

PRESS RELEASE

The CCBE has intervened before the French Constitutional Council to defend the confidentiality of communications between lawyers and their clients

15/07/2015

The Council of Bars and Law Societies of Europe (CCBE) has submitted comments as part of the review of the bill on intelligence, and made several suggestions to bring the law into compliance with the right to privacy and the right to legal advice.

On June 25th 2015, the President of the French Republic, the President of the Senate and more than sixty members of the National Assembly referred to the French Constitutional Council (Conseil constitutionnel) the task of reviewing the French Government bill on intelligence. The CCBE decided to intervene as a third party on request of the French National Council of Bars, since the case affected the core values of the legal profession and the safeguard of fundamental freedoms.

The bill sets out that intelligence services may intercept private communications and bug rooms 'in order to defend and promote the fundamental interests of the nation'. Concerns have been expressed as regards the broad formulation of the various public interest reasons that could justify this approach, and the absence of any independent judicial control mechanism.

The use of intelligence-gathering methods can be ordered only by the Prime Minister, after a body called the National Commission of Intelligence Techniques Control (CNCTR) provides its opinion. However, in case of emergency, there will be no need to consult the CNCTR in advance, even regarding members of protected professions such as journalists, judges and lawyers.

Regarding the mass electronic surveillance provided by the bill, the CCBE requests that it be limited to storing only data which may reveal a potential threat, without indiscriminately storing citizens' connection data.

While the bill puts the Council of State (Conseil d'État) in charge of judicial review, for it to be effective it is imperative that a lawyer

appointed by the plaintiff be allowed to discuss evidence, even classified evidence.

The CCBE notes the verdict delivered by the District Court of The Hague, the Netherlands, on 1 July 2015 recognising that the surveillance of lawyers by the intelligence services breaches fundamental rights. The court ordered the Dutch government to stop all interception of communications between clients and their lawyers. The court also held that the current safeguards in the Netherlands protecting lawyer-client communications in the framework of wiretapping are inadequate in view of the case law of the European Court of Human Rights.

The French Constitutional Council should deliver its decision by 25 July.

NOTE TO EDITORS

The French Constitutional Council is a court with a variety of powers, including oversight of compliance of the law with the Constitution. The Constitutional Council is not a Supreme Court. When dealing with the constitutionality of a bill before its enactment, the Constitutional Council must rule within one month, or eight days in case of an emergency. Decisions of non-compliance lead to the total or partial censure of the bill but not its annulment, since such decisions are imposed before the enactment of the bill, a legal act which ensures its enforcement. Any bill declared unconstitutional by the Constitutional Council may either be enacted if the unconstitutional provisions are deemed removable from the rest of the bill, or be abandoned.

The CCBE wins case against the Dutch State on surveillance of lawyers (2 July 2015 press release):

http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_pr_0415pdf1_1435843144.pdf

Transcript of the Judgement by the District Court of The Hague in the Prakken d'Oliveira case on 1 July 2015 (in Dutch):

<http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2015:7436>

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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