[NL] Amsterdam Court of Appeal Adjudicates on Regulatory Clause which Prohibits Satellite Dishes on Vacation Homes

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On 29 September 2009, the *Gerechtshof Amsterdam* (Amsterdam Court of Appeal) finalised its interlocutory judgment of 24 February 2009. The court found a regulatory clause prohibiting the placement of satellite dishes on vacation homes to be unfair and unreasonable under Dutch private law. The final judgment came after a separate hearing with the parties. In that hearing, the parties were given the opportunity to give their opinions on the question of whether in this case the internet could function as a satisfactory alternative to satellite dishes.

The case involved a dispute between a company that owns and rents out holiday cottages and a cooperative association of homeowners of which the company was a member. The association requires its members to sign articles of association, one clause of which prohibited all use of satellite dishes in a recreational park where the members' houses are located. The company in question irregularly put up satellite dishes on the houses which were usually used by foreigners. For this, the association fined the company EUR 12,552.07.

The company, i.e., the appellant before the Amsterdam Court of Appeal, claimed that the application of the prohibition was unfair and unreasonable in the sense of Article 2:8 of the Dutch Civil Code, while also invoking Article 10 of the European Convention of Human Rights (ECHR).

In contrast to the court of first instance, the Amsterdam Court of Appeal opined in its interlocutory judgment that the company could rely on the protection offered by Article 10 ECHR. This protection weighs in on the evaluation of the interests involved in this case, which is based on Article 2:8 of the Dutch Civil Code. This statutory provision of Dutch private law contains an open norm demanding regulatory measures as issued by the association to be fair and reasonable.

According to the Amsterdam Court of Appeal, the interests of the association do not outweigh the interests of the company and the occupants of the houses. The right to receive information as protected by Article 10 ECHR was especially decisive. The court therefore referred explicitly to the judgment of the European Court of Human Rights in the case of Khurshid Mustafa and Tarzibachi v. Sweden (see IRIS 2009-4: 2/1).

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The prohibition in the rules of the association stated that its main purpose was to maintain the harmony of the landscape in the recreational park. In this case, it was clear that the satellite dishes could hardly be seen while mounted. The further interest of the association in applying the prohibition in order to avoid future discussions with other members on the permissibility of satellite dishes was not significant enough, according to the court, to justify an interference with the right of the company and third parties occupying the houses to receive information.

The court set aside the claim of the association that sufficient alternatives to the use of satellite dishes to receive information that could be found on television through cable, radio, newspapers or the internet.

LJN: BH6413, Gerechtshof Amsterdam, 104.004.334

Interlocutory Judgment of the Amsterdam Court of Appeal, 24 February 2009, LJN: BH6413, 104.004.334

LJN: BL6547, Gerechtshof Amsterdam, 104.004.334

Judgment of the Amsterdam Court of Appeal, 29 September 2009, LJN: BL6547, 104.004.334

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