[NL] Supreme Court Ruling on Seizure of Video Tapes

IRIS 2000-1:1/33

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On 9 November 1999 the Hoge Raad (Dutch Supreme

Court) handed down its eagerly-awaited decision in the 'SBS videotapes' case. SBS, a commercial satellite-tocabletelevision station, had recorded video footage of riots in Amsterdam, only parts of which had been broadcast. Subsequently, the judicial authorities had seized the tapes, in order to obtain evidence of possible criminal acts of violence. SBS' complaint against the seizure was partly successful before the Amsterdam District

Court. (See IRIS February 1999-2: 5). On appeal, however, the Supreme Court has quashed the Court's decision.

Before the Supreme Court, SBS argued that its freedom of expression and information, as protected under Article 10 of the European Convention on Human Rights, had been unduly restricted by the seizure. By seizing video tapes of possible criminal acts, the reporting media would risk being subjected to threats or retaliation, thereby undermining the media's freedom of news gathering. The Supreme Court considered that the government had not directly restricted the plaintiff's freedom of expression and information. The authorities had not prevented SBS from recording and broadcasting the events in the first place. Moreover, according to the Court, this was not a case involving the protection of journalistic sources, as e.g. decided in the Goodwin case (European Court of Human Rights, 27 March 1996, see IRIS 1996-4: 5).

However, the Court agreed that the seizure might have amounted to an indirect restriction of the freedom of expression and information, even if this restriction was only remotely connected to government intervention. The Supreme Court agreed, furthermore, that the tests of subsidiarity (the availability of other sources of evidence) and proportionality (the nature and seriousness of the criminal acts), inherent in Article 10(2) ECHR, had to be applied. But the Supreme Court was not convinced by the District Court's holding that the seizure was disproportionate. The Supreme Court considered that in cases like these, involving serious criminal acts, and where no other evidence is available, seizure of photos and videotapes is not in itself a disproportionate measure. The Court then remanded the case to the Amsterdam Court of Appeals for final adjudication.

Decision of 9 November 1999, Strafkamer, Besch. 4014, 4015, 4016.

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