

[NL] Social media influencer entitled to protection of journalistic sources

IRIS 2022-6:1/15

Ronan Ó Fathaigh
Institute for Information Law (IViR)

On 29 April 2022, the District Court of Amsterdam (*Rechtbank Amsterdam*) delivered an important judgment on whether a social media influencer is entitled to invoke the right to protection of journalistic sources. Notably, the Court held that the activities of a Dutch social media influencer, with over 400 000 followers on Instagram and YouTube, fell within the concept of “journalism”, and the influencer was entitled not to reveal her sources in legal proceedings over an online video.

The case centred on the well-known Dutch influencer Yvonne Coldeweijer (the defendant), who operates an Instagram and YouTube channel, and presents gossip and news about famous Dutch figures, based on tips from anonymous sources. In March 2022, the defendant uploaded a post and video making a number of claims about a well-known Dutch singer (Samantha Steenwijk, the plaintiff), including that she had “lost 22 kilos in a short time with the help of illegal slimming pills, which are dangerous to health”. Following the posts, the plaintiff initiated legal proceedings against the defendant, claiming the allegations were incorrect, offensive, misleading, and constituted a serious violation of her reputation and privacy. Notably, the plaintiff sought a court-ordered rectification, and a court order for the defendant to reveal the sources of the story. Before the Court, the defendant argued that the statements were protected under the right to freedom of expression, and the plaintiff, as a well-known figure, must accept “gossip” will be published about her. Further, the defendant argued she had two sources for the story, had conducted her own research, and invoked the right to protect her sources.

The Court first dealt with the application for the defendant to be ordered to reveal her sources. The Court stated this would be a restriction on news-gathering, while protection of journalistic sources was essential for press freedom. Crucially, relying on the EU Court of Justice judgment in *Tietosuoja v. Satakunnan Markkinapörssi Oy and Satamedia Oy*, the Court held the activities of the defendant fall within the concept of journalism, as they were aimed at communicating information, opinions and ideas to the public. As such, the defendant had rightly invoked the right to protection of journalistic sources. Further, relying on the European Court of Human Rights judgment in *Goodwin v. United Kingdom*, the Court held there was no overriding requirement in the public

interest to force the defendant to reveal her sources, and therefore, the Court rejected the application for an order to reveal the sources.

The Court then dealt with the claim for rectification. First, the Court noted that the dispute involved a balance between the defendant's right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR), and the plaintiff's right to private life under Article 8 ECHR. Second, the Court held that the defendant had made "serious allegations" against the plaintiff, including the use of illegal and dangerous slimming pills. While the defendant was not required to provide "conclusive evidence" before publication, there must be a sufficient basis for such serious allegations. In this regard, the Court stated that the defendant only had two anonymous sources for the allegations, "whom she did not know", and had claimed "they knew someone who had sold the pills" to the plaintiff. Further, the Court rejected the defendant's claim that the statements were presented as merely "gossip", holding that the claims were presented as fact. Taking all the factors into account, the Court held the defendant could not substantiate her allegations and were therefore unlawful. Finally, the Court ordered the defendant to post a rectification on the unlawful nature of the allegations against the plaintiff, to be displayed on the defendant's Instagram account for 24 hours.

Rechtbank Amsterdam, ECLI:NL:RBAMS:2022:2347, 29 april 2022

<https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2022:2347>

Amsterdam District Court, ECLI:NL:RBAMS:2022:2347, 29 April 2022

