[NL] Medical company’s complaint over news programme upheld

IRIS 2016-6:1/22

Robert van Schaik
Institute for Information Law (IViR), University of Amsterdam

In a judgment on 13 April 2016, the District Court of Amsterdam upheld the complaint of medical company Terumo against broadcasting organisation AVROTROS and two of its employees. The defendants were held liable for damages under Dutch tort law for two broadcasts about medical equipment of producer Terumo.

The broadcasts were part of the news programme EenVandaag. In summary, the journalists of EenVandaag reported on two anonymous whistle-blowers, who alleged that medical equipment produced by Terumo could be a threat to public health, and stated that Terumo knowingly maintained these wrongs. The Court notes that “even though not literally stated, viewers were given the impression that 20-30% of Terumo’s 600 million [annually sold] needles were faulty” in a first broadcast. In a second broadcast, Terumo was accused of having sold unsterilized stents and heart catheters on the Dutch market. Importantly, the interviews were only broadcasted several months later. Shortly after the whistle-blowers had been interviewed, and ahead of the broadcast, three reports issued by government institutes were published, which concluded that both allegations were untrue. Despite the existence of these reports, AVROTROS transmitted its broadcast without referring to them.

Terumo sued for tortious interference, maintaining that both allegations were untrue. The defendants were unable to sustain their allegations with any expert evidence during the trial, apart from the two interviewed whistle-blowers, as well as one other whistle-blower who testified in court. The Court consequently held that the accusations were false. Next, in evaluating whether or not tortious interference had taken place, the Court applied a balancing test between the right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) and the interests of Terumo.

Although recognising AVROTROS’ public watchdog role and its aim of contributing to public debate, the Court concluded that its journalists had conducted insufficient research to support their statements. The Court set aside AVROTROS’ defence that it could not have known of the published reports, as they had existed for several months prior to the broadcast. Furthermore, the Court mentioned a lack of communication between AVROTROS and the government agency issuing

© European Audiovisual Observatory (Council of Europe) 2026

one of the reports as contributing to its conclusion. The Court acknowledged that the defendants had refused to communicate with the agency about which allegations would be made until only a few days in advance of transmitting the broadcasts. Consequently, Terumo's damages worsened, and additionally, the government agency was unable to take measures to protect public health in response to the allegations. Finally, the Court held that AVROTROS had offered insufficient opportunity for Terumo to counter the accusations.

The Court held that AVROTROS and the two employees committed unlawful acts and should be held liable for damages. The defendants were consequently ordered to delete all (mostly online) references to the broadcasts, to broadcast a rectification and to place a notification rectifying the unlawful allegations on the website of EenVandaag, all under threat of penalty payments, and to reimburse procedural costs.

Rechtbank Amsterdam, 13/04/2016, ECLI:NL:RBAMS:2016:2121

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2016:2121

Amsterdam District Court, 13 April 2016, ECLI:NL:RBAMS:2016:2121

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026