[NL] Politician convicted for insulting and discriminatory remarks made in TV interview

IRIS 2016-4:1/21

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On 1 February 2016, the Court of Appeal of Amsterdam sentenced local Dutch politician Delano Felter to pay a fine for making insulting and discriminatory remarks against homosexuals during a TV interview in 2010. The same Court acquitted Felter in 2013, but was ordered to revise the ruling by the Dutch Supreme Court in 2014. The ruling could prove important for future prosecutions for insulting and discriminatory remarks against a specific group (for previous prosecutions, see IRIS 2009-3/103).

In February 2010, Felter was running for the local elections in Amsterdam as leader of a small local party. After a public debate about freedom of speech between party leaders who were running for the local elections, Felter was interviewed by the local TV station 'AT5'. When asked about his opinion regarding homosexuals, Felter spoke about homosexuals as "dirty men", who are "dominant aggressive persons with a sexual deviation" and that "it is normal to hate them". He went on to say that they should be "actively opposed by heterosexuals" and "thrown out of the city". The footage was shown on the local TV-network the day after the interview on 25 February 2010.

Felter was charged with making insulting and discriminatory remarks against a specific group, based on Aarticles 137c and 137d of the Dutch Criminal Code. The defence attorney pleaded for acquittal on the grounds of freedom of speech. He emphasised the importance of freedom of speech for politicians regarding a topic of public debate. The Court of Appeal followed the reasoning of the defence attorney in 2013, ruling that the remarks made by the suspect were "reasonable value judgements". Although these value judgments could "offend, shock or disturb", the Court ruled that they were not "excessive" and were part of the public debate that took place earlier that evening.

The Dutch public prosecutor appealed the decision, and in 2014 the Dutch Supreme Court ruled that the Court of Appeal of Amsterdam had to revise the verdict. The Court of Appeal had not given enough weight to the responsibility of politicians "to prevent that they disseminate statements that conflict with the law and with the principles of constitutional democracy". The Supreme Court stated that "this not only involves statements that incite hatred or violence or discrimination, but also inciting to intolerance".

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In the judgment of 1 February 2016, the Court of Appeal of Amsterdam ruled that the remarks made by Felter were “so contrary to the Constitution and the fundamental principles of the Dutch democratic constitutional state that they are not worthy of protection”. The Court also doubted whether the remarks could be seen as a contribution to a public debate, and if so to which public debate. The Court ruled that the remarks were "gratuitously offensive” and thus not protected by the freedom of speech.

Gerechtshof Amsterdam, 1 februari 2016, ECLI:NL:GHAMS:2016:296

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHAMS:2016:296

Court of Appeal of Amsterdam, 1 February 2016, ECLI:NL:GHAMS:2016:296

Hoge Raad, 16 december 2014, ECLI:NL:HR:2014:3583

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2014:3583

Supreme Court, 16 December 2014, ECLI:NL:HR:2014:3583

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