available at: https://uitspraken.rechtspraak.nl/inziedocument?id=ECLI:NL:GHDHA:2020:1606

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