[NL] Dutch public broadcaster acted unlawfully towards a Syrian refugee

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Sarah Johanna Eskens
Institute for Information Law (IViR), University of Amsterdam

In a judgment on preliminary relief proceedings on 15 December 2015, the District Court of Amsterdam ruled that the Dutch public broadcaster PowNed acted unlawfully towards a Syrian refugee. PowNed broadcast video images in which the plaintiff refugee talked about a medical problem with his testicles and seemed to express an aversion to homosexuality. PowNed also shared the fragment on its Facebook page, where it was widely viewed, shared, liked and received many negative comments. The footage was made during a conversation between the plaintiff and a reporter of PowNed while she visited a temporary reception location for refugees.

The Court considered that the plaintiff's right to protection of his privacy conflicted with PowNed's right to freedom of expression, and that the question of which right should outweigh the other would depend on the particular circumstances of the case. In that regard, the Court took into account that the reporter and her cameraman did not introduce themselves to the plaintiff as correspondents for PowNed, whereas acting openly ("handelen met open vizier") is a widely supported journalistic principle. In fact, during the proceedings it became clear that the reporter told the plaintiff the footage would just be for personal use. Next, the Court deemed it important that the plaintiff was not used to being the centre of interest, and had a very limited proficiency in English language. In addition to this, the Court reiterated that journalists should refrain from pure sensationalism (referring to Armellini and others v. Austria, ECtHR, 16 April 2015). It found that the plaintiff's statements were taken out of context, and that there was no justification for displaying the images in this edit. The raw video material showed that the reporter asked highly suggestive questions and that the plaintiff gave a more nuanced view on homosexuality.

On the basis of this, the Court ruled that the plaintiff's right to privacy outweighed PowNed's right to freedom of expression. The Court concluded that PowNed could not invoke the journalistic freedom to expose abuses. Given the content of the video images, the intimate character of the topic, and the manner in which the plaintiff was portrayed, the Court found it sufficiently proven that the plaintiff suffered harm to his private life, his name and good honour. The conduct of PowNed was a tortious act against the plaintiff within the meaning of Article 6:162 of the Dutch Civil Code. The Court ordered the broadcaster to prevent any further broadcasting of the item and to ensure it would be removed from other websites,

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and from Google and Yahoo's search results. Lastly the Court allowed a claim for damages of EUR 2,500.

Rechtbank Amsterdam, 15 december 2015, ECLI:NL:RBAMS:2015:8976

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2015:8976

Amsterdam District Court, 15 December 2015, ECLI:NL:RBAMS:2015:8976

Judgment by the European Court of Human Rights (First Section), Armellini and Others v. Austria, Application no. 14134/07 of 16 April 2015

https://hudoc.echr.coe.int/eng?i=001-153803

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