[NL] Court Ruling on Broadcaster's Comment on Public Figure

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On 23 December 2014, the Court of Appeal in Amsterdam ruled in favour of the Dutch broadcast company Powned in a dispute regarding a board member of Buma/Stemra, the Dutch collective rights management society for musical works. This decision affirms the decision of the District Court of Amsterdam.

Powned had published on its website and in its television news programme that Gerrits, board member of Buma/Stemra, was "corrupt". Powned based this allegation on a phone call between Gerrits and an agent of a composer. In this phone call, which Powned secretly recorded, Gerrits offered to use his influential position as a board member of the collective management society in exchange for a third of the profits gained from the exploitation of the composer's work.

Gerrits claimed that Powned acted unlawfully against him and infringed his reputation and right to privacy under Article 8 of the European Convention of Human Rights (ECHR). The Court of Appeal ruled that Powned's statements did not concern a private matter, but Gerrits' public function as a board member. Since Gerrits failed to demonstrate that his personality rights were infringed by Powned's statement, he could not successfully invoke Article 8 of the ECHR.

The Court of Appeal ruled that calling Gerrits "corrupt" is a value judgment, which includes a variety of more or less severe acts that may not be corruption. The context in which this statement is made is essential to assess whether Powned acted unlawfully. The Court was of the opinion that there was enough evidence to support the statement, namely the telephone call in which Gerrits offered his powers as a board member in exchange for a percentage of the profits. Therefore, Powned had not acted unlawfully against Gerrits.

Furthermore, the Court of Appeal stated that the news medium is allowed to exaggerate or to provoke to a certain extent, as long as there is enough factual evidence available. Viewers of Powned will deem exaggeration as inherent to the news medium and therefore Powned is allowed to provoke and such statements should be less quickly held unlawful.

Gerechtshof Amsterdam, arrest van de meervoudige burgerlijke kamer van 23 december 2014

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Appeal Court of Amsterdam, Decision of 23 December 2014

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