

## **Freedom of discrimination and of religion versus the principle of non-discrimination**

F van Schaik

### **Summary**

A certain tension between freedom of expression and the proscription of discrimination is present in post World War II international law. This tension is dealt with differently in different jurisdictions. This contribution addresses the manner in which the lawgiver and courts of the Netherlands have approached the matter.

With reference to the relevant legal sources, the manner in which the law dealt with insult (especially of Jews and Roman Catholics) in the first half of the twentieth century is described, followed by a description of the reaction of some countries to the Convention on the Eradication of All Forms of Racial Discrimination (CERD). The Netherlands government chose to build its implementation of CERD on the existing law of insult, making insult on grounds of race, religion, life view, gender or sexual orientation punishable. This has created a specific tension regarding the freedom of expression in insult cases.

The relevant jurisprudence is discussed under three headings: \* suspected anti-semitism \* extreme rightist politics \* history writing on World War II and nazism

The wish of the Netherlands government has been to deal with the combating of racial discrimination in a manner which would not lead to undue limitations on the freedom of expression. Partly due to the nature of CERD, which was ratified by the Netherlands without reservation, the implementing legislation has however made strong inroads into freedom of expression. In the jurisprudence race was given a wide meaning while the courts held on to the doctrine on insult not requiring animus iniuriandi and accepting dolus eventualis as sufficient. Thus racial insult is easily established, limiting freedom of expression to a larger extent than in countries such as the USA and UK.