[NL] Court Dismisses Complaint by convicted Criminal about the Broadcasting of the Filming of his Crime

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On 21 October 2011, the Rechtbank Amsterdam (Amsterdam Court) dismissed an action brought by a convicted criminal against the broadcasting of the filming of his crime.

The plaintiff was involved in the kidnapping of a well-known Dutch businessman in 1983. He is currently in prison for a conviction unconnected with the abduction. The defendant in the instant case was a Dutch film production company that filmed the kidnapping. Inter alia, the plaintiff claimed that the film portrayed the victim's abduction and weeklong imprisonment as more violent than it actually was and thus breached his right to social rehabilitation. The public perception of the plaintiff was, he claimed, shaped to a significant extent by the film character portraying him and not by the crime that had actually been committed, a perception enhanced by the fact that the actor playing the role of the plaintiff bore a strong physical resemblance to him. The producer pointed out, however, that the plaintiff's name was not mentioned in the film and that the characters in the film were fictitious "blends" of the actual kidnappers. Moreover, it was not clear how the film could harm the plaintiff's social reputation more than the crime he had committed. The defendant also pointed to the considerable economic loss that would be sustained if the broadcasting of the film were stopped so shortly before the scheduled date (end of October 2011).

The court dismissed the action, stating that, after balancing the conflicting interests and with due regard for Articles 8 and 10 of the European Convention on Human Rights and Article 7 of the Dutch constitution, the interests of the defendant producer predominated. Although the film character bore a physical resemblance to the plaintiff, so that it could be assumed that he was supposed to portray him, it was not unusual and, moreover, was legitimate for actors who resembled the individual portrayed to be chosen for films on historical events. Owing to the actions of the perpetrators and the fact that the victim was a prominent individual, the abduction had created quite a stir and caused public outrage. The crime was inextricably linked to the plaintiff, as was, consequently, any treatment of the subject, including in a film. However, it did not follow that such a film was unlawful. The defendant had admitted that he had added fictitious elements to it, but that was part of the freedom of artistic expression and the choice of artistic form, both of which were protected by law. It was not to be expected that the public would, in its perception, see the plaintiff mirrored in the

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behaviour of the film character concerned, especially when the defendant had clearly stated - and continued to state - that the film was not a purely factual portrayal of the actual crime. The limits of artistic expression had accordingly not been exceeded.

LJN: BT8893, Rechtbank Amsterdam , 500921 / KG ZA 11-1542 WT/JWR, 21/10/2011

http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=BT8893&u_ljn=BT8893

Decision of the court (LJN: BT8893, Rechtbank Amsterdam, 500921 / KG ZA 11-1542 WT/JWR) of 21 October 2011

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