Princes and prophets: democracy and the defamation of power

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Chapter 3 *Lèse-majesté*

Introduction

The previous chapter showed that the early nineteenth century proved to be a turbulent era for the Netherlands in terms of its relations with foreign powers. In order to maintain *external* tranquility, the Dutch government found it necessary to adopt a law that prohibited contemptuous expression directed at foreign powers. The crime that is at the center of this chapter, *lèse-majesté,* has its roots in considerations of *internal* peace and public order.

Lèse-majesté is characterized by the importance of maintaining a monarch's dignity or reputation, that is the quality of being esteemed in the view of others, for *state* interests such as public order. A good illustration of this is England, where *lèse-majesté* amounted to a crime as serious as sedition. In 1908, Folkard wrote the following on the English law of seditious libel:

> 'Every subject of the King has an undoubted right to speak, to write, and to petition, within certain limits; but he must not, by reckless and seditious language, endanger the fundamentals of the constitution; he must not shake what is rooted, nor bring again into discussion, with a view of disturbing, what is settled; he may impute error and suggest improvement: he may present a memorial or a remonstrance, but he must not provoke the passions of the populace to overawe the laws, and recast the system of the State. All writings, therefore, which tend to bring into hatred or contempt the King, the Government, or the constitution as by law established, to promote insurrection, or to encourage or Libel, excite the people to resist the laws, or the administration of justice, are termed seditious libels.'[175]

[175] H. C. Folkard, *The Law of Slander and Libel: Including the Practice, Pleading, and Evidence, Civil and Criminal, with Forms and Precedents: Also Contempts of Court and the Procedure in Libel by Indictment and Criminal Information*, London: Butterworth & co. 1908 (7th ed.), p. 370-371.

Similarly, *Stephen's Commentaries on the Laws of England* of 1922 states that 'Sedition embraces all those practices which do not amount to treason, but, whether by word, deed, or writing, directly tend to have for their object (…) to bring into hatred or contempt, or to excite disaffection against, the King or the Government and Constitution of the United Kingdom (…).'[176] According to *Stephen's Commentaries*, 'speaking or writing against the King, cursing or wishing him ill, giving out scandalous stories concerning him, or doing anything that may tend to lessen him in the esteem of his subjects, or which may weaken his government, or raise jealousies between him and his people, amounts to sedition.'[177]

While these considerations may appear archaic, they have not disappeared from the legal reality in some jurisdictions. For example, the Thai government has referenced the 'stabilizing role' of the Thai monarchy[178] in justifying its strict and actively applied[179] *lèse-*

[176] H.J. Stephen, *Stephen's Commentaries on the Laws of England*, London: Butterworth 1922 (17th ed.), p. 153.

[177] H.J. Stephen, *Stephen's Commentaries on the Laws of England*, London: Butterworth 1922 (17th ed.), p. 153.

[178] As stated by a representative of the Thai government in a report of the Human Rights Committee. In full: 'The lese-majesty provisions were set out in section 112 of the Criminal Code, rather than in separate legislation. The monarchy, closely linked to Thai national identity, played an essential stabilizing role.' See Human Rights Committee, UN Doc. CCPR/C/SR.3350, p. 4.

[179] See, generally, D. Streckfuss, 'Kings in the Age of Nations: The Paradox of Lèse-Majesté as Political Crime in Thailand', *Comparative Studies in Society and History*, 1995, p. 445- 475; 'Thailand: Absurd lese-majeste charges against 85-year-old scholar for comments on 16th Century battle', 7 December 2017, https://www.amnesty.org/en/latest/news/2017/12/thailand-absurd-lese-majeste-charges-against-85-year-old-scholar-for-comments-on-16th-century-battle/; 'Press briefing note on Thailand', 13 June 2017, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21734&LangID=E; 'Man jailed for 35 years in Thailand for insulting monarchy on Facebook', 9 June 2017, https://www.theguardian.com/world/2017/jun/09/man-jailed-for-35-years-in-thailand-for-insulting-monarchy-on-facebook.

majesté law,[180] for which it has been scrutinized by human rights advocates.[181] This ban has also has its roots in treason. 'Prior to the late nineteenth century, Thai political crimes were subsumed within a single charge: rebellion', Streckfuss states. 'Any act against the king was viewed as a form of rebellion, lèse-majesté, treason. As the king and state were perfectly identified with each other, all offenses against the state were offenses against the king and vice versa.'[182]

This chapter addresses the Dutch, European, and international law perspectives of *lèse-majesté* bans. It starts off with the national, Dutch context. This part begins with a discussion of a 1830 law that banned disparaging statements about the King, and the context in which that law was enacted. Next, this chapter discusses the *lèse-majesté* ban in the Criminal Code of 1886, and the Bill of 2016 that proposed to repeal the ban. The work thereafter focuses on *lèse-majesté* in European and international law.

A. National law

1. Political instability in the United Kingdom of the Netherlands

[180] Section 6 of the Constitution of Thailand stipulates that 'The King shall be enthroned in a position of revered worship and shall not be violated. No person shall expose the King to any sort of accusation or action.' Article 112 of the Criminal Code of Thailand states that 'Whoever, defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years.'

[181] Thailand has been called upon by the United Nations Special Rapporteur on the promotion of freedom of opinion and expression, 'to stop using lèse-majesté provisions as a political tool to stifle critical speech.' See 'Thailand: UN rights expert concerned by the continued use of lèse-majesté', 7 February 2017, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21149&LangID=E.

[182] D. Streckfuss, 'Kings in the Age of Nations: The Paradox of Lèse-Majesté as Political Crime in Thailand', *Comparative Studies in Society and History*, 1995, p. 468.

The Penal Code of the Kingdom of Holland of 1809 contained a section on high treason.[183] This section contained provisions regarding attempts on the King's or crown prince's life, and being in league with the enemy.[184] Moreover, this Penal Code contained a provision, included in a section on mutiny, riot, and breaches of public authority, about acts or writings that intent to defame, deride or taunt 'higher or lower powers',[185] which included the King.[186] The penalty for this crime was imprisonment, or exile, or a combination thereof, for a term not exceeding six years.[187] The *Code Pénal* of 1811 did not list the defamation of the King as a special crime. There were no provisions other than the general (private) provisions[188] that dealt with insults.[189]

However, on 1 June 1830, a supplementary law was enacted that criminalized violating 'the dignity, the authority, or the rights of the King or the Royal dynasty' and 'slandering, deriding, or defaming the person of the King.'[190] This law was enacted in the context of great political instability and social tensions. In the years leading to the adoption of this law, the Southern parts (roughly contemporary Belgium) of the United Kingdom of the Netherlands (*Verenigd Koninkrijk der Nederlanden*) became alienated from the Northern parts. There were a number of reasons for this alienation.

[183] Fourth Title, Penal Code of the Kingdom of Holland.

[184] Articles 62-69 Penal Code of the Kingdom of Holland.

[185] Article 89 Penal Code of the Kingdom of Holland.

[186] See J.C.L.M van Gils, *Eenige Aantekeningen op de Artikelen 111 en 112 van het Wetboek van Strafrecht*, Amsterdam: Delsman & Nolthenius 1895, p. 25.

[187] Article 89 Penal Code of the Kingdom of Holland.

[188] See the section on Calumny, Slander, and Disclosure of Secrets (articles 367-378) of the *Code Pénal*.

[189] J.C.L.M van Gils, *Eenige Aantekeningen op de Artikelen 111 en 112 van het Wetboek van Strafrecht*, Amsterdam: Delsman & Nolthenius 1895, p. 21, 27.

[190] Bulletin of Acts and Decrees 1830, no. 15.

First, there were disputes over the national language. The Southern regions cherished the French language whereas King Willem I mandated that, with a view on unification,[191] the Dutch language should become the standard language in official correspondence.[192] William had enacted multiple decrees to this end.[193] This endeavour was perceived in the southern regions as a reformation of the South imposed by the North.[194]

A second dispute revolved around religion and education.[195] In a time where nearly three quarters of the United Kingdom of the Netherlands consisted of Catholics,[196] William attempted to unite Protestants and Catholics in a single state church.[197] The King supported limiting the influence of religion on education. Willem I envisioned that a religiously neutral educational system would promote society's well-being, and thus, he wanted to reform education in the Southern regions.[198] Koch writes that the King was of the opinion that 'driving back the Catholic Church's influence on education was an act of enlightenment, rationalism and citizenship against obscurantism and pointless piety.'[199] To achieve this, the King mandated the establishment of the *Collegium Philosophicum* at the State University of Leuven in 1825.[200]

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[191] L. Wils, 'De taalpolitiek van Willem I', *Bijdragen en Mededelingen betreffende de Geschiedenis der Nederlanden*, 1977, p. 81; J.C. Kennedy, *Een beknopte geschiedenis van Nederland*, Amsterdam: Prometheus 2017, p. 248.

[192] J.C. Kennedy, *Een beknopte geschiedenis van Nederland*, Amsterdam: Prometheus 2017, p. 248.

[193] J. Koch, *Koning Willem 1 1772-1843*, Amsterdam: Boom 2013, p. 412. An example is the Royal Decree of 15 September 1819, see G. Luttenberg, *Luttenberg's chronologische verzameling der wetten en besluiten, betrekkelijk het openbaar bestuur in de Nederlanden sedert de herstelde orde van zaken in 1813*, Zwolle: W.E.J. Tjeenk Willink 1844, p. 83-85.

[194] J. Koch, *Koning Willem 1 1772-1843*, Amsterdam: Boom 2013, p. 413.

[195] J.C. Kennedy, *Een beknopte geschiedenis van Nederland*, Amsterdam: Prometheus 2017, p. 249-250.

[196] J.C. Kennedy, *Een beknopte geschiedenis van Nederland*, Amsterdam: Prometheus 2017, p. 249.

[197] J.C. Kennedy, *Een beknopte geschiedenis van Nederland*, Amsterdam: Prometheus 2017, p. 249.

[198] J. Koch, *Koning Willem 1 1772-1843*, Amsterdam: Boom 2013, p. 419.

[199] J. Koch, *Koning Willem 1 1772-1843*, Amsterdam: Boom 2013, p. 418.

[200] J. Koch, *Koning Willem 1 1772-1843*, Amsterdam: Boom 2013, p. 419; W.J.F. Nuyens, *Geschiedenis van het Nederlandsche volk, van 1815 tot op onze dagen. Eerste deel*, Amsterdam: C.L. van Langenhuysen 1883, p. 134; E.H. Kossmann, *The Low Countries 1780-1940*, Oxford: Clarendon Press 1978, p. 128.

From that point on, individuals aspiring to become priests had to undergo their education at this state controlled institute. Nuyens describes the establishment of the *Collegium Philosophicum* as 'a measure that, more than anything else, embittered the Southerners.'[201] Koch speaks of a 'smack in the face' of the Catholic Church in the Southern parts.[202] Catholics in the South were dismayed, as they felt disrespected in their religious liberty.[203] The fact that the government assumed it knew best how to raise the next generation of the Roman Catholic clergy upset many Catholics in the South, according to Koch.[204] Hence, William's religious policies caused anger and alienation among Catholics.[205]

Third, there were grievances about the state's finances and taxation. King Willem, who was 'fascinated by wealth,'[206] loosely managed the state's finances. The King financed large infrastructure projects without the consent of Parliament.[207] Moreover, Willem increased the taxes on the Southerners, who were taxed unevenly. Kennedy states that 'about 45 to 50 percent of the tax revenue came from the South, yet only 20 to 23 percent flowed back.'[208]

Lastly, the character of King Willem and his way of doing politics also played a part. 'Willem I governed, but didn't do politics', Koch writes in his biography of the King.[209] 'Instead of mediating between the interests and wishes of different sections of society, or to win over his subjects for his plans, he imposed his reforms without much explanation. His subjects'

[201] W.J.F. Nuyens, *Geschiedenis van het Nederlandsche volk, van 1815 tot op onze dagen. Eerste deel*, Amsterdam: C.L. van Langenhuysen 1883, p. 134.

[202] J. Koch, *Koning Willem 1 1772-1843*, Amsterdam: Boom 2013, p. 419.

[203] J.C. Kennedy, *Een beknopte geschiedenis van Nederland*, Amsterdam: Prometheus 2017, p. 249.

[204] J. Koch, *Koning Willem 1 1772-1843*, Amsterdam: Boom 2013, p. 420.

[205] J.C. Kennedy, *Een beknopte geschiedenis van Nederland*, Amsterdam: Prometheus 2017, p. 249; J. Koch, *Koning Willem 1 1772-1843*, Amsterdam: Boom 2013, p. 420.

[206] J. Koch, *Koning Willem 1 1772-1843*, Amsterdam: Boom 2013, p. 401.

[207] J. Koch, *Koning Willem 1 1772-1843*, Amsterdam: Boom 2013, p. 402.

[208] J.C. Kennedy, *Een beknopte geschiedenis van Nederland*, Amsterdam: Prometheus 2017, p. 248.

[209] J. Koch, *Koning Willem 1 1772-1843*, Amsterdam: Boom 2013, p. 411.

desires slowly occurred to him.'[210] Willem I ruled, but he wasn't very responsive, an attitude that ultimately led to alienation, Koch writes.[211] The King was a 'lonely man', 'capable neither of delegating power nor of collaborating with other people', who 'regarded his ministers as his servants.'[212] Kennedy speaks of a 'self-willed and stubborn King',[213] while Van Roon also mentions the authoritarian side of King Willem. The 'stubborn Willem ruled with an iron fist and showed scant regard for criticism,' Van Roon states.[214] Evidence of the unpopularity of the King and his policies are the hundreds of petitions with grievances, signed by hundreds of thousands, the King received between 1828 and 1830.[215]

These factors, as well as an economic recession in 1830,[216] led to increased dissatisfaction among the citizens over King Willem's politics, and ultimately to the Belgian Revolution (*Belgische Opstand*) and the secession of the southern regions.

2. The law of 1 June 1830

Within this context of friction and instability, a Bill that sought to 'curb derision and defamation' (*Beteugeling van hoon en laster*) was proposed. This Bill, 'a fairly restrictive Press

[210] J. Koch, *Koning Willem 1 1772-1843*, Amsterdam: Boom 2013, p. 411.

[211] J. Koch, *Oranje in revolutie en oorlog: Een Europese geschiedenis 1772-1890*, Amsterdam: Boom 2018, p. 173.

[212] E.H. Kossmann, *The Low Countries 1780-1940*, Oxford: Clarendon Press 1978, p. 116.

[213] J.C. Kennedy, *Een beknopte geschiedenis van Nederland*, Amsterdam: Prometheus 2017, p. 251.

[214] E. van Roon, 'Majesteitsschennis onder Willem I. Hoon, laster, en smaad in Zuid-Holland tijdens de Belgische Opstand', *HOLLAND. Historisch Tijdschrift*, 2019, p. 4.

[215] J.C. Kennedy, *Een beknopte geschiedenis van Nederland*, Amsterdam: Prometheus 2017, p. 250; E.H. Kossmann, *The Low Countries 1780-1940*, Oxford: Clarendon Press 1978, p. 149.

[216] J.C. Kennedy, *Een beknopte geschiedenis van Nederland*, Amsterdam: Prometheus 2017, p. p. 250.

Bill,'[217] was sent to the House of Representatives on 11 December 1829. On 1 June 1830 this Bill became law. Article 1 of this law read:

> 'All those who maliciously and publicly, in any way or by any means, shall violate the dignity, the authority of the King, or the rights of the Royal dynasty, or who shall slander, deride or defame the person of the King, will be liable to a term of imprisonment of two to five years.'[218]

The second article of the law prohibited 'slander, derision or defamation directed at any member of the Royal House', punishable by one to three years' imprisonment. The third article of the law made it a crime, carrying a sentence of six months' to three years' imprisonment, to maliciously and publicly assault the binding force, or to incite to disobedience of the laws. Lastly, the law provided for an increased penalty in case of a repetition of the offence in article 4, while articles 5, 6, and 7 contained a number of procedural clauses.

According to the Royal Message that accompanied the Bill, freedom of the press, which was 'aimed at the expansion of knowledge and understanding', was 'degraded by malicious individuals in order to breed resentment, discontent, hatred of religion, partisanship, and rebellion', and it had 'undermined the public order, the force of the State (…).'[219]

3. The Bill in Parliament

The Parliament was overwhelmingly in favor of the Bill: on 22 May 1830 the House of Representatives approved of the Bill by 93 votes for and 12 against,[220] while a week later the

[217] E.H. Kossmann, *The Low Countries 1780-1940*, Oxford: Clarendon Press 1978, p. 149.

[218] 'The law of 1 June 1830, to curb derision and defamation and other offences against public authority and general peace', published in the Bulletin of Acts and Decrees 1830, no. 15.

[219] Proceedings of the States General, 1829-1830, no. XXI (*Beteugeling van hoon en laster*), no. 1, p. 741.

[220] Proceedings of the States General, 1829-1830, 22 May 1830, p. 543.

Senate adopted the Bill with 35 votes in favor and 1 opposing vote.[221] Representative Luyben called the Bill a 'monstrosity in a constitutional monarchy.'[222] Representative Van Dam van Isselt felt the law was inappropriate as he deemed it unwise to 'chain ourselves because some senseless individuals had confused freedom with debauchery.'[223]

On the other hand, representative Van Toulon was in favor of the Bill. For Van Toulon, 'the intentional and public derision and defamation of the dignity, the authority or the rights of the King is an overthrow of the societal order (…) of the worst kind.'[224] In the view of Van Toulon, the type of insult of regulated by the Bill was 'no special [insult], no *injuria privata*' but a public insult done to the State.[225] He considered the proposed two to five years' imprisonment too light of a punishment for this crime.[226] According to Van Toulon, it was 'the solemn promise of, the by all right-minded individuals beloved and respected King, to protect and preserve our internal tranquility, our constitutional institutions (…).'[227]

4. The Netherlands as a 'deference society'

At the time of the adoption and application of the law of 1 June 1830, the Netherlands could be described as a 'deference society.' The historian Thompson describes this concept as follows:

> 'The essence of the deference society was the habitual respect which the upper classes (…) were accustomed to receive from the community at large. This respect was the natural attitude of a world

[221] Proceedings of the States General, 1829-1830, 29 May 1830, p. 583.
[222] Proceedings of the States General, 1829-1830, 17 May 1830, p. 490.
[223] Proceedings of the States General, 1829-1830, 18 May 1830, p. 494.
[224] Proceedings of the States General, 1829-1830, 18 May 1830, p. 508.
[225] Proceedings of the States General, 1829-1830, 18 May 1830, p. 508.
[226] Proceedings of the States General, 1829-1830, 18 May 1830, p. 508.
[227] Proceedings of the States General, 1829-1830, 18 May 1830, p. 508.

> in which each man knew his place and acknowledged his superiors, who were superior by reason of their style, authoritative manner and air of gentility and who were acknowledged as such because they claimed the rights of their social position with self-assurance.'[228]

According to Post a 'deference society' is a society 'in which ascribed social roles are pervasive and well established, and in which such roles provide the point of reference both for the ascription of social status and for the normative standards of personal conduct.'[229] In such a society, Post observes,

> 'the preservation of honor (…) entails more than the protection of merely individual interests. Since honor is (…) created by (…) shared social perceptions that transcend the behavior of particular persons, honor is a public good, not merely a private possession. An insult to the king involves not only injury to the king's personal interests, but also damage to the social status with which society has invested the role of kingship.'[230]

The explanatory statement to the Dutch Bill on 'derision and defamation', as well as considerations of representatives during the parliamentary debate on the Bill, both indicate that defaming the King was more of a *public* and less of a private matter. The Bill was explained in terms of 'the public order and the powers of the State,' and an 'overthrow of the social order.'

5. Early case law

[228] F.M.L. Thompson, *English Landed Society in the Nineteenth Century*, London: Routledge & Kegan Paul 1963, p. 184.

[229] R. C. Post, 'The Social Foundations of Defamation Law: Reputation and the Constitution', *California Law Review*, 1986, p. 701.

[230] R. C. Post, 'The Social Foundations of Defamation Law: Reputation and the Constitution', *California Law Review*, 1986, p. 702.

The law of 1 June 1830 was applied dozens of times after the Belgian Revolution commenced in August 1830. The historian Van Roon points out that between October 1830 and January 1832, 262 criminal cases took place concerning the 'undermining of the state', 65 of which regarded defamation of the King or the Royal House.[231] 22 of these 65 cases took place in South Holland, a province up North from the border of the Southern regions. The fact that many cases took place in South Holland – and not, as one might expect, in the unstable border provinces – is, according to Van Roon, partially due to the fact that South Holland functioned as a passage for conscripts on the way south to their stations.[232] Apart from conscripts, offenders were labourers, businessmen, as well as craftsmen.[233]

Many of the transgressions took place in taverns. There, the Belgian Revolution 'was the talk of the day.'[234] Under the influence of alcohol, some political discussions got out of hand.[235] Van Roon gives a few examples of utterances that got people prosecuted. These include 'What kind of guy is the King (…) he should be here, but he lets us down, he is a scumbag,' 'the King should be hanged and guillotined,' and 'the King is a goddamn thief.'[236] According to Van Roon, these offenders were not so much driven by political zeal but rather they were

[231] E. van Roon, 'Majesteitsschennis onder Willem I. Hoon, laster, en smaad in Zuid-Holland tijdens de Belgische Opstand', *HOLLAND. Historisch Tijdschrift,* 2019, p. 7.

[232] E. van Roon, 'Majesteitsschennis onder Willem I. Hoon, laster, en smaad in Zuid-Holland tijdens de Belgische Opstand', *HOLLAND. Historisch Tijdschrift,* 2019, p. 7.

[233] E. van Roon, 'Majesteitsschennis onder Willem I. Hoon, laster, en smaad in Zuid-Holland tijdens de Belgische Opstand', *HOLLAND. Historisch Tijdschrift,* 2019, p. 7.

[234] E. van Roon, 'Majesteitsschennis onder Willem I. Hoon, laster, en smaad in Zuid-Holland tijdens de Belgische Opstand', *HOLLAND. Historisch Tijdschrift,* 2019, p. 7.

[235] E. van Roon, 'Majesteitsschennis onder Willem I. Hoon, laster, en smaad in Zuid-Holland tijdens de Belgische Opstand', *HOLLAND. Historisch Tijdschrift,* 2019, p. 7-8.

[236] E. van Roon, 'Majesteitsschennis onder Willem I. Hoon, laster, en smaad in Zuid-Holland tijdens de Belgische Opstand', *HOLLAND. Historisch Tijdschrift,* 2019, p. 8-9.

'intoxicated, simple people who let their frustrations run wild in a daze or out of thoughtless indolence.'[237]

After the secession of Belgium, the law of 1830 continued to be applied in the Netherlands. For example, in December 1840 a defendant named Eilert Meeter was convicted for various instances of defaming the King. Meeter was an author for, and editor of a paper entitled *Tolk der Vrijheid* (loosely translated: 'Interpreter of Freedom'). In a series of three articles published in this medium, Meeter wrote of the King that he had 'publicly misled, maligned, and mocked the Nation', that he had 'raped the Constitution', and that he had disgracefully lied in a Royal Message directed at the States General.'[238] Moreover, Meeter was convicted for repeatedly shouting 'Away with the King, away with the King of Holland, live the republic' on a public street in May 1840. Meeter was also convicted for assaulting the binding force of, and inciting disobedience to the laws, as he had written that the residents were no longer obliged to follow the Constitution and tax laws. Lastly, Meeter was convicted for an insult directed at a mayor. For all this, he was convicted to four years' imprisonment and a fine of 100 Guilders.[239] In 1856, a man named Van der Steen was convicted by both the court of first instance as well as the court of appeal, on the basis of article 1 of the law of June 1830. He had derided the King of the Netherlands by vociferously stating at an inn: 'I don't give a damn

[237] E. van Roon, 'Majesteitsschennis onder Willem I. Hoon, laster, en smaad in Zuid-Holland tijdens de Belgische Opstand', *HOLLAND. Historisch Tijdschrift*, 2019, p. 11.

[238] Provinciaal Geregtshof Groningen, 21 October 1840, in *Weekblad van het Regt* 27 December 1840 (No. 142) (mentioning of the impugned articles and phrases in the left column (*Tolk der Vrijheid* issues numbers 16, 18 en 19 regard the defamation of the King)) and *Weekblad van het Regt* 31 December 1840 (No. 143) (containing the second part of the judgement, with the final verdict).

[239] Provinciaal Geregtshof Groningen, 21 October 1840, in *Weekblad van het Regt* 31 December 1840 (No. 143). Affirmed by the Dutch Supreme Court, see Dutch Supreme Court, 16 February 1841 in *Weekblad van het Regt* 8 March 1841 (No. 162); A. Brocx & J.C. Stuart, *Nederlandsche regtspraak, of verzameling van arresten en gewijsden van den Hoogen Raad der Nederlanden en verdere rechtscollegien* (Zevende deel), 's Gravenhage: De gebroeders Van Cleef 1841, p. 131-132.

about the King, I don't give a damn about Willem III!'[240] The court in first instance convicted the man to two years' imprisonment. Upon appeal the defendant claimed, among other things, that he lacked the intention to commit the crime due to him being in a state of drunkenness when he uttered his words. Yet, this was to no avail as the appellate court upheld the judgement.[241]

6. The 1880s: Ferdinand Domela Nieuwenhuis and the Dutch socialists

The 1880s was a decade 'of political as well as cultural innovation', according to the historian Kossmann.[242] There were developments regarding the press, as journals and magazines became cheaper and more popular.[243] Moreover, a vibrant socialist workers' movement was developing.[244] It was also a time when, according to Bos, European political leaders were 'routinely exposed as frauds', prominent companies were shown to be 'involved in malversations', and 'perverse sexual splurges among the highest elites' were exposed.[245] The socialists 'made clever use of the possibilities provided by the press' to 'capitalize on the moral defects of their political opponents.'[246]

The 1880s was also a decade of significant political turbulence. Kossmann speaks of 'The crisis of the 1880s', where 'socialists preached revolution with such passion that they

[240] The published court documents are redacted, and state: '*Ik heb s(…), aan den Koning, s(…) aan Willem III*!'). See *Weekblad van het Recht* 6 November 1856.

[241] See *Weekblad van het Recht* 6 November 1856. The Supreme Court dismissed the appeal. See *Weekblad van het Recht 5* April 1858.

[242] E.H. Kossmann, *The Low Countries 1780-1940*, Oxford: Clarendon Press 1978, p. 310.

[243] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 12.

[244] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 12.

[245] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 12

[246] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 12.

amazed and frightened even people who refused to listen to them.'[247] Pointing at the bombing of Russian Tsar Alexander II in 1881, the murder of US President Garfield in the same year, and the attempted murder of German Emperor Wilhelm I in 1878, Bos points out that 'the times were highly uncertain for the rulers of the world', which provided for 'an ominous undertone of the rise of the socialist workers' movement.' [248]

Apart from political tensions, the 1880s was marked by economic problems.[249] The Netherlands was affected by the Great Depression of 1873–1896. 'The period from 1882 to 1886', Kossmann writes, 'was particularly unpleasant.'[250] 'Public opinion was greatly concerned by the misery of the poor', and 'in 1885 particularly, tension rose to such heights that many doubted whether even armed force could still keep the situation under control.'[251]

Within this context, a socialist movement in the Netherlands was brewing. Central to the Dutch socialist movement was Ferdinand Domela Nieuwenhuis.[252] He was 'the first political champion of socialism in the Netherlands.'[253] 'The originality of Dutch socialism owed much to the eccentricity of one person – Domela Nieuwenhuis', Kossmann states.[254] Domela Nieuwenhuis was 'by far the most high-profile leader of the early socialist movement in the Netherlands'[255] and 'probably the most charismatic leader the Dutch labour movement has ever

[247] E.H. Kossmann, *The Low Countries 1780-1940*, Oxford: Clarendon Press 1978, p. 314.

[248] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 19.

[249] E.H. Kossmann, *The Low Countries 1780-1940*, Oxford: Clarendon Press 1978, p. 314.

[250] E.H. Kossmann, *The Low Countries 1780-1940*, Oxford: Clarendon Press 1978, p. 315.

[251] E.H. Kossmann, *The Low Countries 1780-1940*, Oxford: Clarendon Press 1978, p. 315.

[252] E.H. Kossmann, *The Low Countries 1780-1940*, Oxford: Clarendon Press 1978, p. 345: 'The rise of Dutch socialism is inconceivable without Domela Nieuwenhuis'; D. van der Meulen, *Koning Willem III 1817-1890*, Amsterdam: Boom 2013, p. 566.

[253] J.C. Kennedy, *Een beknopte geschiedenis van Nederland*, Amsterdam: Prometheus 2017, p. 289.

[254] E.H. Kossmann, *The Low Countries 1780-1940*, Oxford: Clarendon Press 1978, p. 311.

[255] J.W. Stutje, 'Ferdinand Domela Nieuwenhuis (1846-1919), Revolte en melancholie. Romantiek in Domela's kritiek op de moderniteit', *Tijdschrift voor Sociale en Economische Geschiedenis*, 2008, p. 3.

known.'[256] He was 'an agitator', who 'with his direct use of words and with his almost mystical mesmerizing appearance, appealed to new masses.'[257] According to Kossmann, Domela Nieuwenhuis 'gave the impression of (…) suffering from a dangerous form of self-gratification' and he was 'worshipped as [a prophet] by [his] followers.'[258]

Domela Nieuwenhuis was the editor of *Recht voor allen* ('Justice for all'),[259] the most important socialist publication. *Recht voor allen*, launched in 1879,[260] was an activist weekly paper that, besides publishing recipes and instructions for explosives,[261] routinely lampooned the King.[262] For example, *Recht voor allen* published satirical 'weekly statistics' in which, in two columns, 'the work delivered by citizen William and the wages he received for it' were listed. For example, in the edition of 26 May 1886, the overview states

Work delivered	Wages received
? ? ? ?	*f.* 20 000
(Spent the country's money abroad, went for walks and drives, ate, drank, and slept, etc. etc.)	at least with a house with appurtenances

[256] J.W. Stutje, 'Ferdinand Domela Nieuwenhuis (1846-1919), Revolte en melancholie. Romantiek in Domela's kritiek op de moderniteit', *Tijdschrift voor Sociale en Economische Geschiedenis*, 2008, p. 4.

[257] J.W. Stutje, 'Ferdinand Domela Nieuwenhuis (1846-1919), Revolte en melancholie. Romantiek in Domela's kritiek op de moderniteit', *Tijdschrift voor Sociale en Economische Geschiedenis*, 2008, p. 7-8.

[258] E.H. Kossmann, *The Low Countries 1780-1940*, Oxford: Clarendon Press 1978, p. 345-346. 'Domela Nieuwenhuis sometimes seemed to prefer to sacrifice himself to his ideals and to represent the suffering Messiah of the nineteenth century.' See: E.H. Kossmann, *The Low Countries 1780-1940*, Oxford: Clarendon Press 1978, p. 346.

[259] J.W. Stutje, 'Ferdinand Domela Nieuwenhuis (1846-1919), Revolte en melancholie. Romantiek in Domela's kritiek op de moderniteit', *Tijdschrift voor Sociale en Economische Geschiedenis*, 2008, p. 6.

[260] E.H. Kossmann, *The Low Countries 1780-1940*, Oxford: Clarendon Press 1978, p. 345; D. van der Meulen, *Koning Willem III 1817-1890*, Amsterdam: Boom 2013, p. 565-566.

[261] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 20.

[262] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 20-25.

Referring to Domela's sense of grandeur, historian Van der Meulen writes that 'In fact [Domela] lacked only one thing to complete the parallel with that other Savior: a crucifixion. And Domela got that too, in a somewhat weakened form – thanks to the king.'[263]

What really sparked the interest of the Dutch Prosecution Service was an article published in *Recht voor allen* in April 1886. This article, entitled *De Koning komt!* ('The King is coming!'), addressed the King's upcoming annual visit to the capital of the Netherlands. The cynical commentary read, in part:

> 'The large newspapers have announced that the king will have his annual visit to the capital. We shall again witness the mumbo-jumbo, called H.M.'s arrival at the enclosed station and the appearance of H.M., accompanied by wife and daughter, at the balcony of the Royal Palace of Amsterdam. The large newspapers will devote long stories of this event and lie about the love of the House of Orange for the Dutch people and of the people's enthusiasm for its sovereign.'[264]

The article slammed the uncritical reporting of the major newspapers towards the deeds of the King. Those newspapers contained 'only useless and insipid reports regarding the acts of the King, which are unable to elicit any respect, devotion, nor enthusiasm for someone who makes so little of his job.'[265]

For this, Ferdinand Domela Nieuwenhuis was prosecuted. Van der Meulen 'suspects that the prosecution was prompted by a fear of the revolutionary socialists.'[266] Van der Meulen mentions the international context of the revolutionary socialists, including the bombing of the

[263] D. van der Meulen, *Koning Willem III 1817-1890*, Amsterdam: Boom 2013, p. 566.

[264] *De Koning komt!*, Recht voor Allen 24 April 1886.

[265] *De Koning komt!*, Recht voor Allen 24 April 1886.

[266] D. van der Meulen, *Koning Willem III 1817-1890*, Amsterdam: Boom 2013, p. 568.

Russian Tsar Alexander II in 1881 by a member of the revolutionary political organization *Narodnaya Volya*. 'Although the methods of the Russian revolutionaries were harsher than those of the Dutch socialists, their ideals were very similar', Van der Meulen writes.[267] On top of this, what didn't help the socialists were the facts that recipes for explosives were published every now and then in *Recht voor allen*, and that a shot was fired during a large demonstration by the socialists on 4 July 1886, which was attended by Domela.[268] 'The violent reputation of the socialists, also those in the Netherlands, was established,' Van der Meulen states, 'just as the danger that they posed to the king.'[269]

Before the court, Domela Nieuwenhuis denied that he had intended to insult the King; he argued that the article only sought to criticize the major newspapers.[270] However, the court decided that the wording and continuous contemptuous tone of the phrases was in violation of the respect owed to the King. The court referenced in particular the phrases 'lies by the House of Orange' and 'the King makes so little of his job.'[271] The court found that 'malicious intent' to insult the King was present, as Domela had not just referred to the major newspapers' conduct in writing about the King, but he had added his *own* opinion about the King's supposed lack of love towards the people, the lies of the King, and the poor job the King was doing.[272] The court gave Domela Nieuwenhuis a harsh sentence: one year of solitary confinement and a fine of 50 guilders for 'maliciously and publicly slandering, deriding, and defaming the person of the King.[273] The court's decision was upheld by the court of appeal, and complaints about

[267] D. van der Meulen, *Koning Willem III 1817-1890*, Amsterdam: Boom 2013, p. 568.

[268] D. van der Meulen, *Koning Willem III 1817-1890*, Amsterdam: Boom 2013, p. 568.

[269] D. van der Meulen, *Koning Willem III 1817-1890*, Amsterdam: Boom 2013, p. 568.

[270] Court of The Hague, 17 June 1886, in *Weekblad van het Recht* 15 July 1886.

[271] Court of The Hague, 17 June 1886, in *Weekblad van het Recht* 15 July 1886.

[272] Court of The Hague, 17 June 1886, in *Weekblad van het Recht* 15 July 1886.

[273] Court of The Hague, 17 June 1886, in *Weekblad van het Recht* 15 July 1886.

the appellate court's decision were rejected by the Supreme Court on 10 January 1887.[274] Domela served seven months in prison, after which he was pardoned by the King.[275]

5. *Lèse-majesté* in the Criminal Code of 1886

The trial of Ferdinand Domela Nieuwenhuis must have been one of the latest based on the law of 1830, as the law was repealed in September 1886 when a new Criminal Code was enacted.[276] Although the law of 1830 was repealed, the crime of *lèse-majesté* was preserved in this new Criminal Code. Articles 111 and 112 would prohibit 'the intentional insult directed at the King or Queen', respectively 'the intentional insult directed at the heir presumptive, at a member of the Royal House, or at the Regent', while article 113 made it a crime to distribute or publicly display insulting material involving the said dignitaries.[277]

According to the explanatory memorandum to the Criminal Code, these crimes 'violate royal dignity and therefore, must be, in the public interest, combatted unconditionally.'[278] The legislative history does not provide much information about the *ratio legis* of the articles

[274] Dutch Supreme Court, 10 January 1887, in *Weekblad van het Recht* 20 January 1887.

[275] D. van der Meulen, *Koning Willem III 1817-1890*, Amsterdam: Boom 2013, p. 567.

[276] See the law of 15 April 1886 (Invoeringswet Wetboek van Strafrecht), articles 2 and 3 (c).

[277] Over time, the wording of these provisions changed. The latest formulation prior to their appeal in 2020 was as follows. Article 111 read: 'The intentional insult directed at the King is punishable by a term of imprisonment of not more than five years or a fine of the fourth category'; article 112 read: 'The intentional insult directed at the spouse of King, at the heir presumptive to the King, at his spouse, or at the Regent, is punishable by a term of imprisonment of not more than four years or a fine of the fourth category'; while article 113 prohibited, in short, distributing, publicly displaying or posting written material or an image insulting the King, the King's consort, the King's heir apparent or his spouse, or the Regent.' This crime carried a penalty of imprisonment not exceeding one year or a fine of the third category.

[278] H.J Smidt, *Geschiedenis van het Wetboek van Strafrecht : volledige verzameling van regeeringsontwerpen, gewisselde stukken, gevoerde beraadslagingen, enz (Tweede Deel)*, Haarlem: H.D. Tjeenk Willink 1891, p. 39.

protecting royal dignity,[279] other than mentioning the 'great interests that are being protected.'[280] However, Simons, writing shortly after the provisions were enacted, justifies them (specifically, their strong penalties) by referencing 'the exceptional positions' of the reputation of the persons covered by the provisions. 'Insults directed at the sovereign (…) may cause him to lose his prestige; they damage his authority; and as such are of a far more dangerous, and thus criminal, nature than insults directed at private persons.'[281]

Simons argued that because of the close relationship between heirs to the throne or members of the Royal House on one side, and the King on the other side, insults directed at them indirectly affect the sovereign, which also warranted their special protection.[282] Simons draws a connection between insults directed at these dignitaries and the state interest (*het staatsbelang*) being at stake.[283] Thus, similar to the law of 1 June 1830, the elevated, special position of the King (or the Royal House in general) as a symbol of the nation justifies a special protection against verbal attacks.

6. King Gorilla

[279] See also Proceedings of the States General, 1880-1881, 29 October 1880 (*Vaststelling van een Wetboek van Strafregt (Beraadslaging over de artt. 55 – 156*)), p. 180, which mentions that the articles were approved 'without parliamentary discussion and without a roll call vote.' The *Commissie van Rapporteurs* only made an editorial, not a substantial remark on the provisions. See Proceedings of the States General, 1879-1880, report of 16 July 1880, p. 118. All things considered, the parliamentary records are mostly quiet on the justifications of the provisions.

[280] Proceedings of the States General, 1878-1879, no. 110, 3, p. 85.

[281] D. Simons, *De vrijheid van drukpers in verband met het Wetboek van Strafrecht*, 's-Gravenhage: Belinfante 1883, p. 152.

[282] D. Simons, *De vrijheid van drukpers in verband met het Wetboek van Strafrecht*, 's-Gravenhage: Belinfante 1883, p. 152-154.

[283] D. Simons, *De vrijheid van drukpers in verband met het Wetboek van Strafrecht*, 's-Gravenhage: Belinfante 1883, p. 154-155.

The conviction of Ferdinand Domela Nieuwenhuis, finalized by the Supreme Court on 10 January 1887, by no means meant the end of the socialists' opposition. In fact, the conviction of Domela Nieuwenhuis infuriated the socialists.[284] In February 1887, a 24-page anonymous[285] pamphlet entitled 'Of the life of King Gorilla' (*Uit het leven van Koning Gorilla*) was published. It grew out of three articles that had appeared in *Recht voor allen* in the months prior.[286]

This pamphlet was published on the occasion of the King's 70th birthday on 19 February 1887.[287] The King's 70th birthday was, 'especially in [the capital of] Amsterdam, an event that concerned authorities.'[288] There, 'socialists proved to be highly troublesome and noisy' and authorities feared that the festivities could lead to new uprisings and disturbances.[289] Memories of riots in the *Jordaan*, a neighbourhood in Amsterdam, during the previous Summer were still fresh. In July 1886, residents of the *Jordaan*, among them many socialists,[290] clashed with the police, leaving 26 people dead and dozens wounded.[291]

The King's birthday 'turned out to be a historic day for the Dutch socialists.'[292] It would be the start of 'a wave of violence against the socialists in Amsterdam.'[293] The *Jordaan* was generally 'a bastion of support for the Royal House,' yet the rise of the socialists had changed

[284] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 26.

[285] The author turned out to be Sicco Roorda van Eysinga.

[286] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 26; D. van der Meulen, *Koning Willem III 1817-1890*, Amsterdam: Boom 2013, p. 569.

[287] D. van der Meulen, *Koning Willem III 1817-1890*, Amsterdam: Boom 2013, p. 569.

[288] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 51.

[289] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 51.

[290] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 51.

[291] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 51-52; D. van der Meulen, *Koning Willem III 1817-1890*, Amsterdam: Boom 2013, p. 574.

[292] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 52.

[293] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 52.

this as the neighbourhood was also the 'cradle of early socialism' in the Netherlands.[294] On the King's birthday, supporters of the King clashed with socialists.

> 'On 19 February, 1887, residents of the Jordaan took to the streets, not only to celebrate [the King's birthday], but also to teach the socialists some lessons. While chanting "Hop, hop, hop, hang the socialists!"[295] they went to bookstores that were selling the pamphlet about King Gorilla. They smashed the windows and hung up strips of orange paper [orange is the colour of the Royal Family, added].'[296]

Thus, it is fair to say that the pamphlet *Uit het leven van Koning Gorilla* was a popular as well as controversial piece of satire. In essence, *Uit het leven van Koning Gorilla* was a 'reflection of stories circulating among the public' about the King.[297] It was a brief but explosive *exposé* of the 'scandalous life of a rude, sadistic, and completely perverted monster, who freely reigns over a poor and oppressed people.'[298] Although the King's name was never mentioned in the pamphlet, everybody knew who the primate represented.[299] The pamphlet starts of by stating that it 'will sketch some scenes of the criminal life of King Gorilla,' who 'was the eldest son of a sovereign, who bore the same name and belonged to a Gorilla family that by misgovernment and extortion had made the people deeply unhappy.'[300] In general, the pamphlet describes the life of 'King Gorilla' as one filled with all types of vices, including

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[294] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 52.

[295] The rhyme gets lost in translation. Original: 'Hop, hop, hop, hang de socialisten op!'

[296] D. van der Meulen, *Koning Willem III 1817-1890*, Amsterdam: Boom 2013, p. 574. See also D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 7.

[297] D. van der Meulen, *Koning Willem III 1817-1890*, Amsterdam: Boom 2013, p. 569.

[298] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 7.

[299] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 7; D. van der Meulen, *Koning Willem III 1817-1890*, Amsterdam: Boom 2013, p. 569.

[300] The pamphlet is inculded in D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007.

drunkenness, theft, extortion, and cruelty. By focusing on the lack of morals of 'King Gorilla', the socialist tapped into the *zeitgeist* of that time, as a continuous stream of royal scandals was already in the public eye.[301]

Authorities were mute in their legal response to the pamphlet. At the time, it was suspected that Sicco Roorda van Eysinga authored the pamphlet.[302] Yet, he resided in Switzerland and was untouchable for the Dutch Prosecution Service.[303] However, a proof-reader for *Recht voor allen*, Alexander Cohen, did get in trouble for an incident somewhat related to the pamphlet. On 16 September 1887, the King was in the Hague to deliver his 'speech from the throne' (*Troonrede*).[304]

At the moment the King passed him by in his carriage, Cohen shouted 'Long live Domela Nieuwenhuis! Long live Socialism! Away with Gorilla!'[305] The court of The Hague convicted Cohen under article 111 and sentenced him to six months' imprisonment.[306] Cohen was the only person to be prosecuted for acts (indirectly) associated with the pamphlet about 'King Gorilla.'[307] Bos suspects that the reason nobody directly involved in the writing or publication of the pamphlet got prosecuted was because 'the pamphlet contained so many truths

[301] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 26.

[302] D. van der Meulen, *Koning Willem III 1817-1890*, Amsterdam: Boom 2013, p. 571.

[303] D. van der Meulen, *Koning Willem III 1817-1890*, Amsterdam: Boom 2013, p. 571; D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 41.

[304] The annual speech from the throne, perhaps best compared to a State of the Union address, is required by article 65 of the Dutch Constitution, which states that: 'A statement of the policy to be pursued by the Government shall be given by or on behalf of the King before a joint the two Houses of the States General that shall be held every year on the third Tuesday in September or on such earlier date as may be prescribed by Act of Parliament.'

[305] D. van der Meulen, *Koning Willem III 1817-1890*, Amsterdam: Boom 2013, p. 571.

[306] Court of The Hague, 17 November 1887, in *Weekblad van het Recht* 19 January 1888.

[307] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 66.

that the authorities preferred to forgo a public trial in which the scandalous accusations of *King Gorilla* would reappear before the public.'[308]

In the following years, convictions over the *lèse-majesté* ban continued. These convictions include a man who, while in a barroom in a state of drunkenness, stated that 'the government are a bunch of shitty guys' and the King a 'whore-hopper and a bastard.' The court of first instance showed leniency for the defendant and acquitted him on the basis that he could not recall, because of his drunkenness, having uttered the offensive words, and if he did, he had no intention of insulting the King, for whom the defendant adduced he had a lot of respect. The court could not prove the intent to insult and acquitted him.[309] Yet, the Court of Appeal found that the intention to insult was innate to the words chosen by the defendant and that the fact that he was drunk did not decrease his criminal responsibility. Subsequently, the appellate court sentenced the defendant to eight days' imprisonment.[310] In October 1888, a defendant stood trial over the accusation that he had repeatedly stated in public: 'long live the social democrats!, long live Domela Nieuwenhuis!, away with the King of the Netherlands, away with the ministry, they only make you pay your taxes.' Although the Court declared the charges proven, the defendant was nonetheless discharged (*ontslagen van rechtsvervolging*) and did not receive a sentence, for the Court was of the opinion that the defendants' statements 'tended to be more a political, republican opinion than an insult directed at the King.'[311] Another case revolved around three youngsters who out on the streets during the night of 1 September 1888 had chanted 'I got my shoes polished, to kick the King to death' (the rhyme is lost in translation, in Dutch: '*Ik heb mijn schoenen laten lappen, om den Koning dood te trappen*'). The next night they repeated their chant in the streets, as well as cheering 'Away with Willem III' at a bar.

[308] D. Bos, *Willem III, Koning Gorilla, met een inleiding van Dennis Bos*, Soestgeest: Aspekt 2007, p. 66.

[309] Court of Leeuwarden, 7 April 1888, in *Weekblad van het Recht* 31 July 1888.

[310] Leeuwarden Court of Appeal, 31 May 1888, in *Weekblad van het Recht* 31 July 1888.

[311] Court of Amsterdam, 5 October 1888, in *Weekblad van het Recht* 22 October 1888.

The Leeuwarden Court of Appeal convicted the three men to four months' imprisonment, a significantly harsher punishment than the eight days' imprisonment that was decided by the court of first instance.[312] On 2 June 1896, a man was convicted of having insulted the Queen and the Regent by blowing a whistle at the moment Queen Wilhelmina and Queen-Regent Emma drove by in an open carriage. The court was of the opinion that 'hissing at somebody is an act that signals disdain.' It considered that 'such an act goes against the respect and deference each individual owes to the Royal dignity and thus to those who are vested with it; that that dignity is so elevated, that it is defamed by any act that loses sight of the respect and deference that is due.' The defendant was found guilty under articles 111 and 112 of the Criminal Code and sentenced to three months' imprisonment.[313]

These cases indicate that defamations of the King were serious matters. Different from the ban on insulting foreign heads of 1816, which was seldom if at all enforced, the 1830 ban on defaming the *national* head of state was actively applied. Although mild criticism of the monarchy seemed to be possible without violating the law, indicating the King was essentially a slacker, or calling him names such as 'Gorilla' landed people in hot water.

6. The Second World War and the 1960s

According to Janssens and Nieuwenhuis, the *lèse-majesté* ban was, compared to the pre-war era, relatively often applied during Second World War. They link this fact to the bond between the home country and the Royal House during the German occupation; as showing contempt to the royals indicated solidarity with the occupiers.[314] In 1946, the *Bijzondere Raad van*

[312] Leeuwarden Court of Appeal, 17 January 1889, in *Weekblad van het Recht* 11 February 1889.

[313] Court of Amsterdam, 2 June 1896, in *Weekblad van het Recht* 18 September 1896. In addition to the jail sentence, the court ordered the destruction of the seized whistle 'by which the crime was committed.'

[314] A.L.J. Janssens & A.J. Nieuwenhuis, *Uitingsdelicten*, Deventer: Kluwer 2011, p. 257.

Cassatie, an institution founded as part of the temporary post-war legal system that dealt with a number of crimes committed during the war, decided a case in which the defendant had publicly referred to the Queen as 'that miserable bitch.'[315] The *Bijzondere Raad van Cassatie* held that 'the honour and good name of the bearer of the highest authority in the Kingdom of the Netherlands must be protected much stronger than that of other persons.'[316] The court felt that 'the crime committed is of a very serious nature (…) and the gravity of the offence is increased as the enemy of the homeland during its occupation has on multiple occasions smeared the honour of the Queen, making it such that the defendant, by uttering the impugned statement, showed solidarity with the enemy.'[317] The defendant was convicted to six-months' imprisonment.

In the 1960s, the Netherlands underwent significant cultural changes. 'The country was changing rapidly in ways that were already undermining old social relations and old commitments', according to the historian Kennedy.[318] In a 'liberizing climate', 'new challenges to authority and established norms could thrive, however dismaying these challenges were to considerable parts of the populace and the political establishment.'[319] According to Janssens and Nieuwenhuis, 'the 1960s led to a questioning of all forms of authority, also that of royal authority and the position of the King in society.'[320]

Convictions for defaming royals continued to take place. In 1966, two men were convicted to a conditional one-month jail sentence for critiquing the marriage between princess Beatrix and prince Claus. The two men had painted slogans on a wall that replaced the 'x' in Beatrix's name with the swastika, while the name of prince Claus was written as 'Clauss', the

[315] Bijzondere Raad van Cassatie, 12 August 1946, in *Nederlandse Jurisprudentie* 1946/654.

[316] Bijzondere Raad van Cassatie, 12 August 1946, in *Nederlandse Jurisprudentie* 1946/654.

[317] Bijzondere Raad van Cassatie, 12 August 1946, in *Nederlandse Jurisprudentie* 1946/654.

[318] J.C. Kennedy, *A Concise History of the Netherlands*, Cambridge: Cambridge University Press 2017, p. 406.

[319] J.C. Kennedy, *A Concise History of the Netherlands*, Cambridge: Cambridge University Press 2017, p. 411.

[320] A.L.J. Janssens en A.J. Nieuwenhuis, *Uitingsdelicten*, Deventer: Kluwer 2011, p. 257.

double ‘ss’ referring to the Nazi paramilitary organization *Schutzstaffel*.[321] Four people were convicted in 1967 for a number of defamatory statements directed at prince Bernhard and the royal family, made in a number of articles. The statements included the phrases ‘money grabbing royal family’, and ‘bastards, stinkers and rabbit heads’ (*schoften, stinkerds en konijnenkoppen*). Moreover, a conviction took place for throwing a smoke bomb at the Royal Carriage, which was deemed by the judge to be a defamatory act.[322]

Also in 1967, the Amsterdam Court of Appeal convicted two editors of a student magazine to three weeks’ imprisonment for insulting princess Beatrix. On the front page of a volume of the magazine, which appeared in the same month the princess was set to marry, a photograph of Beatrix was printed. On this photograph a few police officers with batons were drawn on the head of the princess. The index of the volume stated: ‘On the centrefold page you will find the Netherlands’ playgirl of the year, put her up.’ The centrefold contained a picture of a scantily clad young woman with a crown drawn on one of her short trouser legs.[323] In 1969 a man was convicted for distributing a comic magazine that included a cartoon of the Queen, depicted as a prostitute.[324] Despite the ‘liberizing climate’ of the 1960s, there were no efforts made (different from the ban on insulting foreign heads of state) to substantively alter the *lèse-majesté* ban.

7. *Lèse-majesté* in the 21st century

[321] See *Leuzen-kladden voorwaardelijk gestraft*, Het vrije volk: democratisch-socialistisch dagblad 16 March 1966; *Wegens opzettelijke belediging veroordeeld*, Algemeen Handelsblad 16 March 1966.

[322] *Anti-Oranje Provo’s voor de rechter*, Het Parool 11 February 1967.

[323] *Drie weken voor redacteuren van ‘Bikkelacht’*, Leeuwarder courant 24 February 1967.

[324] Mentioned in: Noyon-Langemeijer-Remmelink, *Het Wetboek van Strafrecht*, art. 111 Sr (aant. [comment] 4). See also *Peter Schat zwijgend voor hof*, Het vrije volk: democratisch-socialistisch dagblad 18 September 1969.

Although the total number of convictions in the early 21st century was very low,[325] there were a number of *lèse-majesté* cases that attracted a lot of (media) attention. In 2005, a defendant was convicted to a fine of 250 euros for throwing a paint bomb at the Royal Carriage carrying the presumptive heir to the throne Willem-Alexander Prins van Oranje, and his wife Maxima Zorreguieta Prinses van Oranje-Nassau. This event took place on 2 February 2002, the wedding day of the royal couple. The defendant argued that throwing a bag of paint should be seen as an act of protest, protected by article 10 of the European Convention on Human Rights. It was claimed that there was no 'pressing social need' to convict the defendant. However, the Supreme Court was of the opinion that in the circumstances of the case, throwing a 'paint bomb', even if rooted in a certain conviction, could not be seen as participating in public debate.[326]

In 2007, a person was convicted for publicly stating that 'The Queen of the Netherlands is a whore. I'm going to fuck her in the ass. She likes that.' The judge in this case considered that 'in examining the accusation of *lèse-majesté,* the question must be asked whether there is a matter of social critique or of political expression that deserves protection. In other words: public office holders, including the queen, must be able to take a beating.' Yet, 'in the context of this case, however, no such expression worthy of protection has been found. (…) [H]e deliberately addressed his insults to the Queen in very harsh terms. It is difficult to interpret these terms in any other way than as directed against the Queen personally. These words were only intended to express his personal frustration. An appeal to the fundamental right to freedom of expression therefore cannot succeed.'[327]

[325] According to statistics of the Dutch Public Prosecution Service, 16 people were convicted in first instance during 2000-2012. See Parliamentary documents, House of Representatives, 2012-2013, Supplement (*Aanhangsel*) no. 1467, p. 1-2.

[326] Dutch Supreme Court, 19 April 2005, in *Nederlandse Jurisprudentie* 2005/566.

[327] Court of Amsterdam, 30 July 2007, ECLI:NL:RBAMS:2007:BB1044.

In a case that was ultimately decided by the Dutch Supreme Court in 2014, the defendant had misbehaved himself on *Prinsjesdag* 2010.[328] On this day in 2010, the defendant had thrown a heavy tea light holder of 625,9 grams in the direction of the Royal Carriage, which carried Queen Beatrix as well as the presumptive heir to the throne Willem-Alexander Prins van Oranje and his wife. While throwing the tea light holder, the defendant shouted 'Crooks', 'Thieves', 'Nazi's' and 'Traitors.' Before the court of appeal, the defendant argued, referring to article 10 of the European Convention on Human Rights, that his actions should be understood as participating in public debate. More specifically, throwing the tea light holder was 'symbolic speech.' Yet, the court of appeal was of the opinion that the defendant's expression 'only consisted of insults directed at the passengers of the carriage.' His utterances nor the action of throwing the tea light holder 'could reasonably be regarded as a contribution to public debate.' Subsequently, the court of appeal convicted him to five months' imprisonment, a decision which was upheld by the Supreme Court.[329]

A case with a different outcome was that of an activist named Abulkasim Al-Jaberi. During a demonstration against racism and *Zwarte Piet* (lit. 'Black Pete', a controversial character that is part of the annual feast of St. Nicholas), the activist had said 'Fuck the King, fuck the Queen, and fuck the Royal House.' The decision to prosecute was criticized in society, and, ultimately, the Dutch Public Prosecution Service decided to drop the case, as the impugned statements were made 'within the context of public debate' according to the prosecutor.[330]

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[328] Every third Tuesday of September is known as *Prinsjesdag* ('Budget Day' or 'Prince's Day'). On this day, the parliamentary year is officially opened. At *Prinsjesdag*, the monarch of the Netherlands speaks to a joint the two Houses of Parliament (the Dutch Senate and House of Representatives). During this day, the monarch as well as other members of the Royal Family arrive at the Houses of Parliament via the Royal Carriage. See https://www.government.nl/topics/budget-day/princes-day.

[329] Dutch Supreme Court, 4 November 2011 ECLI:NL:HR:2014:3083.

[330] 'Geen vervolging voor 'fuck de koning' - valt binnen context publiek debat', 28 May 2015, https://www.nrc.nl/nieuws/2015/05/28/geen-vervolging-om-in-zaak-fuck-de-koning-a1415969; 'Geen

8. The 2016 Bill

The Bill that proposed to repeal the crime of insulting foreign heads of state (discussed in the previous chapter) also proposed to repeal the *lèse-majesté* ban. Specifically, it proposed to repeal articles 111, 112, and 113 of the Criminal Code. Moreover, the Bill initially proposed to add a requirement for the King to file an individual complaint (as opposed to an *ex officio* prosecution) in case of an insult. Such a complaint is part of the general rules of defamation in the Dutch Criminal Code (and thus it is a way to equate the King with 'ordinary people').[331] The reason for the requirement to file a complaint with the authorities in Dutch defamation law is that, if the authorities would prosecute *ex officio*, the subsequent trial could give publicity to the case matter, which could be perceived as harmful by the targeted individual. The trial would add injury to insult, as it were. The requirement to file a complaint enables the targeted individual to weigh up the pros and cons of a procedure, and prioritizes the interest of the individual above the general interest.[332]

The explanatory statement to this Bill reflects upon social developments over the course of almost 200 years. It signaled a changing society, one in which the King no longer holds the elevated position he did in the nineteenth century.[333] While the proposer of the Bill was not of

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vervolging in 'fuck de koning'-zaak', 28 May 2015, https://www.ad.nl/binnenland/geen-vervolging-in-fuck-de-koning-zaak~a4d5ab56/?referrer=https://www.google.com/.

[331] See Parliamentary documents, House of Representatives 2016-2017, no. 34456, 8, p. 11: 'Insofar as the offensive criticism is (…) directed at persons, for example the King or a friendly head of state, the persons involved deserve the protection against insult offered by the criminal law like everyone else. That requires filing a complaint.'

[332] See Parliamentary documents, House of Representatives, 2016-2017, no. 34456, 4, p. 6-7, referring to Dutch Supreme Court, 19 June 1998, in *Nederlandse Jurisprudentie* 1998/800, r.o. 4.5.

[333] Parliamentary documents, House of Representatives, 2015-2016, no. 34456, 3, p. 1-2.

the opinion that the King should be allowed to be insulted, he thought it no longer appropriate to grant the King increased protection via the special *lèse-majesté* provisions.[334]

> 'States should not forbid strong criticism of its institutions on the ground that it would be offensive, regardless of whether it is the kingship or another institution. This also applies to "insulting" other symbols, such as flags. (…) [R]espect for institutions arises when an open debate can be held. It is not appropriate to criminalize certain forms of criticism, certainly against abstractions such as "institutions" or "public authority". Insofar as the offensive criticism is also directed at persons, for example the King or a friendly head of state, the persons involved deserve the protection against insult offered by criminal law like everyone else.'[335]

The Bill aims to express that the special protection offered by articles 111, 112, and 113, is based on 'an outdated vision on kingship and the state.' The drafter of the Bill adheres to a different foundation, namely popular sovereignty. Here, the state belongs to 'us all' and the King derives his position and modest amount of power in our state system from the Constitution.[336] The drafter of the Bill stated that the King nowadays is more and more regarded as a *Bekende Nederlander* (lit. 'Famous Dutchman', 'a celebrity'). As such, the King 'has access to professional spokespersons and a sophisticated media strategy.'[337]

Equating the King with 'ordinary people' was criticized during the legislative process. The Council of State (*Raad van State*), a constitutionally mandated advisory body on legislation, was critical of the classification of the King as a *Bekende Nederlander* as well as the idea to add the requirement of an individual complaint. It considered that

[334] Parliamentary documents, House of Representatives, 2015-2016, no. 34456, 3, p. 3.

[335] Parliamentary documents, House of Representatives, 2016-2017, no. 34456, 8, p. 11

[336] Parliamentary documents, House of Representatives, 2016-2017, no. 34456, 8, p. 8.

[337] Parliamentary documents, House of Representatives, 2016-2017, no. 34456, 8, p. 3.

> ‘The fact that it must be possible to criticize the functioning of government institutions and the people who operate within them does not mean that public institutions and offices no longer play a special role in society and therefore do not deserve special respect. The existing institutions in our democratic constitutional state have not lost importance over time. To the contrary, precisely at a time when visions of the state and philosophical and cultural backgrounds diverge, shared values and norms are becoming increasingly important. This applies *a fortiori* to the King, as a special symbol of the national community. The comparison of the King with any ‘Famous Dutchman’ stands at odds with this. [The explanatory memorandum to the Bill] ignores that institutions, acting as ‘stabilizers’ in changing circumstances (…) must ensure the balance between change and preservation, between democracy and law. This stabilizing role of institutions becomes more important as social changes go faster and are less predictable, as the need for certainty and social cohesion increases. The legislator must take this role into account when considering it. Within the Dutch context, this applies in particular to the role of the head of state who symbolizes community and unity above political divisions.’[338]

Specifically regarding the introduction of the requirement to file an individual complaint, the Council of State stated that:

> ‘As for the King and the other persons mentioned in the current [*lèse-majesté*] provisions, the royal dignity opposes the role as “prosecutors” in criminal proceedings. Moreover, the requirement of a complaint is incompatible with the vulnerable position of the King as a constitutional institution. According to article 42, second paragraph of the Constitution, the King is inviolable and the Ministers are responsible. The ministerial responsibility applies to all public actions and public expressions of the King. This relationship entails limitations on the way the King can participate in public debate. He will have to take into account the political consequences his statements may have. A reserved attitude fits with what he is allowed to say or say back, which makes the King vulnerable. It is not inconceivable that this special position would prevent the King from filing a complaint. This would in fact mean that, even in exceptional cases, no punishment would take place, while any

[338] Parliamentary documents, House of Representatives, 2016-2017, no. 34456, 4, p. 5.

> other person in a similar situation could count on punishment from the offender. Now that the King's spouse, the King's presumed heir to the throne, his spouse or the Regent are directly involved in the exercise of the Royal office, they will also exercise the necessary restraint. In this sense, these people are also vulnerable. Also with regard to these persons, the requirement of a complaint does not fit their vulnerable position.'[339]

Apart from the Council of State, there were also critical voices in Parliament. While there were many voices in the House of Representatives in favour of the Bill, and ultimately the Bill would be adopted by a wide margin, namely 120 against 30,[340] there also was considerable criticism regarding the proposal. For example, the members of the Christian Democratic Appeal rejected the Bill in its totality. The proposal to repeal the special provisions protecting the royals from insults 'generated the most revulsion' among these representatives.[341] The members were of the opinion that 'the King and other existing institutions in our country deserve mere respect' and shared the analysis of the Council of State, namely that 'precisely at a time when visions of the State and philosophical and cultural backgrounds vary, shared values and norms become more important. This applies in particular to the King, a special symbol of the national community.' 'Does the drafter of the Bill realize that the interest of the *lèse-majesté* provisions lies in the infrastructure of the State and not primarily in the person of the king?', they wondered.[342] Moreover, they wondered whether 'it is not the case that citizens always tell us

[339] Parliamentary documents, House of Representatives, 2016-2017, no. 34456, 4, p. 7-8.

[340] See *Eindstemming wetsvoorstel*, 10 April 2018.

[341] Parliamentary documents, House of Representatives, 2016-2017, no. 34456, 7, p. 2.

[342] Parliamentary documents, House of Representatives, 2016-2017, no. 34456, 7, p. 3. The drafter agreed that 'The king is more than a person. Kingship is also more than an office: it is an institution, a symbol, an important connecting institution for the Netherlands.' Yet, this did not meant, in the view of the drafter, that the special provisions were appropriate. See Parliamentary documents, Senate, 2018-2019, 12 March 2019. See also: 'The drafter recognizes that public institutions and offices play a special role in society, which can sometimes be of a stabilizing nature. But that does not imply that they deserve more than citizens or private legal entities. And even if that were different, that does not imply that this respect must be enforced by special criminal protection.'

that they value values and tradition', and referred to the fact that 'the vast majority [of the people] has a great appreciation for the royal family and the way in which it acts.'[343]

Members of the Christian-democratic political party Christian Union did not share the Bill's evaluation of the social and legal developments that inspired an amendment of the criminal law. Instead, they were of the opinion 'that the Dutch head of state has an exceptional and special responsibility that can justify extra protection.'[344] In addition, these representatives found that 'criminalization of insulting the symbol of our democratic constitutional state and the constitutional monarchy of the Kingdom of the Netherlands itself also has a symbolic function.'[345]

Similarly, the orthodox Reformed Political Party felt that the Bill does not 'solve a problem so much, but rather evokes the suggestion that insulting the King (…) is not so bad.'[346] The representatives argued that the Bill 'ignores the special position and vulnerability that [the dignitaries] have with regard to ordinary citizens.'[347]

The Reformed Political Party was of the opinion that the Bill reflected an exaggerated notion of equality.[348] Representative Van Dam of the Christian Democratic Alliance also opposed the Bill, and stressed decency in public debate. As the King, who is part of the government, is limited in speaking out in public, he is less able to defend himself. As a consequence, he deserves special protection, Van Dam argued.[349] For Van Dam, the role of the

[343] Parliamentary documents, House of Representatives, 2016-2017, no. 34456, 7, p. 4.

[344] Parliamentary documents, House of Representatives, 2016-2017, no. 34456, 7, p. 2.

[345] Parliamentary documents, House of Representatives, 2016-2017, no. 34456, 7, p. 2.

[346] Parliamentary documents, House of Representatives, 2016-2017, no. 34456, 7, p. 2.

[347] Parliamentary documents, House of Representatives, 2016-2017, no. 34456, 7, p. 2.

[348] Proceedings of the States General, House of Representatives, 2017-2018, 8 February 2018, p. 7.

[349] Proceedings of the States General, House of Representatives, 2017-2018, 8 February 2018, p. 9.

King as a unifying force and someone who 'represents the honour of our society' justified a special provision that criminalizes insults directed at the King.[350]

Others were more welcoming of the Bill. The Party for Freedom (PVV) stated that it stood 'for the greatest possible freedom of expression for all Dutch people. Everyone should be able to express his or her opinion without fear of persecution.' The party's representative felt that 'In an open, free society you have to be able to say what you want and at the same time you have to be able to take criticism', and that, in the view of the PVV, the limit to free expression is incitement to violence.[351]

As a result of the Council of State's report and the debate in the House of Representatives, the classification of the King as a *Bekende Nederlander* was dropped in a subsequent version of the explanatory memorandum.[352] Moreover, the Bill was amended in March 2018. While the special regime of articles 111, 112, and 113 of the Criminal Code would still be repealed, a new provision was proposed in article 267 of the Criminal Code that provided for an increase of a third of the maximum punishment of a number of general defamation provision in case the target of an insult is the King, the King's spouse, the presumed successor to the King, his or her spouse, or the Regent. Furthermore, the King, the King's spouse, the presumed successor to the King, his or her spouse, or the Regent would be exempt from the requirement of filing an individual complaint in case of an insult; this exemption was incorporated in article 269 of the Criminal Code. It was argued by the drafter of the Bill's amendment that 'these persons [mentioned in article 267] have an interest in maintaining a

[350] Proceedings of the States General, House of Representatives, 2017-2018, 8 February 2018, p. 10, also 11: 'As the King keeps the honour of our nation, so do we have to honour and protect the King. An effective, special provision against insults goes with that.'

[351] Proceedings of the States General, House of Representatives, 2017-2018, 8 February 2018, p.13-14.

[352] Parliamentary documents, House of Representatives, 2016-2017, no. 34456, 6, p. 3.

certain anonymity in cases where a prosecution for insults directed at them takes place. Dropping the requirement to file a complaint contributes to that anonymity.'[353]

In sum, the Bill proposed (1) to repeal the special provisions of articles 111, 112, 113; (2) to regulate insults directed at the King, the King's spouse, the presumed successor to the King, his or her spouse, or the Regent via the general rules of Title XVI of the Criminal Code; with two differences regarding the general defamation rules, these being a) the addition of the possible increase of a third of the maximum sentence in cases of where the target of the insult is the King, the King's spouse, the presumed successor to the King, his or her spouse, or the Regent, and b) the omission of the requirement to file a complaint in cases of where the target of the insult is the King's spouse, the presumed successor to the King, his or her spouse, or the Regent.[354]

Thus, in the ultimate version of the Bill that was passed by the House of Representatives and which was sent to the Senate, where it was adopted by 58 to 17 votes,[355] there was no longer a *total* equation of the King with 'ordinary people.'[356] In January 2020, the Bill became law.[357]

B. European and international human rights law

[353] Parliamentary documents, House of Representatives, 2016-2017, no. 34456, 15, p. 1-3.

[354] See Parliamentary documents, Senate, 2017-2018, no. 34456, A.

[355] Parliamentary documents, Senate, 2018-2019, 19 March 2019 (*Stemming Belediging van staatshoofden en andere publieke personen en instellingen*).

[356] See also comments by the CDA in the Senate: Parliamentary documents, Senate, 2017-2018, no. 34456, B, p. 2 and the statements by the drafter of the Bill in Parliamentary documents, Senate, 2018-2019, no. 34456, C, p. 2-3.

[357] Bulletin of Acts and Decrees (*Staatsblad*) 2019, no. 277.

The 2016 Bill was inspired by developments in international and European human rights law. The drafter argued that international and European law has become highly critical of any special protections based on the status of the targeted individual.[358] This section discusses *lèse-majesté* bans from the perspective of the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

1. The European Convention on Human Rights

Over the last two decades, the European Court of Human Rights has decided a number of cases concerning the defamation of national heads of state. The thread of these cases is that special privileges conferred to people solely on the basis of their status are incompatible with the European Convention on Human Rights. Consequently, the Court has found violations of article 10 of the Convention in cases where citizens were convicted on the basis of *lèse-majesté* bans.

In *Eon v. France*, the European Court of Human Rights placed an emphasis on the context of a particular contemptuous expression. In February 2008, the French President at the time, Sarkozy, said to a man who refused to shake his hand '*Casse toi pov'con*' ('Get lost, you sad prick').[359] In August of that same year, Hervé Eon displayed a placard carrying that same statement during a visit of Sarkozy in the town of Laval. Eon was apprehended at the scene and later convicted to a fine of 30 Euros for insulting the President.[360] While the Court observed that the phrase '*Casse toi pov'con*' was, 'in literal terms, insulting to the President', the Court argued that the phrase should nevertheless 'be examined in the light of the case as a whole,

[358] Parliamentary documents, House of Representatives, 2015-2016, no. 34456, 3, p. 4-6.

[359] See (after 30 seconds) https://www.youtube.com/watch?v=Eau5_Gi3icQ.

[360] European Court of Human Rights, 14 March 2013, 26118/10, par. 8-15 (*Eon v. France*).

particularly with regard to the status of the person at whom it was directed, the applicant's own position, its form and the context of repetition of a previous statement.'[361]

The Court was of the opinion that

> 'by adopting an abrupt phrase that had been used by the President himself and had attracted extensive media coverage and widespread public comment, much of it humorous in tone, the applicant chose to express his criticism through the medium of irreverent satire. The Court has observed on several occasions that satire is a form of artistic expression and social commentary which, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate.'[362]

With regard to the importance of satire in a democratic society, the Court considered that 'criminal penalties for conduct such as that of the applicant in the present case are likely to have a chilling effect on satirical forms of expression relating to topical issues. Such forms of expression can themselves play a very important role in open discussion of matters of public concern, an indispensable feature of a democratic society.'[363]

In *Artun and Güvener v. Turkey*, the Court dealt with a conviction by the Turkish courts of a Turkish journalist, Artun, and the editor in chief, Güvener, of the Turkish newspaper *Milliyet*.[364] This newspaper had published two articles, written by Artun, that criticized the Turkish authorities' behavior leading up to, and in response to a heavy earthquake that hit the city of İzmit on 17 August 1999.[365] Artun and Güvener were charged under article 158 of the

[361] European Court of Human Rights, 14 March 2013, 26118/10, par. 53 (*Eon v. France*).

[362] European Court of Human Rights, 14 March 2013, 26118/10, par. 60 (*Eon v. France*).

[363] European Court of Human Rights, 14 March 2013, 26118/10, par. 61 (*Eon v. France*).

[364] Y. Akdeniz & K. Altıparmak, 'Judgement in the case of Artun and Güvener v. Turkey (monitoring report)', *Human Rights Joint Platform*, December 2016, p. 5.

[365] Y. Akdeniz & K. Altıparmak, 'Judgement in the case of Artun and Güvener v. Turkey (monitoring report)', *Human Rights Joint Platform*, December 2016, p. 5.

Turkish Penal Code[366] with defamation of the President and were subsequently sentenced to imprisonment of 1 year and 4 months.[367] According to Akdeniz and Altıparmak, the court of first instance 'stated that although some sections of the articles mentioned the likely responsibility of the authorities for failing to take the necessary measures about the earthquake, other sections directly targeted the personality of the President and exceeded permissible limits of criticism.'[368] The decision was upheld by the higher domestic courts.[369]

Yet, the European Court of Human Rights found that the conviction by the domestic courts violated article 10 of the Convention. It held that the problematic element of the *Colombani v. France* case regarding the special privilege conferred by French law on foreign heads of state 'applies *a fortiori* concerning a State's interest in protecting the reputation of its own head of state: such interest could not justify conferring on the latter a privilege or special protection regarding other people's right to inform or to express opinions about him. To think differently would not be reconcilable with modern political practices and ideas.'[370]

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[366] 'Whoever insults the President of the Republic face-to-face or through cursing shall face a heavy penalty of not more than three years. If the insulting or cursing happens in the absence of the President of the Republic, those who commit the crime will be liable to imprisonment of between one and three years. Even if the name of the President of the Republic is not directly mentioned, allusion and hint shall be considered as an attack made directly against the President if there is presumptive evidence beyond a reasonable doubt that the attack was made against the President of Turkey. If the crime is committed in any published form, the punishment will increase from one-third to one-half.' Cited in: Y. Alexander, E. H. Brenner & S. Tutuncuoglu Krause, *Turkey: Terrorism, Civil Rights, and the European Union*, Routledge: London and New York 2008, p. 133. See also Human Rights Watch, *Turkey: Violations of Free Expression in Turkey*, 1999, p. 22.

[367] Y. Akdeniz & K. Altıparmak, 'Judgement in the case of Artun and Güvener v. Turkey (monitoring report)', *Human Rights Joint Platform*, December 2016, p. 5.

[368] Y. Akdeniz & K. Altıparmak, 'Judgement in the case of Artun and Güvener v. Turkey (monitoring report)', *Human Rights Joint Platform*, December 2016, p. 5.

[369] Y. Akdeniz & K. Altıparmak, 'Judgement in the case of Artun and Güvener v. Turkey (monitoring report)', *Human Rights Joint Platform*, December 2016, p. 5.

[370] Cited in: T. McGonagle, *Freedom of expression and defamation: A study of the case law of the European court of Human Rights*, Council of Europe 2016. See also Y. Akdeniz & K. Altıparmak, 'Judgement in the case of Artun and Güvener v. Turkey (monitoring report)', *Human Rights Joint Platform*, December 2016, p. 5: 'The

The European Court of Human Rights has also ruled directly on cases that involved defamation of a monarch. The case of *Otegi Mondragon v. Spain* involved a conviction under Spain's *lèse-majesté* law. Article 490 § 3 of the Spanish Criminal Code states that

> 'Anyone who falsely accuses or insults the King or any of his ascendants or descendants, the Queen consort or the consort of the Queen, the Regent or any member of the Regency, or the Crown Prince, in the exercise of his or her duties or on account of or in connection with them, shall be liable to a term of imprisonment of between six months and two years if the false accusation or insult is of a serious nature, and otherwise to a day-fine payable for between six and twelve months.'[371]

The applicant in this case, Ortegi Mondragon, was a spokesperson for a Basque separatist parliamentary group in the Parliament of the Autonomous Community of the Basque Country.[372] Ortegi Mondragon was accused of having insulted the King of Spain by calling him 'in charge of the torturers, who defends torture and imposes his monarchical regime on our people through torture and violence.'[373]

Before the Spanish court, the defendant argued that he 'had sought to express political criticism in the context of freedom of expression, one of the foundations of the rule of law and democracy.'[374] While he was acquitted of the charges by the High Court of Justice,[375] the

ECtHR noted that the provisions afforded greater protection to presidents against the expression of information and opinions about them compared to other people and also foresaw a higher punishment for the authors who made defamatory statements against heads of state. The implementation of Article 158 of the Turkish Penal Code was found to be contrary to both the general principles of the established case-law of the Court with regard to the implementation of the punishments against members of the press as well as its case-law on political speech.'

[371] See European Court of Human Rights, 15 March 2011, 2034/07, par. 28 (*Otegi Mondragon v. Spain*).

[372] European Court of Human Rights, 15 March 2011, 2034/07, par. 7 (*Otegi Mondragon v. Spain*).

[373] European Court of Human Rights, 15 March 2011, 2034/07, par. 10 (*Otegi Mondragon v. Spain*).

[374] European Court of Human Rights, 15 March 2011, 2034/07, par. 12 (*Otegi Mondragon v. Spain*).

[375] European Court of Human Rights, 15 March 2011, 2034/07, par. 13 (*Otegi Mondragon v. Spain*).

Supreme Court of Spain set aside this judgement and sentenced Otegi Mondragon to one year's imprisonment, suspended his right to stand for election for the duration of the sentence and ordered him to pay costs and expenses, on the ground of his criminal liability for the offence of serious insult against the King.[376] After Spain's Constitutional Court had found the defendant's appeal inadmissible,[377] the case came before the European Court, where the applicant alleged that the Supreme Court decision finding him guilty of serious insult against the King amounted to undue interference with his right to freedom of expression under article 10 of the Convention.[378] Otegi Mondragon argued before the European Court that article 490 § 3 was not worded with sufficient precision and clarity.[379] Moreover, he claimed that the increased protection provided for by article 490 paragraph 3 had in reality been turned into an absolute defence of the constitutional monarchy, going beyond the defence of individuals' honour and dignity – in the applicant's view, such a broad interpretation of the provision could not be said to be 'prescribed by law' within the meaning of article 10 paragraph 2 of the European Convention.[380] Furthermore, Otegi Mondragon argued that the interference had not pursued a 'legitimate aim' within the meaning of article 10 paragraph 2 of the Convention,[381] while he also contended that his conviction had been neither proportionate to the legitimate aim pursued nor 'necessary in a democratic society.'[382] He also argued that the special protection afforded to the Crown under Spanish criminal law was incompatible with article 10 of the Convention.[383]

[376] European Court of Human Rights, 15 March 2011, 2034/07, par. 16 (*Otegi Mondragon v. Spain*).
[377] European Court of Human Rights, 15 March 2011, 2034/07, par. 20 (*Otegi Mondragon v. Spain*).
[378] European Court of Human Rights, 15 March 2011, 2034/07, par. 32 (*Otegi Mondragon v. Spain*).
[379] European Court of Human Rights, 15 March 2011, 2034/07, par. 35 (*Otegi Mondragon v. Spain*).
[380] European Court of Human Rights, 15 March 2011, 2034/07, par. 35 (*Otegi Mondragon v. Spain*).
[381] European Court of Human Rights, 15 March 2011, 2034/07, par. 36 (*Otegi Mondragon v. Spain*).
[382] European Court of Human Rights, 15 March 2011, 2034/07, par. 37 (*Otegi Mondragon v. Spain*).
[383] European Court of Human Rights, 15 March 2011, 2034/07, par. 38 (*Otegi Mondragon v. Spain*).

The European Court was of the opinion that the interference with the applicant's right to freedom of expression was 'prescribed by law'[384] and that it pursued one of the aims, namely the 'protection of the reputation or rights of others,' namely the protection of the reputation of the King.[385]

After reiterating it's 'general principles' regarding freedom of expression, the Court evaluated Ortegi Mondragon's utterance in question. The Court observed that

> 'the language used by the applicant could have been considered provocative. However, while any individual who takes part in a public debate of general concern – like the applicant in the instant case – must not overstep certain limits, particularly with regard to respect for the reputation and rights of others, a degree of exaggeration, or even provocation, is permitted; in other words, a degree of immoderation is allowed. (…) [W]hile some of the remarks made in the applicant's speech portrayed the institution embodied by the King in a very negative light, with a hostile connotation, they did not advocate the use of violence, nor did they amount to hate speech, which in the Court's view is the essential element to be taken into account .'[386]

Commenting on Spain's *lèse-majesté* law, the Court was of the opinion that article 490 § 3 of the Spanish Criminal Code

> 'affords the Head of State a greater degree of protection than other persons (protected by the ordinary law on insults) or institutions (such as the government and Parliament) with regard to the disclosure of information or opinions concerning them, and which lays down heavier penalties for insulting statements. In that connection, the Court has already stated that providing increased protection by means of a special law on insults will not, as a rule, be in keeping with the spirit of the Convention. In its judgment in *Colombani and Others*, it examined section 36 of the French Act

[384] European Court of Human Rights, 15 March 2011, 2034/07, par. 46 (*Otegi Mondragon v. Spain*).

[385] European Court of Human Rights, 15 March 2011, 2034/07, par. 47 (*Otegi Mondragon v. Spain*).

[386] European Court of Human Rights, 15 March 2011, 2034/07, par. 54 (*Otegi Mondragon v. Spain*).

> of 29 July 1881, which has since been repealed, concerning offences against foreign Heads of State and diplomats. It observed that the application of section 36 of the 1881 French Act conferred on foreign Heads of State a special privilege, shielding them from criticism solely on account of their function or status; this, in the Court's view, could not be reconciled with modern practice and political conceptions. The Court therefore held that it was the special protection afforded to foreign Heads of State by section 36 that undermined freedom of expression, not their right to use the standard procedure available to everyone to complain if their honour had been attacked. In *Artun and Güvener*, the Court took the view that its findings in *Colombani and Others* on the subject of foreign Heads of State applied with even greater force to a State's interest in protecting the reputation of its own Head of State. That interest, in the Court's view, could not serve as justification for affording the Head of State privileged status or special protection *vis-à-vis* the right to convey information and opinions concerning him.'[387]

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The European Court considered that the principles established in its case law on defaming the head of a state in republican systems are also valid in relation to a monarchy like Spain, 'where the King occupies a unique institutional position.'[388] According to the Court, 'the fact that the King occupies a neutral position in political debate and acts as an arbitrator and a symbol of State unity should not shield him from all criticism in the exercise of his official duties or – as in the instant case – in his capacity as representative of the State which he symbolises, in particular from persons who challenge in a legitimate manner the constitutional structures of the State, including the monarchy.'[389]

Lastly, in examining the proportionality of the interference, the Court noted the 'particularly harsh nature of the penalty imposed.'[390]

[387] European Court of Human Rights, 15 March 2011, 2034/07, par. 55 (*Otegi Mondragon v. Spain*).

[388] European Court of Human Rights, 15 March 2011, 2034/07, par. 56 (*Otegi Mondragon v. Spain*).

[389] European Court of Human Rights, 15 March 2011, 2034/07, par. 56 (*Otegi Mondragon v. Spain*).

[390] European Court of Human Rights, 15 March 2011, 2034/07, par. 58 (*Otegi Mondragon v. Spain*).

Ultimately, the Court found that the applicant's conviction was disproportionate to the aim pursued and the interference in the right to free expression was not 'necessary in a democratic society', and hence that article 10 of the Convention had been violated.[391]

The most recent case the European Court decided with regard to *lèse-majesté* also originated in Spain. In March 2018, the European Court decided on a case of contemptuous symbolic expression, namely the burning by two Spanish citizens of a large photograph (placed upside-down) of the royal couple.[392] The events that led to this criminal case, *Stern Taulats and Roura Capellera v. Spain*, took place in 2007 during a visit of the Spanish King to the city of Girona, Spain.[393] Stern Taulats and Roura Capellera were prosecuted under article 490 § 3 of the Spanish Criminal Code and convicted to a sentence of 15 months' imprisonment.[394] Yet, 'given the personal situation of [Stern Taulats and Roura Capellera], who had never been sentenced to a criminal or correctional sentence, their age and profession, the judge decided to impose a fine of 2,700 euros on each of them as a replacement', under the condition that the two had to serve the prison sentence if they failed to pay the fine.[395] The Constitutional Court of Spain held that their form of protest was not protected by the right to free expression as

[391] European Court of Human Rights, 15 March 2011, 2034/07, par. 61 (*Otegi Mondragon v. Spain*).

[392] European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 6 (*Stern Taulats and Roura Capellera v. Spain*).

[393] European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 6 (*Stern Taulats and Roura Capellera v. Spain*).

[394] European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 9 (*Stern Taulats and Roura Capellera v. Spain*).

[395] European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 9 (*Stern Taulats and Roura Capellera v. Spain*).

protected by the Spanish Constitution.[396] Instead, the court saw the burning of the photograph as 'incitement to hatred and violence against the King and the monarchy.'[397]

Having established that the interference with the applicants' right to freedom of expression was 'prescribed by law' and that it pursued one of the aims mentioned in article 10 § 2 of the Convention (the protection of the reputation or rights of others), the European Court focused its analysis on the question whether the interference was 'necessary in a democratic society.'

The Court considered the burning of the upside-down photograph within the framework of a political critique of monarchies in general and the Spanish Kingdom in particular, instead of a personal critique.[398] It did so by referencing the specific context in which the applicants' behaviour took place, namely an anti-monarchical demonstration that carried the motto '300 years of Bourbons, 100 years of struggle against the Spanish occupation' ('*300 ans de Bourbons, 100 ans de lutte contre l'occupation espagnole*').[399] According to the Court, the burning of the photograph

> 'was part of a debate on issues of public interest, namely the independence of Catalonia, the monarchical form of the state and criticism of the King as a symbol of the Spanish nation. All these elements allow to conclude that it was not a personal attack directed against the King of Spain, aiming to despise and vilify the person of the latter, but a criticism of what the King represents, as

[396] European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 14 (*Stern Taulats and Roura Capellera v. Spain*).

[397] European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 14 (*Stern Taulats and Roura Capellera v. Spain*).

[398] European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 36 (*Stern Taulats and Roura Capellera v. Spain*).

[399] European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 36 (*Stern Taulats and Roura Capellera v. Spain*).

> leader and symbol of the state apparatus and the forces which, according to the applicants, had occupied Catalonia – which falls within the realm of political criticism or dissent.'[400]

Subsequently, the Court addressed the three elements of the applicants' behaviour that the Spanish Constitutional Court found to be constituting 'incitement to hatred and violence against the King and the monarchy', namely (1) the use of fire to burn (2) a large-scale photograph (3) placed upside down.[401] The Court noted that

> 'these are symbolic elements which have a clear and obvious relation to the concrete political criticism expressed by the applicants, which concerned the Spanish State and its monarchical form: the effigy of the King of Spain is the symbol of the King as head of the state apparatus, as shown by the fact that it is reproduced on the coin and stamps, or placed in the emblematic places of public institutions; the use of fire and the positioning of the photograph upside down to express a radical rejection, and both are used as a manifestation of political or other criticism; the size of the photograph seemed intended to ensure the visibility of the act in question, which took place on a public square.'[402]

Considering these circumstances, the Court found that 'the acts alleged against the applicants were part of one of those provocative productions which are increasingly used to attract the attention of the media, which (…) do not go beyond the use of a certain amount of provocation permitted for the transmission of a critical message from the angle of freedom of expression.'[403]

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[400] European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 36 (*Stern Taulats and Roura Capellera v. Spain*).

[401] European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 37 (*Stern Taulats and Roura Capellera v. Spain*).

[402] European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 38 (*Stern Taulats and Roura Capellera v. Spain*).

[403] European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 38 (*Stern Taulats and Roura Capellera v. Spain*).

With regard to the accusation of 'incitement to violence', the Court decided that it was not proven that the intention of Stern Taulats and Roura Capellera was to incite to violent acts against the King.[404] Instead, the Court argued that these types of acts 'must be interpreted as the symbolic expression of dissatisfaction and protest. The staging orchestrated by the applicants in the present case, although having resulted in the burning of an image, is a form of expression of an opinion in the context of a debate on a matter of public interest, namely: the institution of the monarchy', while the Court also referred to its *Handyside*-criterion.[405] Thus, the Court was, other than the Spanish authorities, not of the opinion that the act of burning the photograph 'could reasonably be regarded as an incitement to hatred or violence', also given that the act 'was not accompanied by violent conduct or disturbances to public order.'[406]

As with regard to the other type of speech crime the applicants' conviction was based on, namely the accusation of 'hate speech', the Court first noted that the protection of article 10 of the Convention 'is limited, if not excluded, in relation to hate speech, a term to be understood as covering all forms of expression that propagate, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance.'[407] Yet, the act of burning a photograph of the Spanish royal couple ('the symbolic expression of the rejection and political criticism of an institution') did not fall in this category of expression.[408] Doing so 'would imply an overly broad interpretation of the exception allowed by the Court's

[404] European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 39 (*Stern Taulats and Roura Capellera v. Spain*).

[405] European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 39 (*Stern Taulats and Roura Capellera v. Spain*).

[406] European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 40 (*Stern Taulats and Roura Capellera v. Spain*).

[407] European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 41 (*Stern Taulats and Roura Capellera v. Spain*).

[408] European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 41 (*Stern Taulats and Roura Capellera v. Spain*).

case-law, which would be detrimental to pluralism, tolerance and openness, without which no "democratic society",' according to the Court.[409] Moreover, the Court regarded the imposed penalty – a prison sentence to be executed in case the defendants did not pay the fine – as neither proportionate to the legitimate aim pursued nor necessary in a democratic society.[410]

In *Vedat Şorli v. Turkey*, the European Court ruled on a case concerning the defamation of a national head of state in a republic. The applicant in this case, Şorli, was sentenced to 11 months and 20 days imprisonment, with delivery of the judgment suspended for five years.[411]

Şorli was convicted on two counts over images posted on Facebook that were deemed insulting to the President of Turkey. The first count concerned a 'cartoon showing the former US President, Barack Obama, kissing the President of the Republic of Turkey, shown in woman's attire. On a speech bubble placed above the image of the President of the Republic, it was written in Kurdish "Are you going to register the title deed of Syria in my name, my dear husband?."'[412] The second count was about 'photos of the President of the Republic and of the former Prime Minister of Turkey below which was written the following comment: "May your power be fed by blood sink to the bottom of the earth / May your seats that you solidify by dint of taking lives sink to the bottom of the earth / May your luxurious lives that you live with the dreams that you steal sink to the bottom of the earth / May your presidency, your power, your ambitions sink to the bottom of the earth."'[413]

[409] European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 41 (*Stern Taulats and Roura Capellera v. Spain*).

[410] European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 42 (*Stern Taulats and Roura Capellera v. Spain*).

[411] European Court of Human Rights, 19 October 2021, 42048/19, par. 1, 9 (*Vedat Şorli v. Turkey*).

[412] European Court of Human Rights, 19 October 2021, 42048/19, par. 5 (*Vedat Şorli v. Turkey*).

[413] European Court of Human Rights, 19 October 2021, 42048/19, par. 5 (*Vedat Şorli v. Turkey*).

The domestic court considered that the content 'was intended to undermine the honor, dignity and reputation of the [President].' [414] The court found that

> 'The content that the accused shared on his Facebook account is of such as to damage the honor, dignity and reputation of the President of the Republic. It is not possible to consider that these contents are protected by the freedom of expression of the accused (…) As the contents did not constitute an exchange of ideas on a question of general interest and that they were shared on a social network visible to all, it is considered that they exceeded the limits of criticism and that they could not be regarded as covered by freedom of expression.'[415]

On 'suspicion of having committed the offenses of insulting the President of the Republic and propaganda in favor of a terrorist organization', Şorli was taken into police custody,[416] kept in pre-trial detention for two months and two days,[417] and charged with insulting the Turkish President.[418]

Şorli was found guilty of the crime of insulting the President of the Republic, based on articles 299 and 125 of the Turkish Penal Code.[419]

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[414] European Court of Human Rights, 19 October 2021, 42048/19, par. 9 (*Vedat Şorli v. Turkey*).

[415] European Court of Human Rights, 19 October 2021, 42048/19, par. 9 (*Vedat Şorli v. Turkey*).

[416] European Court of Human Rights, 19 October 2021, 42048/19, par. 6 (*Vedat Şorli v. Turkey*).

[417] European Court of Human Rights, 19 October 2021, 42048/19, par. 11 (*Vedat Şorli v. Turkey*).

[418] European Court of Human Rights, 19 October 2021, 42048/19, par. 7 (*Vedat Şorli v. Turkey*).

[419] European Court of Human Rights, 19 October 2021, 42048/19, par. 9 (*Vedat Şorli v. Turkey*). Article 299 of the Turkish Penal Code states that: '(1) Anyone who insults the President of the Republic will be punished with imprisonment ranging from one to four years; (2) If this offense is committed in public, the penalty is increased by one sixth; (3) The prosecution of this offense is subject to the authorization of the Minister of Justice.' See European Court of Human Rights, 19 October 2021, 42048/19, par. 14 (*Vedat Şorli v. Turkey*). Article 125 (1) of the Turkish Penal Code reads: 'Whoever attributes an act or a concrete fact to another in such a way as to attack his honor, dignity and reputation or attacks the honor, dignity and reputation of others by insults will be punished by a term of imprisonment ranging from three months to two years or a judicial fine.' Article 125 (3) (a) of the Turkish Penal Code prescribes that 'The minimum sentence shall not be less than one year of

Before the European Court of Human Rights, Şorli claimed his Facebook posts 'constituted critical comments on political news' and that his conviction infringed his right to free expression.[420] Moreover, Şorli alleged that the crime of which he was convicted, insulting the President of the Republic, 'ensured special protection for the Head of State and provided for a greater penalty compared to the offense of ordinary insult' and that it was 'not in accordance with the spirit of the Convention and the case-law of the Court.'[421] Şorli also found his pre-trial detention as well as his criminal conviction to imprisonment to be disproportionate.[422] Lastly, he argued that the decision to suspend the delivery of the judgment created a 'chilling effect on the exercise of his freedom of expression on political matters during the period of suspension of five years.'[423]

On the other hand, the Turkish government submitted that, in case the European Court would find an interference with the applicant's right to free expression, that interference was based on a clear and accessible law, of which the interpretation and application by the national courts in the present case was foreseeable.[424] Moreover, the Turkish government argued that 'Similar provisions protecting the honor and reputation of Heads of State appear in the criminal codes of several European countries and continue to be applied', and that 'defamatory remarks targeting the Head of State do not only undermine him personally, but also the integrity of the position he holds and that in the eyes of Turkish society, a targeted insult to the head of state humiliates the entire nation that the latter represents.'[425]

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imprisonment in the event that the offense of insult is committed against a public official because of his function.'

[420] European Court of Human Rights, 19 October 2021, 42048/19, par. 20 (*Vedat Şorli v. Turkey*).

[421] European Court of Human Rights, 19 October 2021, 42048/19, par. 20 (*Vedat Şorli v. Turkey*).

[422] European Court of Human Rights, 19 October 2021, 42048/19, par. 20 (*Vedat Şorli v. Turkey*).

[423] European Court of Human Rights, 19 October 2021, 42048/19, par. 20 (*Vedat Şorli v. Turkey*).

[424] European Court of Human Rights, 19 October 2021, 42048/19, par. 34 (*Vedat Şorli v. Turkey*).

[425] European Court of Human Rights, 19 October 2021, 42048/19, par. 34 (*Vedat Şorli v. Turkey*).

This, in the view of the Turkish government, 'justified the imposition of a more severe penalty for the offense of insulting the President of the Republic.'[426]

According to the government, the interference pursued the legitimate aim of protecting the reputation or rights of others.[427] The government felt that

> 'the national courts duly weighed the interests at stake within their margin of appreciation. It considers in this regard that the contentious content shared by the applicant (…) attributed to the President of the Republic, who should enjoy the confidence of the public given his important duties and powers, criminal acts, such as profiting from murders and massacres, and illustrated it in a sexually-oriented image without any factual basis. According to the Government, the imposition on the applicant of a short prison sentence, not carried out thanks to the application of the measure of suspension of the delivery of the judgment, was a measure proportionate in the circumstances of the case. [The government] asserts that the criminal proceedings against the applicant were initiated not with the aim of silencing opposing voices and preventing the contribution to a public debate, but because the content in question aimed at the President of the Republic was degrading and defamatory.'[428]

The European Court accepted that the interference in issue was provided for by law, namely Article 299 of the Criminal Code and that this interference pursued the legitimate aim of protecting the reputation or rights of others.[429] With regard to the necessity of the interference, the Court

> 'noted that, in order to convict the applicant, the domestic courts relied on Article 299 of the Criminal Code which grants the President of the Republic a higher level of protection than to other

[426] European Court of Human Rights, 19 October 2021, 42048/19, par. 34 (*Vedat Şorli v. Turkey*).
[427] European Court of Human Rights, 19 October 2021, 42048/19, par. 35 (*Vedat Şorli v. Turkey*).
[428] European Court of Human Rights, 19 October 2021, 42048/19, par. 36 (*Vedat Şorli v. Turkey*).
[429] European Court of Human Rights, 19 October 2021, 42048/19, par. 42 (*Vedat Şorli v. Turkey*).

> persons (…) with regard to the disclosure of information or opinions concerning them, and provides for more serious penalties for the authors of defamatory statements. In this regard, it recalls that it has already repeatedly stated that increased protection by a special law in matters of offense is, in principle, not in accordance with the spirit of the Convention.' [430]

Moreover, the Court '[recalled] having already ruled in *Artun and Güvener v. Turkey* (…) that a state's interest in protecting the reputation of its head of state could not justify conferring on the latter a privilege or special protection vis-à-vis the right to inform and express opinions on his subject (…) and that the contrary cannot be reconciled with current political practice and conceptions.'[431]

Next, the Court criticized the proportionality of the imposed criminal sanction[432] and submitted that 'nothing in the circumstances of the present case was such as to justify the applicant's placement in police custody and (…) pre-trial detention (…), nor the imposition of a criminal sanction, even if (…) it was a prison sentence accompanied by a suspension of the pronouncement of the judgment.'[433]

Ultimately, the European Court took into account the criminal sanction, 'imposed on the applicant pursuant to a special provision providing for increased protection for the President of the Republic in matters of offense, which cannot be considered in conformity with the spirit of the Convention', and found that the Turkish government had failed to show 'that the contested measure was proportionate to the legitimate aims pursued and that it was necessary

[430] European Court of Human Rights, 19 October 2021, 42048/19, par. 43 (*Vedat Şorli v. Turkey*).

[431] European Court of Human Rights, 19 October 2021, 42048/19, par. 43 (*Vedat Şorli v. Turkey*).

[432] European Court of Human Rights, 19 October 2021, 42048/19, par. 45 (*Vedat Şorli v. Turkey*).

[433] European Court of Human Rights, 19 October 2021, 42048/19, par. 45 (*Vedat Şorli v. Turkey*).

in a democratic society within the meaning of Article 10 of the Convention.'[434] Hence, the Court established a violation of that article.[435]

2. The International Covenant on Civil and Political Rights

At the United Nations level, human rights bodies and officials have voiced opinions on *lèse-majesté* bans as well. In general, the Human Rights Committee has 'expressed concern'[436] about *lèse-majesté* in its General comment No. 34.[437] Regarding the freedom of the press, the former Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, has stated that 'All too many States legislate in ways that directly undermine journalism and the freedom of expression. They should be repealing laws that, among other things, criminalize defamation, particularly laws that penalize the insult of government authorities or *lèse majesté*.'[438]

Moreover, individual countries have been scrutinized for *lèse-majesté* bans. A prime example is Thailand, known for having one of the strictest of these bans. According to the United Nations, 404 people were investigated for insulting the monarchy between 2011 and

[434] European Court of Human Rights, 19 October 2021, 42048/19, par. 47 (*Vedat Şorli v. Turkey*).

[435] European Court of Human Rights, 19 October 2021, 42048/19, par. 48 (*Vedat Şorli v. Turkey*).

[436] Human Rights Committee, General comment No. 34, UN Doc. CCPR/C/GC/34, 2011, par. 38.

[437] General comments are authoritative interpretations by the Human Rights Committee of treaty provisions. They are meant to 'assist States parties in fulfilling their reporting obligation.' See the Supplement (No. 40 (A/36/40) to the official records of the 36th the UN General Assembly (1981) Annex VII, Introduction.

[438] See 'UN expert urges governments to end "demonization" of critical media and protect journalists', 3 May 2017, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21557&LangID=E.

2016.[439] A minority of these cases ended in an acquittal.[440] In 2017, the Human Rights Committee expressed concern regarding the facts

> 'that criticism and dissention regarding the royal family is punishable with a sentence of 3-15 years' imprisonment, about reports of a sharp increase in the number of people detained and prosecuted for the crime of *lèse-majesté* since the military coup (of 2014, added) and about extreme sentencing practices, which result in dozens of years of imprisonment in some cases.'[441]

The Committee stated that Thailand 'should review article 112 of the Criminal Code, on publicly offending the royal family, to bring it into line with article 19 of the Covenant.'[442]

Similarly, David Kaye has

> 'called on the Thai authorities to stop using *lèse-majesté* provisions as a political tool to stifle critical speech (…). Public figures, including those exercising the highest political authority, may be subject

[439] 'Press briefing note on Thailand', 13 June 2017, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21734&LangID=E.

[440] 'Press briefing note on Thailand', 13 June 2017, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21734&LangID=E: 'Statistics provided by Thai authorities show there has been a sharp fall in the number of people who have been able to successfully defend themselves against *lèse majesté* charges. From 2011-13, around 24 percent of people charged with the offence walked free, but over the next three years, that number fell to about 10 percent. Last year, that figure was only 4 percent.' See for an example: 'Thailand: Absurd lese-majeste charges against 85-year-old scholar for comments on 16th Century battle', 7 December 2017, https://www.amnesty.org/en/latest/news/2017/12/thailand-absurd-lese-majeste-charges-against-85-year-old-scholar-for-comments-on-16th-century-battle/.

[441] Human Rights Committee, 'Concluding observations on the second periodic report of Thailand', 25 April 2017, UN Doc. CCPR/C/THA/CO/2, par. 37.

[442] Human Rights Committee, 'Concluding observations on the second periodic report of Thailand', 25 April 2017, UN Doc. CCPR/C/THA/CO/2, par. 38.

> to criticism, and the fact that some forms of expression are considered to be insulting to a public figure is not sufficient to justify restrictions or penalties.'[443]

The Human Rights Committee has also decided cases on *lèse-majesté* provisions. In *Aduayom, Diasso and Dobou v. Togo*, the Human Rights Committee ruled on the arrests and detainment of three Togolese citizens who had similar things happen to them. Aduayom was a university teacher who was arrested on 18 September 1985 and charged with the offence of *lèse-majesté*.[444] The charges were dropped 23 April 1986 and he was released.[445] However, his request to be reinstated in his post at the university was declined.[446] Diasso was a professor of economics. He was arrested on 17 December 1985 and charged with the offence of *lèse-majesté* as well. The authorities alleged that he 'was in possession pamphlets criticizing the living conditions of foreign students in Togo and suggesting that money "wasted" on political propaganda would be better spent on improving the living conditions in, and the equipment of, Togolese universities.'[447] After the authorities conceded that the charges against him were unfounded, he was released him on 2 July 1986. Just as Aduayom, Diasso unsuccessfully sought reinstatement in his post of economics professor.[448] Lastly, Dobou was a civil servant at the Ministry of Post and Telecommunications. After being arrested on 30 September 1985,

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[443] 'Thailand: UN rights expert concerned by the continued use of lèse-majesté', 7 February 2017,http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21149&LangID=E.

[444] Human Rights Committee, *Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo*, UN Doc. CCPR/C/51/D/422/1990, 423/1990 and 424/1990, par. 2.1. The case does not tell what he allegedly had done wrong.

[445] Human Rights Committee, *Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo*, UN Doc. CCPR/C/51/D/422/1990, 423/1990 and 424/1990, par. 2.1.

[446] Human Rights Committee, *Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo*, UN Doc. CCPR/C/51/D/422/1990, 423/1990 and 424/1990, par. 2.1.

[447] Human Rights Committee, *Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo*, UN Doc. CCPR/C/51/D/422/1990, 423/1990 and 424/1990, par. 2.2.

[448] Human Rights Committee, *Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo*, UN Doc. CCPR/C/51/D/422/1990, 423/1990 and 424/1990, par. 2.2.

'allegedly because he had been found reading a document outlining in draft form the statutes of a new political party', he was charged with *lèse-majesté*.[449] Again, charges were dropped at a later time, and Dobou unsuccessfully requested reinstatement in his former post.[450]

The wages of all three had been suspended after their arrest 'on the ground that they had unjustifiably deserted their posts.'[451] The authors claimed that the state of Togo violated article 19 ICCPR 'because they were persecuted for having carried, read or disseminated documents that contained no more than an assessment of Togolese politics, either at the domestic or foreign policy level'[452] and requested reinstatement as well as compensation.[453]

It was not disputed that the authors 'were first prosecuted and later not reinstated in their posts (…) for having read and, respectively, disseminated information and material critical of the Togolese Government in power and of the system of governance prevailing in Togo.'[454] In its application of article 19, the Human Rights Committee observed that

> 'the freedoms of information and of expression are cornerstones in any free and democratic society. It is in the essence of such societies that its citizens must be allowed to inform themselves about alternatives to the political system/parties in power, and that they may criticize or openly and publicly evaluate their Governments without fear of interference or punishment, within the limits set by article 19, paragraph 3. On the basis of the information before the Committee, it appears that

[449] Human Rights Committee, *Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo*, UN Doc. CCPR/C/51/D/422/1990, 423/1990 and 424/1990, par. 2.3.

[450] Human Rights Committee, *Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo*, UN Doc. CCPR/C/51/D/422/1990, 423/1990 and 424/1990, par. 2.3.

[451] Human Rights Committee, *Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo*, UN Doc. CCPR/C/51/D/422/1990, 423/1990 and 424/1990, par. 2.4.

[452] Human Rights Committee, *Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo*, UN Doc. CCPR/C/51/D/422/1990, 423/1990 and 424/1990, par. 3.1.

[453] Human Rights Committee, *Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo*, UN Doc. CCPR/C/51/D/422/1990, 423/1990 and 424/1990, par. 3.2.

[454] Human Rights Committee, *Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo*, UN Doc. CCPR/C/51/D/422/1990, 423/1990 and 424/1990, par. 7.4.

> the authors were not reinstated in the posts they had occupied prior to their arrest, because of such activities. The State party implicitly supports this conclusion by qualifying the authors' activities as "political offences" (…); there is no indication that the authors' activities represented a threat to the rights and the reputation of others, or to national security or public order (article 19, paragraph 3). In the circumstances, the Committee concludes that there has been a violation of article 19 of the Covenant.'

Another case regarding the defamation of a national head of state that came before the Human Rights Committee is that of *Rafael Marques de Morais v. Angola*. This case was about the head of state of a republic instead of a monarchy. In this case, Angolan citizen Rafael Marques de Morais complained that a number of his rights granted by the International Covenant on Civil and Political Rights, including that of free expression, were violated by the state of Angola.

The background of this case is as follows. In 1999, Marques de Morais wrote several articles that were critical of Angolan President dos Santos. Marques de Morais had written that the President was responsible 'for the destruction of the country and the calamitous situation of State institutions' and that he was 'accountable for the promotion of incompetence, embezzlement and corruption as political and social values.'[455] Marques de Morais was arrested and later charged with 'materially and continuously committ[ing] the crimes characteristic of defamation and slander against His Excellency the President of the Republic and the Attorney General of the Republic.'[456] Ultimately, he was convicted of 'for abuse of the press on the basis of injury to the President.' The Angolan Supreme Court

> 'considered that the author's acts were not covered by his constitutional right to freedom of speech, since the exercise of that right was limited by other constitutionally recognized rights, such as one's honour and reputation, or by "the respect that is due to the organs of sovereignty and to the symbols

[455] Human Rights Committee, *Rafael Marques de Morais v. Angola*, CCPR/C/83/D/1128/2002, par. 2.1.

[456] Human Rights Committee, *Rafael Marques de Morais v. Angola*, CCPR/C/83/D/1128/2002, par. 2.6.

> of the state, in this case the President of the Republic." It affirmed the prison term of six-month, but suspended its application for a period of five years, and ordered the author to pay a court tax of NKz. 20,000.00 and NKz. 30,000.00 damages to the victim.'[457]

Marques de Morais lodged a number of complaints relating to the rule of law, including complaints about his arbitrary arrest and lack of a fair trial.[458] With regard to his right to free expression, Marques de Morais claimed that his criticism of the Angolan President was covered by article 19 ICCPR.[459]

In its assessment, the Human Rights Committee '[reiterated] that the right to freedom of expression in article 19, paragraph 2, includes the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment.'[460] Moreover, the Committee

> '[noted] that the author's final conviction was based on Article 43 of the Press Law, in conjunction with Section 410 of the Criminal Code. Even if it were assumed that his arrest and detention, or the restrictions on his travel, had a basis in Angolan law, and that these measures, as well as his conviction, pursued a legitimate aim, such as protecting the President's rights and reputation or public order, it cannot be said that the restrictions were necessary to achieve one of these aims. The Committee observes that the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves to protect. Given the paramount importance, in a democratic society, of the right to freedom of expression and of a free and uncensored press or other media, the severity of the sanctions imposed on the author cannot be considered as a proportionate measure to protect public order or the honour and the reputation of the President, a public figure who, as such, is subject to criticism and opposition. In addition, the Committee considers it an aggravating factor

[457] Human Rights Committee, *Rafael Marques de Morais v. Angola*, CCPR/C/83/D/1128/2002, par. 2.12.

[458] See Human Rights Committee, *Rafael Marques de Morais v. Angola*, CCPR/C/83/D/1128/2002, par. 3.1-3.7

[459] Human Rights Committee, *Rafael Marques de Morais v. Angola*, CCPR/C/83/D/1128/2002, par. 3.8.

[460] Human Rights Committee, *Rafael Marques de Morais v. Angola*, CCPR/C/83/D/1128/2002, par. 6.7

> that the author's proposed truth defence against the libel charge was ruled out by the courts. In the circumstances, the Committee concludes that there has been a violation of article 19.'[461]

These cases show that both the Human Rights Committee as well as the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression are critical of laws that undermine freedom of expression by criminalizing expression that is critical of governments and heads of state.

Thus far I have discussed commentary from United Nations bodies regarding two countries that provide a relatively low level of protection for free expression.[462]

However, the United Nations is also critical of *lèse-majesté* bans in countries that have comparatively high standards of free expression. In a 2016 letter regarding the Dutch *lèse-majesté* provisions, David Kaye, at the time the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 'expressed concern that the [*lèse-majesté*] provisions of the Dutch Criminal Code limit the right to freedom of expression in contradiction with article 19 of the International Covenant on Civil and Political Rights.'[463] Kaye

> 'expressed particular concern at the fact that persons found guilty of insults to the Dutch Royalty (…) may face significantly more severe punishments than those who insult any other persons. In this context, it gives additional reason for concern that in this kind of cases the prosecution and conviction of offenders does not even require a request or complaint from the allegedly insulted or defamed person. In this respect, I would like to remind your Excellency's Government of the

[461] Human Rights Committee, *Rafael Marques de Morais v. Angola*, CCPR/C/83/D/1128/2002, par. 6.8.

[462] Over the last decade, both Thailand and Angola have ranked outside of the first 100 countries listed in the annual Press Freedom Index from Reporters Without Borders, while Togo did not climb higher than place 74 during this period.

[463] D. Kaye, Letter of 14 October 2016, UN Doc., OLNLD2/2016, https://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL_NLD_2016.pdf.

> principles set out by the Human Rights Committee on expressing opinions concerning public figures in the political domain and public institutions. In its General Comment No. 34, it stated that "in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties (…). Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition. (…) Moreover, I am concerned that sections 111-113 (…) provide neither a defence of truth nor a public interest exception. I would like to refer again to the General Comment No. 34 which points out that all defamation laws, "in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. (…) In any event, a public interest in the subject matter of the criticism should be recognized as a defence" (CCPR/C/GC/34).' [464]

Hence, the Special Rapporteur is critical of provisions that provide for more severe punishments for defamation on the basis of the status of the targeted individual, and of procedural provisions that differentiate between individuals, such as the requirement to file a complaint.

Applying these supranational norms to the Dutch legal situation, two remarks are in place. First, it is clear that the articles 111, 112, 113 were at odds with the protection provided to free expression by both the European Convention on Human Rights as the International Covenant on Civil and Political Rights. Although the ban on insulting the monarchy had a legal basis and, it could be argued, it pursued one of the aims mentioned in article 10 paragraph 2, namely the 'protection of the reputation or rights of others', case law of the European Court of

[464] D. Kaye, Letter of 14 October 2016, UN Doc., OLNLD2/2016, https://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL_NLD_2016.pdf.

Human Rights makes clear that special defamation laws, laws that offer increased protection for a monarch, are incompatible with the Convention. Moreover, articles 111, 112, 113 carried maximum prison sentences of five, four, and one year, which would not be regarded as 'proportionate to the legitimate aim pursued nor necessary in a democratic society.'[465]

Similarly, the Human Rights Committee has stated that laws 'should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned'[466], and that 'imprisonment is never an appropriate penalty' for defamation.[467]

Second, it is not clear that the current situation totally aligns with supranational law. That is because, notwithstanding the repeal of articles 111, 112, and 113, the criminal law maintains special elements in case of insults directed at the monarchy. Namely, article 267 leaves open the possibility of an increase of the maximum sentence of the general defamation provisions in cases of where the target of the insult is the King, the King's spouse, the presumed successor to the King, his or her spouse, or the Regent.[468] Moreover, the current regime does not require the targeted individual to file a complaint in case of *lèse-majesté*, this being another deviation of the general rules of defamation.

12. Conclusion

[465] Cf. European Court of Human Rights, 13 March 2018, 51168/15 and 51186/15, par. 42 (*Stern Taulats and Roura Capellera v. Spain*).

[466] Human Rights Committee, General comment No. 34, UN Doc. CCPR/C/GC/34, 2011, par. 38.

[467] Human Rights Committee, General comment No. 34, UN Doc. CCPR/C/GC/34, 2011, par. 47.

[468] This means that, theoretically speaking, a prison sentence of 32 months for insulting the monarchy is still possible, as article 262 paragraph 1 of the Criminal Code (included in the section regarding general defamation provisions) states that: 'Any person who commits the serious offence of slander or of libel, knowing that the allegation is untrue, shall be guilty of aggravated defamation and shall be liable to a term of imprisonment not exceeding two years or a fine of the fourth category.'

This chapter has discussed the crime of *lèse-majesté*. Over a dozen countries, ranging from relatively free to suppressive, currently ban disparaging statements about their respective Kings, Queens, or Presidents. This chapter has focused particularly on the Dutch *lèse-majesté* ban as well as on international free expression norms. The Dutch *lèse-majesté* ban goes back to the nineteenth century, when 'the law of 1 June 1830' was introduced that banned the defamation of a number of royal figures. This law was enacted in a time of significant political instability and social tensions between parts of the United Kingdom of the Netherlands, including disputes over matters such as religion, language, and taxation. The law of 1 June 1830 was repealed when the new Criminal Code of 1886 was adopted. However, the new code did maintain a *lèse-majesté* ban. Articles 111 and 112 of this code prohibited 'the intentional insult directed at the King or Queen', respectively 'the intentional insult directed at the heir presumptive, at a member of the Royal House, or at the Regent.' *Lèse-majesté* remained controversial in the twenty-first century. On one hand, convictions continued to take place. On the other, the legitimacy of the special protection afforded to royal dignitaries by the *lèse-majesté* ban was questioned. A 2016 Bill proposed to repeal the *lèse-majesté* ban. The Bill was inspired by notions of social equality as well as developments in international law. The Bill became law in 2020. Under the new framework, insults directed at royal dignitaries are generally dealt with via the general defamation rules, with two exceptions to the general regime. First there is the possibility to impose an increase of a third of the maximum punishment of a number of general defamation provision in case the target of an insult is the King, the King's spouse, the presumed successor to the King, his or her spouse, or the Regent. Second, the King, the King's spouse, the presumed successor to the King, his or her spouse, or the Regent are exempt from the requirement of filing an individual complaint in case of an insult. This new regime fits better with European and international human rights norms regarding free expression. The European Court of Human Rights as well as various United

Nations bodies are dismissive of 'special' defamation provisions that provide for an extra protection of dignitaries. The European Court has stated that 'providing increased protection by means of a special law on insults will not, as a rule, be in keeping with the spirit of the Convention' and that the principle stipulated in *Colombani,* namely that special privileges that shield foreign Heads of State from criticism solely on account of their function or status are irreconcilable with the Convention, also applies to national heads of state such as Presidents or Kings. Furthermore, the UN's Human Rights Committee has expressed concern over *lèse-majesté* laws in its authoritative interpretation of article 19 of the ICCPR, and has decided that citizens 'may criticize or openly and publicly evaluate their Governments without fear of interference or punishment, within the limits set by article 19, paragraph 3'. Both the former Special Rapporteur on the right to freedom expression, and the Human Rights Committee have scrutinized countries on the existence and application of *lèse-majesté* laws.