

Court dismissed TV presenter's application to have online article removed

IRIS 2020-3:1/9

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In its judgment of 20 December 2019, the *Rechtbank Amsterdam* (District Court of Amsterdam) delivered an important judgment on tabloid journalism in the Netherlands, ruling that media outlet TMG did not have to remove a sensationalist, online article on a well-known singer's alleged adultery with a television host – the claimant – in 2014. The district court held that the media outlet's freedom of expression, as guaranteed by Article 10 of the European Convention on Human Rights (ECHR), outweighed the television host's right to privacy, as enshrined in Article 8 ECHR in the given circumstances.

On 11 November 2019, TMG published an article on the alleged romantic encounter between a television presenter and a singer in its newspaper *De Telegraaf*, and on that newspaper's corresponding website. According to the media outlet, the singer committed adultery with the television host at a wedding in 2014. TMG concluded that the celebrities had had their own wedding night. The television presenter and singer are now in a relationship.

The television host's lawyer requested the media outlet to remove the online article, and to publish a rectification. TMG did not honour that request, which led to the interim injunction proceedings before the district court. By and large, the television host argued that the publication intolerably violated her right to privacy. The television host argued that the media outlet's anonymous and partial sources did not support the article. According to her, impartial sources, such as staff members present at the wedding location, could invalidate the allegations. Besides, the television host argued that TMG had not conducted a journalistic investigation, and she stated that it had not asked her for a statement. Furthermore, the television host argued that the article did not serve the public interest because it reported on an event that had occurred years ago. Moreover, she argued that the article had gone too far, whilst still acknowledging her status as a public figure. In addition to the removal of the online article and the publication of a rectification, the television presenter claimed EUR 7 500 in damages. The media outlet opposed the claims.

Balancing the right to freedom of expression and the right to privacy, the district court first noted that TMG had to make its accusations plausible; but it did not have to provide conclusive evidence. It then held that the media outlet's

sources had sufficiently substantiated the allegations. Furthermore, the district court considered whether a rectification offered a meaningful measure in the given circumstances. It held that it did not because the article at issue was essentially true. With respect to the right to be heard, the district court considered that not hearing the television host did not necessarily render the article tortious. Besides, it noted that the presenter had already spoken out about the matter in the media; her statement was, therefore, already known. Moreover, the district court held that the television host qualified as a public figure, and it noted that the story was newsworthy because of the new-found relationship between the celebrities concerned.

In the light of the foregoing, the district court concluded that TMG's right to freedom of expression, which also extended to "(hurtful) expression in the entertainment press" ("*kwetsende uitingen in de entertainmentpers*"), outweighed the host's right to privacy, thereby rejecting the latter's claims to have the online article removed, among other things.

Rechtbank Amsterdam 20 december 2019, ECLI:NL:RBAMS:2019:9541

<http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2019:9541>

District Court of Amsterdam 20 December 2019, ECLI:NL:RBAMS:2019:9541

