

Appeals in administrative law in the Netherlands

Design of an instrument for empirical assessment and first run

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Summary in English

In administrative law in the Netherlands, usually an interested party can invoke the administrative review of a decision taken by an administrative authority. The decision in administrative review can be submitted to judicial review by the administrative law division of the district court. Rulings of the administrative law division of the district court can be appealed at a variety of higher courts including the ordinary Courts of Appeal in fiscal cases, the Central Court of Appeal in social security cases and in cases regarding civil servants, and the Council of State in all cases not reserved to any other court. The current research project addresses these appeals of rulings by administrative law divisions of district courts.

The purpose of the research project is to collect measurable data to assess the state of play in administrative law appeals in numerical terms and to perform a first data collection. For this purpose, first a measurement instrument had to be designed.

At present the research purpose is assessing the current situation in as wide a spectrum of issues as possible.

The researchers have designed a questionnaire to extract from individual files in appeal cases to the maximum possible data suited to be mutually compared. To enable comparison, as far as possible, for each question answer-modalities have been given and coded. With a view to application to case files, the questionnaire elaborates 12 research questions into 59 sub-questions and elements of these sub-questions. Among other things these questions relate to the administrative phase – initial decision making and administrative review –, judicial review (in first instance) and appeal. Within these stages the type and position of the different stakeholders is recorded, their legal representation – where applicable –, the type of stake involved, the legal arguments put forward, the manner in which the case has been dealt with, the use of provisional rulings or other specific instruments available to the court and the time involved in the different stages.

With the instrument that has been designed, a first analysis has been carried out of in total 125 case files at the Court of Appeals Arnhem-Leeuwarden, the Central Court of Appeal and the Council of State. The sample of case files has been taken from cases that have been submitted to review in appeal in 2010 in the following five areas of administrative law: income tax, tax-value assessment of real estate, social security, civil servants cases, and spatial administrative law. The advantage of taking a sample on the basis of date of submission, is that the selected cases all date from roughly the same period. For this reason distortions in comparability due to changes in the law are likely to be limited. A possible disadvantage may be that cases still pending at the time of analysis may escape

attention influencing the average time involved with a case. For this reason, the year chosen should not be too recent.

In its application to the 125 cases, the research instrument has proven its practicality. However, also a few possibilities for further refinement have come to light. Within the sample of cases some interesting observations could be made, such as the following.

In about a quarter to a third of the cases the ruling of the administrative law division of the district court instance is overturned, in whole or in part. In the vast majority of the cases, a different view of the appellate court on the facts rather than on the law is given as reason for overturning the ruling in first instance.

Civilians rather than administrative bodies appear to be inclined to appeal against an unwelcome ruling by the administrative law division of the district court.

Within the sample, the research shows some interesting correlations between the involvement of professional legal aid (which is optional in the Netherlands), the time involved with the case and the outcome of the appeal. A higher percentage of cases in which the plaintiff in appeal had involved professional legal aid where successful than of the cases in which the plaintiff did not involve professional legal aid. In cases in which the ruling in first instance is overturned, the duration of the appeal procedure is in average a month shorter than in cases in which this ruling is upheld. Paradoxically, in cases in which professional legal aid is involved, the duration of the procedures is significantly longer than in cases litigated without professional legal aid.

Within the sample, at the level of areas of law, the appeals phase seem to be faster as the phase of administrative review is slower and vice versa. In spatial administrative law, for example, administrative review took 15% (179 days) of the total duration from primary decision up until the ruling in appeal, and the appeals phase took 56% (668 days). In civil servants cases, administrative review took some 40% (603 days) of the total duration and the appeals phase took 25% (378 days).

The sample of cases analysed is relatively small. For this reason, findings should not be extrapolated. Nor can the correlations that have emerged with any certainty be attributed to causality. Therefore, it is recommendable that the basis this report provides for future comparison will be widened and deepened by applying the instrument to a larger sample of cases. The research shows that most of the relevant data are available in the text of the ruling in appeal. Also it has been established that without any selection all rulings in appeal are made available through the Internet. For these reasons, it is justifiable to conduct this additional research on a sample to be taken from published rulings.