[NL] Court of Appeals judgment on the rectification and removal of news programme episode

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In December 2017, the Arnhem-Leeuwarden Court of Appeals (Gerechtshof Arnhem-Leeuwarden) ruled on the question of whether broadcaster AVROTROS acted unlawfully towards a person by giving a distorted picture of a high-profile neighbours' dispute in an episode of the television programme EenVandaag. The Court considered whether the respondent's right to respect for private and family life, including his honour and good name, as guaranteed under Article 8 of the European Convention of Human Rights (ECHR), outweighed the right to freedom of expression of AVROTROS under Article 10 ECHR. The case followed the judgment in preliminary relief proceedings of the Court of Midden-Nederland (Rechtbank Midden-Nederland).

The episode of EenVandaag on the neighbours' dispute discussed the negative image of one of the neighbours (neighbour A), who had been portrayed as the "Leersum monster" in the Dutch media. The claimant (neighbour B), applied to the judge in preliminary relief proceedings, claiming that AVROTROS had painted a "too rosy" image of neighbour A, and had acted unlawfully towards him (uncritically letting interviewees speak, and consciously not hearing both sides). The Court of Midden-Nederland ruled that Article 8 ECHR outweighed Article 10 ECHR, and held that the reporter had not asked any critical questions or made any critical comments, and AVROTROS had consciously refrained from hearing both sides. It obliged AVROTROS to remove the entire episode from its website and archives, and to publish a rectification on the EenVandaag website.

Subsequently, AVROTROS appealed against the judgment. First, the Court of Appeals considered whether AVROTROS should have heard both sides in the episode. The Court did not agree with AVROTROS's argument that the episode must be viewed in the context of prior episodes, in which neighbour A (the respondent) did speak. The Court of Appeals held that due to the long period of time between the episodes, it was unlikely that the viewer would perceive this episode as the final episode of a series. Thereafter, the Court of Appeals determined that the respondent was not a public figure, but rather a person who received a lot of media attention due to a private conflict. It also held that the episode made little contribution to the public debate, and was limited to showing the "other side" of the neighbours' dispute.

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The Court of Appeals also noted that it fell within the journalistic freedom of EenVandaag to only present certain facts, and allow the interviewees to tell their side of the story. However, as AVROTROS's chosen format consciously prevented the respondent from responding to any possible inaccuracies, the Court of Appeals agreed with the lower court that such a format implies that the presented facts must be correct, and give a reliable picture of the situation. It proceeded by establishing that the reporter made an inaccurate statement about the right of way and the accessibility of neighbour A's house. Consequently, the episode gave a distorted picture of the neighbours' dispute and the role of the respondent. As such, AVROTROS misrepresented the respondent as the party that had caused the neighbours' dispute by his own unreasonable behaviour. The Court of Appeals concluded that the presented image was not supported by facts, and formed a major violation of the respondent's right to respect for his private life, including his honour and good name. It found that the lower court had correctly ruled that his right outweighed AVROTROS's right to freedom of expression. Nevertheless, the Court of Appeals did not allow all claims granted by the lower court, as it stated that the removal of the entire episode was not necessary and proportionate. It held that the legitimate interest of the respondent (to be safeguarded from the ascertained infringement), could also be fulfilled by only removing the inaccurate statement.

Rechtbank Midden-Nederland, 9 oktober 2017, ECLI:NL:RBMNE:2017:5079

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBMNE:2017:5079

Court of Midden-Nederland, 9 October 2017, ECLI:NL:RBMNE:2017:5079

Gerechtshof Arnhem-Leeuwarden, 19 december 2017, ECLI:NL:GHARL:2017:11182

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHARL:2017:11182

Arnhem-Leeuwarden Court of Appeal, 9 December 2017, ECLI:NL:GHARL:2017:11182

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