[NL] Column about a Dutch well-known comedian judged unlawful because it was needlessly offensive

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In a judgement of March 14 2018, but published on October 31 2018, the District Court of Amsterdam ruled that a publisher of a Dutch free national newspaper had acted unlawfully by publishing multiple columns — both in print and on its website — in which a columnist accused a well-known Dutch comedian of sexual harassment and rape. The comedian had requested this declaratory decision, and claimed damages for the violation of his right to honor, good name, and reputation.

In interim injunction proceedings, lodged by the comedian in 2015, the Court had already ordered the publisher to remove two columns from its website and archives. Contrary to what the publisher argued, the Court ruled in these proceedings that, even though not mentioned by name, several circumstances — including reactions below the column and a tweet by the author with a video of the accused comedian — made it possible to still trace these columns back to the comedian. The publisher, stating that the columnist should be free to write about her experiences, also argued that these columns were not unlawful and that their removal would lead to an unjustified restriction of the publisher's right to freedom of expression. The Court acknowledged the columnist's rights to write about her own experiences, but reiterated that even in a column no one may be accused lightly and that the accusations should be supported by the available evidence. Given the seriousness of the allegations, the Court found that the columns lacked sufficient factual basis and that the publishing of these columns was therefore unlawful, justifying a restriction of the publisher's right to freedom of expression. The publisher subsequently removed the two columns from its website and archives. In February 2017, however, a new column appeared both in the newspaper and on the website, in which the same columnist wrote about the incident in even stronger words, (implicitly) accusing the comedian of rape. At the request of the comedian, this column and a tweet referring to the column were also removed by the publisher.

In the substantive proceedings leading to the judgment of 14 March 2018, the comedian claimed, in short, that the columns containing the allegations and the publisher's actions in this regards had damaged his right to honor, good name, and reputation, and that he had thereby suffered non-pecuniary damages. While mostly resting with the judgment of the Court in preliminary proceedings, the

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publisher repeated the argument with regards to the February 2017 column; that the piece could not be traced back to the comedian and that it could not be held responsible for tweets or reactions by third parties naming the claimant.

In the judgment, the Court weighed the publisher's right to freedom of expression as laid down in Article 10 ECHR (European Convention on Human Rights) against the comedian's interest in protecting his honor, good name, and reputation, and the rights to respect for his private life, encompassed in Article 8 ECHR. The Court reiterated that the balancing of these interests is dependent on a variety of circumstances, for example the factual basis and substantiation of the allegations. Also, it pointed out that the format of a column leaves an author with a greater freedom to express his or her own opinion. According to the Court this, however, did not permit the columnist to make statements that were needlessly offensive. Moreover it found that the allegations were insufficiently substantiated. With regards to the columns of 2015, the Court therefore overruled the judgment of the Court in preliminary proceedings: as to the February 2017 column, the Court found that this one was unlawful as well. In the view of the Court, the publisher should have known that this column could also be easily traced back to the comedian, rendering it unlawful towards the comedian.

In the context of the damages, the Court attached importance to the repetitive nature of the publisher's wrongdoing. Also taking into account the impact of the allegations on the reputation of a well-known person, the Court ordered the publisher to pay EUR 10 000 in non-pecuniary damages.

Rechtbank Amsterdam 14 maart 2018, ECLI:NL:RBAMS:2018:1555

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2018:1555

District Court of Amsterdam, 14 March 2018, ECLI:NL:RBAMS:2018:1555

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