# [NL] No New Entrants in Dutch Public Broadcasting System until 2005

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The Dutch Secretary of State for Education, Culture and Science was right to reject the request of the broadcasting organisation, DeNieuwe Omroep, for a provisional accreditation to enter the Dutch public broadcasting system. That was the judgment of the Afdeling Bestuursrechtspraak Raad van State (the highest instance for appeal in cases of administrative law - ABRvS) on 24 July 2002.

The Dutch public broadcasting system is formed by private organisations that are publicly financed. In principle, every five years, new parties can enter the public broadcasting system if they fulfil the conditions laid down in the Mediawet (Media Act - Mw). DeNieuwe Omroep had requested a provisional accreditation for public broadcasting in 2000. The Secretary of State, after being advised by several advisory bodies, concluded that the policy plan did not fulfil the condition laid down in Section 37a of the Media Act. Section 37a states that the policy plan must show "that the programme service which the broadcasting association intends to provide differs, in terms of both content and scope, from programme services provided by the broadcasting associations which have obtained an accreditation to such an extent that it increases the diversity of national broadcasting and thereby imparts fresh momentum to the accomplishment of the tasks assigned to national broadcasting." The advisory bodies concluded, after comparing the intended programme schedule with the programme schedule of the accredited public broadcasting organisations, that the only distinction between DeNieuwe Omroep and the accredited organisations could lie in the new approach to subjects proposed by DeNieuwe Omroep. In terms of both content and scope, DeNieuwe Omroep's intended programme schedule did not differ substantively from the past and future programme offer of the accredited organisations. The Secretary of State adopted the conclusions of the advisory bodies and rejected DeNieuwe Omroep's request on this basis. DeNieuwe Omroep appealed this decision on the grounds that the Secretary of State had not interpreted Section 37a Media Act correctly. It argued that he should have interpreted Section 37a Media Act in line with Article 7 of the Dutch Constitution, in which freedom of expression is guaranteed. Article 7(2) of the Constitution states: "[R]ules concerning radio and television shall be laid down by Act of Parliament. There shall be no prior supervision of the content of a radio or television broadcast." On this ground, the broadcaster submitted, the examination of the intended programme schedule should be incidental and the scrupulous examination that

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was undertaken by the advisory organs would amount to unlawful censorship. Besides, DeNieuwe Omroep's line of argumentation continued, it would be inconceivable that any new organisations could enter the public broadcasting system if their intended programme schedule would have to be compared to the past, present and future programming of the accredited organisations. The next opportunity to enter the public broadcasting system will be in 2005.

The ABRvS ruled on appeal that Section 37a Mw gives the Secretary of State a certain amount of decisional discretion. This discretion should be seen in light of Article 7(2) of the Constitution, which does not prevent the application of a concrete content test to judge the intended programme schedule on its contribution to the diversity or innovation of the public broadcasting system. The Secretary of State could therefore rightfully adopt the conclusion of the advisory bodies.

***DeNieuwe Omroep/Staatssecretaris Onderwijs, Cultuur & Wetenschappen, Afdeling Bestuursrechtspraak Raad van State, 24 July 2002, LJN-nummer: AE5780, Zaaknr: 200201911/1***

http://www.rechtspraak.nl/uitspraak/show_detail.asp?ui_id=36773

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