

Dutch prosecutors reject calls for criminal tobacco case

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Benedicte Ficq, the lawyer who filed the criminal complaint against the tobacco giants, poses for the photographer in Amsterdam, Netherlands Thursday Feb. 22, 2018. Dutch anti-smoking activists vowed to fight on Thursday after prosecutors

rejected their call for a criminal investigation into four major tobacco companies on charges including attempted murder or manslaughter, on the grounds that such a case would be unlikely to lead to a conviction. Ficq said she will now petition an appeals court to order prosecutors to investigate. (AP Photo/Aleksandar Furtula)

Dutch anti-smoking activists vowed to fight on Thursday after prosecutors rejected their call for a criminal investigation into four major tobacco companies on charges including attempted murder or manslaughter, on the grounds that such a case would be unlikely to lead to a conviction.

The decision was a blow to what Dutch anti-smoking organizations had hoped would be a new legal front in their battle against the tobacco industry, which they argue is criminally liable because it knowingly sells products that can cause deadly disease.

Benedicte Ficq , the lawyer who filed the criminal complaint against the tobacco giants, said she will now petition an appeals court to order prosecutors to investigate.

"We won't give up the fight," said Anne Marie van Veen, a lung cancer patient who is one of the complainants.

Van Veen said she might not survive long enough to see the outcome of the appeal, but that she would "keep fighting for my children and I hope many will do that with me."

Ficq filed what she called a world's-first criminal complaint in 2016 seeking a prosecution on behalf of Van Veen, another ex-smoker and a youth smoking prevention organization. Hospitals, doctors and other

groups later joined the call.

Ficq had called for the prosecution of Philip Morris, British American Tobacco, Japan Tobacco International and Imperial Tobacco Benelux.

The complaint alleged that the tobacco companies were liable because of "the large-scale, decades-long and ongoing production and sale of addictive tobacco products in the Netherlands." It also alleged that tobacco companies deliberately misled laboratory tests to gauge levels of tar, nicotine and carbon monoxide.

But the Dutch Public Prosecution Service, or DPPS, said in a written statement that they see no prospect within current laws of a conviction.

"Smoking is deadly and the design of cigarettes does add to this but according to the DPPS, the tobacco manufacturers have not acted in violation of either the law or the current regulatory framework," the service said in an English-language statement.

Prosecutors added that tobacco companies cannot be held criminally liable for the deaths or ill health of smokers because smokers knowingly expose themselves to health risks.



This is a Monday, July 24, 2017 file photo of the logo for British American Tobacco appears above a trading post on the floor of the New York Stock Exchange. Dutch prosecutors said Thursday Feb. 22, 2018, they will not open a criminal investigation into four major tobacco companies on charges including attempted murder or manslaughter, saying such a case would be unlikely to lead to a conviction. Amsterdam lawyer Benedicte Ficq had called for the prosecution of Philip Morris, British American Tobacco, Japan Tobacco International and Imperial Tobacco Benelux. (AP Photo/Richard Drew/File)

"Not everyone starts to smoke and there are people who do manage to stop," the DPPS said. "This element of freedom of choice in the chain of cause and effect means that the negative consequences of smoking cannot be attributed to the tobacco manufacturers under criminal law."

An Amsterdam hospital that was among those calling for a prosecution said 55 people die each day in the Netherlands as a result of smoking.

Rene Medema, chairman of the board of the Antoni van Leeuwenhoek hospital, said the hospital also would discuss the option of asking a judge to order prosecutors to launch an investigation.

"We see the damaging consequences of smoking every day in our patients," Medema said in a statement. "We have to make clear to the tobacco industry that their way of working is unacceptable."

When Ficq filed her request, the Dutch association of cigarette and tobacco makers labeled it a publicity stunt and said it was confident that "the sale of a legal, heavily regulated product is not a crime in the Netherlands."

Abe Brandsma, a Dutch spokesman for British American Tobacco, said the company agreed with the prosecutors' decision.

"Our products comply with all applicable regulations and are brought to the market in a completely legal manner," he said.

Philip Morris, the company behind the Marlboro brand, also said it welcomed the decision, adding that it hoped substitute products will soon replace cigarettes entirely.

"We agree that smoking causes diseases and believe that addressing the harm of smoking is better served by giving the millions of consumers smoke-free products that are a much better choice than cigarette smoking," it said in a statement.

The Dutch case was being monitored by other anti-tobacco groups looking at similar action.

British group Action on Smoking and Health, known as ASH, is also looking at a criminal case against cigarette makers.

Van Veen said that the case had already won a key victory: "That is that an unprecedented discussion has started in society."

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