European Court of Human Rights: *Nederlandse Omroep Stichting and Others v. the Netherlands*

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On 21 April 2026, the European Court of Human Rights (the Court) issued its judgments in the case of *Nederlandse Omroep Stichting and Others v. the Netherlands*, No. 20066/18. The applicants – *Nederlandse Omroep Stichting* (public broadcasting service), RTL (commercial broadcasting service), and *De Volkskrant* (newspaper) – complained about the refusal of the Minister of Justice and Security (the Minister) to provide access to documents relating to the government's handling of the downing of flight MH17. The case concerned Article 10 ECHR; the Court found no violation.

Background to the case

Malaysia Airlines' passenger flight MH17, on its way from Amsterdam to Kuala Lumpur, was struck by a Russian Surface-to-Air Missile (SAM) and crashed in Eastern Ukraine (Donetsk) on 17 July 2014 (Russia's responsibility for the crash was confirmed in the Court's judgment of 30 November 2022, convicting Russia of a host of human rights violations, including the downing of MH17). The Dutch authorities were heavily involved in the investigations that followed the crash. In light of these efforts, the Dutch National Crisis Management Structure was activated. The structure consisted of a Ministerial Crisis Management Committee (*Ministeriële Commissie Crisisbeheersing* – MCCb) and an Interministerial Crisis Management Committee (*Interdepartementale Commissie Crisisbeheersing* – ICCb).

The issue at hand

The applicants in the present case requested the disclosure of all MCCb and ICCb documents relating to the political and administrative handling of the MH17 disaster, including the minutes of MCCb and ICCb meetings. They did so on the basis of the Dutch Transparency of Public Administration Act (*Wet openbaarheid van bestuur* – theWob; the Wob has since been repealed and replaced with the Open Government Act, the *Wet open overheid*). They cited their role as journalists and social watchdogs and the public interest in the MH17 disaster as weighty reasons for the Minister to provide access to the requested documents.

Restrictions (listed in the Wob) apply, so that the relevant authority may refuse to make public and/or redact specific documents if need be. The Minister agreed to

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publish some of these documents, sometimes in redacted form, but specifically refused to publish the minutes of the MCCb and ICCb deliberations (in total 255 documents were identified as relevant; access to 79 documents was initially denied). The reasons provided by the Minister, listed in sections 10 and 11 of the Wob, were: the security of the state, relations between the Netherlands and other states and international organisations, respect for personal privacy, the prevention of a disproportionate (in this case) disadvantage to the persons concerned (i.e. the people sitting on the MCCb and ICCb), and the protection of personal opinions expressed in the context of internal consultation. Safeguarding the proper functioning of the MCCb and ICCb and the coherence of policy were also central to the Minister's reasoning.

While the Central Netherlands Regional Court (*rechtbank Midden-Nederland*) ordered the Minister to take new decisions, the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State* – the Division) ruled on appeal that the Minister was justified in withholding and/or redacting certain documents. The applicants had already relied on Article 10 ECHR in the national proceedings. The Division reasoned that the exceptions to full transparency allowed by the Wob should be assumed to align with Article 10, section 2, ECHR, and thus did not find a violation of that article. The applicants' role as journalists was of no significance to the Division's assessment, because the Wob already presupposes there is a public interest in government transparency, which encapsulates the interests the applicants cited. Only when "very special circumstances" apply might the applicants be granted special access to the requested information.

The Court's assessment in the present case

Several criteria apply when assessing whether a refusal to provide access to information constitutes an interference with freedom of expression as enshrined in Article 10: the purpose of the information request, the nature of the information sought, the role of the applicant, and whether the information was ready and available. Applying these criteria to the assessment of the admissibility of the present case, the Court recognised that the information request served as a preparatory step in journalistic activity, and so was instrumental to the applicants' exercise of their freedom of expression as journalists. The Court agreed with the applicants that the nature of the requested information was of great public interest. In addition, there was no reason to assume that disclosing the information would have constituted an unwarranted burden for the authorities. The Court thus found the case admissible. By extension, the refusal to disclose the requested documents constituted an interference with freedom of expression.

The applicants had several complaints. They problematised the lack of *in concreto* balancing, relying on sections 10 and 11 of the Wob; they took issue with fact that

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the Division assumed that the Wob as a general rule complies with Article 10, section 2; they held that the "very special circumstances" criterion was not foreseen by law and opposed the fact that the burden to prove the existence of "very special circumstances" was put on them; they argued that their position as journalists and social watchdogs was not sufficiently taken into account; they contended that their rights under Article 10 had become "theoretical and illusory"; and they complained, above all, that the interference had not been "necessary in a democratic society".

The Court did not, however, question the lawfulness of the refusals and recognised that the accompanying arguments provided by the Minister reflected various legitimate aims, that are either recognised in Article 10, section 2, or in earlier case law of the Court. The heart of the matter, therefore, was whether the interference was "necessary in a democratic society". The Court thus assessed whether there was a "pressing social need" to refuse access to the documents in question, whether the interference was "proportionate to the legitimate aim pursued", and whether the arguments provided by the Minister were "relevant and sufficient". Proportionality partially depends on the procedural safeguards that apply.

Like the Administrative Jurisdiction Division, the Court gave particular weight to the fact that a significant portion of the requested documents was eventually released. On the strength of the procedural safeguards, the Court commended the fact that both the Regional Court and the Division had examined versions of all unredacted documents to make their assessments. The Court also recognised that the restrictions provided for in the Wob are, as a general rule, in line with Article 10, section 2 of the ECHR. As regards the minutes of MCCb deliberations, the Court accepted the arguments provided by the Minister, that making the content of those deliberations public could hinder the coherence of policy, damage relations with other nations and the position of the persons involved, jeopardise the safety of people working in the disaster zone, and above all hinder the functioning of the MCCb since publication could negatively affect the openness of internal discussions. As regards the other documents, the Court appreciated that states are not able to provide as detailed information in matters concerning foreign affairs as they would otherwise. The applicants failed to demonstrate their particular interest in the requested documents. The Court ruled that the mere fact that a journalist requests information as a matter of general principle of openness is not in itself sufficient to oblige states to make certain information public in every event.

The Court concluded that the Minister had struck a fair balance between the interests involved. It thus found no violation of Article 10 ECHR.

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European Court of Human Rights, Nederlandse Omroep Stichting and Others v. Netherlands, No. 20066/18, 21 April 2026

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Raad van State, uitspraak 201702922/1/A3 en 201702923

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European Court of Human Rights, Sieć Obywatelska Watchdog Polska v. Poland, No. 10103/20, 21 June 2024

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