[NL] Court rejects privacy claim over broadcast of secret recording

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In a judgment on preliminary relief proceedings on 17 April 2015, the District Court of Amsterdam rejected a privacy claim over the broadcast of a secret recording being. The plaintiff had received an area ban for the living area of his ex-girlfriend. The woman also pressed charges against him for stalking her and in the meantime contacted a broadcaster that airs a programme about stalking. On 12 April 2015, the broadcaster announced that within a week they would devote attention to the situation of the woman. The broadcast would show secret recordings of the plaintiff looking over the woman's fence and approaching her as she was walking her dog. The plaintiff claimed that the broadcaster had to be prevented from showing the secret recordings.

The broadcaster's right to freedom of expression clashed with the plaintiff's right to privacy. Article 8 of the Constitution of the Kingdom of the Netherlands and Article 10 of the European Convention on Human Rights (ECHR) protect the right to freedom of expression. Article 10(2) ECHR states that the exercise of that right may be subjected to restrictions if they are prescribed by law and are necessary in a democratic society for the protection of the reputation or rights of others. The restriction on the broadcaster would be "prescribed by law" if the broadcast qualified as a tortious act against the plaintiff within the meaning of Article 6:162 of the Dutch Civil Code. On the plaintiff's side, Article 8 of the ECHR protects the right to privacy, which includes the right to respect for his honour and good name. In principle, freedom of expression and the right to privacy are equal. The Court considered that the question of which right would outweigh the other one would depend on all the circumstances of the case.

The Court denied the plaintiff's claim. It found it relevant that the broadcaster had promised that the plaintiff's face would be blurred, the video footage "wiped" and that the plaintiff's full name would not be mentioned. The Court observed that neither the plaintiff's body type, namely a bodybuilding type, nor his voice would identify him in the broadcast. Furthermore, the Court considered that the topic of the broadcast (stalking) was a societal issue. The plaintiff's conduct could illustrate the problem of stalking and the broadcaster could not have obtained the material without a hidden camera. In addition, the Court held that the content of the broadcast at issue (that the plaintiff was a stalker) was supported by publicly available facts. Finally, the Court noted that the plaintiff was offered and made use of the opportunity to tell his side of the matter in the broadcast. The Court

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concluded that the right to freedom of expression of the broadcaster outweighed the right to privacy of the plaintiff.

Rechtbank Amsterdam, 17 april 2015, IEF 14915, S. tegen SBS

http://www.ie-forum.nl/userfiles/IE-Forum%20Vzr_%20Rechtbank%20Amsterdam%2017%20april%202015,%20IEF%2014915%20(S%20tegen%20SBS).pdf

District Court Amsterdam, 17 April 2015, IEF 14915, S v. SBS

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