[NL] Broadcasting suspect's image in Dutch television programme unlawful

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On 27 December 2017, the District Court of Gelderland ruled that broadcasting the image of a murder suspect's face in a television programme did not contribute to the public debate and was therefore unlawful.

In 2016, the claimant in this case was ordered to serve a prison sentence of 7.5 years for attempted provocation of murder. Hidden camera footage had been discovered in which the claimant closed a murder deal and gave instructions to his associates. The footage was broadcast by SBS in 2012 on national television, in Misdaadverslaggever, a frequently watched crime reporting television programme produced by Endemol. In the broadcast of the television programme, the claimant discusses the murder of one of his business competitors. Even though his name is not mentioned, his face is clearly recognisable. Endemol considered it of great importance that the claimant's face was not blurred, because his face shows a cold and careless expression.

The claimant alleged a violation of his right to privacy, and claimed compensation for damages of EUR 500 000. To decide whether Endemol and SBS had committed an unlawful act against the claimant, the district court weighed the interests of the claimant against those of the defendant. The interests at stake were the right to privacy as embodied in Article 8 of the European Convention on Human Rights (ECHR) and the right to freedom of expression as protected by Article 10 ECHR. In order to decide which of these rights prevail, the district court took into account all relevant circumstances of the case at issue. According to the district court, it was relevant that the claimant's face was not blurred and that the television programme gave a detailed overview of the claimant's background; his profession, prior prison sentences and his participation in the discussed murder were all covered.

The district court also noted that special attention needed to be paid to the position of the press. It is the vital job of the press to spread information and ideas that contribute to the public debate, while the public has a right to receive these ideas and information. The district court ruled that the general interest of the public in this case was to be informed about the phenomenon of "murder on order", but that there was no necessity to warn the public about the claimant, since he was already incarcerated. Neither is he a public figure, which is an important factor when deciding on which of the rights prevails in this specific

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case. The district court was of the opinion that revealing the face of the claimant in the television programme did not contribute to the public debate on “murder on order” in general, and had led to unnecessary interference in the claimant’s privacy. The district court concluded that the defendant could have made a useful contribution to the public debate without revealing the claimant’s face and was therefore liable for the immaterial damages of EUR 3 000 that the claimant now suffers.

Ktr. Rechtbank Gelderland 27 december 2017, ECLI:NL:RBGEL:2017:6890

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBGEL:2017:6890

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