

[NL] Court rules that newspaper article critical of tax advisors was within the limits of journalistic freedom

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On 18 November 2022, the *Rechtbank Amsterdam* (Amsterdam District Court) delivered a judgment on the scope of journalistic freedom. The case concerned an online newspaper article about the modus operandi of two fairly well-known legal and tax advisors. While the advisors were portrayed particularly negatively, the Court ruled that the article was not unlawful and did not have to be corrected. Importantly, it held that the advisors should be considered "public figures" subject to increased criticism, and that the statements in the article had had a sufficient factual basis.

The article in question, published by the national NRC newspaper, described how the advisors had been involved in a number of lawsuits over the years, most of which they had lost (e.g., on rent arrears and the wrongful seizure of the assets of a former client). During these procedures, they had reportedly left "a trail" of requests to disqualify judges. The article further highlighted that the duo was currently being prosecuted for blackmailing two Dutch public figures - a father and son - with the publication of an unauthorised family biography. It also noted that one of the advisors had recently been questioned on suspicion of libel in his role as legal advisor for a foundation supporting victims of (sexually) transgressive behaviour.

After they had been informed of the forthcoming article, the advisors requested NRC refrain from publication. The newspaper did not comply with the request and published the article regardless. In response, the advisors initiated court proceedings requesting the rectification of alleged errors.

The Court first considered that granting the rectification would amount to an infringement of the newspaper's right to freedom of expression as protected by Article 10 of the European Convention on Human Rights (ECHR). As a general rule, an infringement could only be justified if it was prescribed by law, necessary to protect the legitimate interests as listed in Article 10(2) ECHR, and proportionate to those aims.

The Court then went on to assess the particular circumstances of the case. It held that the article had contributed to a public debate of general interest; that the advisors could be considered "public figures" who had to expect more criticism

and scrutiny than ordinary individuals; that the (implicit) accusations in the article had a sufficiently strong basis in the facts; that there were no indications that NRC had purposefully wanted to harm the advisors; and that it had provided the advisors with the opportunity to express their views.

Based on those considerations, the Court concluded that the article could not be regarded as unlawful so as to justify an infringement on the newspaper's journalistic freedom. The advisors' claim was therefore rejected.

Rechtbank Amsterdam, ECLI:NL:RBAMS:2022:6753, 18 november 2022

<http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2022:6753>

Amsterdam District Court, ECLI:NL:RBAMS:2022:6753, 18 November 2022

