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	2021	The Netherlands. Court of Appeal Arnhem-Leeuwarden (Gerechtshof Arnhem-Leeuwarden) (2021), Case no. 21-006140-19, 16 April 2021 ECLI:NL:GHARL:2021:4154.	https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHARL:2021:4154	Religion	Court of Appeal Arnhem-Leeuwarden (Gerechtshof Arnhem-Leeuwarden)	Ruling by the Court of Appeal in a case which was referred back by the Supreme Court. This case concerns an anti-Islam held speech held during a public demonstration. 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 (ECLI:NL:GHARL:2017:5538) ruled the woman not guilty on count no. 1 but maintained the verdict of the District Court on count no. 2. On 3 December 2019 the Supreme Court (ECLI:NL:HR:2019:1816) considered 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 confirmed 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 ruled 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 referred this case back to the Court of Appeal on count no.2 (group insult) for a new ruling. In this new judgment, the court rules that the challenged utterance did not exceed the limits of the freedom of expression guaranteed by Article 10 ECHR. In particular, it concerns the limits as set out in Article 137c of the Criminal Code, which protects against group defamation on grounds of religion. Therefore, the court decides that the contested statement cannot be regarded as "insulting" towards Muslims "on account of their religion" as referred to in art. 137c. 137c. By this new ruling the defendant is acquitted of insulting Muslims under article 137c of the Criminal Code and overturns the judgment of an earlier Court of Appeal (ECLI:NL:GHARL:2017:5538) ruling that upheld an earlier court ruling (ECLI:NL:RBMNE:2016:5414) in which the defendant was convicted of group insult.	The defendant is acquitted of insulting Muslims under article 137c of the Criminal Code (this article criminalises group insult). With this ruling, the Court of Appeal overturns the judgment of an earlier Court of Appeal (ECLI:NL:GHARL:2017:5538) that upheld an earlier court ruling (ECLI:NL:RBMNE:2016:5414) in which the defendant was convicted of group insult.	In a democracy, a justification for a restriction of the right to freedom of expression as guaranteed in Article 10 ECHR should not be derived too quickly from the offensive nature of certain statements. The court of appeal is of the opinion that the aforementioned statement was made by the accused within the context of a public debate on a matter of general interest (the arrival of Muslims in Europe). The accused made her statement in a speech during a demonstration by Pegida, a protest movement that opposes the "Islamisation" of Europe, an issue that is occupying minds both in politics and in society. A public demonstration is then a designated way for citizens to express their views, thus providing a platform for public debate. Although the Court of Appeal is of the opinion that the statement can be regarded as insulting, the insulting nature of this is removed by viewing the statement in the context of the speech as a whole and also because it was made during a demonstration held by a protest movement.	This ruling clarifies that the statement "Another reason to despise and hate Muslims is their insane ideologyBecause it's never the religion of peace" must be considered not unnecessarily offensive. The defendant is entitled to raise matters of public interest, even if her statements may hurt, shock or disturb. Within the context of the public debate, the Court of Appeal considers the statement made to be rude and unpleasant, but not unnecessarily offensive, all the more so now that her statement is embedded in an argument in which she expresses her views on more substantive grounds - albeit in strongly critical terms.	"In answering the question whether the statement is unnecessarily offensive,it must be recognised that the defendant must be able to raise matters of public interest, even if her statements may hurt, shock or disturb. Within the context of the public debate, the Court of Appeal considers the statement made to be rude and unpleasant, but not unnecessarily offensive, all the more so now that her statement is embedded in an argument in which she expresses her views on more substantive grounds - albeit in strongly critical terms. In the opinion of the court, the challenged statement must therefore be viewed in that light. Ruling Court of Appeal: In other words, both during her speech and by publishing the text of that speech on Facebook, the defendant did not exceed the limits of what should be considered unadmissible in the light of the right to freedom of expression guaranteed in art. 10 ECHR. Therefore, the statement at issue here cannot be regarded as "insulting" towards Muslims "on account of their religion" as referred to in art. 137c, subarticle 1, of the Criminal Code." "Bij de beoordeling van de vraag of de uitlating onnodig grievend is, dient onder ogen te worden gezien dat verdachte in staat moet zijn zaken van algemeen belang aan de orde te stellen, ook als haar uitlatingen kunnen kwetsen, choqueren of verontrusten. Het hof beantwoordt deze vraag ontkennend. Binnen de context van het publiek debat acht het hof de gedane uitlating weliswaar grof en onaangenaam, maar niet onnodig grievend, temeer nu haar uitspraak is ingebed in een betoog waarin zij op meer inhoudelijke gronden - zij het in sterk kritische bewoordingen - haar opvattingen weergeeft. De gewraakte uitlating moet naar het oordeel van het hof dan ook in dat licht bezien worden." Oordeel van het hof: De verdachte heeft, met andere woorden, zowel tijdens haar toespraak als met het publiceren van de tekst van die toespraak op Facebook, de grenzen van hetgeen in het licht van het in art. 10 EVRM gegarandeerde recht op vrijheid van meningsuiting toelaatbaar moet worden geacht niet overschreden. Daarom kan de hier aan de orde zijne uitlating niet als 'beledigend' jegens moslims 'wegens hun godsdienst' als bedoeld in art. 137c, eerste lid, Sr worden aangemerkt." The Netherlands, Court of Appeal Arnhem-Leeuwarden (Gerechtshof Arnhem-Leeuwarden) (2021), Case no. 21-006140-19, 16 April 2021 ECLI:NL:GHARL:2021:4154.

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