# [NL] Illegal content posted during public broadcaster's Facebook Livestream

**IRIS 2020-8:1/15**

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On 7 July 2020, the Rechtbank Amsterdam (District Court of Amsterdam) delivered a notable judgment on illegal content posted during a public broadcaster's Facebook Live event. The content was held to fall under Article 137c of the Dutch Criminal Code, which forbids the public insult of a group of people based on their race, religion, sexual orientation, etc.

The facts of this case concern the comment of a 49-year-old man which he posted in the comment section of the public broadcaster NOS's livestream of the *Keti Koti* festival, broadcast on Facebook Live. This is an annual festival which celebrates the abolition of slavery. In response to the livestream in which, at that moment, garlands were being laid in memory of slavery, he wrote: *De slaven mogen de krans slepen* (the slaves may drag the wreath). The broadcast was viewed by a large number of people, including people with a Surinamese background. This act led to criminal proceedings against the man, in which he argued before the court that it had not been his intention to insult a group of people, and that he was shocked at his own behaviour. For that reason, he apologised to the court and the injured parties.

To impose criminal liability, the court must examine whether the comment falls within the requirements of Article 137c of the Dutch Criminal Code. This can be done by the court on the basis of assessment criteria developed in previous European Court of Human Rights (ECtHR) case law under Article 10 of the European Convention on Human Rights (ECHR). In short, the court must examine (1) whether the expression is aimed at insulting a group of people on account of their race, religion, beliefs, sexual orientation or physical or mental disability; (2) whether the expression was used in a particular context that possibly removes its offensive character because of the right to free expression under Article 10 ECHR; and (3) whether the statement should be regarded as unnecessarily hurtful.

As regards these assessment criteria, the court stated that the use of the word '*slaven*' (slaves) was intended to hurt people of colour, given the fact that their ancestors were forced into slavery. The man had also used a smiling emoticon, which enhanced the malicious character of the comment. Furthermore, the ECtHR had ruled in its earlier rulings that the offensive character of a statement may be justified when it contributes to the public debate. Since the man pointed out that he had not intended to discuss a specific topic, the comment did not contribute to

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the public debate. Moreover, the court viewed the comment as ‘very serious and unnecessarily offensive’, which contributed to the man's conviction. The court did take into account the man’s lack of a criminal record, and the fact that he had apologised for his mistakes. Thus, the court imposed a conviction for group insult, and sentenced him to a fine of EUR 300, half of which is conditional.

***Rechtbank Amsterdam 7 juli 2020, ECLI:NL:RBAMS:2020:3315***

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2020:3315

*Amsterdam District Court 7 July 2020, ECLI:NL:RBAMS:2020:3315*

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