[NL] Court of Appeal rules arrest of journalist reporting on climate protest was unlawful

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On 23 April 2024, the *Gerechtshof Den Haag* (Court of Appeal of The Hague) delivered a particularly important judgment on the protection of journalists from arrest when reporting on protests. Notably, the Court of Appeal held that the arrest of a photojournalist who had been travelling with a group of climate protestors, who was then taken to a police station and had his equipment and telephone seized, was "unlawful" and a violation of the right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR).

The case arose in October 2021, when the photojournalist was travelling in a van with climate activists from the Extinction Rebellion group, which planned to block a major highway in the Netherlands as a protest action. The journalist wanted to report on this action from within the protest group (so-called "embedded journalism"). The police stopped the van and arrested all the occupants, including the journalist, on suspicion of preparatory actions in connection with an offence, namely the intentional blocking of a public highway. The journalist informed the police officers that he was in the van "in his capacity as a journalist", and was visibly carrying two large cameras, was wearing an official press badge (with "Press" in large print visible), and carrying an official Police Press Card ("Politie Perskaart").

This identification badge and card are national standardised press identification marks, and officially recognised by Dutch police, and Ministry of Justice. They are "strictly personal" to a journalist, with an ID number. However, the police arrested the journalist, and he was brought to a police station. The journalist's camera equipment and telephone were seized. However, shortly after the journalist's detention at the station, he was released after the Police Information Department "determined that he was indeed a photojournalist", and his equipment was returned.

Following his arrest, the journalist initiated legal proceedings against the police, seeking an order from the courts declaring the arrest and equipment seizure as unlawful and an "impermissible infringement" of Article 10 ECHR. In September 2022, the District Court of The Hague issued a preliminary judgment on the application, and rejected the journalist's claims. However, on appeal, the Court of Appeal overturned the District Court's judgment, and held the police had acted

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unlawfully in arresting the journalist and seizing his equipment.

In its judgment, the Court of Appeal first recognised there was a “reasonable suspicion” for arrest of the activists, and the applicant journalist was in a vehicle together with a number of those activists, and was therefore, “at least at first glance”, part of the group against whom the suspicion was directed. The Court agreed with the police that at that time there was still a “reasonable suspicion” against the journalist, and therefore a lawful arrest. Crucially, however, the Court held that “very soon after the arrest” there could no longer be “any reasonable doubt” the applicant “was indeed a journalist”. This was because the applicant stated he was a journalist, and it was “particularly important” that it was “clearly visible” he had a press card around his neck and had a Police Press Card, which he had shown, together with a valid ID.

The Court emphasised the police press card and badge are “official identification marks of a journalist recognised by the Police and the State”, and the police “must therefore, in principle, assume” that the person who carries such identification marks is “actually a journalist”. This is the case even in a case of “embedded journalism”. Otherwise, “it would mean that such a Police Press Card no longer has any value”. As such, the Court held that shortly after the (initially lawful) arrest, there was “no longer a legal basis” for the arrest, and the police should have released him. The Court also held that the police conduct was contrary to the right to gather news freely.

Under Article 10 ECHR, an arrest can only be justified if there is a legal basis and is proportionate. By arresting the journalist, and “even taking him to the station”, the possibility of reporting by the journalist was “effectively ended”, as he could no longer make a photo report of the proposed blockade. In conclusion, the Court ordered the police and the State to pay damages and compensation to the journalist, as well as legal costs. The Dutch Association of Journalists (NVJ) welcomed the ruling as a “great victory for journalism”.

Gerechtshof Den Haag, ECLI:NL:GHDHA:2024:559, 24 april 2024

https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:GHDHA:2024:559

Court of Appeal of The Hague, ECLI:NL:GHDHA:2024:559, 24 April 2024

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