



Refusal by Dutch Minister to disclose minutes of government meetings about handling of MH17 disaster did not breach Convention

The case of [Nederlandse Omroep Stichting and Others v. the Netherlands](#) (application no. 20066/18) concerned requests by two broadcasting organisations and a newspaper for the disclosure of information relating to the Dutch Government's handling of the downing of Malaysia Airlines flight MH17 in July 2014.

In today's **Chamber** judgment¹, the European Court of Human Rights held, unanimously, that there had been **no violation of Article 10 (right to receive and impart information and ideas)** of the European Convention on Human Rights.

The Court found that the Transparency of Public Administration Act, under which the requests had been made, was based on the fundamental principle that government information should be accessible to everyone. A refusal to disclose information based on one of the grounds for refusal set out in the legislation, could, in principle, be considered to comply with the Convention.

The national authorities had refused to disclose certain (parts of) documents, including the minutes of meetings of a ministerial committee on the basis, among other things, that the discussions that had taken place in that committee were confidential. The applicant media organisations were protected by strong procedural safeguards and the Court held that the reasons relied on by the national authorities, when refusing to disclose the information in question, had been relevant and sufficient. They had not overstepped the discretion afforded to them under the Convention.

Principal facts

The applicants are two Dutch broadcasting organisations, Nederlandse Omroep Stichting and RTL Nederland B.V.; and a newspaper, De Volkskrant B.V.

On 17 July 2014 Malaysian Airlines flight MH17 from Amsterdam to Kuala Lumpur was downed in eastern Ukraine.

In the autumn of 2014, the applicant media organisations requested the disclosure of documents on how the Government, acting through Ministerial Crisis Management Committee and the Interministerial Crisis Management Committee, had handled the MH17 disaster. The Ministerial Crisis Management Committee included the Prime Minister as chair and other ministers as members, while the Interministerial Crisis Management Committee included senior officials from various ministries. Both committees had been activated in the wake of the disaster.

In February 2015 the Minister of Security and Justice issued decisions on the requests and identified 225 relevant documents. He refused to disclose 79 of those documents, which included the minutes of the meetings of the Ministerial Crisis Management Committee and the Interministerial Crisis Management Committee. The remaining documents were disclosed either in full or in part with redactions. The Minister relied on several grounds for refusal under the Transparency of Public Administration Act: that disclosure would likely hinder uninhibited deliberation between members of

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

the committee and obstruct their decision-making process; because the documents included personal data of members of the public and civil servants; that disclosure might harm “relations between the Netherlands and other States of international organisations”; and because revealing some of the documents could involve risks for the security of Dutch personnel in the disaster zone.

In the context of the proceedings that followed, further documents were disclosed in full or in part. In October 2017, the Administrative Jurisdiction Division of the Council of State held that, in respect of the documents that had not been disclosed (including all 33 sets of the Ministerial Crisis Management Committee minutes) or disclosed with redactions, the interest in public disclosure had been outweighed by the interests protected by refusal. The legislation included the public interest as an independent and primary interest and set out several grounds for non-disclosure under the Act. The Administrative Jurisdiction Division found that a refusal to provide information based on one of the grounds for refusal set out in the legislation would in principle comply with Article 10 of the Convention. An applicant would have to show “very special circumstances” for it to find otherwise. As the applicant media organisations had not done so, there had been no unlawful interference with their right under the Convention to receive information.

Complaints, procedure and composition of the Court

Relying on Article 10 (right to receive and impart information and ideas), the applicant media organisations complained about the partial non-disclosure of State-held information pertaining to the political and administrative handling of the MH17 crisis.

The application was lodged with the European Court of Human Rights on 18 April 2018.

Judgment was given by a Chamber of seven judges, composed as follows:

Lado **Chanturia** (Georgia), *President*,
Jolien **Schukking** (the Netherlands),
Faris **Vehabović** (Bosnia and Herzegovina),
Ana Maria **Guerra Martins** (Portugal),
Anne Louise **Bormann** (Denmark),
Sebastian **Rădulețu** (Romania),
András **Jakab** (Austria),

and also Simeon **Petrovski**, *Deputy Section Registrar*.

Decision of the Court

The Court attached considerable importance to the fact that the applicant media organisations had been able to bring an action before the domestic courts. In the context of fully adversarial proceedings, those courts had considered the unredacted contents of the requested documents and they had been able to carry out an effective review of the Minister’s compliance with the legal obligations arising from the domestic law and the Convention.

The Transparency of Public Administration Act was based on the fundamental principle that government information should, in principle, be accessible to anyone requesting it, unless its disclosure was specifically precluded. The Court agreed with the Administrative Jurisdiction Division that, by treating the public interest in disclosure of documents as an independent and primary interest and by formulating several grounds for non-disclosure in the legislation, the restrictions could, in general, be considered necessary in a democratic society to protect the interests set out in the Convention.

As regards the disclosure of the Ministerial Crisis Management Committee minutes, the Minister had explained his reasons for refusing disclosure in detail and had concluded that the interest in ensuring

confidentiality outweighed the applicants' interests in disclosure. The Minister had primarily refused to disclose these documents because the members of the Ministerial Crisis Management Committee had to be able to have a free and unrestricted exchange of arguments in confidence, the Cabinet had the constitutional task of promoting the coherence of policy, and because the meetings of the Cabinet and its sub-committees were confidential. The Administrative Jurisdiction Division had subsequently provided its own detailed reasons as to why, in its view, the applicant media organisations' rights under Article 10 had not been violated.

Taking into consideration the strength of the procedural safeguards available to the applicants in the case, the Court was satisfied that the reasons relied on by the Minister and upheld by the Administrative Jurisdiction Division were relevant and sufficient. The Dutch authorities had not overstepped their wide discretion to decide on matters involving national security.

As regards the other documents, the Court emphasised that applicants were required to substantiate the purpose of a request for disclosure of information, both before the domestic courts and before the Court. The applicant media organisations had not done so, and the Court discerned no basis for questioning the Minister's conclusion, which had been reviewed and upheld by the national courts. Lastly, the Court rejected the applicants' proposition that their journalistic capacity and the major societal impact of the MH17 disaster had entitled them to full access to the information requested.

The national authorities had given due consideration to the principles and criteria laid down in the Court's case-law regarding the balancing of interests when faced with a request for the disclosure of State-held information. There were no strong reasons for the Court to substitute its view for that of the domestic authorities and to set aside the balancing exercise undertaken by them.

The Court was satisfied that the reasons relied upon for the partial non-disclosure of the requested documents had been both relevant and sufficient to demonstrate that the interference complained of had been "necessary in a democratic society". The authorities had acted within their discretion when striking a fair balance between the competing interests at stake.

There had therefore been no violation of Article 10.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.