[NL] Court allows broadcast of secretly recorded footage of prisoner on conditional release

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On 20 September 20 2015, the District Court of Amsterdam denied attempts by two plaintiffs to prevent the broadcasting of secretly recorded audiovisual materials. The first plaintiff, Volkert van der Graaf, had been conditionally released from prison, having been sentenced to 18 years after he murdered the Dutch politician Pim Fortuyn in 2002. Graaf had been released six years early from prison on, amongst others, the condition that he would refrain from contact with the media. In the secretly recorded footage at issue in this case, Graaf was recorded stating that he himself contacted a photographer of a Dutch national newspaper to take pictures of him. These pictures were published in a national newspaper in July 2014. He also stated that he violated other conditions of his release, which obliged him to reintegrate in society. Notably, in cases of violation of the conditions of release, individuals may be sent back to prison.

The second plaintiff, another convicted prisoner, secretly recorded the material on two occasions and offered it for sale to a journalist from a Dutch journalistic platform. He renegotiated to meet a third time with the first plaintiff, but he would only do so if the journalist would refrain from broadcasting the prior materials. After a couple of weeks, the platform offered the materials to a Dutch journalistic television show, which is broadcast on national television. This show, called Brandpunt, announced they would use the materials in their upcoming broadcast.

The plaintiffs sought judgment against the broadcaster, to prevent the release of the materials on the grounds that it violated their right to privacy and their portretrecht (Dutch law states an explicit ownership on the publication of your picture). The Court stated that a prevention on the release of the materials is a limitation of the broadcaster's right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR), which is only allowed when it is prescribed by law and necessary in a democratic society. In order to judge whether respect for the right to privacy outweighs the right to freedom of expression, the Court balances the interests of both parties in the circumstances of the case.

The Court stated that Brandpunt has the right to report on issues that affect society in a way it sees fit. The violation of the conditions of release by the murderer of a high-profile politician is an issue of public interest. Due to the severity of the crime committed by the first plaintiff, the public will continually

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have an interest in his actions. The audiovisual materials are the core of the broadcasting of this issue, and the nature of the statements in the broadcast justifies the use of the materials. In addition the Court noted that the images and voice-recordings of the first plaintiff circulate widely on the Internet and therefore his portretrecht was not violated. Based on these conclusions, the claims of the plaintiffs were denied.

Rechtbank Amsterdam, 20 september 2015, ECLI:NL:RBAMS:2015:6674

http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2015:6674&keyword=televisie&keyword=media

District Court of Amsterdam, 20 September 2015, ECLI:RBAMS:2015:6674

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