[BE] Brussels Court of Appeal Confirms Flemish Council of Journalism May Issue “Decisions” Concerning Non-Professional Journalists

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In 2009, the Flemish Council of Journalism (Raad voor de Journalistiek), a self-regulatory body that deals with questions and complaints concerning journalistic practice, issued its “decision” on a complaint against a journalist and editor of an online subscription newsletter. The complaint concerned a significant number of articles, which accused the complainant of theft, threats, social fraud and animal cruelty. Aside from the fact that the complaint was upheld due to infringements of the principles of impartial gathering of information, distinguishing between the description of facts and comments and respect for dignity and privacy, an interesting element concerned the claim of the journalist in casu that the Council of Journalism was not competent to issue a decision with regard to his practices, given that he is not a professional journalist and not a member of the Flemish journalists association. Although the Council of Journalism refuted this claim, the journalist had already launched a request in court to prohibit the publication of the decision on the website of the Council, which was granted in June 2009. Five years later, on 28 October 2014, the Brussels Court of Appeal issued its decision on the merits of the case.

Referring extensively to the principles related to the right to freedom of expression laid down in Article 10 of the European Convention on Human Rights, the Court of Appeal confirmed that the task of the Council of Journalism is to promote and defend journalistic ethics and formulate guidelines for journalistic practice. The Council does not impose sanctions, but expresses an opinion on such practices. The Court considered that a restriction on the freedom of expression of the Council would not meet the criterion of being necessary in a democratic society (as included in the second paragraph of Article 10). In addition, the importance of self-regulation in the field of journalism is confirmed, with references to resolutions adopted on this issue by the Council of Europe. Accordingly, the Court of Appeal was of the opinion that “decisions” by the Council of Journalism fall within the scope of freedom of expression and that there is no cause for restricting this freedom in the circumstances of the case. It added that the fact that the journalist in question is neither a professional journalist nor a member of the journalist association is irrelevant and the Council can exercise its fundamental right to issue its opinion on the journalistic quality of his articles. This also extends to publicly disclosing this opinion. The Court concluded by emphasising that, to the extent that the journalist may claim an absolute right to

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freedom of expression, which he may exercise by means of his publications, the Council of Journalism can also rely on that same fundamental right to formulate and circulate an opinion. The decision is an important one that confirms the broad competence of the Council of Journalism, including for online expression and non-professional journalists. The Council of Journalism published its original 2009 decision on 14 November 2014.

Beslissing van de Raad voor de Journalistiek, Wuyts v. Verbeeck, 9 juli 2009

http://www.rvdj.be/sites/default/files/pdf/0823%20%20Beslissing%20Wuyts%20t%20%20Verbeeck%202009.07.09_3.pdf

Decision of the Council of Journalism, Wuyts v. Verbeeck, 9 July 2009

Hof van beroep Brussels, Verbeeck v. Vereniging van de Raad voor de Journalistiek, 28 oktober 2014, no. 2010/AR/2200

http://www.rvdj.be/sites/default/files/pdf/Arrest-Hof-van-Beroep.pdf

Brussels Court of Appeal, Verbeeck v. Vereniging van de Raad voor de Journalistiek, 28 October 2014, no. 2010/AR/2200

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