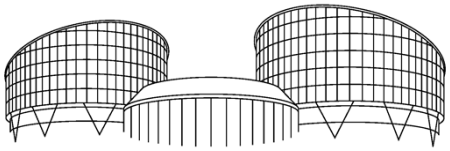

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

# CASE OF NEDERLANDSE OMROEP STICHTING AND OTHERS v. THE NETHERLANDS

*(Application no. 20066/18)*

JUDGMENT

Art 10 • Freedom to receive and impart information • Partial refusal of journalists' request to disclose State-held information pertaining to the political and administrative handling of the downing of flight MH17 in July 2014 • Information requested for journalistic activities on a matter of public interest and was ready and available • Compatibility *ratione materiae* • Considerable portion of the requested information ultimately disclosed during the domestic proceedings • Effective review of the compliance of the impugned refusal with domestic law and the Convention by the domestic courts in adversarial proceedings • Relevant and sufficient reasons • Domestic authorities acted within their margin of appreciation when striking a fair balance between competing interests with due regard to the principles and criteria laid down in the Court's case-law • Interference "necessary in a democratic society" in pursuance of several legitimate aims

Prepared by the Registry. Does not bind the Court.

STRASBOURG

21 April 2026

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Nederlandse Omroep Stichting and Others v. the Netherlands,**

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Lado Chanturia*, President*,
Jolien Schukking,
Faris Vehabović,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu,
András Jakab*, judges*,

and Simeon Petrovski*, Deputy Section Registrar,*

Having regard to:

the application (no. 20066/18) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Dutch broadcasting organisations and a national newspaper ("the applicants"), indicated in the appended table, on 18 April 2018;

the decision to give notice to the Government of the Kingdom of the Netherlands ("the Government") of the complaint concerning Article 10 of the Convention;

the parties' observations;

Having deliberated in private on 24 March 2026,

Delivers the following judgment, which was adopted on that date:

# INTRODUCTION

1. The case concerns the alleged unjustified interference with the applicants' right to freedom of expression under Article 10 of the Convention on account of the authorities' partial refusal to disclose information relating to the Government's handling of the downing of Malaysia Airlines flight MH17 in July 2014. The applicants had requested this information in their capacity as journalists.

# THE FACTS

2. The applicants are two Dutch broadcasting organisations and a national newspaper. They were represented by Mr J.H.A. Van der Grinten, a lawyer practising in Amsterdam.

3. The Government were represented by their Agent, Ms B. Koopman, and their Deputy Agent at the time, Mr. V. de Graaf, both of the Ministry of Foreign Affairs.

4. The facts of the case may be summarised as follows.

# I. REQUESTS UNDER THE TRANSPARENCY OF PUBLIC ADMINISTRATION ACT

5. On 17 July 2014 Malaysian Airlines flight MH17 from Amsterdam to Kuala Lumpur was downed in eastern Ukraine. All 298 civilians on board were killed, 196 of whom were nationals of the Netherlands. Subsequently, working closely with Ukraine and other affected States, the Netherlands coordinated the recovery and repatriation efforts and established, in August 2014, together with Australia, Belgium and Ukraine, a joint investigation team ("JIT") to carry out a criminal investigation into the crash of flight MH17, with the participation of Malaysia and Eurojust (see *Ukraine and the Netherlands v. Russia* [GC], nos. 8019/16 and 3 others, §§ 54 and 126, 9 July 2025).

6. Immediately after the downing of flight MH17, the Netherlands' national crisis structure was mobilised, on the basis of which a number of governmental bodies were activated, including the Ministerial Crisis Management Committee (*Ministeriële Commissie Crisisbeheersing* – "the MCCb"), comprising ministers from the relevant ministries, and the civil service Interministerial Crisis Management Committee (*Interdepartementale Commissie Crisisbeheersing* – "the ICCb"), comprising senior officials from various ministries (see further details in paragraphs 58-63 below). Together, the MCCb and the ICCb formed the linchpin of the national crisis management organisation in response to the downing of MH17.

7. On various dates in October and November 2014 the applicants asked the then Minister of Security and Justice ("the Minister") to disclose all MCCb and ICCb documents relating to the political and administrative handling of the MH17 disaster, including the minutes of their meetings. The applicants relied on Article 10 of the Convention and the Transparency of Public Administration Act (*Wet openbaarheid van bestuur* – "the Wob"; see paragraphs 47-53 below), which has since been repealed and replaced (see paragraph 56 below).

8. On 10 February 2015 the Minister issued decisions on the applicants' requests. A total of 255 documents were identified. The Minister refused to disclose 79 of these documents, while the remaining documents were disclosed either in full or in part with redactions. In making those decisions, the Minister relied on four different grounds for refusal taken from sections 10(2) and 11(1) of the Wob, finding each time that the interests protected by the relevant individual grounds outweighed the public interest that was served by disclosure of the corresponding information. The applicants also received a list which contained, *inter alia*, the titles and dates of all 255 documents and the grounds (if any) for non-disclosure.

9. The Minister refused to disclose the minutes of the MCCb and the ICCb (74 documents in total) on the grounds of "disproportionate disadvantage" (section 10(2)(g) of the Wob), considering that disclosure would likely hinder

uninhibited deliberation between members of the MCCb and the ICCb and obstruct their decision-making process. A free and unrestricted exchange of arguments at meetings of the MCCb and the ICCb was deemed essential for those committees to perform their duties properly.

10. The Minister also refused to disclose the minutes of the MCCb and the ICCb, as well as certain passages in other documents, because they included "personal opinions on policy contained in documents drawn up for the purpose of internal consultation" (section 11(1) of the Wob). In this connection, the Minister referred to the relevant legislative history (see paragraph 55 below) and noted the following:

> "This restriction on the obligation to provide information is included in the Wob because it is necessary to ensure that civil servants ... involved in formulating and preparing policy do not feel constricted when doing so. They must be able to communicate in all candour (*in alle openhartigheid*) with each other and with the ministers responsible.
>
> The minutes of the meetings of the ICCb and the MCCb are drafted for the purpose of internal consultation and contain personal opinions on policy. Moreover, I will not make use of section 11(2) of the Wob and disclose these opinions, because proper and democratic governance depends on ensuring that consultations within these various bodies can be conducted in confidence, in the knowledge that anything said is and will remain confidential. In so far as the documents also contain factual information, this is so closely interwoven with the personal opinions on policy that it cannot be viewed separately from them. I have therefore decided to refuse disclosure of these documents in their entirety."

11. The Minister refused to disclose certain information contained in a number of documents – including the minutes of the MCCb and the ICCb – on the grounds that disclosure could harm "relations between the Netherlands and other States or international organisations" (section 10(2)(a) of the Wob). The MH17 incident had very far-reaching ramifications and required an investigation to be conducted jointly with multiple affected countries. In the Minister's opinion, the investigation could be conducted properly only if the various parties were free to exchange information in full, and the countries and organisations involved needed to be assured that any information shared in confidence would remain confidential.

12. The Minister also noted that the requested documents – including the minutes of the MCCb and the ICCb – contained personal data, such as the names and contact details of members of the public and civil servants who did not regularly operate in public view as part of their position. The Minister removed the personal data of those individuals from the documents, relying on the grounds of "respect for personal privacy" (section 10(2)(e) of the Wob). The names of civil servants who did hold public positions were left unredacted.

13. Lastly, some documents contained information relating to the security of Dutch personnel in the disaster zone. Because this information could reveal actual or potential security measures, there was a heightened risk to

individuals receiving personal protection, individuals providing such protection, and the family, friends and associates of any persons directly involved. The Minister refused to disclose this information, again relying on the grounds of "disproportionate disadvantage" (section 10(2)(g) of the Wob).

## II. OBJECTIONS, APPEAL AND ADDITIONAL DECISION ON OBJECTIONS

### A. The Minister's decisions on objections

14. On various dates in March 2015, the applicants lodged objections against the Minister's decisions of 10 February 2015 (see paragraphs 8-13 above).

15. On 11 August 2015, following a hearing, the Minister maintained his decisions, providing more detailed reasoning.

16. In response to the applicants' claim that the interests of disclosure should be accorded more weight due to the impact of the MH17 disaster, the Minister stated, *inter alia*, the following:

> "Although I agree that the MH17 disaster has had a major impact on Dutch society and acknowledge that there has been an extensive public and political debate on the matter, this does not alter the fact that I have, with good reason, attached greater weight to the interests on which the relevant grounds for refusal are based than to the interest served by disclosure. The Wob presupposes that the interest served by disclosure for proper and democratic governance is an independent interest (*op zichzelf staand belang*), and according to well-established case-law of the Administrative Jurisdiction Division of the Council of State, the weight of this interest is independent of the subject matter of the documents (see, for example, the Administrative Jurisdiction Division's judgment of 17 February 2010, ECLI:NL:RVS:2010:BL4132). The sole fact that your Wob application relates to information about the handling of the MH17 disaster therefore does not lead to the conclusion that more weight should be attached to the interest of disclosure ... or that greater weight should not be attached to the interests underlying the grounds for refusal."

17. In response to the applicants' claim that "respect for personal privacy" (section 10(2)(e) of the Wob) could not be relied on as a reason for refusal where the requested information concerned the exercise of official duties (*beroepshalve functioneren*), the Minister considered the following:

> "It is ... apparent from your notice of objection and what you stated at the hearing that you are less concerned with the personal data of the officials in question than with who said what at the meetings of the ICCb or the MCCb. In view of that, I assume that you are not interested in the disclosure of the personal data as such. In so far as you would like to have the relevant documents indicate in some other way the various people who spoke, I take the view that, given the nature and content of the minutes and the fact that both the MCCb and the ICCb have a small number of members, it is not possible to redact the personal data in the minutes – for example by replacing names with initials to indicate who is speaking – without the information in question being traceable to particular individuals. Nor am I required to do so under the Wob, given that ... I have

attached greater weight to the personal privacy of the officials in question than to the interest of disclosure."

## B. The Regional Court's interlocutory judgments

18. On 21 September 2015 the applicants lodged separate appeals with the Central Netherlands (*Midden-Nederland*) Regional Court against the Minister's decisions of 11 August 2015 (see paragraphs 15-17 above).

19. On 10 December 2015 the Minister submitted a statement of defence.

20. On 3 June 2016, following a hearing, the Regional Court issued interlocutory judgments (ECLI:NL:RBMNE:2016:3018 and ECLI:NL:RBMNE:2016:3019). With the applicants' permission, and in accordance with section 8:29 of the General Administrative Law Act (*Algemene wet bestuursrecht*) (see paragraph 57 below), the court had considered the unredacted content of all documents to which the requests pertained.

21. The Regional Court held that, although the applicants could derive a right to receive information from Article 10 of the Convention, the statutory restrictions set out in sections 10 and 11 of the Wob complied with Article 10 § 2 of the Convention. It further held that the applicants' position as social watchdogs and the societal impact of the MH17 disaster could play no role in the assessment of their request under the Wob, because the Wob presupposed the public interest in disclosure as a self-standing interest (referring, *inter alia*, to the judgment of 17 February 2010 of the Administrative Jurisdiction Division of the Council of State). Lastly, it held that the refusal to disclose the MCCb and ICCb minutes and three other documents could not be based on section 10(2)(g) and section 11(1) of the Wob, and it identified several defects in the Minister's decisions to disclose certain documents in part only.

22. In view of the above, the Regional Court ordered the Minister to make a new decision on the MCCb and ICCb minutes and certain other documents, and to determine on a section-by-section basis whether grounds for refusal would preclude disclosure.

## C. The Minister's additional decisions on objections

23. On 26 August 2016, following the Regional Court's interlocutory judgments, the Minister made additional decisions regarding the applicants' objections. As a result, 38 of the 255 documents (including all 33 sets of MCCb minutes) were not disclosed. All remaining documents were either disclosed in full (70 documents), or partially disclosed with redactions (147 documents). The applicants also received an updated list with the titles and dates of all 255 documents and the grounds (if any) for non-disclosure (see paragraph 8 above).

24. As regards the MCCb minutes, the Minister decided, after extensive deliberation (*na uitvoerige beraadslaging*), to maintain his refusal to disclose them. In addition to the Wob-grounds relied on by the Minister in relation to certain parts of the minutes of the ICCb (see paragraphs 26-29 below), the Minister maintained that the disclosure of these documents would result in a "disproportionate disadvantage" (section 10(2)(g) of the Wob). In his decision, the Minister noted, *inter alia*, the following:

> "First of all, I believe that disclosure of the MCCb minutes would lead to a disproportionate disadvantage, because it would jeopardise the effective functioning of the MCCb and the proper performance of the MCCb's work as part of the system of Cabinet sub-committees and ministerial consultative bodies. Unlike the ICCb, the MCCb is a (temporary) Cabinet sub-committee, and its minutes form part of the Cabinet's decision-making process. The Prime Minister is chair of this MCCb, and the other ministers concerned ([the Ministers of] Security and Justice, Defence, Foreign Affairs, and Infrastructure and the Environment) are part [of the sub-committee] as members. In order for the Cabinet to function, anything discussed there must remain confidential, in the interest of maintaining the coherence of government policy and ensuring that members of the government can exchange thoughts in complete freedom. In the light of the above, disclosure of the minutes would also jeopardise the Cabinet's constitutional task under Article 45 of the Constitution to promote the coherence of policy [see paragraph 46 below] and the duty of confidentiality enshrined in section 26(1) of the Rules of Procedure for the Cabinet [see paragraph 61 below]. Where the minutes of the MCCb are concerned, a free and unrestricted exchange of arguments, views or opinions is essential to the effective functioning of the MCCb and the performance of its work.
>
> Disclosure of these passages could also frustrate the decision-making process and consultations in the future. Moreover, this interest is still relevant today, because the MCCb still meets regularly and the decision-making process, after-effects and criminal investigation concerning the MH17 air disaster are still ongoing. For those reasons, I have decided not to disclose any part of the MCCb minutes, as the interest in ensuring the effective functioning of the MCCb and the Cabinet and in preventing a disproportionate disadvantage to the organisations involved in the matter outweighs the public interest served by disclosure."

25. As regards the ICCb minutes and the other documents in respect of which the Regional Court had ordered him to take a new decision (see paragraph 22 above), the Minister decided to disclose much of the information, as there were no grounds (or no longer any grounds) to refuse disclosure, particularly given the passage of time and the fact that certain information had meanwhile been released in a number of reports (see paragraphs 44-45 below). Concerning the non-disclosure of several passages of these documents, the Minister relied on five Wob-grounds, considering each time that the interests protected by those grounds outweighed the public interest that was served by disclosure of the corresponding information.

26. The first of those grounds was "respect for personal privacy" (section 10(2)(e) of the Wob). In this connection, the Minister referred to the reasoning as set out in his decisions of 11 August 2015 (see paragraph 17 above) and pointed out that the Regional Court had upheld those decisions in

its interlocutory judgments of 3 June 2016 (see paragraphs 20-22 above) in so far as they had concerned the grounds of privacy.

27. The second ground for refusal concerned "relations between the Netherlands and other States or international organisations" (section 10(2)(a) of the Wob). According to the Minister, the disclosure of certain passages in the ICCb minutes could hinder relations between the countries and international organisations involved in dealing with the aftermath of the disaster. In particular, the Minister stated the following:

> "Given the scope and sensitivity of the incident and the fact that it occurred only recently, as a result of which our dealings with the relevant countries and organisations regarding the incident, its cause, the prosecution of the perpetrators and the aftermath are still ongoing, the information in question could have repercussions for our collaboration with other countries and organisations in conducting the investigation into and dealing with the aftermath of the MH17 disaster. Considering the nature and content of the redacted information, I am of the opinion that the interest in maintaining good relations with other countries and organisations outweighs the public interest served by disclosure."

28. The third ground for refusal, on the basis of "the security of the State" (section 10(1)(b) of the Wob), was applied in relation to a very limited (*zeer beperkt*) number of passages in the ICCb minutes, in respect of which the Minister noted the following:

> "The information in question gives insight into the methods used by the relevant security services and the knowledge they possess, or into security methods used and measures taken by those involved on the scene. Such information could be used by malicious parties to carry out attacks or other acts that pose a danger to the security of the State. For that reason, I believe that it remains necessary to prevent malicious parties from gaining insight into the level of knowledge of the security services involved, the security methods used, and the security measures taken by Dutch personnel in these kinds of circumstances ... These security measures can also be applied in future cases and thus provide general insight into the security methods to be applied."

29. The fourth ground for refusal was the protection of "personal opinions on policy contained in documents drawn up for the purpose of internal consultation" (section 11(1) of the Wob), and was explained as follows:

> "The rationale behind [section 11(1) of the Wob] is to protect freedom of opinion and to ensure that brainstorming is possible in confidence without fear of loss of face, and that those involved in the primary formulation of policy can express their ideas and views in complete freedom. Restricting freedom of opinion through the disclosure of documents intended for internal consultation could come at the expense of contributions from the officials in question to the decision-making process and to the formulation of policy.
>
> The need for confidentiality and uninhibited deliberation is all the more important in the case of a sensitive matter like the MH17 disaster and within bodies such as the ICCb. As I have explained before, the ICCb is a gateway (*voorportaal*) to the MCCb [and includes] senior staff from the organisations concerned, some of whom are also part of the MCCb, and the minutes of the ICCb are drawn up in preparation for the MCCb. Within these bodies, it must be possible to confer in confidence, in the knowledge that anything said is and will remain confidential.

> Therefore, I refuse to disclose the personal opinions on policy in the ICCb minutes, on the basis of section 11(1) of the Wob. In the light of what I noted before, I see no reason to make use of section 11(2) of the Wob and disclose these passages. I will, however, disclose the other information in these minutes, in so far as no other grounds for refusal apply."

30. Lastly, the Minister refused to disclose several passages in three sets of ICCb minutes because disclosure would result in a "disproportionate disadvantage" (section 10(2)(g) of the Wob) to the ministries and organisations that were part of the ICCb:

> "Disclosing these passages would hinder open and uninhibited deliberation between the members of the ICCb. Where these passages in the ICCb minutes are concerned, a free and unrestricted exchange of arguments, views or opinions is essential to the effective functioning of the ICCb and the performance of its work. Disclosure of these passages could also frustrate the decision-making process and consultations in the future. Moreover, this interest is still relevant today, as there is still contact at ICCb level concerning the aftermath of the MH17 air disaster. Therefore, with regard to the limited number of passages from the ICCb minutes that I am still refusing to disclose, I am of the opinion that the interest in ensuring the effective functioning of these bodies and preventing a disproportionate disadvantage to the organisations concerned outweighs the public interest served by disclosure."

## D. The Regional Court's judgments

31. On 22 September 2016 the applicants submitted written comments to the Regional Court, claiming that that the Minister's additional decisions had not been prepared with due care, and that the reasoning contained therein was flawed.

32. On 24 February 2017 the Regional Court delivered its judgment in the applicants' cases (ECLI:NL:RBMNE:2017:901 and ECLI:NL:RBMNE: 2017:902). It held, *inter alia*, as follows:

> "7. With regard to the minutes of the MCCb, the [Minister] did not take the opportunity he was offered to rectify the defect ... The Regional Court upholds ... the verdict it gave in the interlocutory judgment [of 3 June 2016; see paragraphs 20-22 above] that the decision was not adequately substantiated owing to the lack of a section-by-section assessment of every document in order to determine whether disclosure could hinder open and uninhibited deliberation between the members of the committee and, if so, whether the interest in preventing that should outweigh the interest in disclosure."

33. The court also held that the Minister had failed to rectify a number of defects with respect to his refusal to disclose certain passages in six ICCb documents.

34. In view of the above, the Regional Court declared the applicants' appeal well founded, and annulled the Minister's decisions of 11 August 2015 (see paragraph 15-17 above) and 26 August 2016 (see paragraphs 23-30 above), insofar as they concerned the refusal to disclose the minutes of the MCCb and certain passages in six ICCb documents. The court decided that

the Minister had to disclose those documents and passages. It upheld all other aspects of the Minister's decisions.

## III. FURTHER APPEAL

35. In April 2017 the applicants and the Minister lodged further appeals against the Regional Court's judgments of 3 June 2016 and 24 February 2017.

36. At a hearing on 11 July 2017 the Administrative Jurisdiction Division of the Council of State ("the Administrative Jurisdiction Division") was informed that the passages from the six ICCb documents (see paragraphs 33-34 above) had, in the meantime, been released.

37. On 25 October 2017 the Administrative Jurisdiction Division gave judgment (ECLI:NL:RVS:2017:2883). With the applicants' permission, and in accordance with section 8:29 of the General Administrative Law Act (see paragraph 57 below), it had considered the unredacted content of all documents to which the requests pertained.

38. With regard to the MCCb minutes, the Administrative Jurisdiction Division held that the effective functioning of the MCCb would be jeopardised by mandatory disclosure.

> "17.1. ... [T]he State has a significant interest in ensuring that ministers and other attendees at MCCb meetings ... are able to speak freely with each other about the progress of investigations and the handling of crises. To this end, it is essential that the matters discussed during the meetings remain confidential. The [Administrative Jurisdiction] Division therefore concurs with the Minister's position that the obligation to disclose these reports would compromise the proper functioning of the MCCb. It is likely that disclosure of the minutes would cause ministers and other participants to be more reserved about what they say at future meetings. It is in the interest of the State that the members of both the Cabinet itself and this ministerial committee can speak freely and in confidence, and can freely decide on what matters they raise. Disclosure of these minutes would subject this interest to a disproportionate disadvantage.
>
> Given the applicable regime of confidentiality [laid down in section 26(1) and (3) of the Rules of Procedure for the Cabinet; see paragraph 61 below], the mandate to promote the unity of government policy [laid down in Article 45 § 3 of the Constitution; see paragraph 46 below], and the sensitive nature of the topics discussed within the MCCb, the Minister was entitled to prioritise the interest in preventing a disproportionate disadvantage over the interest involved in disclosure. In so far as the [applicants] have argued that the refusal to provide the requested information under section 10(2)(g) of the Wob violates Article 10 § 2 of the Convention, this argument fails in the light of the [above], viewed also in conjunction with paragraph 12.3. [see paragraph 41 below].
>
> Accordingly, the Regional Court incorrectly held that the Minister had to disclose all minutes of the MCCb ... The [Minister's] appeal succeeds."

39. With regard to the Minister's refusal to provide the personal data contained in the minutes of the MCCb and the ICCb which related to the members of those committees, the applicants had stated that they were interested in only the job titles of those present. They had contended that this

information could be made public because it was unlikely that it could be traced back to specific individuals. In this connection, the Administrative Jurisdiction Division held as follows:

> "10.1. ... [T]he Administrative Jurisdiction Division notes that the documents do not mention any job titles. Furthermore, the Minister was not required to replace the names of people referred to in the minutes with job titles, as such designations could be traceable to specific individuals ... The [applicants'] submission fails [in this regard]."

40. The Administrative Jurisdiction Division assessed the applicants' grounds for appeal alleging that the refusal violated the right to receive government information under Article 10 of the Convention. In doing so, it based its reasoning on the principle that any refusal to provide information which relied on the grounds for refusal provided for in the Wob complied with Article 10 of the Convention, unless an applicant could satisfactorily establish "very special circumstances" warranting disclosure. In this connection, the Administrative Jurisdiction Division held as follows:

> "12.2. The parties do not dispute ... that [the applicants], [as members of] the press, derive a right to information from the Government under Article 10 § 1 of the Convention – a right which is, by the way, subject to restrictions that may be imposed under Article 10 § 2 of the Convention. The parties do disagree, however, on the consequences that should be attached to this ... The Division considers the following in this regard.
>
> Article 10 of the Convention does not require all information to be provided or made public, and it gives High Contracting Parties the ability to make legal provision for restrictions on providing or making public information and documents. The provisions of the Wob regarding grounds for refusal make legal provision for interference with the right to receive information enshrined in Article 10 § 1 of the Convention. The Administrative Jurisdiction Division notes at the outset that it can generally be assumed that in formulating the grounds for refusal in sections 10 and 11 of the Wob, the legislature created restrictions that are necessary in a democratic society in order to serve the interests referred to in Article 10 § 2 of the Convention. The grounds for refusal laid down in the Wob aim to protect one or more of these interests. However, this principle does not prevent an applicant from arguing that (and why) this general principle should not be upheld in his [or her] specific situation. It is therefore up to the applicant to adduce and demonstrate very special circumstances (*zeer bijzondere omstandigheden*) which mean that despite the application of the Wob, the applicant is being restricted in his [or her] exercise of the specific right to receive information under Article 10 § 1 of the Convention, without justification on the basis of Article 10 § 2 of the Convention. If such special circumstances can be established, and a refusal to provide information cannot be justified on the basis of Article 10 § 2 of the Convention, such a refusal will be contrary to Article 10 of the Convention ...
>
> Aspects that are, in principle, irrelevant to the assessment of a Wob request, such as the capacity (*hoedanigheid*) of the applicant and the subject matter of the request, do become relevant when considering the applicability of Article 10 § 1 of the Convention and whether there is justification as referred to in the second paragraph of this Article."

41. Turning again to the facts of the case, the Administrative Jurisdiction Division held that the interest in public disclosure was outweighed by the interests protected by refusal. It held that the applicants had not demonstrated

the existence of any "very special circumstances" on the basis of which an unjustified interference with Article 10 of the Convention had occurred. In this regard, it held:

> "12.3. ... [T]he Administrative Jurisdiction Division agrees with the Regional Court that the Minister was entitled to take the position, with reference to sections 10 and 11 of the Wob, that the interest in public disclosure was outweighed by the interests that would be protected by refusal, namely: ... the Netherlands' relations with other States and international organisations, respect for personal privacy, the prevention of a disproportionate disadvantage and the protection of personal opinions on policy. It has not been established that there are any very special circumstances which mean that an unjustified interference as referred to above has occurred. The mere assertion by the [applicants] that they are journalists is insufficient in this regard. Furthermore, the fact that the public interest served by disclosure is great has already been addressed sufficiently in sections 10 and 11 of the Wob and the assessment of interests that took place [as a result of] the application of those provisions. With regard to the above, it is significant that the Minister has provided a great deal of the requested information via the documents that were disclosed to the [applicants], and that a considerable amount of information about the MH17 disaster has been made public through other channels, including various briefings to the House of Representatives [see paragraph 43 below], press conferences and the evaluation report ... by the University of Twente ... [see paragraph 45 below].
>
> The foregoing means that, in the light of Article 10 § 2 of the Convention, there was no unlawful interference with the [applicants'] right under Article 10 § 1 of the Convention to receive information from the government."

42. In view of the above, the Administrative Jurisdiction Division declared the Minister's appeal well founded and the applicants' appeal unfounded, and it quashed the Regional Court's judgments in so far as they concerned the MCCb minutes. It upheld all other aspects of the Regional Court's judgments. No appeal lay against that judgment.

## IV. SUBSEQUENT DEVELOPMENTS

### A. Disclosure of information to Parliament and to the public

43. The House of Representatives and the public have received regular updates about the MH17 air disaster, including via briefings, progress reports and answers to parliamentary questions. In accordance with a motion adopted by the House of Representatives in 2016 (Parliamentary Documents, Lower House of Parliament (*Kamerstukken II*) 2015/16, 33 997, no. 73), documents associated with MH17 are being retained for transfer to the National Archives, partly for the purposes of the future accountability of the government for its handling of this matter.

### B. Confidential disclosure to researchers for evaluation purposes

44. In October 2015 the Dutch Safety Board published two reports into the downing of flight MH17. The first report dealt with the technical

investigation into the cause of the crash and the issue of flying over conflict zones (see *Ukraine and the Netherlands v. Russia*, cited above, § 128). The second report dealt with the way in which the passenger list had been drawn up and the next of kin of the Dutch victims had been informed.

45. In 2015, the national crisis management organisation that arose in response to the MH17 disaster was evaluated by a team of researchers at the University of Twente, at the behest of the Research and Documentation Centre (*Wetenschappelijke Onderzoek- en Documentatiecentrum*) of the Ministry of Justice and Security. As part of that study, the researchers from the University of Twente were granted confidential access to all relevant information regarding the MH17 disaster (see the working agreement reproduced in Annex D to the evaluation report). The evaluation report was published on 9 December 2015 (Parliamentary Documents, Lower House of Parliament 2015/16, 33 997, no. 55, annex).

# RELEVANT LEGAL FRAMEWORK AND PRACTICE

## I. THE CONSTITUTION OF THE KINGDOM OF THE NETHERLANDS

46. The relevant provisions of the Constitution (*Grondwet*) read as follows:

**Article 45**

"1. The Ministers shall together constitute the Cabinet.

2. The Prime Minister shall chair the Cabinet.

3. The Cabinet shall consider and decide upon overall government policy and shall promote the coherence thereof."

**Article 110**

"In the exercise of their duties, government bodies shall observe (*betracht*) transparency (*openbaarheid*) in accordance with rules to be prescribed by Act of Parliament."

## II. THE TRANSPARENCY OF PUBLIC ADMINISTRATION ACT

47. The Transparency of Public Administration Act (*Wet openbaarheid van bestuur* – "the Wob") entered into force in 1992. It was applicable at the time of the events complained of.

48. The purpose of the Wob, as stated in the preamble, was to regulate the disclosure of information in such a way that would ensure proper and democratic governance (*goede en democratische bestuursvoering*).

49. Section 1 of the Wob provided the following definitions:

"...

c. internal consultation: consultation concerning an administrative matter within an administrative authority or within a group of administrative authorities in the framework of their joint responsibility for an administrative matter;

...

f. personal opinion on policy: an opinion, proposal, recommendation or conclusion of one or more persons concerning an administrative matter and the arguments they advance in support thereof ..."

50. Section 2 of the Wob described the underlying principle as follows:

"1. Without prejudice to provisions laid down in other Acts of Parliament, an administrative authority shall, in the exercise of its functions, disclose information in accordance with the present Act on the basis that it is in the public interest to do so (*algemeen belang van openbaarheid van informatie*) ..."

51. Section 3 of the Wob described the scope of the right to request information as follows:

"1. Anyone may submit a request for information contained in documents relating to an administrative matter to an administrative authority ...

2. The applicant shall state in his [or her] request the administrative matter or the document relating thereto about which he [or she] wishes to receive information.

3. The applicant does not need to state an interest (*belang*) in his [or her] request.

4. If a request is formulated too broadly, the administrative authority will ask the applicant to clarify his [or her] request as soon as possible, and it will assist him [or her] in doing so.

5. A request for information shall be granted having regard to sections 10 and 11."

52. Under the Wob, any information disclosed upon request was, in principle, available to anyone. It was not possible to provide information to only a limited group. Nor did the Wob provide for a separate disclosure regime for journalists, newspapers or broadcasters. The weight attached to an applicant's interest did not depend on the subject to which the documents related or the position of the applicant. In this connection, the Explanatory Memorandum (Kamerstukken II, 1986/87, 19 859, no. 3) to the bill which became the Wob notes the following (at p. 17 and pp. 37-38 respectively):

"The Wob assumes that, in principle, the applicant's interest in the information does not play a role in the assessment of a request for information. The applicant's interest may not work to his disadvantage, but knowledge of the interest may be necessary for the government body in the context of assessing the relative grounds for refusal [in section 10(2) of the Wob]. The applicant's interest may well then be in favour of disclosure of the requested information.

...

[With regard to the question] of whether persons who have a special relationship with the government by virtue of the law or certain interests should have access to more rather than less information than members of the public in general ..., [we] support the standpoint ... that all members of the public can derive equal rights from the [Wob].

This means that it is prohibited to provide more or less information to certain groups of people, and no additional rules on access to information may be applied to such groups."

53. In the case of a request for information, it followed from section 2 of the Wob that government information was public unless a special interest precluded its disclosure. That special interest could follow from the grounds for refusal listed in sections 10 and 11 of the Wob, of which the relevant provisions read as follows:

**Section 10**

"1. Disclosure of information pursuant to this Act shall not take place in so far as:

...

b. this might damage the security of the State;

...

2. Nor shall disclosure of information take place in so far as its importance does not outweigh one of the following interests:

a. relations between the Netherlands and other States or international organisations;

...

e. respect for personal privacy;

...

g. the prevention of a disproportionate advantage or disadvantage to the natural or legal person concerned, or [to] third parties.

3. Paragraph 2(e) does not apply in so far as the person concerned consents to disclosure."

**Section 11**

"1. When a request concerns information contained in documents drawn up for the purpose of internal consultation (*intern beraad*), no information is to be provided concerning personal opinions on policy (*persoonlijke beleidsopvattingen*) contained therein.

2. Information on personal opinions on policy may be disclosed, in the interests of proper and democratic governance, in a form that cannot be traced back to any individual. If those who expressed the opinions in question or who supported them consent, information may be provided in a form that can be traced back to the individual.

..."

54. The Explanatory Memorandum (see paragraph 52 above, at pp. 34-37) provides the following in respect of section 10 of the Wob:

"*a. The relations between the Netherlands and other States or international organisations [section 10(2)(a) of the Wob]*

This exception is intended to prevent the legal obligation to provide information from damaging Dutch international relations ... For the application of this provision, it is not necessary to foresee a deterioration in good relations as such with other countries or

with international organisations. It is sufficient that, as a result of providing information under the law, it is foreseeable that international contact will become more difficult (*stroever*) in certain areas, with the result that, for example, maintaining diplomatic relations or conducting bilateral consultations ... would become more difficult than before, or that those countries or international organisations would be less inclined to provide certain information than before.

...

*e. Respect for personal privacy [section 10(2)(e) of the Wob]*

... No information shall be disclosed concerning personal data provided by citizens to the government in the confidence that it would be used by the government only for the purpose for which it was provided, if the public interest in disclosure does not outweigh the interest in the confidentiality of the information ...

The protection of privacy is not limited to private individuals. Administrators (*bestuurders*) and civil servants (*ambtenaren*) are also entitled to it. The present exception therefore also applies to data [relating to individual officials] recorded in documents held by government bodies ...

*g. The prevention of a disproportionate advantage or disadvantage to the natural or legal person concerned, or [to] third parties [section 10(2)(g) of the Wob]*

These grounds for exemption ... are the most general and are applied if the provision of information would unduly harm interests other than those mentioned above ... The exception clause provides for the need to be able to apply the Wob in very different, unpredictable situations ...

This provision should ... not lead to government bodies withholding information because its publication might cast their policies in an unfavourable light or reduce the chances of their proposed policies being accepted. The interests at stake here do not outweigh the public interest in providing information as intended by the Wob.

This does not alter the fact that ministers, other administrators and civil servants may also be persons involved in the matters [in question], particularly if information is requested about matters concerning themselves. This ... refers to cases in which the proper functioning of the public body to which they belong is at stake. An example of this is the provision, upon request, of information about the identity of the [people with whom] ministers and civil servants [are speaking] in confidential consultations on matters of legislation or administration. This could undermine the smooth functioning of the public-law body to which the persons concerned belong ..."

55. The Explanatory Memorandum (ibid., pp. 38-39) provides for the following in respect of section 11 of the Wob:

"... The restriction of public access is intended to ensure that those involved [in internal deliberations] can freely express their thoughts and opinions during the initial formulation of the policy ... [T]he restriction on public access does not apply to factual data contained in internal documents [or] the forecasts and policy alternatives derived from those data. Such data must be provided upon request and on the authority's own initiative. This also applies in cases where such data could presumably create an unfavourable impression of the policy pursued or jeopardise the acceptance of the policy to be pursued ... [I]n the event of a request for information [being submitted], the data must be provided in an objective [non-identifying] form. This means that the data is provided in a form that cannot be traced back to individuals."

56. On 1 May 2022 the Wob was repealed and replaced by the Open Government Act (*Wet open overheid*).

## III. THE GENERAL ADMINISTRATIVE LAW ACT

57. Section 8:29 of the General Administrative Law Act provides for the full or partial confidentiality of documents in proceedings before the administrative courts (in judicial review proceedings and on appeal). At the relevant time, it read as follows:

> "1. Parties who are obliged to provide information or submit documents may, if there are substantial reasons (*gewichtige redenen*) to do so, refuse to provide such information or submit such documents, or may inform the administrative tribunal that it alone shall be allowed to inspect the information or the documents.
>
> 2. In the case of an administrative body, no such substantial reasons can exist in so far as there is an obligation, pursuant to the Transparency of Public Administration Act, to accede to any request for information contained in the documents to be submitted.
>
> 3. The administrative tribunal shall decide whether the refusal or restriction of the inspection referred to in the first paragraph is justified.
>
> 4. If the administrative tribunal decides that the refusal is justified, the obligation [to provide information] shall no longer exist.
>
> 5. If the administrative tribunal decides that the restriction of an inspection is justified, it may give judgment on the basis of that information or those documents only with the permission of the other parties. If such permission is refused, the case shall be remitted to another chamber."

## IV. NATIONAL CRISIS MANAGEMENT STRUCTURE

58. In a situation in which national security is or may be at risk, or in another situation which has or may have serious consequences for society, the national crisis management structure is activated. The core of the national structure for decision-making in crisis situations is formed by the MCCb and the ICCb.

59. The organisation and working methods of the MCCb which responded to the MH17 disaster, were laid down in the Order establishing the Ministerial Crisis Management Committee. The Order was adopted on 12 April 2013 (Official Gazette (*Staatscourant*) 2013, no. 11207) and entered into force on 25 April 2013. It was included in its entirety and expanded upon in the 2013 version of the National Handbook for Decision-Making in Crisis Situations (reproduced in Parliamentary Documents, Lower House of Parliament 2012/13, 29 668, no. 37, annex). The task of the MCCb was to coordinate intersectoral crisis management and decision-making (section 2 of the Order establishing the MCCb).

60. The MCCb was a ministerial committee as referred to in section 25(1) of the Rules of Procedure for the Cabinet, in accordance with which the

Cabinet "may form other committees of a permanent or temporary nature from among its members in order to prepare for or decide on certain matters".

61. There is a duty of confidentiality pertaining to anything that is discussed or happens at the meetings of the Cabinet or its committees (section 26(1) and (3) of the Rules of Procedure for the Cabinet).

62. Decisions by the MCCb must be approved by the Cabinet unless – as was deemed to be the case with the MH17 disaster – decisions need to be implemented without delay (section 4(2) of the Order establishing the MCCb).

63. If necessary, senior officials (at Director-General level) may convene an ICCb, which is chaired by the National Coordinator for Counterterrorism and Security (2013 National Handbook for Decision-Making in Crisis Situations, at p. 8). The ICCb advises the MCCb and, if necessary and possible, takes its own decisions.

# THE LAW

## ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

64. The applicants complained that the partial non-disclosure of State-held information pertaining to the political and administrative handling of the MH17 crisis had violated their rights under Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions [or] restrictions ... as are prescribed by law and are necessary in a democratic society, in the interests of national security ... or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others [or] for preventing the disclosure of information received in confidence ... "

### A. Admissibility

65. The Court observes that the parties did not dispute the applicability of Article 10 of the Convention in the present case. In their observations, the Government merely referred to the criteria governing the applicability of Article 10, as summarised below (see paragraph 67 below). The Court nevertheless considers it necessary to examine whether the situation complained of falls within the scope of Article 10. It notes in this connection that the question of the applicability of this provision is to a large extent linked to the merits of the complaint. At the same time, the Court has held that the question of applicability falls within its jurisdiction *ratione materiae* and should therefore normally be examined at the admissibility stage, unless

there is a particular reason to join it to the merits (see *Šeks v. Croatia*, no. 39325/20, § 35, 3 February 2022, with further references). As there are no particular reasons to join this question to the merits in the present case (ibid.; compare and contrast, for example, *Studio Monitori and Others v. Georgia*, nos. 44920/09 and 8942/10, § 32, 30 January 2020), the Court will examine the applicability of Article 10 before dealing with the merits of the complaint.

*1. General principles*

66. The Court reiterates that Article 10 does not confer on the individual a right of access to information held by a public authority or oblige the Government to impart such information to the individual. However, such a right or obligation may arise where access to the information is instrumental for the individual's exercise of his or her right to freedom of expression, in particular "the freedom to receive and impart information", and where its denial constitutes an interference with that right (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 156, 8 November 2016).

67. In determining this question, the Court will be guided by the principles laid down in *Magyar Helsinki Bizottság* (ibid., §§ 149-80) and will assess the case in the light of its particular circumstances and having regard to the following criteria: (a) the purpose of the information request; (b) the nature of the information sought; (c) the role of the applicant; and (d) whether the information was ready and available.

*2. Application of the general principles to the present case*

68. The Court notes that the applicants are news organisations committed to the dissemination of information on public affairs (see also *Girginova v. Bulgaria*, no. 4326/18, §§ 62 and 67, 4 March 2025, and *Zöldi v. Hungary*, no. 49049/18, § 37, 4 April 2024). They requested information from the Minister to carry out relevant preparatory steps in journalistic activities, on the basis of original documentary sources (see also *Kenedi v. Hungary*, no. 31475/05, § 43, 26 May 2009, and *Sieć Obywatelska Watchdog Polska v. Poland*, no. 10103/20, §§ 62-63, 21 March 2024), with the clearly expressed intention to report on the management of the MH17 disaster and the decision-making in its aftermath. The applicants' experience, professional standards and outreach to the broader public have not been called into question, either at domestic level or before the Court (see also *Yuriy Chumak v. Ukraine*, no. 23897/10, § 29, 18 March 2021).

69. The Court further considers that the nature of the requested information would contribute to a discussion on an issue of public interest (see also *Sieć Obywatelska Watchdog Polska*, § 62, and *Yuriy Chumak*, §§ 30-31, both cited above). The MH17 disaster undisputedly attracted widespread attention and generated considerable public debate. Indeed, it

affected a great number of victims, their next of kin and society as a whole. The fact that the Minister explicitly recognised the magnitude of societal impact in the domestic proceedings (see paragraph 16 above; compare *Zöldi*, § 36, and *Šeks*, § 40, both cited above) and that a report was commissioned to evaluate the national crisis management and decision-making (see paragraph 45 above; compare *Saure v. Germany* (dec.), no. 6106/16, § 36, 19 October 2021) only reinforces the conclusion that the MH17 disaster and the Government's handling thereof were matters of great public interest.

70. Lastly, the Court notes that the requested information was ready and available, and there is no reason to assume that disclosure would have been particularly burdensome for the domestic authorities (see also *Magyar Helsinki Bizottság*, § 179, and *Šeks*, § 42, both cited above).

71. The Court is thus satisfied that the applicants exercised the right to impart information on a matter of public interest and sought access to information to that end under Article 10 of the Convention. Article 10 thus being applicable, the application is not incompatible *ratione materiae* with the provisions of the Convention.

72. The Court further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

## B. Merits

### *1. The parties' submissions*

#### (a) The applicants' submissions

73. The applicants complained on procedural and substantive grounds that the partial non-disclosure of the requested documents of the MCCB and the ICCb had violated their right under Article 10 of the Convention.

74. Taking issue with the domestic decision-making itself, the applicants submitted that the authorities had failed to scrutinise the non-disclosure in the light of the Convention standards for Article 10 § 2 of the Convention. In this connection, they put forward the following arguments.

75. Firstly, the grounds for refusal in sections 10 and 11 of the Wob did not allow for any *in concreto* balancing exercise between the applicants' interest in disclosure and the State's interest in non-disclosure.

76. Secondly, the domestic courts had incorrectly held that if the grounds for refusal in the Wob applied, a refusal to disclose the relevant information was by definition necessary under Article 10 § 2 of the Convention.

77. Thirdly, the Administrative Jurisdiction Division had incorrectly placed the burden on the applicants to show the existence of "very special circumstances" requiring disclosure under Article 10 § 2 of the Convention, whereas it should have been for the Minister to justify non-disclosure.

78. Fourthly, the applicants contended that the enjoyment of their right under Article 10 of the Convention had become theoretical and illusory because they had not known what the undisclosed documents and passages had contained (making it impossible for them to show "very special circumstances"), their capacity as renowned journalists and the societal impact of the MH17 disaster had not been recognised as "very special circumstances", and no one had ever been able to satisfy that criterion.

79. Taking issue with the outcome of the domestic decision-making, the applicants complained that the scope of the non-disclosure had violated their right as social watchdogs to receive State-held information on issues of general interest. In this connection, they submitted the following arguments.

80. Firstly, the interference and the "very special circumstances" exception were not prescribed by law because they were unforeseeable, incompatible with the rule of law and arbitrary.

81. Secondly, the applicants submitted that the interference was unnecessary in a democratic society and that the domestic authorities had failed to provide relevant and sufficient reasoning, considering also the narrow margin of appreciation in matters of public interest. In particular, the applicants claimed that the authorities had failed to carry out a section-by-section assessment of the MCCb minutes to determine whether and to what extent grounds for refusal would preclude disclosure. Moreover, their position as social watchdogs had not been given sufficient weight, even though disclosure had been necessary for them to publish information about the decision-making in the aftermath of the MH17 disaster, and no account had been taken of the passage of time and their cooperative attitude.

**(b) The Government's submissions**

82. The Government submitted that the interference with Article 10 of the Convention was based on various provisions of the Wob and was necessary in a democratic society in the pursuit of the legitimate aims of national security; preventing the disclosure of information received in confidence; protecting the independence, integrity and security of the country and its foreign relations; and protecting the rights of others.

83. The Government submitted that the presumption of disclosure which lay at the heart of the Wob showed that the legislature had already attached particularly great weight to the interest in public access to information, and thus to the individual interests that had to be taken into account under Article 10 of the Convention.

84. The need to prevent the disclosure of confidential information carried a great deal of weight, in order to ensure the coherence of government policy and facilitate the uninterrupted exchange of ideas within the Cabinet. The Minister had been entitled to attach greater weight to this interest than to the applicants' interests. In order to ensure the coherence of government policy

and facilitate the uninterrupted exchange of ideas, the minutes of the Cabinet and its sub-committees (including the MCCb) had to be kept secret.

85. In addition, the confidentiality in question was of particular importance, given the sensitivity of the subjects discussed in the MCCb and the ICCb and the international dimension of the MH17 disaster. The minutes included information that could shed light on the standpoints, motives and strategies of other countries, which had to be taken into account, as well as on the methods used and knowledge possessed by security services. The refusal to disclose such information was thus also proportionate with respect to protecting the independence, integrity and security of the country and its foreign relations.

86. The refusal to disclose the personal data of civil servants contained in the minutes was proportionate, given the reasonable expectation of privacy of the civil servants in question.

87. The Government further submitted that the Administrative Jurisdiction Division had in fact scrutinised the non-disclosure in the light of the Convention standards for Article 10 § 2 of the Convention. It held that in principle – and thus not by definition – it could be assumed that a refusal on the grounds provided for in the Wob complied with Article 10 of the Convention. In considering that the applicants had failed to demonstrate "very special circumstances" which would warrant disclosure under Article 10 of the Convention, the Administrative Jurisdiction Division had taken account of relevant elements of the Court's case-law, such as the applicants' capacity as journalists and the subject of the requested documents.

88. Lastly, the Government submitted that the domestic proceedings had provided for various procedural safeguards. There had been an adversarial procedure, and the Minister's decisions on the applicants' requests for information had been detailed and well reasoned. Moreover, those decisions had been reviewed at two levels of jurisdiction, in that the Regional Court and the Administrative Jurisdiction Division had inspected the documents in question and provided a thorough and convincing explanation for their judgments.

### *2. The Court's assessment*

#### (a) Existence of an interference

89. In view of the above considerations (see paragraphs 68-71 above), the Court considers that the domestic authorities' partial refusal to disclose the requested information (see further paragraphs 96-99 below) constituted an interference with the applicants' rights under Article 10 § 1 of the Convention. The Court notes that this issue was not disputed by the parties. It will therefore proceed to examine whether that interference was justified under the second paragraph of Article 10.

90. Such an interference will be compatible with Article 10 only if it was "prescribed by law", pursued one or more of the legitimate aims mentioned in paragraph 2 of that provision and was "necessary in a democratic society" (see *Magyar Helsinki Bizottság*, cited above, § 181).

**(b) Lawfulness**

91. The Court notes that the Minister refused to disclose part of the requested information on the basis of the following sections of the Wob: section 10(1)(b) ("security of the State"); section 10(2)(a) ("relations between the Netherlands and other States or international organisations"); section 10(2)(e) ("respect for personal privacy"); section 10(2)(g) ("disproportionate disadvantage"); and section 11(1) ("personal opinions on policy contained in documents drawn up for the purpose of internal consultation", see paragraphs 8-13, 17 and 24-30 above). The Administrative Jurisdiction Division upheld the refusal on those grounds in its judgment of 25 October 2017 (see paragraphs 37-42 above). The Court finds no grounds to question the authorities' position that those statutory provisions provided a legal basis for the impugned non-disclosure (see also *Magyar Helsinki Bizottság*, cited above, § 185; *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, §§ 31-32, 14 April 2009; *Gafiuc v. Romania*, no. 59174/13, §§ 64-68, 13 October 2020; and *Sieć Obywatelska Watchdog Polska*, cited above, § 62). Accordingly, the interference was "prescribed by law" within the meaning of Article 10 § 2 of the Convention.

92. As regards the applicants' claim that the "very special circumstances" criterion was unlawful or incorrect in view of their status as journalists and the impact of the MH17 disaster (see paragraphs 77-81 above), the Court considers that it falls within the scope of the examination of whether the interference was "necessary in a democratic society" in the particular circumstances of the case (see paragraphs 96-112 below; compare *Gafiuc*, § 75, and *Šeks*, § 61, both cited above).

**(c) Legitimate aim**

93. The Court considers that the applicable grounds in the Wob (see paragraph 91 above) correspond to several of the legitimate aims recognised in Article 10 § 2 of the Convention**.** In particular, they relate to "national security" and the protection of State secrets and foreign relations (see also *Girginova*, cited above, § 90; *Saure v. Germany*, no. 8819/16, § 51, 8 November 2022; *Šeks*, cited above, § 61; and *Sieć Obywatelska Watchdog Polska*, cited above, § 62), "the protection of the rights of others" (see *Magyar Helsinki Bizottság*, § 186, and *Társaság a Szabadságjogokért*, § 34, both cited above), and "preventing the disclosure of information received in confidence" (see *Saure*, cited above, § 51, and *Saure v. Germany (No. 2)*, no. 6091/16, § 54, 28 March 2023) within the meaning of Article 10 § 2 of

the Convention and its case-law. The Court therefore agrees with the Government that the interference pursued legitimate aims within the meaning of Article 10 § 2 of the Convention.

**(d) Necessary in a democratic society**

*(i) General principles*

94. The general principles concerning the assessment of whether an interference with freedom of expression is "necessary in a democratic society" are well established in the Court's case-law and have been summarised as follows (see, among other authorities, *Magyar Helsinki Bizottság*, cited above, § 187, with further references):

> "(i) ... As set forth in Article 10, [the freedom of expression] ... is subject to exceptions, which ... must ... be construed strictly, and the need for any restrictions must be established convincingly ...
>
> (ii) The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10.
>
> (iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation ... [T]he Court has to ... look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient'... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts ..."

95. The Court has further stressed that the fairness of proceedings and the procedural guarantees afforded to the applicant are factors to be taken into account when assessing the proportionality of an interference with the freedom of expression guaranteed by Article 10. In cases such as the present one, involving national security concerns, the Court will therefore scrutinise the national decision-making procedure to ensure that it incorporated adequate safeguards to protect the interests of the person concerned (see *Šeks*, § 65, and *Saure*, § 54, both cited above and with further references). The absence of an effective judicial review may support the finding of a violation of Article 10 (see *Baka v. Hungary* [GC], no. 20261/12, § 161, 23 June 2016, with further references, and *Yuriy Chumak*, cited above, § 41).

*(ii) Application of the general principles to the present case*

(α) Scope of the non-disclosure and procedural safeguards

96. At the outset, the Court considers it appropriate to reiterate the scope of the non-disclosure resulting from the applicants' requests for information concerning the manner in which the MCCb and the ICCb had handled the MH17 disaster (see paragraphs 6-7 above).

97. In the decisions of 10 February 2015 (see paragraphs 8-13 above) and 11 August 2015 (see paragraphs 15-17 above), the Minister refused to disclose 79 out of 255 documents, including the minutes of the MCCb and the ICCb. The remaining documents were either disclosed in full or with redactions. Following the Regional Court's interlocutory judgments of 3 June 2016 (see paragraphs 20-22 above), the Minister took additional decisions. This resulted in the refusal to disclose 38 out of 255 documents, including all MCCb minutes, while the rest of the documents were disclosed in full (70 documents) or with redactions (147 documents, see paragraphs 23-30 above).

98. On 24 February 2017 the Regional Court annulled the Minister's decisions in so far as they concerned the refusal to disclose the MCCb minutes and certain passages in six ICCb documents (see paragraphs 32-34 above). It ordered the release of those minutes and passages (the passages were released later, see paragraph 36 above), and upheld all other aspects of the Minister's decisions. Thereafter, the Administrative Jurisdiction Division quashed the first-instance judgments regarding the MCCb minutes (see paragraphs 37-42 above). It held that those minutes did not have to be disclosed and upheld all other aspects of the judgments of the Regional Court.

99. Accordingly, the Court observes that the scope of the non-disclosure at issue in the present case is reflected in the Minister's additional decisions on the objections and the subsequent release of certain passages in six ICCb documents (see paragraphs 23-30 and 36 above). The Court, like the Administrative Jurisdiction Division (see paragraph 41 above), attaches particular importance to the fact that a considerable portion of the requested information – including material contained in the ICCb minutes – was ultimately disclosed in the course of the domestic proceedings (see also *Šeks*, cited above, § 68, where the Court emphasised that the applicant had been granted access to thirty-one out of the fifty-six requested classified documents).

100. The Court further notes that the Minister's decisions were reviewed by the Regional Court and the Administrative Jurisdiction Division, both of which had directly examined the unredacted versions of the documents in question and held a hearing at which they heard the submissions of the applicants and the Minister (see paragraphs 20 and 36-37 above). The Court attaches considerable importance to the fact that the applicants were able to bring an action before the domestic courts, thereby enabling those courts, in

the context of fully adversarial proceedings, to carry out an effective review of the Minister's compliance with the legal obligations arising from the Wob and the Convention (see also *Association Burestop 55 and Others v. France*, nos. 56176/18 and 5 others, §§110-15, 1 July 2021; *Šeks*, cited above, §§ 64 and 69-70; *Saure*, cited above, § 55; and *Gafiuc*, cited above, § 87).

101. Since the applicants' requests for information concerned different documents and were granted to varying degrees, the Court considers it appropriate to assess separately the proportionality of the refusal to disclose the minutes of the MCCb and the (partial) refusal to disclose the other documents (compare *Saure (No. 2)*, cited above, § 58).

102. Before turning to this assessment, the Court notes at the outset that the Wob was based on the fundamental principle that government information should, in principle, be accessible to anyone requesting it, unless its disclosure was precluded by a specific protected interest under sections 10 and 11 of the Wob (see paragraphs 52-53 above). The Court agrees with the Administrative Jurisdiction Division (see paragraph 40 above) that, by treating the public interest in disclosure of documents as an independent and primary interest and by formulating several grounds for non-disclosure under the Wob, the legislature has introduced restrictions which may, in general, be considered necessary in a democratic society to protect the interests mentioned in Article 10 § 2 of the Convention.

(β) The minutes of the MCCb

103. The Court notes that the Minister, when refusing to disclose the MCCb minutes, explained in great detail that, in order to function effectively as a Cabinet sub-committee, the members of the MCCb – namely, the Prime Minister and the other ministers concerned (see paragraphs 6 and 60 above) – must be able to have a free and unrestricted exchange of arguments in confidence (see paragraphs 9 and 24). The Minister also pointed out that the Cabinet had the constitutional task of promoting the coherence of policy (see paragraph 46 above) and that the meetings of the Cabinet and its sub-committees were confidential (see paragraph 61 above). Moreover, the MCCb minutes contained information which, if disclosed, could unduly jeopardise the security of Dutch personnel in the disaster zone, the relations between the Netherlands and other States or international organisations, the privacy of members of the public and civil servants, or the expression of personal opinions on policy in documents for internal consultation (see paragraphs 10-13, 17 and 26-29 above).

104. In the light of these considerations and the particular circumstances of the case, the Minister concluded that the interest in ensuring the confidentiality of the minutes of the MCCb outweighed the applicants' interests in disclosure.

105. Subsequently, the Administrative Jurisdiction Division, which had considered the full contents of all the documents with the applicants' permission and ruled on the case in final instance, provided detailed reasoning in its judgment as to why the Minister had been entitled to attach greater weight to the above-mentioned interests than to the applicant's interests in disclosure of the minutes of the MCCb and why, in its view, the applicants' rights under Article 10 of the Convention had not been violated (see paragraphs 38-41 above).

106. Taking also into consideration the strength of the procedural safeguards afforded to the applicants in the present case (see paragraph 100 above; see also *Šeks*, cited above, §§ 69-70), the Court is satisfied that the reasons relied on by the Minister and upheld by the Administrative Jurisdiction Division were relevant and sufficient, and that the authorities of the respondent State did not overstep the wide margin of appreciation afforded to them in matters involving national security (see *Šeks*, §§ 63 and 72, and *Saure*, § 52, both cited above).

(γ) The other documents

107. The Court notes that the applicants complained about the (partial) non-disclosure of various other documents from the MCCb and the ICCb, but they failed to specify in their application to the Court to which particular documents their complaint related. In this connection, the Court underlines that inasmuch as the domestic authorities are required under Article 10 of the Convention to assess the proportionality of a refusal of access to information on the basis of the elements made available to them, there is a corresponding requirement on the applicants under this Convention provision to substantiate the purpose of their request, both before the domestic courts and before this Court (see *Saure*, §§ 55-58 with further references, and *Saure (No. 2)*, § 75, both cited above). It is not sufficient for an applicant to make an abstract point to the effect that certain information should be made accessible as a matter of general principle of openness (ibid.). More generally, it should be reiterated that the Court's task is not to review domestic law in the abstract but to determine whether the way in which it was applied to or affected the applicant gave rise to a breach of the Convention (see, among other authorities, *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 116, ECHR 2012, and *Perinçek v. Switzerland* [GC], no. 27510/08, § 136, ECHR 2015 (extracts)).

108. In any event, the Court observes that the domestic proceedings indicate that parts of documents other than the MCCb minutes were withheld in order to protect various legitimate aims (see paragraphs 91, 93 and 103 above). In the light of the applicants' unsubstantiated submissions in this respect (see paragraph 107 above), the Court discerns no basis for questioning the Minister's conclusion, which had been reviewed and upheld by the national courts (after having considered the full content of all the documents

with the applicants' permission), that the applicants' right under Article 10 of the Convention did not prevail over the relevant interests served by non-disclosure of the relevant passages of these documents, or for concluding that the domestic authorities had failed to strike a fair balance between the competing interests at stake. For example, the applicants have failed to demonstrate why their interests should be regarded as outweighing the rights of others – in particular, the victims, their next of kin and civil servants not holding public positions – under Article 8 of the Convention to have their personal data kept out of the public domain (compare and contrast *Magyar Helsinki Bizottság*, cited above, §§ 195 and 198).

109. The Court is also mindful that the MH17 disaster raised issues directly touching upon national security and foreign affairs. In the context of national security – a sphere which traditionally forms part of the inner core of State sovereignty – the competent authorities cannot be expected to provide the same level of detail in their reasoning as would normally be required in ordinary civil or administrative cases, for example (see *Šeks*, cited above, § 71). Providing detailed reasons for refusing the disclosure of such information may itself undermine the very purpose for which that information was withheld in the first place (ibid.).

(δ) The applicants' capacity and the subject matter of their Wob request

110. Lastly, the Court observes that the applicants seem to have claimed, in essence, that their journalistic capacity and the major societal impact of the MH17 disaster entitled them to full access to all information contained in the documents of the MCCb and the ICCb. The Court cannot accept such a proposition. While the applicants' role as journalists and the major societal impact of the MH17 disaster were undeniably compatible with the scope of the right to solicit access to State-held information (see paragraphs 68-69 above), these factors are neither determinative in law nor sufficient in the applicants' case for the Court to find a violation of Article 10 of the Convention on the merits of the complaint. In that regard, the Court reiterates that this provision, once applicable, does not confer on individuals an absolute right of access to State-held information (see *Magyar Helsinki Bizottság*, § 156, and *Association Burestop 55 and Others*, §§ 79 and 107, both cited above), and such information need not be disclosed merely because someone – even a journalist – has requested it as a matter of principle (see, *mutatis mutandis*, *Studio Monitori and Others*, §§ 40-42, and *Saure*, § 57, both cited above).

111. While acknowledging the significance of openness and transparency in government decision-making, the Court considers that the requirement that the information sought satisfy a public-interest test in order to prompt a need for disclosure under Article 10 of the Convention is of a different nature, as it refers to the specific subject matter of a document – in this case, the

documents pertaining to the MCCb and the ICCb (compare *Studio Monitori and Others*, cited above, § 42, with further references).

112. In this connection, even assuming that it would have been desirable for the Administrative Jurisdiction Division to provide further substantiation of its response to the applicants' argument that the "very special circumstances" criterion had been met in their case (see paragraph 41 above), this is not sufficient in the specific circumstances of the case for the Court to call into question the finding that the applicants had access to a remedy meeting the requirements of Article 10 of the Convention (see also *Association Burestop 55 and Others*, cited above, § 115).

**(e) Conclusion**

113. In view of the above, the Court considers that in assessing the circumstances submitted for their evaluation, the Minister and the Administrative Jurisdiction Division gave 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. In doing so, particular weight was attached to the confidentiality of internal deliberations and preliminary decision-making in meetings of the Cabinet and its sub-committees. In the light of the information in the case file and the parties' submissions, the Court discerns no strong reasons which would require it to substitute its view for that of the domestic authorities and to set aside the balancing exercise undertaken by them (see also *Šeks*, § 72; *Saure*, § 57; and *Saure (No. 2)*, § 61, all cited above; see also *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, §§ 196 and 198, 27 June 2017). It is satisfied that the reasons relied upon for the partial non-disclosure of the requested documents were both relevant and sufficient to demonstrate that the interference complained of was "necessary in a democratic society". The authorities of the respondent State acted within their margin of appreciation when striking a fair balance between the competing interests at stake.

114. The Court therefore concludes that there has been no violation of Article 10 of the Convention.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 21 April 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Simeon Petrovski<br>Deputy Registrar | Lado Chanturia<br>President |

# APPENDIX

List of applicants:

| **Application no.**<br>**Case name** | **Applicant's company name**<br>**Year of incorporation**<br>**Place of statutory seat** | **Representative's name**<br>**Location** |
|---|---|---|
| 20066/18<br>Nederlandse Omroep Stichting and Others v. the Netherlands | **NEDERLANDSE OMROEP STICHTING**<br>2009<br>Hilversum<br><br>**DE VOLKSKRANT B.V.**<br>1932<br>Amsterdam<br><br>**RTL NEDERLAND B.V.**<br>2004<br>Hilversum | Johannes<br>H.A. VAN DER GRINTEN<br>Amsterdam |