

Decision

on the application dated 7 June 2010 submitted by a former student of the Hanzehogeschool Groningen, hereafter applicant, regarding conduct of the Hanzehogeschool Groningen, hereafter Hanzehogeschool.

1. PROCEEDINGS

The National Commission received a letter from applicant on 9 June 2010, hereafter the application, regarding a number of actions of Hanzehogeschool.

A copy of the application was sent to Hanzehogeschool and the National Commission received a reply from Hanzehogeschool on 23 July 2010. The applicant responded to the written reply of Hanzehogeschool on 2 August 2010.

A hearing was organised on 25 August 2010 for which an invitation to attend was sent to both applicant and Hanzehogeschool. Applicant was not able to attend the hearing. Hanzehogeschool have been given the opportunity to comment on the draft report of the hearing, after which the report was approved by the National Commission.

The contents of the above mentioned documents are considered to be included in this decision.

2. ADMISSIBILITY

Applicant is of a foreign nationality and has had his previous education outside the Kingdom of the Netherlands. He continued his education with a Dutch educational institute. This satisfies the definition of international student as referred to in Section 1 (former version) of the Code of Conduct.

Hanzehogeschool is a higher education institution and listed since 2 May 2006 in the register of the Code of Conduct.

The application pertains to actions in the academic year 2008-2009. This means that the text of the Code of Conduct applies as it was valid till 4 December 2009.

The application shows that before submitting his complaints, applicant has followed or has tried to follow the internal complaints procedures of Hanzehogeschool. Applicant is of the opinion that the internal complaints procedures were defective and that he was not able to submit all his complaints to Hanzehogeschool. Although the internal complaints procedures have not been followed for all complaints, the National Commission processed the application to the extent that it pertained to the Code of Conduct.

3. ASSESSMENT AND CONCLUSION

The National Commission decided to group the applicant's complaints into 4 subjects.

3.1 Internal complaint procedure in conflict with the Code of Conduct

3.1.1 Complaint

Applicant complained about the lack of an internal complaint procedure, as mentioned in Section 7.5 (former version) Code of Conduct, which deals with complaints about compliance with the Code of Conduct. Nor did until recently exist the possibility for MBA students to submit complaints to a complaints commission. Recently, after having received a number of complaints, this was set up. According to applicant, complaints that had not been sent to the correct recipient, were not forwarded.

3.1.2 Point of view Hanzehogeschool

Hanzehogeschool acknowledged not having had a specific complaint procedure for complaints pertaining to the Code of Conduct.

Although the Dutch Higher Education and Research Act (WHW) only provides for the protection of legal rights for students in initial education and the Student Appeals Board cannot formally be held to process complaints from students in post-initial education, Hanzehogeschool requested the Student Appeals Board to take note of complaints from students in the post-initial MBA study programme. Furthermore, Hanzehogeschool contested the opinion of applicant that complaints were not being forwarded. Hanzehogeschool stated that complaints indeed were being forwarded, for instance to the student counsellors.

Hanzehogeschool stated that the protection of legal rights as provided for in the Student Charter does not apply to students, such as applicant, who followed post-initial education, but only to students in initial education. According to Hanzehogeschool, the reference made to the Student Charter in the letter of registration of applicant was mistaken.

3.1.3 Assessment

The National Commission will not review the assessment of complaints as done by the Students Appeal Board or the Complaints Committee. The National Commission only assesses whether the Code of Conduct is complied with. Section 7.5 of the Code of Conduct stated and still states that the higher education institution ensures "that existing or, if necessary, new internal complaint procedures are available for complaints under the Code of Conduct".

In the academic year 2008-2009 no complaints procedure existed for complaints pertaining to the Code of Conduct. Nor did such a procedure exist at the time of the hearing. Moreover, the regular complaint procedures were not open to applicant since these procedures are directed at students in initial study programmes. To that respect, Section 7.5 of the Code of Conduct was not complied with. The Complaints Committee too, observed in their decision of 24 March 2010 that a gap existed in the complaint procedures of Hanzehogeschool.

With regard to his legal position, the letter of registration sent to applicant incorrectly referred to the Student Charter.

3.2 Incorrect promotional text and presentation of study programme

3.2.1 Complaint

Applicant stated that Section 2.3 (former version) Code of Conduct was violated by Hanzehogeschool. According to applicant, the MBA programme he registered for was presented as an e-MBA programme. The student ID cards and the certificate of registration mentioned e-MBA as the programme he registered for.

3.2.2 Point of view Hanzehogeschool

At the hearing Hanzehogeschool explained that applicant could not be of the opinion to follow the e-MBA study programme nor that he had registered successfully for the programme. The reason is that Hanzehogeschool did not offer the e-MBA to international students. Students were only recruited on a regional level.

Moreover, e-MBA was mostly taken as a part-time course, since it was directed at professionals who combine work and study. Applicant followed a full-time study programme.

At the hearing Hanze Hogeschool indicated that the last cohort of part-time e-MBA students started in September 2007. After this cohort, only the full-time MBA programme was offered. However, in the Dutch Central Register of Higher Education Study Programmes (CROHO) the programme was still listed as e-MBA. The name of the programme in CROHO was changed to MBA in September 2009. Hanze Hogeschool stated that the name of a study programme could only be changed in CROHO after the last student of that programme graduated. Because of this the student ID card and the certificate of registration mentioned e-MBA as the name of the study programme. This reflected the formal listing in CROHO but not the actual state of affairs. According to Hanze Hogeschool in fact only the MBA programme was being offered.

Hanze Hogeschool added to this that students do not base their choice of studies on its listing in CROHO, but on information given on the internet, in brochures and in conversations with the staff of Hanze Hogeschool. According to Hanze Hogeschool such information only mentions MBA.

3.2.3 Decision

In accordance with the CROHO register, the study programme applicant followed at the time was listed as Executive Master of Business Administration. As a result, this name was mentioned on the student ID card and on the certificate of registration. Furthermore, the NVAO accreditation decision and the NQA review only mention e-MBA, since for renewal of accreditation the official name as listed in the CROHO register is used. The student brochure for the MBA programme bears no date stamp, so no evaluation as from which moment the brochure was used can be made.

The National Commission is of the opinion that Hanze Hogeschool had no intention to recruit international students for the e-MBA programme for the academic year 2008-2009. However, the process of changing to the new name of the study programme was unclear and confusing. The formal situation differed from the actual situation in which student ID cards and the certificate of registration, although in accordance to the CROHO register, mentioned a different study programme than the one Hanze Hogeschool offered to applicant. This led to confusion as to which study programme applicant followed. In that respect, Section 2.3 (former version) of the Code of Conduct was violated.

3.3 Insufficient compliance admission requirements

3.3.1 Complaint

Hanze Hogeschool acted contrary to Section 4.1 (former version) Code of Conduct since in the opinion of applicant Hanze Hogeschool did not sufficiently test whether future students meet the admission requirements as stated in Section 4.2 (former version) Code of Conduct.

Applicant stated that a number of his fellow students did not meet the language requirement as meant in the Code of Conduct. Applicant stated to have been affected adversely because of insufficient command of the language of his fellow students. As a result he learned nothing from other students.

3.3.2 Point of view Hanze Hogeschool

At the hearing Hanze Hogeschool explained that the IELTS certificate or a certificate of a comparable language test was used to assess whether future students meet the admission requirements.

Hanze Hogeschool is of the opinion that cultural differences between the students may lead to different a experience of the command of the language. In group conversations some students are more constraint than others. Hanze Hogeschool acknowledges this and offers language training geared to this issue.

3.3.3 Assessment

The National Commission investigated whether student files give evidence that the the admission requirements were met with respect of command of the English language.

4 students out of the 17 students admitted to the MBA study programme in the academic year 2008-2009 were admitted in accordance to the Code of Conduct on the basis of sufficient results of TOEFL and IELTS tests. The student files contained copies of the test certificates. Hanzehogeschool does not assess the validity of the test results.

The other 12 students either:

- had their previous education in a country in which English is the official language, or
- had their previous education in a country in which English is the language of education, or
- had their previous education in English in a country in which English is neither the official language nor the language of education.

Hanzehogeschool applied the exceptional circumstance referred to in Section 44, paragraph 1 (former version) of the Rules and Regulations to the Code of Conduct, which stated that an international student who had his previous education in a country in which English is the official language and the language of education, can be exempted from the obligation to take a language test.

The student files proved that Hanzehogeschool interpreted this exception wider than the wording allows for: not only students were admitted who had their previous education in a country in which English is the official language and the language of education, but also in case English is either the official language or the language of education. In the opinion of Hanzehogeschool, students who had their previous education in a country where English is neither the official language nor the language of education, but who followed their previous education in English, complied with the language requirement as well. To this extent Hanzehogeschool acted contrary to Section 44, paragraph 1 (former version) of the Rules and Regulations to the Code of Conduct.

Hanzehogeschool indicated that the existence of a list on which countries that are exempted from the language requirement would help to apply this condition.

3.4 Violation preamble to Code of Conduct

3.4.1 Complaint

Applicant claims violation of the preamble (former version) to the Code of Conduct. His request to submit an application to the Student Appeals Board in English was denied. At first he was refused help in translating and through the intermediation of the student counsellor, the application was translated.

3.4.2 Point of view Hanzehogeschool

Hanzehogeschool admitted that it was a mistake to deny the request. Shortly after the initial rejection, Hanzehogeschool had the application translated at their expense.

3.4.3 Assessment

One of the principles of the Code of Conduct regards equivalence of the Dutch and English language, so that educational institutes listed in the register - especially since such institutes offer study programmes in English - are obliged to allow complaints to be submitted in English. Hanzehogeschool acknowledged this and, even before the complaint was brought to the National Commission, had the complaint translated. The National Commission deems the interests of applicants to have this complaint reviewed by the Commission manifestly insufficient to this extent and decides not to investigate this item of the complaint pursuant to Section 20, paragraph 1, sub c (former version) of the Rules and Regulations (currently Section 17) to the Code of Conduct.

4. DECISION

The National Commission upholds complaint 3.1. During the academic year 2008-2009 Hanzehogeschool had no possibilities for submitting complaints regarding the Code of Conduct.

The National Commission upholds complaint 3.2. The National Commission is of the opinion that Hanzehogeschool could have avoided the confusion that arose when converting e-MBA to MBA by informing students about the conversion and by indicating why the student ID cards and the certificates of registration mentioned Executive Master of Business Administration.

The National Commission upholds complaint 3.3. The exception given in Section 44 (former version) of the Rules and Regulations to the Code of Conduct have been interpreted too wide by Hanzehogeschool.

The National Commission declares complaint 3.4 inadmissible because of an apparent lack of interest for the applicant.

5. MEASURES

The National Commission instructs Hanzehogeschool to set up a complaint procedure with regard to complaints concerning the Code of Conduct as of the date of the decision and in conformity with Section 7.5 Code of Conduct. The National Commission requires to be informed about this in writing by Hanzehogeschool before 1 March 2011.

As of the date of the decision, the National Commission instructs Hanzehogeschool not to interpret the exceptional circumstances mentioned in Section 44 of the Rules and Regulations at that time, now Section 4.3 of the Code of Conduct, wider than the text allows for. In case English is neither the official language nor the language of education in the country where a student had his previous education, the student should demonstrate to meet the language requirement as referred to in Section 4.2 Code of Conduct by submitting a IELTS certificate or a certificate of a comparable language test, as mentioned in Section 4.3.

6. RECOMMENDATIONS

The National Commission recommends:

- that Hanzehogeschool duly informs students of changes in the study programmes or parts of the programme;
- that Hanzehogeschool duly informs students about their legal position and in which document this is to be found;
- that Hanzehogeschool dates their information materials by adding a date or year of publication indicating when these brochures are being used.

7. MISCELLANEOUS

The National Commission informs Hanzehogeschool that because of the matter in hand the National Commission sees cause to enter in consultation with the umbrella organizations and to request them to review the text of the exceptional circumstances, in order to simplify the enforcement of the language requirement and its exceptions.

R. Fernhout (prof. mr.), Chair, Mrs H.A.M.F. Keijzer-Lambooy, Mrs K.S. Ali (dr.), J. Donner (mr.), F.A. van der Duyn Schouten (prof. dr.), F. Kuipers (ir.) and C. Boom (mr. drs.), Members, in the presence of Mrs W.E.A. Leusink (mr.), Examiner, and A.G.D. Overmars (mr.), Secretary.

Delivered in Utrecht on 20 October 2010.

R. Fernhout (prof. mr.)
Chair

A.G.D. Overmars (mr.)
Secretary

Sent on 3 November 2010.

Appendix: Report of the hearing.

Hearing in the application Hanzehogeschool Groningen.

25 Augustus 2010, 14.00 - 15.30 hrs, Utrecht.

National Commission (NC):

R. Fernhout (prof. mr.), Chair, Mrs H.A.M.F. Keijzer-Lambooy, Mrs K.S. Ali (dr.), F.A. van der Duyn Schouten (prof. dr.), F. Kuipers (ir.), C. Boom (mr. drs.), J. Donner (dr.), Members; Mrs W.E.A. Leusink (mr.), Examiner for the NC; A.G.D. Overmars (mr.), Secretary of the NC.

Hanzehogeschool Groningen (Hanze):

B. Opheikens (drs.), Programme manager MBA; H.C. Duinkerken (mr.), Legal assistant.

Opening

After opening the meeting, the chair welcomed all persons present and introduced the members of the NC. Unfortunately both applicants have been absent with notice stating their reasons. The hearing was recorded for the benefit of the Secretary; the proceedings are to be reported in the English language.

The persons present on behalf of Hanze introduced themselves. Hanze gave a written response to the applications submitted. Subsequently both applicants have responded to Hanze's statement. Hanze indicated to have no further additions.

The Chair indicated to establish the admissibility of both applications first, and then to hear both cases in a joined action, since the contents of both cases showed areas of overlap regarding the complaints and the arguments.

Admissibility

Admissibility must be established on a number of grounds:

Has a settlement been reached with either of the applicants and if so to what effect?

Hanze stated that a settlement had been reached with one of the applicants. This settlement pertained to the actions of a number of employees of Hanze, as well as to the supervision during the graduation phase. The complaints were submitted to Hanze's Complaints Committee, which stated the application to be manifestly inadmissible. This regards the complaints 14, 15 and 16 in the application. Neither Hanze nor NC disputed this.

Did the grounds for application pertain to the subjects as provided for and protected by the Code of Conduct?

The NC established that part of the complaints in both applications referred to aspects of the quality and the contents of the study programme. The NC is only competent to assess issues and matters which are provided for in the Code of Conduct. Subsequently, the NC does not assess educational subjects which are within the competence of the NVAO (Accreditation Organisation of the Netherlands and Flanders) and the Dutch Education Inspectorate. Neither Hanze nor NC disputed this.

Have - all - the complaints been submitted to Hanze internally, as prescribed by the Code of Conduct?

It is established that not all complaints were submitted by applicants to Hanze before submitting them to the NC. However, Hanze did not remonstrate with the applicants not to have followed the internal complaint procedure. Moreover since the principal question in fact is whether such a procedure exists or should exist. For this reason, neither did the NC remonstrate with the applicants.

Substantial

In as far as the NC is competent to take cognizance of the complaints, the NC was of the opinion that they could be grouped into three subjects.

- Conversion of the study programme e-MBA to MBA.
- Enforcement of the language requirement as an admission requirement for e-MBA or MBA.
- The internal complaint procedure as referred to in the Code of Conduct.

Conversion of the study programme e-MBA to MBA

Hanze held the view that applicants did not indicate nor demonstrate that they wished to follow the study programme e-MBA. The study programme MBA has been included in the CROHO register since September 2009, before that time it was referred to as e-MBA. The study programme e-MBA was started in 1992 in a transitional accreditation scheme; in 1998 accreditation was obtained from the Dutch Validation Council (DVC). e-MBA is a part-time programme whereas the MBA programme is being offered both as a full-time and as a part-time course. Hanze had the intention to terminate the e-MBA programme and start with the MBA programme, which was effected after the last student had completed the programme (mid 2009). Hanze stated that as from 2004 in its communications it only made mention of the course as being an MBA programme. Moreover, the group of prospective students is completely different from the group targeted at for the e-MBA programme.

Depending on the educational institute, the e-MBA could be rated higher than a regular MBA programme. Both programmes work towards an MBA degree. The curriculum and competences are practically similar; the only differences concern the target group and the admission requirements. Thus, the differences are primarily related to the expectations students have.

One of the subjects of the hearing concerned the interest of applicants. The market decides the value of the study programme and the certificate. No distinction exists from a judicial point of view. The e-MBA programme could be combined with a job; MBA is a full-time programme. Hanze expressly stated that it did not raise any expectations that students would follow the e-MBA programme as listed in the CROHO register. However, the NC established that the booklet for the MBA programme unfortunately bears no date stamp and that consequently the NC could not establish whether this brochure was used for the recruitment of students for the academic year 2008-2009. Hanze stated that it had in fact been used for that purpose.

The NC asked Hanze why they have not developed specific information materials for the conversion of e-MBA into MBA. Hanze stated that the information consisted of two routes: recruitment for the e-MBA was done on a regional level, whereas recruitment for the MBA was explicitly targeted at the international level. According to the NC, the point is that as a foreign student you receive what you would expect, which means certainty and absence of confusion as to which specific programme and which degree the programme awards. In this case, it would be hard to explain that although the programme formally is classified as e-MBA, the contents of the courses are that of MBA. Since in the academic year the programme was formally an e-MBA programme, the certificate to be obtained in that year should state the e-MBA programme. Applicants' certificates mention the MBA programme. Hanze stated that this is no problem for the degree awarded: the CROHO register awards both the e-MBA and MBA programme the MBA title.

Hanze repeated that students were recruited for the MBA programme and that students were registered for the MBA programme. The student ID card was designed in conformity with the CROHO register (so e-MBA), however, students do not primarily choose their studies because of its CROHO listing. Besides, the external review in 2008 by the Netherlands Quality Agency (NQA) carried out for the accreditation procedure was directed at the full-time e-MBA programme. Hanze confirmed that the applicants' certificate should have listed e-MBA as the formal study programme instead of MBA. And yet Hanze never led the applicants to expect that they were to take the e-MBA programme. For the students the formal aspects of the case (CROHO listing etcetera) were of no relevance in their decision which study programme to take.

The NC asked Hanze to explain the study load of the programme. CROHO, NVAO and external review mention 60 ECTS, Hanze mentions 70 (in the section facts and figures on their website). Which is the correct number? Hanze stated that both applicants followed a study programme of 61 ECTS. The explanation was that the programme is in the course of development. In 2008 the study load was 60 ECTS (CROHO), at present the study load is 70 ECTS and in future it will be 90 ECTS. According to Hanze this was made possible because of the NVAO's decision to grant Hanze's MBA accreditation application (60 ECTS).

Enforcement of the language requirement as an admission requirement for e-MBA or MBA

One of the admission requirements set by Hanze is linguistic competence in English at 6.5 IELTS. The NC enquired at which time evaluation of prospective students against this admission requirement takes place. Hanze responded that a copy of the IELTS certificate (or of a comparable language test) must be included in the application forms. In exceptional cases this may be submitted upon actual entry (conditional admission). Submission of the IELTS certificate for the minimum level suffices for application.

When looking at the students' own expectations, it should be observed that in spite of a formally established sufficient level of the English language, regional variants may lead to another interpretation: African and Asian students are generally more reserved than other students; this is usually less the case for native speakers. This is why Hanze offers specific training courses to improve student cooperation.

Hanze responded positively to the question whether all e-MBA and MBA students in the academic year 2008-2009 had an IELTS certificate for level 6.5 (or comparable). Copies of these certificates are archived in the student files. The NC is welcome to review these files.

The internal complaint procedure as referred to in the Code of Conduct

The NC asked Hanze to respond to the general complaint made by applicants that Hanze did not have or does not seem to have sufficient ways for submitting complaints. Hanze asked what the procedure should look like to meet the demands of the Code of Conduct. The Code of Conduct contains in one section a complaint procedure directed at complaints pertaining to subjects provided by the Code of Conduct and in another section reference is made to complaints about behaviour. The complaint procedure is designed after the Dutch Higher Education and Research Act (WHW).

Hanze has two combined procedures: with the Examinations Appeals Board and with the Higher Education Appeals Tribunal. Both operate under the authority of the Students Appeals Board. Legal rights are protected by the WHW and this is expressly limited to students in initial education. Thus, Hanze cannot choose to have post-initial education covered by this at their own discretion. This means that the procedure with the Students Appeal Board was not open to both applicants (as they took part in post-initial education).

The NC informed whether - aside the procedure with the Students Appeal Board - other complaint procedures based on the Students Charter apply to initial education only. What was the reason for Hanze not to apply such a procedure for post-initial education of their own volition? Hanze stated that they cannot choose to protect legal rights that have been provided for by law; that is the primacy of the legislature. Following the Students Charter a complaint procedure and a Whistleblower Procedure exist. These are available to students of both initial and post-initial education. As an alternative to the protection of legal rights that have been provided for by law, Hanze asked the members of the Students Appeal Board (not in their capacity of a board) to decide on issues submitted by students in post-initial education.

The NC determined that the Code of Conduct is a matter of an educational institute and not of the NC. Hanze too, has endorsed the Code of Conduct. The Code of Conduct provides for an internal complaint procedure for students in case of complaints pertaining to the Code of Conduct. This means that Hanze in 2008 had no procedure for this type of complaints for their students in both initial and post-initial education. No information booklets have been supplied to students in post-initial education about the possibilities of a complaints procedure with the Students Appeal Board. For instance the students information package did not contain a booklet on the complaint procedure. Moreover, it seemed curious that the Students Charter did not apply to both applicants, although their Letters of Acceptance explicitly referred to the charter. However, according to Hanze the main thing was that both applicants could in fact turn to Hanze for their complaints.

Hanze was asked to explain the differences between private and public-law governed programmes and whether students could refer to the WHW. Hanze: we offer accredited programmes as well as other courses. Subsequently, for accredited programmes the distinction between initial and non-initial education is important.

The applicants were registered for accredited non-initial education, which is why a large part of the WHW was not applicable, such as the conditions concerning the Education and Examination Regulations and the protection of legal rights. According to Hanze this does not necessarily mean that the protection of legal rights was not as solid as in the case of initial education, but an educational institute itself cannot choose to adopt provisions that apply to initial education to post-initial education.

The NC asked whether, aside from statutory aspects, this case is not just about customers who may expect a certain level of service from a company. Did Hanze not feel the need to make additional arrangements to the statutory provisions for their customers? Hanze repeated: several complaint procedures were in fact available, however this could not statutorily be arranged. However, in the mean time a general complaint procedure has been set up because of the entry into force of the Improved Governance Higher Education Act. NC: a basic principle when drawing up the Code of Conduct, however, was that a foreign student, as a customer, could rely on service and on protection of their interests. Hanze repeated that they are unclear about the scope of the complaint procedure as prescribed by the Code of Conduct. Hanze: the Education and Examination Regulations have been handed to foreign students and were published on the website. However, it is regrettable that in the case of one of the applicants the link did not function properly. Hanze have always been open to students' questions and complaints and have made an effort to be easily accessible. For instance, students always could drop in with their programme manager or teacher for their complaints. There were never any problems, which is why Hanze never felt much need for an additional complaints procedure.

After having answered all questions of the NC, Hanze was given the time for a final remark. Hanze stressed the point that pertaining to the issues brought before the NC, applicants have never been affected adversely in for instance any formal defects in the CROHO system or in the protection of legal rights. Besides that, in the past everything always went well. With regard to the contents of the studies Hanze is doing a good job and students are mainly positive in their opinion of Hanze. In this respect, the applicants have given Hanze a good stir.

Conclusion

A draft report of the hearing will be sent to Hanze for comment. After that the NC will approve of the report and will conclude both applications as soon as possible. The decision is expected to be given at the end of October. Hanze and both applicants will be informed of the decision in writing. The decision will be published on the website of the Code of Conduct.

The chair thanked all persons present and closed the hearing.