[NL] Dutch broadcaster acted in good faith when covertly interviewing refugee

IRIS 2016-10:1/22

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In December 2015, the District Court of Amsterdam ordered the Dutch public broadcaster PowNed to prevent further broadcasting of a video item. The item featured a Syrian refugee who seemed to express an aversion to homosexuality and talked about a medical problem with his testicles (IRIS 2016-2/21). On 16 August 2016, the Court of Appeal in Amsterdam overturned parts of the judgment.

The Court of Appeal separately assessed whether PowNed lawfully broadcasted the video fragment concerning homosexuality next to the fragment about the man's medical issues. The Court also distinctly evaluated whether PowNed lawfully obtained, and subsequently broadcasted, the information. Central to the District Court's decision was the fact that the PowNed reporter and her cameraman had not introduced themselves to the plaintiff as correspondents for PowNed. The District Court found that PowNed's conduct was a tortious act against the plaintiff. By contrast, the Court of Appeal considered that obtaining the man's view on homosexuality served a debate of general interest, so that the reporter not acting openly was justified (see the criteria in Axel Springer AG v. Germany, ECtHR, 7 February 2012, IRIS 2012-3/1). The Court took into account that the Dutch Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang asielzoekers - COA) refused PowNed all access to a temporary reception location for refugees. In view of the Court, this refusal constituted an unacceptable interference with press freedom. The Court concluded that the reporters acted in good faith while covertly obtaining the video material regarding homosexuality, and that PowNed had showed it lawfully.

Nonetheless, the Court of Appeal ruled that PowNed broadcasted the video fragment regarding the medical issues unlawfully. The Court considered that this fragment was indeed aired in the context of a debate of general interest, namely the attitude of (male) refugees towards women's rights and sexuality. However, the Court found that in this case broadcasting the fragment did not serve the public debate. The Court observed that the fragment aimed to close the broadcasting episode in a not-so-serious and light-hearted manner. In those circumstances, the right to freedom of expression did not outweigh the plaintiff's right to protection of his private life. The Court concluded that, even though the reporters had obtained the video material in good faith, the subsequent

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broadcasting of the material was unlawful.

The Court of Appeal overturned the part of the District Court's judgment concerning homosexuality, but reinforced the claim of damages for the video fragment regarding the plaintiff's medical problems.

Gerechtshof Amsterdam, 16 augustus 2016, ECLI:NL:GHAMS:2016:3286

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHAMS:2016:3286

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