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51016/11

51016/11 OVRAN and others v. NLD

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European Court of Human Rights
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France

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Amsterdam, 19 December 2012
Our ref. 20110382.WE/WE
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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.

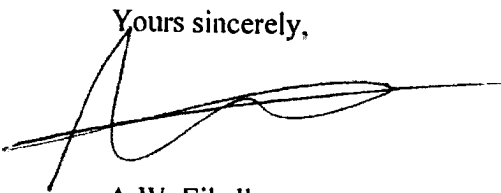
The Ministry did not mention to parliament the application lodged against these two verdicts with your Court and still under appeal with CBB. Neither was mentioned the well-known European (*Chassagnou, Schneider*) and Dutch (*Huisarts*) case law forbidding “*the compulsory regimentation of the professions 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)