

## Summary

In Dutch Administrative Law, the plaintiff must have a personal interest in the proceedings. If the plaintiff does not have the required interest, his case is to be dismissed on the ground that the plaintiff does not have standing. The prevailing case law and doctrine hold, that the decisive criterion for sufficient interest is, whether the decision the plaintiff attacks is injurious to the interests of the plaintiff. The General Administrative Law Act (*Algemene wet bestuursrecht*) reflects this, in article 1:2 (section 1). It reads:

### '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.'

If a person has a sufficient interest, he has a right to lodge an appeal against the administrative order concerned in court. The doctrine further holds that if the court finds that the administrative order is in violation with statutory requirements, the court should quash the order, *regardless of whether the statutory requirements have the intention to protect the interest of the plaintiff or not*. It has been argued, that – at least under certain circumstances – this could lead to an 'improper use' of the right to lodge an appeal.

This study investigates the central question whether there are good reasons to introduce a standard that holds that, if an order is in violation of a statutory requirement, a (third party) plaintiff only has a right to have that order quashed in case the violated statutory requirement has the intention to protect the interests of that plaintiff. Such a provision exists in German Administrative Law (*Schutznorm-theory*), as well as in Dutch Private Law.

Good reasons to introduce such a standard could be:

- grounds of efficiency, if can be expected that it will lead to reduction of the caseload courts and administrative bodies have to deal with;
- the argument that this would create a better harmony between Dutch Administrative Law and Dutch Private Law;
- the argument that it would create a better harmony with recent developments in Dutch Administrative Law, acknowledged in the GALA, than the present doctrine;
- the argument that in some cases the present doctrine leads to unsatisfactory results (results that conflict with the 'sense of justice').

Five different ways (variants of a *Schutznorm*-theory, or alternative solutions) to hold off improper use of the right of appeal are discerned and investigated.

The study shows, as far as the element of efficiency is concerned, that, generally speaking, there is only a rather small number of cases that could be dismissed if a *Schutznorm*-theory would be introduced. As regards considerations of harmonising within Dutch Administrative Law or with Dutch Private Law the investigators argue that these considerations do not provide conclusive arguments to introduce a *Schutznorm*-theory.

Considering that some of the ways to hold off improper use of the right to appeal bring about new complications, the conclusion is that efficiency advantages of

the introduction of a *Schutznorm*-theory can only be expected if the theory would be restricted, so that it would exclude only a small category of complaints that third parties put forward: the theory should be restricted to cases in which it is apparent that the regulation concerned is not meant to protect any interest of the third party. This is for instance the case if a third party alleges that there has been a violation of a legal provision, while that legal provision clearly does not have the intention to protect the interests of the third party but, on the contrary, only the – opposed – interests of the addressee of the order. It can be argued that applying such a version of a *Schutznorm*-theory could satisfy the sense of justice. Arguing on the basis of a sense of justice, however, could also lead to opposing even such a solution: one could argue that a third party who's interests will be injured as a result of an irregular administrative order should have the right to ask the court to quash the order.