[NL] Publishing of secretly taped conversation with members of Dutch political party was lawful

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On 15 August 2018, the District Court of Amsterdam ruled that BNNVARA, a Dutch broadcasting association, had not acted unlawfully by broadcasting on its website a secretly taped conversation with a Dutch member of parliament (MP) of the political party called DENK. The conversation took place in a private meeting room of the party. The recording related to a political election campaign banner (which the party was contemplating publishing on the Internet) containing a provocative message in the name of another Dutch political party the Party for Freedom (Partij voor de Vrijheid): “After 15 March we are going to cleanse the Netherlands.” Publicly DENK, the party denied having any such intention, accusing BNNVARA of spreading “fake news”. In the taped conversation however, the MP admits that the party actually had considered publishing the campaign banner, but that it had eventually dropped the idea. The House of Representatives’ press regulations explicitly prohibits journalists from secretly taping MPs inside their private meeting rooms. Consequently, the party lodged an application for interim injunction proceedings, alleging a violation of the privacy rights of its members under Article 8 of the ECHR.

In response, BNNVARA claimed the recording had been published solely to refute the accusations of spreading fake news. Prior to dismissing the application, the District Court weighed the right to privacy (as embodied in Article 8 of the ECHR) and the right to freedom of expression (as protected by Article 10 ECHR). Balancing these interests, the District Court took into account all relevant circumstances of the case. The District Court firstly observed that Article 8 of the ECHR aims to protect private affairs and that the interview concerned the actions of the claimant in a professional capacity. With regard to the breached press regulations, the District Court noted that, owing to its nature, the conversation did not require the same level of confidentiality as is commonly adhered to. The District Court furthermore viewed the idea of a fake banner to constitute such severe wrongdoing that it required the public to be informed. BNNVARA had successfully demonstrated that the preparations for publication of the banner to a large audience had been well advanced. The District Court also considered of great importance the fact that the recordings were published only after the accusations had been made by the party.

In conclusion, the District Court found that the recordings had exposed serious wrongdoing and that the interests of the public in transparency, therefore,

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outweighed the interests of the party.

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https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2018:5852

District Court of Amsterdam, 15 August 2018, ECLI:NL:RBAMS:2018:5852

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