

Decision

on the application submitted on 28 December 2012 by Mr C.F. Wassenaar LL.M,
acting as the authorized representative of a (future) student at Hogeschool Rotterdam, hereafter applicant,
regarding alleged conduct of Hogeschool Rotterdam.

1. COURSE OF THE PROCEEDINGS

On 28 December 2012, the National Commission received a letter, hereafter the application, regarding a number of actions of Hogeschool Rotterdam.

An identical application was already received on 22 October 2012. That application was stated inadmissible by the National Commission on 19 November 2012 on the grounds that at the time the internal complaints procedure of Hogeschool Rotterdam had not been followed completely. The content of the application of 22 October 2012 is deemed to be repeated and included herein.

The application was substantiated with additional reasons on 18 March 2013, given in response to a request for further information sent by the National Commission on 8 January 2013, which request was repeated on 4 March 2013. The applicant requested the National Commission to defer treatment. The National Commission agreed to defer treatment until 1 July 2013.

On 25 April 2013, Hogeschool Rotterdam responded to a request by the National Commission to give a further explanation of the content of the application. At the same time additional information was submitted.

On 18 September 2013 the National Commission assessed the application, which led to a decision and closure of the case. In its assessment, the National Commission saw no reason to give applicant and Hogeschool Rotterdam the opportunity to explain previously submitted information and their views in a hearing.

2. CONTENT APPLICATION

Applicant has lodged a complaint about violation of the stipulations in articles 2.1 (under d), 4.1, 4.4 and 5.5 of the Code of Conduct by Hogeschool Rotterdam by refusing applicant's (preliminary) registration for the academic year 2012-2013 per 1 September 2012.

Hogeschool Rotterdam would have refused (preliminary) registration on the grounds that applicant would have reached (almost) the maximum duration of studies, and/or that applicant would not have a valid residence document. Applicant stated that applying a maximum duration of studies is in conflict with European law and other regulations. In its assessment of admissibility and registration of (future) students Hogeschool Rotterdam could not have relied on the text of the regulation regarding the maximum duration of studies in the Aliens Act Implementation Guidelines which was in force at the time. Furthermore, applicant counters the assumption that he would be legally resident, since his residence document was valid until 1 September 2012.

3. ADMISSIBILITY

The National Commission is competent to have jurisdiction in disputed conduct of educational institutions listed in the register of the Code of Conduct, to the extent that such conduct took place after the date of inclusion in the register. Hogeschool Rotterdam is a higher education institution and has been listed since 19 May 2006 in the register of the Code of Conduct. The conduct dates from after the registration date.

Applicant is a (future) student of Moroccan nationality. The documents submitted with the application demonstrate that he has (had) a temporary residence permit, issued on behalf of studies.

Article 4.1

This article is of procedural nature, whereby educational institutions in requests for admission and registration by international students are obliged to first assess admissibility for a specific study programme for which a student requests admission and registration. The registration requirements must be determined before canvassing international students for the corresponding programme, and educational institutions must - before deciding on admission and registration - check whether the international student meets the requirements. As such no rights may be derived from this article for admission or registration. Applicant gives reasons for his argument that refusal of registration is in conflict with article 4.1 of the Code of Conduct, by mentioning provisions of national and European legislation and regulations (Higher Education and Research Act, Aliens Act Implementation Guidelines and Students Guideline).

The National Commission has only jurisdiction to decide on conduct which may involve a breach of the stipulations in the Code of Conduct. Any suspected violations of legislative or European stipulations cannot be submitted for assessment by the National Commission on the grounds of the complaints procedure of the Code of Conduct. This equally applies to the arguments pertaining to the maximum duration of studies and to the question whether Hogeschool Rotterdam or the Immigration and Naturalisation Service may have power of assessment in such cases. In the preceding application proceedings, the National Commission referred applicant to the competent authorities of Hogeschool Rotterdam as well as the Appeals Tribunal for Higher Education.

After the application in question was submitted to the National Commission, applicant lodged an appeal with the Appeals Tribunal for Higher Education on 11 January 2013. On 6 May 2013 the Tribunal decided that applicant succeeded in his action (reference number 2013/005). The Tribunal was of the opinion that applicant met the requirements for registration as stated in the Higher Education and Research Act and that for that reason Hogeschool Rotterdam was not competent to refuse registration on grounds that have no basis in legislation.

In view of the above, the National Commission is of the opinion that there is no interest (any more) to further process the application with regard to alleged conflict with article 4.1 of the Code of Conduct.

Article 5.5

The text of this article of the Code of Conduct as referred to by applicant, was not yet in force (see appendix to the Code of Conduct) at the time of the conduct described. As such, no violation exists of the phrasing of the provision referred to.

4. ASSESSMENT

Article 2.1 (under d)

This article contains a number of issues (under a to h) for which the educational institution should timely present trustworthy and easily accessible information to the international student, for instance on its website. Paragraph d is directed at information about entry requirements for the programme, including procedures for admission and registration and the associated costs, as referred to in sections 3 and 4 of the Code of Conduct.

Applicant stated that Hogeschool Rotterdam violated this article (under d) by failing to include in its refusal of registration the reasons for refusal, which was the Hogeschool's assumption that applicant was not lawfully resident.

The National Commission is of the opinion that not stating reasons is not a violation of article 2.1 of the Code of Conduct. It has not been stated nor proven that Hogeschool Rotterdam failed in its provision of information - for instance through its website or a booklet - about the entry requirements of the study programme.

Article 4.4

Article 4.4 stipulates that the educational institution is obliged to give the international student who has not met the requirements set by the educational institution and/or the study programme, its substantiated reasons for refusing admission and/or registration in writing. This should include any legal remedies regarding refusal available to the international student.

In its letter of 24 September 2012 Hogeschool Rotterdam turned down the request for registration. The arguments for the decision show that this was done because applicant had not met the statutory provisions for admission, without explaining which provisions these were. In view of the background of the case, this could not have been done by simply using a standard argumentation.

The - automated and therefore not signed - decision also contained a number of standard text blocks that do not apply to the specific situation of the future student in question. Furthermore, the decision did not provide information about the term and procedure to be taken in case the person concerned could not agree with the decision. Finally, the National Commission was surprised to read that the decision was written in Dutch (only), whereas the addressee was an international student and for which reason it would have been apparent to communicate in English as well.

The National Commission is of the opinion that this is a violation of article 4.4 of the Code of Conduct. On the grounds of this provision of the Code of Conduct, Hogeschool Rotterdam is obliged to provide adequate substantiation of its decision and also to provide a reference to the legal remedies available.

5. DECISION

The National Commission declares the application as unfounded, to the extent the application pertains to the alleged violation of article 2.1 under d of the Code of Conduct. It has not been stated nor proven that Hogeschool Rotterdam failed in its provision of information with regard to the entry requirements for the study programme, for instance through its website or booklets.

The National Commission upholds the application, to the extent the application pertains to violation of article 4.4 of the Code of Conduct. Hogeschool Rotterdam could have prevented the unclear situation regarding content and procedure, which came about after its refusal to admission, by including adequate substantiation of its decision (in English as well) and by also providing a reference to the legal remedies available. Hogeschool Rotterdam is obliged to do so on the grounds of the provision of the Code of Conduct as formulated by the educational field, to which Hogeschool Rotterdam committed itself.

The National Commission declares the application in all other respects as inadmissible.

6. MEASURES

The National Commission instructs Hogeschool Rotterdam to adjust the partly automated admission and registration procedure in such a way that future students, in case of refusal of admission or registration, will be informed unambiguously and extensively about the reasons of refusal.

The National Commission considers it appropriate that the currently used Dutch letters which are being sent to future international students, will include an English translation of its content (for instance on the reverse side).

More in particular, the National Commission instructs Hogeschool Rotterdam to include in its decision a reference to legal remedies that may be invoked against decisions of the educational institution, including the terms in which such remedies must be invoked.

The National Commission desires to be informed in writing by Hogeschool Rotterdam of the measures it has taken by 15 November 2013 at the latest.

Prof. R. Fernhout LL.M, chair, Mrs H.A.M.F. Keijzer-Lambooy, Mr drs. C. Boom, Mr ir. F. Kuipers, members, and Mrs drs. M.C. Gardeur-Veltman, substitute member, in the presences of Mrs bc. W. Broersma, investigator and Mr A.G.D. Overmars LL.M, secretary.

Drawn up un Utrecht on 18 September 2013,

prof. R. Fernhout LL.M
chair

A.G.D. Overmars LL.M
secretary

Sent on 2 October 2013.