[NL] New Criteria for Allocation of Radio Frequencies in the Netherlands

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For many years, frequencies for commercial radio (AM and FM) have been allocated on a temporary basis in the Netherlands. For almost a decade, discussions took place on the amount of available frequencies and on how to allocate them. About two years ago, consensus was reached and the decision was taken to use an auction to assign nine national licences for commercial FM radio (frequencies for regional/local commercial radio are also available, but are not further discussed here). This would mean a substantial increase in the number of stations. However, the Dutch Parliament changed its mind and forced the Government to reconsider the allocation plans so that a beauty contest should replace the auction. This was also written into the coalition agreement of the new right-wing/Christian democratic government that was inaugurated in August.

At first instance, the Rotterdam Court ordered that the auction process be continued, but after a change to the relevant regulation, the Frequentiebesluit (Frequency Decree), the Court confirmed the discretionary power of the government to choose the allocation mechanism, but also forced the government to speed up the process. In October, the government (although it also tendered its resignation) formally decided to continue with the beauty contest. The allocation process has to start in January 2003 and the new licences have to be granted by June 2003.

In the revised Decree, two new elements are introduced that directly concern freedom of expression. In the first place, the applicants will have to guarantee a "constant quality level". What this means is not yet clear and will need further discussion. Secondly, frequencies cannot be granted to, or held by, parties that will use the frequencies for disturbing the peace (verstoren van de openbare orde); for making trouble (onrust stoken) or for causing confrontation between (different) sections of the population (bevolkingsgroepen tegen elkaar opzetten). Compliance with this provision, for which there are already similar criteria in the Penal Code, will be supervised by the ministers with the relevant responsibilities. More than 20 years ago, all of the Dutch media regulation provisions which contained direct possibilities for political interference with broadcasting were abolished. The main arguments were that these provisions were outdated, not in line with freedom of expression and that there were already sufficient safeguards in the Penal Code. None of these arguments are discussed in the Explanatory Memorandum to the amendments of the Frequency Decree. The reasons for this

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fundamental change therefore remain unknown.

Rechtbank Rotterdam, LJN-nummer: AE5810 Zaaknr: VTELEC 02/1169, 24-07-2002

http://www.rechtspraak.nl/uitspraak/frameset.asp?ljn=AE5810

Rechtbank Rotterdam, decision of 27 July 2002 (AE5810)

Rechtbank Rotterdam, (AE8741) LJN-nummer: AE8741 Zaaknr: VTELEC 02/2258, 11-10-2002

http://www.rechtspraak.nl/uitspraak/frameset.asp?ljn=AE8741

Rechtbank Rotterdam, decision of 11 October 2002 (AE8741)

Frequentiebesluit : Stb. 1998, 638; Stb. 2002, 467

Frequency Decree: Stb. 1998, 638; amendments to the Decree (as discussed): Stb. 2002, 467

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