[NL] Court Rejects Application to Prevent Broadcast of Programme on Healthcare Inspectorate

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In a judgment on preliminary relief proceedings on 16 January 2015, the District Court of Midden-Nederland refused to prevent a television broadcast that might harm someone's personal and business interests. The case demonstrates how Dutch courts balance freedom of expression and the right to respect for privacy. The plaintiff worked as a physiotherapist and was convicted for possessing child pornography in 2007. The defendant intended to devote attention to the plaintiff's conviction in a television broadcast about the Dutch Health Care Inspectorate. The plaintiff claimed that the defendant should be prevented from paying attention to his conviction in any way.

The Court noted that the plaintiff had a right to respect for his honour and good name, which conflicted with the defendant's right to freedom of expression. Article 7 of the Constitution of the Kingdom of the Netherlands and Article 10 of the European Convention on Human Rights (ECHR) protect the right to freedom of expression. Article 10, paragraph 2 of the ECHR states that the exercise of the right to freedom of expression may be subjected to restrictions as are prescribed by law and are necessary in a democratic society for the protection of the reputation or rights of others. Under Article 6:162 of the Dutch Civil Code, a violation of someone else's right is a tortious act. Therefore, a judicial order to prevent the broadcast would be "prescribed by law", if the contested broadcast could be considered a tortious act. In that case, to decide whether or not the restriction would be "necessary in a democratic society", the judge had to balance the interests of the plaintiff and the defendant.

The Court considered that in principle both interests have the same weight and that the particular circumstances of the case should be decisive. On the one hand, the Court recognised the plaintiff's interest not to be in the news in relation to a conviction dating from 2007. On the other hand, the Court found that the defendant had an interest in paying attention to the functioning of the Dutch Health Care Inspectorate in general. In particular, the defendant intended to expose an abuse in the inspection system. The broadcast would show that in the Netherlands there is no effective procedure to inform the inspectorate in cases where a healthcare professional is convicted and where the conviction might affect his performance. In addition, the Court attached importance to the fact that the inspectorate recently started an investigation into the plaintiff's case. The Court considered that, with regard to the topic and the content of the broadcast,

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there was no ground to impose a preventive ban on the broadcast. It did not matter that renewed attention for the plaintiff's conviction could cause additional harm to his personal and business interests, as "after all, his right to be left alone after his criminal conviction is not absolute".

Rechtbank Midden-Nederland, 16 januari 2015, Karl Noten tegen KRO-NCRV B.V., C/161384710 I KL ZA 15-11

http://www.boek9.nl/files/B92015/B920150116_Rb_Midden-Nederland_Karl_Noten_v_KRO-NCRV.pdf

Midden-Nederland District Court, 16 January 2015, Karl Noten v. KRO-NCRV B.V., C/161384710 I KL ZA 15-11

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