

## About this application form

This form is a formal legal document and may affect your rights and obligations. Please follow the instructions given in the "Notes for filling in the application form". Make sure you fill in all the fields applicable to your situation and provide all relevant documents.

Warning: If your application is incomplete, it will not be accepted (see Rule 47 of the Rules of Court). Please note in particular that Rule 47 § 2 (a) requires that a concise statement of facts, complaints and information about compliance with the admissibility criteria MUST be on the relevant parts of the application form itself. The completed form should enable the Court to determine the nature and scope of the application without recourse to any other submissions.

### Barcode label

If you have already received a sheet of barcode labels from the European Court of Human Rights, please place one barcode label in the box below.

### Reference number

If you already have a reference number from the Court in relation to these complaints, please indicate it in the box below.

## A. The applicant

### A.1. Individual

This section refers to applicants who are individual persons only. If the applicant is an organisation, please go to section A.2.

1. Surname

2. First name(s)

3. Date of birth

e.g. 31/12/1960

D D M M Y Y Y Y

4. Place of birth

5. Nationality

6. Address

7. Telephone (including international dialling code)

8. Email (if any)

9. Sex  male  female

### A.2. Organisation

This section should only be filled in where the applicant is a company, NGO, association or other legal entity. In this case, please also fill in section D.1.

10. Name

11. Identification number (if any)

12. Date of registration or incorporation (if any)

e.g. 27/09/2012

D D M M Y Y Y Y

13. Activity

14. Registered address

Statutory seat: Wassenaar.

Address:  
Leopoldhoeve 55  
2726 CV Zoetermeer  
The Netherlands

15. Telephone (including international dialling code)

16. Email

**B. State(s) against which the application is directed**

17. Tick the name(s) of the State(s) against which the application is directed.

- |                                                       |                                                       |
|-------------------------------------------------------|-------------------------------------------------------|
| <input type="checkbox"/> ALB - Albania                | <input type="checkbox"/> ITA - Italy                  |
| <input type="checkbox"/> AND - Andorra                | <input type="checkbox"/> LIE - Liechtenstein          |
| <input type="checkbox"/> ARM - Armenia                | <input type="checkbox"/> LTU - Lithuania              |
| <input type="checkbox"/> AUT - Austria                | <input type="checkbox"/> LUX - Luxembourg             |
| <input type="checkbox"/> AZE - Azerbaijan             | <input type="checkbox"/> LVA - Latvia                 |
| <input type="checkbox"/> BEL - Belgium                | <input type="checkbox"/> MCO - Monaco                 |
| <input type="checkbox"/> BGR - Bulgaria               | <input type="checkbox"/> MDA - Republic of Moldova    |
| <input type="checkbox"/> BIH - Bosnia and Herzegovina | <input type="checkbox"/> MKD - North Macedonia        |
| <input type="checkbox"/> CHE - Switzerland            | <input type="checkbox"/> MLT - Malta                  |
| <input type="checkbox"/> CYP - Cyprus                 | <input type="checkbox"/> MNE - Montenegro             |
| <input type="checkbox"/> CZE - Czech Republic         | <input checked="" type="checkbox"/> NLD - Netherlands |
| <input type="checkbox"/> DEU - Germany                | <input type="checkbox"/> NOR - Norway                 |
| <input type="checkbox"/> DNK - Denmark                | <input type="checkbox"/> POL - Poland                 |
| <input type="checkbox"/> ESP - Spain                  | <input type="checkbox"/> PRT - Portugal               |
| <input type="checkbox"/> EST - Estonia                | <input type="checkbox"/> ROU - Romania                |
| <input type="checkbox"/> FIN - Finland                | <input type="checkbox"/> RUS - Russian Federation     |
| <input type="checkbox"/> FRA - France                 | <input type="checkbox"/> SMR - San Marino             |
| <input type="checkbox"/> GBR - United Kingdom         | <input type="checkbox"/> SRB - Serbia                 |
| <input type="checkbox"/> GEO - Georgia                | <input type="checkbox"/> SVK - Slovak Republic        |
| <input type="checkbox"/> GRC - Greece                 | <input type="checkbox"/> SVN - Slovenia               |
| <input type="checkbox"/> HRV - Croatia                | <input type="checkbox"/> SWE - Sweden                 |
| <input type="checkbox"/> HUN - Hungary                | <input type="checkbox"/> TUR - Turkey                 |
| <input type="checkbox"/> IRL - Ireland                | <input type="checkbox"/> UKR - Ukraine                |
| <input type="checkbox"/> ISL - Iceland                |                                                       |

**C. Representative(s) of the individual applicant**

An individual applicant does not have to be represented by a lawyer at this stage. If the applicant is not represented please go to section E.

Where the application is lodged on behalf of an individual applicant by a non-lawyer (e.g. a relative, friend or guardian), the non-lawyer must fill in section C.1; if it is lodged by a lawyer, the lawyer must fill in section C.2. In both situations section C.3 must be completed.

**C.1. Non-lawyer**

18. Capacity/relationship/function

19. Surname

20. First name(s)

21. Nationality

22. Address

23. Telephone (including international dialling code)

24. Fax

25. Email

**C.2. Lawyer**

26. Surname

27. First name(s)

28. Nationality

29. Address

30. Telephone (including international dialling code)

31. Fax

32. Email

**C.3. Authority**

The applicant must authorise any representative to act on his or her behalf by signing the first box below; the designated representative must indicate his or her acceptance by signing the second box below.

I hereby authorise the person indicated above to represent me in the proceedings before the European Court of Human Rights concerning my application lodged under Article 34 of the Convention.

33. Signature of applicant

34. Date

D	D	M	M	Y	Y	Y	Y

e.g. 27/09/2015

I hereby agree to represent the applicant in the proceedings before the European Court of Human Rights concerning the application lodged under Article 34 of the Convention.

35. Signature of representative

36. Date

D	D	M	M	Y	Y	Y	Y

e.g. 27/09/2015

**Electronic communication between the representative and the Court**

37. Email address for eComms account (if the representative already uses eComms, please provide the existing eComms account email address)

By completing this field you agree to using the eComms system.

**D. Representative(s) of the applicant organisation**

Where the applicant is an organisation, it must be represented before the Court by a person entitled to act on its behalf and in its name (e.g. a duly authorised director or official). The details of the representative must be set out in section D.1.

If the representative instructs a lawyer to plead on behalf of the organisation, both D.2 and D.3 must be completed.

**D.1. Organisation official**

38. Capacity/relationship/function (please provide proof)

Chairman of the Board

39. Surname

Spil

40. First name(s)

Corneel

41. Nationality

Dutch

42. Address

Lage Driesstraat 25  
5268 BP Helvoirt  
The Netherlands

43. Telephone (including international dialling code)

+31-41-1641699

44. Fax

none

45. Email

bestuur@ovran.nl

**D.2. Lawyer**

46. Surname

Eikelboom

47. First name(s)

Anne Willebrord

48. Nationality

Dutch

49. Address

Prakken d'Oliveira Human Rights Lawyers  
Linnaeusstraat 2-A  
1092 CK Amsterdam  
The Netherlands

50. Telephone (including international dialling code)

+31-20-3446200

51. Fax

+31-20-3446201

52. Email


weikelboom@prakkendoliveira.nl

**D.3. Authority**

The representative of the applicant organisation must authorise any lawyer to act on its behalf by signing the first box below; the lawyer must indicate his or her acceptance by signing the second box below.

I hereby authorise the person indicated in section D.2 above to represent the organisation in the proceedings before the European Court of Human Rights concerning the application lodged under Article 34 of the Convention.

53. Signature of organisation official



54. Date

1	7	0	7	2	0	2	0
D	D	M	M	Y	Y	Y	Y

 e.g. 27/09/2015

I hereby agree to represent the organisation in the proceedings before the European Court of Human Rights concerning the application lodged under Article 34 of the Convention.

55. Signature of lawyer



56. Date

1	7	0	7	2	0	2	0
D	D	M	M	Y	Y	Y	Y

 e.g. 27/09/2015
**Electronic communication between the representative and the Court**

57. Email address for eComms account (if the representative already uses eComms, please provide the existing eComms account email address)

By completing this field you agree to using the eComms system.

**Subject matter of the application**

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E, F and G). It is not acceptable to leave these sections blank or simply to refer to attached sheets. See Rule 47 § 2 and the Practice Direction on the Institution of proceedings as well as the "Notes for filling in the application form".

**E. Statement of the facts**

58.

The Order of Chartered Advisors (Orde van Registeradviseurs or 'OvRAN') is a Dutch professional association of accountants. All its members are presently, or have been, members of the Royal Netherlands Institute of Chartered Accountants (Koninklijke Nederlandse Beroepsorganisatie van Accountants or 'NBA'), the sole public association allowed under the laws of the Netherlands, with a membership of 21.723 end 2018.

All members of OvRAN fully qualify as accountants, but they wish not to be or remain member of the NBA. At present, under article 2, third paragraph, of the Law on the Accountancy Profession (Wet op het accountantsberoep or 'Wab'), such membership is compulsory for anyone wishing to be registered in the Dutch accounting register, which is maintained by the NBA. In accordance with article 41, Wab, only NBA members who are registered may use the academic titles "Registered Accountant" (Registeraccountant or 'RA') or "Administrative Accountant" (Administrative Accountant or 'AA'). Under article 41 of the Wab, only those who are included in the aforementioned register (and, thus, who are member of the NBA), are allowed to publicly present themselves as "accountant" and to use the titles "RA" or "AA", even while this is an academic qualification. The right to use that academic title ceases when membership of the NBA ceases. This arrangement is unique in comparison to other professional organisations in the Netherlands.

Article 12, paragraph 6 of the Wab prescribes that the NBA board should strive for having a balanced composition, representing the various categories of accountants according to the nature of their work. In practice, however, decisive voting power in the board and in all important committees is held by the top 4 largest accounting firms in the Netherlands, colloquially also known as the "Big Four": Ernst & Young, PwC, Deloitte, and KPMG. Efforts by the applicant organisation and others to break this dominance have all failed because of the internal regulations of the NBA: the 'Big Four' companies have the ability to send enough employees to vote in general meetings so that no proposal will pass without their agreement.

It is therefore OvRAN's opinion that the NBA is in practice driven by a "Big Four cartel". Through the NBA, they impose strict accounting regulations on members, from which they then cleverly exempt themselves using network definitions in Dutch law through specialised departments outside the network. This is to the detriment of the vast majority of the other members of the NBA as many of these regulations hinder other activities (bookkeeping, providing tax and/or legal advice, human resources, corporate finance, etc.). By the end of 2018, public auditing activities were exercised by just 2,681 accountants with authority for statutory audits. BigFour partners among these 2,681 accountants are a minority. In the domestic procedure, the claim was not disputed that 58.7% of all NBA members are not accountants at all as the public understands that term. That 58.7% is forced to remain a member of the NBA as a training certificate and in order not to lose the associated title.

To end this domination and regulatory discrimination, four members of OvRAN requested the NBA on 22 October 2008 to be registered in the Dutch accounting register without membership of the NBA. On 19 October 2009, OvRAN requested the Dutch Ministry of Finance to change the Wab to allow its members who are otherwise to be registered in the Dutch accounting register without the compulsory membership of the NBA. Both administrative procedures, based on Article 11 ECHR, were eventually rejected by the highest Industrial Appeals Tribunal (College van Beroep voor het bedrijfsleven or 'Cbb'), on 15 February 2011 and 18 August 2014 respectively, as the Tribunal held that Article 11 of the Convention is not applicable to public law associations.

On 12 August 2011 an application was lodged at your Court (case no. 51016/11, "Ovran and Others v. the Netherlands"). By decision of 21 April 2015, the Third Section declared the application inadmissible for non-exhaustion of domestic remedies.

**Statement of the facts (continued)**

59.

Consequently, on 29 March 2016 OvRAN commenced civil proceedings against the Kingdom of the Netherlands, applying for the court to find that the compulsory membership of the NBA for accountants was in violation of, inter alia, Articles 11 of the Convention, and Article 1 of the First Protocol.

These claims were rejected by the District Court of The Hague on 22 February 2017. OvRAN's appeal was subsequently rejected by the High Court of The Hague on 3 April 2018.

The cassation appeal filed by OvRAN was subsequently rejected by the Supreme Court of the Netherlands (Hoge Raad der Nederlanden) on 6 December 2019. Throughout the proceedings, the main arguments as forwarded by the applicant can be summarised as follows.

The NBA is an entity which does not have or fulfil a solely or predominantly public function, neither in theory nor in practice. It therefore falls within the scope of Article 11. Membership is (directly or indirectly) compulsory for anyone using or wishing to use the academic title "Registered Accountant" (Registeraccountant or 'RA') or "Administrative Accountant" (Administrative Accountant or 'AA') or to present themselves as "accountant". There is no justification of the compulsory membership of the NBA. Moreover, any public functions exercised by the NBA can be assumed by other organisations, such as the applicant organisation itself. There is thus a violation of Article 11 of the Convention.

**Statement of the facts (continued)**

60.

**F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments**

61. Article invoked  
Article 11

Explanation

The freedom of association as enshrined in Article 11 entails a prohibition of compulsory association (*Chassagnou v France*). Art 11 must be interpreted in the light of article 20 (2) of the United Nations Universal Declaration of Human Rights which states: "No one may be compelled to belong to an association." In order to be a registered accountant in the Netherlands and to use the academic title "RA" or "AA", one is obliged under the laws of the Netherlands to be a member of the NBA. In so far, this is a case of compulsory membership. Limitations to the right not to be a member of an association are accepted under very narrowly defined circumstances only. The second paragraph of Art 11 describes these limited circumstances: they must be "prescribed by law, 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." A relevant question is, then, whether the NBA qualifies as an "association" in the sense of Art 11. The Court has found that it is not for national law to define this: "If Contracting States were able, at their discretion, by classifying an association as "public" or "para-administrative", to remove it from the scope of Art 11, that would give them such latitude that it might lead to results incompatible with the object and purpose of the Convention, which is to protect rights that are not theoretical or illusory but practical and effective ...." (*Chassagnou v France*; para 100). The Court has found, furthermore, that purely public associations do not fall within the scope of Art 11 (*Le Compte, Van Leuven and De Meyere v Belgium*). However, an association which performs only in part a public function does fall under the scope of Art 11 (*Sigurjonsson v Iceland*). Important to the applicant's argument are the judgments in the case of *Herrmann v Germany*. In its judgment of 20/01/2011, the Fifth Section declared the application inadmissible to the extent that it complained about obligatory membership of a hunting association, finding that the association was a public law institution outside the scope of Art 11, rendering the complaint incompatible *ratione materiae*. The Grand Chamber, to which the case was subsequently referred, was unable to adjudicate this reasoning, as it found in its judgment of 26/06/2012: "the Court no longer has jurisdiction to examine the complaints under Article 11, taken alone and in conjunction with Article 14 of the Convention, which were declared inadmissible by the Chamber". Thus, the reasoning of the Fifth Section could not be assessed by the Grand Chamber. In the Court's case law, criteria have been established in order to determine the nature of an association. The applicant argues that when these criteria are applied, the NBA must be considered an association within the scope of Art 11. It is true that the NBA is a public body established by law. However, as the Court has repeatedly found, that is not in itself sufficient to declare it outside the scope of Art 11, as States must be prevented from declaring associations "public" and thereby circumventing the protections offered by Art 11. The applicant argues, that the strict nature of the permissible exceptions to Art 11 in its second paragraph implies that the criteria for excluding an association from the scope of Art 11 altogether are necessarily also strictly applied. As the applicant has established in the domestic procedure, 58.7% of all NBA members are not accountants at all as that term is understood by the public. They may be retired accountants, or have moved to other jobs or, in many cases, they have never been accountants in the first place. The NBA therefore does not advance the interests of accountants as such or of accountancy in general. To the applicant, it is thus unclear what the NBA really advances. As stated above, the NBA is moreover dominated by the "Big Four" firms. Rather than a public institution, the NBA is thus a vehicle for those four big private firms to advance their private interests. In the light of the Court's jurisprudence, notably *Sigurjonsson v Iceland*, this means that Article 11 is applicable. The domestic courts, not following the argument that Art 11 was applicable in the present case, have failed to assess whether the obligation for accountants to join the NBA is acceptable in the light of the second paragraph of Art 11. If they would have made that assessment, the result would have had to be that Article 11 was violated. Membership of the NBA is (indirectly) compulsory for accountants, who could otherwise



**Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments (continued)**

62. Article invoked  
Article 11 (continued)

Explanation  
not (fully) exercise their profession and use their (academic) title. The applicant refers to the cases of E Sigurdur a. Sigurjónsson (taxi-driver), Redfearn (member political party) and Vogt (teacher). In *Vördur Olofsson v Iceland* the Court confirmed in par. 46: "Furthermore, regard must also be had in this context to the fact that the protection of personal opinions guaranteed by Articles 9 and 10 of the Convention is one of the purposes of the guarantee of freedom of association, and that such protection can only be effectively secured through the guarantee of both a positive and a negative right to freedom of association (see *Chassagnou and Others*, cited above, § 103; *Young, James and Webster*, cited above, § 57; *Sigurður A. Sigurjónsson*, cited above, § 37; and *Sørensen and Rasmussen*, cited above, § 54)". As the Court made clear in *Young, James and Webster v UK*: "Accordingly, it strikes at the very substance of this Article [11] to exert pressure, of the kind applied to the applicants, in order to compel someone to join an association contrary to his convictions." The applicant organisation stresses that it is contrary to its convictions, and to those of its members to be a member of an association dominated by its largest competitors, the "Big Four cartel". The applicant stresses that no restrictions may be placed on the exercise of free association other than to the extent necessary in a democratic society. This is accentuated among others in the Grand Chamber judgment in *Chassagnou v. France*. Violations of art. 11 based on "necessary" were motivated by the Grand Chamber as follows. In par. 112 "The term "necessary" does not have the flexibility of such expressions as "useful" or "desirable". In par. 117 the Grand Chamber found that only indisputable imperatives can justify interference with enjoyment of a Convention right" and "compel a person by law to join an association such that it is fundamentally contrary to his own convictions goes beyond what is necessary to ensure that a fair balance is struck between conflicting interests and cannot be considered as proportionate to the aim pursued." In par. 121 the Grand Chamber found that "the Government have not put forward any objective and reasonable justification for this difference in treatment". More recently, these findings were confirmed in *Mytilinaios Kostakis v Greece*. A comparison may be made to the 'BIG-register'; the Dutch register of medical professionals. Article 14, paragraph 5 of the Law on Professions in the Individual Healthcare (BIG law) provides that "Registration in an recognised register of medical specialist is not dependent on the membership of that organisation [of medical specialists - applicant]." In *Le Compte*, the Court required, in par. 65, that the setting up of a public law association "must not prevent practitioners from forming together or joining professional associations." And it is clear that the NBA prevents professionals trained and qualifying as accountant to join OvRAN as alternative for NBA, as they would by losing academic titles, qualifications, license and practice as public accountant. This criterion of negative compulsory or forced association is extensively elaborated in many ECHR cases. In this respect it is relevant to note that in the domestic procedure it was established that duly organised professional associations of lawyers and accountants like the NBA are defined by the European Court of Justice as associations of undertakings within the meaning of art. 101(1) TFEU. And art. 101(1) TFEU forbids all decisions by associations of undertakings that might have as an effect the prevention, restriction or distortion of competition. Moreover, EU Regulation 1/2003 reverses the burden of proof to the association of undertakings. This implies that the NBA must prove that its regulations do not prevent, restrict or distort competition. But only one counterargument was raised in the domestic procedure against the claim that the "Big Four cartel", through the NBA, imposes strict regulations on members from which they exempt themselves. That counterargument was that NBA regulations apply to all NBA members equally. That is true, but it overlooks the fact that size matters. And size is needed to dispose of enough staff working in specialised departments outside the network and not manned by NBA members. The background of these Dutch court decisions is closely related to the 2011 verdict of your Fifth Chamber in the case of *Hermann v Germany*, setting almost all public law institutions outside the scope of Article 11. That reasoning could not be assessed by the Grand Chamber.

**G. Compliance with admissibility criteria laid down in Article 35 § 1 of the Convention**

For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the six-month time-limit.

63. Complaint Article 11	Information about remedies used and the date of the final decision Civil proceedings commenced against the State on 29 March 2016  District Court Judgment on 22 February 2017 (rejected)  Appeals Court Judgment on 3 April 2018 (appeal rejected)  Cassation Court Judgment on 6 December 2019 (cassation appeal rejected)  This application is filed timely in accordance with the Covid19 measures as announced by your Court on 19 March and 9 April 2020.
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64. Is or was there an appeal or remedy available to you which you have not used?

Yes

No

65. If you answered Yes above, please state which appeal or remedy you have not used and explain why not

Empty text area for response to question 65.

#### H. Information concerning other international proceedings (if any)

66. Have you raised any of these complaints in another procedure of international investigation or settlement?

Yes

No

67. If you answered Yes above, please give a concise summary of the procedure (complaints submitted, name of the international body and date and nature of any decisions given)

Empty text area for response to question 67.

68. Do you (the applicant) currently have, or have you previously had, any other applications before the Court?

Yes

No

69. If you answered Yes above, please write the relevant application number(s) in the box below

51016/11

Empty text area for response to question 69.

**I. List of accompanying documents**

**You should enclose full and legible copies of all documents. No documents will be returned to you. It is thus in your interests to submit copies, not originals. You MUST:**

- arrange the documents in order by date and by procedure;
- number the pages consecutively; and
- NOT staple, bind or tape the documents.

70. In the box below, please list the documents in chronological order with a concise description. Indicate the page number at which each document may be found

1.	OvRAN: summons dated 29 March 2016	p.	1-29
2.	State: defence dated 21 June 2016	p.	30-57
3.	OvRAN: additional statement containing appendices 1 to 11c dated January 2017	p.	58-464
4.	OvRAN: trial briefs dated 31 January 2017	p.	465 - 473
5.	State: trial briefs dated 31 January 2017	p.	474-479
6.	Record of the court session at the District Court on 31 January 2017	p.	480 - 484
7.	Judgment by the District Court dated 22 February 2017	p.	485 - 497
8.	OvRAN: summons in appeal dated 28 March 2017	p.	496 - 499
9.	OvRAN: statement of grounds of appeal containing appendices 1-5 dated 30 May 2017	p.	500-547
10.	State: statement of answer in appeal dated 3 August 2017	p.	548-587
11.	OvRAN: additional statement containing appendices 6 to 6d dated 21 November 2017	p.	588-600
12.	Record of the session at the Court of Appeal on 22 February 2018	p.	601-605
13.	State: trial briefs in appeal dated 22 February 2018	p.	606-612
14.	OvRAN: trial briefs in appeal dated 22 February 2018	p.	613-629
15.	Trial briefs of OvRAN corrected by the Court of Appeal dated 22 February 2018	p.	630-646
16.	Judgment by the Court of Appeal dated 3 April 2018	p.	647-657
17.	OvRAN: writ of cassation grounds dated 2 July 2018	p.	658-668
18.	State: pro forma statement of defence dated 12 October 2018	p.	669-671
19.	OvRAN: explanatory note to the cassation grounds dated 11 January 2019	p.	672-697
20.	State: explanatory note to the defence in cassation dated 11 January 2019	p.	698-724
21.	OvRAN: reply to the State's defence dated 25 January 2019	p.	725-727
22.	The Procureur-General's advice dated 5 July 2019	p.	728-796
23.	OvRAN: letter to the Supreme Court in reaction to the P-G's advice dated 19 July 2019	p.	797-801
24.	Judgment in cassation by the Supreme Court dated 6 December 2019	p.	802-810
25.		p.	

**Any other comments**

Do you have any other comments about your application?

71. Comments


**Declaration and signature**

I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.

72. Date

1	7	0	7	2	0	2	0
D	D	M	M	Y	Y	Y	Y

 e.g. 27/09/2015

The applicant(s) or the applicant's representative(s) must sign in the box below.

73. Signature(s)  Applicant(s)  Representative(s) - tick as appropriate


------------------------------------------------------------------------------------

**Confirmation of correspondent**

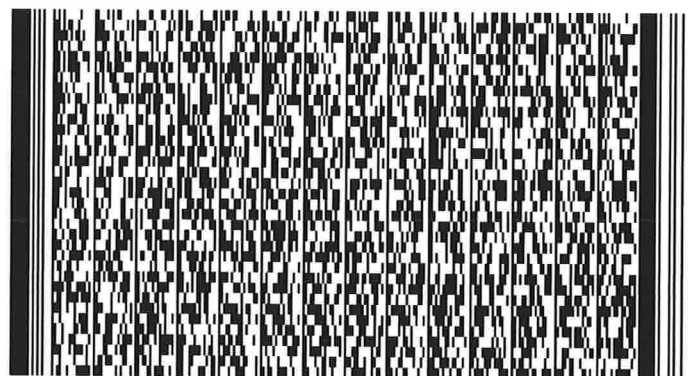
If there is more than one applicant or more than one representative, please give the name and address of the one person with whom the Court will correspond. Where the applicant is represented, the Court will correspond only with the representative (lawyer or non-lawyer).

74. Name and address of  Applicant  Representative - tick as appropriate

Prakken d'Oliveira Human Rights Lawyers  
Linnaeusstraat 2-A  
1092 CK Amsterdam  
The Netherlands

**The completed application form should be signed and sent by post to:**

The Registrar  
European Court of Human Rights  
Council of Europe  
67075 STRASBOURG CEDEX  
FRANCE



893669e1-66ca-4653-b9e0-2de2561a694b

**Statement of facts**

1. The Order of Chartered Advisors (*Orde van Registeradviseurs* or 'OvRAN') is a Dutch professional association of accountants. All its members are presently, or have been, members of the Royal Netherlands Institute of Chartered Accountants (*Koninklijke Nederlandse Beroepsorganisatie van Accountants* or 'NBA'), the sole public association allowed under the laws of the Netherlands, with a membership of 21.723 end 2018.
2. All members of OvRAN fully qualify as accountants, but they wish not to be or remain member of the NBA. At present, under article 2, third paragraph, of the Law on the Accountancy Profession (*Wet op het accountantsberoep* or 'Wab'), such membership is compulsory for anyone wishing to be registered in the Dutch accounting register, which is maintained by the NBA. In accordance with article 41, Wab, only NBA members who are registered may use the academic titles "Registered Accountant" (*Registeraccountant* or 'RA') or "Administrative Accountant" (Administrative Accountant or 'AA').
3. Under article 41 of the Wab, only those who are included in the aforementioned register (and, thus, who are member of the NBA), are allowed to publicly present themselves as "accountant" and to use the titles "RA" or "AA", even while this is an academic qualification. The right to use that academic title ceases when membership of the NBA ceases. This arrangement is unique in comparison to other professional organisations in the Netherlands.
4. Article 12, paragraph 6 of the Wab prescribes that the NBA board should strive for having a balanced composition, representing the various categories of accountants according to the nature of their work. In practice, however, decisive voting power in the board and in all important committees is held by the top 4 largest accounting firms in the Netherlands, colloquially also known as the "Big Four": Ernst & Young, PwC, Deloitte, and KPMG. Efforts by the applicant organisation and others to break this dominance have all failed because of the internal regulations of the NBA: the 'Big Four' companies have the ability to send enough employees to vote in general meetings so that no proposal will pass without their agreement.
5. It is therefore OvRAN's opinion that the NBA is in practice driven by a "Big Four cartel".<sup>1</sup> Through the NBA, they impose strict accounting regulations on members, from which they then cleverly exempt themselves using network definitions in Dutch law through specialised departments outside the network. This is to the detriment of

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<sup>1</sup> This statement is elaborated upon in the attached document by the applicant: "*NBA is in practice driven by a 'Big Four cartel'*".

the vast majority of the other members of the NBA as many of these regulations hinder other activities (bookkeeping, providing tax and/or legal advice, human resources, corporate finance, etc.). By the end of 2018, public auditing activities were exercised by just 2,681 accountants with authority for statutory audits. *BigFour* partners among these 2,681 accountants are a minority. In the domestic procedure, the claim was not disputed that 58.7% of all NBA members are not accountants at all as the public understands that term. That 58.7% is forced to remain a member of the NBA as a training certificate and in order not to lose the associated title.

6. To end this domination and regulatory discrimination, four members of OvRAN requested the NBA on 22 October 2008 to be registered in the Dutch accounting register without membership of the NBA. On 19 October 2009, OvRAN requested the Dutch Ministry of Finance to change the Wab to allow its members who are otherwise to be registered in the Dutch accounting register without the compulsory membership of the NBA. Both administrative procedures, based on Article 11 ECHR, were eventually rejected by the highest Industrial Appeals Tribunal (*College van Beroep voor het bedrijfsleven* or 'CBB'), on 15 February 2011 and 18 August 2014 respectively, as the Tribunal held that Article 11 of the Convention is not applicable to public law associations.
7. On 12 August 2011 an application was lodged at your Court (case no. 51016/11, "Ovran and Others v. the Netherlands"). By decision of 21 April 2015, the Third Section declared the application inadmissible for non-exhaustion of domestic remedies.
8. Consequently, on 29 March 2016 OvRAN commenced civil proceedings against the Kingdom of the Netherlands, applying for the court to find that the compulsory membership of the NBA for accountants was in violation of, inter alia, Articles 11 of the Convention, and Article 1 of the First Protocol.
9. These claims were rejected by the District Court of The Hague on 22 February 2017. OvRAN's appeal was subsequently rejected by the High Court of The Hague on 3 April 2018.
10. The cassation appeal filed by OvRAN was subsequently rejected by the Supreme Court of the Netherlands (Hoge Raad der Nederlanden) on 6 December 2019. Throughout the proceedings, the main arguments as forwarded by the applicant can be summarised as follows.
11. The NBA is an entity which does not have or fulfil a solely or predominantly public function, neither in theory nor in practice. It therefore falls within the scope of Article 11. Membership is (directly or indirectly) compulsory for anyone using or wishing to use the academic title "Registered Accountant" (Registeraccountant or 'RA') or "Administrative Accountant" (Administrative Accountant or 'AA') or to present themselves as "accountant". There is no justification of the compulsory membership

of the NBA. Moreover, any public functions exercised by the NBA can be assumed by other organisations, such as the applicant organisation itself. There is thus a violation of Article 11 of the Convention.

### Statement of violations

12. The freedom of association as enshrined in Article 11 entails a prohibition of compulsory association (*Chassagnou v France*). Art 11 must be interpreted in the light of article 20 (2) of the United Nations Universal Declaration of Human Rights which states: "No one may be compelled to belong to an association."
13. In order to be a registered accountant in the Netherlands and to use the academic title "RA" or "AA", one is obliged under the laws of the Netherlands to be a member of the NBA. In so far, this is a case of compulsory membership. Limitations to the right not to be a member of an association are accepted under very narrowly defined circumstances only. The second paragraph of Art 11 describes these limited circumstances: they must be "prescribed by law, 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."
14. A relevant question is, then, whether the NBA qualifies as an "association" in the sense of Art 11. The Court has found that it is not for national law to define this: "If Contracting States were able, at their discretion, by classifying an association as "public" or "para - administrative", to remove it from the scope of Art 11, that would give them such latitude that it might lead to results incompatible with the object and purpose of the Convention, which is to protect rights that are not theoretical or illusory but practical and effective ...." (*Chassagnou v France*; para 100). The Court has found, furthermore, that purely public associations do not fall within the scope of Art 11 (*Le Compte, Van Leuven and De Meyere v Belgium*). However, an association which performs only in part a public function does fall under the scope of Art 11 (*Sigurjonsson v Iceland*).
15. Important to the applicant's argument are the judgments in the case of *Herrmann v Germany*. In its judgment of 20/01/2011, the Fifth Section declared the application inadmissible to the extent that it complained about obligatory membership of a hunting association, finding that the association was a public law institution outside the scope of Art 11, rendering the complaint incompatible *ratione materiae*. The Grand Chamber, to which the case was subsequently referred, was unable to adjudicate this reasoning, as it found in its judgment of 26/06/2012: "the Court no longer has jurisdiction to examine the complaints under Article 11, taken alone and in conjunction with Article 14 of the Convention, which were declared inadmissible by the Chamber". Thus, the reasoning of the Fifth Section could not be assessed by the Grand Chamber.



16. In the Court's case law, criteria have been established in order to determine the nature of an association. The applicant argues that when these criteria are applied, the NBA must be considered an association within the scope of Art 11. It is true that the NBA is a public body established by law. However, as the Court has repeatedly found, that is not in itself sufficient to declare it outside the scope of Art 11, as States must be prevented from declaring associations "public" and thereby circumventing the protections offered by Art 11. The applicant argues, that the strict nature of the permissible exceptions to Art 11 in its second paragraph implies that the criteria for excluding an association from the scope of Art 11 altogether are necessarily also strictly applied.
17. As the applicant has established in the domestic procedure, 58.7% of all NBA members are not accountants at all as that term is understood by the public. They may be retired accountants, or have moved to other jobs or, in many cases, they have never been accountants in the first place. The NBA therefore does not advance the interests of accountants as such or of accountancy in general. To the applicant, it is thus unclear what the NBA really advances.
18. As stated above, the NBA is moreover dominated by the "Big Four" firms. Rather than a public institution, the NBA is thus a vehicle for those four big private firms to advance their private interests. In the light of the Court's jurisprudence, notably *Sigurjonsson v Iceland*, this means that Article 11 is applicable.
19. The domestic courts, not following the argument that Art 11 was applicable in the present case, have failed to assess whether the obligation for accountants to join the NBA is acceptable in the light of the second paragraph of Art 11. If they would have made that assessment, the result would have had to be that Article 11 was violated.
20. Membership of the NBA is (indirectly) compulsory for accountants, who could otherwise not (fully) exercise their profession and use their (academic) title. The applicant refers to the cases of *E Sigurdur a. Sigurjonsson* (taxi-driver), *Redfearn* (member political party) and *Vogt* (teacher). In *Vördur Olofsson v Iceland* the Court confirmed in par. 46: "Furthermore, regard must also be had in this context to the fact that the protection of personal opinions guaranteed by Articles 9 and 10 of the Convention is one of the purposes of the guarantee of freedom of association, and that such protection can only be effectively secured through the guarantee of both a positive and a negative right to freedom of association (see *Chassagnou and Others*, cited above, § 103; *Young, James and Webster*, cited above, § 57; *Sigurður A. Sigurjonsson*, cited above, § 37; and *Sørensen and Rasmussen*, cited above, § 54)".
21. As the Court made clear in *Young, James and Webster v UK*: "Accordingly, it strikes at the very substance of this Article [11] to exert pressure, of the kind applied to the applicants, in order to compel someone to join an association contrary to his convictions."

22. The applicant organisation stresses that it is contrary to its convictions, and to those of its members to be a member of an association dominated by its largest competitors, the "Big Four cartel".
23. The applicant stresses that no restrictions may be placed on the exercise of free association other than to the extent necessary in a democratic society. This is accentuated among others in the Grand Chamber judgment in *Chassagnou v. France*. Violations of art. 11 based on "necessary" were motivated by the Grand Chamber as follows. In par. 112 "The term "necessary" does not have the flexibility of such expressions as "useful" or "desirable". In par. 117 the Grand Chamber found that only indisputable imperatives can justify interference with enjoyment of a Convention right" and "compel a person by law to join an association such that it is fundamentally contrary to his own convictions goes beyond what is necessary to ensure that a fair balance is struck between conflicting interests and cannot be considered as proportionate to the aim pursued." In par. 121 the Grand Chamber found that "the Government have not put forward any objective and reasonable justification for this difference in treatment". More recently, these findings were confirmed in *Mytilinaios Kostakis v Greece*.
24. A comparison may be made to the 'BIG-register'; the Dutch register of medical professionals. Article 14, paragraph 5 of the Law on Professions in the Individual Healthcare (BIG law) provides that "Registration in an recognised register of medical specialist is not dependent on the membership of that organisation [of medical specialists - applicant]." In *Le Compte*, the Court required, in par. 65, that the setting up of a public law association "must not prevent practitioners from forming together or joining professional associations." And it is clear that the NBA prevents professionals trained and qualifying as accountant to join OvRAN as an alternative for the NBA, as they would by losing academic titles, qualifications, license and practice as public accountant. This criterion of negative compulsory or forced association is extensively elaborated in many ECHR cases.
25. In this respect it is relevant to note that in the domestic procedure it was established that duly organised professional associations of lawyers and accountants like the NBA are defined by the European Court of Justice as associations of undertakings within the meaning of art. 101(1) TFEU. And art. 101(1) TFEU forbids all decisions by associations of undertakings that might have as an effect the prevention, restriction or distortion of competition. Moreover, EU Regulation 1/2003 reverses the burden of proof to the association of undertakings.
26. This implies that the NBA must prove that its regulations do not prevent, restrict or distort competition. But only one counter argument was raised in the domestic procedure against the claim that the "Big Four cartel", through the NBA, imposes strict regulations on members from which they exempt themselves. That counter

argument was that NBA regulations apply to all NBA members equally. That is true, but it overlooks the fact that size matters. And size is needed to dispose of enough staff working in specialised departments outside the network and not manned by NBA members. The background of these Dutch court decisions is closely related to the 2011 verdict of your Fifth Chamber in the case of Hermann v Germany, setting almost all public law institutions outside the scope of Article 11. That reasoning could not be assessed by the Grand Chamber.

27. In conclusion: The NBA is an entity which does not have or fulfil a solely or predominantly public function, neither in theory nor in practice. It therefore falls within the scope of Article 11. Membership is (directly or indirectly) compulsory for anyone using or wishing to use the academic title “Registered Accountant” (Registeraccountant or ‘RA’) or “Administrative Accountant” (Administrative Accountant or ‘AA’) or to present themselves as “accountant”. There is no justification of the compulsory membership of the NBA. Moreover, any public functions exercised by the NBA can be assumed by other organisations, such as the applicant organisation itself. There is thus a violation of Article 11 of the Convention.

#### **On the admissibility**

28. This application was filed within the time limit of Article 35 of the Convention, as extended exceptionally by the Court in view of the Covid-19 situation.
29. Mr. Spil is authorised to represent the Applicant Organisation by virtue of the fact that he is chairman of the board, and can represent the organisation jointly with the Secretary (see Articles of Association, art. 10, paragraph 2). The current Secretary, Mr Boer has authorised Mw Spil in this respect. Please find the Articles of Association, an extract from the Chamber of Commerce registration and the authority signed by Mr Boer attached.

The statement in the application form: *"It is therefore OvRAN's opinion that the NBA is in practice driven by a "Big Four cartel"* needs more substantiation than technically possible in this form's limited space. Hence this further substantiation based on facts presented to the Hague court in the domestic legal proceedings (see Annex 9, paragraphs 4-12, and, in more detail, in Annex 14, paragraphs 1-10). For practical reasons we focus on this last text of the pleading notes. At the beginning of the hearing the judge informed OvRAN that his written request for extended speaking time could not be found in the file. Therefore important parts of these Paragraphs 1-10 were erased by the court as indicated hereafter.

Paragraph 1, erased except the last two phases: OvRAN stated here that the NBA never denied the facts about the composition of the NBA membership. This implies that the vast majority of NBA members are not public auditors at all. The vast majority consists of at least 12,500 NBA members work in the corporate sector, Government as a regular employee, self-employed, manager, advisor etc. in numerous internal or external positions. They all have nothing to do with the accounting profession as such. The first instance summons indicated that the NBA had 21,290 members at year-end 2014. This means that 58.7% of NBA members are not public auditors at all as the public understands. That 58.7% is forced to remain a member of the NBA as a training certificate and so as not to lose the associated title.

Paragraph 2, erased completely: OvRAN stated here that the fact that these 12,500 NBA members are unnecessarily subjected to quite a set of rules set by NBA that should aim only at normal accounting practices. This is an important reason behind OvRAN's complaints. These rules about activities in which an NBA member uses his professional competence is a broad and vague concept when a NBA member has no accounting practice. But these rules may have far-reaching consequences in its application (disciplinary law + extra measures + extra costs), even if those internal or external functions have nothing to do with the accounting profession as such. Colleagues of the same NBA member who are not registered with the NBA can perform the same activities without fear of those far-reaching consequences or hindered by them, if they perform the same activities. That is why the large audit firms perform the same activities via separate independent departments where formally no accountants are employed, so as not to be hindered by unnecessary NBA-banned audit regulations. The public often thinks that those departments are part of an accounting firm.

Paragraph 3 was not erased: OvRAN stated here that these NBA rules use broad definitions of services and use terms like "assurance" and "assurance-related" and "procedures in which an auditor uses his professional competence". These broad definitions include a great many services, such as assessment and composition of financial statements, voluntary audits, due diligence, prospectus notifications, forensic and consultancy work, valuations, tax, legal, human resources etc. and so on. And at least 10 of these NBA regulation are applicable on those services by NBA members. All these regulations again leave a lot of room for subjective and varying interpretations.

Paragraph 4, erased except the first two phases: OvRAN provides specific proof with a striking example in production 6.b in an attachment called AHP. The chief NBA regulator proved unable to answer the simple but interesting question whether an advice from any NBA member falls under the definition of "assurance", as a result of which these aforementioned 10 NBA regulations may become applicable. After these first two phases all other phrases showing the resulting consequences were erased. So the Court of The Hague did not realize that when the chief NBA regulator is unable to answer when "assurance" and "assurance-related" is applicable and what regulations then apply, normal NBA members certainly can never find out which regulations are applicable in which case. No wonder that all large accounting firms provide these services through separate legal

entities to stay outside the scope of NBA regulations, avoid the need to appoint regulatory quality officers and independence officers, and disciplinary law remains inapplicable. Those 12,500 other NBA members do not have that option. OvRAN alleges that this is not in the public interest.

Paragraph 5, erased completely: OvRAN provides here other striking examples. A company that has nothing to do with accountancy, but employs accidentally several NBA members. Take real estate agents, for example or all other companies that mediate and broker in, for example, real estate, shares of other companies, staff, financial products or other forms of mediation. Or companies that sell products in which professional skills of accountants can provide useful services, such as tax, HR, organizational and ICT advice. Often substantiated opinions and reports about certain product qualities or services are almost inevitable for companies active in production, trade or services. In all these cases it is easily conceivable, sometimes even very likely that formal communications or reports end up with third parties. In all these cases this is "assurance" or "assurance related". As a result all these companies employing accidentally one or more NBA members, fall under the broad definition of 'accountancy firm'. The consequence is that the aforementioned 10 NBA regulations become applicable and these companies become most likely culpable of possible violations of many detailed rules. Some examples of these violations are quoted. However, the standard conclusion that the public interest is not served if all large accounting firms can provide these services through separate legal entities to stay outside the scope of NBA regulations but that at least 12.500 other NBA members cannot, was not repeated here.

Paragraph 6 was not erased: OvRAN notes here that is remarkable that Big Four firms, by supposedly operating as independent entities within the network definition without formally employing accountants, have managed to evade all those rules, insofar as they are undesirable or impractical. Smaller Dutch NBA colleagues with similar services cannot. This way, any competitor of Big Four firms in every area where other NBA members are also active is effectively eliminated and in any case put at a disadvantage.

Paragraph 7, completely erased: OvRAN confirms here the statement of the NBA that these NBA rules and regulation or so-called quality assurance system includes all activities performed by all NBA-members and is fundamental to in OvRAN's complaints. Besides a repetition with different wordings in fact a repeat of Paragraph 2 . More interesting here are public quotes of the complaints of spokesmen of small accounting companies (sme's): *"The NBA register is polluted"*, *"Perhaps 90% of the NBA members are not involved in the statutory audit at all"*, *"SMEs accountants bear the burden of a compulsory registration with a professional organization that ignores their interests without receiving anything in return"*, *"The NBA usually looks at the sector as a whole through the eyes of the large firms"*, etc. etc. A predominant Dutch financial newspaper Financieele Dagblad quotes them as follows with the headline: *"SME accountants want to blow up the NBA association"*. The remainder of this Paragraph concludes that 6,618 practising public SME accountants complain that quality assurance system of the NBA favours in fact large firms and the the BigFour firms have only of 5.2% of a total of 21.290 NBA members.

Paragraph 8 was not erased: The NBA, represented by the State maintains here that no evidence has been provided for the claim that large accounting firms can evade professional standards. The cleverness in this answer is that the quality assurance system concerns only NBA-members at large firms. That is true of course but not the point at all. It is about independent departments of large firms where formally not any NBA members is employed , but provide many kinds of services also provided by smaller local accounting companies. And smaller firms are too small to form separate departments without employing their own accountants.

Paragraph 9 was not erased: OvRAN states here that the foregoing conclusively demonstrates that the professional services of 19.119 (12.500 + 6.618) of the 21.290 NBA members (89.8%) are demonstrably hampered without serving any public interest and in addition cause distortions of competition by large firms.

The foregoing not erased statements by OvRAN were not disputed by the Court of The Hague. The Court concluded nevertheless in consideration 19 that the NBA is not a private association where art. 11 ECHR is applicable.

At the Supreme Court (Hoge Raad der Nederlanden) complaints were raised based on art. 11 ECHR, art. 6 ECHR and distortion of competition (art. 6 Dutch Law on Competition). The complaint on art. 6 ECHR focussed on the unexpected limitation of speaking time at the hearing. Proof of the written request for extended speaking time not found by the Hague Court of Appeal in the file was provided to the Supreme Court. But none of the foregoing erased and not erased statements by OvRAN proving that the NBA is in practice driven by a "Big Four cartel" were disputed. Also the not erased statement in par. 55 quoting various regulations, among which EU Regulation 1/2003 that all reverse the burden of proof of restricting or distorting competition to the association of undertakings, NBA in this case.

- As to art. 6 ECHR, the Supreme Court decided that it was the duty of OvRAN to verify on time that the request for extended speaking time was confirmed in writing by the Court.

- As to distortion of competition (art. 6 Dutch Law on Competition), the Supreme Court decided that the denial of this complaint needed no further motivation.

- As to art. 11 ECHR the Supreme Court concluded in consideration 3.16 that "the apparent and not incomprehensible opinion of the Court of Appeal (Hague Court) of the statements of OvRAN cited, do not carry sufficient weight with regard to the arguments stated by the Court of Appeal." This conclusion also implies that none of the foregoing erased and not erased statements by OvRAN proving that the NBA is in practice driven by a "Big Four cartel" are disputed.

## **STATUTEN OvRAN**

### **Naam en Zetel**

#### Artikel 1

1. De vereniging draagt te naam: OvRAN
2. Zij heeft haar zetel in de gemeente Wassenaar.

### **Doel**

#### Artikel 2

1. Het doel van de vereniging, is:
  - a. de bevordering van een goede beroepsuitoefening door adviseurs en/of accountants in de breedste zin van het woord en de behartiging van hun gemeenschappelijk belang, waaronder de zorg voor de eer van de stand;
  - b. het functioneren als platform voor zo zelfstandig mogelijke Kamers van specialisten in een bepaald advies- en/of accountancyvakgebied in de breedste zin van het woord. Deze kamers kunnen zowel deel uitmaken van de rechtspersoonlijkheid van de vereniging dan wel afzonderlijk rechtspersoonlijkheid bezitten;
  - c. het stimuleren en faciliteren van de Kamers van specialisten naar vermogen met inachtneming van het subsidiariteitsbeginsel; hetgeen inhoudt dat wanneer een besluit, taak of activiteit beter door een bestaande Kamer genomen of uitgevoerd kan worden, deze taak niet door de vereniging uitgevoerd zal worden;
2. Zij tracht dit doel onder meer te bereiken via alle middelen rechtens, doch in het bijzonder door:
  - a. het voeren van overleg met regering en parlement;
  - b. het desgewenst voeren en/of begeleiden van procedures om het beoogde doel te bereiken;
  - c. het bundelen van krachten uit de diverse groepen van betrokken adviseurs en/of accountants.

### **Duur**

#### Artikel 3

1. De vereniging is aangegaan voor onbepaalde tijd.
2. Het boekjaar van de vereniging is het kalenderjaar.

### **Lidmaatschap**

#### Artikel 4

1. De vereniging kent leden.
2. De toelatingsprocedure voor de leden staat vermeld in het reglement van de vereniging als bedoeld in artikel 17 lid 3, welk reglement onder meer is te raadplegen op de internetsite van de vereniging.
3. Het lidmaatschap is persoonlijk en kan niet worden overgedragen of door erfopvolging worden verkregen.

#### Artikel 5

1. Het lidmaatschap eindigt:
  - a. door de dood van het lid;
  - b. door opzegging door het lid;
  - c. door opzegging door de vereniging;
  - d. door ontzetting.
2. Opzegging van het lidmaatschap door het lid kan geschieden gedurende het

gehele boekjaar. Zij geschiedt schriftelijk aan het bestuur met inachtneming van een opzeggingstermijn van ten minste vier weken.

3. Opzegging van het lidmaatschap namens de vereniging kan geschieden overeenkomstig de procedure die staat vermeld in het reglement van de vereniging als bedoeld in artikel 17 lid 3.

4. Ontzetting uit het lidmaatschap kan geschieden overeenkomstig de procedure die staat vermeld in het reglement van de vereniging als bedoeld in artikel 17 lid 3.

5. In het reglement van de vereniging als bedoeld in artikel 17 lid 3 staat vermeld wat het lid verschuldigd is wanneer het lidmaatschap in de loop van een boekjaar eindigt.

## **Donateurs**

### Artikel 6

1. Donateurs zijn zij, die door het bestuur als donateur zijn toegelaten. Het bestuur is bevoegd het donateurschap door schriftelijke opzegging te beëindigen.

2. Donateurs zijn verplicht jaarlijks aan de vereniging een geldelijke bijdrage te verlenen, waarvan de minimale omvang door de algemene ledenvergadering wordt vastgesteld.

3. Donateurs hebben uitsluitend het recht om de algemene ledenvergadering bij te wonen. Zij hebben daarin geen stemrecht, maar wel het recht om het woord te voeren.

## **Contributies**

### Artikel 7

Ieder lid is jaarlijks een contributie verschuldigd. De hoogte van de contributie wordt vastgesteld door de algemene ledenvergadering.

## **Bestuur**

### Artikel 8

1. Het aantal leden van het bestuur wordt door de algemene ledenvergadering bepaald, doch bestaat tenminste uit een voorzitter, secretaris en penningmeester. De bestuursleden worden door de algemene ledenvergadering uit de leden van de vereniging voor een bepaald aantal jaren benoemd. Om de continuïteit van bestuur te handhaven, zal het aantal jaren per bestuurslid verschillen. Onder een jaar wordt te dezen verstaan de periode tussen twee opeenvolgende jaarlijkse algemene ledenvergaderingen. Een bestuurslid is maximaal twee keer herbenoembaar.

2. De jaarlijkse benoeming van bestuursleden ter vervulling van de ingevolge het vorige lid openvallende plaatsen of tussentijds ontstane vacatures, geschiedt in de algemene ledenvergadering, waarin het bestuur rekening en verantwoording aflegt over het beheer van de financiën in het afgelopen boekjaar.

3. Kandidaten voor de te vervullen vacatures kunnen worden aanbevolen, zowel door het bestuur als door ten minste vijftwintig leden. Het bestuur deelt de namen van de door het bestuur aanbevolen kandidaten aan de leden mede ten minste zes weken voor de datum van de bijeenkomst van de algemene ledenvergadering. De namen van de door leden aanbevolen kandidaten dienen uiterlijk drie weken voor de datum van de algemene ledenvergadering bij het bestuur te worden ingediend.

4. Het bestuur vermeldt bij de agenda voor de algemene ledenvergadering de namen van de door het bestuur of door leden aanbevolen kandidaten. Op niet aanbevolen personen kunnen geen geldige stemmen worden uitgebracht.

5. Indien het aantal bestuursleden beneden het in lid 1 vermelde minimum is



gedaald, blijft het bestuur niettemin bevoegd. Het bestuur is verplicht zo spoedig mogelijk een algemene ledenvergadering te beleggen, waarin de voorziening in de vacature(s) aan de orde komt.

6. Bestuursleden kunnen te allen tijde onder opgaaf van redenen door de algemene ledenvergadering worden geschorst en ontslagen. De algemene ledenvergadering besluit tot schorsing of ontslag met een meerderheid van twee/derde van de uitgebrachte stemmen.

7. De schorsing eindigt wanneer de algemene ledenvergadering niet binnen drie maanden daarna tot ontslag heeft besloten. Het geschorste bestuurslid wordt in de gelegenheid gesteld zich in de algemene ledenvergadering te verantwoorden en kan zich daarbij door een raadsman doen bijstaan.

8. Op de vergaderingen en de besluitvorming van het bestuur is het bepaalde in de artikelen 11 tot en met 13 zoveel mogelijk van toepassing.

#### Artikel 9

1. Het bestuur is belast met het besturen van de vereniging.

2. Het bestuur is bevoegd tot het nemen van alle besluiten zonder voorafgaande goedkeuring van de algemene ledenvergadering, tenzij overeenkomstig het reglement van de vereniging als bedoeld in artikel 17 lid 3 goedkeuring is vereist.

#### Artikel 10

1. Het bestuur vertegenwoordigt de vereniging.

2. De vertegenwoordigingsbevoegdheid komt mede toe aan de voorzitter tezamen met de secretaris of de penningmeester, dan wel de secretaris tezamen met de penningmeester.

### **Algemene ledenvergaderingen**

#### Artikel 11

De algemene ledenvergaderingen kunnen worden gehouden in de vorm van teleconferenties, videoconferenties, elektronisch stemmen en dergelijke of op de plaats als bij de oproeping is bepaald.

#### Artikel 12

In het reglement van de vereniging als bedoeld in artikel 17 lid 3 staan onder meer vermeld de regelingen omtrent:

- a. degenen die toegang hebben tot de algemene ledenvergadering;
- b. stemrecht;
- c. besluitvorming;
- d. stemmingen;
- e. leiding van de algemene ledenvergadering;
- f. opstellen notulen van de algemene ledenvergadering.

#### Artikel 13

1. Het boekjaar van de vereniging is gelijk aan het kalenderjaar.

Jaarlijks wordt ten minste één algemene ledenvergadering gehouden en wel binnen zes maanden na afloop van het boekjaar, behoudens verlenging van deze termijn door de algemene ledenvergadering. In deze algemene ledenvergadering brengt het bestuur zijn jaarverslag uit over de gang van zaken in de vereniging en over het gevoerde beleid. Het legt de balans en de staat van baten en lasten met een toelichting ter goedkeuring aan de algemene ledenvergadering over.

Deze stukken worden ondertekend door de bestuursleden; ontbreekt de ondertekening van een of meer hunner, dan wordt daarvan onder opgave van

- redenen melding gemaakt. Na verloop van de termijn kan ieder lid in rechte vorderen van de gezamenlijke bestuurders dat zij deze verplichtingen nakomen.
2. Wordt omtrent de getrouwheid van de stukken bedoeld in het vorige lid aan de algemene ledenvergadering niet overgelegd een verklaring afkomstig van een accountant als bedoeld in artikel 2:393 lid 1 van het Burgerlijk Wetboek, dan benoemt de algemene ledenvergadering, jaarlijks, een commissie van ten minste twee leden die geen deel van het bestuur mogen uitmaken.
  3. Het bestuur is verplicht aan de commissie ten behoeve van haar onderzoek alle door haar gevraagde inlichtingen te verschaffen, haar desgewenst de kas en de waarden te tonen en inzage in de boeken en bescheiden van de vereniging te geven.
  4. De commissie onderzoekt de in lid 1 en lid 3 bedoelde stukken.
  5. De commissie brengt aan de algemene ledenvergadering verslag van haar bevindingen uit.

#### Artikel 14

1. Algemene ledenvergaderingen worden door het bestuur bijeengeroepen zo dikwijls het dit nodig oordeelt of daartoe op grond van de wet verplicht is en voorts indien ten minste één/tiende gedeelte van de stemgerechtigde leden of ten minste veertig stemgerechtigde leden indien zij minder dan één/tiende gedeelte van de stemgerechtigde leden uitmaken, onder opgaaf van de te behandelen agendapunten, per post of per e-mail om haar bijeenroeping verzoeken. Het bestuur brengt een dergelijk verzoek zo spoedig als mogelijk - doch niet langer dan vier weken na indiening van het verzoek - onder aandacht van alle leden. Het bestuur bevordert de meningsvorming onder de leden over alle naar voren gebrachte agendapunten en geeft daarom ook aan de agendapunten van de leden dezelfde aandacht in al haar communicatiemiddelen als haar eigen agendapunten.
2. Indien aan het verzoek binnen veertien dagen geen gevolg wordt gegeven, kunnen de verzoekers zelf tot de bijeenroeping van de algemene ledenvergadering overgaan op de wijze als in lid 3 bepaald of op de wijze zoals in de wet is voorzien. De verzoekers kunnen alsdan anderen dan bestuursleden belasten met de leiding van de vergadering en het opstellen van de notulen.
3. De bijeenroeping van de algemene ledenvergadering geschiedt ten minste veertien volle dagen tevoren door toezending per e-mail aan alle leden van een agenda, onder vermelding van plaats, dag en aanvangsuur van de vergadering. De agenda en bijbehorende stukken zijn via de website van de vereniging te downloaden. In spoedeisende gevallen ter beoordeling van het bestuur kan deze termijn worden bekort, met dien verstande dat de termijn van oproeping ten minste vijf werkdagen is.

#### Statutenwijziging

##### Artikel 15

1. Wijziging van de statuten kan slechts plaatshebben door een besluit van de algemene ledenvergadering, waartoe is opgeroepen met de mededeling dat aldaar wijziging van de statuten zal worden voorgesteld.
2. Zij, die de oproeping tot de algemene ledenvergadering ter behandeling van een voorstel tot statutenwijziging hebben gedaan, moeten ten minste vijf dagen voor de dag van de vergadering een afschrift van dat voorstel, waarin de voorgestelde wijziging woordelijk is opgenomen, op een daartoe geschikte plaats voor de leden ter inzage leggen tot na de afloop van de dag, waarop de vergadering werd gehouden.

3. Tot wijziging van de statuten kan door de algemene ledenvergadering slechts worden besloten met een meerderheid van ten minste twee/derde van het aantal uitgebrachte stemmen.
4. De statutenwijziging treedt eerst in werking nadat daarvan een notariële akte is opgemaakt.  
Ieder van de bestuursleden is bevoegd de akte van statutenwijziging te doen verlijden.
5. Het bepaalde in de leden 1 en 2 is niet van toepassing, indien in de algemene ledenvergadering alle stemgerechtigden aanwezig of vertegenwoordigd zijn en het besluit tot statutenwijziging met algemene stemmen wordt genomen.
6. De bestuursleden zijn verplicht een authentiek afschrift van de akte van statutenwijziging en een volledige doorlopende tekst van de statuten, zoals deze na de wijziging luiden, neer te leggen ten kantore van het door de Kamer van Koophandel en Fabrieken gehouden register.

### **Ontbinding en vereffening**

#### Artikel 16

1. Het bepaalde in artikel 15 leden 1, 2, 3 en 5 is van overeenkomstige toepassing op een besluit van de algemene ledenvergadering tot ontbinding van de vereniging.
2. De algemene ledenvergadering stelt bij haar in het vorige lid bedoelde besluit de bestemming vast voor het batig saldo, en wel zoveel mogelijk in overeenstemming met het doel van de vereniging.
3. De vereffening geschiedt door het bestuur.
4. Na de ontbinding blijft de vereniging voortbestaan voor zover dit tot vereffening van haar vermogen nodig is. Gedurende de vereffening blijven de bepalingen van de statuten zoveel mogelijk van kracht.  
In stukken en aankondigingen die van de vereniging uitgaan, moeten aan haar naam worden toegevoegd de woorden "in liquidatie".
5. De vereffening eindigt op het tijdstip waarop geen aan de vereffenaar bekende baten meer aanwezig zijn.
6. De boeken en bescheiden van de ontbonden vereniging moeten worden bewaard gedurende tien jaren na afloop van de vereffening. Bewaarder is degene die door de vereffenaars als zodanig is aangewezen.

### **Reglementen**

#### Artikel 17

1. De algemene ledenvergadering kan een of meer reglementen vaststellen en wijzigen, waarin onderwerpen worden geregeld waarin door deze statuten niet of niet volledig wordt voorzien.
2. Een reglement mag geen bepalingen bevatten, die strijdig zijn met de wet of met deze statuten.
3. Er is een reglement van de vereniging dat kan worden aangehaald als: "Ordereglement OvRAN".

### **Slotbepaling**

#### Artikel 18

Aan de algemene ledenvergadering komen in de vereniging alle bevoegdheden toe, die niet door de wet of de statuten aan andere organen zijn opgedragen.

## Uittreksel Handelsregister Kamer van Koophandel<sup>®</sup>

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**KvK-nummer** 27323227

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### Rechtspersoon

RSIN	819729061
Rechtsvorm	Vereniging met volledige rechtsbevoegdheid
Statutaire naam	OvRAN
Statutaire zetel	Wassenaar
Bezoekadres	Leopoldhove 55, 2726CV Zoetermeer
Telefoonnummer	0348480598
Eerste inschrijving handelsregister	28-07-2008
Datum akte van oprichting	02-07-2008
Datum akte laatste statutenwijziging	10-10-2008
Activiteiten	SBI-code: 9411 - Bedrijfs- en werkgeversorganisaties Het bevorderen van een goede beroepsuitoefening door adviseurs en/of accountants en het functioneren als platform voor zo zelfstandig mogelijke kamers van specialisten in een bepaald advies-en/of accountancyvakgebied

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### Bestuurders

Naam	Lemoine, Jules Dominique
Geboortedatum	13-03-1953
Datum in functie	02-07-2008
Titel	Penningmeester
Bevoegdheid	Gezamenlijk bevoegd (met andere bestuurder(s), zie statuten)

Naam	Boer, Adrianus Joseph
Geboortedatum	13-12-1946
Datum in functie	02-07-2008
Titel	Secretaris
Bevoegdheid	Gezamenlijk bevoegd (met andere bestuurder(s), zie statuten)

Naam	Spil, Cornelis Bernardus Antonius
Geboortedatum	04-04-1941
Datum in functie	02-07-2008
Titel	Voorzitter
Bevoegdheid	Gezamenlijk bevoegd (met andere bestuurder(s), zie statuten)

Naam	ten Voorde, Inge
Geboortedatum	16-04-1973



## Uittreksel Handelsregister Kamer van Koophandel<sup>®</sup>

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**KvK-nummer** 27323227

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**Pagina** 2 (van 2)

Datum in functie	01-01-2018 (datum registratie: 17-10-2019)
Bevoegdheid	Gezamenlijk bevoegd (met andere bestuurder(s), zie statuten)

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Uittreksel is vervaardigd op 17-07-2020 om 11.58 uur.

AUTHORITY

On behalf of OvRAN, the *Orde van Registeradviseurs Nederland*, Adrianus Joseph <sup>Boer</sup> born on 13 December 1946 and having his residence at Leopoldhoeve 55, 2726 CV Zoetermeer, The Netherlands, in the capacity of board member and Secretary of the association, hereby authorise Corneel Spil, Chairman of the Board, to represent the association in legal proceedings before the European Court of Human Rights against the Kingdom of The Netherlands; in particular the proceedings commenced on 17 July 2020.

Amsterdam, 17 July 2020



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Adrianus Joseph Boer