[NL] Appeal Court judgment on politician's conviction over televised speech and interview

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On 4 September 2020, The Hague Court of Appeal delivered an important judgment on the appeal made by controversial Dutch politician Geert Wilders over his conviction for comments made during a media interview and a televised speech (see IRIS 2017-2/25). Notably, the court of appeal upheld Wilders' conviction for group insult, but set aside his conviction for incitement to discrimination. Similar to the lower court ruling, the court of appeal also decided not to impose a sentence on Wilders. The judgment contains important principles on a politician's right to freedom of expression and its limits.

The case arose in 2014 in the run-up to the Dutch municipal elections. On 19 March 2014, during a public meeting, Wilders asked an audience whether they wanted more or fewer Moroccans. In response, the audience cheered "Fewer! Fewer! Fewer!" numerous times. Wilders then said, "Well, then we are going to take care of that." Both Wilders' statements and the cheering of the audience were recorded and broadcast by the Dutch public broadcaster NOS. Earlier, on 12 March 2014, Wilders had given an interview to a reporter while out in a market, where he stated that certain voters were voting for a "safer, and more social city, and in any case, a city with fewer problems and, if possible, fewer Moroccans." The Dutch Public Prosecution Service charged Wilders with incitement to hatred, incitement to discrimination, and group insult. In December 2016, The Hague District Court convicted Wilders of group insult and incitement to discrimination, but found him not guilty of incitement to hatred. According to the court, Wilders had generalised all Moroccans, making contemptuous and therefore insulting statements. Furthermore, Wilders had incited discrimination by distinguishing Moroccans from other people living in the Netherlands.

In its judgment of 4 September 2020, The Hague Court of Appeal first upheld the conviction for group insult. The court held that Wilders had aimed to discredit all those with a Moroccan background on the sole ground that they belonged to this population group, and that his statements, even if made in the context of a political debate, were "unnecessarily offensive". The court held that the statements had damaged the honor and dignity of those with a Moroccan background, and had contributed to (further) polarisation within Dutch society. Although offensive statements are protected to a certain extent by the right to freedom of expression, it was considered that Wilders had gone too far and was

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thus guilty of a criminal offence. However, in relation to incitement to hatred or discrimination, the court of appeal acquitted Wilders. The court stated that when assessing whether a statement incites hatred or discrimination against people on account of their race, “it is not the statement itself that is central, but its intended effects on others.” Essentially, the court found that there was insufficient proof that Wilders had intended to incite hatred or discrimination, but was rather “seeking political gain” with his statements. Furthermore, in relation to the interview with the reporter, the court held that Wilders had only been describing the voting behaviour of people to whom he had spoken in the market.

Finally, like the district court, the court of appeal decided not to impose a sanction on Wilders. The court held that it had to take account of the special circumstances of the politician, noting that he was a democratically elected representative, and that he had made the statement in that capacity. Crucially, the court of appeal took into account the fact that Wilders had been “threatened” for a long time for expressing his (party) political position, and, consequently, has to live under police protection. As such, Wilders has been “paying a high price for communicating his opinion for years.”

Gerechtshof Den Haag, 4 september 2020, ECLI:NL:GHDHA:2020:1606

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2020:1606

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