

OvRAN

Orde

van

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(3 pag. incl. dit voorblad)

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Postbus 20021
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Datum

19-12-12

Uw referentie:

A.J. Boer 11/295

N. Plug 11/296

C.B.A. Spil 11/297

AWB 10/1418

Edelgrootachtbaar College,

Onze referentie:

Beroepschriften

Besluit Nivra d.d. 11 maart 2011

Uitspraak Rechtbank R'dam

d.d. 9 december 2010

Telefoon

0411-641699

Naar aanleiding van de eerdere uitspraken CBB op 15 februari 2011 onder procedurenummers AWB 09/381, 09/382, 09/383 en AWB 10/117, doen wij u hierbij ter kennisname toekomen een schrijven aan het Europese Hof voor de Rechten van de Mens (EHRM) inzake nieuwe ontwikkelingen in dit dossier.

Wij verzoeken u dit schrijven als dossierstuk te voegen bij uw procesdossier betreffende procedurenummers A.J. Boer 11/295, N. Plug 11/296, C.B.A. Spil 11/297 en AWB 10/1418.

Voor de goede orde maken wij u attent op de laatste alinea van bijgaand schrijven. Daarin wordt opgemerkt dat sinds de start van de procedures A.J. Boer 11/295, N. Plug 11/296, C.B.A. Spil 11/297 op 22 Oktober 2008, meer dan 4 jaar zijn verstreken. Dat betekent dat de 'redelijke termijn' zoals bedoeld in art. 6 EVRM en volgens uw standaard jurisprudentie gesteld op 3 tot 4 jaar¹, over de door uzelf gestelde termijn is geraakt².

Met vriendelijke groeten,

C.B.A. Spil RMC

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¹ Zie bijv CBB 8 September 2010, LJN BN6785 (3 jaar) of 26 Januari 2009, LJN BH1009(4 jaar in 3 instanties)

² Die termijn vangt, zoals uw College eerder heeft overwogen (uitspraak van 4 december 2007 in de zaken AWB 06/915 en 06/916, LJN: BB9789) en bevestigd in de zaak LJN: BH6281 van 3 maart 2009, aan op het moment dat de betrokkene kenbaar maakt het niet eens te zijn met de weigering van Nivra tot inschrijving zonder lidmaatschap welke weigering bij het verzoek daartoe op 22 Oktober 2008 al vast stond.

Böhler

ADVOCATEN

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51016/11

51016/11 OVRAN and others v. NLD

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VICTOR KOPPE
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PROF. HANS ULRICH JESSURUN D'OLIVEIRA

Amsterdam, 19 December 2012
Our ref. 20110382.WE/WE
Your ref. 51016/11
Direct phone +31 20 344 6200
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Re: OvRAN and others v. the Netherlands (Application No. 51016/11)

Dear Sir/Madam,

In the above application, I would like to inform you about two developments which I believe are pertinent to the case. The first development is a new law on the accounting profession (*Wet op het accountantsberoep*). This law passed parliament on 11 December 2012 and creates a new body called NBA (*Nederlandse Beroepsorganisatie van Accountants*), replacing two earlier bodies; Nivra and NOvAA. The second development is what the applicant calls a 'penal law offensive' by the Ministry of Finance (Ministry) and the NBA against any use of accounting titles in its widest sense.

The new law in itself does not change the objections brought forward in the above application against: a. compulsory membership, b. discrimination on nationality and c. deprivation of property rights. It only changes names in and numeration of the respective articles in the new law compared to the old one.

In essence, the Ministry used two arguments to convince parliament that freedom of association as defined in Article 11 of the Convention is not at stake. The first argument was that Article 11 does not apply to what is called a "PBO" in Dutch, meaning an entity created by public law. The second argument was that the two verdicts of the CBB on February 15 2011 that "*Article 11 ECHR is not applicable to public law organizations*", confirmed the first argument.

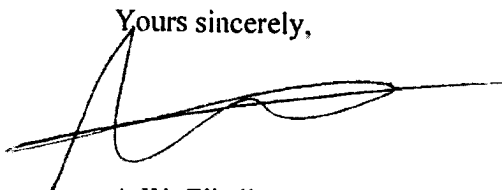
The Ministry did not mention to parliament the application lodged against these two verdicts with your Court and still under appeal with CBB. Neither was mentioned the well-known European (*Chassagnou, Schneider*) and Dutch (*Huisarts*) case law forbidding “*the compulsory regimentation of the professions by means of closed and exclusive organizations*” as defined in *Le Compte*. Also not mentioned was the fact that the second paragraph of Article 11 limits any restriction on the freedom of association to those that 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 or for the protection of the rights and freedoms of others*”. This excludes restrictions on freedom of association of the accounting profession or any “PBO”. Finally, the Ministry omitted the requirement “*necessary in a democratic society*” while the Dutch Law on health practitioners (*BIG*) proves that no such necessity exists. The strength of the lobby of the NBA, the 'Big Four' and the Ministry seems to have overwhelmed all legal arguments.

The ‘penal law offensive’¹ by the Ministry and the NBA aims at about 1.600 cases of ‘abuse of title’. Some 700 penal complaints are expected against, among others, members of OvRAN. The applicant naturally agrees with the need to protect the public against misleading use of academic titles which have not been earned. However, preventing the use of *earned* academic titles unless the NBA is joined, is a clear case of the negative right of freedom not to join an organization. The fear of losing accounting titles prevents many accountants to join OvRAN. This fear and the resulting threat to our member base forced us to launch a counter offensive implicating again expensive legal support and procedures until your Court may decide eventually upon this negative right of freedom.

As to the appeals with CBB there is no progress to mention. Since the proceedings against Nivra started on 22 October 2008, over 4 years have passed. The applicant informed CBB today that the reasonable time as meant in Article 6 and defined by CBB to mean ‘3 to 4 years’² has long past. CBB, meanwhile, received a copy of the application with your Court on 7 April 2012.

Thank you for your attention to this matter.

Yours sincerely,



A.W. Eikelboom

¹ See <http://www.accountancynieuws.nl/actueel/accountancymarkt/mogelijk-1600-gevallen-van-onrechtmatig-gebruik.117227.tynkx>

² See e.g. CBB 8 September 2010, LJN BN6785 (3 year) or 26 January 2009, LJN BH1009(4 year in 3 instances)