

NETHERLANDS

Netherlands Bar Association

1. Introduction

The Netherlands Bar Association (*Nederlandse Orde van Advocaten*) is the public organization with supervisory and regulatory powers, of which all 16,000 lawyers (*advocaten*) in the Netherlands are mandatory members. The task of the Association is clearly described in the Counsel Act. The General Council of the Bar, in close co-operation with the Supervisory Boards of the nineteen local bars, oversees the quality of services of the legal profession (i.e. its members). The General Council and the Supervisory Boards stimulate the supervision of a proper practice of law and take measures that may contribute to it. The General Council is being chaired by Mr. Willem Bekkers, who is to be succeeded in March 2010 by Mr. Jan Loorbach.

Dutch lawyers make an important contribution to the development of national and international economic activities. They support companies and individuals, but they also help those who cannot find the gate to justice by themselves. In doing so, they perform an important task in a democratic state under the rule of law. And a reliable rule of law is a condition for a sustainable economy.

2. Core values of the legal profession

In 2010 the landscape of the Netherlands Bar may see some important and discernible changes. First of all, we are expecting the parliamentary treatment and approval of amendments to the Counsel Act (*Advocatenwet*). These include the core values, which form the basis of the practice of the legal profession. The Netherlands Bar Association endorses the legal basis of five core values, to wit: partiality, independence, confidentiality, expertise and honesty. The sixth core value is stated in the draft as follows [translated literally]: 'the lawyer shall take the general interest of a proper administration of justice into account'. Earlier on, the Association advised the Netherlands State Secretary for Justice against the inclusion of this core value in the Act. Because, according to the Association, the sixth core value already forms an integral part of the professional rules and views currently in force. In other words, in the legal profession, a lawyer always contributes to the general interest of a proper administration of justice.

3. Effective management

The General Council endeavours to pursue a policy that provides a framework with regard to the development of the entire profession. The Council submits that policy to the Board of Representatives, which includes more than ninety members. The President attaches much value to these four-yearly consultations with the Board, but the present set-up complicates effective management. In the new Counsel Act, consideration has to be given to the modernization of management and supervision.

In light of the proposed changes in the legal framework, the Netherlands Bar Association has initiated the evaluation of certain (institutional) aspects of the bar organization. Founding father of the Authority on Financial Markets Mr. Arthur Docters van Leeuwen has been commissioned by the Netherlands Bar Association to report and advise on the effectiveness and credibility of our supervisory system, including disciplinary proceedings. His advise will consequently be adopted by the Huydecoper Commission, which is investigating the way in which the regulatory based institutional framework of the bar can be enhanced. Huydecoper focuses on issue of governance and the specific relation between the national bar and the local bars. Finally, the Kortmann Commission will advise on future development of professional education, as already (and mandatory) offered by the Netherlands Bar Association to new bar members. All reports are expected in the course of 2010.

4. Professional competence

In order to establish what exactly is meant by the professional competence of lawyers, the General Council had an investigation carried out involving the entire Bar Association in 2008 for the purpose of setting out clearly what lawyers already do about bringing the professional competence to the required standard and keeping it there. Based on the results of that investigation, upgrading of the legal profession lead in 2009 to adopting a By-law on Professional Ability (*Verordening op de vakbekwaamheid*), emphasizing the individual responsibility of lawyers to meet up to professional requirements.

5. Access to justice

In the coalition agreement, the Netherlands State Secretary for Justice was confronted with a 50-million-euro task set to her for legal aid in respect of a budget of 400 million euros. In 2008, she presented her ideas, complying with the task set. The Association seconded several of the ideas, e.g. the plan to avoid conflicts between the government and the people as much as possible by a more pro active way of acting by the government. But the Association strongly opposed the plans to reduce the income limits for certain legal areas, due to which a large group of people would no longer be eligible for legal aid. The Association also considered the idea of not providing crime suspects with legal assistance until a later stage to be an unacceptable change for the worse of the safeguarding of legal rights. Through targeted action, the Save the Legal Aid Committee (*comité Red de rechtshulp*) at least managed to prevent a reduction of income limits.

6. Enforcement

The Netherlands Prevention of Money-Laundering and Terrorist Financing Act (*Wet ter voorkoming van witwassen en financieren van terrorisme - Wwft*) entered into force in 2008. This Act obliges lawyers who grant a certain type of services to initiate a client assessment and to report unusual transactions. Accordingly, the professional integrity of lawyers was further enhanced by coming in force of the By-law on Administration and Financial Integrity (*Verordening op de administratie en de financiële integriteit*), joining the obligations concerning financial administration, mandatory insurance and prevention of involvement in criminal activities.

The Complaint and Dispute Settlement Scheme for the Legal Profession Directive (*Richtlijn Klachten- en Geschillenregeling Advocatuur*) urgently recommends lawyers to provide for an internal complaints procedure. In accordance with that Directive, the Disputes Committee for the Legal Profession may be requested to render a decision in the case where a law firm cannot manage to settle a dispute with a client by itself. At present, 1102 law firms are affiliated (in 2008: 1016).

7. Communication

The General Council wants a visible, self-confident and accurate image of the Bar Association among the public and opinion leaders. Besides, it attaches value to an effective communication with its own followers. For that reason, a special communications project was started two years ago. Round-table conferences between lawyers and also talks with the people regarding their opinion about the Netherlands legal profession were part of the project. Furthermore, a qualitative test was carried out into the information position of the lawyer in respect of contents and coherence of the corporate media of the Association (the professional magazine *Advocatenblad*, the digital newsletter and the Bar's website (www.advocatenorde.nl)).

8. Current issues within the scope of criminal law

An other important theme is the attitude of mutual respect amongst all stakeholders in the administration of justice (i.e. judges, public prosecutors and lawyers). All parties involved are trying to contribute to a professional, ethical and respectful co-operation, notwithstanding the independent role each of them has to play. This can be seen in trilateral consultation (known as 'trojka'). The outcome of the *Salduz* case has strengthened the position of lawyers and clients, as defendants can have access to their lawyers from the moment they are arrested. Another important development concerns the taping of confidential conversations that pursuant to Netherlands law have to be destroyed. A number of major criminal proceedings failed because of taping of confidential conversations, found in the criminal files. Together with the Netherlands Bar Association, the Netherlands Board of Procurators General submitted a proposal to the Minister to introduce a system of number identification, through which a conversation with a counsel would be recognized and not be added to the file.

9. International activities

The Association maintained its international contacts. It pleaded for the closing down of Guantánamo Bay and it signed the 'Convention between Lawyers of the World', which argues for the protection of human rights. Furthermore, the General Council took part in meetings of international law societies and participated in an active manner in the European umbrella organization CCBE. The Netherlands Bar Association intervenes in cross border questions concerning legal professional privilege: the appeal in the Akzo case, concerning legal professional privilege in relation to in-house lawyers, will continue before the Court of Justice of the European Union in February.