ADMINISTRATIVE JUSTICE IN EUROPE

Questionnaire on the inventory and typology of review by the courts of administrative authorities in the 25 Member States of the European Union.

Aim of this questionnaire

The aim of this questionnaire is to know as precisely as possible which are the modes, bodies, and ways of controlling administrative acts and action in the 25 Member States of the European Union.

In view of the diversity of the legal systems of these Member States, these questions try to encompass the various situations, but also to obtain detailed answers to particular cases.

For certain questions, additional explanations are provided in italics below it. These explanations incorporate elements from Recommendation R (2004) 20 of the Committee of Ministers of the Council of Europe (see in annex).

When it is possible, answers to these questions should systematically stress the difference between the highest appeal courts/supreme courts and lower courts or tribunals.

Answers

17 November 2005

Author: Jack Kleijne, Research Department of the Council of State of the Netherlands

Preliminary Questions

1. Could you give the main dates in the evolution of the review of decisions and acts of administrative authorities?

The history of administrative justice in the Netherlands is described below. As views differed on an acceptable division of duties between the judiciary and the administration, the question of whether it was desirable and practicable for independent courts to

have general jurisdiction to hear disputes between citizens and the authorities about the latter's acts and actions remained disputed in the Netherlands until well into the 20th century. This led to the adoption of ad hoc solutions in cases where the need for judicial review prevailed. The evolution of administrative justice has therefore been marked by a piecemeal division of jurisdiction between administrative and judicial bodies that resulted in a veritable jungle of review procedures.

The solution chosen in many areas of administrative law was administrative review [*administratief beroep*], i.e. a right to apply to a different (higher) administrative authority for review of a decision. This review authority could substitute the attacked decision by its own decision. Often there was also a further right to appeal to the Crown, in which case the final decision rested with the Crown. To ensure the independence of the ruling in such cases, the Crown based its decision on an opinion submitted by the Administrative Disputes Division of the Council of State [*Afdeling geschillen van bestuur van de Raad van State*] following an adversarial procedure as regulated in the Council of State Act of 1861. If the Crown decided not to follow the opinion, it had to comply with special rules ("justice retenue"). "Contrary decisions", as they were called, were rather rare. Less than o,5%.

After the principle of independent administrative justice (i.e. judicial review of administrative acts and actions) was accepted in 1887 – in article 154 of the Constitution of those days – proposals were made for the introduction of a general system of administrative justice, but they were never implemented. Instead, provisions were introduced piecemeal in fields where administrative justice was accepted on account of the highly binding nature of specific statutory rules and there was no disagreement about the authority to be given jurisdiction (the usually specialised nature of the authority helped to inspire confidence). This compartmentalisation of administrative justice was strengthened by – and itself in turn strengthened – the sector-oriented development of substantive administrative law, in which general norms and doctrines played

little part.

The decisions of specialised tribunals established to hear applications for *review of tax cases* evolved into a separate tax jurisdiction, which was later assigned to the Courts of Appeal [*gerechtshoven*] and the Court of Cassation [*Hoge Raad*, High Council[1]].

The administration of justice in *social security cases* was originally assigned to specialised tribunals, which were later integrated by the Social Security Appeals Act of 1955 statute into tribunals spread throughout the Netherlands. The appeal court has been the Higher Social Security Court [*Centrale Raad van Beroep*[2]] since 1902. Social assistance disputes were not added to the jurisdiction of this court until 1 January 1994. Before that date appeal in such disputes lay to the Crown, since 1863 the Administrative Disputes Division of the Council of State.

Cases involving the legal position of *public servants* were heard at first instance by public service tribunals, which had the same president as the social security tribunals. Appeal lay to the CRvB.

The Food Supply Tribunal was established for *economic administrative law* in 1941. When the regulatory industrial organisations were established under public law in the 1950s its jurisdiction was transferred to the *Administrative Court for Trade and Industry* [College van Beroep voor het bedrijfsleven[3]]. The core function of the CBB has now changed from the supervision of regulatory industrial organisations to regulatory and subsidy law and disciplinary law.

Just as in the tax field, administrative jurisdiction in *other areas of the law* was sometimes assigned to the ordinary courts (i.e. the district courts and courts of appeal and the Supreme Court as provided for in the Judiciary (Organisation) Act since 1838).

---

[1] Hereinafter: **HR**.
[2] Hereinafter: **CRvB**.
[3] hereinafter: **CBB**.

As time passed, the willingness to accept the many gaps left by this fragmentation diminished. This was why general, supplementary administrative jurisdiction was created in the 1960s and 1970s. Although this filled the gaps (once again within certain limits), it left the existing jurisdictions intact.

The Administrative Decisions (Review) Act [Wet beroep administratieve beschikkingen] of 1963 still conferred jurisdiction on the Crown. However, the *Administrative Decisions Appeals Act* of 1975 gave jurisdiction to hear appeals to the Judicial Division of the Council of State, which was established at that time. Like the Administrative Decisions (Review) Act, the Administrative Decisions Appeals Act related only to individual administrative decisions ("beschikkingen"). From 1975 onwards it became customary in new statutes to take for granted the jurisdiction created under the Administrative Decisions Appeals Act by not making any special provision for judicial review.[4] As a result, the Judicial Division quickly evolved into the general administrative court for the Netherlands.

The General Administrative Law Act[5] entered into force on 1 January 1994. This statute regulates the law of administrative procedure and, to an increasing extent, substantive general administrative law. The system described at I has applied since then.

2. Does the review by the courts of administrative acts and actions aim to submit administrative authorities to law and protect individual rights, in other words to the rule of law? Alternatively, is it only a review of the good functioning of the administration?

The review by the courts of administrative acts and actions is intended to protect the rights of the appellants against the administration. The administrative authorities must comply with both

[4] This historical survey is taken from M. Schreuder-Vlasblom, "Rechtsbescherming en bestuurlijke voorprocedure" (Judicial review and administrative preprocedure)), Deventer, 2003, pp. 9-13.

[5] Hereinafter: **Awb**, Algemene wet bestuursrecht.

statute law and unwritten law. However, the review of the acts and actions of administrative authorities is not intended as a general review of the lawful functioning of the administration.

3. What is the definition of an administrative authority in your country? Does this definition include all public legal entities and private legal entities exercising public authority?

"Administrative authority" means (a) an organ of a legal person that has been established under public law or (e.g. the State, province, municipalities, water-board districts)(b) another person or body which is invested with any public authority (section 1:1, subsection 1 Awb).[6]

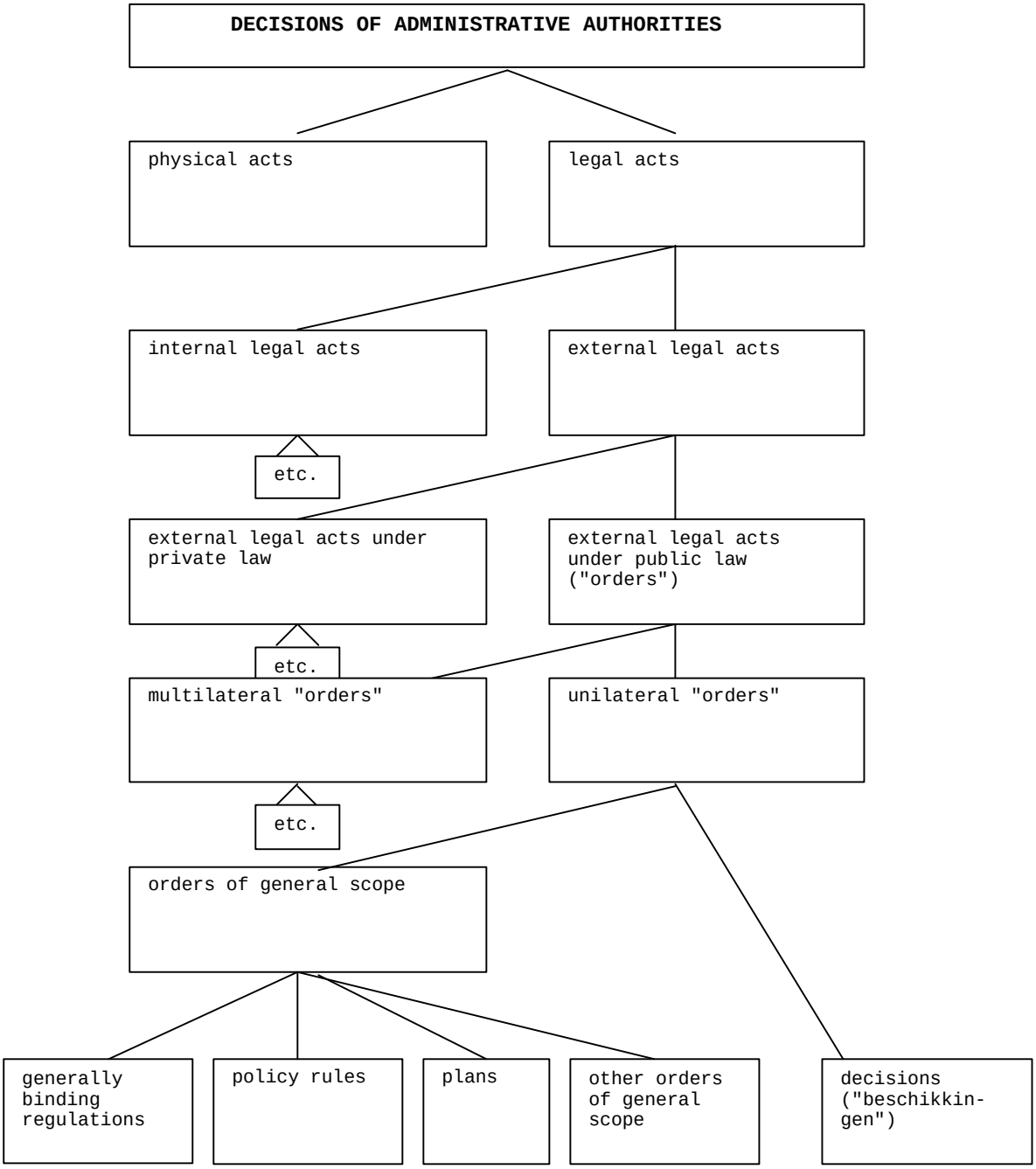
4. Is there a classification of administrative acts in your country? The usual classification identifies individual acts and general normative acts. It separates unilateral acts and contracts awarded by administrative authorities.

In Dutch law decisions of administrative authorities are classified in accordance with the following schedule.[7] Section 1:3 Awb defines

[6] Article 1:1
1. "Administrative authority" means:
(a) an organ of a legal entity which has been established under public law, or
(b) another person or body which is invested with any public authority.
2. The following authorities, persons and bodies are not deemed to be administrative authorities:
(a) the legislature;
(b) the First and Second Chambers and the Joint Session of the States General;
(c) independent authorities established by law and charged with the administration of justice, and the Council for the Judiciary;
(d) the Council of State and its divisions;
(e) the General Chamber of Audit;
(f) the National Ombudsman and Deputy Ombudsmen;
(g) the chairmen, members, registrars and secretaries of the authorities referred to at (b) to (f), the Procurator General, the Deputy Procurator General and the Advocates General to the Supreme Court, and committees composed of members of the authorities referred to at (b) to (f).
An authority, person or body excluded under subsection 2 is nonetheless deemed to be an administrative authority in so far as it makes orders or performs acts in relation to a public servant not appointed for life as referred to in 1 of the Central and Local Government Personnel Act, his surviving relatives or his successors in title.

[7] Van Wijk, "Hoofdstukken van bestuursrecht", The Hague, 2005, p. 153.

the different external legal acts under public law.[8]



[8] Article 1:3
1. "Order" means a written decision of an administrative authority constituting a public law act.
2. "Administrative decision" means an order which is not of a general nature, including rejection of an application for such an order.
3. "Application" means a request by an interested party for an order.
4. "Policy rule" means an order, not being a generally binding regulation, which lays down a general rule for weighing interests, determining facts or interpreting statutory regulations in the exercise of a power of an administrative authority.

Generally binding regulations: "lois au sans matériel" edicted by administrative authorities.

Policy rules: in French "circulaires".

Whether or not acts of administrative authorities can be challenged depends on their classification:

- decisions, plans and other orders of general scope can be challenged;
- generally binding regulations and policy rules cannot be challenged (section 8:2 Awb)[9];
- multilateral "orders" may be challenged only in accordance with the doctrine of "acte détachable".

I – WHO REVIEWS ADMINISTRATIVE ACTS?

I – What administrative authorities and administrative courts review decisions of administrative authorities?

The expression "administrative acts" may be understood in accordance with Recommendation R (2004) 20 of the Committee of Ministers to Member States on judicial review of administrative acts, that is to say: "legal acts – both individual and normative – and physical acts of the administration taken in the exercise of public authority which may affect the rights or interests of natural or legal persons; situations of refusal to act or an omission to do so in cases where the administrative authority is under an obligation to implement a procedure following a request". It is also possible to refer to Resolution R (77) 31 on the protection of the individual in relation to the acts of administrative authorities.

[9] Article 8:2
No appeal may be lodged against:
(a) an order containing a generally binding regulation or a policy rule,
(b) an order repealing or laying down the entry into force of a generally binding regulation or policy rule,
(c) an order approving an order, containing a generally binding regulation or a policy rule or repealing or laying down the entry into force of a generally binding regulation or a policy rule.

NB Although under "Recommendation R (2004) 20" "administrative acts" are, strictly speaking, taken to include physical acts of the administrative authority, I will confine my answers to "orders", i.e. legal acts (orders of general application or decisions in individual cases) under public law (section 1:3, subsection 1 Awb). An "order" includes a refusal or failure to make an "order" (section 6:2 Awb).[10] In the great majority of cases action can or will be taken against the administration only when there is an express "order".

Only the civil courts are competent to hear cases involving loss or damage caused by physical acts of the administration. Where loss or damage is caused by "orders", the administrative courts have had jurisdiction since the late 1990s as the result of several landmark judgments. For the time being, the civil courts also consider that they have jurisdiction.

Below I will set out the rules governing the law of administrative procedure as contained in the Awb. Occasionally I will also refer to provisions of specific statutes.

A – COMPETENT BODIES

A – Competent administrative authorities and administrative courts

5. Is the review of administrative acts undertaken by general bodies related to the administrative authorities, and similar to courts? [In the affirmative, please refer to questions 21 and 61].

The procedure starts with an objection which may (or must) be lodged with the administrative authority concerned. The "order" is then reconsidered in the light of the objection (section 7:11, subsection

[10] Article 6:2
For the purposes of statutory regulations governing objections and appeals, the following shall be equated with an order:
(a) a written refusal to make an order, and
(b) failure to make an order in due time.

1 Awb).[11] Where appropriate, the administrative authority may decide on the basis of the reconsideration to rescind the contested "order" and, in so far as necessary, make a new one replacing it (section 7:11, subsection 2 Awb).

In a limited number of cases no objection can be lodged, but application can be made to another "higher" administrative authority for review of the decision. Such an administrative authority has much the same options open to it as an authority hearing an objection.[12] [13]

An interested party may apply to an independent court for judicial review of the decision taken in pursuance of the of objection or the application for administrative review. See answer to question 6.

6. Could you describe the organization of the court system in your country, indicating which courts or tribunals are competent to hear disputes concerning acts of the administration? If possible, try to respect the pattern hereafter.

If all the courts are competent to review administrative acts, specify whether such review is reserved to specialized courts or tribunals for administrative disputes. If this review is assumed by several kinds of courts, present a basic chart of tribunals in charge of this control.

If judicial review of administrative acts and action is assumed by all courts, specify if it is reserved to highest courts or if it can be exerted by lower courts? In each

[11] Article 7:11
1. If the objection is admissible, the disputed order shall be reviewed on the basis thereof.
2. In so far as the review provides grounds for so doing, the administrative authority shall rescind the disputed order and, in so far as necessary, make a new order replacing it.

[12] Article 7:25
In so far as the appeals authority considers that the appeal is admissible and well-founded, it shall annul the disputed order and, in so far as necessary, make a new order replacing it.

[13] No objection or application for administrative review can be lodged in cases concerning spatial planning or environmental law. In these matters "orders" may be challenged when they are in their draft stage. The final "orders" may be attacked directly before the administrative courts.

situation, is the review assigned to specialized chambers for administrative affairs?

If review by the courts of administrative acts and action is assumed by administrative tribunals, describe the jurisdictional organization, indicating if this control is the exclusive competence of general administrative tribunals or whether it is assigned in part to specialized administrative tribunals competent to hear specific types of dispute (concerning, for example, pensions, taxes, immigration and nationality matters, employment).

If there is a constitutional court in your country, specify whether it is competent to review administrative acts and action.

At first instance

As a rule, the administrative law sectors of the 19 district courts are competent to hear disputes in all areas of administrative law (after completion of the objection and administrative review stages). However, there are two exceptions to this. The *Administrative Jurisdiction Division of the Council of State* [Afdeling bestuursrechtspraak van de Raad van State[14]] administers justice at first and sole instance in cases concerning spatial planning law and environmental law.[15] The CBB administers justice at first and sole instance in applications for the review of decisions of regulatory industrial organisations under public law. In addition, some statutes provide for a right to apply directly to the CBB for review of a decision.[16]

On appeal

Appellate jurisdiction is divided among a number of courts:
(a) tax cases: the courts of appeal, with the possibility of cassation by the HR;

[14] Hereinafter: **ABRvS**.

[15] In 1994 the Administrative Jurisdiction Division replaced the existing Administrative Disputes Division and the Judicial Division.

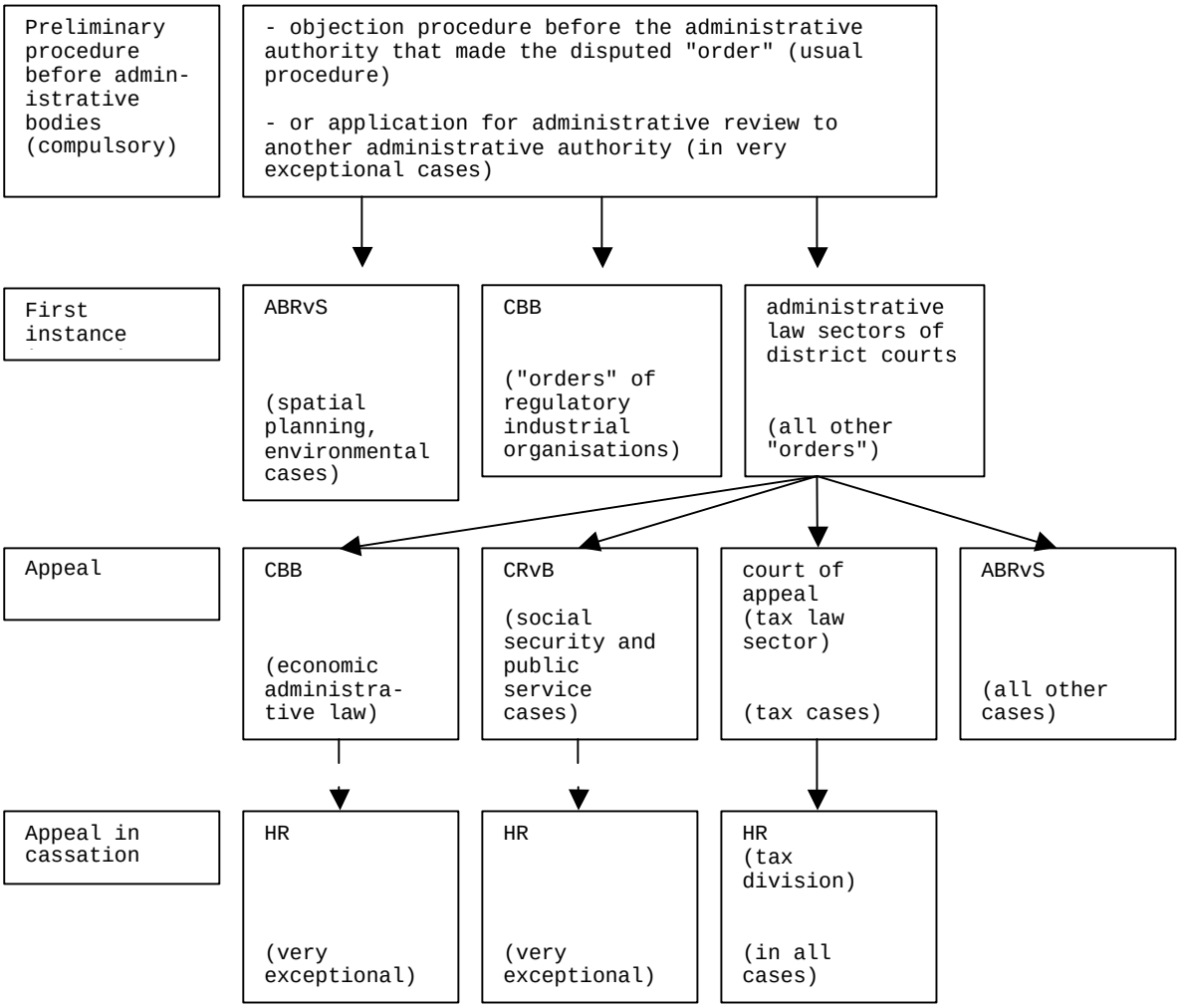
[16] The system of legal redress against administrative fines for traffic offences is disregarded here.

(b) social insurance cases and cases involving public servants: the CRvB;

(c) administrative law in economic cases: CBB;[17]

(d) other cases: ABRvS.

Administrative justice in the Netherlands:



[17] In exceptional cases in categories (b) and (c), appeal in cassation may lie to the Supreme Court, namely for the interpretation of terms that also play a role in tax law or civil law (e.g. "pay" and "employee").

B – RULES GOVERNING COMPETENT BODIES

7. If the review of administrative acts and action lies within the competence of the ordinary courts, is that competence delimited by texts (such as a Constitution, or parliamentary legislation) or by case law?

Some of the administrative courts referred to in the answer to question 6 are ordinary courts, namely the district courts (administrative law sector), the courts of appeal (tax division) and the HR (tax division). However, their power to review administrative acts is regulated in the specific statutes mentioned in the answer to question 8.

8. If the review of administrative acts is carried out by administrative courts or tribunals, are the existence, competence and duties of those courts or tribunals governed by specific rules? Are such rules set out in texts or in the case law?

The power of review is regulated in specific statutes such as the Awb, the State Taxes Act, the Council of State Act, the Social Security Appeals Act (the appellate jurisdiction of the CRvB), various statutes relating to administrative law in economic matters and the Administrative Jurisdiction (Trade and Industry) Act. Practically speaking, chapter 8 of the Awb is always applicable, the specific statutes contain only minor variances.

C – INTERNAL ORGANIZATION AND COMPOSITION OF COMPETENT BODIES

9. If judicial review is assumed by ordinary courts, describe their internal organization and specify if they comprise specialized chambers, and how these are composed.

Provisions governing the organisation of the *administrative law sectors of the district courts* are contained in the Judiciary

(Organisation) Act. These provisions deal with the staff of the courts, the court management boards and the decision-making procedure. Section 20 provides that a district court has four sectors: administrative law, civil law, limited jurisdiction and criminal law. The administrative law sector has three-judge and single-judge divisions. The courts of appeal have civil law, criminal law and tax law sectors. Here too there are three-judge and single-judge divisions.[18]

10. If judicial review is assumed by administrative courts, present their internal organization. Distinguish between the highest and the lower courts. Could you provide a chart or a diagram?

(a) *ABRvS*

The *ABRvS* has four chambers: spatial planning, the environment, general appeals and appeals in immigration and asylum cases. Cases may be heard either by a three-judge chamber or by a judge sitting alone. The ABRvS has a support staff of 190 lawyers (FTEs).

(b) The CBB has two sections, each of which has more or less the same jurisdiction. Cases may be heard either by a three-judge chamber or by a judge sitting alone. The CBB has a support staff of approximately 13 lawyers (FTEs).

(c) The CRvB has three sections, each of which consists of divisions. Each division deals with a particular type of case. Cases are heard by a three-judge chamber. The CRvB has a support staff of approximately 43 lawyers (FTEs).

[18] The requested information on this subject is not received yet from the tax division of the HR. This information will be send to you on a later moment.

D – JUDGES

11. Do the judges who review administrative acts belong to a specific category? Specify whether different categories of judges exist according to the various kinds of control of administrative authorities.

(a) The judges of the district courts and the justices of the courts of appeal and the HR are members of the ordinary judiciary. They may circulate among the different sectors of a court.

(b) The justices of the CRvB and the CBB are also members of the ordinary judiciary.

(c) The members of the ABRvS form a separate category, which can in turn be divided into two subgroups:

(i) approximately 25 State Councillors, who are full-timers and whose duties involve advising on both legislation and administering justice; they include a few non-lawyers, who may, however, not act as presiding judge of a chamber or sit alone to hear cases;

(ii) approximately 30 Extraordinary Councillors, who are part-timers (50, 60 or 80%) and all of whom are lawyers; generally they do not have a different permanent job.[19]

The two categories of State Councillor have the same rights.

12. How are judges in charge of judicial review of administrative authorities recruited?
Specify if this recruitment is made by regular or exceptional competitive examination, or by vocational selection?
Distinguish, if need be, between courts.

Judges of the district courts are selected by a committee for the recruitment of members of the judiciary; they are nominated by the

[19] With the exception of the presidents of the CRvB and the CBB and a member of the tax division of the HR, who do, on the other hand, not have a fixed part-time job with the ABRvS.

Court for life. As regards the training of these judges, see the answer to question 13.

Judges of the district courts can apply for the position of justice at the courts of appeal, the CRvB or the CBB. Generally speaking, only administrative judges are eligible for appointment to appellate administrative courts. By the same token, administrative judges without experience of civil or criminal law are not usually eligible for appointment as justices of a court of appeal. Hitherto, tax judges at the courts of appeal could not be recruited from the ranks of district court judges as the tax sectors at these district courts have only recently been instituted.

Not all of the justices of the CRvB and the Trade and the CBB are appointed from the district court judges; the others are lawyers who have previously held a different kind of job, for example in public administration or at a university.

The State Councillors also have a varied background. They include quite a lot of former professors as well as some former politicians, judges and civil servants and the occasional ex-attorney or ex-mayor. They are appointed by the Court for life.

13. What is the professional training of judges in general?

In general, there are two different courses: the first is a 6-year course for lawyers who do not have at least six years’ experience as a legal practitioner ("the RAIO course") and the second is a shorter course for lawyers who do have this experience ("the RIO course").

The 6-year course covers all aspects of court work, including that of the prosecutors. During the course the trainees also spend a one-year placement in a legal profession other than the judiciary. Trainees on the shorter course usually spend their placements in two sectors of the court in question. Trainees of both categories are supervised in presiding over court hearings and drafting judgments.

14. How is their career structure organized? Briefly describe the modes of promotion for length of service or merit.

Members of the judiciary are promoted only if they choose to apply for promotion and obtain the requisite qualifications. There are no senior judicial posts that carry a form of automatic promotion. Judges can be appointed as vice-president of a court. In general there is one vice-president who is responsible for managerial and organisational duties and another who is responsible for duties of a more legally substantive nature.

15. How is their professional mobility organized? Do judges move from court to court? Is it possible for a member of the judiciary to take up a position in the public administration?

There is no established policy of professional mobility. Some judges remain a permanent member of "their" court and others switch to another court (whether or not higher) court within the ordinary court system;[20] some members of the judiciary also switch from the ordinary courts to an administrative court or vice versa. There are no fixed career patterns in the Dutch system.

E – ROLE OF COMPETENT BODIES

16. What are the different kinds of recourse against administrative acts and action in your country?

Specify if the judge can overrule the act, modify it, cancel a contract awarded by an administrative authority and a private person. Indicate if he can also award damages to a claimant who has suffered harm as a consequence of an act of the administration (a fault committed by the body).

You may wish to use the following classifications. This classification is usually based on the distinction between

[20] District courts, courts of appeal and the HR.

review of the lawfulness of an act ("contrôle de légalité") and full review.

The review of lawfulness means the court may annul an administrative act or simply declare what the law is, or the rights of the respective parties (this aims to determine the nature, validity and scope of an act). We can distinguish the review of the lawfulness of unilateral acts and the review of the legality of contractual acts.

Full review entails the power not only to annul the act, but also to award damages for harmful administrative acts or actions, and the reworking of an administrative decision. It is now possible to add the power to order the administrative authorities to do or not to do something.

On the question of damages, that is to say public authority liability, it is possible to distinguish between extra-contractual liability and contractual liability.

(a) Application to the administrative courts is in principle an application for annulment. Its purpose is to obtain the full or partial annulment of an "order" of an administrative authority. If an "order" is annulled on a procedural ground, the administrative authority will generally have to make a new one.[21] If the "order" is annulled on a substantive ground, there are basically two alternatives:[22]

---

[21] If it is a procedural defect which is not to the detriment of any interested party, the administrative judge may himself rectify the defect (section 6:22 AWB).

Article 6:22
An order against which an objection has been made or an appeal has been lodged may be upheld by the authority deciding on the objection or appeal, despite an infringement of a procedural rule, if it is found that the infringement has not prejudiced the interests of the interested parties.

[22] Article 8:72
1. If the district court rules the appeal well-founded, it shall annul all or part of the disputed order.
2. If an order or part of an order is annulled, the legal consequences of the order or the annulled part thereof shall be void.
3. The district court may determine that all or part of the legal consequences of the annulled order or the annulled part thereof shall be allowed to stand.
4. If the district court rules the appeal well-founded, it may direct the administrative authority to make a new order or to perform another act in accordance with its judgment, or it may determine that its judgment shall take the place of the annulled order or the annulled part thereof.

(1) the administrative authority still has some latitude to make a substantially new "order"; in such a case, the administrative court simply quashes the existing one;[23]

(2) there is no longer any latitude since it is clear what the new "order" must be; in such a case, the court itself makes the new "order" to replace the one it has annulled.[24]

The final decision in cases involving damages, administrative fines and tax cases is generally taken by the court itself.

(b) In all cases the administrative court reviews all aspects of the contested "order" to determine its legality (i.e. lack of competence or breach of statute law or unwritten law). In so far as the statute allows the administration latitude to decide, the administrative court merely checks that this power has not been exercised in a manifestly unreasonable manner.

(c) The relationship between the appeal court and the court of first instance can be disregarded. It should, however, be noted that an appeal generally involves all aspects of the judgment (i.e. issues of fact and law). Only in immigration and asylum appeals is the scope of review by the court severely restricted.

17. Do mechanisms exist for the delivery of a preliminary ruling? (Apart from the procedure under Article 234 of the Treaty establishing the European Community.) In such a

---

5. The district court may set the administrative authority a time limit for issuing a new order or performing another act.
6. The district court may determine that a provisional remedy shall cease to have effect at a later time than the time of judgment.
7. The district court may determine that, as long as the administrative authority does not comply with a judgment, an astreinte to be fixed in the judgment shall be payable by the legal entity designated by the district court to a party designated by the district court. Articles 611a to 611i of the Code of Civil Procedure shall apply *mutatis mutandis*.

[23] An administrative court may set the administration a time-limit for this purpose, if necessary supported by a penalty payment for failure to comply. See section 8:72, subsections 5 and 7, Awb.

[24] To this extent the Netherlands has a mixed form of "recours en annulation" and "plein recours"; it is sometimes qualified as "recour en annulation enrichi".

mechanism, many bodies (ordinary jurisdiction, financial jurisdiction, constitutional court or non-jurisdictional body) determine the nature, validity and scope of an act.

No.

18. Does a competent body have only judicial functions or does it also have an advisory role vis-à-vis the executive or the legislature? In the affirmative, specify the various aspects of these consultative functions, and if they are exclusive to the body or the highest jurisdiction.

Only the Council of State has a role in addition to its judicial function. This additional role involves providing advice to the legislator on statutes and to the Crown on orders in council (article 73, paragraph 1 of the Constitution).

The Council of State has to advise on the following "legislative" matters:

- parliamentary bills ("projets de loi");
- draft orders in council;[25]
- bills proposed by members of the House of Representatives ("propositions de loi";
- ratification of treaties;
- expropriation orders (but not on the amount of compensation).

In addition, the Council of State or one of its divisions *may* be heard on such matters as the government considers necessary. Examples are government policy documents, government positions, amendments to legislation and also the national budget (section 15a of the Council of State Act).

[25] This also applies to draft "Kingdom statutes" and "Kingdom orders in council", i.e. legislation which, put simply, applies not only to the Netherlands in Europe but also to the Caribbean parts of the Kingdom (the Netherlands Antilles and Aruba).

19. Where the body plays both a judicial and an advisory role, how are its respective duties organised?

Specify if a body can successively deal with a case in both its consultative and judicial capacity. In this case, is it a normal practice, and do mechanisms exist to make sure members of this body cannot serve in both a judicial and an advisory capacity at the same time?

Specify if the question of the compatibility of such double functions (consultative and judicial) with the right to a fair hearing has ever been raised before a national court or before the European Court of Human Rights.

All ordinary State Councillors sit both on the full Council (consultative function) and in the ABRvS. A State Councillor who has been involved in giving an opinion on the lawfulness or constitutionality of a statute or order in council may not subsequently sit as a member of the ABRvS to try a case in which this same matter is raised afresh.[26] Although the Council of State Act does not yet contain a specific provision to this effect, this is established practice. In fact, "same case" situations of this kind are extremely uncommon.

As the Administrative Jurisdiction Division consists not only of ordinary State Councillors (who also advise on legislation) but also of Extraordinary State Councillors (who act only in a judicial capacity), a chamber can always be formed which is "Procola & Kleyn-proof".

F – ALLOCATION OF DUTIES AND RELATIONSHIP BETWEEN COMPETENT BODIES

20. Do the highest appeal courts have an instrument or a procedure to ensure the harmonised and uniform application and interpretation of law?

Specify whether it is possible for the highest appeal courts to resolve divergences in the case law as between the various

[26] See the judgments in the cases of Procola (arrest no. 14570/89; ECtHR A326) and Kleyn and others (arrest no. 39343/98, 39651/98, 43147/98, 46664/99; ECtHR 2003-VI).

lower courts. Indicate the appropriate proceedings. Are there any proceedings analogous to the French "avis contentieux"? (a reference to the Conseil d'Etat may, in certain circumstances, be made by an administrative tribunal (first instance) or an administrative court of appeal for an opinion).

The first form of harmonisation and cooperation between the highest appeal courts in the field of administrative law is the informal consultation that takes place in various forums established for this purpose (of the external presidents' consultations) consisting of the President of the ABRvS, the Presidents of the CBB and the CRvB and the Vice-Presidents of the civil law and tax divisions of the Supreme Court. At staff level there is consultation between the liaison officers.

In 2004 the government announced the introduction of a bill to establish an *Administrative Law (Uniform Application) Chamber* spanning the ABRvS, the CBB and the CRvB. A chamber of this kind would make it possible, where necessary, to give well-publicised guiding judgments on general questions of administrative law and administrative procedure.

In practice, the highest administrative courts have proved well able to prevent major divergences in the case law.

II – HOW ARE ADMINISTRATIVE ACTS AND ACTIONS REVIEWED BY THE COURTS?

A. ACCESS TO JUSTICE

21. How significant are the pre-conditions for access to the courts in your system of control of administrative authorities? [This question supplements questions 5 and 61]

Specify if the obtaining of a prior administrative act or/and the introduction of a prior recourse to administrative authorities constitute preconditions for review by the courts.

Indicate if these preconditions are required in every kind of litigation or only in certain types of dispute.

This possibility is provided for by the Recommendation R (2004) 20, which indicates that natural and legal persons may be required to exhaust remedies provided by national law before having recourse to judicial review. The length of the procedure for seeking such remedies should not be excessive (art. B.2.b).

See the answer to question 5.

22. Who may bring a case before the court (natural persons, legal entities such as associations, companies, etc., local authorities or other administrative bodies or authorities)?

State whether it is possible in your country for there to be proceedings for judicial review in which both the applicant and the defendant are "collectivités infra-étatiques".

Every interested party may lodge an application for review or appeal to an administrative court. An interested party is a person whose interests are directly affected by an "order" (section 1:2, subsection 1 AWB).[27] According to the case law such a person must have an:

- own
- objectively definable
- current
- personal interest
- and be directly affected

by the contested "order".

This is broader than the German case law but narrower than the French.

[27] Article 1:2
1. "Interested party" means a person whose interest is directly affected by an order.
2. As regards administrative authorities, the interests entrusted to them are deemed to be their interests.
3. As regards legal entities, their interests are deemed to include the general and collective interests which they particularly represent in accordance with their objects and as evidenced by their actual activities.

An interested party may be either a natural or a legal person. Administrative authorities too may qualify as interested parties (section 1:2, subsection 2 Awb). The interests entrusted to them are deemed to be their own interests. General and collective interests may only be defended by legal entities (section 1:2, subsection 3 Awb).

It is quite possible in administrative law proceedings for both the applicant and the respondent to be part of the administration.

> 23. For every situation, specify the conditions that must be satisfied in order for an application for judicial review to be admissible.
>
> Do persons or bodies that want to challenge an administrative act or operation have to demonstrate an interest in the annulment of this act, that they have a particular interest in this annulment? Do they have to prove that one of their rights has been infringed?
>
> It is possible to refer to Recommendation R (2004) 20, article B, 2°): "Judicial review should be available at least to natural and legal persons in respect of administrative acts that directly affect their rights or interests. Member states are encouraged to examine whether access to judicial review should not also be available to associations or other persons and bodies empowered to protect collective or community interests".

Before the substance of an application for review or appeal can be assessed by an administrative court, the requirements for admissibility must have been satisfied. For example:

- the application for review or appeal must have been lodged in good time (section 6:7 and section 6:24, subsection 1 Awb);[28] [29]

[28] Article 6:7
The time limit for submitting a notice of objection or appeal shall be six weeks.

[29] Article 6:24
1. With the exception of article 6:12, this division shall apply *mutatis mutandis* if an appeal to a higher court or an appeal in cassation may be lodged.
2. Notwithstanding article 6:4, an appeal in cassation shall be instituted by submitting a notice of appeal with the court against whose judgment the appeal is brought.

- the court registry fee must have been paid (section 8:41, subsection 1 Awb in the case of review and the provisions of specific statutes in the case of review and appeal);[30]
- the notice of appeal must contain (a) a description of the decision or judgment that is challenged by the application for review or appeal respectively and (b) the grounds for the application for review or appeal (section 6:5, subsection 1, opening words and (c) and (d) and section 6:24, subsection 1 Awb).[31]

[30] Article 8:41
1. A registry fee shall be levied by the registrar on the submittant of the notice of appeal. In the case of a notice of appeal concerning two or more related orders, or is submitted by two or more submittants against the same order, one registry fee shall be payable. In this case the registry fee shall be the highest amount due under subsection 3 for one of the orders or from one of the submittants respectively.
2. The registrar shall inform the submittant of the notice of appeal that the registry fee is payable and inform him that the amount due must be credited to the account of the district court or paid to the registry within four weeks of the date on which the communication is sent. If the amount has not been credited or paid within this period, the appeal shall be ruled inadmissible, unless the submittant cannot reasonably be held to have been in default.
3. The registry fee shall be:
(a) EUR 37 if the appeal has been lodged by a natural person against:
(1°) an order made under a statutory regulation included in parts B and C, 1 to 25 and 29 of the Schedule to the Appeals Act,
(2°) an order regarding unemployment or sickness benefit made in respect of a public servant as such as referred to in article 1 of the Central and Local Government Personnel Act, or a conscript as such as referred to in article 1 (b) of the Conscripts (Legal Status) Act, their surviving relatives or their successors-in-title, or
(3°) an order regarding benefit for permanent disability under a statutory regulation under which the natural person is insured for a state disability pension in respect of his disability, or an order made under article P9 of the Public Servants' Superannuation Act,
(4°) an order made under the Rent Rebate Act,
(b) EUR 138 if the appeal has been lodged by a natural person against an order other than an order as referred to at (a), unless provided otherwise by act of Parliament, and
(c) EUR 276 if the appeal has been lodged by another than a natural person.
4. If the appeal is withdrawn because the administrative authority has wholly or partly satisfied the wishes of the submittant of the notice of appeal, the legal entity in question shall reimburse him the registry fee paid by him. In other cases where the appeal is withdrawn the legal entity in question may reimburse him all or part of the registry fee.
5. The amounts referred to in subsection 3 may be altered by order in council in so far as this is warranted by the cost-of-living index.

[31] Article 6:5
1. The notice of objection or appeal shall be signed and shall contain at least:
(a) the name and the address of the submittant;
(b) the date;
(c) a description of the order against which the objection or appeal is addressed;
(d) the grounds for the objection or appeal.
2. A copy of the order to which the dispute relates shall be submitted with the notice of appeal if possible.
3. If the notice of objection or appeal is in a foreign language and a translation is necessary for the objection or appeal to be properly dealt with, the submittant

The admissibility requirements are the same for all categories of applicants.

If an admissibility requirement (other than submission within the time-limit) has not been fulfilled the applicant must be given the opportunity to rectify the default. If he fails to do so or to do so in time, the application for review or appeal can be declared inadmissible.[32]

If a time limit is not observed, the application will not be declared inadmissible if the applicant cannot reasonably be held to have been in default (section 6:11 and section 6:24, subsection 1 AWB).[33]

For an application to be admissible, the contested "order" must directly affect the interested party. Only a person whose interests are directly affected by an "order" qualifies as an interested party. See the answer to question 22.

24. Is recourse to the courts subject to time-limits?

Specify whether it is obligatory for claimants to be informed of these time-limits, and whether the court may grant an extension of the time-limits. Specify the various rules and technical points regarding time-limits for bringing proceedings: general time-limits (explicit, implicit), specific time-limits (according to the nature of the proceedings, or to the distances involved) and the method for calculating time-limits.

---

shall arrange for a translation.

I.e. the one who submits the notice of objection or appeal. The words "petitioner" and "applicant" cannot be used as these words have a specific meaning in this act of Parliament.

[32] Article 6:6
If article 6:5 or any other requirement laid down by act of Parliament for the objection or appeal to be considered has not been complied with, the objection or appeal may be ruled inadmissible, provided the submittant has had the opportunity to remedy the omission within a time limit set for this purpose.

[33] Article 6:11
A notice of objection or appeal submitted after the end of the time limit shall not be ruled inadmissible on this ground if it cannot reasonably be held that the submittant was in default.

The period of time allowed for the initiation of judicial review proceedings must be reasonable (Recommendation R (2004) 20, art. B. 2. c). Try to specify how this period of time is calculated: from the date of the administrative act, the date of its notification …?

The usual time-limit for submission of an application for review or appeal is six weeks after notification of the "order" (section 6:7 Awb) or the judgment (section 6:7 and section 6:24, subsection 1 Awb). An "order" of an administrative authority and a judgment of an administrative court always contain an explanation of the remedies available and the relevant time-limits (sections 3:45 and 8:77, subsection 1, opening words and (f) Awb).[34] [35]

This time-limit cannot be extended. However, a "pro forma application" is possible: after an application for review or appeal has been lodged on grounds to be stated later, the court specifies a period within such grounds must be lodged.

Specific statutes may apply a period other than six weeks, for example, two or four weeks. But these are exceptions.

If an "order" is challenged on the ground that it has not been made in time ("administrative silence"), the objection or application for review is not subject to a time-limit (section 6:12, subsection 1

[34] Article 3:45
1. If an objection may be made or an appeal may be lodged against an order, this shall be stated when notifying and giving communication of the order.
2. At the same time it shall be stated by whom, within what time limit and with which authority an objection may be made or an appeal may be lodged.

[35] Article 8:77
1. The written judgment shall state:
(a) the names of the parties and their representatives or legal representatives,
(b) the grounds for the decision,
(c) the decision,
(d) the name or names of the judge or judges hearing the case,
(e) the date on which the decision was delivered,
(f) who is entitled to a remedy, within what time limit and to which administrative district court.
2. If the district court rules the appeal well-founded, the judgment shall state what written or unwritten rule of law or general principle of law is considered to have been infringed.
3. The judgment shall be signed by the presiding judge of the three-judge section and the registrar. If the presiding judge or registrar is unable to sign it, this shall be stated in the judgment.

Awb).[36] However, the objection or application for review is declared inadmissible if it has been lodged unreasonably late (section 6:12, subsection 3 Awb).

25. Are there certain administrative acts or actions that are not open to review by the courts?
Specify whether certain acts or actions are not open to review by the courts because they are regarded as too unimportant, or, on the contrary, because they are regarded as being too "sensitive" [links with high administration or politics].

No application for review may be lodged against (a) "orders" containing a generally binding regulation or a policy rule (section 8:2 Awb); (b) an "order" preparing a legal act under private law (section 8:3 Awb);[37] (c) an "order" belonging to any of the varied categories specified in section 8:4 Awb;[38] (d) any "order" on the

[36] Article 6:12
1. If the notice of objection or appeal is brought against failure to make an order in due time it shall not be subject to any time limit.
2. A notice of objection or appeal may be submitted at such time as the administrative authority fails to make an order in due time.
3. The objection or appeal shall be ruled inadmissible if the notice of objection or appeal is submitted unreasonably late.

[37] Article 8:3
No appeal may be lodged against an order in preparation of a legal act under private law.

[38] Article 8:4
No appeal may be lodged against an order:
(a) suspending or annulling an order of another administrative authority,
(b) based on a power conferred, or obligation imposed, under any statutory regulation in case of exceptional circumstances, made in these circumstances,
(c) made on the basis of a statutory regulation designed to protect the military interests of the Kingdom or its allies,
(d) appointing a person, unless an appeal is lodged by a public servant as such as referred to in article 1 of the Central and Local Government Personnel Act, or a conscript as such as referred to in article 1, (b) of the Conscripts (Legal Status) Act, their surviving relatives or their successors-in-title,
(e) assessing the knowledge or ability of a candidate or pupil examined on the matter or tested in any other way, or laying down tasks, assessment standards or rules for such examination or testing,
(f) a technical assessment of a vehicle or aircraft, or a measuring device, part thereof or auxiliary device therefore,
(g) made under a statutory regulation concerning taxation or the levying of a contribution, or tax replacing a contribution, under the National Insurance (Financing) Act,
(h) on the numbering of lists of candidates, the validity of electoral alliances, the voting procedure, the counting of votes and the establishment of results in elections of members of representative bodies, and the declaration of election to vacant seats, or
(i) made on the basis of a statutory regulation concerning compulsory military service, in so far as medical examination, re-examination, drafting, actual

"negative list" referred to in section 8:5 Awb.[39] This list consists mainly of "orders" which are closely connected with other irrevocable "orders" against which a separate right of review would result in unnecessary proceedings, and various "orders" in respect of which the possibility of review was not considered expedient for political or other reasons.

The Dutch administrative law knows no such a thing as a "théorie de l'acte de gouvernement" ("political question theory").

26. Are applications for review by the courts subject to screening procedures? Distinguish between first instance, appeal, and highest jurisdiction.

If the answer is in the affirmative, specify the nature of that procedure (whether it is an admission procedure or an accelerated processing procedure), the steps in that procedure (in particular, whether or not a hearing is involved), the form of that procedure (in particular, whether it is in the hands of a single judge or whether several judges are involved), whether it is necessary to state the full grounds for the application or merely a brief statement of the reasons, the average length of time within which the application must either be refused or allowed to proceed, and whether the question of the compatibility of that procedure with European and international conventions has been examined by the national courts or by the European Court of Human Rights.

Applications for judicial review and appeal are not subject to separate screening procedures.

27. How must the application be presented? Are there specific forms or is the applicant free to choose the format?

---

service, long furlough or discharge is concerned, unless the order relates to voluntary enlistment, extension of actual service or breadwinner's allowance, or the order was made on the basis of the Armed Forces (Reserves) Act 1985.

[39] Article 8:5
No appeal may be lodged against an order made on the basis of a statutory regulation listed in the schedule to this act.

An application for review or appeal does not have to fulfil specific presentation requirements. In practice, it may even be lodged by fax.

28. Has the possibility of bringing proceedings via the Internet been envisaged in your country or is it already possible? Are there reflections or plans for the introduction of tele-procedures or e-procedures (e-registry office)?

This is not yet provided for by law. However, the administrative law sector of the District Court of Zwolle has started a pilot "digital litigation" project.

29. Is there a pecuniary charge for lodging an application for judicial review (in the form of stamp duty, tax, or registry fees)?

With a few exceptions, a registry fee is charged for lodging an application for judicial review or appeal. For example, the charge for an application lodged by a natural person with the ABRvS is € 138 in the case of review or € 207 in the case of appeal. If the application is lodged by a legal person, the charges are doubled.

30. Is recourse to a solicitor/lawyer or counsel compulsory? Specify whether the assistance of a solicitor/lawyer or a barrister/advocate is compulsory or facultative? Is there any difference between the position in practice and the legal position, strictly speaking? Is the situation different according to the seniority of the court (highest court or lower ones)?

The assistance of legal counsel or an advocate is not compulsory, but is fairly common in practice. This makes little difference to the processing of the application.[40]

[40] The requested information on this subject is not received yet from the tax division of the HR. This information will be send to you on a later moment.

31. As regards the costs of the proceedings, can they be paid through legal aid? Specify conditions for access to legal aid, in particular, whether access depends on the applicant's financial resources. Is this aid granted by the court or by an independent body? Can a refusal to grant legal aid be challenged before the courts?

An interested party may be assigned legal counsel or an advocate under the legal aid system if he or she is unable to pay the costs of administrative law proceedings. Income and capital tests are applied. An assignment is usually issued, on request, by one of the five independent Legal Aid Councils. In a few cases regulated by statute, counsel may be assigned under the legal aid system by a court. A person refused an assignment may challenge the decision before the administrative courts.

32. Is there a fine for abusive or unjustified applications?

No.

B. MAIN TRIAL

33. Which fundamental principles govern the main trial hearing? The right to inter partes proceedings, the rights of the defence/the right to a fair hearing, the balance of written and oral elements in the proceedings. Do these principles derive from national law (legislation or/and case law) or European law (Convention for the Protection of Human Rights and Fundamental Freedoms for example) or both?

The Recommendation of 2004 indicates that the proceedings should be adversarial in nature, public other than in exceptional circumstances, that the judgment should be pronounced in public, and give the grounds on which it is based. The equality of arms between the parties of the proceedings should be also respected.

The main trial hearing is governed by the fundamental principle that both parties should be heard ("audi alteram partem"). This derives from sections 8:42 and 8:43 Awb.[41] [42] Section 8:42 provides that an administrative authority may lodge a defence to the application for judicial review. Section 8:43 makes provision for the submission of a written reply and rejoinder. In addition, each of the parties may also address the court at the hearing. It should be noted that the basic principle is that each case should be dealt with orally at a hearing. Under section 8:54 Awb, judgment *can* be given without a hearing only if the district court *manifestly* lacks jurisdiction or the application for judicial review is *manifestly* inadmissible, *manifestly* unfounded or *manifestly* well-founded.[43] This provision is applicable *mutatis mutandis* on appeal.[44] In practice, the hearing is of great importance. These statutory provisions also give effect to the principle of "equality of arms".

The hearing is held in public (section 8:62, subsection 1 Awb).[45] However, the district court may determine that the court hearing

---

[41] Article 8:42
1. Within four weeks of the date on which the notice of appeal is sent to the administrative authority the latter shall send the documents relating to the case to the district court and lodge a defence.
2. The district court may extend the time limit referred to in subsection 1.

[42] Article 8:43
1. The district court may give the submittant of the notice of appeal the opportunity to submit a written reply, in which case the administrative authority shall be given the opportunity to submit a written rejoinder. The district court shall fix the time limits for reply and rejoinder.
2. The district court shall give parties other than those referred to in subsection 1 the opportunity at least once to state their views on the case in writing, for which it shall set a time limit.

[43] Article 8:54
1. Until the parties have been invited to appear in court, the district court may close the inquiry if continuation thereof is not necessary because:
(a) the district court manifestly lacks jurisdiction,
(b) the appeal is manifestly inadmissible,
(c) the appeal is manifestly unfounded, or
(d) the appeal is manifestly well-founded.
2. If judgment is given with application of subsection 1, the attention of the parties shall be drawn to article 8:55, subsection 1.

[44] The situation is different only on appeal in immigration and asylum cases. Section 8:54, subsection 2 Awb and section 8:55 Awb shall not apply (section 88, subsection 1 Aliens Act 2000).

[45] Article 8:62
1. The hearing shall be held in public.
2. The district court may determine that the hearing shall take place wholly or partly behind closed doors:
(a) in the interests of public order or public morality,

will be held wholly or partly in camera in the interests of public order or morals, in the interests of State security, in the interests of safeguarding the interests of minors or protecting the privacy of the parties or if a public hearing would seriously prejudice the proper administration of justice (section 8:62, subsection 2 Awb). The judgment is given in writing (section 8:66, subsection 1 Awb) and in open court, and states the grounds for the decision (section 8:77, subsection 1, opening words and (b) Awb).[46] If the judgment finds that the application for review is well-founded, it states what written or unwritten rule of law or general principle of law is considered to have been infringed (section 8:77, subsection 2 Awb).

With the exception of the subject-matter of question 34, the influence of article 6 of the European Convention on Human Rights is reflected above all in the abolition in 1994 of appeal to the Crown (see above, question 1)[47] and the broader scope for parties to comment on reports prepared by experts appointed by the court.[48] The cassation procedure in tax cases is the only procedure before an administrative court in which an advocate general submits an opinion before the court gives judgment. Nowadays parties have been given the opportunity to comment on this opinion before the HR gives judgment.[49]

34. How is judicial impartiality ensured in your country?

(b) in the interests of State security,
(c) if this is necessary to safeguard the interests of minors or protect the privacy of the parties,
(d) if a public hearing would seriously prejudice the proper administration of justice.

[46] Article 8:66
1. Unless judgment is given orally, the district court shall give judgment in writing within six weeks of closing the hearing.
2. In special circumstances the district court may extend this time limit for a maximum of six weeks.
3. The parties shall be informed of such extension.

[47] As a consequence of the judgment in the Benthem case (no. 8848/80; ECtHR A97).

[48] Cf ECtHR 18 March 1997 (Mantovanelli).

[49] Cf ECtHR 30 October 1991 (Bergers), 20 February 1996 (Vermeulen) and 7 June 2001 (Kress).

Many recommendations of the Council of Europe exist on this subject, in addition to the Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the Court of Human Rights (for example Recommendation R (94) 12.

The principle is that judicial review should be exercised by a court established by law, the independence and impartiality of which are guaranteed (Recommendation R (2004) 20). Specify causes, reasons, conditions and procedures to prevent a judge from hearing a case where his impartiality is contested.

The independence of the judiciary is guaranteed by article 117 of the Constitution.[50] A crucial factor is that all judges are appointed for life. Members of the judiciary are "promoted" not by the government but by an independent Council for the Judiciary. Also appointed for life are the ordinary and extraordinary State Councillors and members of the ABRvS (sections 3 and 4 of the Council of State Act).

Judicial impartiality is also guaranteed by the following sections of the Awb. If there are facts or circumstances that could prejudice his impartiality any judge may recuse himself from hearing the case (section 8:19, subsection 1 Awb).[51] Section 8:15 AWB provides that on the grounds of these facts or circumstances a party may request the disqualification of any of the judges hearing a case. [52] [53] A judge

[50] Article 117
1. Members of the judiciary responsible for the administration of justice and the Procurator General at the Supreme Court shall be appointed for life by Royal Decree.
2. Such persons shall cease to hold office on resignation or on attaining an age to be determined bij Act of Parliament.
3. In cases laid down by Act of Parliament such persons may be suspended or dismissed by a court that is part of the judiciary and designated by Act of Parliament.
4. Their legal stutus shall in other respects be regulated by Act of Parliament

[51] Article 8:19
1. Any of the judges dealing with a case may ask to be excused from dealing with it on the ground of facts or circumstances as referred to in article 8:15.
2. The request shall be in writing, stating the reasons. After the start of the hearing, or after the start of the hearing of parties or witnesses in the preliminary inquiry, the request may also be made orally.
3. If the request is made in court, the hearing shall be adjourned.

[52] Article 8:15
At the request of a party, any of the judges dealing with a case may be challenged on the ground of facts or circumstances which could prejudice the judicial

whose disqualification has been requested may acquiesce in the disqualification (section 8:17 Awb).[54] Otherwise the disqualification request must be heard by a disqualification panel (section 8:18 Awb).[55]

Finally, state councillors are subject to the rule (not yet enacted) that a person who has helped to draft an opinion on the constitutionality or legality of a statutory provision may not sit as a member of the ABRvS trying the "same case". See above at question 19.

35. After the application has been lodged, can the applicant rely on legal arguments raised for the first time in the course of the proceedings? Distinguish, if need be, between the levels of jurisdictions (first instance, appeal, highest jurisdiction).

Legal arguments that have not been included in the notice of objection or the application for administrative review may be raised in the application for judicial review. New legal grounds may also

---

impartiality.

[53] Article 8:16
1. The request shall be made as soon as the facts or circumstances become known to the petitioner.
2. The request shall be made in writing, stating the grounds. After the start of the hearing, or after the start of the hearing of parties or witnesses in the preliminary inquiry, the request may also be made orally.
3. All the facts and circumstances must be presented together.
4. A subsequent challenge to the same judge shall not be dealt with unless facts or circumstances are adduced which did not become known to the petitioner until after the previous request.
5. If the request is made in court, the hearing shall be adjourned.

[54] Article 8:17
A judge who has been challenged may acquiesce in the challenge.

[55] Article 8:18
1. The challenge shall be dealt with as soon as possible by a three-judge section of which the judge who has been challenged is not a member.
2. The petitioner and the judge who has been challenged shall be given the opportunity to be heard. The district court may determine, on its own initiative or at the request of the petitioner or the judge who has been challenged, that they will not be heard in each other's presence.
3. The district court shall decide as soon as possible. The decision shall state the reasons and shall be communicated without delay to the petitioner, the other parties and the judge who has been challenged.
4. In the event of abuse, the district court may order that no subsequent requests shall be dealt with. This shall be stated in the decision.
5. The decision is final.

be raised on appeal. This right is subject to two limits: (a) the arguments must relate to a part of the "order" that was previously disputed (this can be inferred from section 6:13 Awb),[56] and (b) a new argument may not be raised at the hearing or at an unreasonably late date prior to the hearing. The courts have ruled that this would be contrary to the rules of good procedure.

36. Which other persons can intervene during the main hearing?

During the main hearing the "parties" may address the court. They can also lodge written documents. The "parties" are in any event the applicant or applicants and the administrative authority[57] whose "order" is the subject of the application. If the applicant is challenging an "order" addressed to a third party (e.g. a permit holder or person awarded a grant), the third party is also party to the proceedings. Other interested parties who have lodged an objection at an earlier stage or have applied for judicial review are also heard as a party at their request.[58]

Witnesses and experts can also play a role. And the court may appoint interpreters (section 8:60, subsection 1 Awb).[59]

---

[56] Article 6:13
No appeal may be lodged against an order made in respect of an objection or administrative appeal by the interested party if he may reasonably be considered at fault in not having made an objection or lodged an administrative appeal against the original order.

[57] In the Dutch law of administrative procedure only "administrative authorities" are parties for the administration, not the legal person to which they belong (state, municipality, etc.).

[58] Article 8:26
1. Until the end of the hearing the district court may allow interested parties to be joined as parties in the proceedings on its own initiative, at the request of a party or at their own request.
2. If the district court suspects that there are unknown interested parties, it may announce in the Government Gazette that a case is pending before it. The announcement may also be made by other means in addition to the announcement in the Government Gazette.

[59] Article 8:60
1. The district court may summon witnesses and appoint experts and interpreters.
2. A witness who has been summoned, or an expert or interpreter who has accepted his appointment and been summoned by the district court, shall comply with the summons. Articles 198 and 204 of the Code of Civil Procedure shall apply *mutatis mutandis*. The summons to the expert shall specify the assignment to be carried out, the time and place at which it is to be carried out and the consequences of non-appearance.

37. Is there a representative of the State ("ministère public") who may submit pleadings in cases concerning administrative law?

No.

38. Is there, in your legal system, an institution or a person who plays a role analogous to that of role played by the French "commissaire du gouvernement" before the Conseil d'Etat, that is to say, who is completely independent and impartial and who delivers an opinion in open court, analysing the legal arguments and suggesting how the case ought properly to be disposed of in a case?

The position of advocate general exists only at the HR, e.g. in its tax division. This official is independent and impartial and gives a legal opinion after analysing the legal arguments. See also the answer to question 33.

39. How can proceedings come to an end before a decision is reached by the Court? Specify the reasons why the proceedings could come to an end prematurely, such as the death of the applicant or withdrawal of the application?

Proceedings can end prematurely if the application for judicial review or appeal is withdrawn before the court has given judgment. The death of a party may, but need not, signify the end of the proceedings. If the "order" does not relate solely to the deceased, the proceedings may be continued by his heirs either in the name of the deceased or in their own name.

---

3. The parties shall be informed as far as possible in the invitation referred to in article 8:56 of the names and places of residence of the witnesses and experts who have been summoned and the facts to which the hearing relates or, as the case may be, the assignment which is to be carried out.
4. The parties may bring with them witnesses and experts, or summon them by registered mail or bailiff's communication, provided the district court and the other parties are informed not later than a week before the date of the hearing, stating the names and places of residence. The attention of the parties shall be drawn to this right in the invitation referred to in article 8:56.

40. Does the court registry itself forward the various written applications and pleadings to the parties?

The registries of the courts send the written applications to the administrative authority and ask it to submit a defence (section 8:42, subsection 1 Awb). A copy of the defence is sent by the registry to the applicant. Copies of other documents lodged by a party are sent by the registry to the other parties.

41. Who is responsible for providing the evidence – the parties or the court?

At first instance, the parties are responsible for providing evidence of their submissions. If, however, the court considers it necessary to hear a witness or expert in order to ascertain the facts, it may call a witness or appoint an expert (section 8:60, subsection 1 Awb). This may also occur during the preliminary examination (sections 8:46 and 8:47 Awb).[60] [61] It is mainly of matters of spatial planning and of environmental law that the court (i.e. ABRvS) itself appoints an independent expert.

[60] Article 8:46
1. The district court may summon witnesses.
2. The district court shall inform the parties at least one week in advance of the names and places of residence of the witnesses, the time and place at which they are to be heard and the facts to which the hearing will relate.
3. Article 205, subsections 1, 2 and 3, first sentence, and article 206, subsections 1 to 3 and 5 of the Code of Civil Procedure shall apply *mutatis mutandis*.

[61] Article 8:47
1. The district court may appoint an expert to conduct an investigation.
2. The assignment to be carried out and the time limit referred to in subsection 4 shall be stated when the appointment is made.
3. The parties shall be informed of the intention to appoint an expert as referred to in subsection 1. The district court may give the parties the opportunity to make known their wishes concerning the investigation in writing within such time limit as it may set.
4. The district court shall set a time limit for the expert to issue his written report of the investigation to the district court.
5. The parties may state their views on the report in writing within four weeks of the date on which the report is sent to them.
6. The district court may extend the time limit referred to in subsection 5.

42. How is the hearing conducted? Is it public? Can it take place in camera and in which circumstances? Who can take part in the hearing and how (in writing, orally)?

The principle of the publicity of judicial proceedings is widely established at the European level; however, hearings may take place in camera (with no spectators or witnesses) in many cases. Specify the situation in your country.

The hearing is conducted by a judge sitting singly or by the presiding judge of a three-judge chamber. It takes place in public (section 8:62, subsection 1 Awb). However, the court may determine that the trial will take place wholly or partly in camera in the interests of public order or morals, in the interests of State security, in the interests of safeguarding the interests of minors or protecting the privacy of the parties or if a public hearing would seriously prejudice the proper administration of justice (section 8:62, subsection 2 Awb). See also the answer to question 33. In practice this hardly ever occurs.

A party may be represented or assisted by counsel (section 8:24 Awb).[62] After the parties have addressed the court, they are questioned in person by the court. Witnesses and experts may be brought by the parties or summoned to attend the hearing (section 8:60, subsection 4 and section 8:63, subsections 2 and 3 Awb).[63] They may also be questioned under oath, but this occurs relatively infrequently. In practice, the parties on more than one occasion bring with them other people who wish to address the court.

[62] Article 8:24
1. The parties may be assisted or represented by a legal representative.
2. The district court may require a legal representative to produce a written authorisation.
3. Subsection 2 shall not apply to attorneys-at-law and procurators.

[63] Article 8:63
1. Article 205, subsections 2 and 3, first sentence of the Code of Civil Procedure shall apply *mutatis mutandis* to the hearing of witnesses and experts. Article 205, subsection 1 of the Code of Civil Procedure shall apply *mutatis mutandis* to the hearing of witnesses.
2. The district court may decide not to hear witnesses and experts brought in or summoned by a party if it considers that this testimony cannot reasonably be expected to contribute to the assessment of the case.
3. If a witness or an expert summoned by a party has not appeared, the district court may summon him, in which case the district court shall adjourn the hearing.

Witnesses and experts may also be summoned or appointed by the administrative court (section 8:60, subsection 1 Awb). See also the answer to question 41.

Let me add that the hearing takes place in a rather internal atmosphere.

43. When and how is judicial deliberation conducted? Who can take part in it?

Specify which members take part in the deliberation, in particular if a member who delivered an opinion in all independence and in public, can take part, actively or passively. Specify if rules governing deliberation are set by text or precedent, and if they have been recently modified, for example because of the case law of the European Court of Human Rights.

Where a case is heard by a panel of three judges, the deliberations in chambers are conducted by the presiding judge. The practice is fairly informal. In many quarters it is the custom for the youngest judge to open the deliberations. In the ABRvS one of the two members of the chamber is always designated as "rapporteur", in other words he opens the questioning at the hearing and gives his opinion first during the deliberations in chambers. The clerk of the court also may take part in the deliberations in chambers.

No independent opinion is given at the hearing by an advocate general or member of the court ("commissaire du gouvernement"). The advocate general at the HR (tax cases) submits a written opinion on which the parties can comment in writing. He does not take part in the deliberations in chambers (nor has he ever done).

C. JUDGMENT

44. How are the grounds of the decision given? In detail or more briefly?

The Recommendation of 2004 indicates that courts should indicate with sufficient clarity the grounds on which they base their decisions. Although it is not necessary for a tribunal to deal with every point raised in argument, a submission that would, if accepted, be decisive for the outcome of the case requires a specific and express response. Is a detailed statement of reasons required, to enable applicants to understand the meaning and the scope of the decision? Is such a consideration taken into account?

The grounds for judgments are usually explained in some detail (section 8:77, subsection 1, opening words and (b) Awb). Normally, each point raised in an argument is dealt with in the judgment. If there are different arguments for quashing an "order", all of them are usually dealt with in order to ensure that when the new "order" is made it will not be the subject of unnecessary challenges. The court generally tries to give a "convincing" judgment.

45. What are the reference norms [international norms, European norms (Convention for the Protection of Human Rights, Community law), constitution, law, jurisprudence, personal conviction]?

Specify which reference norms are the most used, in particular whether the lawfulness of administrative acts is normally evaluated by reference to Community law or the Convention for the Protection of Human Rights.

All these legal norms (written law and unwritten legal principles) are important. The following international rules are of particular importance: article 6 ECHR, Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ EC 1985, L 175/40), Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ EC 1992, L 206/7), Council

Directive 75/442/EEC of 15 July 1975 on waste (OJ EC 1975, L 194/39), Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ EC 1003, L 30/1) and Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management (OJ EC 1996, L 296/55).

46. Which criteria and methods of review are used by the court?

Specify whether the court only carries out a global control on the administrative authorities' appreciation of situations, or if it tries to find, for example, if other decisions, more respectful of citizens' rights, were possible. Specify if he can compare advantages and drawbacks of the decision. Indicate in which context this review can be done.

Specify if a specific review is reserved for the acts translating the exercise of discretionary powers by administrative authorities, understood in the sense of the Recommendation R (80) 2 concerning the exercise of discretionary powers by administrative authorities (that is to say the power giving administrative authorities a certain liberty to appreciate which decision to take, and allowing them to choose the most appropriate amongst several legally grounded solutions).

Specify if the review by lower courts is different from the review by the highest courts.

The legality test in the narrow sense is carried out strictly (incompatibility with written law or a general principle of law). If the law grants an administrative authority a discretionary power, the court merely assesses whether the authority exercised its powers reasonably (i.e. no manifestly unreasonable assessment of interests or manifestly incorrect classification). The extent of the judicial review depends on the degree of discretion granted by the legislator to the administrative authority. Powers to impose administrative

sanctions of a punitive nature are never supposed to be discretionary (article 6 ECHR).[64]

NB Often an administrative authority that has a discretionary power has adopted policy rules ["guidelines"] for this purpose. The court checks whether these policy rules have been correctly applied.

47. How are legal costs apportioned? Specify if the court can exempt a party from paying costs.

The administrative court has exclusive jurisdiction to order a party to bear the costs incurred by another party in connection with the institution of certain forms of legal redress. An exhaustive fixed-penalty system is applied for this purpose.[65] This provides a contribution towards certain costs. A natural person can be ordered to bear the costs only if he has made manifestly unreasonable use of his procedural rights.

In practice, a person other than an administrative authority is hardly ever ordered to bear the costs of the other party. To this extent an applicant runs little risk in lodging an application for judicial review or appeal. If he loses, he need only bear his own costs.

48. Is it more usual for the case to be decided by a single judge or by a number of judges? Specify if there is a difference between lower and higher jurisdictions.

Cases are normally heard by a single judge in the *district courts*. Complicated cases are referred to a panel of three judges.

The converse rule applies in the *ABRvS*, the *CRvB* and the *CBB*. In other words, appeals are generally heard by panels of three judges, unless the cases are less complicated. Cases heard by a single judge

[64] The requested information on this subject is not received yet from the tax division of the HR. This information will be send to you on a later moment.

[65] See the Legal Costs (Administrative Law) Decree.

in the district court are generally also heard by a single judge on appeal.

The *courts of appeal* sit as panels of three judges, including in tax cases. The tax division of the HR generally sits as a panel of three judges (sometimes five).

> 49. Where the case is heard by several judges, is the expression of individual judicial opinions allowed (dissenting opinions)? Specify if there is a difference between lower and higher jurisdictions.

Dutch procedural law makes no provision for the possibility of a "dissenting" or "concurring opinion".

> 50. Is the decision delivered in writing, or orally? Specify if it is pronounced in public, and notified to the parties, indicating the time-limit for notification.

Almost all judgments are given in writing (section 8:66, subsection 1 and section 8:77 Awb). If judgment is given orally, a record of it is drawn up and sent to the parties (section 8:67, subsections 1 and 3 Awb).[66] The decision in the judgment (i.e. not the grounds of the judgment) is given in open court and also sent to the parties (section 8:67, subsection 5 and section 8:78 Awb).[67] When a hearing is held the parties are informed when judgment will be given. This

[66] Article 8:67
1. The district court may give judgment orally immediately after the closing of the hearing. Judgment may be deferred for a maximum of one week, in which case the parties shall be informed of the date of judgment.
2. The oral judgment shall consist of the decision and the grounds for the decision.
3. A record of the oral judgment shall be drawn up by the registrar.
4. It shall be signed by the presiding judge of the three-judge section and the registrar. If the presiding judge or the registrar is unable to sign it, this shall be stated in the record.
5. The district court shall deliver the decision referred to in subsection 2 in public, in the presence of the registrar, stating who is entitled to appeal, within what time limit and to which administrative court.
6. The statement referred to in subsection 5, second sentence, shall be included in the record.

[67] Article 8:78
The district court shall deliver the decision referred to in article 8:77, subsection 1 (c), in public, in the presence of the registrar.

is no later than six weeks after the close of the hearing (section 8:66, subsection 1 Awb). This period may be extended in special circumstances (section 8:66, subsection 2 Awb).

D – EFFECTS OF DECISIONS AND EXECUTION OF JUDGEMENT

51. What is the authority of the decision? Res judicata, stare decisis? Specify if this authority is influenced by the nature of the challenged act, and if the judicial decision only produces effects for the parties, or erga omnes. Indicate if the solution given is limited to the present case or if it can be used in other cases, where similar legal issues arise.

The judgment constitutes *"res judicata"* between the parties, i.e. only the parties are bound by the judgment of the administrative court. However, annulment of the "order" is binding *"erga omnes"*. The decision is always given in the case under consideration, although similar decisions will be given in similar cases of course. To this extent, a judgment also has a bearing on other cases. Dutch procedural law does not recognise the doctrine of *"stare decisis"*.

52. Can the court limit the effects of the judgment in time? If so, indicate the extent of such a limitation: as regards the future, and as regards the past. Specify whether this possibility derives from national law, or from the case law of the Court of Justice of the European Communities or the European Court of Human Rights.

A decision in a judgment can always be subject to a time limit. For example, a decision may be given until the time (in the future) when a fresh decision is given by the administrative authority on the objection. The court may also limit the retroactive effect of the annulment of a decision. This is long-established case law, which is not derived from international case law.

53. Is the right to the execution of judicial decision guaranteed in your country? Specify if it is uniformly

guaranteed, or through a specific judicial procedure. Indicate if there is a distinction between implementation of the judgment by administrative authorities and implementation of the judgment by private persons. Specify if the court has the power of injunction, possibly completed by coercive fine, in order to secure compliance with the judicial decision.

The recommendation of the Council of Europe distinguishes the execution of judicial decisions by private persons and administrative authorities. As regards private persons, Recommendation R (2003) 16 on the execution of judicial and administrative decisions in the field of administrative law, indicates that it is possible where necessary to have recourse to measures to enforce the decision, provided that a certain number of rights are guaranteed and specific conditions are respected. For the implementation of decision by administrative authorities, member states should ensure that administrative authorities implement judicial decisions within a reasonable period of time. In order to give full effect to these decisions, they should take all necessary measures in accordance with the law. Thus, in cases of non-implementation by an administrative authority of a judicial decision, an appropriate procedure should be provided to seek execution of that decision, in particular through an injunction or a coercive fine. Administrative authorities should be held liable where they refuse or neglect to implement court decisions. Public officials in charge of the implementation of judicial decisions may also be held individually liable in disciplinary, civil or criminal proceedings if they fail to implement them. Specify if these various hypotheses exist in your country.

The execution of court judgments is guaranteed in the Netherlands. No special legal procedure is necessary for this purpose. The judgment – possibly certified by the court – constitutes an enforceable order. Administrative authorities, directed by an administrative court to make a fresh "order" will almost always follow the decision of the court; however, it is quite common for the fresh "order" to be made later than directed by the court. In

certain circumstances, for example refusal of the administrative authority to make a fresh "order", the administrative court may specify in its decision a time-limit within which the administrative authority must take some action, for example make a fresh "order" (section 8:72, subsection 5 Awb). The administrative court may rule that the administrative authority owes a penalty payment in the event of failure to make an "order" (section 8:72, subsection 7 Awb).

Under the law of civil procedure, a pecuniary penalty can be enforced without difficulty against a public body to which the administrative authority belongs (e.g. the State or a province or municipality). In practice, this is hardly ever necessary.

Public officials and individual administrators cannot be held individually liable in civil or criminal proceedings for failure to implement judgments. Nor is there felt to be a need for such liability.

54. Is there a policy in your country to reduce the length of time needed for the proper disposal of cases before the courts? If so, how is that policy implemented?

In all cases, specify if recent case law or legislative reforms have been made or are envisaged that cases are dealt with within a reasonable time. Indicate if these reforms permit compensation to be awarded for loss caused by excessive delays in handing down judgements, and/or to end the unreasonable time of a trial.

All courts try to dispose of cases as quickly as possible. Broadly speaking, the disposal times in 2004 were as follows:
(a) district courts (administrative law sector)
(b) CBB
(c) CRvB (public service cases)
(d) CRvB (social security cases)
(e) courts of appeal (tax law sector)
(f) HR (tax division)

(g) ABRvS (spatial planning and environmental cases)
(h) ABRvS (appeals in immigration/asylum cases)[68]
(i) ABRvS (appeals in other cases).[69]

E – REMEDIES

55. How are various functions or/and competencies shared out between the lower courts and the supreme courts?

Specify if the first instance and appeal courts have the same functions, or if functions change with the level, in particular if many functions are allotted to lower jurisdictions, and others reserved to highest jurisdictions (for example, control of the respect of law, judicial review of decisions taken by the head of State, the head of government, ministries, and the disputes relating to elections).

Basically, first instance courts and appeal courts have the same functions in relation to the public administration. However, one difference is that on appeal the disputed "order" is only an indirect subject of dispute, since the appeal is directed against the judgment of the lower court.

As a court of cassation the HR receives only appeals in cassation (appeals on points of law). It does not decide on the facts. In tax cases it can, if necessary, itself determine the amount of the tax to be paid.

56. Are there remedies to challenge a judgment before a higher court? Describe these remedies and their functioning.

This issue concerns the existence of a system of appeal. The Recommendation of 2004 considers it by indicating "the decision of the tribunal that reviews an administrative act should, at least in important cases, be subject to appeal to a higher

[68] A maximum time-limit of twenty three weeks is imposed on these cases by the Aliens Act 2000.

[69] The data for the ABRvS are taken from the 2004 Annual Report; the other data are from the annual report, of the Council for the Judiciary.

tribunal, unless the case is directly referred to a higher tribunal in accordance with the national legislation".

In this case, specify if the higher court can hear the whole litigation, and review the findings of fact and of law, or if it can only review points of law?

Appeal lies against the judgment of a district court to the ABRvS, CRvB, CBB or to a court of appeal, depending on the field of law. Appeal in cassation against the judgment of a court of appeal lies to the HR. See also the answer to questions 6 and 55.

The written judgment that forms the subject of the appeal gives information about who is entitled to appeal, within what time limit, and to what administrative court appeal lies (section 8:77, subsection 1, opening words and (f) Awb).

For the manner of review, see the answers to questions 16 and 46.

F. EMERGENCY PROCEEDINGS AND SUMMARY JURISDICTION / APPLICATIONS FOR INTERIM RELIEF

57. Are there emergency and summary jurisdiction proceedings? Such a procedure could enable the court to pronounce a decision quickly, to preserve claimant from a particularly unpleasant situation and loss which may be difficult to compensate but without settling the litigation on the merits. Specify [if the judge hearing an application for interim relief is the same as the judge hearing the main proceedings] if a single judge or a restricted collegiate formation is competent. Indicate if there is a difference between lower and highest courts.

The applicants can apply for interim relief (section 8:81 AWB).[70] Such an application is heard by a single judge of the court before

[70] Article 8:81
1. If an appeal against an order has been lodged with the district court or, prior to a possible appeal to the district court, an objection has been made or an administrative appeal has been lodged, the president of the district court which has or may have jurisdiction in the proceedings on the merits may, on request,

which the application for judicial review or appeal is pending. If the dispute is still at the stage of objection or administrative review, application for interim relief may be made to the court to which application for judicial review can in due course be made. Interim relief can be granted if the applicant has an urgent interest (section 8:81, subsection 1 Awb). Where a court grants interim relief, it merely gives a provisional opinion on the legal issue or dispute submitted to it. Interim relief is often granted in a situation in which the disputed "order" will have irreversible consequences, for example the granting of a planning permission, the refusal of a permit for selling firework to the public during the last days of the year.

A judge who hears an application for interim relief should not, in principle, be involved in hearing the main proceedings.

58. What types of requests can be made to the emergency and summary jurisdictions? Ascertainment of a situation? The obligation for administrative authorities to communicate a document? The suspension of the execution of an administrative act? The payment of a provision?

Specify if the judge’s intervention is only conservatory, for example to safeguard evidences or a particular situation, or if he can also protect a threatened freedom, or decide on an element of the claim which is not seriously contested?

---

grant a provisional remedy where speed is of the essence because of the interests involved.
2. If an appeal has been lodged with the district court, the request for a provisional remedy may be made by a party in the proceedings on the merits.
3. If, prior to a possible appeal to the district court, an objection has been made or an administrative appeal has been lodged, a request for a provisional remedy may be made by the submittant of the notice of objection or appeal, or by the interested party if he is not entitled to lodge an administrative appeal.
4. Article 6:4, subsection 3 and articles 6:5, 6:6, 6:14, 6:15, 6:17 and 6:21 shall apply *mutatis mutandis*. The submittant of the request who has made an objection or lodged an appeal shall at the same time submit a copy of the notice of objection or appeal.
[5. If a request for a provisonal remedy is made after an objection has been made or an administrative appeal has been lodged and this objection or appeal has been decided on, before the request is dealt with in court, the submittant of the request may lodge an appeal with the district court. The request for a provisional remedy shall be equated with a request that is made during the appeal with the district court.] [Subsection 5 is translated by JK.]

"Interim relief" may take any form. The law contains no restrictions. In the case of "orders" that impose a burden (e.g withdrawal of a grant or permit, enforcement action by an administrative authority at the expense of a person in breach of an obligation, an "order" backed by a penalty payment or an administrative fine) the applicant often requests a full or partial suspension. Similarly, a rule whose observance is a condition of a permit may be temporarily amended by way of interim relief. Where a permit for a one-off activity which must take place very shortly (e.g. a collection for a good cause on a particular day, a demonstration, or the sale of fireworks in the last few days of December) is refused, the court may *sometimes* give permission for the activity to take place after all.

Whether the court grants interim relief depends on various factors. Examples are whether it seems likely that all or part of the disputed "order" will be annulled and how the interests of the applicant in obtaining the requested remedy compare with those of the defendants. The interim relief should normally last until the decision in the main proceedings plus the appeal period of six weeks, but the court may specify a shorter period.

No appeal lies against a ruling on an application for interim relief. However, an interested party can always apply for amendment or cancellation of the interim relief or submit a new application.

59. Are there different kinds of summary jurisdiction? General or specific to certain litigants?

Specify if all summary jurisdiction proceedings are identical or if they are different depending on whether they concern litigation between a private person and administrative authorities, between central and local authorities, or according to the field of public action (such as defence, environment, liberties, asylum, foreigners, for example)?

Under the AWB there is just one form of summary jurisdiction, namely

where the court manifestly lacks jurisdiction or the application is manifestly inadmissible, manifestly unfounded or manifestly well-founded (section 8:54 Awb). See the answer to question 33.

III – CAN ADMINISTRATIVE DISPUTES BE SETTLED BY NON-JUDICIAL BODIES?

60. Can disputes be settled by administrative authorities themselves? How? This question completes questions 5 and 21.

Yes, at the stage of the objection procedure or, where provision is made for this by law, at the stage of administrative review. See the answer to question 5.

61. Can administrative disputes be settled by independent bodies (offices, agencies, ombudsman, mediators, regulation authorities)?

Recommendation R (2001) 9 considers alternatives means of dispute resolution between administrative authorities and private persons. Recommendation R (81) 7 on measures facilitating access to justice calls in its appendix for measures to encourage the use of conciliation and mediation; Recommendation R (86) 12 concerning measures to prevent and reduce the excessive workload of the courts, calls for encouraging, in appropriate cases, the settlement of disputes, either outside the judicial system altogether, or before or during legal proceedings. These recommendations lay down a certain number of principles, in particular that these alternatives must not preclude recourse to the courts, and that the body in charge of hearing the dispute must provide guarantees of independence, impartiality and competence. Indicate procedures corresponding to these objectives in your country.

Various administrative courts, including the environment chamber of the ABRvS, have tried resolving cases by ***mediation***. Although the final evaluations are not yet known, mediation would seem to be an interesting alternative in some cases.

The *national ombudsman* (and local ombudsmen) cannot settle disputes. Instead, the ombudsman investigates "instances of maladministration" and publishes his opinion and recommendations after first attempting mediation (quite often with success). Sometimes he intervenes successfully when an administrative authority is too late in replying to applications (this is unfortunately a persistent problem).

62. Can administrative disputes be resolved by means other than recourse to the courts?

Specify if access to these alternatives (arbitration, for example) is subject or not to conditions in administrative affairs. Specify the various kinds of alternatives to litigations (negotiated settlement, conciliation, mediation, etc.).

As regards mediation, see the answer to question 61. An advisory committee sometimes attempts to mediate during the *objection stage*, but this is not very common. *Arbitration* occurs in administrative disputes only in relation to claims for compensation.

IV – ADMINISTRATION OF JUSTICE AND STATISTIC DATA

Concerning statistic data, could you provide general trends by decades, for the last thirty years? If that is not possible, could you take 2003 and 2004 as reference years? A presentation in charts, distinguishing between first instance and the different levels of appeal, is desirable.

A. Financial resources made available for the review of administrative acts?

63. On average, what proportion of the State budget is allocated to the administration of justice? Specify for administrative justice when it exists and is distinguished from ordinary justice.

Take an overall approach stating where possible, average costs in terms of staff, operation and equipment. Reference years: 2003-2004.

The answer to this question should be interpreted with some reservations because each country defines the costs of justice in a different way. For the answer here below the information is derived principally from: "European Judicial Systems 2002 of the European Commission for the Efficiency of Justice (CEJEC), Strasbourg, 10 December 2004".

In 2002, 0,5% of the national budget of the Netherlands is allocated for justice. It can be assumed that this figure has been the same for the years 2003 and 2004. The exact amount reserved for the administrative justice is not entirely clear. However, if we proceed on the assumption that the budget is divided in three parts, civil law, criminal law and administrative law, the smallest part would be for the administrative law, about 0,1% of the Netherlands national budget.

With regard to the specification of the costs for staff and equipment and accommodation there are no reliable data available, due to the fact that the different organisations use different definitions. A rule of thumb could be used: 70% for staff costs and 30% for equipment and accommodation.

64. Specify the total number of magistrates and judges working within the legal system concerned.

On 31 December 2004 the number of judges working in all courts in the Netherlands totalled 2004 FTEs.

65. What percentage of judges is assigned to the review of administrative authorities?

Approximately 300 judges (FTEs) are assigned to judicial review in the administrative law sectors of the district courts.

There are 34 "judges" (FTEs) on the ABRvS[71]. This includes both those hearing cases at first instance and those hearing appeals. The CBB has 15 justices charged with administrative justice. The CRvB had 46.11 FTEs (including those responsible for management) on 1 September 2005.[72]

66. Apart from registry staff, are judges helped by assistants in their research and decisions? Specify the number of assistants (overall and per judge) and their professional training (university, the Bar, etc.).

The judges who work in the administrative law sectors of the district courts are helped by assistants (i.e. persons other than the court registry staff) during hearings and in drafting judgments. The support staff number 381 lawyers (FTEs).

The support staff for the ABRvS (first instance and appeal) number 190 lawyers (FTEs).

Court legal assistants and lawyers work at the CBB. Court legal assistants and judicial clerks work at the CRvB.

67. Do you have a library, and what kind of works and documentary resources can be found there?

All courts have libraries. These stock the hard copy versions of the relevant literature (including standard textbooks and handbooks) and the main professional journals as well as law reports and legislation.

[71] Ordinary Councillors of State and Extraordinary Councillors in total.

[72] The number of judges working (FTEs) at the courts of appeal that employ administrative law is not known. The requested information on this subject is not received.

The requested information on this subject is not received yet from the tax division of the HR. This information will be send to you on a later moment.

68. Do you have access to information technology? In which proportion? And for which kind of task (file management, data bases, computer assistance for writing decisions?)

All work stations of the administrative law sector of Zwolle district court, for example, have online access to law report databases. These databases are maintained and updated by publishers and by the court itself. CD-ROMs containing statute law and law reports are also available through the local network. The administrative law sectors of the other district courts have much the same facilities as those available in Zwolle.

The appeal jurisdictions equipped in the same way.

The administrative law sectors of the district courts use various systems to register cases. These systems are maintained at national level. Law reports are also available online at www.rechtspraak.nl and www.raadvanstate.nl. These contain all judgments since the first months of 2000 and 1 April 2002 respectively.

There is also digital management information, which is thought for the most part to be developed and managed locally. Word and Justword are the programs used when drafting judgments.

69. Do competent bodies and courts have a website to publicise themselves and to communicate with the public?

www.raadvanstate.nl is the website used by the Council of State to provide information to and communicate with the public. The other courts use the website at www.rechtspraak.nl for this purpose.

B. Other statistics and figures

Could you take 2003 and 2004 as reference years?
Distinguish between lower and highest courts, and between emergency proceedings and normal proceedings. A presentation in charts is desirable.

70. How many new applications are registered every year with the court registry or the authority in charge of registering them?

New cases in 2003 and 2004 2003 2004

	main proceedings	applications for interim relief	main proceedings	applications for interim relief
district courts, administrative law sector	114,340	not known	107,740	not known
CBB	1,291	136	1,131	89
CRvB	6,520	(in 6,520)	7417	(in 7,417)
courts of appeal, tax law sector	14,670	not known	15,800	not known
HR, tax division	?	?	?	?
ABRvS, total of all chambers	7,873	1,907	9,506	1,721

Courts of appeal, tax law sector: these are just applications for judicial review (system in practice up to end 2004). Appeal to a court of appeal has only been possible since 1 January 2005.

71. How many cases are heard every year by the court or other competent bodies?

Hearings in 2003 and 2004

	2003		2004	
	main proceedings	applications for interim relief	main proceedings	applications for interim relief
district courts, administrative law sector	not known	not known	not known	not known
CBB	180	72	168	29
CRvB	657	(in 657)	689	(in 689)
courts of appeal, tax law sector	not known	not known	not known	not known
HR, tax division	?	?	?	?
ABRvS, total of all chambers	801	224	768	233

72. Could you provide figures concerning cases currently lodged with courts or competent bodies which have not yet been disposed of?

Backlog from 2003 and 2004 2003 2004

	main proceedings	applications for interim relief	main proceedings	applications for interim relief
district courts, administrative law sector	inflow: 114,340 outflow: 135,000		inflow: 107,740 outflow: 135.170	
CBB	76	no backlog	555	1
CRvB	1,091	(in 1,091)	4,542	(in 4,542)
courts of appeal, tax law sector	not known	not known	not known	not known
HR, tax division	?	?	?	?
ABRvS, total of all chambers	no backlog	no backlog	almost no backlog	no backlog

73. What is the average time taken between the lodging of a claim and judgment?
Specify for each level of court, and indicate if it is a theoretical or real time, and the way it is calculated.

Lead times in 2003 and 2004 2003 2004
in days

	main proceedings	applications for interim relief	main proceedings	applications for interim relief
district courts, administrative law sector	346	not known	330	not known
CBB	331	(in 331)	325	(in 325)
CRvB	721	42	709	47
courts of appeal, tax law sector	511	not known	508	not known
HR, tax division	?	?	?	?
ABRvS	chamber 1: 245 chamber 2: 217 chamber 3: 203 chamber 4: 56	chamber 1: 91 (hearing) chamber 2: 49 (hearing) chamber 3: 28 (hearing) chamber 4: 14	chamber 1: 217 chamber 2: 189 chamber 3: 182 chamber 4: 91	chamber 1: 84 (hearing) chamber 2: 49 (hearing) chamber 3: 35 (hearing) chamber 4: 21

Chamber 1: spatial planning.
Chamber 2: environmental cases.
Chamber 3: other appeals.
Chamber 4: appeals in asylum and immigration cases.

74. Indicate the percentage and rate of the annulment of administrative acts decisions against administrative authorities by the lower courts.

In the years 1998 and 2000 at five out of the nineteen district courts, sections administrative law, respectively 29,4% and 30,3% of the lodged appeals was annulled.[73] The same percentages can be expected for the years 2003 and 2004 given the minimal deviation of percentages between 1998 and 2000.

NB The figures here are not representative for tax law cases, where a two-layer system went into force on January 1st 2005 only. They are not representative either for the domain of and immigration cases, where this system was introduced in 2001 only.

75. Could you indicate the volume of litigation per field (asylum, foreigners, tax, urban planning, etc.)?

Per field:

	1998	2000
Disability	44,9	27,8
Other social security cases	36,8	41,0
Social assistance cases	37,8	48,8
Public service cases	26,5	23,1
Planning permission cases	30,8	16,7
Other cases	27,5	42,5

[73] This survey is taken from A.T. Marseille, "Effectiviteit van de Bestuursrechtspraak" (Efficiency of the administrative justice), Den Haag, 2004, p. 179. There are no other figures available.

C. The economics of administrative justice

76. Do studies by researchers or work produced by practitioners demonstrate particular concerns by the courts, for example about orders for damages; do they deal with the influence of heavy awards against administrative authorities on public budgets? Do they consider the implications of their decisions in terms of costs for public finances?

No such studies are thought to have been made. Nor are there any indications that considerations of this kind play a significant role.