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NEWS REPORT

Country:	The Netherlands
Title:	Wilders found guilty of insulting a group and incitement to discrimination on grounds of race
Date:	13 December 2016
Expert:	Titia Loenen
<u>Context</u>	
Issue at stake:	Trial of politician Geert Wilders for his controversial remarks regarding Moroccans
Ground of discrimination:	Race/ethnic origin
Source:	National court decision; District Court of The Hague, 9 December 2016, ECLI:NL:RBDHA:2016:15014
Field:	Other
Applicable law:	Art. 137c and 137d Criminal Code

Content

Case:

In March 2014 Geert Wilders, Dutch Parliamentarian and chairman of the Dutch political 'Party for Freedom' (PVV) asked his followers at a party event whether they would want 'more or less Moroccans' in their own city and in the Netherlands. When the crowd yelled back 'less, less, less!' (*minder, minder, minder*) he responded: 'Then we will arrange it' (*Dan gaan we dat regelen*).

The Public Prosecutor initiated criminal proceedings against Wilders on the basis of art. 137c of the Criminal Code, which prohibits insulting a group of people on grounds of, among others, their race (*belediging van een groep mensen op grond van ras*), and article 137d, which covers incitement to hatred and discrimination on that ground (*aanzetten tot haat en discriminatie*). The punishment requested was a 5000 euro fine.

Decision of the Court: District Court of The Hague, 9 December 2016, ECLI:NL:RBDHA:2016:15014.

The Court found Geert Wilders guilty of insulting a group based on grounds of race and of incitement to discrimination on this ground. Wilders was acquitted of incitement to hatred. The Court did not impose a punishment. The Court arrived at this judgment by first considering that according to established Dutch jurisprudence the legal definition of 'race' is to be interpreted in light of the broad definition of racial discrimination contained in the International Convention on the Elimination of all forms of Racial Discrimination and thus includes any distinction, exclusion, restriction or preference based on 'race', 'colour', 'descent' and ethnic origin'. According to the Court, when Wilders used the term 'Moroccans' he used it as an ethnic designation, referring to their common origin. Thus his wording falls within the scope of the meaning of 'race' in articles 137c and 137d Criminal Code.

The Court then considered that Wilders had singled out an entire group of citizens, which he considers to have less rights to reside in the Netherlands. This is insulting for the entire group. In addition, the Court held that the deliberate, inflammatory character of the way in which Wilders made his statements and the context in which they were made have incited others to discriminate people of Moroccan origin. The Court found insufficient evidence for incitement to hatred against Moroccans. The Court rejected the claim that a conviction would violate article 10 ECHR (freedom of expression) as this freedom is not absolute and is justifiably restricted in the case at hand.

Finally, the Court considered that the most important question at issue was whether Wilders crossed a line and that justice is done by the judgment as such. Consequently, no punishment was imposed. Wilders has announced he will appeal the verdict.

Key points of analysis:

The judgment is important as it draws a line regarding the freedom of speech of politicians regarding the way in which they address the sensitive issue of the position of immigrant groups in Dutch society. It is also important to note that the Court recognized that reference to what may technically be nationality ('Moroccans') was in fact intended to be directed at people of a particular national or ethnic origin, bringing it in the purview of racial discrimination.

Internet link source:

District Court of The Hague 9 December 2016 (case Wilders)
ECLI:NL:RBDHA:2016:15014 (in Dutch only)
<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2016:15014>.

Summary in English:

<https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Den-Haag/Nieuws/Paginas/Wilders-found-guilty-of-insultment-of-a-group-and-incitement-to-discrimination.aspx>.