[BE] Senate Agrees on Modified Bill on the Protection of Journalistic Sources

IRIS 2005-3:1/8

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After several law proposals since 1985 a bill on the protection of journalistic sources is now finally on its way to being voted on by the Belgian parliament. After a first reading by the Chamber of representatives in July 2004, the Senate on 27 January 2005 approved a modified version of the proposed law. The text has now been sent back to the Chamber for final approval.

Since Belgium was found by the European Court of Human Rights to have permitted unnecessary and disproportionate interferences by the judicial authorities disrespecting the confidentiality of journalistic sources in the case of Ernst and others v. Belgium (see IRIS 2003-9: 3), journalists and their professional organisations have claimed the need for a legal framework to protect journalistic sources. The request for such a legal framework was put on the agenda again after the searches at the office and in the house of Stern -journalist Hans Martin Tillack in 2004. In a judgment of 1 December 2004, the Hof van Cassatie / Court de Cassation (Belgian Supreme Court) was of the opinion that as part of a legitimate investigation into the bribery of a civil servant of the EU, the searches at H.M. Tillack's house and in the Brussels' office of Stern were not to be considered as illegal, nor did they violate Article 10 of the European Convention. A firm claim for the protection of journalistic sources was also formulated on 26 January 2005 at a press conference organised by the newspaper De Morgen, after it was revealed that a judicial investigation had taken place with regard to the telephone communications of one of its journalists Anne de Graaf. The organisation of Flemish professional journalists and Reporters sans Frontières also protested strongly against this manifest disrespect for the confidentiality of journalistic sources.

The proposed law on the protection of journalistic sources that was approved by the Senate on 27 January 2005 is very much in line with the Recommendation No. R (2000)7 of the Committee of Ministers to Member States on the rights of journalists not to disclose their sources of 8 March 2000 (see IRIS 2000-3: 3). The proposed law not only formulates a broad notion of who is a journalist and what is protected information, it also reduces substantially the possibility of compelling journalists to reveal their sources, as well as any kind of investigative measures taken by the judicial authorities to circumvent the right of journalists not to reveal their sources. A disclosure order is only in accordance with the law if there are no alternative measures for disclosure and if the information possessed by the

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journalist is crucial to prevent crime that holds a serious menace for the physical integrity of one or more persons. Journalists exercising their right of protection of sources can neither be prosecuted for fencing (heling / recel), nor for complicity in the crime of breach of professional secrecy.

Parl. St. Senaat 2004-2005, n° 3-670/8. Projet de loi relative à la protection des sources journalistiques / Wetsontwerp tot bescherming van de journalistieke bronnen

http://www.senate.be/

Draft Law on the protection of journalistic sources

Arrêt de la Cour de cassation / Hof van Cassatie (Cour suprême) du 1er décembre 2004

http://www.juridat.be/

Supreme Court judgment of 1 December 2004

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