[NL] Court of Appeal rejects Ryanair's appeal over broadcaster's programme

IRIS 2015-10:1/23

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On 14 July 2015, the Amsterdam Court of Appeal upheld an earlier District Court decision that critical statements made in a Dutch television programme regarding the airline Ryanair were not unlawful.

Around the end of 2012, the Dutch public broadcaster KRO aired two episodes of a programme in which the business practices of Ryanair were said to endanger flight safety. More specifically, it was said that pilots were encouraged to fly with the absolute minimum of fuel and that they felt obliged to fly whilst feeling unwell. KRO also published press releases preceding the broadcasts.

Ryanair appealed the Amsterdam District Court's judgment, stating that the statements were lawful. Their main complaint is a lack of causality and a lack of factual basis regarding the statements. They also complained about the anonymity of the pilots in the interview.

The Court of Appeal agreed with the lower court that enough research has been done by KRO by conducting interviews with Ryanair pilots and consulting documents, and that these sources give enough factual basis to support the statements made by KRO. The Court refused to accept Ryanair's argument that facts may only be reported after they have been irrefutably proven by solid research, or that all the research needs to point in a certain direction. The Court stated that accepting these kinds of arguments would make news reporting impossible.

The Court found that the reason for the anonymity of the pilots (i.e. fear of sanctions) is justified (for an earlier ruling on the anonymous sources, see IRIS 2013-7/20). The identity of the pilots was checked by KRO. Ryanair argued that their employees have a duty not to disclose information following ECtHR case law on whistleblowers (ECHR 12 February 2008, Guja v. Moldova) (see IRIS 2008-6/1). The Court decided that this case law was irrelevant as it concerned the special duty of civil servants towards the government. Such a special duty cannot be said to exist for pilots.

Ryanair also complained that the opinions of four pilots could not warrant factual statements. The Court dismissed this. Considering the importance of flight safety and the role of the press as public watchdog, KRO had the freedom to make the

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statements, despite the fact that they were based on the subjective perception of four pilots.

Procedurally, Ryanair complained that their adversarial right had been breached by KRO. The Court stated that the right to be heard is not absolute, and that Ryanair had been given enough opportunity to respond. How and whether KRO dealt with the response given is in principle a matter of journalistic freedom.

Gerechtshof Amsterdam, 14 juli 2015, ECLI:NL:GHAMS:2015:2887

http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHAMS:2015:2887

Amsterdam Court of Appeal, 14 July 2015, ECLI:NL:GHAMS:2015:2887

Rechtbank Amsterdam, 16 april 2014, ECLI:NL:RBAMS:2014:2003

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2014:2003

Amsterdam District Court, 16 April 2014, ECLI:NL:RBAMS:2014:2003

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