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Publication date
2021
Document Version
Final published version
Published in
IRIS

Link to publication

Citation for published version (APA):
Ó Fathaigh, R. (2021). [NL] Court fines journalist for criminal offence during newsgathering activities. *IRIS*, *2021*(2), 61-62. Article 18. https://merlin.obs.coe.int/article/9085

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Download date:12 Nov 2026

NETHERLANDS

[NL] Court fines journalist for criminal offence during newsgathering activities

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On 31 December 2020, the District Court of Gelderland delivered a notable judgment on the controversial issue of the criminal liability of journalists who commit (minor) offences as part of their newsgathering activities, and on which the European Court of Human Rights has delivered a series of judgments (see, for example, IRIS 2016-8/1 and IRIS 2016-9/1). In its judgment, the district court convicted a Dutch journalist of purchasing illegal fireworks as part of a news report, and ruled that the right to newsgathering by the media does not mean that journalists do not have to comply with the provisions of criminal law.

The case arose in December 2019, when a journalist with *De Gelderlander* sought to demonstrate how easy it was to purchase illegal fireworks as a private person via social media. The journalist secured an appointment with an illegal fireworks' seller via the Telegram messaging app and purchased six fireworks which fall under the highest category of fireworks. The journalist took the fireworks to the police two days later, and an article was published in the newspaper on the easy availability of such fireworks.

The public prosecutor initiated proceedings against the journalist for the offence of possession of illegal fireworks. The District Court of Gelderland first held that the article by the journalist had contributed to public debate. Importantly, the court stated that the right to newsgathering by the media does not mean that journalists do not have to comply with the provisions of criminal law. However, the court added an important caveat: it may be different if a journalist commits an offence to "expose an abuse", and there was "no other way to expose the abuse."

First, the court found that "actually receiving the illegal fireworks was not necessary for the article", and that the journalist had kept the fireworks for an "unnecessarily long" period after their delivery. Secondly, the court held that the journalist could have prepared the article in a less far-reaching way, and without committing a crime. Thirdly, the court criticised the journalist for not returning the fireworks to the police immediately after the purchase, and for taking the fireworks in a car to the *De Gelderlander* editorial office.

The fireworks were stored there for two days and only then taken to the police. As such, the journalist acted dangerously, as these were explosive material. Fourthly, the court took into account the fact that the purchase of the illegal fireworks had been discussed at an editorial meeting, and that legal advice had also been obtained in advance. On the basis of this - what turned out to be - incorrect advice, the journalist made the wrong decision.

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In determining the sanctions, the court noted the seriousness of the crime, and the danger the journalist has caused. The court stated that it could have imposed a heavy community service order for possession of illegal fireworks. However, it decided to only impose a fine. The court took into account the fact that the journalist had acted from a journalistic point of view, and therefore considered that a fine was sufficient. In addition to the unconditional fine, the public prosecutor had also demanded a conditional fine, but the court saw no reason to impose such a fine.

Rechtbank Gelderland, De Gelderlander, 31 december 2020

https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Gelderland/Nieuws/Paginas/Geldboete-voor-journalist-na-kopen-illegaal-vuurwerk.aspx

District Court of Gelderland, De Gelderlander, 31 December 2020

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