

EXHIBIT 4

Court	District Court of Rotterdam
Date of judgement	28/01/2021
Date of publication	28/01/2021
Case number	10/997376-16 (decision on notice of complaint)
Field of law	Criminal law
Special characteristics	Decision
Indication of the contents	

Decision on lawyer-client privilege of in-house lawyers.

Application of Dutch law implies that a professional statute must have been signed by the in-house lawyer and their employer in addition to the in-house lawyer being a member of the Netherlands Bar. The District Court considers the manner in which this safeguards the in-house lawyer's independence to be material to the in-house lawyer's professional practice. Only if this requirement has been met, are they entitled to the position of person entrusted with privileged information and, consequently, the lawyer-client privilege.

The same requirement applies to a lawyer who is a member of a bar abroad and performs work for the company in the Netherlands. There is no reason to treat them differently from their Dutch colleagues.

Foreign in-house lawyers who do not perform work in the Netherlands are not subject to that obligation. The mere fact that they are in the employment of a company based in the Netherlands is insufficient. They retain their lawyer-client privilege if and to the extent that they have this privilege in their own country.

Sources Rechtspraak.nl

Judgement

District Court of Rotterdam

Criminal law team 2

Public prosecutor's office no.: 10/997376-16 ([name of the oil company])

In camera numbers:

19/2738 ([name of complainant 1])

19/2880 ([name of complainant 2])

19/2881 ([name of complainant 3])

19/2882 ([name of complainant 4])
19/2883 ([name of complainant 5])
19/2884 ([name of complainant 6])
19/2885 ([name of complainant 7])
19/2886 ([name of complainant 8])
19/2887 ([name of complainant 9])
19/2888 ([name of complainant 10])
19/2889 ([name of complainant 11])
19/2890 ([name of complainant 12])
19/2891 ([name of complainant 13])
19/2892 ([name of complainant 14])
19/2893 ([name of complainant 15])
19/2894 ([name of complainant 16])

Decision of the District Court of Rotterdam, multi-judge division, on the notice of complaint from:

[name of complainant 1] (hereinafter: [name of oil company]),

based in [place of business] ,

for these proceedings choosing domicile in Amsterdam at Beethovenplein 10 (PO Box 1070 AP Amsterdam) at the offices of its counsel D.R. Doorenbos LLM;

and

the notices of complaint of the (former) “**in-house counsels**” of [name of oil company] (hereinafter: in-house counsels), namely:

[name of complainant 2] born on [date of birth of complainant 2] ;

[name of complainant 3] , born on [date of birth of complainant 3] ;

[name of complainant 4] , born on [date of birth of complainant 4] ;

[name of complainant 5] , born on [date of birth of complainant 5] ;

[name of complainant 6] , born on [date of birth of complainant 6] ;

[name of complainant 7] , born on [date of birth of complainant 7] ;

[name of complainant 8] , born on [date of birth of complainant 8] ;

[name of complainant 9] , born on [date of birth of complainant 9] ;

[name of complainant 13] , born on [date of birth of complainant 13] ;

[name of complainant 10] , born on [date of birth of complainant 10] ;

[name of complainant 11] , born on [date of birth of complainant 11] ;

[name of complainant 12] , born on [date of birth of complainant 12] ;

[name of complainant 14] , born on [date of birth of complainant 14] ;

[name of complainant 15] , born on [date of birth of complainant 15] ;

[name of complainant 16] , born on [date of birth of complainant 16] ,

all of whom for this case choose domicile at Jachthavenweg 121, 1081 KM (PO Box 75265,

hereinafter also jointly referred to as: the complainants.

The course of the proceedings until the contested decision

On 17 and 18 February 2016, [name of oil company]'s business premises in The Hague were searched in the context of a criminal investigation against [name of oil company], which relates to the suspicion of bribery of a government official pursuant to Section 181(1) of the Dutch Criminal Code (hereinafter: the Etosha investigation).

The public prosecutor seized various items during this search, including documents and digital data carriers containing documents/information about the [name of oil field] oil field in Nigeria that were sent or received by [name of oil company]'s (former) in-house counsels (hereinafter: the documents). The intended seizure of these documents was based on Section 94 of the Dutch Code of Criminal Procedure (DCCP).

On 16 February 2018, [name of oil company] submitted a first notice of complaint against this under Section 552a DCCP, requesting that the described seizure, or the continuation of it, be declared unlawful in full or in part and that the return of the seized items be ordered. [name of oil company] also requested that the handling of the request be suspended, because it was conducting consultations with the public prosecutor and the existence or non-existence of a (derivative) lawyer-client privilege still had to be discussed before the examining judge. When handling the present notices of complaint on 15 October 2020 and 3 December 2020, it was agreed that the handling of this notice of complaint would continue to be suspended and that this Court would not decide on it at present, to which the public prosecutor and [name of oil company]'s counsel consented.

On 14 January 2019, the public prosecutor demanded that the examining judge responsible for the handling of criminal cases in this Court decide whether the seizure of the documents was permitted. On 4 February 2019, [name of oil company], also on behalf of the in-house counsels, responded to the demand.

By a decision dated 5 February 2019, the examining judge, on the basis of the ruling of the Dutch Supreme Court of 13 October 2015 (ECLI:NL:HR;2015:3076), held that they have jurisdiction if an attachee argues outside the context of a notice of complaint that the items taken include items subject to a lawyer-client privilege. Now that the examining judge, pursuant to the provisions of Section 98, can give an opinion on specific items only and the public prosecutor did not specifically indicate the items concerned, the examining judge barred the public prosecutor.

On 4 March 2019, the public prosecutor sent the seized documents to the examining judge through the in-house counsel. In this context, the public prosecutor (initially) only requested that judgement be given on the question whether these in-house counsels, who are registered with a foreign bar and are, or were, in the employment of [name of oil company] or a legal entity affiliated with [name of oil company] (hereinafter also: the [name of oil company] organisation), are entitled to privilege in respect of information discussed with [name of oil company].

Following a pre-trial meeting with regard to these demands, [name of oil company] and the public prosecutor responded to each other's arguments and the examining judge gave the in-house counsels the opportunity to present their position.

The decision of the examining judge of 7 October 2019 (and its supplement of 4 November 2019)

On 7 October 2019, the examining judge decided in response to these demands that none of the fifteen mentioned in-house counsels of [name of oil company] are regarded as a person entrusted with privileged information within the meaning of Section 218 DCCP and that they cannot (independently) invoke the lawyer-client privilege.

The examining judge qualified [name of oil company]'s in-house counsels, who are registered as lawyers in the country of origin and work in the Netherlands, as visiting lawyers within the meaning of Section 16f of the Dutch Counsel Act (*Advocatenwet*). Because [name of oil company] nor these in-house counsels have signed the Professional Statute as referred to in Section 5.12 of the Legal Profession Regulations (*Verordening op de advocatuur* (and before 1 January 2015: Article 3(3) of the Professional Practice in Employment Regulation (*Verordening op de praktijkuitoefening in dienstbetrekking*)), the examining judge held that the independence of these in-house counsels was insufficiently safeguarded. Moreover, [name of oil company] did not argue convincingly that this was safeguarded in any other way and the examining judge observed that the fact that the head of the Legal Department is a member of [name of oil company]'s Executive Committee is even indicative of the opposite. Therefore, the in-house counsels cannot qualify as persons entrusted with privileged information within the meaning of Section 218 DCCP according to the examining judge.

This also applies, in the opinion of the examining judge, to the lawyers in the employment of the [name of oil company] organisation who practise and work outside the Netherlands. They can, in principle, invoke confidentiality if they qualify as persons entrusted with privileged information under the law of the country in which they have their practice. Also in their case, however, the position of the head of the Legal Department, under whose supervision they perform their duties for [name of oil company] abroad, implies that their independence was insufficiently safeguarded. Consequently, they cannot qualify as persons entrusted with privileged information either, according to the examining judge.

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