[NL] LinkedIn ordered to restore Dutch politician's account closed over COVID-19 disinformation

IRIS 2021-10:1/21

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On 6 October 2021, the *Rechtbank Noord-Holland* (District Court of Noord-Holland - the Court) delivered a significant judgment on the issue of politicians' social media accounts and ordered the online platform LinkedIn to restore the account of a Member of Parliament (MP) that had been closed under its COVID-19 disinformation policy. However, the Court refused to order that LinkedIn reinstate specific posts concerning COVID-19 published by the politician which had been removed.

The case involved Mr. Wybren van Haga, a Dutch politician and member of the *Tweede Kamer* (House of Representatives), who was critical of the Dutch government's Covid-19 measures. Mr. van Haga had maintained a LinkedIn account for over a decade, and had posted many messages via his account, including messages critical of COVID-19 measures. On 7 June 2021, LinkedIn informed the MP that his account had been permanently restricted due to a series of posts concerning COVID-19 which had been deleted for violating LinkedIn's rules on disinformation. The posts included: "The IFR (Infection Fatality Rate) of Corona is slightly higher, but comparable to the #IFR of flu", "Kids don't get sick from #COVID19 and asymptomatic contamination is close to zero", and "It remains strange that #Ivermectin does work in other countries, but this drug may not be used in the Netherlands".

Following the closing of his account, the MP initiated legal proceedings against LinkedIn, seeking to have his account restored and his posts re-uploaded. The Court first dealt with the issue of the closing of the MP's account. At the outset, the Court made a significant finding, holding that while LinkedIn was a private party, its parent company (Microsoft) had "responded" to the European Commission's call for online platforms to "prevent disinformation about COVID-19". As such, the Court held that the case concerned a restriction on freedom of expression at the "instigation of the government, of a type of information considered undesirable by the government (harmful disinformation about COVID-19), via a certain type of channel (social media platforms)"; and that had to be taken into account when determining the "freedom to be left to the platform" in that regard. Further, the Court noted that the user agreement between LinkedIn and the MP was a "continuing performance agreement", and, under the Dutch Civil Code, such agreements had to include requirements of "reasonableness and

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fairness", including in relation to termination of the agreement. Crucially, the Court strongly criticised LinkedIn's communication with the MP about the closing of his account based on his COVID-19 posts, holding that its communication had been "substantively inadequate", "insufficiently informative" and had contained "no motivation" apart from a "single reference" to the user agreement on disinformation. Therefore, the Court held that the termination of the user agreement had occurred "without due care", and ordered LinkedIn to reinstate the MP's account. However, the Court did emphasise that the MP "must comply" with the conditions that LinkedIn imposed on the use of its platform.

Second, the Court considered the content of the MP's deleted posts and referred to the case-law of the European Court of Human Rights; in particular, that where damage might be caused by statements of facts, there had to be a "sufficient factual basis". Crucially, the Court held that LinkedIn had had "good grounds" to find that the MP's posts had contained "harmful disinformation", including that dissemination of that information could "diminish the willingness of readers to follow well-founded advice and adhere to prescribed measures". As such, the Court refused to order that LinkedIn reinstate the MP's deleted posts concerning COVID-19 measures.

Finally, the Court ordered LinkedIn to restore the MP's account within three days of the judgment's publication.

Rechtbank Noord-Holland, ECLI:NL:RBNHO:2021:8539, 6 oktober 2021

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBNHO:2021:8539

District Court of Noord-Holland, ECLI:NL:RBNHO:2021:8539, 6 October 2021

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