



TRIAL
International

Sanctioning

GENOCIDE

DENIAL

in Europe

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| 1. The European Court of Human Rights (ECHR) | 4 |
| 2. Belgium | 6 |
| 3. The Netherlands | 8 |
| 4. The Czech Republic | 10 |
| 5. France | 11 |

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Since TRIAL International's 2022 report on war crimes denial cases at the international level,¹ several European countries have confronted genocide denial through litigation and prosecution. The cases discussed below do not represent an exhaustive list, given the confidentiality and lack of access to some records. However, these cases provide a broad set of examples of genocide denial in different forms and the legal consequences across other domestic systems. The aim of the document is to show the development of judicial practice regarding the prosecution of cases of denial of genocide and other war crimes and to present a cross-section of cases that can be used by the judiciary of Bosnia and Herzegovina when applying the provisions of Article 145. a) of the Criminal Code of Bosnia and Herzegovina.

¹ Dejan Lučka, Negiranje, glorifikovanje i odobravanje ratnih zločina u svjetlu prakse sudova i međunarodnih mehanizama za zaštitu ljudskih prava, December 2022, <https://trial.ba/wp-content/uploads/2023/04/Negiranje-ratnih-zlocina-publika.pdf>

The European Court of Human Rights (ECHR)

1. The European Court of Human Rights (ECHR) found in the 2024 decision in *Zăicescu and Fălticineanu v. Romania* that the Romanian government *itself* had engaged in actions amounting to Holocaust denial. Court unanimously held that Romania violated Article 8 in conjunction with Article 14 of the Convention by acquitting two high-ranking military officials previously convicted of war crimes and crimes against humanity connected with the Holocaust. The acquittal followed from extraordinary appeal proceedings that were not disclosed to Holocaust victims, nor to the public. The case underscored the Court's flexibility and willingness to address genocide denialism, expanding beyond the traditional "denialist statement" to demonstrate how various forms of state action (or inaction) can harm the dignity of a vulnerable population, thus violating Article 8 of the ECHR. This approach paves the way for new interpretations of denialism and highlights the role of the State in either perpetuating or punishing such denial.

The case at hand was an unexpected instance of denialism, primarily based on violations of the victims' procedural rights rather than the typical denialist assertions. Despite this, the Court applied many principles from its previous denialism case law, demonstrating a flexible approach to defining genocide denialism. The Court previously broadened the interpretation of "private life" under Article 8 of the Convention, emphasizing that it encompasses personal integrity, which can be influenced by public interactions (*Behar and Gutman v. Bulgaria*). Article 8 thus safeguards an individual's physical and social identity, personal development, and interpersonal relationships (*Denisov v. Ukraine*).

The Court recognized that ***the case at bar did not concern the expression in public of opinions denying the existence of the Holocaust or of the negative stereotyping of survivors of the Holocaust***, but nevertheless ***still found that the principles developed in this strand of case law may also be used as reference in the present case***, which is rooted in procedural issues.

Belgium

2. In Belgium, a far right political leader, Dries Van Langenhove, was convicted in March 2024 for “inciting violence and denying the Holocaust.”² The Court reasoned that Van Langenhove’s statements within a public space, Facebook and Discord group, were “motivated by racism and xenophobia,” in which the spreading of both negationist and racist messages was the ‘core business’ of the Facebook group to make Flemish youth aware of their allegedly ‘pure’ Flemish identity.³ Furthermore, in November 2023, an investigation into five Belgian soldiers for offenses including Holocaust denial, glorification of Nazi ideologies, and spreading hate speech, was reported.⁴ The suspended soldiers face severe disciplinary actions, including potential army expulsion for having communicated through various digital platforms like Messenger, Telegram, WhatsApp, and even the dark web,

2 Camille Gijss & Laurens Cerulus, Belgium’s far-right prodigy gets prison term for inciting violence POLITICO (2024), <https://www.politico.eu/article/belgium-far-right-prodigy-dries-van-langenhove-prison-term-incite-violence-deny-holocaust/>.

3 Court of First Instance, East Flanders, Department Ghent (12 March 2024), decision https://www.tribunaux-rechtbanken.be/sites/default/files/media/reatpi/oost-vlaanderen/gent/files/vonnis-sv-12032024_0.pdf

4 The Brussels Times, Five Belgian soldiers under investigation for Holocaust denial and xenophobia The Brussels Times (2023), <https://www.brusselstimes.com/818391/five-belgian-soldiers-under-investigation-for-holocaust-denial-and-xenophobia>.

in chats that were named 'Auschwitz' and 'Hitler did nothing wrong,' and reportedly included xenophobic, Islamophobic, and antisemitic remarks, violent videos. Some even went as far as filming themselves performing Hitler salutes and drawing swastikas within army barracks.⁵

Holocaust denial has been illegal in Belgium since 1995 under the 'Negationism Law', amended in 1999.⁶ This law mandates a prison sentence of eight days to one year and a fine of 26 to 5000 Belgian francs (approximately €124) for anyone who denies, grossly minimizes, justifies, or approves the genocide committed by the Nazi regime during WWII.

While initially, ***the Negationism Law narrowly defined genocide to only include the Holocaust, a new provision was added to the 1981 Anti-Racism Act in May 2019.⁷ This provision criminalizes the denial, minimization, justification, or condoning of genocides, crimes against humanity, or war crimes recognized by international courts, such as the International Criminal Court in The Hague and UN tribunals.***

5 Zvika Klein, Belgium investigates five soldiers for Holocaust denial and xenophobic acts The Jerusalem Post | JPost.com (2023), <https://www.jpost.com/diaspora/antisemitism/article-776590>.

6 Law aimed at suppressing the negation, minimization, justification or approval of the genocide committed by the German National Socialist regime during the Second World War. Accessible here: https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1995032331&table_name=loi

7 Law tending to repress certain acts inspired by racism or xenophobia. Accessible here: https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1981073035&table_name=loi

The Netherlands

3. In the Netherlands, a man was sentenced to two months in jail in October 2023 for projecting a message onto the Anne Frank House Museum in Amsterdam that “suggested Frank’s diary was a forgery or that she had not written it.”⁸ The Court, considering the “important symbolical meaning” of Frank’s diary for Holocaust remembrance, found the statement to constitute a form of Holocaust denial that is “extremely grieving to victims and their relatives.”⁹ He was charged with coercion for unlawfully forcing the Anne Frank Foundation, the Anne Frank House, and passers-by to tolerate offensive projections. Additionally, he faced charges of group insults against Jews and the dissemination of offensive, discriminatory, or hateful statements about Jews by posting or sharing a video on Telegram and the internet. However, he was acquitted of the latter charges, as the court could not determine that he had posted or shared the video, either directly or indirectly.¹⁰

8 Canadian sentenced to two months for message suggesting Anne Frank’s diary was not authentic | CBC News, CBCnews (2023), <https://www.cbc.ca/news/world/anne-frank-man-jailed-for-antisemitic-statement-1.7001477>.

9 Canadian sentenced to two months for message suggesting Anne Frank’s diary was not authentic | CBC News, CBCnews (2023), <https://www.cbc.ca/news/world/anne-frank-man-jailed-for-antisemitic-statement-1.7001477>.

10 Court of Amsterdam, decision of 19 October 2023, accessible here: <https://uitspraken.rechtspraak.nl/etails?id=ECLI:NL:RBAMS:2023:6504&showbutton=true&keyword=anne%2Bfrank%2Bhuis&idx=1>

Although there has been a proposal since 2006 to specifically criminalize Holocaust and genocide denial in the Netherlands, it has not been deemed necessary due to existing hate speech laws, particularly Articles 137c, 137d, and 137e of the Dutch Penal Code.¹¹ Article 137c punishes public, deliberate insults against a group based on race, religion, sexual orientation, or disability with up to one year in prison or a fine. Article 137d addresses incitement to hatred, applicable in some Holocaust denial cases. Article 137e punishes those who publicly make offensive statements or incite hatred, discrimination, or violence against a group, or distribute such material, with up to six months in prison or a fine. ***This includes online expressions of Holocaust denial.*** These articles cover Holocaust denial under the category of group insults. However, some courts have deviated from this interpretation, arguing that denying historical facts alone does not necessarily insult the affected group.¹²

Due to these inconsistencies, the European Commission has initiated an infringement procedure against the Netherlands for not fully implementing the 2008 Framework Decision on combating certain forms of racism and xenophobia by means of criminal law.

¹¹ Dutch Penal Code, Arts. 137(c)-(e), accessible here: https://wetten.overheid.nl/BWBR0001854/2020-07-25#BoekTweede_TiteldeelV_Artikel137c

¹² Arnhem-Leeuwarden Court of Appeal, decision of 27 May 2016, available here: <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:GHARL:2016:3979>

The Czech Republic

4. In the Czech Republic, a primary school teacher was investigated and charged after pupils recorded her saying 'nothing is happening' in Kyiv and that 'Ukrainian Nazi groups' have been killing Russians in the Donbas since 2014.¹³ Although there has been no international decision or consensus on the Russian military action in Ukraine legally constituting genocide, the defendant was accused of the criminal offence of denying, questioning, approving or justifying genocide.¹⁴

In June 2023, she was acquitted by the Prague court, which held that her actions did not amount to a crime, and instead proposed an ***eight-month probation, with a five-year ban on "pedagogic, educational or other work with children."***¹⁵

13 Kristina Cirokova, Policie Navrhla Obžalovat Učitelku za popírání války na ukrajině Seznam Zprávy (2023), <https://www.seznamzpravy.cz/clanek/domaci-kauzy-policie-navrhla-obzalovat-ucitelku-za-popirani-valky-na-ukrajine-228506>.

14 Rob Cameron, Czech teacher on trial over Ukraine War Misinformation BBC News (2023), <https://www.bbc.com/news/world-europe-65413458>.

15 Anna Fodor, Court acquits teacher accused of denying war crimes in Ukraine Radio Prague International (2023), <https://english.radio.cz/court-acquits-teacher-accused-denying-war-crimes-ukraine-8786733>.

France

5. In France, far-right figure Eric Zemmour faced legal action for violating laws against Holocaust denial after making televised remarks praising Marshal Philippe Pétain, head of state for Vichy France, a regime that collaborated with Nazi Germany, as a “savior of the Jews.” The Paris Criminal Court and Court of Appeals, in May 2022, acquitted him, reasoning that the offense of “disputing crimes against humanity” under Article 24 bis had not been committed, as “the remarks (...), while potentially offensive to the families of deportees (...), are not intended to dispute or undermine, even marginally, the number of victims of deportation or the policy of extermination in the concentration camps.” It added that Pétain had not been “prosecuted for one or more crimes against humanity as defined by Article 6 of the Statute of the International Military Tribunal annexed to the London Agreement of August 8, 1945.”¹⁶ In September 2023, the Court of Cassation reversed

16 The first paragraph of Art. 24 bis, which the Court relied on, states: “Those who have contested, by one of the means set out in article 23, the existence of one or more crimes against humanity as they are defined by article 6 of the statute of the international military tribunal annexed to the London agreement of August 8, 1945 and *which were committed either by members of an organization declared criminal pursuant to article 9 of the said statute, or by a person convicted of such crimes by a French or international court.*”

the ruling in this latter point, reasoning that “it is immaterial” whether Pétain himself was convicted of one of the crimes as defined by Art. 6 of the IMT (as stated in Art. 24 bis of the French penal code), and that it is sufficient that individual “decided or organized them, regardless of whether their material execution was, partially or completely, the work of third parties.”¹⁷

The decision had mixed reactions, as some believe the court went too far in interpreting Zemmour’s words as constituting Holocaust denialism, rather than an attempt to rehabilitate Marshal Pétain, who had been convicted of serious crimes, but not genocide and/or crimes against humanity.¹⁸ Thus, ***the French Court’s broad interpretation of the crime of denialism has allowed it to be used as a vector for condemning negation by insinuation, partly due to the fact that Art. 24 bis criminalizes “contestation” not strict “denialism.”*** This was established early on by the Court of Cassation, which held that contestation falls within the criminal act “even if it is presented in a disguised or dubious form or by way of insinuation,”¹⁹ given that a narrower,

¹⁷ Crim., 24 March 2020, appeal no. 19-80.783

¹⁸ Nathalie Droin, “Négationnisme déguisé ou apologie implicite: une délicate frontière,” *La Semaine juridique*, Édition générale, 2023.

¹⁹ Cass. crim., Jan. 29, 1998, no. 98-88.200: *Gas. Pal.* 1998, 2, p. 87, obs. Doucet. See also, Nathalie Droin, “Négationnisme déguisé ou apologie implicite: une délicate frontière,” *La Semaine juridique*, Édition générale, 2023, para. 18.

“bad faith” interpretation would result in an “outrageous reduction” of the number of potential criminal action provided for and punished by Art. 24 bis.²⁰

Thus, *French judges play a considerable role in examining what qualifies as “disguised denialism,” harking to the ECtHR’s “holistic” and “broad” contextual analysis of Art. 8 admissibility affirmed in Zăicescu and Fălticineanu.*

France has been at the forefront of combating Holocaust denial since the early 1990s, enacting the Gayssot Act to criminalize such denials. This law, added to the Freedom of the Press legislation, aligns denial offenses with incitement to discrimination or hatred.²¹ This Act added Article 24 bis²² to the 1881 Freedom of the Press law, aligning penalties for denial offenses with those for incitement to discrimination, hatred, or violence based on ethnicity, race, or religion under Article 24. **It also criminalizes denial without requiring proof of the consequences or the perpetrator’s intent.**

²⁰ Cass. crim., June 17, 1997, no. 94-85.126: JurisData no. 1997-003448; Bull. crim., no. 236; D. 1998, p. 50, notes J.-P. Feldman. See also, Nathalie Droin, “Négationnisme déguisé ou apologie implicite: une délicate frontière,” La Semaine juridique, Édition générale, 2023, para. 18.

²¹ Law No. 90-615 of July 13, 1990 aimed at repressing any racist, anti-Semitic or xenophobic act, accessible here: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000532990>

²² Law of July 29, 1881 on freedom of the press, accessible here: https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000033975356/2017-01-29

Despite controversies regarding its impact on freedom of speech and historical research, both the ECtHR²³ and the French Constitutional Council²⁴ upheld the law. Further, A 2017 law on equality and citizenship²⁵ expanded Article 24 bis to cover the denial, minimization, or trivialization of other crimes against humanity, genocide, war crimes, and crimes of enslavement, with the same penalties.

23 European Court of Human Rights, Fact Sheet – Hate Speech, November 2023, https://www.echr.coe.int/documents/d/echr/FS_Hate_speech_ENG#page=3

24 French Constitutional Council, Decision No. 2015-512 QPC of January 8, 2016, accessible here: <https://www.conseil-constitutionnel.fr/decision/2016/2015512QPC.htm>

25 Law no. 2017-86 of January 27, 2017 relating to equality and citizenship, accessible here: <https://www.legifrance.gouv.fr/loda/id/LEGIARTI000033938305/2017-01-29/>

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