[NL] Prohibition against broadcasting hidden camera images at Dutch secondary school

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Anne Goubitz
Institute for Information Law (IViR), University of Amsterdam

On 16 May 2014, the Preliminary Court of Midden-Nederland ruled that RTL, a Dutch broadcaster, was prohibited from broadcasting images recorded by means of a hidden camera in the television programme 'Project P'. The images were recorded at a secondary school in order to bring attention to the bullying of a schoolchild. The Court held that the interest of RTL in informing the public about abuses in society, such as bullying, did not outweigh the right to privacy of the fellow schoolchildren and the teachers of the school.

RTL produces a television programme called 'Project P'. In this programme a 12-year old schoolchild, X, was given a prepared backpack with a hidden camera so as to film him being bullied at his school, the Einstein Lyceum. The recorded images were shown to the fellow schoolchildren outside the school during a confrontation by the show's presenter, which was also recorded by RTL.

The Einstein Lyceum objected to RTL's intention to broadcast these images. The school stated that the broadcasting of the images would seriously infringe the right to privacy and the portrait rights of the schoolchildren and their teachers. Broadcaster RTL argued that the use of a hidden camera was the only way by which it could inform the public about the seriousness of bullying in society.

The court weighed the interests of both parties involved: the freedom of speech of RTL in informing the public about abuses in society, against the right to privacy of the schoolchildren in question and of the school.

The court considered that the images of the hidden camera seriously infringed the right to privacy of the schoolchildren and the teachers. According to the court, the school is a non-public area; the schoolchildren should not have to expect secret recordings at school for national broadcasting. Since the schoolchildren in question are of a young age, 11 to 13 years of age, they have no choice but to attend school. The court held that the interest of RTL in informing about bullying at school did not justify the use of a hidden camera by X in this specific case.

The court further considered the fact that RTL blocked the road between the school and the playing field by a car with a large television screen. The schoolchildren were confronted by the programme's well-known television presenter who showed them the secretly filmed images. Neither the school nor

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the parents of the schoolchildren were informed about the filming or the fact that the children would be confronted with the images by the presenter.

Despite the fact that the images of the children were blurred and their voices distorted, the filming of the footage still made it possible for the children to be recognized by their fellow schoolchildren and their parents. Through the dissemination of the images on social media, the possibility of recognition of the children would increase. The court found that RTL had not done their utmost to prevent recognition of the schoolchildren. In its judgment, the court also took into account the efforts of the school to prevent bullying through the implementation of special anti-bullying projects. The court held that the right to privacy of the schoolchildren outweighed RTL's right to freedom of speech and therefore prohibited the broadcasting of the footage.

Voorzieningenrechter Rechtbank Midden-Nederland, 16 mei 2014, ECLI:NL:RBMNE:2014:1940, Project P

http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBMNE:2014:1940

Preliminary Court Midden-Nederland, 16 May 2014, ECLI:NL:RBMNE:2014:1940, Project P

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