[NL] Supreme Court rules on obligation to hand over unedited hidden camera footage

IRIS 2017-10:1/27

Melanie Klus
Institute for Information Law (IViR), University of Amsterdam

On 29 September 2017, the Dutch Supreme Court ruled that the claim of the telecom company Pretium to oblige the broadcaster Tros to hand over unedited hidden camera footage would be an impermissible restriction on the right to freedom of speech (see IRIS 2015-7/23). The decision relates to the question of the extent to which hidden camera footage falls within the scope of Article 10 of the European Convention of Human Rights (ECHR), and whether an order to hand over audiovisual material may be rejected if the desired evidence can be obtained by other means.

In 2008, Tros aired an episode of the television programme Tros Radar, which showed hidden camera footage of a training session for Pretium call centre employees. The TV broadcast critically discussed how Pretium attracted clients. Based on Article 843a Rv (the Code of Civil Procedure), Pretium argued that Tros should hand over all unedited footage.

At first instance, The Hague Court allowed Pretium's claim, and compelled Tros to hand over the complete footage that they had obtained during the "'infiltration' of the call centre". In December 2015, The Hague Court of Appeal set aside this interim judgement. The Court of Appeal referred to the Nordisk judgment of the European Court of Human Rights (ECtHR) (see IRIS 2006-3/3), and held that hidden camera footage falls within the scope of Article 10 of the ECHR. It stated that a compulsory handover of hidden camera footage could have a ''chilling effect'' on the exercise of freedom of expression.

Therefore, Pretium's claim to compel Tros to hand over unedited footage constituted an interference within the meaning of Article 10 of the ECHR. The Court of Appeal went on to say that such an inference must meet all criteria set out in Article 10 (2) of the ECHR. First, it ruled that Article 843a Rv grants the right to compel the handover of footage, and therefore was prescribed by law. Secondly, it considered that Pretium, prior to bringing an action on the basis of Article 843a Rv, could have obtained evidence by hearing witnesses. Accordingly, it held that in the light of the principles of proportionality and subsidiarity, the interference was not necessary.

Finally, the Dutch Supreme Court decided that the Court of Appeal was correct in its assessment that Pretium's claim must be disallowed based on Tros's right to

© European Audiovisual Observatory (Council of Europe) 2026

freedom of expression and access to information - especially in the light of the substantial public interest in freedom of the press in a democratic society - as laid down in Article 10 of the ECHR. The Dutch Supreme Court concluded that the Court of Appeal did not err in law by ruling that Pretium's claim had to be rejected on the basis of the principles of proportionality and subsidiarity of Article 10(2) of the ECHR.

Hoge Raad, 29 september 2017, ECLI:NL:HR:2017:2518

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2017:2518

Supreme Court, 29 September 2017, ECLI:NL:HR:2017:2518

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026