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NETHERLANDS

[NL] Broadcaster's news and opinion website is not subject to objectivity rules

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On 1 October 2021, the *Rechtbank Midden-Nederland* (District Court of Midden-Nederland — the Court) delivered a notable judgment on the media standards applicable to news and opinion websites operated by broadcasters. Notably, the Court laid down important principles on the freedom of broadcasters to criticise public figures, including in online news articles, and refused to order a rectification against a broadcaster sought by a public figure over various online articles.

The case involved a well-known activist who campaigns against Covid-19 measures implemented by the Dutch government, and is director of a high-profile campaign group (“Stichting Viruswaarheid”, Virus Truth Foundation) which sued the government over its Covid-19 measures. In 2021, the activist initiated legal proceedings against the broadcaster BNN-VARA over its news and opinion website (Joop.nl), in particular over various online publications describing the activist as a “Corona denier” (“*corona-ontkenner*”), “virus madman” (“*viruswaaninnige*”), and “cult leader” (“*sekteleider*”). The activist claimed these descriptions contained in news items on the broadcaster’s website were unlawful, and sought removal of these terms from items already published, a ban on the use of the terms in future news items, and also sought a rectification. Notably, the activist had no issue with these terms being used in “opinion pieces” or cartoons, but specifically objected to their use in “news” items.

At the outset, the Court noted that the case concerned a clash between fundamental rights, namely the broadcaster’s freedom of expression under Article 10 of the European Convention of Human Rights (ECHR), and the claimant’s right to protection of reputation under Article 8 ECHR. Notably, the Court rejected the broadcaster’s argument that the claimant could not invoke Article 8 ECHR as the statements at issue did not affect his private life, but only concerned his role as director of the campaign group. Instead, the Court held the descriptions at issue concern the “private sphere” of the claimant in the form of his reputation, and as such, Article 8 ECHR was at issue. It followed, according to the Court, that in balancing Article 8 and 10 ECHR, a number of criteria must be taken into account.

First, the Court examined the medium on which the statements were made, and noted that the website is an online opinion website. Crucially, contrary to the claimant’s argument, the Court emphasised that the media is generally “not under an obligation to present news exclusively in an objective manner”, and an opinion website such as that operated by the broadcaster, does not have an objectivity “obligation”. The fact that the website made a distinction between the

categories “news” and “opinion” did not change this, as items in the “news” category on the website were also “regularly permeated with opinion and value judgements”. Second, the Court examined the specific terms used, and held that “Corona denier”, “virus madman”, and “cult leader”, were value judgments, and would only be unlawful if lacking a “sufficient factual basis”. However, the Court held there was a sufficient factual basis, noting that “Corona denier” was similar to “climate denier”, in that it indicated someone who had a different view to the prevailing views on Covid-19 or climate change; the term “virus madman” was a “pun” on the name of the campaign group’s previous name (*Stichting Viruswaanzen*) (Virusmadness Foundation); while “cult leader” was also a value judgment, having regard to the claimant describing himself in the past as an “icon” and “hero” for a large group of people opposed to Covid-19 measures. Finally, the Court had regard to the claimant’s own tone in public debate, and held that he must accept viewpoints and criticism in response to this, including his description of a government minister as, “[H]e not only looks like a Nazi, he also behaves like that ”, and comparing the obligation to wear a face mask with wearing a “Star of David”.

In conclusion, the Court dismissed the claimant’s application, holding that the broadcaster had no obligation to publish news items objectively or without value judgments, and that the statements at issue were not unlawful.

Rechtbank Midden-Nederland, ECLI:NL:RBMNE:2021:4702, 1 oktober 2021

<http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBMNE:2021:4702>

District Court of Midden-Nederland, ECLI:NL:RBMNE:2021:4702, 1 October 2021