[NL] Final decision issued on broadcaster Ongehoord Nederland's recognition as a public broadcaster

IRIS 2024-3:1/13

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On 19 December 2023, the newly appointed Secretary of State for Culture and Media issued a high-profile final decision, refusing a request by the Stichting Nederlandse Publieke Omroep (Dutch Public Broadcasting Foundation - NPO) to withdraw the recognition of the broadcaster Ongehoord Nederland (ON!) as a public broadcaster. This follows the previous Secretary of State for Culture and Media issuing a provisional decision in November 2023, also refusing the NPO's request to withdraw the recognition of Ongehoord Nederland as a public broadcaster (see IRIS 2024-1/16).

The notable procedure followed the NPO having imposed three separate fines on the broadcaster, including a 131,000 EUR fine in April 2023 for "systemic violation" of the NPO Journalistic Code in relation to the broadcaster's news programme; a 84,000 EUR fine in July 2022 for an earlier systematic violation of the NPO Journalistic Code, and a 56,000 EUR fine in December 2022 for a "lack of cooperation" (IRIS 2023-6/16). Subsequently, the NPO requested the *Commissariaat voor de Media* (Dutch Media Authority) to take further enforcement action against the broadcaster, which the Authority refused in April 2023 (IRIS 2023-6/16) while in July 2023, the Board of Directors of the NPO issued a decision, upholding the financial sanction imposed on the broadcaster (IRIS 2023-8/17).

Crucially, in April 2023, the NPO's Board of Directors formally requested the Secretary of State for Culture and Media withdraw the recognition of the broadcaster, based on a "lack of willingness to cooperate" on the part of the broadcaster.

The then-State Secretary considered the request and issued a provisional decision on 27 November 2023, rejecting the request. The State Secretary noted that it had "never happened that a minister had to consider a request for withdrawal", and revoking the permit was a "very serious measure" and the government "must therefore be particularly cautious in doing so".

The State Secretary noted that "cooperation is indeed difficult due to Ongehoord Nederland's attitude". However, according to the State Secretary, there was "insufficient legal basis to make such a far-reaching decision". The State

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Secretary stated that the “journalistic code is not about collaboration, but about quality requirements that a broadcaster must meet” and added that “I have not observed such a manifest and structural lack of willingness to cooperate that this justifies the severe remedy of withdrawal. I would like to emphasize that I cannot pass judgment on the content of ON’s programming. It is essential that we protect journalistic freedom, in all its manifestations and extremes”.

Following the provisional decision, both the NPO and Ongehoord Nederland were given the opportunity to make submissions. In the final decision of 19 December 2023, a newly appointed Secretary of State for Culture and Media upheld the provisional decision. The State Secretary stated that the NPO had not offered any new facts, circumstances or reasons to arrive at a different assessment. The final decision added that “[a]lthough I realise that the rejection of the request means that the NPO must continue to collaborate with a broadcaster that “it believes shows insufficient willingness” to cooperate, that interest “does not outweigh the interest of Ongehoord Nederland to retain its recognition and to show the promised improvement.” Crucially, the State Secretary noted that during the oral hearings, Ongehoord Nederland “explicitly expressed its willingness to restore relations” and collaborate within the public broadcasting system. The State Secretary expected Ongehoord Nederland “to demonstrate this willingness in practice”.

Staatssecretaris van Onderwijs, Cultuur en Wetenschap, Definitief besluit verzoek NPO tot intrekking voorlopige erkenning Ongehoord Nederland, 19 december 2023

https://www.rijksoverheid.nl/ministeries/ministerie-van-onderwijs-cultuur-en-wetenschap/documenten/besluiten/2023/12/19/definitief-besluit-verzoek-npo-tot-intrekking-voorlopige-erkenning-ongehoord-nederland

State Secretary for Education, Culture and Science, Final decision on NPO request to withdraw provisional recognition Ongehoord Nederland, 19 December 2023

https://www.rijksoverheid.nl/ministeries/ministerie-van-onderwijs-cultuur-en-wetenschap/documenten/besluiten/2023/12/19/definitief-besluit-verzoek-npo-tot-intrekking-voorlopige-erkenning-ongehoord-nederland

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