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# Citizens' Experiences regarding objection procedures

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## **A study exploring citizens' experiences regarding the objection procedure regulated in the Dutch General Administrative Law Act**

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## **Summary**

### **1.1 Introduction**

The purpose of this research has been to find out more about citizens' experiences with the objection procedure regulated in the Dutch General Administrative Law Act (*Algemene wet bestuursrecht*, Awb).

The Awb lays down general rules that in principle apply to the entire field of administrative law. As a result, its scope of application is broad, covering a variety of legal areas, such as environmental law, spatial planning law (zoning plans, planning permissions, etc.), social security law, economic administrative law (e.g., telecommunications and banking), aliens law, tax law and art subsidies. For each of these areas, special rules are in place, but to a number of general issues in these areas the Awb also applies. If a decision can be appealed to a court, the general rule is that an objection procedure must be followed before the matter can be taken to court.

A notice of objection is to be lodged with the administrative authority that took the disputed decision. So if, for instance, a municipal executive has rejected a subsidy application, any objection to that decision must also be filed with (and will be considered by) the municipal executive. The executive, which will decide on the objection, is expected to reconsider the decision to which the objection relates. In other words, the municipal executive will have to deliberate whether it still supports its original decision.

Ever since the Awb came into effect in 1994, it has been the subject of a considerable number of impact assessments or evaluations. When these studies looked into the experiences of parties using the Awb, they would mostly focus on the experiences of those applying the Awb: administrative authorities and judges. The Commission that advised the government on the studies carried out as part of the third round of evaluation, the *Commissie Evaluatie Awb III*, recommended that ‘the legislator’s assumptions on this point be more systematically tested against reality by means of social research’.

The Legislation Department the Ministry of Security and Justice and the Constitutional Affairs and Legislation Department of the Ministry of the Interior and Kingdom Relations followed up on this recommendation and requested the Research and Documentation Centre (WODC) of the Ministry of Security and Justice to initiate a study exploring citizens’ expectations and experiences regarding Awb objection procedures. This report gives an account of that study.

## 1.2 Research design

The research was divided into two parts or stages. The first stage mainly concerned quantitative research, which was conducted to survey citizens’ experiences before and during objection procedures, as well as factors influencing these experiences. To gain insight into the underlying mechanisms, a limited qualitative study was subsequently carried out: the second stage. The aim of this integrated-perspective study was to more fully understand the expectations and goals of persons filing an objection, as well as their experiences before, during and after objection procedures.

### *The quantitative stage*

For this part of the research it was decided to contact respondents through the administrative authorities that were involved in the study, as these authorities have contact details of potential objectors. An additional advantage of this approach was that potential objectors could be interviewed when they were in the process of deciding to initiate an objection procedure (or not) and before a hearing had been held. The respondents who were contacted after the objection procedure also had fresh memories of their experiences. In all, 376 respondents were interviewed by telephone. Of these, 32 were interviewed twice (once before the procedure and once afterwards).

The set-up of this stage of the research specifically aimed at *respondent* diversity, ensuring that the sample of subjects included a sufficient number of less well-educated, less linguistically proficient and relatively low-earning respondents. Respondent diversity was also pursued by interviewing both individuals and companies. Diversity regarding the *underlying decisions* was another objective (e.g., not only decisions on permits, but also on sanctions). Finally, diversification was aimed for regarding the nature of decisions taken by *administrative authorities*. More specifically, the intention of this part of the study was to cover citizens’ experiences not only with administrative assessments tailored to individual cases, but also with standardized decision-making (‘custom-made’ versus ‘serial production’).

### *The qualitative stage*

Given the nature of the topic under study, in this stage, as in the first stage, the observation unit consisted of the objectors. Oral interviews were held with 38 objectors to obtain information about their expectations and experiences. Semi-structured interviews were used in order to reflect as accurately as possible the perception of the interviewees. The interviewers used a topic list that was based in part on the results of the quantitative stage of the research. Both research stages are discussed in Part II of this report (Chapters 10 to 13).

### *Assessing the results: preliminary observations*

Before outlining the conclusions of the research, three general observations are in order.

- We registered the respondents' experiences as they perceived them. We did not investigate to what extent these experiences corresponded with reality. The primary concern of this study was not to establish the factual correctness of the respondents' accounts, but rather how events and procedures impacted on their perceptions. Yet, if remarks by a substantial number of respondents on matters of fact raised doubts about the accuracy of these matters, we had occasion to enquire at the administrative authority concerned. But even then we were not looking to verify what had actually happened in a specific, individual case, but to ascertain the general meaning of certain scores. For example, if one or a few respondents indicated that the administrative authority had not contacted them by phone after they had lodged an objection, we could not tell whether that statement was correct. But if similar statements were made by many respondents, we would ask the administrative authority concerned to clarify its policy on this issue.
- The data we collected do not support firm conclusions on the comparative performance of the administrative authorities involved in this research in following and completing objection procedures. Such a comparison would have required greater uniformity of subject matter of objections. But the purpose of this study has of course not been to compare administrative authorities, but rather to determine how objectors perceived the objection procedures they were involved in, regardless of the issue at hand.
- In assessing the results of this research, it is important to add the qualifier that it cannot be confidently asserted that all reported experiences are exclusively attributable or related to the objection procedure and not to other factors. In several cases, respondents made remarks that were found to reflect their perception of the administrative decision-making process that preceded the objection procedure. This could be deduced in particular from responses to open-ended questions and from the qualitative research stage.

## **1.3 Main conclusions of the quantitative research stage**

What are the most striking results of the quantitative study?

### *Negative overall respondent assessment of the objection procedure*

What stands out is the predominantly negative respondent assessment of the objection procedure as a whole. On average, almost 75% of the respondents hold a negative to very negative view of the objection procedure. Among Social Insurance Bank (SVB) respondents the dissatisfaction percentage is markedly lower, but the number of positive decisions on their objections was much higher than that for other respondents. The study showed a correlation between respondent view of the objection procedure and the outcome of objection procedures. As indicated in Chapter 7.3.1, the respondents whose objections had been favourably decided on viewed the objection procedure in a positive light significantly more often than respondents whose objections had been dismissed.<sup>1</sup>

### *Dissatisfaction with the duration of the procedure*

More than half of the respondents felt that the procedure took too long. The overall assessment of the procedure is to a large extent determined by the respondents' view of the time element. In response to open-ended questions on points of improvement, the duration of the procedure was mentioned most often.

By far the most respondents (70%) considered a decision swift when it had been taken within two months, although approximately 20% of the respondents felt that it had been overdue even then. Negative and positive views are more or less evenly matched when the procedure was completed within three months. Any time beyond that was generally considered too long. Yet the perception of when decision-making takes long cannot be fully expressed in a fixed time unit. For instance, 61% of

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<sup>1</sup> See Table 7.9, and see Table 9.2 in Chapter 9.3.5.

all SVB objections were decided on within two months, a much higher percentage than for the other respondent groups. Even so, 44% of the SVB respondents felt that the decision had been pending for too long.

#### *Respondent need for informal contact/resolution*

Given the best efforts of most<sup>2</sup> administrative authorities to resolve objections informally, it is remarkable that relatively few respondents indicated that the administrative authority had contacted them after they had lodged an objection. Our research shows that many of the respondents felt a need for open consultation and expressed a preference for informal settlement. This is true even for respondents who did not file an objection themselves, but who participated in the procedure to 'defend' the planning permission they had obtained.<sup>3</sup>

#### *Core elements of procedural justice and overall assessment*

In the main, the respondents confirmed that they had had ample time and opportunity to express their views at the hearing. From this response we conclude that the elements of *trustworthiness* and *voice* were assessed positively. These elements do not impact significantly on the overall respondent assessment of the procedure; their positive scores did not avert an essentially adverse overall assessment.

The element of *neutrality* scored badly and this correlates with the outcome of the procedure. Three quarters of those whose objection was rejected rated the element of neutrality adversely. And of those whose objection was successful, still more than a third assessed the element of neutrality unfavourably. Neutrality weighs heavily on the overall assessment of the objection procedure.

The element of *interpersonal respect* (as perceived at the hearing) was rated favourably and unfavourably in more or less equal measure. The responses significantly affected the respondents' final judgment. The open-ended questions prompted quite a few critical comments on how the respondents felt they had been treated, more, in fact, than on the element of neutrality.

## **1.4 Main conclusions of the qualitative research stage**

What are the most striking results of the qualitative study?

#### *Appreciation of treatment at hearing*

On the whole, the interviewees appreciated their treatment at the hearing. They indicated that they were able to expound their position (*voice*), that their arguments were taken seriously (*trustworthiness*) and that they were treated with respect (*interpersonal respect*). On these elements, the qualitative study paints a slightly rosier picture than the quantitative study. The interviewees were less positive about the element of neutrality than they were about the other elements of procedural justice, but the overall view is less explicitly negative than in the quantitative study.

The most critical comments on the hearing we recorded concerned the attitude of those representing the administrative authority in cases that were considered by an independent committee. That attitude was often judged to be rigid and the respondents were annoyed by the appearance at the hearing of ('yet') another official than the one(s) they had previously been in contact with.

#### *A change of course: alternative track*

As for the Change of Course, which can result in an alternative course of action, two observations are particularly noticeable. First, many interviewees indicate that in their case such a change of course

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<sup>2</sup> Not counting the *Arbeidsinspectie* (Labour Inspectorate), which holds the view that as the decisions selected for this study impose sanctions, informal resolution may give rise to legal inequality.

<sup>3</sup> See Chapter 9.3.2 and the close of Chapter 9.4.3.

never materialized. Second, when informal resolution was attempted, the response of the interviewees concerned was by no means invariably positive, and in some cases even distinctly negative.

#### *Great need for information*

The interviews showed that the objectors would have preferred to have been informed of the actual objection procedure in detail and in advance. A number of interviewees indicated that they felt very uncomfortable when certain procedural aspects were sprung on them, such as the presence of the opposing party (which they had not expected) and a medical examination being carried out.

#### *Ambiance matters*

It was found that the perceived level of treatment could be influenced by subtle expressions of social etiquette, including the nature of the reception, a handshake, and the offer of a drink. The research shows that objectors set great store by a proper reception. They also value the physical layout of the hearing venue (arrangement of tables, seats, etc.). Layout is material not only to the atmosphere, but also to mutual visibility and audibility.

## **1.5 The results of the quantitative and qualitative studies compared**

The qualitative study largely corroborates the findings of the quantitative study and in addition deepens our understanding of a number of points.

#### *Core elements of procedural justice*

The interviews conducted in the qualitative stage of the research confirm the general view of the respondents that they had ample opportunity to express their views and that their arguments were duly taken note of (especially when an independent committee was in charge of the hearing). More so than the quantitative research data, the interviews clarified how the respondents came to feel that their arguments were taken seriously. Active listening is important, and respondents were appreciative when those who conducted the hearing evinced a thorough knowledge of their case, as they were when an independent committee (where necessary) would firmly question representatives of administrative authorities.

Regarding neutrality, the interviews revealed less explicitly negative views than the quantitative study. The results of the quantitative study allowed a margin of uncertainty about how the strongly negative neutrality score should be interpreted. Judging by the quantitative study, we suspected that the respondents had meant to give a negative qualification. And it is true that during the interviews respondents did clearly voice doubts about impartiality. However, these doubts mostly concerned administrative authorities (or their representatives), not independent committees. The interviews also showed that these doubts did not specifically relate to the objection procedure, but were of a more general nature. The lack of trust predates the inception of the objection procedure. It would appear that the respondents' manifestly unfavourable assessment of neutrality in the quantitative stage of the research can to a substantial degree be attributed to the attitude of the administrative authority throughout the entire decision-making process, and only in part to the objection procedure itself – and still less so when an independent committee conducted the hearing.

#### *An apposite ambiance*

On the issue of the respondents having been treated properly, the qualitative study also showed a more positive evaluation than the quantitative study. Criticisms voiced in the interviews mainly concerned aspects that in the previous section were classed under ambiance. The scope of the quantitative study did not extend to the impact of the details of how the objectors were received and treated at the hearing.

In making these observations, it should be noted that the interviewees were asked to comment immediately after the hearing, so before they had been informed of the outcome of the objection procedure.

#### *The time factor*

A notable conclusion from the quantitative study was the respondents' dissatisfaction with the duration of the objection procedure. The qualitative study interviews also addressed the time factor and it was found that the objectors were disaffected with the duration of the procedure in part because of a perceived imbalance. To the objectors the administrative authorities appeared to have all the time they needed, while the objectors felt they were under severe time pressure.

#### *Inadequate provision of information*

Two of the most observable results of the qualitative study were the need the objectors felt for more information and that through lack of information basic procedural aspects sometimes caught them by surprise. We had not anticipated this finding, which probably only surfaced as a result of the fairly open nature of the interviews.

#### *Mixed feelings about informal approaches*

The interviews conducted during the qualitative stage of the research support the observation that the interviewees did not always respond favourably to a different approach to attempt an informal resolution as a matter of course. Although the interviewees often did profess to be in favour of an informal solution (in line with the findings of the quantitative study), many were critical of how these attempts had worked out in their case. According to some, they had not been invited to an informal meeting in the first place. And when an informal approach was used or mediation attempted, a number of interviewees said these efforts had had no positive effects.

## **1.6 Recommendations**

We observed that objectors sometimes appeared to use the objection procedure as an alternative to a complaints procedure, to make up for a lack of involvement, as an opportunity to exchange information when no such opportunity was available before the contested decision was taken, or to obtain an explanation that the decision did not provide.

We do not think this is a bad thing per se. Obviously, it would be better if issues citizens regard as faulty decision-making were resolved before an objection is lodged. But if such matters are not settled, the objection procedure may serve to achieve that end. As a bypass for an objection procedure, an informal approach may sometimes even be best suited.

Different cases lend themselves to an informal approach (an alternative track) for different reasons, and it is our conclusion that the specifics of that approach as well as the participants' roles ought to reflect these differences. We recommend that when there is no room for negotiation the purpose of establishing contact be made clear in advance. In such a situation that purpose will mostly be limited to exchanging information: does the decision rest on the correct assumptions as to the facts and how can it be explained in greater detail? In a number of cases, lack of clarity would appear to be a major contributing factor to the sense of disappointment objectors felt over an informal approach. When such words as mediation or pre-mediation are used, objectors expect there to be scope for negotiation. Providing clarity in the course of the objection procedure itself is also of great import. The research showed a great need among objectors for information and clarity about what to expect from the procedure. This is true not only of the procedural, but also of the substantive legal parameters.

Sometimes objectors can influence the result of the decision-making process and sometimes their main goal is information exchange. The latter aim too serves a functional purpose, i.e., as extended decision-making. The reason for this is not primarily that a choice of policy must be reconsidered, but

that rectification as to facts is called for or a legal context must be clarified. In the case of ‘mass-produced’ decisions in particular, the objection procedure can be materially relevant in compensating for a lack of ‘customization’ in the principal stage.

If an informal, alternative approach – the Change of Course – has for the most part proved a success, should the objection procedure as a whole become more informal? That would be inadvisable. An informal approach is not a blueprint for success. Some objectors positively welcome the opportunity to (‘at long last’) be able to be heard before an independent committee. A setting that breathes a measure of formality may certainly go some way towards accommodating them.

Should the procedure then become more formal, to the point of resembling court proceedings? That would also be inadvisable. Especially when a case is heard by an independent committee, the representatives of the administrative authorities concerned ought not to consider the hearing as a ‘dress rehearsal’ for a trial.

This goes to the heart of the matter. A number of interviews conducted in the qualitative stage of the research conjure up an image of officials stalwartly defending decisions taken by the administrative authorities they represent, often through rebutting the objectors’ arguments by invoking legal provisions. The communicative aspect (a proper dialogue) was left entirely to the committee. In a number of cases the official read out a written argument at the hearing. This greatly annoyed some interviewees. Their feeling of being at a disadvantage was exacerbated by a written document which they reasoned could have been made available to them before the hearing. As things now stood, they had been unable to examine it in advance and had thus not been in a position to adequately prepare for the hearing. This particularly bears on views and arguments of the administrative authority concerned that are of a technical legal nature. When officials adopt the alleged attitude, it is hard to avoid the impression of legal proceedings with the committee having to rule on the matter as if it were a court. We believe that the reconsideration function requires that representatives of the administrative authorities involved also work to ensure that the communicative aspect is attained to the fullest extent possible.