[BE] Belgian news site Apache acquitted of stalking and breach of privacy in SLAPP-case Antwerp Court of Appeal condemns applicant civil party for abuse of process

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Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

A judgment of the Antwerp Court of Appeal of 9 June 2022 offers strong support for investigative journalism on issues of public interest, while at the same time acknowledging the detrimental impact of SLAPPs (Strategic Litigation Against Public Participation).

The case concerned a complaint by project developer Erik Van der Paal against a journalist of the news site Apache and its chief editor. The chief editor, Karl van den Broeck, and Apache journalist Stef Arends were accused of having stalked Erik Van der Paal of the NV Land Invest Group (Section 422bis Criminal Code) and of violating the Personal Data Processing Act (Privacy Act). Mr. Van der Paal also alleged a violation of his right to his own image (portrait right) and an infringement of the presumption of innocence. Mr. Van der Paal had started the criminal proceedings because Stef Arends had used a hidden camera to make images of him welcoming a number of guests to his birthday party at 't Fornuis, a well-known top restaurant in Antwerp. The images were made secretly from the public road and were published on the Apache website as an illustration of the close and friendly relationship between the building promoter and members of the Antwerp city council. After Apache's acquittal in January 2021, Mr. Van der Paal lodged an appeal. The Court of Appeal confirmed the acquittal of the Apache journalists and validated the counter claim of Apache arguing that the lodging of an appeal in the case had been an abuse of process. The court found that Mr. Van der Paal had not acted as a prudent and careful person, but had essentially had the intention of (financially) exhausting Apache and stopping the critical reporting by Apache about him.

The Court held that the (surreptitious) making of the images and their processing and integration in the reporting on Apache had been part of responsible journalistic reporting on a topic of social importance, namely the critical reporting on a series of real estate projects linked to Land Invest Group NV and its relations with the Antwerp city authorities. The judgment clarified that the peace and quiet of Mr. Van der Paal had not been seriously disturbed (no stalking) and that there was no unfair or unlawful processing of his personal data by Mr. Arends or Apache (no infringement of the Privacy Act). The violation of his portrait right and

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infringement of the presumption of innocence brought forward by Mr. Van der Paal was also rejected by the Court of Appeal. The judgment emphasised that the making and publication of the video at issue was part of Apache's journalistic activities and was justified within the limits and possibilities that the freedom of the press offers in the interest of a democratic society.

In reply to Mr. Van der Paal's appeal, the lawyers of Apache lodged an incidental appeal, as a legal remedy in a criminal case that can be used by an accused. The Apache chief editor and the journalist each demanded EUR 5,000 in damages for the abusive and reckless lodging of the appeal by Van der Paal, and they requested an increased share of court fees as (partial) compensation for the lawyers' and procedural costs. The Apache journalists argued that the lodging of the appeal was a SLAPP: after the tribunal's judgment of 20 January 2021 acquitting Apache, it was sufficiently clear that the complaint lodged by Mr. Van der Paal as a civil party against Apache's chief editor and journalist did not stand a chance and that Mr. Van der Paal was therefore abusing the appeal proceedings.

The judgment elaborated on the principles in play and ordered Mr. Van der Paal to pay damages of EUR 10,000 euros as requested by Apache, considering that a civil party's appeal against an acquittal may be of a vexatious and reckless nature if that party intends to cause prejudice to the referred party or if it exercises or continues to exercise its right to exercise this remedy without reasonable or sufficient interest or in a manner which manifestly exceeds the limits of the normal exercise of it by a prudent and careful person. The Court held that lodging an appeal in the present case had not been aimed at a final settlement of a limited (legal) dispute between the parties, as may be expected from a cautious and careful person, but rather that instituting the legal remedy had to be seen as yet another procedure against Apache and its chief editor Karl Van den Broeck, with the intention of (financially) exhausting both the news site and its chief editor to such an extent that further reporting that Erik Van der Paal considered unpleasant would be stopped.

The Court recognised that, as a result of the introduction of the appeal in the outlined circumstances, the Apache journalists had suffered material damage because of the hindrance of their professional activities, as well as moral damage because they remained uncertain about the final decision and because their professional functioning, including their good name, had been wrongfully attacked. The chief editor of Apache and the journalist were also awarded an increased compensation for legal costs of EUR 6 000 euros, with reference to Mr. Van der Paal's abusive conduct in the appeal proceedings in the case. Mr. Van der Paal has lodged an appeal against the judgment with the Supreme Court (Court of Cassation).

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Arrest geeft flinke steun in de rug van de onderzoeksjournalistiek door Apache

https://www.apache.be/2022/06/10/apache-opnieuw-vrijgesproken-fornuis-zaak

Judgment of 9 June 2022, Antwerp Court of Appeal, Chamber 7C correctional cases, no. C/820/2022, concerning Erik Van der Paal v. Karl Van den Broeck and Stef Arends

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