[BE] Hidden Camera Infringes Right to Image

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In a ruling of 19 May 2000, the Brussels Court of First Instance dealt with a case involving a hidden camera.

On 2 October 1998 the applicant, Mrs P., had attended the recording of a talk-show on Flemish TV channel VTM, entitled "I'm looking for a millionaire", which concerned people attracted by money. Once the recording was officially over, the studio audience, including Mrs P., and the programme guests, including one man who was supposed to be a millionaire, had been invited by VTM for a drink. It was then that, by means of a hidden camera. Mrs P. had been filmed in conversation with the supposed millionaire. VTM subsequently broadcast both recordings to the general public on 30 November 1998. In the hidden camera scene, the applicant was perfectly recognisable and TV viewers could easily hear her conversation. Mrs P. claimed that the broadcast of the hidden camera scene had been wrong and that she was entitled to compensation.

The Brussels Court of First Instance ruled that, although the applicant had given her consent to use her image as part of the scheduled recording, she had not had the opportunity to give prior permission for it to be used in a hidden camera scene which she had no idea was being filmed. According to the Court, the studio audience could reasonably have assumed that they were no longer being filmed after the first recording was over.

In these circumstances, VTM had been in the wrong because it had infringed the applicant's rights over her own image, protected in particular by Article 10 of the Copyright Act of 30 June 1994. This Article entitles any individual to object to their image being used without their consent. In this case, VTM had not obtained the applicant's express permission to use her image, which had been filmed by a hidden camera.

Moreover, the Brussels Court of First Instance took aggravating circumstances into account because, firstly, the applicant had been portrayed as someone who would only become romantically involved if she thought she could gain financially, and secondly because the programme presenter had introduced the hidden camera sequence with words to the effect of "how to attract flies into a jam pot", while subtitles which appeared in the broadcast on 30 November 1998 were considered insulting to the applicant.

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In view of the large ratings attracted by this VTM programme, the Court awarded moral damages ex aequo et bono of BEF 1 per viewer (a total of BEF 702,000) and made VTM publish its ruling in seven different daily newspapers at its own expense.

Brussels Court of First Instance, 19 May 2000, Mrs P. vs. S.A. Vlaamse Media Maatschappij (VTM).

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