***Case Title: The Case of Schild & Vrienden (S&V)***

**Case Analysis**

***Meta-Data*:**

* **Case Number**: N/A
* **Date of decision**: March 12, 2024.
* **Featured case**: N/A
* **Region**: Europe and Central Asia
* **Country**: Belgium
* **Type of expression**: Electronic / Internet-based Communication
* **Judicial Body**: First Instance Court
* **Type of law**: Criminal Law
* **Main Themes**: Hate Speech, Political Expression
* **Outcome**: Mixed Outcome / Restricts Expression
* **Status**: Open, appeal pending
* **Tags**: memes, Discord, Facebook, social media, far-right

***Analysis:***

* **Summary and Outcome**: The Schild & Vrienden (S&V) case involved the criminal conviction of Dries Van Langenhove and six other members of the far-right activist youth movement Schild & Vrienden (“Shield & Friends”) for sharing racist and negationist memes and messages on their private Facebook and Discord pages. A 2019 documentary, in which a journalist went undercover, exposed the inner workings of S&V, prompting the Public Prosecutor to launch a criminal investigation. Five years later, the members were charged with various violations of the Anti-Racism Law and the Holocaust Denialism Law. S&V’s leader, parliamentarian Van Langenhove, was convicted on all counts and sentenced to one year of imprisonment, a €16,000 fine, and a 10-year ban from political office. The other members were convicted on some charges and received suspended prison sentences and €8,000 fines.
* **Facts**: On September 5, 2018, the Flemish Radio and Television Broadcasting Organization (VRT) aired a documentary on Schild & Vrienden (S&V), a far-right youth movement that had gained popularity at the time. The documentary covered S&V’s public activities but also revealed its secret “inner workings” through an undercover journalist. S&V maintained private chat groups on Facebook and Discord, where they shared racist material and Holocaust denial memes. The documentary prompted the Public Prosecutor to launch a criminal investigation. Search warrants led to the confiscation of the VRT’s raw documentary footage and some suspects' computers. Although Facebook refused to cooperate, an ethical hacker was employed to verify the authenticity of (formerly deleted) racist and denialist posts in the Discord groups. The expert concluded that “large quantities of such material were indeed present.” During interrogations, several suspects also admitted to the existence of the private Discord and Facebook groups. (First Instance Court of Ghent, S&V case (Mar. 12, 2024), para. 7).
Eleven suspects (all members of S&V) were charged with: inciting racial discrimination, segregation, hatred, or violence against a group, a community, or its members ([Article 20, 3º and 4º Anti-Racism Law](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=1981073035#LNK0013) *junto* [art. 444 Belgian Penal Code](https://www.ejustice.just.fgov.be/eli/wet/1867/06/08/1867060850/justel)); denying, minimizing, justifying, or approving of the Holocaust ([Article 1 Holocaust Denialism Law](https://www.ejustice.just.fgov.be/eli/wet/1995/03/23/1995009273/justel)); spreading ideas based on racial hatred and racial superiority ([Article 21 Anti-Racism Law](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=1981073035#LNK0013)); belonging to an association that promotes discrimination and segregation ([Article 22 Anti-Racism Law](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=1981073035#LNK0013)); and selling or offering for sale prohibited weapons ([Article 19 Weapons Law](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2006060830&table_name=wet#LNK0008)). Van Langenhove, the leader of S&V, was charged with all counts, while the other members faced at least two charges. (*Ibid*.).

Although the documentary caused significant public uproar, it also bolstered Van Langenhove’s persona and even kick-started his political career. He served as a representative in Belgium’s Federal Parliament from 2019 [until 2023](https://www.vrt.be/vrtnws/nl/2023/02/04/dries-van-langenhove-persco/).

* **Decision Overview**: The First Instance Court analyzes all the different charges and applies them to the various suspects. The first three charges relate to the posting of messages and pictures in S&V’s Facebook and Discord groups.
* a) Inciting racial discrimination, segregation, hatred, or violence against a group, a community, or its members ([Article 20, 3º and 4º Anti-Racism Law](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=1981073035#LNK0013) *junto* [art. 444 Belgian Penal Code](https://www.ejustice.just.fgov.be/eli/wet/1867/06/08/1867060850/justel))

This crime can only be committed if it takes place in a public space or a private space accessible for gatherings upon invitation. The Facebook group had at least 750 members, while the Discord group had 164 users. Both were considered “private spaces, accessible upon invitation” by the Court and thus met the publicity requirement according to Article 444 BPC (First Instance Court of Ghent, S&V case (Mar. 12, 2024), para. 13.1).

The Court then had to assess whether the S&V members intended to incite racial discrimination or segregation. The Court states that the S&V Facebook and Discord groups “were directed towards like-minded individuals and those susceptible to a racist discourse. Moreover, [racial minorities] were repeatedly and systematically mocked on those forums. (...) The expression of racism was also encouraged on these forums” (*Ibid*., para. 13.2).

Moreover, “the general defense of the defendants, claiming that ‘sharing some jokes’ should be allowed, is not applicable in this case. The ‘humor’ used within S&V was deliberately and systematically employed to make racism accessible and light-hearted. By encouraging the frequent posting of racist and negationist ‘humor,’ the members were deliberately and gradually convinced of their own superiority and the necessity to achieve S&V’s objectives through discrimination and violence. It is in this context that the posting of memes and messages by each defendant must be assessed” (*Ibid*.).

Since Van Langenhove was the only “group admin” of the social media pages, he is considered “the person ultimately in charge, the so-called ‘final boss’.” He is also personally responsible for 5,021 posts. The Court gives examples of what it considers to be Van Langenhove’s “highly toxic content”: e.g., “We need more ‘Congo is ours’-memes”; “2027, Flanders shows European countries the way after the coup of Schild & Vrienden”; “The day of violence will still come, you know. I know which side will be prepared and which will not.” According to the Court, he repeatedly instructed the creation of memes to normalize racial inferiority, thereby “creating an atmosphere of collective fanaticism that incited the posting of racist messages. At no point did he make an attempt to block the messages and images. On the contrary.” (*Ibid*., para. 13.3).

The Court also cites an expert’s report: “The most extreme insults seem to be directed against immigrants (‘bastards,’ Muslims, ‘blacks’). These people are, for example, compared to primitive tribes, excrement, or target practice, described as scum, inbred, backward, aggressive, lazy, and their culture as inferior” (*Ibid*.). Van Langenhove and three other suspects who also posted memes about “Congo, interracial relations, and drowned immigrants washed up on the beach” on S&V’s social media are found guilty of inciting racism (*Ibid*., para. 13.5).

* b) Denying, minimizing, justifying, or approving of the Holocaust ([Article 1 Holocaust Denialism Law](https://www.ejustice.just.fgov.be/eli/wet/1995/03/23/1995009273/justel))

The Court gives examples of “various images, photos, and memes that were posted and at least grossly minimized and endorsed the genocide during World War II,” such as: “Doctor, doctor, give me the news. I've got a bad case of killing Jews”; ‘What is the difference between a Jew and a pizza? A pizza doesn't scream in the oven’; ‘What should you do with a Jewish child who has ADHD? Send them to a concentration camp’; ‘What is the difference between a Jew and a bar of soap? A bar of soap lasts longer than 5 minutes in the shower,’ and many more. According to the Court, “given the objectives of S&V, the repetitive nature of these messages, images, and memes, the closed forums, the inciting language, and the proposed violence, they can in no way be classified as humor or innocent jokes” (*Ibid*., para. 14.1).

Although Van Langenhove did not post any Holocaust denial memes himself, he was considered criminally responsible for them as well since he was the “leader of that organization [S&V] and the administrator and ultimately responsible person for those [Facebook and Discord] groups.” He thus “stimulated, facilitated, and tolerated” the sharing of Holocaust denial posts (*Ibid*., para. 14.2). Five other members of S&V who created or posted memes were also convicted for Holocaust denial.

* c) Spreading ideas based on racial hatred and racial superiority ([Article 21 Anti-Racism Law](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=1981073035#LNK0013))

The Court again provides examples of racist posts encountered in the Facebook and Discord groups: the frequent use of the n-word, a meme where black girls are compared to animals; a picture of a person with Down syndrome wearing a shirt that says “at least I’m not a nigger”; or pictures mocking chained black slaves. Some posts called on users to post their worst, darkest memes, which created the following reactions: “What is the similarity between a Black person and a bicycle? They only work when there’s a chain attached” (13 likes); “What lies on the border between the human kingdom and the animal kingdom? The Mediterranean Sea” (12 likes); and many more. Later, another user suggested: “I think it's time to all share your least politically correct jokes, as a way to relax for the students among us who are studying hard.” This gained lots of traction, with examples such as: “I saw a black guy riding a bike yesterday... I thought it was mine. Then I checked the garage and it was still chained up, asking for food”; “I'm not racist. Racism is a crime, and crime is for black people”; or a picture of chained-up black people with the caption: “Who remembers owning one of these as a kid? :-)” (*Ibid*., para. 15).

Van Langenhove is again found guilty as the leader and administrator of the group, as well as for fanning the flames with posts such as “Africans have amounted to nothing, absolutely nothing”; “Around blacks, never relax”; or “Some cultures are just inferior” (*Ibid*., para. 15.1). Five other members were also convicted for violating Article 21 of the Anti-Racism Law. One of them created a meme of Leopold II (the late King of Belgium responsible for the colonization of Congo) greeting President Barack Obama, whose hands have been cut off. The Court explains: “It can no longer be considered mere crude humor. The image of the severed hands—in the context of Congo—refers to the severed hands of Black slaves in Belgian Congo, evoking and spreading the notion that Black people are inferior” (*Ibid*., para. 15.5).

* d) Belonging to an association that promotes discrimination and segregation ([Article 22 Anti-Racism Law](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=1981073035#LNK0013))

It is not necessary for the association to be held personally responsible for a violation of the Anti-Racism Law; however, for this crime to be committed, the group must “apparently and repeatedly advocate discrimination or segregation,” and the suspect must “knowingly and willingly belong to this group or association or provide assistance to it” (*Ibid*., para. 16.1).

The Court states that although S&V does not have legal personality, it was an informal association with sustainability and structure. The S&V website described itself as a “Flemish nationalist youth movement,” and the group members had their own uniform, website, Facebook page, Twitter and Instagram accounts, and business cards. The S&V website also sold merchandise with their logo to help finance their activities. The Court thus concludes that “it was an organization with a hierarchy, specific objectives, and its own policies.” The three other charges mentioned earlier proved the association was used to promote discrimination and segregation. Van Langenhove is again found guilty of this charge as the “founder and de facto leader (…) Moreover, he was the mastermind behind everything” (*Ibid*., para. 16.2). Six other members are also found guilty of belonging to a racist association, for smaller roles or for being moderators in the chat group. Some of them actively cooperated in the removal of incriminating evidence after the documentary was broadcast (*Ibid*., para. 16.3).

* e) Selling or offering for sale prohibited weapons ([Article 19 Weapons Law](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2006060830&table_name=wet#LNK0008))

Lastly, Van Langenhove was found guilty of offering pepper spray for sale on the internet to his fellow members.

*Punishment*

For the first four charges, Van Langenhove is given a one-year prison sentence, a criminal fine of 16,000 euros, and a 10-year ban from political life ([Article 31, para. 1 BPC](https://www.ejustice.just.fgov.be/eli/wet/1867/06/08/1867060850/justel)). For the final charge, he is given a suspended prison sentence of 10 months and a criminal fine of 8,000 euros (*Ibid*., para. 39). The Court found a strong punishment reasonable for Van Langenhove, since: “he demonstrated an extreme lack of morals and contempt for fundamental values and rights. Moreover, he abused fundamental rights and freedoms to infringe upon and deny those of others. This criminal behavior poses a threat to a peaceful society where there is space for all people, regardless of their race, gender, origin, skin color, religion, or beliefs. It creates a hostile atmosphere in society and contributes to further opposition, division, conflicts, and violence. The defendant's hate speech crosses the line of what is acceptable. In this way, the defendant incited physical and psychological violence. (...) The case file reveals that he sought to undermine democratic society and replace it with his model of white supremacy.” (*Ibid*., para. 21)

Five other suspects were given lower sentences since they were merely “followers” or “sympathizers” (*Ibid*., para. 22). They were thus given suspended prison sentences of 6 months and (partially) suspended fines of 8,000 euros (*Ibid*., para. 39). Only one suspect showed genuine remorse and distanced himself from his past actions by apologizing to the civil parties. Thus, the Court granted him the favor of probation (*Ibid*., para. 23).

Dissenting Opinions of Judges …: N/A

***Direction:***

* **Outcome**: Contracts Expression/Mixed Outcome

***Perspective***:

* **Related International and/or regional laws**: N/A
* **National law or jurisprudence**:
* [Belgian Penal Code](https://www.ejustice.just.fgov.be/eli/wet/1867/06/08/1867060850/justel)
* [Anti-Racism Law](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=1981073035#LNK0013)
* [Holocaust Denialism Law](https://www.ejustice.just.fgov.be/eli/wet/1995/03/23/1995009273/justel)
* [Weapons Law](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2006060830&table_name=wet#LNK0008)

**Other national law or jurisprudence**: N/A

* Cass. 19 mei 1993, Arr. Cass. 1993, 514
* GwH nr. 40/2009, 12 maart 2009, B.36.1

***Significance***:

No precedent. The S&V-case did cause quite the commotion (internationally and internally – see news articles).

* **Related Cases**: Self-generated
* **Date updated**: N/A

***Docs***:

* **Official Case Documents**:

**Examples:**

Judgment (in Dutch) [[Attached](https://www.rechtbanken-tribunaux.be/nl/nieuws/vonnis-oprichter-en-zes-leden-schild-en-vrienden-schuldig-bevonden)]

* **Reports, Analysis, and News Articles**:
	+ B. DE NAEYER, “Online Humor in Court: Two Belgian cases”, *ForHum* (Mar. 29, 2024), [link](https://www.forhum.org/blog/two-belgian-cases/).
	+ C. GIJS and L. CERULUS, “Belgium’s far-right prodigy gets prison term for inciting violence”, *Politico* (Mar. 12, 2024), [link](https://www.politico.eu/article/belgium-far-right-prodigy-dries-van-langenhove-prison-term-incite-violence-deny-holocaust/).
	+ X, “Former MP given 1-year prison sentence”, *VRT* (Mar. 12, 2024), [link](https://www.vrt.be/vrtnws/en/2024/03/12/former-mp-given-1-year-prison-sentence/).