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	2022	The Netherlands, Supreme Court (Hoge Raad) (2022), Case no.21/01879, 18 October 2022, ECLI:NL:HR:2022:1468.	https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2022:1468	Religion	Supreme Court (Hoge Raad)	Ruling of the Supreme Court upholding a judgment of the Court of Appeal in which the defendant was acquitted of group insults against Muslims because of or statements she made 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 the 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 ruling, 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 , which protects against group insult on the ground 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. of the Criminal Code. 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 district court ruling (ECLI:NL:RBMNE:2016:5414) in which the defendant was convicted of group insult. In this ruling the Supreme Court maintains the ruling of the Court of Appeal. By this decision the acquittal of the defendant is made final.	This ruling of the Supreme Courts makes the acquittal of the defendant of insulting Muslims under article 137c of the Criminal Code final. The ruling maintains the ruling of the Court of Appeal (ECLI:NL:GHARL:2021:41540 which overturns an earlier ruling of the 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 towards muslims.	In view of Article 10 ECHR and the case law of the ECtHR, when assessing whether a statement is criminal under Article 137c of the Criminal Code attention must be paid to the wording of that statement and the context in which the statement was made. In doing so, it must be considered whether the statement in question can contribute to the public debate or is an expression of artistic expression. It must also be considered whether the statement in that context is not unnecessarily offensive. In this case the Supreme Court agrees with the Court Appeal's decsion that the contested statements is not 'unnecessarily offensive' and that the defendant must therefore be acquitted of group insult as referred to in Article 137c of the Criminal Code. The Court of Appeal based its decsion on the fact that the contested statement was made in the context of a public debate on a matter of general interest (the arrival of Muslims in Europe) and that it was embedded in an argument in which the defendant expresses her views on more substantive grounds albeit in strongly critical terms.	Participants in the public debate, even if they are not politicians, cannot be denied the right to freedom of expression derived from Article 10 ECHR on the basis of Article 137c of the Penal Code even if they make statements against a religion or religious group that may be perceived by others as offensive, shocking or disturbing.	"Gelet op deze door het hof vastgestelde feitelijke context, waarin zijn begrepen de omstandigheden dat de in de tenlastelegging opgenomen uitlating is gedaan tijdens een door een protestbeweging gehouden demonstratie en is ingebed in een betoog waarin de verdachte op meer inhoudelijke gronden haar opvattingen weergeeft, is het oordeel van het hof dat deze uitlating weliswaar belediging is, maar dat deze niet als onnodig grievend en dus evenmin als belediging in de zin van artikel 137c lid 1 Sr kan worden aangemerkt, niet onbegrijpelijk. Gelet op wat hiervoor onder 2.5.1 is overwogen, doet de omstandigheid dat de uitlating door betrokkenen als kwetsend kan worden ervaren, hieraan niet af. Ook kan daaraan niet afdoen wat in het cassatiemiddel wordt aangevoerd over de omstandigheid dat de verdachte tijdens de toespraak nog andere uitlatingen heeft gedaan dan de in de tenlastelegging weergegeven uitlating." "In view of this factual context established by the court of appeal, which includes the circumstances that the contested statement was made during a demonstration held by a protest movement and is embedded in an argument in which the defendant expresses her views on more substantive grounds, the judgement of the court of appeal that although this statement is insulting, it cannot be regarded as unnecessarily offensive and therefore cannot be regarded as insulting in the sense of article 137c, subarticle 1 of the Criminal Code either, is not incomprehensible. In view of what was considered above under 2.5.1, the circumstance that the statement could be experienced as offensive by those involved does not alter this. Nor can this be affected by what is argued in the appeal in cassation about the circumstance that during the speech the defendant made statements other than the statement in the indictment." The Netherlands, Supreme Court (Hoge Raad)(2022), Case no.21/01879, 18 October 2022, ECLI:NL:HR:2022:1468.

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