[NL] Court orders Dutch broadcaster BNNVARA to broadcast rectification over YouTube episode

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In a decision of 11 July 2019, the Midden-Nederland District Court ordered broadcaster BNNVARA to broadcast a rectification in respect of a #BOOS YouTube episode ("boos" means "angry" in Dutch). The episode contained unproven and incorrect statements about two Dutch real estate entrepreneurs, according to the court. The YouTube series calls upon angry viewers to complain about various topics, such as dismissals, lost packages or expensive mobile phone subscriptions. In each episode the host aims to solve an angry viewer's problem. #BOOS has won various awards, such as the Best Social Award 2019 for best YouTube series.

The following statements are at the heart of the proceedings before the court. It was alleged that the real estate entrepreneurs wrongly charged brokerage fees when concluding tenancy agreements, and had deliberately allowed a company to go bankrupt in order to avoid paying creditors. Lastly, the episode contained the statement that the real estate entrepreneurs had established a new company with the aim of circumventing the law. The two real estate entrepreneurs requested the court to order BNNVARA to remove the episode and to broadcast a rectification; for its part, BNNVARA asked the court to refuse the entrepreneurs' request.

The court balanced the right to freedom of expression with the right to respect for private and family life, and more specifically, the right to protection of reputation and good name. The court firstly note that the answer to the question of which fundamental right outweighed the other depended on the particular circumstances of the case. The court continues by listing the relevant factors that ha to be considered when assessing which fundamental right was to prevail. According to the court, these include: (i) the nature of the published statements and the seriousness of the expected consequences for the person to whom these statements relate; (ii) the seriousness – from the point of view of the general interest – of the wrongdoing that is being exposed; (iii) the extent to which the statements are supported by the available factual material at the time of publication; (iv) the manner in which the statements in question have been created and presented; (v) the authority that the medium on which the statements are published enjoys; and (vi) the social position of the person involved. The court point out that the relevant factors and the weight to be

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attached to them depended on the particular circumstances of the case.

The court continues by fact-checking each statement contained in the episode in question. The statement that the real estate entrepreneurs wrongly charged brokerage fees was indeed factually correct. The statement that the real estate entrepreneurs had deliberately allowed a company to go bankrupt cannot be proven, because the company had been dissolved and its existence had been terminated. The statement that a new company had been established with the aim of circumventing the law is incorrect.

The court helds that the unproven and incorrect statements cannot justify the removal of the entire episode in question. Firstly, the incorrect statements had been partially revoked by BNNVARA. The broadcaster had previously added a statement to the video's description box to the effect that the company had not gone bankrupt, but that it had been dissolved and its existence had been terminated. Secondly, the statements are not of such a severe nature when assessed in the light of the entire episode. Instead, the court prescribed the text of a rectification statement, and ordered BNNVARA to broadcast that rectification in the first 30 seconds prior to the running of the episode concerned. BNNVARA re-uploaded the episode to YouTube with the ordered rectification on the day of the delivery of the court's decision.

Rechtbank Midden-Nederland, 11 juli 2019, ECLI:NL:RBMNE:2019:3108

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBMNE:2019:3108

District Court of Midden-Nederland, 11 July 2019, ECLI:NL:RBMNE:2019:3108

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