# [NL] Dutch public broadcaster ordered to alter report on fraud allegations

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On 5 February 2015, the District Court of Amsterdam partly upheld a complaint against the Dutch public broadcaster Avrotros. The proceedings had been initiated following the 11 November 2014 episode of the Dutch television show “Opgelicht” (“Swindled”), in which attention was paid to a large scale insolvency fraud allegedly committed by the plaintiff and the company for which he worked. During the episode concerned, the plaintiff’s name was mentioned, an image of his driver’s licence was shown and words of an accusing nature were used.

As an immediate consequence, the plaintiff started preliminary relief proceedings against the Dutch public broadcaster Avrotros. He claimed that all media coverage managed by Avrotros wrongfully mentioning his name should be removed. Furthermore, he demanded that Avrotros make a rectification. Avrotros argued, in short, that the episode at issue fell within the scope of its freedom of expression and that this right should not be limited in the case at hand. In its argument, Avrotros emphasised Opgelicht’s role as public watchdog, stating that the goal of the episode concerned was to inform and warn its audience with regards to insolvency fraud.

The Court balanced the freedom of expression of Avrotros against the plaintiff’s right to the protection of his reputation. The Court started by stating that the episode’s theme was socially relevant. It then considered four main factors in its balancing test. First, the content of the programme, which suggested that crimes were committed by the plaintiff, even though these allegations did not find sufficient support in the available facts. Secondly, the grave consequences of accusing a person of insolvency fraud on television, as well as on the internet. Thirdly, Avrotros’ regular modus operandi is to partially anonymise all references to a person whenever that person is suspected by the public prosecutor. Avrotros refrained from doing so in the current case, however. Finally, Avrotros did not hear the plaintiff before the episode originally aired.

Taking all of the above-mentioned circumstances into consideration, the Court concluded that the plaintiff was wrongfully exposed to suspicions and unwanted publicity. As such, the Court ordered Avrotros to replace the plaintiff’s name and surname with his initials on Avrotros’ website. Additionally, the plaintiff should be made unrecognisable in the episode that was uploaded to Avrotros’ website. However, the Court rejected the plaintiff’s claim for rectification, arguing that the

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measure was not proportionate. It substantiated that claim by stating that the image of the plaintiff's driver's licence was only showed vaguely and briefly, that the plaintiff's surname was only mentioned once and that the possibility should be considered that Avrotros' allegations are, in fact, correct.

***Rechtbank Amsterdam, 5 februari 2015, ECLI:NL:RBAMS:2015:740***

http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2015:740

*District Court Amsterdam, 5 February 2015, ECLI:NL:RBAMS:2015:740*

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