[NL] Dutch Supreme Court dismisses Ryanair's appeal in cassation against broadcaster KRO

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On 23 December 2016, the Dutch Supreme Court dismissed Ryanair's complaints against the Court of Appeal's finding that KRO's television programme regarding the airline was not unlawful (see previous decisions, in IRIS 2015-10/23 and 2013-7/20). KRO had aired in late 2012, and early 2013, two episodes of a programme in which the business practices of Ryanair were said to compromise 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. In July 2014, the Amsterdam Court of Appeal upheld an earlier District Court decision that the critical statements made in the programme regarding Ryanair were not unlawful. The Supreme Court has now held that the complaints do not raise legal issues concerning the unity or certainty of law. The case is therefore dismissed on the basis of Article 81 RO (the Judiciary Organization Act), so that no further rationale is necessary.

The Advocate General (AG) discussed the case more thoroughly. Ryanair's complaints in cassation can be briefly outlined as follows: (1) the Court of Appeal did not decide their rectification claim on the basis of Article 6:167, paragraph 2 of the Dutch Civil Code; (2) in case the Court of Appeal did decide this issue, they decided wrongly.

Article 6:167 of the Dutch Civil Code provides a judge with the possibility to order a rectification for a publication of facts that were either false or misleading due to missing information. Such a rectification order is possible in two situations: (1) the defendant is liable for the publication, because it constitutes an unlawful act; (2) the defendant is not liable for the publication, because defendant was not aware of the falsity or incompleteness of the publication. The second possibility generally involves the situation that the defendant has done sufficient research.

The AG explains that the Court of Appeal held that KRO's television broadcasts did not contain false or misleading statements. Therefore, the AG concludes, there is no room for a rectification order on the basis of either grounds of Article 6:167 of the Dutch Civil Code. The Court of Appeal did decide the issue. The AG further dismisses all arguments made by Ryanair claiming that this decision was wrong.

Hoge Raad, 23 december 2016, ECLI:NL:HR:2016:2996

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Supreme Court, 23 December 2016, ECLI:NL:HR:2016:2996

Parket bij de Hoge Raad, 4 november 2016, ECLI:NL:PHR:2016:1118

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:PHR:2016:1118

Procurator General's Office at the Supreme Court, 4 November 2016, ECLI:NL:PHR:2016:1118

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

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHAMS:2015:2887

Amsterdam Court of Appeal, 4 July 2015, ECLI:NL:GHAMS:2015:2887

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