[NL] Court rules that investigative broadcast journalist can invoke right to protection of journalistic sources

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On 7 November 2024, the *Rechtbank Rotterdam* (District Court of Rotterdam) delivered an important ruling on the protection of journalistic sources, and when courts can compel journalists to testify in criminal proceedings. Notably, the court ruled that an investigative journalist of the public broadcaster BNNVARA was entitled to refuse to testify in criminal proceedings against a Dutch local councillor accused of leaking confidential information.

The case arose in May 2023, during a meeting of the Municipality of Dordrecht, where councillors were confidentially informed about legal correspondence between the municipality and the global chemical company Chemours, which has a large chemical plant in Dordrecht. The confidential information concerned a possible settlement between the municipality and the chemical company over legal proceedings for pollution. The confidential information was leaked, and subsequently, the investigative current affairs programme Zembla, of the public broadcaster BNNVARA, published reports on the confidential information.

Notably, in March 2024, the Dutch Public Prosecution Service decided to prosecute a councillor for leaking the confidential information. During the criminal proceedings, the defendant councillor requested the Zembla journalist as a witness; the defendant stated that he had “shared information from the meeting” with the journalist. According to the defendant, the municipality wanted to “secretly settle” with the chemical company. In addition, the defendant alleged that the journalist “did not inform the defendant that the information leaked would be published and in what form this would happen”. In August 2024, at the defendant’s request the journalist was summoned to appear as a witness. However, the journalist’s legal representative appeared during the criminal proceedings, and sought to have the summons withdrawn. It was argued that the journalist was entitled to protection of journalistic sources, and due to the “importance of future sources continuing to trust the journalist”, and the “social importance of source protection”, the journalist would “not disclose information from and about his sources or otherwise act as an extension of the judiciary or of parties in the criminal investigation”.

In its ruling on whether the journalist should be ordered to testify, the District Court first stated that it can be “sufficiently inferred” from the procedural documents that the “leaked information was collected by [the journalist] with a

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view to reporting for the benefit of the public debate". Second, the court considered that source protection applies not only to the personal details of the source, but also to the "information provided by that source and the context in which that information was provided (source-related information)". The court also added that in order "not to deter future sources", the right to refuse to testify also applies to the situation in "which the source is (now) known". Crucially, the court noted that the defence's questions to be asked to the journalist relate to source-related information, and it is "more than plausible" that the journalist "can and will rightly invoke his journalistic right to refuse to testify" in response to "almost all of the questions to be asked". In this regard, the court held that the "discovery of the truth" and the "defence's interest" in this case are "not of such a weighty (social) interest that they justify an infringement of the right to source protection". As such, the court held that the journalist should not be questioned, and the court would refrain from hearing the journalist as witness.

Rechtbank Rotterdam, ECLI:NL:RBROT:2024:11231, 7 november 2024

https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBROT:2024:11231

District Court of Rotterdam, ECLI:NL:RBROT:2024:11231, 7 November 2024

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