[NL] Court rules on lawfulness of allegations made against psychiatrist in investigative programme

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On 25 November 2015, the District Court of North-Netherlands ruled on a case about the lawfulness of a television programme in which negative statements about a psychiatrist were made. It decided that the broadcaster did not act unlawfully, but that one of the interviewees - an ex-colleague of the psychiatrist - did make an unlawful allegation.

The broadcaster EO aired an episode of a programme in which the malpractice of a psychiatric facility was investigated, and more specifically the conduct of the claimant in his capacity as leading psychiatrist. Several interviewees gave negative accounts of the claimant's practice, amongst them a former colleague of the claimant. Because of unrest at the facility, the claimant was forced to resign, and he was dismissed from his subsequent employment after the broadcast.

The Court decided that EO did not act unlawfully by making and broadcasting the programme, or by publishing corresponding announcements on its website and Twitter. The programme covered a topic of public interest. EO had collected sufficient evidence for the content, and presented the views of the interviewees as subjective accounts rather than facts, and did not adopt these views itself. The Court did find that the programme gave a one-sided account of the story. Based on the materials, EO could have also given an account which was less onerous on the claimant. However, EO enjoys journalistic autonomy and was free to do as it did.

With regard to the second defendant, the claimant's ex-colleague, the main complaint was that the statements did not have sufficient factual basis. The Court held that the majority of the statements made by defendant were mere opinions that do not need a basis in fact, even if they were of an insulting nature. Some were not pure opinions, but were sufficiently supported by declarations of other sources.

However, the defendant made one very serious allegation of a factual nature which was found to be unlawful. It was suggested that the claimant, in his role as psychiatrist at the facility, restricted patients' freedom through separation treatment without proper medical or judicial grounds. The Court found that there was no factual basis for this allegation. It was also important that the defendant

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chose to make this allegation public to a wide audience through a national television programme whereby she had EO incorrectly present her as an experienced psychologist whilst she had only just finished her education.

The Court awarded immaterial damages of EUR 8,000, having particular regard to the harmfulness of the allegation for the claimant's career. Material damages following from the unlawful statement are likely, such as loss of income, and must be assessed in a separate procedure.

Rechtbank Noord-Nederland, 25 november 2015, ECLI:NL:RBNNE:2015:5428

http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBNNE:2015:5428

District Court of North-Netherlands, 25 November 2015, ECLI:NL:RBNNE:2015:5428

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