

[NL] Court holds PowNed liable for infringing former mayor's right to private life

IRIS 2016-10:1/21

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On 31 August 2016, the District Court of Amsterdam held broadcasting organisation PowNed liable for broadcasting private conversations between former Dutch mayor Onno Hoes and a 24-year-old man he was romantically involved with (for the preliminary decision, see IRIS 2015-10/25).

Hoes, at that time the mayor of the Dutch city Maastricht and married for several years, met the man, Robbie Hasselt, a few times during the autumn of 2014. Hoes had been involved in a scandal in 2013, when he was seen kissing another man. For a short period of time, his position as mayor seemed to be in danger, but the case was settled - Hoes stayed mayor of Maastricht, and the media storm about the events came to an end.

In 2014 however, broadcasting organisation PowNed learned that Hoes had contact with Hasselt on the Internet and that they had arranged to meet each other. Two meetings between Hoes and Hasselt were secretly recorded, one by PowNed and one by Hasselt, who was equipped by PowNed with a hidden camera. The conversations between the two, during which explicit sexual language was used, were broadcast. As a result of the incident, in the summer of 2015, Hoes' position became untenable and he resigned from his job. Hoes started a procedure against Hasselt and PowNed in which he claimed they were liable for both the material and immaterial damage he said he had suffered and possibly will suffer in the future. Hoes stated both PowNed and Hasselt infringed his right to a private life. Moreover, he wanted PowNed to keep the material removed from the Internet and never use it again. Hoes had already sought removal of the material earlier, during the preliminary proceedings in 2015. On this second claim the request was then granted.

The Court noted that it had to balance two fundamental rights, namely Hoes's right to private life (Article 8 of the European Convention on Human Rights (ECHR)) and PowNed's right to freedom of expression (Article 10, ECHR). The Court then examined the recording and broadcasting of the material separately.

According to the Court, the recording of the conversations was allowed. As Hoes had been involved in a scandal before, and as it was known that repetition of his past behaviour could affect his position as mayor of Maastricht, the meetings

between Hoes and Hasselt were a subject of public debate. The Court stated that is the task of the media to report on matters like these. The usage of hidden cameras and microphones was found proportionate by the Court, as it was the most effective and least severe method to achieve the result sought: if Hoes would have known that his statements were recorded, he probably would not have spoken freely.

Broadcasting the material, however, was found disproportionate by the Court. Hasselt had already blogged about his meetings with Hoes, and therefore the matter was already known to the public. Moreover, PowNed had manipulated the broadcasted material by adding sound recordings of statements made by Hoes only later that day, outside of the restaurant where the meetings took place. The Court stated that this was important because the setting of the conversation was relevant.

Therefore, PowNed was held liable and was prohibited from using the recorded material. The Court did not hold Hasselt liable, because he had not been involved in the broadcasting of the conversations.

Rechtbank Amsterdam, 31 augustus 2016, ECLI:NL:RBAMS:2016:5438

<http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2016:5438>

