[NL] Man acquitted of insulting Muslims during television documentary

IRIS 2016-5:1/24

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On 9 March 2016, a 37-year-old man was acquitted of insulting Muslims by the Amsterdam Court of Appeal. The man made his statements in a documentary about the Dutch politician Geert Wilders from the Partij voor de Vrijheid - (Party for Freedom, PVV) in 2010. The makers of the documentary wanted to investigate the motives of Geert Wilders and his followers. One of the interviewees was the defendant, who was presented as a follower of Geert Wilders. In the interview he spoke about Arabs as “fervent ass crashers” (fervent kontenbonkers), who also “fuck young boys”. According to him this is “normal in their culture”. The Court believed that the defendant meant Muslims when he talked about Arabs, so the man stood trial for publicly and intentionally insulting Muslims on the ground of their religion, under Article 137c of the Dutch Penal Code (Sr) (see IRIS 2009-3/109).

The central element of Article 137c Sr is the offensiveness of statements. A statement about a group is insulting if it impairs the self-respect or honour of the group, or discredits the group, because it belongs to a particular race, religion or belief. The context is particularly important for the determination of liability under Article 137c Sr. If the statements were made in the context of, for example, a public debate, this can reduce the punishable insulting-character of the statement. However, this is only when the statements are not gratuitously offensive.

The Court considered that these statements were unmistakably insulting. The defendant had insulted Muslims with his statements by reasons of their religion, since he had implied that the behaviour described by him is rooted in Islam and so an expression of the creed of Muslims. With this he affected the dignity and self-respect of Muslims and discredited them as a group.

The Court also considered, on the other hand, that the statements of the defendant were made during a public debate, more specifically during an interview before an anti-Islam demonstration. According to the Court it cannot be said that these kinds of statements serve no useful purpose in public debate.

The question was ultimately whether the expressions used were gratuitously offensive. If so, the context of the public debate overrides the insulting character

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of the statements. The Court answered that question in the negative, stating that everyone who wants to raise topics of common interest should be free to do so, even if the statements are offensive, shocking or disturbing. According to the Court the statements used were unsavoury, but unsavoury statements are frequently used in public debate. The statements do not incite hatred, violence, discrimination or intolerance.

In other words, the defendant did not exceed the boundaries of the Article 10 ECHR right to freedom of expression. Therefore, the statements used could not be classified as 'insulting' for Muslims 'because of their religion', as intended in Article 137c of the Dutch Penal Code.

Gerechtshof Amsterdam, 9 maart 2016, ECLI:NL:GHAMS:2016:828

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHAMS:2016:828

Amsterdam Court of Appeal, 9 March 2016, ECLI:NL:GHAMS:2016:828

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