[NL] Court rules on publication restrictions on media footage from inside detention centres

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The Hague Court of Appeals has ruled that Ministry of Justice restrictions placed on a journalist concerning pictures and video footage taken inside detention centres violate freedom of expression and the European Convention on Human Rights (ECHR). The case arose following a request from a journalist to the Ministry seeking permission to take pictures and video footage at certain detention facilities. The Ministry initially rejected the request, but following negotiation, the Ministry agreed to grant permission for taking footage, provided the journalist enter into a contract setting out when and how the footage could be subsequently used.

The Ministry's restrictions included clauses that none of the footage could be redistributed without the permission of the Ministry, and text accompanying the pictures must be checked beforehand by the Ministry for "factual inaccuracies". The journalist made an application to the courts, arguing that the Ministry's restrictions on the use of the journalist's footage violated the Dutch constitution and Article 10 of the ECHR. He was supported by a number of organisations, including the Nederlandse Vereniging van Journalisten (Dutch Association of Journalists), Persvrijheidsfonds (Press Freedom Fund) and Reporters Without Borders.

The Court found the restrictions violated both the Dutch constitution, and Article 10 of the ECHR. First, the Court ruled that the restrictions violated Article 7 of the Constitution, which prohibits requirements of prior approval for the dissemination of thoughts and opinions. Second, under Article 10 of the ECHR, the Court held that the restrictions were not "in accordance with law", as the Prisons Act nowhere granted the Ministry the power to limit republication of footage gathered by journalists within detention facilities. Finally, the Court rejected the arguments that the restrictions were needed to protect detainees' privacy, and maintain order. The Court held that it was unclear how republication of footage with no inmates or employees depicted could violate privacy, and there was no evidence that "provocative" captions accompanying the footage could lead to unrest among detainees. The Court concluded that the restrictions no longer applied, and the journalist could distribute footage without prior permission or editorial input from the State.

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Gerechtshof Den Haag, 29 december 2015, ECLI:NL:GHDHA:2015:3545

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The Hague Court of Appeals, 29 December 2015, ECLI:NL:GHDHA:2015:3545

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