

The Trial of Geert Wilders

What is the Geert Wilders case about?

The Amsterdam district court dealt with the facts of the criminal case against Geert Wilders in October 2010. The trial was then postponed after a second challenge of the judges' impartiality. When the substantive portion of the trial will continue is not yet known. This factsheet will address the most important aspects of the criminal proceedings against Geert Wilders.

The Dutch Public Prosecution Service (OM) is prosecuting Wilders for offences against sections 137c and 137d of the Dutch Criminal Code. He allegedly incited hatred and discrimination due to statements made by him in various media outlets about Muslims and their religion. An example is his comment:

'The core of the problem is fascist Islam, the sick ideology of Allah and Mohammed as set down in the Islamic Mein Kampf, the Koran. The texts in the Koran leave little to the imagination.'

(Source: *De Volkskrant*, 8 August 2007. 'Enough is enough, ban the Koran'.)

In addition, Wilders is being prosecuted for defamation of Muslims by comparing Islam with Nazism. For example, Wilders said in the short film *Fitna* that he made in 2008:

'Islam wants to rule, submit and seeks to destroy our Western civilisation. In 1945, Nazism was defeated in Europe. In 1989, communism was defeated in Europe. Now the Islamic ideology has to be defeated. Stop Islamisation. Defend our freedom.'

What happened before the criminal proceedings?

Various people filed criminal complaints against Wilders. These formal complaints did not only come from private individuals but also from organisations active in society, including the Dutch Muslim Broadcasting Association (NMO) and the anti-racism organisation *Nederland Bekent Kleur* ('The Netherlands Shows Its Colours'). The lawyer and Dutch Labour Party (PvdA) politician Els Lucas as well as the lawyers Haroon Raza and Gerard Spong also came forward with criminal complaints against Wilders – also in the name of thirty students at the University of Amsterdam. Originally, the public prosecution service chose not to prosecute. Those who had filed the criminal complaints began a legal process under section 12 of the Dutch Code of Criminal Procedure at the court of appeal in Amsterdam to object to the prosecution's decision. On 21 January 2010, the court of appeal decided to order the prosecution of Wilders. According to the appeals court, Wilders' remarks were marked by one-sided,

strongly generalised formulations with radical tendencies, unceasing repetition and an increasing zeal, which indicates a case for inciting hatred. Moreover, the appeals court was of the opinion that the majority of the comments were defamatory, as they attacked the essential religious dignity of Muslims. According to the court of appeal, by attacking the symbols of Islam, Wilders in fact harmed Muslims themselves. The appeals court also determined that the prosecution is acceptable even in light of the standards in the European Convention on Human Rights. The court of appeal reached this decision because politicians' comments that incite hatred or harm people cannot pass the muster of European standards considering the special social responsibility of politicians. Finally, the court decided that prosecution of Wilders was desirable, as incitement of hatred endangers the democratic rule of law and that it is in the public interest to have a clear boundary drawn in the current social debate. Different critical remarks have been made on this specific argument made by the court.

What is Wilders charged with?

Wilders received the summons on 3 December 2009. He was charged with five counts:

1. defamation of a group (Section 137c, Dutch Criminal Code),
2. incitement to hatred against people, to wit Muslims, because of their religion (Section 137c, Dutch Criminal Code),
3. incitement to discrimination against people, to wit Muslims, because of their religion (Section 137d, Dutch Criminal Code),
4. incitement to hatred against people, to wit non-Western migrants and/or Moroccans, because of their race (Section 137d, Dutch Criminal Code) and
5. incitement to discrimination against people, to wit non-Western migrants and/or Moroccans, because of their race (Section 137d, Dutch Criminal Code).

Objection to the summons

Not long after Wilders had received the summons, he and his lawyer entered an objection against part of the summons. They requested that the district court remove the count of 'group defamation' from the summons. According to Wilders' defence counsel, the public prosecution service could not prosecute Wilders for this, as the Dutch Supreme Court decided in another case in March 2009 that insulting a religion did not automatically mean that the religion's adherents were also insulted. According to his lawyer, Wilders criticised Islam but not Muslims.

On 13 January 2010, the district court considered the objection behind closed doors and rendered judgement later in the day. The court rejected Wilders' objection, as it did not meet the most important condition, i.e. no new facts or new situations were presented. According to the district court, the summons as it was (and still is), fulfils the mandate given to the public prosecution service by the court of appeal.

Pre-trial review

The criminal trial began on 20 January 2010, with a pre-trial review – a public session that aims to ensure that the criminal proceedings move forward as effectively as possible. It was not a *substantive* review of the case. The defence brought forward preliminary defences during the pre-trial review (reasons why the prosecution should be precluded). In addition, the goals of the investigation both for the defendant and the public prosecutor were made known.

On 3 February 2010, the court reached a decision. First, it was determined that the district court in Amsterdam is competent to handle the criminal proceedings against Geert Wilders and that Wilders may indeed be prosecuted. At the request of the defence, three experts on Islam and the Koran would be heard by the examining judge. The defendant Wilders had originally requested to summon 18 witnesses; three of the 18 were eventually permitted. The experts were Mr J.J.G. Jansen, Mr S.R. Admiraal and Ms W. Sultan.

Background information about the witnesses

J.J.G. Jansen

Hans Jansen is an Arabist and commentator; he studied theology and Semitic languages in Amsterdam, Leiden and Cairo. One of his most recent books is the book *Islam for pigs, monkeys, donkeys and other beasts*.

S.R. Admiraal

Simon Admiraal obtained his doctorate as an Arabist and was supervised by Hans Jansen. He is the author of the short book *Arabic Etiquette*. He researches radicalisation in Arabic sermons. He worked in Egypt and later travelled regularly to the Middle East.

W. Sultan

Wafa Sultan was born in Syria and currently lives in the United States where she works as a psychiatrist. She is a passionate anti-Islam activist. After the attacks of 11 September 2001, she entered the political debate on 'Islam and violence'. She became well-known for an interview on the Arabic network Al Jazeera in which she furiously and passionately argued against an imam.

Substantive portion of the trial – first day

On 4, 6 and 8 October 2010, the substantive portion of the criminal trial was held. On the first day, Wilders indicated that he wished to invoke his right to remain silent. The right to remain silent is the right of a defendant not to answer questions from judicial authorities. In spite of this, Wilders requested two minutes to speak to the court. During that time, he declared, among other things: 'I am here today as a defendant. Formally I am the one being tried, but it is the freedom of expression of many people in the Netherlands that is on trial with me. Freedom of expression may not be curbed! That is all I have to say. My lawyer will speak on my behalf regarding all the rest. I invoke my right to remain silent. I do so on the advice of my lawyer, but also because I have already said everything that needs to be said. I do not retract any of it. However, this does not mean that I have said all the things which have been attributed to me.'

The judge noted that Wilders is known in the media as being good at advancing a position and then stepping aside for the ensuing discussion. According to the judge, it appeared as if Wilders was doing the same in this trial. Later during the day, Wilders' lawyer stated that 'it was inappropriate' that the court characterised Wilders' invocation of his right to remain silent as avoiding discussion. On the basis of this remark, Wilders' counsel challenged the entire court. (In this context, a challenge means that the party that is involved in a court case and has good reason to believe that the judge cannot act impartially can request a replacement for the judge. In other words, the person involved can submit a formal challenge of a judge. The challenged judge may choose to recuse him or herself and be replaced. The judge may also choose to adjourn the session and allow the challenge to be evaluated by a different panel of judges. In practice, these requests for replacement of judges rarely occur.)

This challenge by Wilders' lawyer was presented to the panel of judges hearing the objection and was rejected. 'The remarks of the court's presiding judge do not show evidence of bias', according to the judges on the panel that considered the challenge.

Substantive portion of the trial – second day

At the beginning of the second day in court, Wilders' short film *Fitna* was shown. The public prosecutor asked Wilders questions about the film. What preceded the realisation of the film? Do you support the film's contents? What is the goal of the film? Would it also have been possible to achieve this goal in another way? Because of Wilders' invocation of his right to remain silent, he did not respond to these questions.

This day in court also involved the judge reading aloud a large number of written statements. These were the expert statements of the professors of criminal law De Roos and Sackers. These experts were both asked earlier by the prosecution as to whether legal proceedings against Wilders would be feasible. Both considered it improbable that Wilders would be convicted for defamation of a group and incitement to hatred. Sackers explained that the context in which Wilders made his statements removed their criminal liability. De Roos also did not think it likely that Wilders could be convicted. De Roos noted in his statement that Wilders' comments could indeed have been taken to be hurtful and frightening by some people, but this does not make them criminal offences. According to Professor De Roos, it must be proven that a real possibility existed that Muslims were brought into an existentially threatening position because of Wilders' remarks. Only then would there be pressing social need for prosecution. De Roos also pointed out that Wilders' statements were mainly against Islam and not against Muslims. Because of this, according to the professor, Wilders' remarks were not criminal offences.

Afterwards, the affidavits of the witnesses Jansen, Admiraal and Sultan were read aloud. Jansen stated that moderate Islam does not exist: 'There is only one Islam. There are, however, moderate Muslims.' The same could be concluded from the statement of Admiraal. According to him, Islam is aimed at taking over the world: 'The goal is that other religions be subjugated to Islam.' He thinks that Wilders' claim that the Koran incites hatred and murder when taken literally is accurate. Admiraal points to, among other things, the spiteful verses about Jews. Moreover, he argues that the Koran is not free of violence and is therefore violent. Admiraal did not comment about Wilders' remark that the 'tsunami' of an alien culture must be stopped. The psychiatrist Sultan said to the examining judge that all of Wilders' remarks are accurate. She has met Wilders, who is also the leader of the Dutch Freedom Party (PVV), several times and said that she was proud of him for daring to speak the truth. 'I do not deny that I am sympathetic to Wilders.' She thinks that the Koran is even worse than *Mein Kampf* because the latter was a political book and the Koran is a mixture of politics and religion.

Because Wilders did not speak, the substantive portion of the criminal proceedings finished faster than was expected. The court accordingly decided to cancel the last planned session of the trial's substantive phase.

Public Prosecutor's Demand

The public prosecutor's demand was planned for Tuesday, 12 October 2010. This demand is an argument from the Dutch public prosecutor at the court session in which he or she presents reasons as to why the suspect committed the crimes alleged (or did not commit those crimes) and how the prosecutor feels the judge should rule. During this demand the prosecutor can request an acquittal, if, for example, too little evidence exists to convict.

During the demand in Wilders' case, the public prosecution service requested acquittal of the charge of defaming Muslims as a group. This was the first of the five counts that the prosecution was pursuing against Wilders. Wilders' remarks were directed against Islam as a religion, and according to the prosecution, Dutch law does not make that a criminal offence. Only if a statement unmistakably is connected to a group of people who are singled out because of their religion and if negative conclusions were arrived at about people within the group, would a group be discredited and the worth of the group denied. The remarks about Muslims related to count 1 could indeed be offensive for Muslims. Comparisons of the Koran and Islam to *Mein Kampf*, national socialism, fascism and communism by themselves could injure one's feelings. Nevertheless, the injury done to feelings as such does not fall under the category of criminal defamation as intended in section 137c (Dutch Criminal Code) regarding defamatory commentary about a group of people based on race or religion.

Public Prosecutor's Demand – continuation

The second part of the prosecution's demand was presented on Friday, 15 October 2010. In this part, the public prosecutors requested Geert Wilders' acquittal of the incitement to hatred and discrimination. In a thorough argument the prosecutors explained why they decided to recommend acquittal. In essence, the deciding fact was that for the most part, Wilder did not talk about Muslims but instead about Islam. According to the prosecution, criticism of a religion is not a crime. The prosecutors think that some of Wilders' comments were in principle incitement to discrimination against people. The criminal liability for these remarks was nevertheless removed by the fact that Wilders is a politician and his comments were made in relation to the debate in Dutch society. The conclusion of the demand was the public prosecution's request for acquittal of all charges.

Explanation of the claims of the injured parties

On Monday, 18 October 2010, the injured parties were given the chance of explaining their claims. That explanation sometimes was at loggerheads with the court; the judges interrupted the representatives of the injured parties several times because they were attacking the prosecution. According to the court, the injured parties may only speak about their claims and not give their opinion about the course of the trial. The injured parties explained to the court that they suffered emotional injury because of the living environment that Wilders caused to sour. Those who filed the criminal complaint against Wilders alleged that they and their supporters felt injured and harmed in their good reputation and honour.

Defence counsel's statement

The defence presented its arguments on Tuesday, 19 October, and Thursday, 21 October, 2010. Defence counsel Moszkowicz dealt with two general points in his argument. First, he argued that the summons of the prosecution was not admissible (not subject to trial). The defence also dealt with the veracity of Wilders' remarks. In terms of the first point, the lawyer felt that there were formal and material errors made by the court of appeal that originally gave the mandate to prosecute. For example, the indictment sometimes dealt with specific elements of the film *Fitna* and then later the entire film. Charging someone for an entire film could have as a consequence that Wilders is convicted for the comments of Islamic clerics, for example. In terms of the veracity of Wilders' comments, Moszkowicz argued that not all of the headlines in which Wilders was quoted can in fact be attributed to him. For example, in *De Volkskrant* on 7 October 2006, an interview with Wilders was included under the headline 'The Pope is absolutely right'. This headline had been formulated by the newspaper's editors. According to Moszkowicz, Wilders actually said: 'The Pope recently was absolutely right.' The lawyer argued that the word 'recently' was relevant because it provided the context as to what exactly Wilders agreed with.

Again a challenge

On Friday, 22 October 2010 – the last session before the court was to render a decision – the reply of the prosecution was planned. This reply is the answer of the prosecution to the defence's statements. Afterwards, the defence lawyer has the chance to react (rejoinder), after which the final word is given to the defendant. That is the normal course of events. On this day in Wilders' case, things happened differently than they were planned. At the session Wilders' lawyer again formally challenged the judges. The reason for this was that the court did not immediately agree to lawyer's request to hear the witness Hans Jansen who was at court.

A report had appeared in the media in which it seemed that a few days before the trial an appeals justice from the court of appeal spoke to the expert witness Hans Jansen during a dinner. This appeals justice sat on the panel that ordered the public prosecution service to prosecute Wilders in the first place. According to Moszkowicz the

appeals justice could have attempted to influence the witness during the dinner. The lawyer wanted to determine whether or not this was the case by hearing from Hans Jansen. Because the trial judges did not originally agree to this request, in combination with other incidents during the proceedings, Wilders' lawyer felt that this was a case of bias of the judges.

The judges indicated that they would not acquiesce to the challenge. The request for removing the trial judges was then taken up by another panel of judges at an open hearing on 22 October 2010. This panel heard Wilders, his lawyer and the prosecutor and then agreed to the challenge. According to the panel hearing the objection, the trial court's decision not to hear the witness was in conflict with applicable jurisprudence. Because of this, the panel felt that the concern of Wilders' lawyer that the decision of the court demonstrated a certain extent of bias, also in light of earlier incidents, was understandable.

Accepting the challenge of the judges means that the case will begin anew with new judges. On 11 November 2010, the court in Amsterdam announced the new group of three judges who would hear the case. The court also announced that the trial against Wilders would begin again 'in a short period of time'.

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