



NEWS REPORT

Up-date of Flash report	758-NL-10
Date:	1 July 2011
Expert:	Rikki Holtmaat
Title:	Acquittal in case against Mr Wilders
Country:	The Netherlands
<u>Context</u>	
Issue at stake:	Acquittal in criminal law case against Mr Wilders (Freedom Party)
Ground of discrimination:	Religion
Source:	District Court of Amsterdam 23-06-211
Field:	Discrimination by (hate) speech (all fields)
Legislative provisions:	Articles 137c(1) and 137d(1) Criminal Code (<i>Wetboek van Strafrecht</i>)

Content

Case Law: In the Netherlands, since approximately 2002, a heated debate has taken place about the integration of immigrants, in particular of Islamic background. Most outspoken in this respect was Mr Wilders (leader of the Freedom Party, PVV). In 2007-2008, several complaints were filed to police stations about the alleged discriminatory content of some of his statements and an anti-Islam film that he produced, called *Fitna*. At first the Public Prosecutor decided not to bring criminal charges against Mr. Wilders. Further to the Court of Appeal of Amsterdam's decision in 2009 that a criminal trial in which the allegations would be investigated was needed,¹ the District Court of Amsterdam came to the conclusion that Mr Wilders had not breached the relevant Dutch criminal law provisions and that therefore he should be acquitted from all criminal charges. Two criminal law provisions were at stake. First Article 137c(1) of the Criminal Code, which prohibits in essence to publicly insult people on the grounds of race, religion or belief, hetero- or homosexual orientation or physical or mental disability. In this respect, the District Court found that

¹<http://zoeken.rechtspraak.nl/resultpage.aspx?snelzoeken=true&searchtype=ljn&ljn=BH0496>, accessed 5 February 2009. See also Flash report 758-NL-10.

although Mr Wilders indeed often had said very offensive things about Islam as a religion, he had not directed his insults towards *people* of the Islamic belief *as such*. The provision allowed, according to the Court, to criticise people who behave in a particular way because they obey to certain religious prescriptions (e.g. wearing a headscarf). The latter kind of critique was seen as part of critique of the Islamic religion, not as insulting people of that belief. The second provision, 137d(1) of the Criminal Code contains a prohibition of (briefly summarized) incitement to hatred or discrimination of certain people or incitement to violence against certain people or their goods, because of their race, religion or belief, hetero- or homosexual orientation or physical or mental disability. Again, the Court found that Mr Wilders did not trespass the limits set out by this provision. And again, the Court made a distinction between incitement (to hatred / violence) against (a group of) people on the ground of their religion as such, or saying bad thing about this group of people because they behave in a certain way as a result of their religious belief. This was seen as critique against the religion as such (which is allowed in the Netherlands because it forms part of the freedom of speech).

Internet link source and additional information:

Reference number: Rechtbank Amsterdam 23 June 2011, LJN: BQ9001.

Address of the webpage:

<http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=BQ9001>