

District Court North Netherlands
Location Leeuwarden Case
number: C/17/190788 / HA ZA
2023-172
Roll hearing dated Feb. 21, 2024

CONCLUSION OF REPLY ON BEHALF OF VAN CANN AND JANSEN

Regarding:

1. Ms. Giselle **Jacqueline Marie-Thérèse** van Cann, defendant subd. 12, hereinafter referred to as "Van Cann."
2. Mr. Paul Edwin Jansen, defendant subd. 13, hereinafter referred to as "Jansen",

Attorneys handling the case: mrs. L. Broers and R.H.W. Lamme

3. Mr. Everhardus **Ite Hofstra**, defendant subd. 1,
4. Mr. Jaap Tamino Van Dissel, defendant sub 2,
5. Mrs. Maria Petronella Gerarda **Koopmans**, respondent sub 3,
6. Mr. Mark Rutte, defendant subd. 4,
7. Ms. Sigrid Agnes Maria Kaag, defendant subd. 5,
8. Mr. Hugo Matthew de Jonge, defendant subd. 6,
9. Mr. Ernst Johan Kuipers, defendant subd. 7,
10. Mr. Diederik Antonius Maria Paulus Johannes Gommers, defendant sub 8,
11. Mr. Wopke Bastiaan **Hoekstra**, defendant sub 9,
12. Ms. Cornelia van Nieuwenhuizen, defendant subd. 10,
13. Mr. Feike Sijbesma, defendant sub 14,
14. THE STATE OF THE NETHERLANDS, defendant sub 17,

Defendants 1-10, 14 and 17 hereinafter referred to collectively in singular as: "the State",

Attorneys handling the case: mrs. R.W. Veldhuis and M.E.A. Möhring

15. Mrs. **Agnes Catharina van der Voort-Kant**, ge-
respondent sub 16, hereinafter referred to as "Kant".

treating attorney: mr. A.H. Ekker

16. Mr. **Albert Bourla**, defendant sub 11, hereinafter
referred to as "Bourla",

handling lawyer: mr. D. Roessingh

17. Mr. William Henry Bill Gates III, defendant sub 15,
hereinafter referred to as "Gates",

handling lawyer: mr. W.H. Heemskerk

against:

1. Mr. _____ plaintiff sub 1,
2. Ms. _____ , plaintiff sub 2,
3. Mr. _____ , plaintiff sub 3,
4. Ms _____ , plaintiff sub 4,
5. Mr. _____ , plaintiff sub 5
6. Mr. _____ , plaintiff sub 7,

plaintiffs 1-6 hereinafter collectively referred to as "
c.s."

handling lawyers: mrs. P.W.J. Stassen and A.G.W. van
Kessel

AC&R

A. INTRODUCTION

1. These proceedings relate to the Covid-19 pandemic. The pandemic involved an eventful - and for many - uncertain and fearful period. Governments worldwide had to take measures to contain the pandemic. These included measures which restricted the freedoms of citizens and which were not supported by all of society, as was the case with the c.s.
2. It appears from the subpoena that c.s. are convinced that the Covid-19 pandemic never occurred. c.s. claim that they were misled and "tricked" by the defendants into getting Covid-19 vaccinations. The c.s. claim to have personal injury and hold the defendants liable.
3. More specifically, Van Cann and Jansen are accused of having, as the chief editors of "the mass media," used "their" coverage of the Covid-19 pandemic to maximize fear. In addition, they are alleged to have deliberately withheld reports regarding the alleged unsafety of the Covid-19 vaccines from the public. c.s. even go so far as to accuse Van Cann and Jansen in of complicity in "genocide" against the Dutch population.¹ c.s. do not substantiate these far-reaching accusations, but base their assertions on exclamations by controversial politicians² and disinformation.³
4. It appears from the summons that the claims of et al. are in fact directed against Van Cann and Jansen's work-givers: the NOS and De Telegraaf. Nevertheless c.s. have chosen to summon Van Cann and Jansen in person. This choice is based on a strategy set out by Stichting Recht Oprecht where c.s. (and their lawyers) are part of.⁴
5. Van Cann and Jansen request your Court to dismiss the claims of c.s. in entirety and thereby also ensure that they are not subjected to this form of personal harassment. Van Cann and will hereinafter take the primary position that there is no legal basis for their personal liability and will in the alternative defend against the claims actually directed against their employers. For the record, it is noted that NOS and De Telegraaf are not parties to this dispute. Solely for benefit of readability, reference will be made to NOS and De

Subpoena, margin number 280.

² Romanian MEP Cristian Terhes of the *Eurosceptic Conservatives* party (see, among others: <https://www.brusselstimes.com/197893/six-meps-punished-for-entering-parliament-buildings-wit-wood-covid-certificate> and <https://www.ad.nl/buitenland/europarlement-eist-coronapas-van-leden-diep-triest-a6a6d6ac/>) and *Alternative f "ür Deutschland* leader Alice Weidel (see: <https://www.bloomberg.com/news/features/2023-12-09/will-afd-s-alice-weidel-be-germany-s-first-far-right-leader-since-nazi-era> and <https://www.theguardian.com/world/2024/jan/10/politicians-from-germany-afd-met-extremist-group-to-discuss-deportation-masterplan>).

³ <https://nos.nl/nieuwsuur/collectie/13903/artikel/2438923-bronnen-bij-ophef-over-de-pfizer-papers>.
<https://rechtoprecht.online/rechtszaak: 'Each of the defendants is being sued by the plaintiffs jointly and severally and in private for the plaintiffs' alleged participation in this project. The plaintiffs allege that the defendants have acted both in person and as a group willfully unlawful, causing substantial damages the plaintiffs.' The foundation believes that by pursuing this civil pro- cedure a great social interest is '>

Telegraaf when it comes to the defense against the contentions of c.s. about the be- direction of NOS and De Telegraaf.

B. FACTSKA THERE

B.i. Covid-19 and vaccination policy

6. Van Cann and Jansen took note of the statement of reply on behalf of the State dated January 10, 2024 ("State CoA"). This conclusion sets forth the principles of public policy regarding the Covid-19 pandemic, as well as addressing the facts surrounding the *World Economic Forum*, *The Great Reset*, the general scientific consensus surrounding Covid-19, the central government's vaccination program, and the safety of the Covid-19 vaccine. Van Cann and Jansen refer to this and will not repeat it. In particular, they concern Chapters 1, 2, 5 and 6 of the State CoA.
7. Van Cann and Jansen otherwise suffice with contesting the facts put forward by c.s. put forward in which, in summary, it is asserted without substantiation that the *World Economic Forum* is engaged in the execution of an evil genocidal plot under the heading of "*The Great Reset*," of which Van Cann and Jansen would be a part. No explanation is given as to why Van Cann, Jansen, the NOS or De Telegraaf would benefit from the *World Economic Forum*'s domination of the Dutch population, let *alone* what benefit it would serve them to enable the alleged genocide of the Dutch population. The theses of c.s. are - besides being unsubstantiated - implausible.

B.ii. Role of the media during the corona crisis

8. NOS and De Telegraaf played a crucial role during the Covid-19 pandemic in informing the Dutch population about all facets of the pandemic. The Covid- 19 pandemic covered an extremely hectic time, in which, among other things, media were under great and continuous pressure to report daily on the newsworthy facts surrounding the Covid-19 virus. The overwhelming amount of information that resulted from (the fight against) the Covid-19 pandemic required editorial decisions.
9. On the whole, NOS and De Telegraaf can state that they included the most important facts regarding the Covid-19 pandemic in their coverage. Although the sound between NOS and De Telegraaf differ terms of content, both me- dia have gone to lengths to report faithfully and accurately on the Covid-19 pandemic. In that context, NOS and De Telegraaf would like to emphasize that none of their publications on Covid-19 and the corona crisis have been found unlawful.
10. The reporting by NOS and De Telegraaf during the Covid-19 pandemic can mainly be categorized as (the) 'general information' of the . After all, the vast majority of the publications of both media concerned the addressing of news of a factual nature, for example about the (speed of the) spread of Covid-19, the infectivity, the deaths, international comparisons regarding this, and/or proposed coronamate remedies at home and abroad. These articles found support in the adopted scientific consensus at the time and were carefully produced.

11. NOS and De Telegraaf are aware that their coverage on *social media* has often been used as ammunition in a conflict between proponents and opponents of the Dutch government's corona- tion measures.⁵ However, the use of factual news as a booster of conflict on *social media* is not a reason speak of unlawful reporting on the part of NOS and De Telegraaf, let alone Van Cann and Jansen.

B.iii. Adding to the facts

12. To the extent that separate or additional facts are relevant to Van Cann and Jansen's legal position, they will address them later in this Reply Brief.

C. PRIMARY: NO PERSONAL LIABILITY

C.i. No qualitative liability chief editors

13. c.s. hold Van Cann and Jansen personally liable in these proceedings for the alleged unlawful reporting by NOS and De Telegraaf. In the summons, c.s. rely on Van Cann and Jansen's capacity as chief editors of NOS News and De Telegraaf, respectively:

*"The NOS, under the leadership of Van Cann, has fully cooperated in the urgent and fear-inducing transmission of the Covid-19 narrative, which is clearly aimed at using social dmk and misrepresentation to encourage people to take Covid-19 injections. "*⁶

and

"Jansen [in his capacity of editor-in-chief, adv] led the editorial staff with the same editorial responsibilities and tasks as above with regard Van Cann. The same reproaches as Van Cann" (.j⁷ affect him.

14. The subpoena does not outline any active involvement of Van Cann and Jansen in the disputed reporting by NOS and De Telegraaf, nor does direct involvement of Van Cann and Jansen appear from the submitted publications of and De Telegraaf in productions 46 and 52. et al. only suggest, on an assertive basis, that Van Cann and Jansen led the creation of the news coverage during the corona crisis. From the concrete assertions of c.s. regarding the alleged unlawful actions of Van Cann and Jansen, however, only show reproaches that can be attributed to the NOS and De Telegraaf as the publishing medium:

"First, the c.s. point to the fact that the NOS presented the first infected corona patient as a person who was immediately changed by the Covid-19 virus from a healthy person to someone who () dead. Dead people or sick people on

See, for example, with respect to The Telegraph: Schaper et al. "Coronascepticism in the Media," Social and Cultural Planning Office, The Hague 2023.

⁶ Subpoena, margin number 169.

⁷ Subpoena, margin number 178.

street, people in hospitals and people on life support in the ICU, that's how the picture of infection was portrayed by NOS." and

*"The Telegraph, with its newspaper and Internet sites under the final editorship of Jansen, has, from the onset of the pretended Covid-19 pandemic, done everything in its power great fear and panic in" their readers and viewing public. "**

15. c.s. apparently base the personal liability of Van Cann and Jansen on a qualitative liability that would result from their position as chief editors of the NOS and De Telegraaf. This is a legally incorrect starting point: with regard to press publications, the medium - and not the chief editor - is ultimately responsible and possibly liable for the content of publications. After all, it is the publishing legal entity that performs the relevant formal legal act to place a publication or a series of publications.¹⁰

16. The term 'editorial responsibility' as used by c.s. in support of qualitative liability¹¹ is a term that harkens back to the autonomy of an editor under the Media Act and is not to the liability of a chief editor or editorial staff.¹² Editorial responsibility is not (chief) editorial liability. Established case law confirms that there is no place within media law for qualitative liability of chief editors or an arrangement whereby chief editors are, legally speaking, in principle always liable for what a medium publishes:

*"The claim, to the extent directed against [defendant 3] as chief editor of De Telegraaf, will however be . A chief editor is not automatically personally liable for every unlawful publication that appears in his newspaper; to that extent a form of qualitative liability does not apply either. In this light it has not been sufficiently explained where the unlawfulness committed by [defendant 3] would lie."*¹³

C.ii. 'Chilling effect'

17. One of the reasons why qualitative liability is considered inadmissible in media law is the danger of a *chilling* effect on press freedom. The establishment of personal liability on (chief) editors may lead to reluctance to investigate or publish social wrongdoing. Even if it concerns authors or editors of specific articles, which can be said to be in

⁸ Subpoena, margin number 162.

Subpoena, margin number 179.

¹⁰ Rechtbank Den Haag (Vzr.) 7 February 2018, ECLI:NL:RBDHA:2018:1301, r.o. 4.2: *Before proceeding to the substantive assessment of the dispute, the judge in preliminary relief proceedings noted that he - as well as Consumentenbond et al. - was surprised that Roompot (respondent sub 2) had also sued. [defendant sub 2] is - as a researcher and as an editor of the Consumer Guide - employed by the Consumers' Association. Legally speaking, it is the Consumers' Association which decides to publish the challenged article. It is hard to see that any unlawful publication (defendant sub 2) can only be blamed on grounds of her employment with the Consumers' Association. All the less since concrete/specific verwijsend that (could) make her (partly) liable have neither been stated nor shown ...]*.

¹¹ Subpoena, margin number 178.

¹² See art. 1.1 1ter sub a and b Media Act 2008.

¹³ Amsterdam District Court February 14, 2018, ECLI:NL:RBAMS:2018:763, r.o. 4.43.

direct sense responsible for the content of articles, a judge should exercise restraint in establishing personal liability:

*"Liability of employed should be applied with temghouderity, in part because of the 'chilling effect.'"*¹⁴

18. c.s., constitute in these a litigation vehicle for the Recht Oprecht foundation, which, led by the lawyers¹⁵ of c.s., deliberately choose to make a personal attack on Van Cann and Jansen.¹⁶ In front of their supporters, the c.s. portray Van Cann and Jansen as serious criminals.¹⁷ The intimidating tactics of c.s. are propelled, among other things, by the distribution of banners directed against Van Cann and Jansen.¹⁸ These banners are placed, among other things, in meadows equipped with an upside-down Dutch flag; a distress signal known from recent farmers' protests (pro- **duction 1**). Combined with the already known violence against journalists¹⁹, the recent warnings from the NCTV about 'complotextremists'²⁰ and looked at against mass protests by the Stichting Recht Oprecht²¹, this imputation by c.s. constitutes an extremely threatening and unpleasant situation for Van Cann and Jansen. It can be argued that c.s. thereby aim at precisely the above-mentioned *chilling effect*.²² On this ground alone, the claims against Van Cann and Jansen should be rejected.

C.iii. No personal blaming of Van Cann and Jansen

19. Finally neither Van Cann nor Jansen is to blame personally for the reporting by NOS and De Telegraaf on the Covid-19 pandemic. c.s. argue that:

"[Van Cann) was deputy editor-in-chief of NOS News from 2011 and became the new editor-in-chief of NOS News on September 1, 2022."23 [...]

¹⁴ Amsterdam District Court July 25, 2018, ECLI:NL:RBAMS:2018:5130, r.o. 4.7.3.

¹⁵ <https://www.advocatie.nl/tuchtrecht/voorwaardelijke-schorsing-voor-antivax-advocaat-die-ggd-medewer-cherry-prick-box-intimidated/>.

¹⁶ <https://rechtoprecht.online/rechtszaak:> *"Each of the defendants is being sued by plaintiffs principally and privately because of plaintiffs' alleged participation in this project. The plaintiffs allege that the defendants acted intentionally unlawfully both in Dersoon and a/s group, causing the plaintiffs substantial ."* The foundation believes that by conducting this civil litigation, a great social interest is .

¹⁷ Subpoena, margin numbers 274 - 280.

¹⁸ <https://rechtoprecht.online/mediadoeken>.

¹⁹ <https://nos.nl/artikel/2395423-verdachten-van-aanslag-op-groningse-journalist-zijn-corona-ontkenners>.

²⁰ <https://nos.nl/artikel/2451478-nctv-waarschuwt-voor-complotextremisten>.

²¹ <https://rechtoprecht.online/nieuwsbrief-3:> *"On November 22, 2023, many people (" 150 people) getrothed the cold and went with banners, trucks etc. to the square 'Het Zaailand' in front of the court in Leeuwarden to show their support to the seven plaintiffs in these civil bo- dem proceedings or to all Covid-19 victims all over the . All these supporters knew, of course, that there would be no public in the court at the roll call hearing on November 22, 2023. The mainstream media (the msm) reported as expected, that all these people supposedly gullible and thought they enter the court in public! The conscious Dutchman weave ge/Ukkig better. "*

²² Similar to what the State argues in response in its conclusion dated January 10, 2024, margin number 1.13.

²³ Subpoena, marginal 156.

"The manner in which NOS reported on the pretended Covid-19 Crisis was determined by Van Cann" and "Van Cann from (the) beginning of the pretended Covid-19 crisis, namely from January, to use the tone, pictures and, 'ugges- ties in the editorial work of NOS to on maximum panic and fear among the population." and

"Jansen is personally liable for the censorship he caused by cooperating in a cover-up on the one hand and, on the other hand, by blindly adopting the official narrative when even with minimal journalistic investigation it should have been clear that this narrative was false."

20. These allegations are factually incorrect. Van Cann was, first of all, only appointed as editor-in-chief of NOS News as of September 1, 2022 (and thus not "the NOS") (production 2) ^{24 25} Therefore, even if your Court were to decide on the qualitative liability of editors-in-chief, Van Cann cannot be held personally for this reason.

21. Second, neither Van Cann nor Jansen bears personal blame for "the reporting" by NOS and De Telegraaf on the Covid-19 pandemic, as required under Section 6:162(1) of the Civil Code.

et al. argue only that Van Cann and Jansen chose a particular narrative and would have committed "censorship. However, this alleged malicious intent is not evident from the documents submitted by c.s. submitted. For the record and for the sake of completeness, Van Cann and Jansen dispute that they are part of a cover-up or *The Great Reset*, let alone that they would have been guilty of censorship. From the documents c.s. submitted already show *ab initio* no evidence of a "cover-up," to which Van Cann or Jansen could have "cooperated. The unjustified personification of the NOS and De Telegraaf thus has - besides no legal basis - also no factual basis.

C.iv. **Conclusion primary defense**

22. The interlocutory conclusion with regard to the primary defense is that c.s. have no grounds for holding Van Cann and Jansen liable. There is no qualitative liability for chief editors. Moreover, Van Cann and Jansen are not at all to blame personally for the reporting by NOS and De Telegraaf on the Covid-19 pandemic.

et al. aim to exert a *chilling effect* on freedom of the press with this subpoena and the collateral banners. This is objectionable and a violation of freedom of expression. Already on these grounds claims I-III on behalf of c.s. must be dismissed. c.s. regarding Van Cann and Jansen must be dismissed.

D. **IN THE ALTERNATIVE: NO UNLAWFUL ACTS INVOLVED**

23. Should your Court unexpectedly agree to hold Van Cann and Jansen liable *contra legem* for their employers' general coverage of the Covid-19 pandemic, they defend as follows.

²⁴ See also: <https://nos.nl/article/2436821-giselle-from-cann-new-editor-in-chief-nos-news>.

²⁵ The evidence that et al. submit in support of their claims is dated January 29, 2020, two years before Van Cann took office.

D.i. The NOS and The Telegraph

24. The complaints of c.s. about the reporting by NOS and De Telegraaf can be summarized as follows:
- (i) The tone set by NOS and De Telegraaf regarding the "Covid-19 news" would be unfair, because they would deliberately and unjustifiably use maximum fear and panic among the population in the reporting in question;²⁶
 - (ii) NOS and De Telegraaf should have reported on facts that c.s. assess as newsworthy, such as specific hearings of European Commissions, the contents of Covid-19 vaccination leaflets, and "numerous" health risks that according to c.s. would result from the Covid-19 vaccinations;²⁷ and
 - (iii) NOS and De Telegraaf should have let scientists and experts speak who would have articulated the narrative proclaimed by c.s.'s proclaimed narrative.*
25. The reproaches under i-iii are characterized by c.s. characterized as "censorship" or "neglect of the journalistic task" by NOS and De Telegraaf over the period 2020 through 2022.
- c.s. substantiate a breach of standards under Section 6:162 of the Dutch Civil Code with a reference to the 'Treaty of Bordeaux' and - with respect to the NOS - the *mission statement* of the NOS on its website.²⁸ To substantiate the allegations under i-iii, c.s. one publication of NOS (production 46) and ten publications of De Telegraaf (production 52). These publications, in brief, factually on the distribution of the Covid-19 virus based on international sources such as WHO, governments and agencies such as the RIVM.
26. Van Cann and Jansen are not personally liable for the tone of reporting by NOS and De Telegraaf (under i). This also applies to the alleged omissions (under ii and iii), such as the failure to report the messages desired by c.s. wanted or the failure to invite commentators that c.s. are agreeable to. Nor can Van Cann and Jansen simply be identified *per se* with the NOS and/or De Telegraaf. Nevertheless, briefly and superfluously, Van Cann and Jansen will dwell below on the substantive objections that

²⁶ Subpoena, margin numbers 160-162 and 179-180.

²⁷ Subpoena, margin numbers 163-168 and 170-171.

See subpoena, margin number 172. That c.s. only make peace with their 'own' experts is evident from the subpoena, margin number 181, c.s. dismiss the critics of government policy chosen by De Telegraaf as 'pseudo critical' because they do not pay attention to 'the great deception of the public', referring to the poisoning of the with Covid-19 vaccination: "Insofar as Jansen would like to defend himself *mel the fact that he has attracted 'critical journalistic collaborators' in the persons of Ronald Plasterk or Marianne Zwagerman*, note c.s. note as follows. Both Plasterk and Zwagerman made a pseudo-critical about the approach of the pre-reviewed Covid-19 pandemic, but not contest a single essential point of the narrative Jansen used Plasterk and Zwagerman geused to give a schijn opposition a stage. This so that the confidence of the reading public in the journalistic functioning of ji editors was maintained while in reality there was an oDzettelijkeGreat deception of the public. c.s. were misled by Jansen in this way."

²⁹ <https://over.nos.nl/organisatie/>.

c.s. have expressed by writ of summons about the publications of the NOS and De Telegraaf (submitted by c.s. as exhibits 46 and 52).

D.ii. Proper review framework

27. The complaints of c.s. cover the tone (i) and content (ii-iii) of the reporting by NOS and De Telegraaf.
28. Under Article 10(1) ECHR, the NOS and De Telegraaf have far-reaching rights to report on events the public debate. After all, the media perform an essential function in a democratic society and their freedom of expression should not be subjected to restrictions lightly. It is the media's job to fulfill the role of *public watchdog* and information on matters of public interest:

*"In this respect the essential function the press fulfills in a democratic society must be emphasized. Although the press must not overstep certain bounds, its duty is nevertheless to impart - in a manner consistent with its obligations and responsibilities - information and ideas on all matters of public interest. *0*

29. Freedom of the press means, among other things, that the media, such as NOS and De Telegraaf, are free to publish both opinions and facts in any conceivable form. This is also true if the content is shocking or insulting ("*offend, shock and disturb*?").³¹ It is (thus) up to the media how they frame their own journalistic publications and how they portray the report of their journalistic investigations.³² It is not the task of the media, let alone an obligation, to every point of view (desired by third parties) in their reporting. In fact, the media do not always have to be neutral in reporting, provided there is no light-touch imputation or that a third party is unfairly portrayed in a bad light.^{*3}
30. Freedom of the press may only be restricted if this is necessary in a democratic society.[^] This restriction may find basis in the unlawful actions of the media under article 6:162 of the Civil Code. Whether the media are acting unlawfully is determined by (European) case law. The possible conflict with un-binding standards such as the "Treaty of Bordeaux" and the *mission statement* of the NOS,

ECHR 5 July 2016, 26115/10 *Kurski v. Poland*), para. 50, see also: ECHR 24 February 1997, Reports 1997-

(*De Haes and Gijssels v. Belgium*), ECHR 29 March 2016, 56925/08 (*A.B. v. Switzerland*).

31. ECHR 7 December 1976, NJ 1978/283 *Handyside*); ECHR 8 July 1986, NJ 1987/901 (*Lingens*) and ECHR 6 May 2003, *Mediaforum* 2003/6 (*Pema v. Italy*); ECHR 7 February 2012, LJN: BW0603 [*Axel Springer*]; ECHR 14 June 2016, no. 53421/10, *Jiménez Losantos v. Spain*), ECHR 17 January 2017, no. 31566/13 (*Ta- vares de Almeida Fernandes and Almeida Fernandes v. Portugal*).

32. See, inter alia, ECHR 10 May 2011, no. 48009/08, RAV 2011/82; EHRC 2011/108, cf. A.W. Hins (Mosley/VV),

Hoge Raad 26 March 1999, LJN: ZC0040, Hoge Raad 28 September 2012, NJ 2012, 556 (*Tros/Pretium*), Vزر. Rechtbank Amsterdam 28 February 2011, LJN: BP6121 *Partij voor de Dieren*(NOS), Rechtbank Noord-Nederland 25 November 2015, ECLI:NL:RBNNE:2015:5428 [*X/EO*] and Vزر. Rechtbank Amsterdam 28 February 2017, ECLI:NL:RBAMS:2017:1151 (*Forum voor Democratie*/NOS), Vزر. Rb. Amsterdam 27 November 2020, ECLI:NL:RBAMS:2020:6022 (*Hema / AVROTROS*).

Vزر. Rb. Amsterdam November 27, 2020, ECLI:NL: RBAMS:2020:6022 (*Hema/AVROTROS*), rulings 4.4 and 4.5.

34. ECHR 26 April 1979, NJ 1980, 146 [*Sunday Times*].

are irrelevant to your Court's legality judgment (if any), as will be explained below.

Bordeaux code: law of conduct

31. The appeal of c.s. to the "Convention" (read: the Code) is unfounded. The Bordeaux Code is a unilateral declaration of *the International Federation of Journalists* issued in 1954. An internal decency standard with no external effect. The Bordeaux Code is one of the guiding principles for Guiding Principles for Journalism³⁵ and thus part of a complaint procedure before the Press Council ("RvdJ").³⁶ The RvdJ tests against journalistic standards of conduct and concludes journalistic (un)care. The court tests against the law, treaties and case law and concludes to (un)lawfulness.³⁷

The 'mission statement' of the NIS

32. With regard to the NOS, its *mission statement* is also irrelevant for the assessment of whether its publication(s) are unlawful. Pursuant to Section 2:34a of the Media Act ("Mw"), the has a statutory duty to report facts that it deems newsworthy. The ECHR draws a clear line when it comes to the great journalistic freedoms of 'state broadcasters'. Even if these 'state broadcasters' operate under the obligation of pluralistic and/or objective reporting:

*"The Supervisory Board's decision correctly pointed out that the weight to be given to this information was a matter to be assessed, in principle, BY the responsible journalists. Even considering that the news item in question concerned the ORF itself and its status under the Austrian broadcasting legislation, the Commission is satisfied that this element did not improperly influence the manner of reporting. Nor does the Commission find any indication that the manner of reporting was affected by inappropriate considerations relating to the fact that one of the successful applicants was Mr. Haider, being an opposition leader who had himself issued a press release on this ."*³

and

*The Court reiterates that the weight to be given to an item of information "is a matter to be assessed, in principle, by the responsible journalists" (see Jifirg Haider v. Austria, no. 25060/94, Commission decision of 18 October 1995, DR 83, p. 66), and that the journalists and news editors enjoyed, under Article 10 of the Convention, a wide discretion on how to comment on political matters. The applicants did not sufficiently explain how it was possible, on the basis of the evidence and information available and in the absence of complaints of undue pressure by the journalists themselves, to distinguish between Government-induced propaganda and genuine political journalism and/or routine reporting on the activities of State officials (see, by contrast, Saliyev v. Russia, no. 35016/03, § 68, 21 October 2010)*³⁸

*5 <https://www.rvdj.nl/leidraad>.

** See <https://www.rvdj.nl/over-de-raad>. The Telegraph did not join this complaint proceeding.

³⁷ HR 8 April 2011, LJN BP6165, NJ 2011/449, m.nt. E.J. Dommering (*Pretium/Tros*), Rb. Amsterdam 7 March 2012, ECLI:NL:RBAMS:2012:BV9330 *bookkeeper RDM/Quote*, r.o. 4.7. See vice versa also Raad voor de Journalistiek 25 June 2002, RvdJ 2002/23.

ECHR 18 October 1995, No. 25060/94 (*Haider v. Austria*), p 66.

³⁸ ECHR 19 June 2012, no. 29400/05 (*Communist Party and Others v. Russia*, para. 120).

33. It is also clear from established Dutch case law that the ' legal mission does not detract from its rights to report on topics affecting society under its own editorship.

"Article 2:34a of the Media Act stipulates that the NOS has the task of providing media offerings for the landelij "ke public media service in the areas of news, sports and events that themselves particularly well to joint provision. According to the Explanatory Memorandum to the Media Act, the NOS can only fulfil its task if it appeals to and reaches out to various sections of the Dutch public (regard pluralism). Above all, within the framework of the Media Act, the NOS has a large degree of freedom regarding the subjects it wishes to focus on in its radio and television programs and the way in which it so.

34. The Amsterdam District Court, while explicitly acknowledging the broad editorial freedom of the NOS, considered that the NOS violates its limits to free reporting only if it makes unreasonable editorial decisions and thereby abuses its legal mandate.

"In the light of what has been considered above and within the framework of the Media Act, NOS has a large degree of freedom with regard to the subjects to which it" wishes to give attention in its radio and television programs and the manner in which it" wishes to so. NOS acts unlawfully only if it makes choices that could not reasonably have been made and therefore abuses that freedom. ⁴⁰

35. The appropriate legal framework will be applied below to the objections of et al.

D.iii. Application proper review framework

General considerations

36. The above legal framework shows the broad authority of the NOS and The Tele- count to decide for themselves what news they cover, in what form they do so and what tone they use in doing so. There is neither an interest nor a legal basis that can compel the media to cover specific facts. There is no *must carry* obligation in the context of (European) political reporting.
37. The bases used incorrectly by c.s., such as the Code of Bordeaux and the mis- sionstatement of the NOS, are used as a broad basis to proclaim that c.s. believe that NOS and De Telegraaf would have engaged in improper journalism. The summons is no more than a sequence of personal criticism, followed by the hasty conclusion that "therefore" "obviously" there is censorship and unlawful acts on the part of the NOS and De Telegraaf.⁴¹ This bare assertion, combined only one (!) submitted by NOS and a handful of not further explained publications by De Telegraaf⁹² in which neutral reporting on the corona crisis took place, is completely insufficient to conclude that there was an unlawful form of editorial implementation over a of two years. Let that this would constitute sufficient substantiation

Rechtbank Amsterdam 28 February 2011, ECLI:NL: RBAMS:2011:BP6121 NOS/PvDD), r.o. 4.2.

⁴¹ As an illustration, see the subpoena, marginal numbers 164, 175, 181.

* Of the hundreds of reports by NOS (see. <https://nos.nl/zoeken?q=corona&page=1>) and The Telegraph (see <https://www.telegraaf.nl/zoeken/corona>) during the coronacrisis.

for the proposition that there is question of the 'conscious misleading of the Dutch population' by the NOS and De Telegraaf as lies at the basis of the claim of et al. under I.

38. Besides being unsubstantiated, the claims of c.s. thus count as (completely) insufficiently substantiated. On this NOS and De Telegraaf suffice with contesting the criticism of c.s.

Re (i) the tone of messaging

39. Regarding the tone of the reporting by NOS and De Telegraaf, they refer, first of all, to the factual framework as submitted to the State Commission. NOS and De Telegraaf reported on facts brought by the Health Council, foreign reporters, RIVM and (foreign) government institutions. In short, there was a WHO-recognized global pandemic that posed a threat to public health. That at points there was possibly an urgent and warning tone in the reporting by NOS and De Telegraaf (which the c.s. fail to specify) was thus justified.
40. The case law cited shows, second, that it is up to the NOS and De Telegraaf to decide what tone they in their reporting. The fact that c.s. themselves have interpreted this tone as frightening does not alter this. As the content of the titles of news articles, it applies, unnecessarily, that these must be read in the of the reporting and a medium has a far-reaching power to draw the attention of the reading public to a publication by using a provocative headline.⁴³

Re ii and iii) the content of messaging.

41. The content of the reporting by NOS and De Telegraaf was in line with the general, worldwide scientific consensus surrounding the (control of) Covid-19. In this , is made to chapters 1-6 of the CoA of the State. The reporting on the Covid-19 pandemic thus found sufficient support in the facts, illustrating the legality of the reporting by NOS and De Telegraaf.
42. It is, secondly, not up to c.s. to determine what facts are reported by NOS and De Telegraaf. From the fact that c.s. have taken knowledge of the European hearings cited by them in a different way, the repeated opinions of controversial politicians and the conspiracy rhetoric used in the summons, shows that on the part of c.s. there was also no need to these messages via the NOS and De Telegraaf. NOS and De Telegraaf do not have a news monopoly. Nor is it up to c.s. to determine who on behalf of NOS and De Telegraaf should be consulted as an 'expert' in their reporting.

⁴³ See, inter alia, ECHR 1 June 2010, no. 16023/07 *Suárez v. Spain*) and ECHR 10 November 2015 (*Couderc and Ha-cl'ette Filipacchi Associés/Frankrijk "k*), Mediaforum 2016/10, no. 3, cf. W.F. Korthals Altes.

43. In addition, , with regard to the articles submitted (productions 46 and 52), the NOS and De Telegraaf in particular fulfilled a messenger function with regard to information originating from another source. That c.s. recognize the messenger role of NOS and De Telegraaf is also evident from the summons:

"Van Cann slavishly followed the official narrative as imposed worldwide by the WHO and blindly followed by all defendants"⁴⁴and

"[...] which was indiscriminately obtained by the NIS from international news agencies and from other channels acquired"⁴⁵

44. Based on this messenger function, it cannot be argued without further explanation or substantiation that the NOS and De Telegraaf would be liable for conveying information from reliable sources, such as scientifically recognized in- stances and governments worldwide.^{4*}
45. Neither the summons nor the evidence submitted by c.s. submitted shows, finally, why the submitted publications of NOS and De Telegraaf would not find support in the facts. In addition, it is not substantiated why experts who gave the to NOS and De Telegraaf would not be competent⁴⁷, let alone why NOS and De Telegraaf could be held liable for this. The same applies to the information adopted and quoted by NOS and De Telegraaf from recognized institutions or press agencies. c.s. exclusively base themselves on a contrary, delusional and suggestive story about a so-called *Great Reset* initiated by the *World Economic Forum*, 'toxic' vaccinations and/or the *Pfizer papers* and their incorrect interpretation thereof.^{4*} De NOS and De Telegraaf cannot be forced to report on facts which they do not consider to be of importance.
46. Indeed, if they had presented the aforementioned topics as facts, the NOS and De Telegraaf may very well acted in violation of journalistic codes or social decency.

Needless to say, the NOS is acting in accordance with its statutory mission.

47. With regard to the NOS, it can be said that, in line with the above arguments, it legitimately exercised its editorial freedoms. Nevertheless, the NOS will briefly consider the arguments of c.s. put forward in the context of its *mission statement* and the underlying obligations under Section 2:34a of the Dutch Media Act.

⁴⁴ Subpoena, margin number 160.

⁴⁵ Subpoena, margin number 162.

⁴⁶ Rechtbank Amsterdam 15 November 2023, ECLI:NL:RBAMS:2023:7180 (*X/BIND* c.s.), r.o. 4.22.

⁴⁷ c.s. do not explain in any way in their summons which experts of the NOS were wrongfully appointed, nor which "untrue" information they allegedly spread. With regard to De Telegraaf, they only Ronald Plasterk and Marianne Zwagerman who - in so many words - did not go far enough in com- plot rhetoric. Without further explanation about the "untruths" that were allegedly proclaimed by experts at NOS and De Telegraaf, both NOS and De Telegraaf can suffice with the assertion that did indeed allow sound experts to speak during the corona crisis.

⁴⁸ <https://nos.co.uk/news/collection/13903/article/2438923-sources-about-the-pfizer-papers>.

48. The evidence submitted by _____ The evidence submitted by c.s. does not show that the NOS would have acted in violation of its obligations under Article 2:34a of the Dutch Media Act, let alone that would have made deliberately unreasonable editorial choices that led to abuse of its freedom of the press. As stated, the reporting by the NOS has its basis in the scientific consensus surrounding the corona crisis, it has mainly acted as a messenger and has far-reaching editorial freedom under European and Dutch case law. _____ c.s. mainly feel that the news of NOS cannot be seen as objective and pluralistic because it is not consistent with the conspiracy rhetoric used.
49. For the record, NOS cannot be blamed for having reported one-sidedly during the Covid-19 pandemic. As **productions** 3 to 22, publications of are submitted which show that it also paid attention to criticism of the State' corona policy and paid attention to alternative Covid-19 vaccinations and Covid-19 treatments.

fl.iv. Conclusion subsidiary defense

50. If your Court should be of the that Van Cann and Jansen can be held liable for the reporting of the NOS and De Telegraaf, then it appears, in the alternative, that the NOS and De Telegraaf enjoy far-reaching protection when it comes to the freedom of the press and the running of their own editorial offices. This freedom also belongs to Van Cann and Jansen as chief editors.
51. The allegations that the NOS Van Cann) and De Telegraaf (Jansen) would have unlawfully conducted re daction are not at all substantiated by _____ c.s., al- now find no basis in the alleged facts, the law or case law. The reporting by NOS and De Telegraaf found support in the scientific consensus and was particularly done from a (lawful) messenger function. Finally, reported in accordance with its obligations under Article 2:34a of the Media Act by reporting on the corona crisis in a pluralistic and objective manner.
52. The above leads to the conclusion that the claims of _____ c.s. should also be rejected on subsidiary grounds because of the absence of unlawful acts on the part of the NOS and De Telegraaf.

E. IN THE FURTHER ALTERNATIVE: DEFENSE OF THE (OTHER) CLAIMS

53. In the unlikely event that your should decide that the reporting by NOS and De Tele- count about the Covid-19 pandemic unlawful and Van Cann and Jansen are personally liable for this reporting, Van Cann and Jansen defend themselves in the further alternative as follows.

E.i. No evidence of the alleged intent or foreknowledge

54. et al. claim to have suffered personal injury because they were allegedly induced by Van Cann and Jansen to take a Covid-19 vaccination that Van Cann and Jansen would have known was not safe or effective.⁴⁹
55. The contentions of c.s. in these proceedings consist solely of unsubstantiated allegations. c.s. have in no way demonstrated the existence of a 'world-wide conspiracy' or an associated 'cover-up'. Above all, available factual material does not show that Van Cann and Jansen 'intentionally' moved c.s. would induced c.s. to take a Covid-19 vaccination and/or that Van Cann and Jansen would have known that the Covid-19 vaccine would be unsafe or ineffective.
56. The claim under I on behalf of c.s. is thus in advance not assignable against Van Cann and Jansen, even if your would conclude to the personal liability of Van Cann and Jansen because of the unlawful reporting of the NOS and De Telegraaf.

E.ii. No injury and/or causation

57. With respect to the alleged damages suffered by c.s. and the alleged causation, Van Cann and Jansen join the defense as raised by the State in Chapter 7 of the State's brief.
58. In short, all evidence on behalf of c.s. in support of the allegedly ligated damages. Thus there is no proof that c.s. have been vaccinated at all and which vaccine they have taken. In addition, the frankly tendentious "medical statements" of c.s. coming from company doctor and anti-corona activist Alexander van Walraven⁵⁰, in itself provides a basis for the alleged physical injury that is questionable to say the least. That c.s. have suffered damage by taking the Covid-19 vaccinations is also not plausible: after all, the authorized vaccines appear to be safe on a large scale, or at least there appears to be no question of the genocide on the Dutch population predicted by c.s. predicted genocide of the Dutch population through the 'unsafe' vaccines.
59. Specifically with regard to the role of Van Cann and/or Jansen, it applies additionally that c.s. do not explain how the "grievous bodily harm" relates to the role Van Cann and Jansen played as chief editors of the NOS and the Telegraaf. Thus, it remains undiscussed and unproven which articles c.s. concretely read in their individual cases and which articles led them - each of them - to be forced to take a vaccination without reading a package insert.
60. Moreover, it is noteworthy that c.s. refer in particular to information from October 2022, which show that the Covid-19 vaccines are dangerous and which the NOS and De Telegraaf would have erroneously failed to publish about (productions 48- 50). Although

⁴⁹ Subpoena, petition under I.

⁵⁰ See "*Alexander van Walraven's Manifesto to All Doctors of the Netherlands*" at <https://www.youtube.com/watch?v=sOpfIZOaqmU>. And <https://www.spoor3.com/alexander-van-walraven-company-doctor/>.

c.s. provide no evidence of their own vaccinations, the Covid-19 vaccination campaign largely took place before October 2022 place.¹ Net is thus prima facie plausible that even c.s. were vaccinated before October 2022. From this it can be inferred that the failure of NOS and De Telegraaf to publish about the October 2022 events could not have played a role in c.s.' decision to take the Covid-19 vaccine.

E.iii. Conclusion more subsidiary defense

61. The very wording that Van Cann and Jansen would act "knowingly" with to a cover-up and would "know" about the "toxic" Covid-19 vaccination makes claim I of et al. is not assignable. After all, the evidence submitted by c.s. that there was any malicious intent or foreknowledge regarding the Covid-19 vaccinations. Besides that c.s. have not shown that they actually suffered personal injury, by submitting defective evidence. c.s. also failed to outline any causal connection between the publications of NOS and De Telegraaf and the damages they sustained, let alone that - as c.s. claim - there would be any question of a causal connection. c.s. claim - there would be a *conditio sine qua non* connection.
62. On the basis of (also) the more subsidiary defence the claims of c.s. must be rejected in their entirety.

F. MEANS OF EVIDENCE

63. Van Cann and Jansen have productions 1 to 22 and any additional productions to be submitted in order to demonstrate the correctness of the statements disputed by c.s. c.s. contested contentions.

G. BENEFITS

64. To the extent your finds that Van Cann and Jansen have any burden of proof, Van Cann and Jansen offer to prove these contentions by having witnesses heard.

WITH CONCLUSION

- I. To reject the claims of c.s., either by declaring declaring the c.s. ineligible in their claims, or denying c.s. their claims;
- II. order c.s. jointly and severally to pay the costs of the proceedings, to be increased by the additional costs amounting to EUR 173,-- without service, increased by EUR 82,-- in case of service, to be paid within fourteen days after the date of the judgment, and - in case payment of the costs or additional costs is not made within the prescribed period - to be increased by the statutory interest on the costs or additional costs, to be calculated as from the aforementioned period for payment,

¹ <https://www.rijksoverheid.nl/documenten/publicaties/2020/12/17/tijdljn-start-coronavaccinaties>.

AC&

the , to the extent permitted by law, .

