Journalist released from detention by Rotterdam Court over protection of sources

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Sarah Stapel
Institute for Information Law (IViR), University of Amsterdam

On 25 October 2019, the district court of Rotterdam ordered the release from detention of a journalist working for the Dutch public broadcaster NOS who had been detained for over 30 hours for the protection of journalistic sources in a criminal case. His detention was met with significant public debate and protest, with the editor-in-chief of NOS stating that, “the right to the protection of journalistic sources is crucial for the journalist’s role as the watchdog of a democratic society.” Hundreds of journalists had also protested outside the court.

In 2014, a man was shot in his home after the shooter had mistakenly identified him as a target in a drugs conflict. During the resultant investigation, a wiretapped conversation between a source and the journalist became of particular interest. The questions asked by the journalist implied awareness of important details unknown to the prosecutor. With the goal of obtaining more information with regard to those details, the journalist was asked to act as a witness in the case. He invoked his right as a witness to refuse to answer questions on the grounds of Article 218a, paragraph 1 of the Dutch Code of Criminal Procedure (DCCP), as it would be detrimental to the protection of journalistic sources and the freedom of information. The examining magistrate considered that this right was limited in the case at hand, as the questions concerned information submitted as evidence, and not that originating from other sources. Nevertheless, the journalist refused to comply, and the magistrate ordered his detention on 24 October 2019.

Detention, or ‘gijzeling’ in Dutch, is the strongest means of coercion available in Dutch law. According to Article 221, paragraph 1, DCCP, the examining magistrate may order the witness to be detained in the interest of the investigation when they refuse to answer questions without legal grounds. However, this must be considered in light of a balance of interests and most notably Article 218a, paragraph 1, DCCP, and case law concerning Article 10 of the European Convention on Human Rights.

On 25 October 2019, the district court of Rotterdam reconsidered the balance of rights to assess whether the detention should continue. The Court agreed with the earlier considerations in that the right is not absolute, but limited to protecting sources in the interest of the freedom of information. However, the court extended the scope of protection, in light of ECtHR case law, to include the

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journalist's means of obtaining information, the unpublished contents of this information, and the protection of sources that are not, or no longer, anonymous. The court highlighted the need to identify such a broad scope in order to prevent a chilling effect on the freedom of information.

The court then considered whether the public interest could outweigh the protection of witnesses granted by Article 218a, paragraph 1, DCCP. Paragraph 2 of the same article allows a restriction on the right when the unanswered question causes unreasonable harm to the public interest. Considering the fundamental importance of the freedom of information as protected by the ECtHR, the court found no public interest basis for the detention.

The court concluded that there were insufficient grounds to rule that the public interest outweighed the right to freedom of expression, and ordered that the journalist be released immediately.

Rechtbank Rotterdam, 25 oktober 2019, ECLI:NL:RBROT:2019:8376

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBROT:2019:8376

Court of Rotterdam, 25 October 2019, ECLI:NL:RBROT:2019:8376

Wil Thijssen and Jan Tourkov, "Rechtbank laat gegijzelde NOS-journalist Robert Bas vrij", de Volkskrant, 25 oktober 2019

https://www.volkskrant.nl/nieuws-achtergrond/rechtbank-laat-gegijzelde-nos-journalist-robert-bas-vrij~b37d73b8/

"*Court releases hostage NOS journalist Robert Bas*", *Wil Thijssen and Jan Tourkov, de Volkskrant, 25 October 2019*

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