[NL] Judicial Proceedings against Geert Wilders and “Fitna”

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The movie “Fitna”, created by the Dutch right-wing politician Geert Wilders, has given rise to two provisional judgements in the Netherlands. The first judgement, concerning freedom of speech, turned out to be positive for the politician, while the second resulted in a fine, due to intellectual property infringements.

On 28 March 2008, the movie “Fitna” was broadcast from the Internet site Liveleak.com. The movie included negative remarks about Islam. The prophet Mohammed was called a “barbarian” and Islam and the Koran were linked with fascism. Before the release of the movie, the Dutch Government was concerned that it would trigger acts of terrorism and would insult people in an unlawful manner. However, in accordance with Dutch law, the Government was not able to initiate proceedings against the movie before its release. After the release, the Dutch Islamic Federation (NIF) sued Geert Wilders and requested a prohibitory injunction and a withdrawal of Wilders’ statements.

On 7 April 2008, the Dutch regional court in The Hague rejected the claims of the NIF in a provisional judgement. The regional court considered that Wilders’ views contributed to the public debate on Islam in the Netherlands. A politician must be allowed opportunity to participate in this debate, even outside of parliament, and, if necessary, with sharp language. The regional court referred to the case-law of the European Court of Human Rights concerning Article 10 ECHR, which offers protection to offensive, shocking or disturbing political speech and allows criticism of a religion, as long as it does not incite hatred or violence (see ECtHR 31 January 2006, Giniewski v. France).

Furthermore, the regional court noted that the NFI did not contest the existence of the passages in the Koran used by the politician to support the characterisation of the prophet Mohammed as a barbarian. Neither did the claimants contest the fact that some Islamists do have views, which can be incompatible with the fundamental principles of democracy. Consequently, although Wilders’ observations might have been selective and incomplete, they were supported by sufficient factual background. Moreover, the regional court considered that the term “fascism” must not be interpreted in a narrow way, referring only to the Holocaust and the atrocities committed by the Nazis in World War II. To the contrary, it must be interpreted as a collective term describing ideologies that

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encompass the fundaments of a totalitarian political system, which is not unlawful.

As a result, the regional court did not establish that the statements of the politician, although provocative, incited hatred or violence against Muslims and were consequently unlawful.

The second judgement concerned the use of a picture in the film, depicting the face of a Muslim man with the caption “Mohammed B.”, a reference to the murderer of the Dutch writer Theo van Gogh. In fact, this was not a real picture of Mohammed B., but the picture of the Dutch-Moroccan rapper Salah Edin. The picture, which was used on the cover of Edin’s CD, was an artistic expression intended to confront Dutch citizens with their biased impression thatall Moroccans with a beard and shaved head pose a terrorist threat. Neither Edin nor his photographer had given permission to show this picture in the movie “Fitna”. Wilders admitted that he had made a mistake and asserted that he had, in the meantime, removed the picture.

On 17 April 2008, the regional court of Amsterdam decided that the picture infringed Dutch portrait rights and copyrights. The court took particlar account of the fact that the movie had caused much commotion both in the Netherlands and abroad. The picture was shown in a different context, which meant the rapper would now be associated across the world with the murder of Theo van Gogh and the views of Wilders. This was sufficient to damage the reputation of the rapper and Wilders was accountable for this mistake. Before using it in a movie with such global impact, Wilders should have scrutinized the origins of the picture more carefully. In conclusion, the court decided that Wilders had to pay EUR 3.000, to Edin in advance and EUR 5.000 to his photographer.

However, as already mentioned above, the judgements in question are still provisional. There is still a possibility for the court of first instance to reverse the decision.

Rechtbank ‘s Gravenshage, 7 april 2008, LJN BC8732, (Nederlandse Ilslamitische Federatie (NFI) t. Geert Wilders)

http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=BC8732

Regional court The Hague, 7 april 2008 (provisional judgement), LJN BC8732, (Dutch Islamic Federation (NFI) v. Geert Wilders)

Rechtbank Amsterdam 17 april 2008, LJN BC9778, (Salah Edin v. Geert Wilders)

http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=BC9778

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Regional court Amsterdam 17 april 2008 (provisional judgement.), LJN BC9778, (Salah Edin v. Geert Wilders)

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