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The Wilders' trial: what you wanted to know but couldn't ask¹

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Mr Geert Wilders is a Dutch right-wing Member of Parliament. He has been summoned for the Amsterdam criminal court on January, 20th 2010 for inciting hatred and discrimination and insulting Muslims. In his film *Fitna*, just 17 minutes long, he urged banning the Koran, which he calls "the Islamic Mein Kampf". Earlier he called Islam a retarded religion and made several other offensive remarks in newspapers and on several Internet websites.

This is all well known by al Jazeera and by the New York Times, in the United Kingdom, in Jordan and so forth. It is also clear that in the end two deep values are at stake: the freedom of expression and the respect for a religion and its believers. However, even the way we define this contrast is tricky and reason for debate. Some Westerners will state the second problem only in terms of 'freedom of religion'. Some believers might say that it is also about respect for God or Allah.

It is not my aim to deliver an opinion on these or other matters relevant to the case, nor will I provide an answer to the question what the Court will decide. But because of the relevance of the case someone should inform the international public about the factual and legal intricacies. As a criminal law professor at Radboud University Nijmegen and editor of the Dutch Legal Weekly *NJB* I feel obliged to do that.

The outline of my lecture is as follows

- Dutch Tolerance and after
- Muslim immigration and its discontents
- The Wilders Case
- European Convention on Human Rights: freedom of speech
- Religious insults and incitement to hatred

Dutch Tolerance and after

Tolerance has always been a major characteristic of Dutch culture, but recently something seems to have changed. Dutch tolerance came about in a 17th century multicultural society. Religious views that were not compatible with official Protestant doctrine were accepted. Think of the freedom for Jews like Spinoza, or the freedom to hold mass for Roman Catholics as long as it couldn't be seen from outside. In those days a huge amount of immigrants entered the Netherlands, looking for work in agriculture or on board of the ships of the East and West Indian Companies. In Dutch '*polders*' tolerance was forced upon people who were living together and who had to set aside sectional differences to reclaim land from the threatening waters.

Gradually the meaning of acceptance (or toleration) of difference in religious matters has changed into the acceptance of moral ambiguity in general. Against this background the Dutch way of dealing with morally sensitive issues regarding drugs, prostitution and euthanasia can be understood. Statu-

tory prohibitions were softened by legal verdicts describing reasons to defer from punishment and by writing down circumstances in which prosecution wouldn't follow. The prominent way of dealing with such issues is by differentiating between dangerous and less dangerous forms of questionable behaviour, for instance by making a difference between hard and soft drugs. Many endorsed the official forbearance regarding euthanasia, drugs and prostitution. However the positive connotation of the word tolerance changed when it was equalled to governmental leniency and indifference regarding petty crime at the end of the 20th century. In those days – and that didn't change - many complained about rudeness, individualism and a loss of solidarity, tolerance and respect of their compatriots. But there was another reason for complaining: especially the lower educated felt threatened by the last generation of immigrants and their children.

Muslim immigration and its discontents

Notwithstanding an even higher amount of Christian immigrants an impressive increase of Muslim believers took place in the last quarter of the 20th century: there were 54.000 Muslims in 1971 as compared to more than 850.000 in 2006 on a total population of 16.5 million (CBS 2007; SCP report 2008, p. 406). Most Muslims live in the four largest cities: in Amsterdam Islam is reported to have a greater number of followers than any other religion. For people living in the poorer sections the influx was most visible. For the immigrants as well as for the old Dutch it meant that they have to live together notwithstanding the different roots, the different values and the double loyalties of the new Dutch – half of Dutch Turks and 40% of Dutch Moroccans consider themselves to be primarily Turkish or Moroccan.

The new Muslim part of the population found itself confronted with an extremely tolerant culture with very straightforward habits. After a short period of relative civility the relations between Muslims and non-Muslims became strained. The old Dutch pointed to the relatively high amount of petty crimes and street robberies committed by young second generation Dutch-Moroccans; the new Dutch were and felt to be discriminated at school and in work. They were both right, but nothing changed. And then opinion leaders chimed in.

At first, in the 1990's it was hard to state that there was a problem – that wasn't supposed to be politically correct. But Pim Fortuyn, a charismatic politician found a new, populist way of addressing the multicultural issue He wrote a book titled 'Against the islamisation of our culture'. His outspoken ideas were criticized, but especially the relatively uneducated lower classes who felt threatened by the immigrants, thought that for the first time there was a politician who appreciated their problems. It is noteworthy that his voters were not intolerant: they had no problems with a vote for an openly ho-

homosexual politician. Fortuyn was killed by an environmentalist fanatic in 2002 a few days prior to the elections. His political party swept into parliament with 18% of the votes (26 seats), but a year later after new elections it fell back to 8 seats.

The political establishment tried to make the best of it. A Parliamentary Enquiry presided by an MP of the liberal-conservative party VVD really tried to make a difference regarding discrimination etc with a report of January 2004. Nevertheless the tone of the debate shrilled.

The killing of Theo van Gogh and Dutch Jihadism

One of the most outspoken debaters was Theo van Gogh – a distant relative of the famous painter. He directed a short movie *Submission* written by Ms Ayaan Hirshi Ali, then a Member of Dutch Parliament. Hirshi Ali was born in Somalia and raised as a Muslim. The movie was broadcasted on public television on August 29, 2004 and was intended to speak out against the oppression of women in Muslim culture. It did so in a provocative way. In the film Koranic verses could be seen written on the bodies of naked women. It might be hard to understand that Van Gogh, who consequently insulted Muslims, was the first film maker in the Netherlands who made a television series about the love of a Dutch girl and a Moroccan boy: *Najib and Julia*. He worked with petty Muslim criminals to make another movie about their predicament: *Cool!* But he liked provocation and he insulted everyone in the name of free speech. He had also insulted Jews, but spokespersons from this community started criminal procedures successfully. The Muslim community didn't have this kind of spokespersons.

Van Gogh was killed by a Muslim fanatic, Mohammed Bouyeri on November 2, 2004. After shooting Van Gogh the killer tried to decapitate him and pinned an open letter to Ms Hirsi Ali on his chest with a knife (see for more details the book of my cousin Ian Buruma, *Murder in Amsterdam*, Penguin 2006). Bouyeri was part of a group of Muslim radicals, who have been brought before a court of law. Earlier, in 2002, foreign jihadist recruiters were found in the Netherlands. But the Hofstad group with which Bouyeri was involved was 'home grown', although a Syrian preacher seemed to be involved as well. According to the Dutch secret service AIVD in 2007 10 to 20 very loosely organised networks could be described. Most of them are inclined to salafist ideas or to the ideology of Takfir Wal Hijra. It's difficult to assess the amount of Islamist radicals and potential terrorists. According to older estimations of the secret service maybe 5% of the Muslims might feel attracted to radicalism (the same rule of thumb goes for non-Muslims) and less than 10% of these might be inclined to use violence: then we talk about less than 500 persons in the Netherlands. Moreover, the cabinet minister for the interior has stated in 2008 that a strong resistance is growing among Dutch Muslims against radicalising tendencies. Many of them consider Bouyeri to be a lunatic.

That is important. For sure the climate got worse for the Muslim population. In the year 2002 – that is after 9/11 – anti-muslim violence had declined (AIVD 2003, p. 43)! But after the killing of Van Gogh a sharp rise unto 106 violent incidents took place – mostly committed by unorganized ‘Lonsdale kid’.. Most of these were cases of verbal abuse, but physical violence, bomb attacks and arson also took place. Many Muslims felt threatened in their religion and many of them distanced themselves from Bouyeri’s act. This was acknowledged by Dutch politicians. ‘We have to keep social bonds intact’ says Amsterdam mayor Job Cohen.

So from both sides – from the old Dutch as well as the new Muslim Dutch – the urgency was felt not to give in to the obituaries on Dutch tolerance that could be read after the murder.

Why is Geert Wilders a popular politician?

However one man, Geert Wilders, kept stirring the fire. In the weeks following the murder of Van Gogh opinion polls showed the rise in popularity of Geert Wilders, a former MP of the liberal party VVD. At the moment Mr Wilders’ Party for Freedom (PVV) controls 9 of the 150 seats in the Dutch lower house, and in recent European elections it came second only to the Christian Democrats (CDA) of Jan Peter Balkenende, the Netherland's prime minister. I should mention that Mr Wilders has a female competitor, Rita Verdonk. However the softer version of right wing populism of her party TON (Proud of the Netherlands) is loosing ground.

Many have tried to understand the source of Wilders’ popularity and several factors have been mentioned. One notable aspect is his very confronting style of speaking. Even according to Dutch standards his tone of voice is uncivilized: to call a cabinet minister repeatedly ‘raving mad’ is unusual. As Fortuyn had done before Mr Wilders claimed that Islam is ‘retarded’ and ‘incompatible with democracy’. Many of his voters consider these particularly strong terms proof of frankness and clarity. Related might be that Mr Wilders seems to be a martyr for free speech. The proper authorities deemed it necessary to protect Mr Wilders by bodyguards around the clock since late 2004. That is highly unusual in a country where the former Minister of Justice, Mr Donner, after 9/11 kept on visiting the Houses of Parliament by bicycle. This presumed martyrdom seems to attract a growing amount of better educated voters. According to a study of TNS/NIPO in January 2009 13% of his voters might be qualified as such. For them the idea might be unbearable that those who came from elsewhere can determine what they are allowed to say or not – most of them are not in favour of banning the Koran, but they think that Mr Wilders should be free to use his insulting language.

For my purpose of giving a background of the trial it is important to realise that the anti-Muslim vote and the pro free speech voice might be his most successful issues, but for another part of his voters Mr Wilders brings something else. According to Swierstra and Tonkens (2009) he capitalizes on the

loss of self respect by a part of the population that can't cope with the current high pressure meritocracy. Late 20th century 'Greed is good' neoliberalism made everyone responsible for his own life, but many of his voters think that's unfair. It might be up to a certain level. For an unemployed or underpaid worker with an unruly son and a sick daughter it's difficult to maintain some self-respect. Religion is of no avail: only 25% of the population is closely knit in a religious community (SCP Report 2008, p. 411) – according to the polls religious Christian people don't vote for Wilders. Furthermore, there is no clear dominant communal identity in the Netherlands. People identify with the national soccer team, but that is something else than considerations of identity with others in a shared group that influence one's individual self esteem – the Dutch are less than any other people except for the Danes proud of their country or their home town. Those who can't cope with this individualistic culture like to bond with 'people like them' and feel attracted to someone who establishes a group with a common enemy. They prefer bonding to bridging (Putnam 2007)

The mockeries of Theo van Gogh, or for that matter Danish cartoonist Kurt Westergaart might have been expressions of provocateurs from two countries where it is very difficult to be provocative because almost everything is tolerated. But in the eyes of many their sayings and doings were expressing the gut feelings of people without a voice by attacking the elite, the intellectuals and the Muslims. This is why many opinion leaders in the Netherlands have doubts on this trial. It will deepen the gap with the unsatisfied part of the population that considers Wilders to be a martyr. Silencing him might amplify his message.

Mr Wilders is an MP and that makes all the difference if we have to discuss his case. For now one example. A Muslim student once told me: "I can live with the fact that people in the baker's shop look at my scarf with distrust, because I know there are many others who accept me. But it is horrible to listen to an MP saying such hostile and insulting things, knowing that he is speaking on behalf of a whole lot of voters."

The Wilders Case

Fitna, the movie

It all started with a news clip in the Telegraaf on November 27, 2007 that Mr Wilders planned to make a movie. Presumably Mr Wilders had informed the National Coordinator on Terrorism of his plans and later he had talks with two cabinet ministers. Rumour had it that the film would show that the Koran was being shred apart. The news resulted in protests in Pakistan and Egypt and of course in The Netherlands. In January the Minister of the Interior informs the police that it will have to prepare for days of unrest. The Prime Minister

spoke of a crisis and public television declined Mr Wilders' request to broadcast.

On March 27, 2008 the film was shown on the British website www.liveleak.com and shortly thereafter it was shown on a minor private Dutch television network. After three hours three million had watched it.

Throughout the first ten minutes of the film video clips of violence and bloodshed committed by Muslims are interspersed with verses from the Koran (in particular Sura 8: 60, Sura 4: 56, Sura 47: 4, Sura 4: 89, Sura 8: 39). For instance video footage of one of the planes striking the World Trade Centre on September 11, 2001, is juxtaposed with Sura 8:60. Other clips show images of Westerners being beheaded; carnage from the 2005 London transit bombings; and imams making statements like "Allah is happy when non-Muslims get killed." In the second seven minutes the influence of Islam on Dutch society is shown with graphs and newspaper clippings etc. Finally a hand is shown that takes a page from the Koran. The display turns black and a shredding sound is being heard. Then a text is shown that the sound was the shredding of a telephone book, because it is not upon me – says Mr Wilders – but upon the Muslims themselves to tear out resentful verses from the Koran. The film ends with the message from Mr. Wilders that Islam "seeks to destroy our Western civilization" and "has to be defeated. Stop islamisation. Defend our freedom." Then the cartoon of Mohammed with a turban/bomb on his head is shown again with the fuse almost burnt and the ticking of a clock.

After the broadcasting the Prime Minister explicitly said he was sorry the film had been broadcasted: 'We don't see the purpose of this movie, other than hurting the feelings of others'. A parliamentary debate followed and society was in turmoil. Danish cartoonist Kurt Westergaard was angry that his cartoon of Mohammed with the turban/bomb had been used and he distanced himself from the movie. Mr Wilders was obliged to make a re-make without the cartoon, which he published in April.

According to Mr. Wilders the film is meant to demonstrate how verses from the Koran push Muslims towards violence. In October 2009 he said: "I have nothing against Muslims, I know the majority of Muslims in our society are law-abiding people. I have a problem with the Islamic ideology, the Islamic culture because I believe that the more Islam we get in our free societies, the less freedom we will get." His choice of words seems to be careful. During his second visit to the UK – where he was first denied entry – he was asked if he still believed that Islam was a retarded culture. He answered that under some Islamic cultures, "homosexuals are beaten up and killed. Journalists are jailed. That action is retarded."

Prosecution

Dozens of official criminal complaints have been filed. According to Dutch law it is not possible for a civilian to start criminal proceedings on his own. Moreover, it might be mentioned here that in the Netherlands relatively few civil

proceedings are started because of insult and defamation. However, in the end of June 2008 the Public Prosecutor's office in Amsterdam decided not to prosecute Mr Wilders, because of his remarks in several newspapers in 2006 and 2007, nor because of the film *Fitna* or a column on several websites on the Internet. According to the chief prosecutor the reason not to prosecute was that the freedom of expression in the political arena has to be very wide. After the refusal of prosecution by the public prosecutor it is possible to request the Court of Appeals for a reconsideration of the decision of the public prosecutor (article 12 Code of Criminal Procedure). On that basis in July and August 2008 several persons and organisations asked the Amsterdam Court of Appeals for such a decision. The Court decided on January 21st, 2009 that Mr Wilders should be prosecuted.

The Court had to consider not only which crimes would be applicable, but also whether the facts could potentially be proven, whether the proven facts would be liable to punishment, and whether prosecution would be expedient. Although the complaints regarded several crimes, the order said that prosecution would only be demanded because of 'insulting a religious group' (art. 137c Penal Code) and 'incitement of hatred'(art. 137d Penal Code).

Recently, in December 2009, Mr Wilders received a summons of 21 pages, focused on 5 counts. Several pronouncements of Mr Wilders are noted like: "The core of the problem is fascist Islam, the sick ideology of Allah and Mohamed as it is written in the Islamic *Mein Kampf*: the Koran". And: "The figures show. One in five Moroccan youngsters is registered as a suspect by the police. Their conduct is a result of their religion and culture. You can't separate these."

A word on blasphemy

The request to prosecute Mr Wilders for blasphemy (art. 147 Penal Code) was turned down. For Dutch lawyers that came hardly as a surprise. According to the Dutch Constitution church and state are separated and all religious communities enjoy equal treatment. This is not a formality. The state is inclined to keep as much distance as possible towards religion. That often works quite well. The discussions on the Islamic headscarf were less bitter in the Netherlands than for instance in France: they are tolerated by and large. So is ritual slaughter of cattle. But that also means there is little protection for the religious.

The crime of blasphemy was introduced in the Dutch Penal Code in 1932. In 1968 the Supreme Court gave an interpretation of this crime – of the derisive intention of blasphemy in particular - that is so extremely strict, that it is almost impossible to fulfil its requirements. In that case a relatively famous (Roman Catholic) writer had compared God with a donkey. It is highly questionable whether it is according to Dutch law blasphemous to make any derisive comments regarding Jesus or the prophet Mohammed whatsoever. When Theo van Gogh called 'christian dogs' a 'supporters' group of that rot-

ten fish from Nazareth' in 1999 the request to prosecute him was turned down by the Amsterdam Court: there was no reason to prosecute him for insulting a religious group nor for blasphemy (Sackers 2007, p. 107). Although in 2008 the Council of Europe has asked for adequate measures regarding blasphemy as well as religious insult and hate speech against persons on ground of their religion, a majority in the Dutch Second Chamber has asked for striking out art. 147 PC.

Prosecuting an MP

A difficulty was at stake because Mr Wilders is a Member of Parliament. According to our Constitution MP's can't be prosecuted for words they have spoken during an assembly in the Houses of Parliament.

If an MP commits a crime elsewhere he can only be prosecuted after a decision of the Second Chamber (or a decision of the Queen) by the (independent) Attorney General (*Procureur-Generaal*) at the Supreme Court if this crime is considered to be a "crime of a public servant" (*ambtsdelict*). Such a prosecution has never happened.

However if the crime of the MP is not a "crime of a public servant" a public prosecutor is entitled to prosecute the MP on the same basis as any other person. This has happened before, for instance when a Christian MP compared homosexuals with thieves. However there is no doubt that such a prosecutor will only prosecute the MP after consulting with the Prosecutor-General's Office (*Parquet-Generaal*), which is ultimately subordinate to the cabinet Minister of Justice. That's no problem whatsoever if the MP was arrested for drunken driving or the likes. It is something else if the alleged crime has directly to do with the political work of the MP – that was the case here. In such cases the suspect will of course call the prosecution a political inspired prosecution. In my opinion this consideration must have had some influence on the decision of the prosecutors not to prosecute. From a democratic point of view it is safer if an independent court obliges the public prosecutor to prosecute that if a political actor like the Minister of Justice would have been responsible for such a decision.

European Convention on Human Rights: freedom of speech

Most of the discussions regarding the Wilders case focus on the tension between freedom of speech and the possibility to criminalize insult and incitement of hatred. Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those which offend, shock or disturb; such are the demands of pluralism, tolerance and

broadmindedness, without which there is no “democratic society”. Although freedom of expression may be subject to exceptions, they “must be narrowly interpreted” and “the necessity for any restrictions must be convincingly established”. Furthermore, the Court stresses that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on the debate of questions of public interest (ECHR 8 July 2008, Vajnai). While freedom of expression is important for everybody, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of expression of an opposition member of parliament, call for the closest scrutiny on the part of the Court (ECHR 23 April 1992 Castells). However politicians have the responsibility to abstain from pronouncements that can lead up to intolerance (ECHR 6 July 2006, Erkanban) or that are unnecessary grievous (ECHR 21 March 2000, Wabl). In the Norwood decision a regional organiser of the right wing British National Party was convicted and his plea at the ECHR was found inadmissible:

“The poster in question in the present case contained a photograph of the Twin Towers in flame, the words “Islam out of Britain – Protect the British People” and a symbol of a crescent and star in a prohibition sign. The Court notes and agrees with the assessment made by the domestic courts, namely that the words and images on the poster amounted to a public expression of attack on all Muslims in the United Kingdom. Such a general, vehement attack against a religious group, linking the group as a whole with a grave act of terrorism, is incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination. The applicant's display of the poster in his window constituted an act within the meaning of Article 17, which did not, therefore, enjoy the protection of Articles 10 or 14 (ECHR 16 November 2004, Norwood inadmiss.).

And in ECHR 16 July 2009, Feret it was accepted that a Belgian right wing politician was convicted with similar considerations:

La Cour reconnaît que le discours politique exige un degré élevé de protection, ce qui est reconnu dans le droit interne de plusieurs Etats, dont la Belgique, par le jeu de l'immunité parlementaire et de l'interdiction des poursuites pour des opinions exprimées dans l'enceinte du Parlement. La Cour ne conteste pas que les partis politiques ont le droit de défendre leurs opinions en public, même si certaines d'entre elles heurtent, choquent ou inquiètent une partie de la population. Ils peuvent donc prôner des solutions aux problèmes liés à l'immigration. Toutefois, ils doivent éviter de le faire en préconisant la discrimination raciale et en recourant à des propos ou des attitudes vexatoires ou humiliantes, car un tel comportement risque de susciter

parmi le public des réactions incompatibles avec un climat social serein et pourrait saper la confiance en les institutions démocratiques

Religious insults and incitement to hatred

The Penal Code of 1886 and the Code of Criminal Procedure of 1926 still are at the basis of criminal law in action, but the influence of the case law of the European Court of Human Rights is tremendous. Dutch criminal procedure can only be understood in relation to the European Convention of Human Rights. The Netherlands have a monistic system which means that international law applies within the national legal order and the courts are competent to apply treaty law. That's why ECHR case law trumps the law in the Codes. One would think that criminal liability in the Wilders case is easy then. However, the aforementioned ECHR case law does not show how the Wilders case will end.

Dutch law on religious insults

On March 10, 2009 LJN BF0655 the Supreme Court had to interpret the crime of insulting a religious group. It stated that art. 137c PC only penalizes 'offensive speech regarding a group of persons because of their religion' and not 'offensive speech regarding a religion, even if that happens in such a way that the believers feel offended in their religious feelings'. Criminal liability only exists for needless offensive speech regarding a group of people because they adhere a certain religion. All criticism – even fierce criticism – of ideas or the conduct of those who live in a group is outside the scope of article 137c PC. This article demands that the speech act is unmistakably related to a certain group of people who are defined by their religion. The decision of the Court of Appeals in this case was therefore wrong regarding a conviction because of a poster with the words 'Stop the cancer that is called Islam'.

With this decision the Supreme Court seems to have chosen for an originalist interpretation of the article (that came in 1934 in the Penal Code in order to fight anti-semitism). In 1969 the Second Chamber had introduced a change in the article and then it said: "Criminal liability will only be accepted because of an attack on the self-respect or because of discrediting a group because of race or religion". The decision of 2009 is not unique. In cases of 2001 and 2003 regarding acquittals of people who for religious reasons had insulted homosexuals the interpretation of the Supreme Court had been as strict as in this case. In these earlier cases the Supreme Court considered the offensive communications to be necessary in the public debate – it depended on the context whether a comparison of homosexuals and thieves was to be accepted. The difficulty of the 2009 decision is that the contextual interpretation

is not at stake: even unnecessary communications seem to be out of the scope of art. 137c PC.

In my opinion the decision of the Supreme Court seems to bypass the line of reasoning by the ECHR in *Norwood* and *Feret*. Of course it is legally possible that the text 'Islam out of Britain – protect the British people' is forbidden in England with the approval of the ECHR while 'we have to stop the tsunami of islamisation' would be accepted in the Netherlands because our definition of insult is different from the British definition and we like free speech even more than they do. But it doesn't feel right that because of this interpretation the rallying cry of football supporters ' Hamas, Hamas, Joden aan het gas' (Hamas, Hamas, let's gas the Jews) could be accepted as being an insult according to a Supreme Court decision of 15 September 2009, because that one is directed at persons. Mr Wilders' pronouncements seldom are. The decision of March 2009 seems to make a conviction more difficult. The lawyer of Mr Wilders has of course welcomed this decision and used it in order to criticize the decision of the Amsterdam Court to order the prosecution of his client. It will definitely be a big issue whether the words of Mr Wilders can be seen as an attack on the self esteem of Moroccan Muslims or not.

Dutch law on inciting hatred, discrimination or violence

With the crime of inciting hatred etc. Dutch courts have fewer experiences. It is interesting to realise that in a case in 1999 the Supreme Court has decided that a certain pronouncement was not considered to be inciting on its own, but it did in the context of the cries of others in a public meeting. According to the decision of the Amsterdam Court of Appeals in the Wilders case the accumulation of the invective words is important. That line of reasoning seems to be correct.

Conclusion

While for late 20th century Dutch people tolerance was a prerequisite for freedom and peaceful coexistence, in the 21st century tolerance could be equated with something negative: for many Muslims it is a prerequisite for blasphemy as well as other immoral activities and for the old Dutch it is equated with governmental indifference.

Of course, the Dutch are not unique in this respect. The influx in the European Union brought about tensions - think of the 'cartooncrisis' in Denmark in 2005 and recently in 2009 we have seen the Swiss vote for a ban on mosque minarets.

In the Netherlands the big issue – not only for the lawyers but also for the electorate - is the tension between free speech and respect for Islam. Until now the line of reasoning that the freedom of religion demands a certain pro-

tection hasn't been used widely, undoubtedly because of the strict Dutch separation of Church and State.

Especially after the killing of Theo van Gogh the general climate for the Muslims became worse. Especially Mr Wilders' strong words are stirring up the fire for a loudmouthed unsatisfied part of the population and for those who defend freedom of expression without acknowledging the possibility of accepting temperance by criminal law. The interviews of Mr Wilders in 2006 and 2007 as well as his film *Fitna* are without a doubt insulting for many. An important question is however, whether they are also insulting in a legal sense. According to the ECHR there is presumably no problem when the Dutch court convicts Mr Wilders. Question is whether the Dutch judges think that's a fitting interpretation of the law. And a further question is whether a strict interpretation of Dutch law would be sufficient with respect to the international treaties and the Council of Europe resolutions to fight insulting and hate inspiring behaviour because of religion.