

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, Supreme Court (Hoge Raad) (2021), Case no. 20.03005, 6 July 2021, ECLI:NL:HR:2021:1036	https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2021:1036	Racial or ethnic origin	Supreme Court (Hoge Raad)	On 19 March 2014 elections for the municipal councils were held. The political party PVV of Geert Wilders participated in those election in two municipalities: Almere 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 against Wilders. The Public Prosecution Service decided to prosecute Wilders because of incitement to hatred and discrimination and on the charge of insulting a group of people because of their race. On 9 December 2016 the District the Hague convicted Wilders under Article 137c of the Dutch criminal code (group insult) and under Article 137d of the Dutch Criminal Code (incitement to discrimination and hatred). The Court of Appeal maintained the conviction of Wilders for group insult but exonerated Wilders for incitement to discrimination and hatred. The Supreme Court upheld Geert Wilders' conviction for insulting Moroccans at a campaign rally in 2014 under article 137c of the Dutch criminal code.	Politicians are not allowed under the 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 protected by Article 137c.	Group insult is prohibited under the Criminal Code. Even a politician must adhere to the basic principles of the rule of law and must not incite to intolerance. The Supreme Courts also stresses the context in which the statements by Wilders were done. Not only the words that are used matter, but also the context in which the contested statements were made. In this case, the context was that Wilders, after making earlier statements about statements about fewer Moroccans at a public place (a market) on 12 March 2014 which had caused a great deal of commotion, repeated these statements during a televised party rally on 19 March 2014.	The ruling 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 defence argued that Moroccans are solely a nationality and are not protected against incitement to discrimination because of that. Nationality is not discrimination ground under Dutch criminal law. 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 making statements. Making statements that affect the self-esteem of a minority such as the Moroccans in the Netherlands and undermine respect for the equality of others as the foundation of a democratic and pluralistic society is punishable under Dutch law.	Bij het oordeel of die groep door een uitlating is beledigd, gaat het niet alleen om de woorden die zijn gebruikt, maar ook om de context waarin zo'n uitlating is gedaan. Die context bestond er in dit geval uit dat de verdachte, nadat een eerdere uitlating van hem over minder Marokkanen op een markt op 12 maart 2014 tot veel ophef en beroering had geleid, met zijn partijmedewerkers de speech die hij zou houden op de partijbijeenkomst van 19 maart 2014 heeft voorbereid. Daarbij is de vraag aan de orde gekomen of alleen 'Marokkanen' of 'criminele Marokkanen' zou worden gezegd, waarbij de verdachte goedkeuring heeft gegeven aan het voorstel om slechts te spreken van 'Marokkanen' in het algemeen. Ook is gekozen voor het stellen van drie vragen om zo de speech in kracht op te bouwen. Vervolgens heeft de verdachte in die openbare speech doelbewust en in interactie met een daartoe vooraf geïnstrueerd publiek gezegd zich te willen inzetten voor "minder Marokkanen", waarbij hij welbewust sprak over deze groep als geheel. Op die manier heeft hij deze groep beledigd. Dat is verboden op grond van artikel 137c Sr. Dat de verdachte sprak als politicus maakt dit niet anders. Weliswaar moet een politicus zaken van algemeen belang aan de orde kunnen stellen, ook als hij daarmee anderen kwetst of verontrust, maar dat neemt niet weg dat hij in het publiek debat de verantwoordelijkheid draagt om te voorkomen dat hij uitlatingen verspreidt die strijdig zijn met de wet en met de grondbeginselen van de democratische rechtsstaat, waaronder uitlatingen die direct of indirect aanzetten tot onverdraagzaamheid. De vorm waarin de verdachte in dit geval zijn uitlatingen heeft gedaan, is onnodig grievend en overschrijft die ook door een politicus in acht te nemen grenzen van de wet en grondbeginselen van de democratische rechtsstaat. Dat betekent dat het recht op vrijheid van meningsuiting niet in de weg staat aan een veroordeling voor groepsbelediging. "In judging whether that group has been insulted by a statement, it is not only the words that have been used that matter, but also the context in which such a statement was made. In this case, the context was that the accused, after an earlier statement he had made about fewer Moroccans at a market on 12 March 2014 had caused a lot of commotion, discussed the speech he was going to give at the party rally of 19 March 2014 with his party colleagues. The question of whether only 'Moroccans' or 'criminal Moroccans' would be said was discussed, whereby the accused approved the proposal to only speak of 'Moroccans' in general. The choice was also made to ask three questions in order to build up the strength of the speech. Subsequently, in this public speech the accused has deliberately and in interaction with a previously instructed audience said that he wants to dedicate himself to 'fewer Moroccans', whereby he deliberately spoke about this group as a whole. In this way he insulted this group. This is prohibited on the grounds of article 137c of the Criminal Code. The fact that the accused spoke as a politician does not make this any different. It is true that a politician has to be able to raise matters of general interest, even if by doing so he hurts or upsets others, but this does not alter the fact that in the public debate he bears the responsibility for preventing the dissemination of statements that are contrary to the law and to the basic principles of the democratic constitutional state, including statements that directly or indirectly incite intolerance. The form in which the accused has made his statements in this case is unnecessarily hurtful and exceeds the limits of the law and the basic principles of the democratic constitutional state, which a politician should also observe." The Netherlands, Supreme Court (Hoge Raad), Case no. 20/03005, 6 July 2021, ECLI:NL:HR:2021:1036.

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