[NL] Court orders public broadcasting organisation to take two articles offline and publish a rectification

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The District Court of Midden-Nederland ordered the Nederlandse Omroep Stichting (Dutch Public Broadcaster NOS), to rectify two articles it had published on its website. In these articles, Mr Baybaşin, the plaintiff, was associated with a person who is suspected of an execution in Turkey in 2014. More than a decade ago, the plaintiff received life imprisonment in the Netherlands for a series of serious offences, such as involvement in murder and hostage taking, and participation as a director in a criminal organisation. The Supreme Court dismissed his appeal in cassation, but in 2011 the plaintiff requested a judicial review of his sentence. Last year, NOS published an article on its website in which it reported on the arrest of nine people. The article also stated that according to multiple sources, one of the arrested men was a former partner of Mr Baybaşin. Two days later, NOS published a second article online, in which the plaintiff denied the association. Nevertheless, the plaintiff wanted both publications to be taken offline.

To decide whether NOS's right to freedom of expression or the plaintiff's right to protection of his honour and good name prevailed, the District Court considered the criteria that the European Court of Human Rights (ECtHR) developed for such cases (see, for example, Axel Springer AG v. Germany, IRIS 2012-3/1). It decided against NOS on the following grounds. First, the articles were insufficiently factually supported. The association between the plaintiff and one of the arrested men was based on the journalists' own instance of insight, and was only confirmed by an anonymous source. Second, the articles did not make a contribution to a debate of general interest. The Court remarked that NOS is free to make associations as it sees fit, provided the associations are factually supported. Third, the plaintiff's reputation could be harmed by the publications. According to the Court, (at least part of) the audience would question the plaintiff's claim, in his still undecided appeal request, that he is not guilty of participation in murder, hostage taking, etc. The Court considered that creation of a certain image in the media might affect judicial procedures. Therefore, consequences for the plaintiff's appeal procedure could not be ruled out. Fourth, and finally, NOS did not hear both sides of the story for the composition of the first article. The second article (in which the plaintiff rejects his association with the arrested man) could not be seen as a rectification of the first unlawful article, since NOS did not distance itself from the original article.

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On the basis of these circumstances, the District Court decided that the plaintiff's right to protection of his honour and good name outweighed NOS's right to freedom of expression. The Court ordered NOS to take both articles offline, and to issue a rectification on the homepage of its website.

Rechtbank Midden-Nederland, 20/04/2016, ECLI:NL:RBMNE:2016:2202

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBMNE:2016:2202

District Court Midden-Nederland, 20 April 2016, ECLI:NL:RBMNE:2016:2202

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