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NETHERLANDS

[NL] Vlogger ordered to pay damages over YouTube video published without consent

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On 9 December 2020, the District Court of Amsterdam (*Rechtbank Amsterdam*) delivered an important judgment on the liability of vloggers and social media influencers for audiovisual content published without consent on YouTube and Instagram which violates the right to private life. The judgment contains important principles on the filming of private individuals in public areas without consent, and the subsequent publication of such videos on large video-sharing platforms such as YouTube.

The case arose in May 2018, when the defendant, a well-known Dutch musician and vlogger, published a video on his YouTube channel for his many followers which depicted a public altercation between an individual (the claimant) who had been accused of theft by another person. The vlogger had filmed the 10-minute public altercation during which the claimant had been followed by another person who was accusing him of bicycle theft; however, towards the end of the video, the person admits to having been mistaken about the theft. The vlogger later uploaded the video to his YouTube channel, seeking to highlight the issue of "prejudice" in society.

However, the claimant initiated legal proceedings against the vlogger, claiming that, due to the publication of the video and the publishing of his image without consent, he had suffered harassment as well as damage to his right to reputation and private life. The vlogger agreed to remove the video from his YouTube channel, however, the claimant sought over EUR 10 000 in damages over the video. The court first recognised that the case involved a conflict between the vlogger's right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR), and the claimant's right to protection of his reputation under Article 8 ECHR, and specifically against accusations of unlawful conduct. The court then examined the specific circumstances of the filming, and held that the vlogger had not taken sufficient account of the legitimate interests of the claimant in publishing the video on YouTube, and "should have realised the negative consequences the disclosure of these images could have for the claimant in this context." Importantly, the court held that while it "may be the case that in today's society a lot of filming is done, that does not mean that everything may be made public, and the interests of those being filmed must be taken into account." Furthermore, the court rejected the defendant's argument that the end of the video revealed the accusation of theft to be mistaken, holding that for the most part of the video, the claimant was portrayed as a thief, which had led to him experiencing adverse effects. As such, the court held that the publication of the video had been unlawful, but rejected the claimant's claim of

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EUR 10 000. Instead, the court ultimately ordered the vlogger to pay damages and costs totalling EUR 1 000.

District Court of Amsterdam, ECLI:NL:RBAMS:2020:5820, 9 December 2020

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