



## NEWS REPORT

**Date:** 15 August 2014  
**Expert:** Rikki Holtmaat  
**Title:** Amsterdam District Court: Black Pete is a negative stereotype  
**Country:** The Netherlands  
**Context**  
**Issue at stake:** Amsterdam District Court rules that Black Pete is a negative stereotype, municipality has to reconsider decision to grant permit  
**Ground of discrimination:** Race/ethnic origin  
**Source:** National court decision  
**Field:** Other

### Content

**Decision of the court:** Last year, 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 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. This debate gained wide attention after it became public that the UN High Commissioner for Human Rights had started an investigation into Zwarte Piet. The results of this research have not yet been published, but a recent decision of the Amsterdam District Court forced the municipality of Amsterdam to reconsider its decision to grant a permit for one part of the festivities: the arrival of Saint Nicholas, attended each year by thousands of children.

Article 3:2 General Administrative Law Act (“Awb”) provides that “when preparing a decision an administrative authority shall gather the necessary information concerning the relevant facts and the interests to be weighed.” Several claimants argued that the municipality of Amsterdam’s decision to grant a permit for the festivities surrounding the arrival of Saint Nicholas violated this provision, because it allegedly did not take the interests of black people into account. The claimants based their claim on various international treaties, Directive 2000/43/EC, the Dutch Constitution, Article 20 of the Treaty on the Functioning of the European Union (TFEU) and Articles 3 and 8 of the European Convention on Human Rights (ECHR). The court however found all of these provisions either non-applicable or found the claimants’ appeal to the provision insufficiently substantiated, except for their appeal to Article 8 ECHR (private life).

The court, with reference to *Aksu v. Turkey* (ECtHR 15 March 2012, appl. nos. 4149/04 and 41029/04), reiterated that Article 8 ECHR puts authorities under a positive obligation to protect their citizens’ private lives (of which an individual’s ethnic identity forms one element). The municipality therefore, given the impact of the



Saint-Nicholas festivities, should have considered whether granting the permit would violate Article 8 ECHR. The court found that the authorities failed this obligation and therefore annulled the decision to grant a permit for the arrival of Saint-Nicholas.

Subsequently, under Article 8:72 Awb, a court has to examine whether, after annulment, the legal consequences of the annulled decision shall be allowed to stand, or whether its judgment shall take the place of the annulled decision. The Amsterdam District Court, relying on statistical data, information provided by the Dutch equality body NIHR and statements made by the claimants, ruled that Zwarte Piet is a negative stereotype of black people and on this basis concluded that the legal consequences of the annulled decision could not be allowed to stand. In addition, the court also found that its judgment could not take the place of the annulled decision, for the authorities have a margin of appreciation in striking a fair balance between the general and individual interests at stake. Thus, the court ruled that the municipality of Amsterdam should reconsider its decision to grant a permit.

The mayor of Amsterdam, Mr. Van der Laan, as well as Zwarte Piet performers, have announced to lodge an appeal against the court's decision. Van der Laan emphasised that Zwarte Piet's appearance would change over the next few years, but added that the discussion about Zwarte Piet should happen in the Dutch community, not in a courtroom. It is yet unknown when the case will be held.

**Internet link source:** The judgment may be found at:  
<http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2014:3888>