[NL] Dutch Media Authority rejects request to take enforcement action against broadcaster *Ongehoord Nederland*

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On 17 April 2023, the Dutch Media Authority (*Commissariaat voor de Media*) rejected a high-profile request from the Board of Directors of the Dutch Public Broadcasting Foundation (*Stichting Nederlandse Publieke Omroep* – NPO) to take enforcement action against the broadcaster *Ongehoord Nederland*. This came after the NPO had imposed three separate fines on the broadcaster, including a EUR 131 000 fine in April 2023 for "systemic violation" of the NPO Journalistic Code in relation to the broadcaster's news programme; a EUR 84 000 fine in July 2022 for an earlier systematic violation of the NPO Journalistic Code, and a EUR 56 000 fine in December 2022 for a "lack of cooperation". Under the Dutch Media Act, the NPO has the task of ensuring public broadcasters meet high journalistic and professional quality requirements, and may impose administrative sanctions. In its mission statement, the broadcaster *Ongehoord Nederland* describes itself as a "critical voice" on important social issues, including "the ill effects of mass immigration", and "the preservation of Dutch traditions and culture".

The NPO requested the Media Authority to take enforcement action over three issues, namely: failure to comply with journalistic quality requirements, hate speech, and disguised broadcasting time for political parties. The Media Authority rejected the request on all three grounds. First, the Media Authority noted that the NPO has already imposed three administrative sanctions on *Ongehoord Nederland* relating to the obligation for broadcasters to comply with journalistic quality requirements. The Media Authority noted that the request for enforcement "related to the same subject", and that if the enforcement request were to be complied with, *Ongehoord Nederland* "would have to defend itself against the same alleged violation before various authorities". The Authority considered this "undesirable, in view of the principle of proportionality and the special requirements arising from Article 10 of the European Convention on Human Rights", which guarantees freedom of expression.

Second, the NPO's request to take enforcement action because of alleged hate speech was also rejected. The Media Authority noted that Dutch law prescribes that a public media institution "must take appropriate measures to prevent its media offerings from inciting violence or hatred", and this provision concerns the establishment of measures to prevent certain punishable expressions. These measures have a "preventive character". In the opinion of the Media Authority,

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the assessment of whether there is a “media supply that incites violence or hatred is reserved for the criminal court (and therefore in the first instance for the Public Prosecution Service), since it concerns the qualification of criminal law concepts”.

Third, the Media Authority also held that in regard to the request for enforcement in relation to improper broadcasting time allocated to political parties, it had “not been made sufficiently clear on what basis the Media Authority should take enforcement action in this case”. Further, a violation over political influencing of the media “affects the journalistic quality and the independence of the media”. The Authority considered that enforcement action “in that regard” would be “disproportionate because of the administrative sanctions that the NPO itself has already imposed”.

Finally, on 24 April 2023, following the Media Authority’s rejection of the NPO’s request, the NPO’s Board of Directors made a formal request to the Secretary of State for Culture and Media to withdraw the provisional recognition of the broadcaster *Ongehoord Nederland*. The Secretary of State will now consider the request and issue a formal response.

Commissariaat voor de Media, Afwijzing handhavingsverzoek NPO m.b.t. Ongehoord Nederland, 17 april 2023

https://www.cvdm.nl/nieuws/afwijzing-handhavingsverzoek-npo-m-b-t-ongehoord-nederland/

Dutch Media Authority, Rejection of NPO enforcement request regarding Ongehoord Nederland, 17 April 2023

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