Court of Appeal rules that news outlet can name individual in #MeToo reporting

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In its judgment of 17 December 2019, the Court of Appeal of Arnhem-Leeuwarden (*Gerechtshof Arnhem-Leeuwarden*) delivered an important judgment on #MeToo reporting in the Netherlands, ruling that Dutch news outlet NRC could name an individual in an investigative report on that individual's alleged "sexually transgressive behaviour" (*seksueel grensoverschrijdend gedrag*). The Court of Appeal held that given the circumstances in question, the news outlet's freedom of expression, as guaranteed by Article 10 of the European Convention on Human Rights (ECHR), outweighed the individual's right to privacy, as enshrined in Article 8 of the ECHR.

On 14 May 2019, the news outlet published an investigative report on the alleged sexually transgressive behaviour of a former professor of the University of Amsterdam and former deputy justice of the Court of Appeal of Amsterdam on that university's initially inadequate response to complaints about that individual. The report should be seen against the backdrop of the larger #MeToo movement, which was referred in the Court of Appeal's judgment.

Initially, the investigative report was to have cited the individual's name. Interim injunction proceedings before the District Court of Amsterdam (*Rechtbank Amsterdam*), however, prohibited the news outlet from doing so. The District Court ruled that the public debate regarding the #MeToo movement did not necessitate the inclusion of the individual's name, among other things, in the report. Most notably, the District Court held that the news outlet had not sufficiently substantiated its most serious accusations of assault and of engaging sexual contact with a vulnerable student, and it emphasised the adverse effects that naming the individual would have on him and his family.

Subsequently, the news outlet challenged the District Court's judgment in the interim injunction proceedings before the Court of Appeal. The Court of Appeal firstly noted that the injunction concerned a preventative measure, which was subject to stricter requirements than "repressive measures" such as compensation awards – namely careful examination and exceptional circumstances. Additionally, it emphasised that journalists enjoyed editorial freedom as long as they acted in compliance with applicable ethical standards and with the relevant codes of conduct. The Court of Appeal then considered how

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six jurisprudential (ECHR) criteria related to the circumstances in question. Most notably, the Court of Appeal held that the aforementioned accusations were sufficiently substantiated by the cited facts: the news outlet had relied on thirty-five sources and had accessed confidential documents, and the university's dean had affirmed the accusations in a television show. Additionally, the Court of Appeal emphasised the seriousness of the individual's conduct. By and large, the Court of Appeal concluded that the news outlet had contributed substantially to the public debate regarding the #MeToo movement with its investigative report.

In the light of the foregoing, the Court of Appeal held that the news outlet could name the individual in its investigative report on that individual's alleged sexually transgressive behaviour, thereby reversing the District Court's judgment delivered in the interim injunction proceedings.

Gerechtshof Arnhem-Leeuwarden 17 december 2019, ECLI:NL:GHARL:2019:10757

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHARL:2019:10757

District Court of Arnhem-Leeuwarden 17 december 2019, ECLI:NL:GHARL:2019:10757

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