



Paleis van Justitie (Court house), the Hague

CCBE Info

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Prakken d'Oliveira case, ruling upheld-EU parliament calls for the protection of lawyer-client communications - Report on European Parliament Legal Affairs extraordinary meeting - OECD Final Report on Mandatory Disclosure Rules - Updates on PECO countries - Human Rights Lawyers at Risk - FBE conference in Krakow - European Lawyers Day

DUTCH COURT UPHOLDS LOWER COURT RULING BANNING SURVEILLANCE OF LAWYERS' COMMUNICATIONS AFTER SUCCESSFUL CCBE INTERVENTION

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**, indicating 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 and the right to a fair trial. The Court stressed 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, this 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 a result of these findings the Court of Appeal confirmed the lower court's ruling.

The transcript of the judgement (in Dutch) can be found here: <http://uitspraken.rechtspraak.nl/inzindocument?id=ECLI:NL:GHDHA:2015:2881>

EU PARLIAMENT CALLS FOR THE PROTECTION OF LAWYER-CLIENT COMMUNICATIONS

On **13 October 2015**, the LIBE Committee (Committee of Civil Liberties, Justice and Home Affairs) adopted the [Follow-up Resolution of 12 March 2014 on the electronic mass surveillance of EU citizens](#) which includes recommendations made by the CCBE.

These recommendations were made to protect the confidentiality of lawyer-client communications as a key element of the rule of law. The draft resolution *“underlines in particular that the rights of EU citizens be*

protected against any surveillance of confidential communications with their lawyers,” and *“calls upon the Commission to present a Communication on the protection of confidential communications in professions with legal professional privilege by the end of 2016 at the latest”*.

This draft resolution takes stock of the action (or lack of action) by the European Commission, other EU institutions and member states to follow up the recommendations set

out by Parliament in its [resolution of 12 March 2014 on the electronic mass surveillance of EU citizens](#), which also called for protection of the confidentiality of lawyer-client communications in the context of surveillance.

The draft resolution was approved by the Plenary of the European Parliament on 29 October 2015. It was also stressed that a common definition of “national security” was needed **to ensure legal certainty**.

INCREASE OF 28 NEW JUDGES AT THE GENERAL COURT

On **8 October**, an extraordinary meeting of the European Parliament Legal Affairs Committee of the Court of Justice took place. The meeting was convened to reach a Committee position on whether there should be an increase in the number of judges at the General Court. Following a discussion, the Committee supported an increase of 28 new judges (which is what had been proposed by Member States) in three steps (12 judges, then 7 judges and then 9 judges). In taking its decision the Committee also emphasised the need to improve gender balance with regard to new nominations.

It was further agreed that, after five years, there would be a review on the efficiency and functioning of the General Court. This review will focus on “the efficiency of the General Court, the necessity and effectiveness of the increase to 56 judges, the use and effectiveness of resources and the further establishment of specialised chambers and/or other structural changes”.

The Committee decision means that final discussions between the Commission, Council (Member States) and Parliament can now take place in order to reach a final agreed text.

OECD FINAL REPORT ON MANDATORY DISCLOSURE RULES

Earlier this year, CCBE put forward [its views](#) on mandatory disclosure rules, highlighting the role of lawyers within the administration of justice and the defense of the rule of law; and the core values that they lawyers are subject to, in particular legal professional privilege or professional secrecy and independence. The CCBE was therefore opposed any option that would put an obligation of disclosure of tax schemes on lawyers acting as legal counsel in tax matters.

On 5 October 2015, the OECD released the final BEPS package, including the [Final Report](#) on ‘Mandatory Disclosure Rules – [BEPS Action 12](#)’.

Action 12 which requires taxpayers to disclose their [Aggressive Tax Planning Arrangements](#) is explained by the fact that it *“provides a modular framework of guidance drawn from best practices for use by countries without mandatory disclosure rules*

which seeks to design a regime that fits those countries’ need to obtain early information on aggressive or abusive tax planning schemes and their users.”

The Final BEPS Package was presented to G20 Finance Ministers at their 8 October meeting in Lima and it will be put to G20 Leaders at their summit in Antalya on 15-16 November 2015.

HUMAN RIGHTS LAWYERS AT RISK

On **23 September** in Warsaw, the CCBE President Maria Ślżak was invited to moderate a panel at a seminar organised by the OSCE/ODIHR, the ABA, the Lawyers for Lawyers Foundation, the Human Rights House Network and the Human Rights Embassy, on *“Human Rights Lawyers: Challenges and Professional Guaranties for Legal Professionals”*.

The aim of the seminar was to promote the Report “Human Rights Lawyers at risk - making the cases for protection of legal professionals in Azerbaijan, Belarus, Moldova, Russia and Ukraine” and to spread the message on violations of rights of human rights defenders. The seminar was very well-attended by human rights activists as well as governments’ representatives.



President Maria Ślżak at the Human Rights Lawyers at risk event in Warsaw

FBE CONFERENCE IN KRAKOW



Michel Benichou at the FBE congress in Krakow

CCBE Vice-President Michel Benichou represented the CCBE on at the Congress of the *Fédération des Barreaux d'Europe* in Krakow. He took part in a scientific panel on white-collar workers’ corruption and also participated in discussions on money laundering and European standards.

UPDATES ON PECO COUNTRIES

There are new articles on the [PECO blog](#): firstly, an article highlighting the participation of CCBE President Maria Ślżak at joint UNBA-CoE-CCBE event on Strategic Planning; secondly a CCBE letter to the Prime minister of

the Republic of Albania regarding introduction of fiscal cash registers for lawyers and the VAT rules.

The full articles and further information about PECO countries can be found on the [PECO blog](#).

EUROPEAN LAWYERS DAY

As a reminder European Lawyers Day will be held on **10 December 2015**, in conjunction with International Human Rights Day. The theme this year is **“Freedom of Expression”**.

The CCBE has prepared a Guide and a Poster which are now available on the website: www.ccbe.eu/lawyersday.

Madeleine Kelleher of the CCBE is available for any questions or comments that you may have regarding European Lawyers Day 2015. She can be reached at kelleher@ccbe.eu.



UPCOMING EVENTS

- 7-8/11** *Georgian Bar Association's 10 year Anniversary, Tbilisi*
- 13/11** *AFAC Conference on local governments (or local authorities) and Europe, Paris*
- 13/11** *90th Anniversary of the foundation of the Supreme Bar Council of Bulgaria, Sofia*
- 18/11** *European Evening of the German Bar Association, Brussels*
- 27-28/11** *CCBE Plenary Session, Mons*