[NL] Judgment on Regional Televisions' Refusal to Broadcast an Advertisement

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On 25 January 2005 the Rechtbank Utrecht (District Court of Utrecht) concluded in summary judgment that two regional television broadcasters were not obliged to broadcast a television commercial.

The plaintiff in the case was the author of a book entitled “Judas”, which he described as an erotic thriller. The book contains three stories that all address the relationship between Christianity and homosexuality. The plaintiff developed a television commercial to promote his book. The commercial shows images of Jesus and Judas while a voice-over poses a number of questions on the relationship between Christianity and homosexuality, such as “Where does Christianity's hatred against homosexuals come from?” and “Was Jesus homosexual?”. Then the plaintiff's book is shown and the voice over says: “Read Judas, the exciting erotic thriller by [the plaintiff]”.

Two regional television broadcasters, RTV Utrecht and Omroep West, refused to broadcast the commercial. Both broadcasters claimed they had a right to refuse a commercial because of its content, nature, import or form. The author claimed in interlocutory proceedings that both broadcasters should be ordered to broadcast the commercial, failing which they should have to pay a fine.

The plaintiff stated that the broadcasters did not have legitimate reasons to refuse to broadcast the commercial, as the commercial was not unnecessarily grievous, no shocking pictures were shown and no offensive expressions were made. He stated that the refusal violated his right of freedom of expression as stated both in Article 7 of the Grondwet (Dutch Constitution) and in Article 10 of the European Convention on Human Rights (ECHR). Also, he claimed that a regional broadcaster, like the government, serves a public interest, which should be taken into account when the broadcaster carries out private agreements. Therefore, according to the plaintiff, both broadcasters have the duty to serve the public interest as regards their advertisement contracts.

The plaintiff did not succeed in his claim. According to the judge, broadcasters are in principle free to refuse advertisements or programmes. The judge considered that it was not likely that the broadcasters in question had a monopoly position as providers of broadcasting time for advertising. The plaintiff could offer his commercial to other regional broadcasters. Therefore his freedom of expression

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had not been restricted. Also, the judge did not accept the plaintiff's argument that he had the right to have his commercial broadcast under Article 7 of the Grondwet because of the non-commercial nature of the advertisement. Indeed the commercial aimed at promoting the sale of the book and thus served the interests of the advertiser.Finally, the plaintiff's claim that the broadcasters were obliged to act like the government in private contracts was rejected. The judge considered that there was no reason why these broadcasters, that fulfil a public task, should not be allowed to pursue a programme policy. The judge stated that the television channels in question do not have to function as a platform for anybody who wishes to express their opinion.

Voorzieningenrechter Rechtbank Utrecht, 25.01.2005, Plato Publishers v. RTV Utrecht, Omroep West & Samenwerkende Omroepen Midden-Nederland, LJN No: AS3745

http://www.rechtspraak.nl/

District Court of Utrecht, Summary judgment of 25 January 2005, Plato Publishers v. RTV Utrecht, Omroep West & Samenwerkende Omroepen Midden-Nederland, LJN No: AS3745

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