[NL] Court refuses injunction over BNN/VARA documentary

IRIS 2017-9:1/27

Susanne van Leeuwen
Institute for Information Law (IViR), University of Amsterdam

In a notable judgment concerning preventive censorship and broadcasting, on 17 August 2017, the District Court of Midden-Nederland ruled that the Dutch public broadcasting association BNN/VARA may broadcast an episode of the YouTube documentary show #BOOS (Dutch for “angry”). The show aims to solve consumer complaints, mostly from young people. In the episode in question, the presenter confronted a landlord with complaints from his student tenants. The confrontation resulted in a fight which left the presenter suffering from a broken jaw. The landlord requested an injunction to prevent the documentary from being broadcast on the basis that it would interfere with his right to have his employees’ private lives respected. The Court rejected the request.

The Court found that the requested injunction entailed a form of preventive censorship, which violates freedom of expression under Article 10 of the European Convention of Human Rights (ECHR) and Article 7(2) of the Dutch Civil Code. The Court referred to the Mosley case of the European Court of Human Rights (ECtHR) (see IRIS 2011-7/1), in which the ECtHR emphasised that it is important that the assessment of any alleged unlawfulness of a publication and/or broadcast takes place after the publication and/or broadcast has been brought to the public’s attention, considering the weight of the freedoms guaranteed in Article 10 ECHR. Article 10 does not preclude imposing restrictions prior to publications, but the dangers are such that they require that a judge only imposes such restrictions after “the most careful scrutiny”.

Dutch case law has complied with this standard by requiring exceptional circumstances in the sense that the broadcast is unlawful to such an extent and will lead to such irreparable harm that a preventive broadcasting ban is justified. The Court held that a distinction needs to be made between the unlawfulness of the footage and the unlawfulness of the broadcast. Any unlawfulness of the footage does play a role in evaluating the unlawfulness of the broadcast, but does not, by definition, justify a broadcasting ban, let alone a preventive broadcasting ban. The Court found it unlikely that broadcasting the footage would lead to irreparable harm for the landlord. The landlord’s employees would be blurred so as to render them unrecognisable. Regarding the landlord’s recognisability, the Court held that the landlord had not claimed that he would suffer damage to his reputation because of the broadcast. In addition, the incident is already known to the public, partly because the landlord had already given an interview to a well-

© European Audiovisual Observatory (Council of Europe) 2026

known magazine. The publication of the footage is important for the public to form its opinion on the incident. Moreover, if the broadcast proves to be unlawful and leads to harm for the landlord, it is expected that the harm may be undone by removing the footage from the Internet and/or by rectification or compensation.

Rechtbank Midden-Nederland, 17 augustus 2017, ECLI:NL:RBMNE:2017:4347

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBMNE:2017:4347

District Court of Midden-Nederland, 17 August 2017, ECLI:NL:RBMNE:2017:4347

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026