[NL] Court allows broadcast of documentary on police shooting of young man, despite family's objections

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On 10 September 2019, the Amsterdam District Court delivered a notable judgment on the broadcasting of an investigative documentary concerning the death of a young man after a police shooting, despite objections of the deceased's family to the broadcast. The Court rejected an application for the broadcast to be prohibited, holding that the broadcast's interference with the family's private life – in the light of various considerations, including the fact that the deceased's mother had not given permission for the use of certain information – did not outweigh the public interest in the documentary being shown.

The case involved tragic circumstances that arose in summer 2016, when a 21-year-old man was shot dead by police in the province of South Holland. There were a number of public protests against police violence after the shooting. However, an investigation concluded that the police had acted lawfully in fatally shooting the man, and that the incident had constituted an instance of "suicide by cop". Following considerable news coverage of the shooting, the public broadcaster BNNVARA produced a documentary on the circumstances of the man's death. The documentary was scheduled to premiere in September 2019 in various cinemas, and to be broadcast on the NPO 3 channel on 25 September 2019. However, on 5 September 2019, the deceased's mother and sister (as plaintiffs) initiated legal proceeding against the documentary-maker and BNNVARA, seeking a court order preventing the broadcast

The order sought was based on a number of grounds: (a) the documentary unlawfully interfered with the plaintiffs' private life, (b) the documentary damaged the deceased's honour and good name; and (c) the documentary's use of the deceased's final letter before his death violated copyright. The court firstly noted that the documentary maker had spent over two years interviewing the deceased's family and friends; moreover, the documentary explicitly stated that the first plaintiff (without citing her name) did not wish to take part in the documentary.

The court then set out the relevant legal framework, noting that the requested order could only be given if it was demonstrated that the resultant restriction on freedom of expression was "necessary in a democratic society". Firstly, the court examined whether the documentary interfered with the plaintiffs' private lives. It

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noted that it included images of the plaintiffs at a memorial service. However, the court held that the plaintiffs had not been mentioned by name, the images had already been made public on YouTube, and the plaintiffs were only recognisable by a limited circle of people. The court also noted that the mother's divorce had been mentioned and that the documentary may have affected the grieving process of the plaintiffs. However, the court held that the plaintiffs' interests did not outweigh the right of the documentary-maker and broadcaster to freedom of expression in making a documentary on a matter of public interest.

The second question was whether the documentary caused damage to the honour of the deceased. The plaintiffs had asserted that the documentary contained factual inaccuracies, such as the assertion that he had been detained for nine months in juvenile detention; they also claimed that the documentary amounted to "racist voyeurism" ("racistisch voyeurisme") as it sought to portray the man as violent. However, the court also rejected this assertion. It held that the documentary was not intended to find out the truth about anything but rather that "any judgment is left to the viewer". Furthermore, the court held that statements by the interviewees were not presented as facts and that the documentary-maker "had no obligation to verify every claim made".

Lastly, the court examined whether there had been an infringement of copyright in publishing images of the deceased's handwritten letter. However, the court rejected that allegation, holding that the letter was only shown for a short duration and that the plaintiffs had not established all the necessary elements for the assertion of copyright.

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