

SECRETARIAT
Joh. Vermeerstraat 22
1071 DR Amsterdam
The Netherlands
tel: +31-(0)20-6735727
fax: +31-(0)20-6799065
email: raad@rvdj.nl
website: www.rvdj.nl

MEDIA SELF-REGULATION IN THE NETHERLANDS

**THE NETHERLANDS PRESS COUNCIL
(RAAD VOOR DE JOURNALISTIEK)**

Daphne C. Koene
secretary

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1. Media – freedom and regulation

The right to freedom of expression and information is considered to be one of the fundamental human rights and a cornerstone of democracy. In order to execute this right, the public needs reliable information which enables it to form an opinion on matters of common interest. And here, media freedom comes in. In the words of the European Court of Human Rights, the media play the role of “public watchdog”. This means that media professionals must be free to scrutinise the words and actions of public authorities.

However, the media itself are not outside the law and have to give accountability for their actions. The question is, in what way?

Considering the role of ‘public watchdog’ it seems best that the media are regulated by the state as less as possible. After all, state-regulation may lead to a restriction of the freedom of the media to analyse actions of the government and thus to censorship.

Therefore, self-regulation seems to be a better – maybe the best – alternative. In several Western and Eastern European countries the media accept their responsibility and support the self-regulation system in their country, to prevent that the government interferes severely. This self interest of the media is an important factor when it comes to the working of a self-regulation institute.

If self-regulation is effective, the credibility of the media will be enhanced, which contributes to a democratic society and to an increase of media freedom.

2. History of the Netherlands Press Council

In The Netherlands we have a self-regulation system for a considerable time. The origin of our Press Council leads back to 1948. After the Second World War had ended and the free press in The Netherlands had been rebuilt, the journalists' organisations looked for means to safeguard good journalistic practice. The main point of concern was the standing of the profession.

The Netherlands Union of Journalists founded in 1948 the 'Raad van Tucht', a disciplinary council, which functioned as a kind of Press Council until 1960.

The competence of this disciplinary council extended only to members of the Netherlands Union of Journalists. In case of bad professional conduct the disciplinary council could impose one of the following sanctions: warning, rebuke, suspension, or expulsion as member of this Union. During the twelve years of its existence the disciplinary council came to a judgement in fifteen cases.

An incident led to the institution of our present Press Council, the 'Raad voor de Journalistiek'. What happened? A journalist of a daily paper had published an article about a government statement, presented to the press under embargo. The journalist did not accept the embargo, because he already knew the content of this statement from his own sources.

As a reaction to this event the government excluded this journalist during one year from all information on the part of the government. The Prime Minister declared, when asked for his opinion in Parliament, that the government could not accept the disciplinary council judging this question, because the council was only competent to judge the members of the Netherlands Union of Journalists. So, if a journalist ended his membership, the disciplinary council lost its competence to examine the complaint and to make a statement.

In reply to this attitude of the government the Netherlands Union of Journalists reformed the disciplinary council into a council of opinion in 1960. This Press Council was given competence with regard to *all* journalistic practice, including the practice of non-organized journalists (in the Netherlands Union of Journalists).

Worth mentioning in this context is that in 1948 in the first collective labour agreement for daily newspaper journalists a so-called 'closed-shop' article was agreed upon by the parties, meaning that journalists were obliged to join the union. This article however was not approved by the Department of Social Affairs and therefore never became valid. If this would not have happened, the disciplinary council could have judged all 'professional' journalists.

Also worth mentioning is that in 1949 the government proposed a bill, regulating the registration and assessment to profession of all journalists. This bill also envisaged a self-discipline system based on public law. Great discontent and criticism on the part of the union led to the withdrawal of this bill finally in 1960.

As a result journalism in the Netherlands is – as we call it – a free profession. This means that everybody may call himself a journalist and act like one. There is no obligation to follow a specific education or to register as a journalist.

3. Establishment and financing

At present the Netherlands Press Council is established and will be maintained by a foundation named Stichting Raad voor de Journalistiek.

In the Foundation all important media organizations participate:

- the Netherlands Union of Journalists (Nederlandse Vereniging van Journalisten, NVJ)
- the Netherlands Society of Chief-Editors (Nederlands Genootschap van Hoofdredacteuren)

- the Netherlands national news agency (Algemeen Nederlands Persbureau, ANP)
- several co-ordinating organizations of printed press:
 - the Dutch Newspaper Publishers Association
 - the Consumer Magazines Group of the Dutch Publishers Association
 - the Dutch association of local newspapers (Nederlandse Nieuwsblad Pers, NNP)
- the co-ordinating organizations of public broadcasting:
 - the Nederlandse Omroep Stichting (NOS)
 - Stichting Regionale Omroep Overleg en Samenwerking (ROOS)

and further the following organizations of commercial broadcasting:

- RTL Nederland, the Netherlands branch of RTL Group
- SBS Broadcasting

In 2005 the first Internet organization Planet Internet joined the Foundation.

All participants of the Foundation together finance the Press Council: the media owners together for approximately 86,6%, the Netherlands Union of Journalists and the Netherlands Society of Chief-Editors both for some 6,7%. The current year's budget is around € 130.000,=.

In the Netherlands the government does not contribute, all costs are to the expense of the branch of industry. In our annual report over 2004 the president of the Foundation stated in this respect: *"It should remain this way, because the most beautiful role of the government is that of a friend on a proper distance."*

The board of the Foundation appoints the members, chairmen and secretaries of the Press Council. The Press Council consists of four (vice) chairmen, thirteen member-journalists and thirteen members-not-journalists. The chairmen and members all do their work in their spare time and beside their normal jobs.

The chairman and his substitutes are (ex-)members of the judiciary. The member-journalists have various jobs in journalism such as editor, editor-in-chief or freelance journalist. The non-journalist members have different positions in society, all in some way related to journalism. They work for example as a professor, teaching at a School of Journalism, or they have a non-journalistic post at a publishing or broadcasting concern. The secretary and acting secretary must be a lawyer. The appointments are for four years but can be extended for another four years.

Further the board of the Foundation determines the regulations of the Press Council.

4. Mission

According to article 3 of the Statutes of the Foundation the Press Council is charged with the examination of complaints against violations of good journalistic practice. But not every complaint leads to such an examination. Not every one may complain. Only they, who are to be considered as directly involved in a case of journalistic (mal)practice, can complain. The complainants are mostly persons or organizations who feel there has been published in a false, incorrect or grievous way about them.

The complaint must concern journalistic practice of either a professional journalist or someone who, on a regular basis and for remuneration, collaborates on the editorial content of a mass medium.

Besides, the Press Council cannot treat the maintaining of the standard of good taste or general complaints against the press. The complaint must always be in regard of a specific publication, a specific series of articles or a specific broadcasting program, as far as journalistic practice is concerned.

Since the change from a disciplinary council to a council of opinion the Press Council no longer can impose a sentence on the journalist. Neither can the Press Council assure the complainant financial compensation.

In this context one may ask whether or not the Press Council is a 'watchdog without teeth'. However, the Press Council has an important public function by giving a moral redress to the complainant.

The council gives its opinion on the complaint and publishes its decision on its website and in the professional magazine for journalists. Also it circulates its decisions on a wide scale by sending it to the national news agency and to several other media.

Further it is of great importance that media publish the opinions of the Press Council, especially those on valid or partially valid complaints. After all, such brings satisfaction to the complainant and contributes to the debate on journalistic ethics.

In this respect must be emphasised that the Press Council is founded by the media organisations itself. This implies that the media take the Press Council serious and almost all media co-operate voluntarily on the procedure of the Press Council.

A considerable amount of media has signed an agreement in which they declare to publish the decisions of the Press Council in cases in which they are involved. Some media did not sign this agreement because they have objections of principle, meaning that the agreement should infringe on the freedom of the press. However, this does not mean that these media do not publish the decisions of the council at all. The number of media which actually publish in valid and partially valid cases, is now around 70%, and still growing.

It is my experience that for most complainants a moral redress is enough. It prevents people from taking legal actions, although the one does not exclude the other. Indeed, a complainant will not receive any financial compensation, but in the Netherlands a claim for such compensation in court is hard to win.

5. Procedure to complain

Besides, compared to a legal procedure the procedure to file a complaint is very accessible. The complainant just has to send his complaint in writing to the office of the Press Council. No charge is made. Legal representation is permitted, but not compulsory.

After a complaint is received the secretary sends it to the journalist or chief-editor involved, asking him to respond on the complaint in writing within three weeks. Then in most cases a public hearing will be arranged.

The Press Council is convinced that the best way of dealing with the complaints is to hear both parties, if possible. However, parties are not obliged to appear. In practice it occurs that both parties attend the hearing, that only the complainant or the journalist is present, or that both parties are absent. During the hearing both parties may explain their points of view. Further the hearing gives the Press Council the opportunity to ask questions and to explain the standards of journalistic ethics and the circumstances in which these standards must be realised.

Sometimes the secretary is of the opinion that the complainant can not be considered as directly concerned or the complaint does not relate to journalistic practice. If however the complainant will present the Press Council with the question whether or not he is admissible, or whether or not the council is competent, the Press Council deals with such a case without a hearing.

The Press Council deals with an average of four to five complaints per hearing. At its sessions the chamber of the Press Council consists of at least three and not more than five members: a chairman and a proportional amount of journalist members and non-journalist members (1/1 or 2/2). If one of the members is suddenly unable to attend, the Press Council may deal with a case with four members if the parties present approve.

After the hearing the Press Council considers the case behind closed doors. Then the secretary formulates a draft decision. As soon as the comments of the president and members of the Press Council are incorporated, the definite decision will be sent to both parties. According to the regulations this must be within eight weeks after the hearing.

In its decision the Press Council asks the journalist or mass medium in question to publish the decision. After sending its decision to the parties, the Press Council publishes its decisions itself on its website and in the professional magazine for journalists, as I mentioned earlier.

A large part of the decisions concern alleged infringements of privacy. An other significant part is related to publications which contained severe accusations referring to the complainant, who believed the accusations lacked valid foundations and that the journalist wrongfully did not hear his side.

6. Challenges and developments

In the past criticism was heard that the Press Council lacked enforcement power. To enlarge its esteem the Press Council constantly tries to improve its working methods.

Over the years the statutes and regulations have been adjusted. Since 1993 there is also the possibility of mediation between complainant and journalist. Another important change is that since that same year the Press Council can give a statement of opinion about a case of principal interest on its own initiative. Up till now this has happened three times: about the use of stolen information by journalists (RvdJ 1995/32), about the use of hidden camera's and microphone's (RvdJ 1996/44) and about embargo (RvdJ 2003/50).

As from January 2003 a complainant may apply for an accelerated treatment of his complaint.

The latest adjustments in the regulations are made in 2005. Since February of last year a term of six months is implemented, in which a complaint must be filed.

Further the Press Council introduces consistency in its decisions by expressing the tendency in its decisions, referring to its earlier opinions in similar cases.

In the past few years the work of the Press Council increases. Probably not because journalistic malpractice increases, but because more complainants find their way to the Press Council. Here-after you will find an overview of data concerning the received complaints and number of decisions.

Not only this overview shows the growing significance of the Press Council. In the past couple of years some governmental reports have been published concerning the accountability of the media. The government is of the opinion that in this respect a reinforced Press Council can play an important role.

However, the costs for this reinforcement are for the account of the professional sector. In this connection the board of our foundation had success by finding funds to further improve the working methods of the Press Council. The public broadcasting appeared to be willing to bear the extra costs for the last few months of 2004 and for 2005, to reinforce the office of the Press Council and to hire freelance clerks.

These four clerks, all working at the Council of State, formulate draft decisions. As a result the complaint procedure is shortened; the parties receive an opinion approximately within four weeks after a hearing. In order to prolong the work of the clerks, this year the foundation collected extra funds from the Stichting Democratie en Media (the Foundation Democracy and Media). Our foundation will investigate the possibilities to increase its budget in a structural way.

Further the Press Council is enlarged in order to deploy enough presidents and members for a larger amount of hearings. The number of presidents is increased from 3 to 4, the number of members from 20 to 26.

In the past two years the secretary's office put a lot of energy in improving the website of the Press Council. The website is more accessible than before and it is a lot easier to consult the decisions of the Press Council. Besides, we have modernised the design of the website and we have updated our brochure.

Although at present most criticism seems to have silenced down, the Press Council would like to improve its social profile. Therefore, the council installed a working committee to investigate the possibilities and ways to play a more active role in the public debate on journalistic practice. The efforts of this committee will be discussed this fall in the next meeting of the Press Council.

7. Alliance of Independent Press Councils of Europe

During the two meetings of the Alliance of Independent Press Councils of Europe (AIPCE) that I have attended, I have learned that the Netherlands Press Council is not the only Press Council that is criticised and has gone through some changes during the years. The present Danish Press Council for instance is established on the basis of the Danish Media Liability Act, after the former council collapsed due to economic disputes between journalists and media owners.

In the annual meetings of the Alliance colleagues from several Press Councils cooperate with each other through the exchange of views and information, without the need for formal bureaucracy.

A comparison of the several Press Councils lead to the conclusion that no two councils are the same. To give you an impression of remarkable differences:

- the Danish, Belgium and Netherlands Councils are competent not only in print media cases but in broadcasting cases as well, unlike the councils in Great Britain, Germany and Sweden;

- the Netherlands Press Council has hearings, which is not common in other councils;
- in Great Britain and Belgium mediation is successful in a significant part of all cases;
- in Sweden there is a primary complaints institute, called the Press Ombudsman. The complainant may appeal to the Swedish Press Council.

So, considering the social and cultural differences between all countries there is no 'one-fits-all' model for a Press Council or Press Code.

This brings me to the remark that unlike some other European Press Councils the Netherlands Press Council does not use a written code of ethics.

However, in the discussion following the Jyllands-Posten Muhammad cartoons controversy (the 'Danish cartoons') there were pleas from various sides for some kind of codification. With just there were warnings against codification as well, since legislation may put pressure on the freedom of opinion. Therefore, consistent with self regulation it might be better that the Press Council will translate the standards mentioned in its jurisprudence in its own code. With this in perspective a working committee is installed to prepare a draft proposal. With its code the Press Council will place its journalistic principles plain and simple at the disposal of the branch and the society.

The Alliance of Independent Press Councils of Europe is a loose-knit group, designed to promote self-regulation, resist attempts to harmonise or impose press regulation, and share experiences and information.