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Association des Conseils d'Etat et des Juridictions administratives suprêmes de l'Union européenne a.i.s.b.l.

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With The collaboration of the Administrative Court of the Republic of Croatia

The New administrative jurisdiction system of Croatia in the perspective of the accession to the European Union: Exchange of European experiences

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ORGANIZATION OF THE FIRST INSTANCE

Mrs MONDT SCHOUTEN

Mr President, Ladies and Gentlemen.

I am honoured that I may speak to you from my experience as a judge, specialised in administrative law. For a long time I worked at the District Court of The Hague and since six years I am a State Councillor at the Dutch Council of State.
After a short introduction about the organisation of the administrative jurisdiction in The Netherlands I will speak about workload, expedient judging, quality, selection of cases and final judgment, with the emphasis on the organisation and practice in the district courts.

Introduction.
Besides an Advisory Division the Dutch Council of State has an Administrative Jurisdiction Division which is the highest general administrative court in The Netherlands. There are two other administrative appeal courts (The Central Appeal Court for Social Security Matters and the Court of Appeal for Trade and Industry) . Cases concerning tax law are treated by the "ordinary" Courts of Appeal and only in these administrative law cases cassation (by the Court of Cassation) is possible.
Since about twenty years we have not had any special administrative courts of first instance in The Netherlands. Admininistrative disputes are treated by the general courts of first instance, the district courts. Each district court has an administrative division. At the moment there are 19 district courts, but in the near future there will be just 10 because some of the district courts are too small in the opinion of the Dutch Government. Each district court will then have 18 to 53 judges (fte) in administrative law.
The administrative division of a district court treats mainly cases concerning social security, civil servant law, rates and taxes, planning permissions, grants, tree felling permits, the water authorities and cases under the Aliens Act 2000 (regular and asylum permits and detention).

Workload.
Each judge has a workload of about 300 cases (with oral hearings) per year. The handling of this amount of cases is only possible because the judges are assisted by supporting lawyers. They prepare the cases for the judge, make a summary of the facts, enclose jurisprudence and write a draft judgment in 80 to 90% of the cases, except in cases under the Aliens Act 2000 where the supporting lawyers write a draft judgment in all the cases.
In 2010 the district court in The Hague dealt with 14.546 cases (4.828 cases under the Aliens Act 2000, 3.853 tax law cases and 5.865 other cases, concerning social security, civil servant law, planning permissions, grants, tree felling permits and others) with 29,5 fte judges, 58,5 supporting lawyers, 35 administrative support staff and 6,5 overhead (ict and secretarial).

Due progress and expedient judging.
In general the target for district courts is that the procedures in administrative disputes are finished within one year. In some cases the legally required period is shorter (for instance: in cases of detention 3 weeks). When an applicant files an application for provisional relief judgment must sometimes be given on the same day or within a few days.
To make sure that the procedure in administrative disputes is finished in time the district courts have a sophisticated registration system. In this sytem the stage of each procedure is registered, it indicates the set time for each stage, it gives a warning when there is a risk of overstaying a time-limit and also the location of the dossier is registered. The managing vice-presidents think it more and more important that pocedures do not take too long and that measures are taken when in any stage of the procedure time limits are not met.

Quality.

It is important that judges and supporting lawyers maintain the desired quality. For that reason it is thought important within the district courts, that there is sufficient attention for permanent education. Each judge has to spend 30 hours per year on education (participate in courses or attend conferences). More and more the courts organise in house courses themselves.
Jurisprudence meetings are held on a regular basis. Judges or supporting lawyers specialised in a certain field prepare and chair these meetings.
It is also thought important that in a certain amount of the cases which are treated by a judge sitting alone (single judge chamber), another judge reads the judgment and gives his or her opinion about it.
Also intervision is thought important. Judges attend each others hearings and give an opinion about the way of treating applicants, the communication with the parties involved and the way of keeping order. All this in a positive way. As judges are inclined to be very polite to each other, in some district courts an experienced judge from another district court or from a high court is asked to attend hearings of judges and give clear advice. This approach has worked well, judges were positive about the way advice has been given.

Case selection.
Already for a long time it has been common practice in the administrative divisions of the district courts to select identical cases and treat these cases in a cluster. That is efficient and lessens the chance of divergent decisions within the same court.
At the moment in a number of district courts experiments are being conducted concerning a different case selection. The objective is to offer applicants an approach "made to measure". In some cases the right approach can be to discuss with the parties the possibility of reaching a settlement, in other cases it can be important to make clear during a procedural hearing what kind of evidence is missing and discuss in which way proof could be provided. In some cases it can be efficient that the judge starts the hearing on the contents of the case with asking questions, while in other cases it is better to let the parties start with their pleadings before questions are put to them.
At the moment this is in an experimental phase. Which are goal selection criteria? Which stage of the procedure (at the very beginning or just before or during a hearing?) is the most appropriate to do the selection?

Final judgment.
More and more it is thought important that a judge in administrative disputes gives a final judgment to avoid that one procedure follows another.
Article 8:72 of the General Administrative Act gives some possibilities such as:
- The district court may direct that the legal effects of the annulled decision shall be allowed to stand in full or in part.
- The district court may rule that its judgment shall replace the annulled decision or the annulled part of the decision.
Since January 2010 there is also a new possibility, article 8:51 a of the General Administrative Act. The district court may offer an administrative authority the possibility to repair an ascertained shortage in the disputed decision, for example to repair a lack in the reasoning that is underpinning the decision or to complete an investigation in case of an omission.

In administrative disputes expedient judgments based on clear and appropriate reasoning are to be pursued. To reach this goal in an efficient way a staff of supporting lawyers of high quality is necessary. Management on quality and on time, a sufficient registration and case monitoring system and case selection are also important, both in The Netherlands and in Croatia.