[NL] Investigative documentary using hidden-camera footage not unlawful

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On 9 June 2020, the *Gerechtshof Amsterdam* (Amsterdam Court of Appeal) issued an important ruling on the use of hidden-camera footage as part of a commercial broadcaster's investigative programme. The case arose on 9 October 2016, when the Dutch broadcaster SBS6 broadcast an episode for the television series *Undercover in the Netherlands*, addressing the performance of illegal polygamous wedding ceremonies by imams. The show used hidden cameras attached to witnesses of a ceremony in order to document it. The claimant, the Imam who was secretly filmed for this episode, initiated legal proceedings against SBS6, challenging the lawfulness of the hidden-camera footage.

The claimant submitted five claims to demonstrate that SBS6 had acted unlawfully towards him. The claimant argued that (1) SBS6 did not lawfully broadcast the footage taken of him, (2) this footage was manipulated and therefore did not portray the ceremony accurately, (3) his right to private life under Article 8 of the European Convention on Human Rights (ECHR) had been violated as he was recognisable in the footage, (4) his reputation was damaged as a result of the broadcast, (5) there was a direct causal relationship between the broadcast and his dismissal from his job and SBS6 was therefore required to compensate him, and (6) the broadcast made it impossible for the claimant to find future employment. Throughout his argument, the claimant stated that he had not been aware of the polygamous nature of the arrangement and that the Nikah (Islamic wedding ceremony) was not official as certain steps still needed to be taken by the parties involved. SBS6 responded to these claims by arguing that the footage did not portray the claimant inaccurately and that, more importantly, SBS6 has the right to freedom of expression when making its documentaries (Article 10 ECHR), particularly in relation to matters of public interest.

In its judgment of 9 June 2020, the Court of Amsterdam dismissed the Imam's claims and ruled that the episode using hidden-camera footage was not unlawful. The court came to its decision on the basis of an evaluation of the footage and an assessment of the freedom of expression. Contrary to the argument advanced by the claimant, the court argued that both the raw and edited footage illustrate that the claimant was aware of the polygamous nature of the wedding and therefore did not portray him inaccurately. The footage shows the claimant acknowledging the polygamous nature of the wedding ceremony and declaring that he had no objections to performing it. The court further argued that the fact that the

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ceremony was not completed, given the pending commitments of the parties, did not lead to a different assessment. Furthermore, the court justified the use of hidden cameras by emphasising the importance of documenting and reporting illegal polygamous wedding ceremonies. The court supported SBS6's argument that the broadcaster has a certain role to play in documenting social wrongdoing, as is the objective of *Undercover in the Netherlands,* and should have the freedom to do so.

Gerechtshof Amsterdam, 9 juni 2020, IEF 19309, C/13/635267

http://ie-forum.nl/documents/ecli/5f04593b-6ee4-4a80-823f-6127c35ff8c2.pdf

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