[NL] Court dismisses complaint against public broadcaster NOS for not including political party in election debates

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On 28 February 2017, the District Court of Amsterdam dismissed a complaint by the newly-founded political party Forum voor Democratie (Forum for Democracy - FvD) against the public broadcaster NOS for not being invited to participate in the election debates that NOS organised and broadcast. The Court held that NOS acted in accordance with the Mediawet (Dutch Media Act), that it did not abuse its journalistic freedom, and had not unjustly restricted FvD's right to political expression nor acted unlawfully in any other way.

NOS organised a radio and television election debate that took place on 24 February 2017 and 14 March 2017 (the night before the election) respectively. On 2 February 2017, NOS announced that 14 of the 28 parties in total participating in the elections were selected to take part. Because they were not selected for either debate, FvD started preliminary relief proceedings in which they demanded that NOS be ordered to retake their selection decision. Both parties relied on their freedom of expression. FvD argued that their freedom of political speech was restricted without justification by their exclusion from the debates. NOS argued that they had journalistic freedom to organise their programmes, including these debates, at their discretion.

The Court considers that, on the basis of the Dutch Media Act (Mediawet) public broadcaster NOS has a wide margin of discretion in shaping their media content. However, their conduct will be unlawful when they make unreasonable choices, infringe rights and freedoms of others, and/or abuse their journalistic freedom (for example, by trying to influence the elections). The Court first held that NOS did not act unlawfully against FvD through its selection process. FvD complained in particular that NOS made their selection at a premature moment, because at the time of the decision FvD was not yet been included in a combined poll and had not yet started its campaign, and NOS did not await publication by the kiesraad (electoral council) of the final list of parties participating in the election. FvD also complained that NOS included current seats of political parties as a selection criterion. The Court did not find the decision-making process of NOS to be unlawful because of these circumstances. The criteria used by NOS were predetermined, objective, and clear. The Court held that the choices were sufficiently neutral, not unreasonable, and made in a transparent fashion.

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The Court went on to consider whether FvD's freedom of political speech was restricted by NOS. It held that, although FvD was prevented from communicating its views in the debates organised by NOS, FvD was not prevented from effectively expressing its political views altogether. FvD was at liberty to communicate its political message through other channels. Moreover, it was not established that NOS systematically excluded FvD in their (online) coverage of the elections.

Rechtbank Amsterdam, 28 februari 2017, ECLI:NL:RBAMS:2017:1151

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2017:1151

District Court of Amsterdam, 28 February 2017, ECLI:NL:RBAMS:2017:1151

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