

**CASE NOTE:
THE NETHERLANDS**

CASE CITATION:
**LJN BV5623 (appeal in cassation re Arnhem
Appeal Court, 19 August 2010, LJN: BN4204)**

NAME AND LEVEL OF THE COURT:
Supreme Court

DATE OF DECISION:
27 March 2012

The full decision is available at
<http://jure.nl/bv5623>

*Derogatory images on the internet;
effectiveness of a disclaimer*

In this case it was argued on behalf of the accused that the context in which the ‘Auschwitz cartoon’ had been put on the Internet entails that there is no question of defamation. The accused always expressed his intention to draw attention to the ‘double moral standards’ in the public debate with regard to offences of defamation and blasphemy by means of, amongst other things, a disclaimer, according to the defence.

In the opinion of the Appeal Court, the modality whereby the disclaimer text appears on screen simultaneously with the cartoon is pre-eminently suited to clarify the context in which the cartoon should be appreciated. The text of the disclaimer is also suited and leaves no scope for doubts about the purpose of the publication. For some periods this method was used on some of the websites; as far as those publications are concerned, it could be ruled that their defamatory nature is cancelled by the context in which they were placed.

Another category is the category in which the disclaimer was not shown simultaneously with the cartoon. Two subcategories can be distinguished here: one in which no reference whatsoever is made to any disclaimer, and another where the disclaimer can be invoked by clicking the text ‘Read more’.

The former subcategory, according to the Appeal Court, does not altogether meet the requirement that the context must be recognisable in a simple, straightforward manner. With regard to the second subcategory, the Appeal Court also finds – with some hesitation – that this criterion is not met. It should be taken into account that users of the Internet will not go to the trouble to go into the background, and that others are shocked by merely taking note of the cartoon to the extent where they do not wish to take any further cognizance of the range of ideas propagated by the accused.

The Supreme Court concludes that the complaints worded in the appeal in cassation regarding the reasons adduced by the Appeal Court fail and dismisses the appeal in cassation.

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