[NL] Court declares broadcasting hidden camera images of public figure unlawful

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In a judgment on preliminary relief proceedings on 12 August 2015, the District Court of Amsterdam declared the broadcast of images of the former mayor of Maastricht unlawful. The images were recorded by the Dutch broadcaster Powned, by means of a hidden camera. The Court ordered Powned to ensure that the unlawful images can no longer be found through search engines on the Internet.

In December 2013, the mayor of Maastricht, who is married, was discredited when a Dutch broadcaster published a photo of him kissing a 24-year-old man in a hotel lobby. In the same period, a photo of the mayor was found on the gay dating application Grindr, showing his naked torso. The city council chairmen of Maastricht discussed the position of the mayor, but this did not lead to further consequences.

Less than a year later, Powned published secretly recorded footage, showing the mayor dating another young man. This second scandal led to his resignation as mayor of Maastricht.

The former mayor sued Powned, and the Court concluded that the broadcaster's right to freedom of expression conflicted with the former mayor's right to privacy. These rights are protected under Articles 10 and 8 respectively of the European Convention on Human Rights (ECHR). Restrictions on freedom of expression are possible when they are prescribed by law and are necessary in a democratic society.

The Court stated that the answer to the question of which right should outweigh the other can be found by looking at all the relevant circumstances of the case. First, the press has a special position, considering their task as a public watchdog and to report on issues of general interest, and considering the public's right to receive information and ideas. Second, public figures have to tolerate greater intrusion in their private lives. It is also relevant whether a breach of Article 8 ECHR is a foreseeable consequence of one's own actions. Finally, the use of a hidden camera should be taken into consideration.

The Court ruled that, to a certain extent, the former mayor had made his private life subject to public debate. Moreover, a mayor should be a role model. However,

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this does not mean the mayor was not entitled to any legal protection. In the opinion of the court, the behaviour of the former mayor did not justify the breach of his right to a private life. The mayor was free to meet other young men, and the use of a hidden camera did not meet the proportionality requirement.

Therefore, Powned was found to have acted unlawfully. The restriction on freedom of expression was proportional and necessary in a democratic society. The court ordered Powned to ensure that the unlawful images can no longer be found through search engines on the Internet. In addition, Powned was ordered to hand over all the images and recordings to the former mayor, since these might have been tampered with.

Rechtbank Amsterdam, 12 augustus 2015, ECLI:NL:RBAMS:2015:5070

http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2015:5070

District Court of Amsterdam, 12 August 2015, ECLI:NL:RBAMS:2015:5070

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