[NL] ‘Undercover in the Netherlands’ - Broadcast Held to Fall Within the Public Watchdog Role of the Media

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On 4 December 2013, the District Court in Amsterdam ruled that the broadcasting of a programme by Dutch television show ‘Undercover in Nederland’ (Undercover in the Netherlands), which detailed the dangers of finding sperm donors on the Internet, fell within the responsibility of the media to spread information and ideas of public interest and to execute its vital role of public watchdog.

The Court further stated that there was no need to consider the question of whether women who use the Internet to find sperm donors could be seen as a vulnerable group of “victims” that need protection, since they are considered to belong to a public that needs to be well informed about the relevant facts and circumstances involving the decision to do business with a sperm donor on the Internet. The programme in question focused on the particularities of the plaintiff in the present case. The plaintiff had offered his services as a sperm donor over the Internet from 2009 until mid-2011. During this time, he came into contact with several prospective mothers. A standard agreement between the plaintiff and the prospective mothers took place in which the plaintiff was not financially compensated for his sperm. In the agreements, the plaintiff guaranteed that he was in good health. The plaintiff, however, failed to disclose the fact that he had been diagnosed with Asperger syndrome (AS) in 2008, which is regarded as a hereditary health condition.

‘Undercover in Nederland’ recorded and showed an interview with the plaintiff with a hidden camera. During the interview, the plaintiff was asked questions about his health condition by an undercover employee of the show who pretended to be a prospective mother. The plaintiff made guarantees of his health by showing his blood results to the undercover reporter. However, the plaintiff did not mention his diagnosis of AS when the reporter questioned him on whether there were any hereditary diseases in his family. While leaving the interview, the plaintiff was confronted with the camera. The plaintiff was made unrecognisable in the broadcast through the use of pixilation and by the distortion of his voice. As well as this, his name was never mentioned. The plaintiff, however, claimed that there was an unjustified interference with his right to respect for his private life.

In evaluating the balance of the competing rights at issue in this case, the judge considered that the act of donating sperm can be regarded as an activity that falls within the respect for private life. On the other hand the plaintiff was not

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recognizable in the portrayal. The media company (SBS) only broadcasted information that was necessary to inform the public of the fact that a sperm donor, plaintiff, who was not disclosing the fact that he suffers from Asperger syndrome, was actively operating on the internet. As well as this, the hidden camera was used to attain further evidence for this allegation. The judge stated that there was sufficient evidence to determine that the plaintiff did indeed suffer from this syndrome. Due to the aforementioned facts, the judge ruled that SBSs' interest in informing the public outweighed the plaintiff's respect of private life.

Rechtbank Amsterdam, 04/12/2013, C/13/531572

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District Court in Amsterdam, 4 December 2013, C/13/531572

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