[NL] Court prohibits journalist from publishing certain classified information

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Lauren Power
Institute for Information Law (IViR)

In a decision of 12 July 2019, the Amsterdam District Court prohibited a journalist from publishing certain information in a forthcoming book. According to the court, the argument that the publication of the information could put a source from the Dutch secret service in a life-threatening situation was sufficiently convincing.

Investigative journalist Huib Modderkolk works for the Dutch newspaper De Volkskrant. The journalist intended to publish a book entitled “Het is oorlog maar niemand die het ziet” ("It's war, but no one sees it") in September 2019. The journalist sent a manuscript to the Dutch secret service (Algemene Inlichtingen- en Veiligheidsdienst) (AIVD). The secret service informed the journalist that 13 words in the manuscript led to the traceability of their source.

The Dutch Government requested that the court prohibit the journalist from publishing the passage in the book. The journalist argued that he should be able to fulfill his duty as a public watchdog and that including the passage in the book was essential for the credibility of the book. He also argued that the secret service had used power play in this case, based on the request for a high penalty payment and the fact that the secret service also wanted to file a criminal report against him. The journalist also challenged the statement that publishing the passage in the book would put the secret service’s source in a life-threatening situation. The passage is not included in the judgment and, because the information in this case is highly confidential, the published judgment has also been considerably redacted.

After noting that a prohibition to publish the book would constitute an interference with the journalist and the publisher's right to freedom of expression, the court assessed whether this interference was justified. According to the court, an interference is prescribed by law if the publication is unlawful within the meaning of Article 6:162 of the Dutch Civil Code. To determine whether a publication is unlawful, the interests of the parties must be balanced. The interest of the journalist and the publisher was to be able to express critical, informative, opinion-forming and warning views in public about abuses that affect society. The state's interest lay in the protection of national security; the prevention of disorder and criminal offences; the protection of health; and the prevention of the distribution of confidential information. The court pointed out that in order to

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balance the interests of the parties, all circumstances of the case had to be taken into account.

At the heart of these proceedings was the question of whether the argument that publishing the book would put the secret service's source in a life-threatening situation was sufficiently convincing. The court firstly noted that this case concerned a request for preventative censorship. Both parties agreed that a prohibition to publish the book qualified as censorship that could only be justified if the publication led to irreversible damage. The court continued by considering that by including the passage in the book, the number of people that could be identified as the secret service's source was likely to be significantly reduced. The information could, in combination with other information, reveal the time period of certain events, which, in combination with the knowledge of the country in which the source could be found, increased the chance of exposure. The court acknowledged that it was not possible to pinpoint the chances of the information in the book endangering the life of the source; however, according to the court, this risk could not be neglected in advance.

The court prohibited the journalist from publishing the passage in the book because it considered that the interest of the journalist and the publisher must give way to the interest of the state in safeguarding the source. The court also issued a penalty payment of EUR 25 000 for each book edited if the order were to be breached, with a maximum penalty of EUR 250 000.

Rechtbank Amsterdam, 12 juli 2019, ECLI:NL:RBAMS:2019:5017

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2019:5017

Amsterdam District Court, 12 July 2019, ECLI:NL:RBAMS:2019:5017

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