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Meeting: 1179 meeting (24-26 September 2013) (DH)

Item reference: Action plan (21/08/2013)

Communication from the Netherlands concerning the cases of Voskuil, Sanoma Uitgevers B.V. and Telegraaf Media Nederland Landelijke Media B.V. and others against Netherlands (Applications No. 64752/01, 38224/03 and 39315/06).

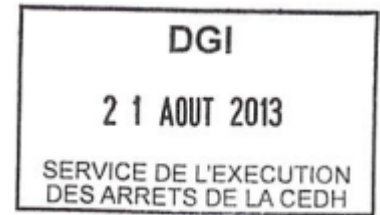
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Réunion : 1179 réunion (24-26 septembre 2013) (DH)

Référence du point : Plan d'action

Communication des Pays-Bas relative aux affaires Voskuil, Sanoma Uitgevers B.V. et Telegraaf Media Nederland Landelijke Media B.V. et autres contre Pays-Bas (requêtes n° 64752/01, 38224/03 et 39315/06)
(anglais uniquement)



Action plan

of the Government of the Netherlands

for the implementation of

Application No. 64752/01

VOSKUIL v. the Netherlands

Judgment of 22 November 2007

Application No. 38224/03

SANOMA UITGEVERS B.V. v. the Netherlands

Judgment of 14 September 2010

and

Application No. 39315/06

TELEGRAAF MEDIA NEDERLAND

LANDELIJKE MEDIA B.V. AND OTHERS

v. the Netherlands

Judgment of 22 November 2012

Introduction

1. Having regard to the fact that the cases of Voskuil, Sanoma Uitgevers B.V. and Telegraaf Media Nederland Landelijke Media B.V. and others v. the Netherlands, as described below, concern the issue of protection of journalists' sources, the Government of the Netherlands, at the request of the Execution Department of the Committee of Ministers, decided to present a joint action plan.
2. With reference to the standard classification procedure, the Government of the Netherlands wishes to present its action plan with a view to informing the Committee of Ministers about the measures taken to execute the judgments.

Case descriptions

Voskuil v. the Netherlands

3. On 26 October 2000 an application was lodged by a journalist, Koen VOSKUIL, alleging that, in violation of article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, he was denied the right not to disclose his sources for two newspaper articles which appeared in September 2000 in the newspaper Sp!ts and that the authorities detained him in order to compel him to do so. He also alleged that his detention was not in accordance with a procedure prescribed by law, in breach of article 5, paragraph 1 of the Convention.
4. In its judgment of 22 November 2007 on this application the European Court of Human Rights held, unanimously, that there had been a violation of article 10 of the Convention as regards the measures taken by the Government of the Netherlands to learn the identity of the applicant's source and that there had been a violation of article 5, paragraph 1 of the Convention as regards the Government's failure to provide the applicant with a written copy of his detention order three days after his hearing.

Sanoma Uitgevers B.V. v. the Netherlands

5. On 1 December 2003 SANOMA UITGEVERS B.V. lodged an application complaining that they had been compelled to disclose information to the police that would have enabled their journalists' sources to have been revealed, in violation of their right to receive and impart information as guaranteed by article 10 of the Convention.
6. In its judgment of 14 September 2010 on this application the Court held, unanimously, that there had been a violation by the Netherlands of article 10 of the Convention as regards the procedure available to the applicant company to enable an assessment as to whether the interests of the criminal investigation overrode the public interest in the protection of journalistic sources.
7. Furthermore, the Court held, unanimously, that the Netherlands was to pay the applicant company within a period of three months EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses.

Telegraaf Media Nederland Landelijke Media B.V. and others v. the Netherlands

8. On 29 September 2006 UITGEVERSMAAATSCHAPPIJ DE TELEGRAAF B.V., currently called Telegraaf Media Nederland Landelijke Media B.V., and two journalists of De Telegraaf, Joost DE HAAS and Bart MOS, lodged an application alleging a violation of article 10 of the Convention in that measures had been taken against them in order to identify their journalistic sources. The second and third applicants alleged in addition that they had been victims of a violation of article 8 of the Convention resulting from the use of special powers of surveillance.
9. In its judgment of 22 November 2012 on this application the Court held, unanimously, that there had been a violation by the Netherlands of articles 8 and 10 of the Convention as regards the use by the General Intelligence and Security Service (AIVD) of special powers against the second and third applicants and, by five votes to two, that there had been a violation of article 10 of the Convention as regards the order for the surrender of documents addressed to the first applicant.
10. Furthermore, the Court held, unanimously, that the Netherlands was to pay the applicants, within three months from the date on which the judgment became final in accordance with article 44 § 2 of the Convention, EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses.

Just satisfaction

Voskuil v. the Netherlands

11. The Court did not award any just satisfaction in this case.

Sanoma Uitgevers B.V. v. the Netherlands

12. The amount of EUR 35,000, imposed by the Court, was transferred to the account of the applicant company's legal representative on 7 October 2010, i.e. well within the period of three months which the Court set out in its judgment.

Telegraaf Media Nederland Landelijke Media B.V. and others v. the Netherlands

13. The amount of EUR 60,000, imposed by the Court, was transferred to the account of the applicants' legal representatives on 20 February 2013, i.e. well within the period of three months from the date on which the Court's judgment became final.

General measures

14. Following the Court's judgment in the case of *Telegraaf Media Nederland Landelijke Media B.V. and others v. the Netherlands* the Government sent a letter dated 7 December 2012¹ to the House of Representatives of the States General explaining in detail the Court's judgment and setting out the measures the Government intended to take in response. The letter also announced that both the Intelligence and Security Services Act 2002 (*Wet op de inlichtingen- en veiligheidsdiensten 2002*) and the Code of Criminal Procedure would be amended.

¹ Parliamentary Papers, House of Representatives 2012/2013, 30 977, no. 49.

15. The amended Intelligence and Security Services Act 2002 will stipulate that if the Dutch intelligence and security services intend to use special powers against journalists in order to identify their journalistic sources directly or indirectly, they must obtain the consent of The Hague district court (*rechtbank*) in advance. In this way, the law will provide for a prior judicial assessment. The Council of State has been asked to issue an advisory opinion on the bill and the amendment is expected to take effect in the first half of 2014. The Government is currently examining how prior judicial assessment can be provided for pending the amendment's entry into force.
16. The Court's judgment in the case of *Voskuil v. the Netherlands* prompted the Government to introduce new legislation as well. A bill has been prepared which proposes to add a new article to the Code of Criminal Procedure.² The article would give witnesses to whom information has been entrusted within the framework of the professional reporting of news or the gathering of information for that purpose, or the reporting of news within the framework of participation in public debate, the right to refuse to give evidence or identify sources of information. Such a right would be more limited than that enjoyed by the categories enumerated in articles 217, 218 and 219 of the Code of Criminal Procedure, as it would be subject to the investigating judge finding that no disproportionate harm to an overriding public interest would result from such a refusal.
17. The bill also includes an amendment to article 96a of the Code of Criminal Procedure to the effect that journalists may refuse to comply with an order to surrender an object if such surrender would violate their duty to maintain confidentiality in connection with the protection of sources. A journalist's invocation of that provision may be dismissed by the investigating judge if he takes the view that leaving the questions unanswered would be disproportionately prejudicial to a more compelling interest. In that case, the surrender of an object will be subject to prior assessment by the investigating judge and no longer depend solely on the assessment of the investigating officer. The proposed amendments therefore also aim to address the concerns expressed by the Court in its judgments in the cases of *Sanoma Uitgevers B.V. v. the Netherlands* and *Telegraaf Media Nederland Landelijke Media BV and Others v. the Netherlands*. The Minister of Security and Justice has added a provision to the existing bill on protecting journalists' sources in criminal cases (on which the Council of State has already issued an advisory opinion) tightening up the requirements for applying coercive measures subject to prior judicial assessment against those entitled to decline to give evidence subject to prior judicial assessment.

Additional information

18. The Court's judgment in the case of *Voskuil v. the Netherlands* was published in:
 - a. European Human Rights Cases (EHRC), 2008, no. 20, with commentary from A. Nieuwenhuis;
 - b. Nederlandse Jurisprudentie (NJ), 2008/216, with commentary from E.J. Dommering.
19. The Court's judgment in the case of *Sanoma Uitgevers B.V. v. the Netherlands* was published in:
 - a. Nederlandse Jurisprudentie (NJ), 2011/230, with commentary from E.J. Dommering and T.M. Schalken

² Article 218a of the Code of Criminal Procedure.

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b. Nederlands Juristenblad (NJB), 2010/1986.

20. Finally, the Court's judgment in the case of *Telegraaf Media Nederland Landelijke Media B.V. and others v. the Netherlands* was published in:

- a. *Mediaforum* 2013-I, with commentary from Wouter Hins;
- b. European Human Rights Cases (EHRC), 2012, no. 14, with commentary from J. Verbaan;
- c. Nederlandse Jurisprudentie (NJ), 2013/252, European Human Rights Cases (EHRC), 2008, no. 20, with commentary from E.J. Dommering.

Conclusion

21. The Government is of the opinion that it will have executed the Court's judgment once the draft legislation described above has been adopted.

The Hague, 20 August 2013



Roeland Böcker
Agent for the Government of the Netherlands