[NL] Court of Appeal overturns judgment against broadcaster for criticising telecom provider

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In its judgment of 24 April 2015, the Dutch Court of Appeal of Amsterdam refused to declare an item about a telecom provider a tortious act, even though it was in bad taste. A Dutch broadcasting organisation called BNN-VARA, the appellant in this case, broadcast a show in which it devoted attention to various complaints about the telecom provider Pretium, the respondent. The show started with an item that told the story of an old lady who had been unable to use her telephone line in the final weeks of her life, because of a failure of her telephone company. Sober music and shots of one of the old lady's family members who was visiting her grave accompanied the story. The court of first instance agreed with the telecom provider that this particular item was unlawful and that the broadcaster had to pay damages. Subsequently, the broadcaster filed an appeal.

The broadcaster's right to freedom of expression was in conflict with the telecom provider's right not to be subjected to publications that, due to unfounded or light-hearted allegations therein, would violate its right to respect for its honour and good name. Such a publication would be a tortious act within the meaning of Article 6:162 of the Dutch Civil Code. The Court considered that the question which of those rights outweighed the other depended on the facts of the case and on the Supreme Court's judgment of 24 June 1983 (Gemeenteraadslid). In that regard, the Court found significant the press' task to impart information of public interest and its task to act like a public watchdog. Furthermore, the Court attached importance to the right of the public to receive information.

In contrast to the court of first instance, the Court of Appeal concluded that the broadcast was not unlawful. Correspondence between the telecom provider and the old lady proved that the former had not disposed of its duties toward the latter in securing a working telephone line. Therefore, the fault-finding reporting was sufficiently supported by the facts of the case. The Court added that the fact the item was in bad taste did not change its conclusion. It rejected all of the telecom provider's claims.

Hof Amsterdam 24 april 2015, ECLI:NL:GHAMS:2015:1515 (Omroepvereniging BNN-VARA/PRETIUM B.V.)

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