

PRESS RELEASE

Dutch court upholds lower court ruling banning surveillance of lawyers' communications after successful CCBE intervention

29/10/2015

On 27 October 2015, a Dutch Court of Appeal upheld The Hague District court's ruling in the Prakken d'Oliveira case which ordered the Dutch State to stop all surveillance of lawyers' communications until it provided for independent oversight.

In its ruling, the Dutch Court of Appeal **dismissed all the grounds of appeal alleged by the Dutch State**. The Court indicates that according to case law of the European Court of Human Rights surveillance **activities must be subject to review by an independent body with the power to prevent or terminate potential infringements of professional secrecy**. The current Dutch surveillance regime **does not meet the requirements** for such independent control and, therefore, conflicts with the right to privacy (article 8 ECHR) and the right to a fair trial (article 6 ECHR). The Court stresses that information obtained from tapping lawyers **may not be shared with prosecutors** until an independent review has taken place regarding the legality of that information and the way it was obtained. Even the possibility that information is shared with the public prosecutor can result to people refraining from contacting a lawyer. According to the court, that is a violation of the right to a fair trial and undermines the rationale behind professional secrecy. The Court also ruled that the **protection of client confidentiality is not limited to communications with Dutch lawyers but extends to communications with all European lawyers rendering services in The Netherlands** as referred to in Directive 77/249/EC.

As a result of these findings the Court of Appeal confirmed the lower court's ruling.

The parties in the case may make an appeal in cassation against the ruling within 3 months at the Dutch Supreme Court.

In welcoming the decision, CCBE President Maria Ślązak commented: "the trust between lawyer and client is, at root, an assurance of due process and the rule of law. It is therefore essential that the confidentiality of lawyer-client communications is always respected. Surveillance measures that could undermine this principle have always to be subject to review by an independent body with the power to prevent and/or terminate the infringement. The fact that this has been reaffirmed by the Dutch Court of Appeal is reassuring and an important step to bring Dutch surveillance policy in line with the right to a fair trial."

NOTE TO EDITORS

Background: in May of this year the CCBE successfully intervened before The Hague District Court in a challenge brought against the Dutch State by the law firm Prakken d'Oliveira and the Dutch Association of Criminal Defence Lawyers (NVSA). The Court was questioned on the legality of eavesdropping by domestic intelligence agencies on lawyers' calls and communications. In its verdict delivered on July 1st, the court recognised that the ability to communicate confidentially with a lawyer is a fundamental right which is currently being breached under Dutch surveillance policy. The court therefore ordered the Dutch government to stop all interception of communications between clients and their lawyers under the current regime within six months. In response, the Dutch State fast-tracked an appeal against the judgement. In turn, on 25 August, the CCBE challenged the grounds of the appeal.

Transcript of the judgement (in Dutch):
<http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2015:2881>

Transcript of the previous judgement (in Dutch):
<http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2015:7436>

CCBE wins case against the Dutch State on surveillance of lawyers (press release, 02/07/2015):
http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_pr_0415pdf1_1435843144.pdf

CCBE takes mass surveillance to court (press release, 27/05/2015):
http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_pr_0315pdf1_1432724578.pdf

CCBE Statement on mass electronic surveillance by government bodies (including of European lawyers' data):
http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_14142013_CCBE_Sta1_1382086457.pdf

Dutch Intelligence Service (AIVD) taps Prakken d'Oliveira lawyers:
<http://www.prakkendoliveira.nl/en/news/dutch-intelligence-service-aivd-taps-prakken-doliveira-lawyers/>

About the CCBE

The CCBE represents the bars and law societies of 32 member countries and 13 further associate and observer countries, and through them more than 1 million European lawyers.

Founded in 1960, the CCBE is recognised as the voice of the European legal profession by the EU institutions, and acts as the liaison between the EU and Europe's national bars and law societies. The CCBE has regular institutional contacts with those European Commission officials, and members and staff of the European Parliament, who deal with issues affecting the legal profession. The CCBE is an international non-profit-making association incorporated in Belgium.

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