



NEWS REPORT

Update of flash report nr: 1299-NL-96

Date: 14 November 2014

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Title: Council of State gives ruling in Zwarte Piet case

Country: The Netherlands

Context

Issue at stake: Council of State overturns district court decision: mayors are not empowered to take into account whether Zwarte Piet stereotypes black people

Ground of discrimination: Race/ethnic origin

Source: National court decision

Field: Other

Content

Case: The last years, a fierce debate raged in the Netherlands on the allegedly racist character of “Zwarte Piet” (Black Pete), one of the central figures in the Dutch “Sinterklaas” (Saint-Nicholas) festivities. Zwarte Piet’s black face, red lips and curly hair led opponents to argue that he forms an offensive caricature of black people and a throwback to slavery.

In August 2014, a decision of the Amsterdam District Court forced the municipality of Amsterdam to reconsider its decision to grant a permit for the festivities surrounding the traditional arrival of Sinterklaas in mid-November. The claimants then based their claim on Article 8 (private life) of the European Convention on Human Rights (ECHR). In its judgment the court held that the municipality should have considered whether granting the permit would violate Article 8. It therefore annulled the decision to grant a permit for the arrival of Saint-Nicholas (see Flash report 1299-NL-96).

The mayor of Amsterdam, Mr Van der Laan, as well as a Zwarte Piet performers’ foundation, lodged an appeal against the district court’s decision.

Decision of the Court: On 12 November 2014, the Council of State (the highest administrative court of the Netherlands) gave a ruling after an expedited procedure, overturning the district court’s decision. It ruled that mayors are not empowered to take into account whether Zwarte Piet would stereotype black people; when deciding on whether or not to grant a permit, mayors are limited to evaluating the effects on public order and security.

The ruling means that administrative courts “cannot and will not answer” the question whether the Zwarte Piet-figure violates Dutch non-discrimination law. The Council of State however stipulated that claims may be brought to civil courts on the grounds of



the general torts provision (6:162 Civil Code); or people may report discrimination to the police. This court decision will thus by no means be the end of the debate on Zwarte Piet.

The Council's ruling follows only one week after the Netherlands Institute for Human Rights (NIHR - "College voor de Rechten van de Mens") judged in a non-binding opinion that the Sinterklaas festivities contain discriminatory features. In a case lodged by a parent against a primary school board, the NIHR found that schools have a duty of care to ensure that discriminatory stereotypes are removed from the Zwarte Piet-figure.

Internet link source: The Council of State's judgment may be found at:
<http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RVS:2014:4117>
The NIHR's Opinion 2014-131 may be found at:
<http://mensenrechten.nl/publicaties/oordelen/2014-131>