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Date 21 april 2021
Subject Response to alert Platform of journalists of the Council of
Europe (no. 160/2020)

Reference
2021-0000188274
Your reference
Alert no. 160/2020

With reference to alert no. 160/2020, regarding two recent reports by the public bodies supervising the Dutch intelligence services, I would like to take the opportunity to respond to the alert.

The Netherlands is committed to safeguarding media freedom and to the protection of journalists and their sources and emphasizes that a free press is indispensable to a democratic society.

The Intelligence and Security Services Act 2017 which entered into force in May 2018, enshrines new protective provisions towards journalists and their sources.

The use of a special investigatory power against a journalist, where such use may lead to the acquisition of data concerning the identity of the journalist's source, is only permitted after judicial approval. The exercise of these special investigatory powers must take into account the principles of necessity, proportionality and subsidiarity, three central concepts to which the services are bound in all of their activities and which the services must explicitly substantiate prior to the exercise of the special investigatory power. Use of such powers against journalists will only be considered proportional by the court in cases where concrete indications exist of a direct threat to national security. If data relating to a journalist is processed by the services, it will in principle not be shared with other intelligence and security services.

The above-mentioned safeguards are not limited by nationality or residence and apply to all known journalists.

The implementation of the Intelligence and Security Services Act 2017 and its safeguards is a top priority for the services. The reviews by the Investigatory Powers Commission (Toetsingscommissie Inzet Bevoegdheden, TIB) and the Oversight Committee for the Intelligence and Security Services (Commissie van Toezicht op de Inlichtingen- en Veiligheidsdiensten, CTIVD) remain an important contribution to the further improvement of the quality of the AIVD's and MIVD's work.

Contrary to the statement in the alert, neither of the reports mentioned in the alert – dating from the beginning of the implementation of the new law – states that unauthorized access to information on journalists and/or their sources occurs within the AIVD or MIVD. Nor do these reports refer to any structural violation of press freedom and the protection of journalists' sources under the Intelligence and Security Services Act 2017.

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The recommendations of Review Report 65, which concerns activities of the services in the period from 1 May 2018 to 1 January 2019, have been implemented by the AIVD and the MIVD in internal working procedures.

The Netherlands underlines the importance of the right balance between privacy safeguards and safeguarding national security and the security of our military troops. The freedom of expression is an essential part of a properly functioning democracy and journalists play an important role as an independent source of information and watchdog. They must be able to do their work independently and in safety and therefore there are specific protective provisions regarding journalists and their sources.

Yours sincerely,

On behalf of the Minister of the Interior and Kingdom Relations,

J. Schipper-Spanninga
Director Constitutional Affairs and Legislation



Hanneke Schipper-Spanninga