Access to justice in environmental matters

Netherlands

I. Constitutional Foundations

Article 21 of the Dutch Constitution (*Grondwet*[1]) obliges Government to secure its citizens with a habitable environment and arrange for the protection and the improvement of the environment. Together with Article 11 which secures the right to personal integrity and Article 22 which awards a right to health, these provisions are the main (social) fundamental rights related to the environment laid down in the Dutch Constitution. Access to justice is secured by Article 17 that states that no one can against his will be kept from the competent court. Furthermore Chapter 6 of the Dutch Constitution is relevant for it states that the law will make clear which court is competent. Citizens have the right to invoke fundamental rights directly in administrative or judicial procedures if these rights are considered subjective rights. Therefore Article 21 of the Constitution could be invoked by citizens in procedures against decisions by public authorities. In most cases however, it will not have the desired effect because of the discretion that Government has in achieving the objective(s) of this provision. Any provision of an International treaty can be invoked in administrative and judicial proceeding after it has been published and when such a provisions is of a generally binding nature (Article 93 of the Constitution). This is also true for the so-called Aarhus Convention that was adopted by both the Netherlands and the European Union.

II. Judiciary

Legal protection in the Netherlands is first of all provided by the courts of general jurisdiction that are competent to decide on civil and criminal cases.[2] This system has three tiers. A case is heard first by a District Court (*Rechtbank*) and if a party doesn't agree with the judgment, he may lodge an appeal to a Court of Appeal (*Gerechtshof*). The Court of Appeal re-examines the facts of the case and reaches its own conclusions. Thereafter it is usually possible to refer a dispute to the highest court, the Supreme Court of the Netherlands (*Hoge Raad*). The Supreme Court of the Netherlands examines only whether the lower court(s) observed proper application of the law in reaching its decision. At this stage, the facts of the case as established by the lower court(s) are no longer subject to discussion. In 2013 the Netherlands will be divided into 11 districts, each with its own District court. District courts are divided into 3 sectors: a civil law sector, a criminal law sector and an administrative law sector. The 11 districts are divided into 4 areas of jurisdiction for the Courts of Appeal for civil and criminal disputes and some specific administrative disputes (e.g. tax law). With regard to criminal and civil law, the justices of the Court of Appeal only deal with cases where an appeal has been lodged against the judgment passed by the District Court. There is no special court or tribunal for environmental matters. The law will stipulate which court is competent, so there is no relevant possibility for forum shopping. With a few exceptions, administrative disputes on governmental decisions about environmental matters are heard first by one of the eleven District Courts (administrative law sector). Usually the cases are heard by the District Court by a single-judge division, but the court can decide to appoint three judges to a case which is complex or which involves fundamental issues. In environmental matters governed by administrative law and in a lot of other areas appeal is a matter for the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*), which will have a case dealt with by three judges although it could decide to have a simple case heard by a single judge. In other areas Dutch law provides for a special appeals tribunal, like the Central Appeals Tribunal (*Centrale Raad van Beroep*) for cases involving civil servants and social security issues, the Court of Appeal for appeals against tax assessments and the Trade and Industry Appeals Tribunal (*College van Beroep voor het Bedrijfsleven*) for disputes in the area of social-economic administrative law and for appeals for specific laws, such as the Competition Act. In many administrative disputes the hearing by the administrative law sector of the District Court is preceded by an objection procedure under the auspices of the administrative authority. When a case is being dealt with in an objection procedure or by an administrative court the applicant has the possibility to ask the court for a provisional or interim measure in a specific procedure if there is sufficient reason and a sufficiently urgent interest (Articles 8:81-8:86 General Administrative Law Act). If the interim measures demanded are allowed by the administrative court it will in most cases mean that the challenged decision is suspended.

In procedures against administrative decisions a competent court will quash (or: annul) the decision if the applicant has proven the decision in breach of the law. Although the courts do have the competence to alter or amend an administrative decision after it has been annulled, exercising that authority will be justified only in cases where it is sufficiently obvious what decision the administrative body would have to take after the annulment. In most cases the annulment of the decision will lead to a new decision by the same administrative authority. Courts are able to award compensatory damages to citizens against the public authority when there are grounds to do so (on the basis of tort), a request has been made by that citizen and the attacked decision has been found in breach of the law. Procedures against administrative decisions in environmental matters are governed by both the general provisions of

(administrative) procedural law which are stipulated in the General Administrative Law Act (*Algemene wet bestuursrecht*), mainly chapters 6, 7 and 8, and by some provisions in specific acts of which the most important are the Environmental Management Act (*Wet milieubeheer*), the General Act on Environmental Permitting (*Wet algemene bepalingen omgevingsrecht*), the Spatial Planning Act (*Wet ruimtelijke ordening*), the Water Act (*Waterwet*), the Nature Conservation Act (*Natuurbeschermingswet 1998*) and the Flora- and Fauna Act (*Flora- and Faunawet*). In procedures about administrative decisions on environmental matters there is the possibility that the court will appoint a specific independent expert, the Foundation for advising Administrative Courts in environmental and zoning cases (*Stichting Advisering Bestuursrechtspraak* or *StAB*). This foundation is funded by government and has a specific expertise in environmental matters. The law provides that it will write a report on any environmental case at the request of an administrative court. In administrative court procedures the courts do not have the possibility to investigate parts of an administrative decision that have not been attacked by the applicant. Any court however has the authority to investigate the facts of the case by hearing witnesses, by asking for (written) evidence or by appointing an expert as long as it concerns the conflict that has been brought to court by the parties in the procedure. Administrative courts will use these powers in cases where the applicant has supplied sufficient information to doubt the facts that the administrative authority has based its decision on. Case law proves that parties to the conflict being decided by the courts have the duty to provide evidence out of their own motion. This is also true in environmental matters before administrative courts, although the administrative authority of course always has the duty to take due care in preparing any administrative decision.

III. Access to Information Cases

Article 110 of the Dutch Constitution (*Grondwet*) instructs government to adopt legislation to secure citizens' access to information on governmental affairs. The Freedom of Information Act (*Wet openbaarheid van bestuur*) allows for the full or partial disclosure of previously unreleased information and documents that are controlled by all tiers of the government and are related to public affairs. The Freedom of Information Act states that practically all records related to governmental affairs are subject to disclosure, it sets the principle of mandatory disclosure but also contains a number of grounds for refusal in Article 10 and 11. Decisions concerning the disclosure of information must always take these grounds into account. In accordance with Article 3 of the Freedom of Information Act (*Wet openbaarheid van bestuur*) anyone may ask for information that is contained in public records to be disclosed. Requesters are not required to state the subject or reason of their interest. Disclosure of information is deemed relevant for securing the rule of law in a democratic society. Furthermore there are no relevant formal requirements for such a request, although a written request is preferred. One does have to state the public affair to which the request refers. A decision on a request has to be made within 4 weeks; in case of environmental information this is 2 weeks. The administrative authority can offer parties concerned an opportunity to submit views about the disclosure of information that can affect their interests in which case the decision is postponed (article 6(3) Freedom of Information Act). In accordance with the provisions of the General Administrative Law Act (*Algemene wet bestuursrecht*) a refusal has to be accompanied by a statement of reasons for the refusal and must contain information on available remedies. Those who are not satisfied with a decision (refusal, an incomplete answer or an insufficient answer) can apply for reconsideration under the auspices of the administrative authority that refused the request. If the decision remains unsatisfactory they then can turn to the administrative sector of the District Court for a court judgment. This is in accordance with the general provisions that are stipulated in Article 8:1 and 7:1 of the General Administrative Law Act (*Algemene wet bestuursrecht*). Finally it is possible to launch an appeal to the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*). All procedures have to be filed within 6 weeks and have no rules on mandatory legal representation. However, in cases where no decision is taken within the period that was awarded to the public authority to take the decision, that inaction of the public authority can be taken to court directly. When relevant for the dispute the courts are in general competent to demand information of the public authority. Article 8:29 of the General Administrative Law Act (*Algemene wet bestuursrecht*) allows public authorities to send information to court asking not to disclose the information to the applicant. This is what could occur in a case that concerns the request to disclose certain information. Only in cases where the applicant has allowed the court to access the information and to decide the case on the basis of that information even though the applicant didn't have access, could it influence the verdict of the court. When any court concludes that there is no (reasonable) ground to refuse disclosure, it could order information to be disclosed.

IV. Access to Justice in relation to Public Participation

The administrative procedures in environmental matters are governed by both the general provisions on administrative procedure of the General Administrative Law Act (*Algemene wet bestuursrecht*) and by some specific provisions in the General Act on Environmental Permitting (*Wet algemene bepalingen omgevingsrecht*) and the Environmental Management Act (*Wet milieubeheer*) and the Spatial Planning Act (*Wet ruimtelijke ordening*). For a number of important environmental permitting decisions, such as whether or not to grant an environmental permit (like an IPPC-permit) and the adoption of municipal zoning plans, the law provides for a procedure that involves public participation based on a draft-decision by the public authority. If a decision has been drafted it will be made publicly known and the draft-decision and the documents that it is based on will be available for anyone's viewing for 6 weeks. During that time *anyone* can participate in the decision making process by submitting views to the competent authority. The competent authority will have to react to these views before then taking and publishing the final decision. Such a final decision has to be taken within 6 months of the application for the environmental permit. This administrative procedure is laid down in section 3.4 (extensive public preparation procedure) of the General Administrative Law Act (*Algemene wet bestuursrecht*) and section 3.3 of the General Act on Environmental Permitting (*Wet algemene bepalingen omgevingsrecht*). This procedure is applicable when prescribed by law or when the administrative authority decides to prepare the decision using this procedure. Any decision that was prepared in this extensive procedure is subject to review by a court directly. Preparation of any other decision will be less extensive and will (in most cases) not involve public participation. In those cases, taking a final decision will usually take 8 weeks. This procedure is provided for in section 4.1 of the General Administrative Law Act (*Algemene wet bestuursrecht*) and in section 3.2 of the General Act on Environmental Permitting (*Wet algemene bepalingen omgevingsrecht*). In cases where the extensive procedure for preparing the decision has been applied, any *interested* party may lodge an appeal (see Article 1:2 General Administrative Law Act) that has also submitted views on the draft-decision (see Articles 8:1 and 6:13 of the General Administrative Law Act). An interested party is anyone whose interest is directly affected by an administrative decision. Case law provides that there should be a personal, objectively determinable interest that belongs to the person filing the case. Regarding administrative authorities, the interests entrusted to them are deemed to be their interests. Regarding legal entities, their interests are deemed to include the general and collective interests that they particularly represent in accordance with their objects and as evidenced by their actual activities. An example of a general interest could be the protection of the environment in a specific area. When the extensive procedure hasn't been applied, Articles 8:1 and 7:1 of the General Administrative Law Act (*Algemene wet bestuursrecht*) will prescribe that any *interested party* that wants to bring the case to court, shall first have to file an objection (*bezwaarschrift*) with the authority that took the decision. The result of this objection procedure will be a (re)new(ed) decision by the same public authority and only that decision can be taken to court. In any case only those parts of the decision may be challenged in court that have also been disputed in the administrative phase (Article 6:13 of the General Administrative Law Act). Most cases are lodged with the District Courts unless a specific Act stipulates another procedure (e.g. appeal in first and only instance with the Administrative Jurisdiction Division of the Council of State). For cases concerning environmental permits the District Court and thereafter the Administrative Jurisdiction Division of the Council of State are usually competent. Cases on zoning plans go directly to the Administrative Jurisdiction Division of the Council of State. For instance: a zoning plan will be adopted according to the extensive procedure that has to be applied by the competent authority in preparing the decision. Judicial review of a zoning plan is a matter for the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*) in first and last instance. An application for an IPPC license (in accordance with Article 2.1(1) sub e of the General Act on Environmental Permitting)

will also be dealt with in the extensive administrative procedure but will be subject to judicial review by the District Court first and to appeal by the Administrative Jurisdiction Division of the Council of State. In cases on an IPPC license the courts will grant the public authority a small margin of appreciation when establishing what are the Best Available Techniques for the specific installation at hand. In all procedures of judicial review the applicant may ask for provisional or interim measures in accordance with the general provisions on injunctive relief in administrative procedures (Articles 8:81-8:86 General Administrative Law Act).
In some environmental cases the law prescribes that an Environmental Impact Assessment (EIA) report has to be drawn up by the applicant before the public authority is able to decide on an application (Chapter 7 of the Environmental Management Act). Any decision on EIA screening, EIA scoping decisions or acceptance of an EIA report by the public authority can be challenged in court by filing a case against the decision that allows or refuses the application. There are no special rules on standing, forum, hearing, evidence or the extent of the review by the court. EIA is seen as an important instrument to prepare certain decisions that potentially have significant effects on the environment. It ensures those involved that the competent authority is able to respect the duty of careful preparation of the decision. In most cases the draft-decision is made public together with the EIA report and anyone is allowed to submit views before a final decision is made. Administrative Courts will review both the procedural legality and the substantive legality of administrative decisions as long as the interested parties have made that specific part of the decision a part of the dispute (see Article 8:69(1) General Administrative Law Act). When a public authority has been granted a margin of appreciation by the legislator in weighing the different interests involved in making a specific decision, the court will allow for this margin by applying a marginal review and upholding any decisions that it finds not unreasonable (Article 3:4(2) General Administrative Law Act). In general, courts will review the administrative decision and will ascertain whether the competent authority could justifiably base the decision on the material, technical findings and calculations that were used. There are no written rules of evidence other than the formal rules that have to be applied when establishing the facts. The court is for instance competent to appoint an independent expert, like the Foundation for advising Administrative Courts in environmental and zoning cases (*Stichting Advisering Bestuursrechtspraak* or *StAB*). In cases where the court concludes that the decision is unlawful it will annul the challenged decision. However, Article 6:22 of the General Administrative Law Act (*Algemene wet bestuursrecht*) provides that any *procedural* flaw that won't harm the interests of any of the interested parties could be overlooked by court. In the near future, however, this provision will provide this same possibility for any *substantive* flaw. Also the near future will bring a new provision to general administrative procedural law, which will provide that an administrative decision will not be quashed by court if it is in breach of any rule, which wasn't written to protect the interests of the party that filed the case.
The case will be dealt with in accordance with the general provisions on administrative proceedings that are laid down in Chapter 8 of the General Administrative Law Act (*Algemene wet bestuursrecht*). The court will publicly hear most cases (Articles 8:56-8:65 General Administrative Law Act) but sometimes a simplified procedure applies (Article 8:54 General Administrative Law Act). There are no written rules on evidence other than the formal rules on demanding information, appointing an expert etc. (Articles 8:27-8:29 and 8:42-8:51 General Administrative Law Act). Case law of course provides for rules of thumb concerning substantial rules of evidence. For instance: when the challenged decision restricts a citizen in his rights or is of a punitive nature, the burden of proof is on the public authority. Another relevant rule of thumb is: who took the initiative for the administrative decision? If the administrative decision-making started with an application by the citizen involved, the first burden of proof is on the applicant. Policy documents and generally binding rules cannot be directly reviewed by an administrative court.

V. Access to Justice against Acts or Omissions

When private individuals or legal entities act in breach of environmental law, Dutch law provides for the possibility to submit a claim to court directly. However, these proceedings are not specific for environmental matters, but are brought to (civil, ordinary) courts based on tort law, which is regulated in Article 6:162 of the Dutch Civil Code (*Burgerlijk Wetboek*). An applicant can claim damages or can demand that the court orders the private individual or legal entity to stop its actions. The same applies for claims against state bodies. The administrative courts in the Netherlands that handle cases on environmental permits and on environmental enforcement aren't competent in such cases against private individuals or legal entities. The administrative courts are of course competent when it concerns cases in which a decision was made to grant an environmental permit, to impose enforcement measures and to allow or refuse on other environmental issues. The Environmental Liability Directive (2004/35/EC) was implemented by the Netherlands in title 17.2 of the Environmental Management Act (*Wet Milieubeheer*). The competent authority for damage caused to the environment is either the authority that is competent to issue the permit for the installation (*inrichting*) on the basis of the General Environmental Permitting Act (*Wet algemene bepalingen omgevingsrecht*) or – for those installations that are governed by general binding rules on environmental protection, in most cases the Decree on general rules for activities (*Activiteitenbesluit*) – the authority that is competent to enforce the general rules. In cases where the damage is caused outside an installation, the competent authority is designated on the basis of the nature of the damage in accordance with Article 17.9(1-4) of the Environmental Management Act. Any interested party, as defined in Article 1:2 of the General Administrative Law Act (GENERAL ADMINISTRATIVE LAW ACT ; *Algemene wet bestuursrecht*), or a state body may request the competent authority to decide on preventive or remedial measures. If an interested party lodges an appeal, any decision in accordance with the regulation implementing the Environmental Liability Directive by a public authority with respect to environmental liability is subject to judicial review. Any appeal will be dealt with in accordance with both the general regulation on administrative adjudication that are specified in the General Administrative Law Act and the specific procedural rules on environmental matters in the Environmental Management Act. When an administrative court isn't competent to deal with the dispute that is raised in court, the civil court will be competent to deal with the case.

VI. Other Means of Access to Justice

The public prosecution (*openbaar ministerie*) is responsible for prosecuting criminal acts against the environment which are determined in the Dutch Criminal Code (*Wetboek van Strafrecht*). For environmental matters there is a specific section of the public prosecutor's office to prosecute these kinds of acts. Private criminal prosecution is not available in environmental matters. There is however the possibility for an interested party to request the criminal court to order the public prosecution to prosecute a certain criminal act; Article 12 of the Criminal Procedural Code (*Wetboek van Strafvordering*).
The existence of a National Ombudsman is guaranteed by Article 78a of the Dutch Constitution (*Grondwet*). The Netherlands has a special National Ombudsman Act (*Wet Nationale ombudsman*). In addition, the work of the National Ombudsman's Office is covered by the Dutch General Administrative Law Act (*Algemene wet bestuursrecht*). The National Ombudsman investigates complaints brought to him by members of the public. He can also launch investigations on his own initiative. There is no special Ombudsman for environmental matters. At anyone's complaint the Dutch Ombudsman is competent to investigate the behavior of government. The Ombudsman (http://www.nationaleombudsman.nl/) helps individual citizens who are experiencing problems with government and explains to administrative authorities how they can do things better. Where appropriate, the National Ombudsman responds to problems or complaints by launching investigations. By law, all parties concerned have to cooperate with these. The National Ombudsman is a 'fall-back provision'. If you have a complaint about government, the first step is to complain to the administrative authority itself. The National Ombudsman can only deal with a complaint if it was first lodged with the administrative authority itself and the complaint was not sufficiently dealt with.

VII. Legal Standing

Legal Standing	Administrative Procedure (public participation)	Judicial Procedure
Individuals		

	In administrative procedure the main rule is that an interested party, a person whose interest is directly affected by a decision (Article 1:2(1) General Administrative Law), shall be able to participate in the procedure that will lead to the decision. This is the case both in the procedure that is prescribed for individual decisions and the extensive preparation procedure of section 3.4 General Administrative Law Act. In environmental matters there are however specific provisions that will allow not just an interested party, but anyone to submit his or her views on a draft decision, for example Article 3.12, lid 5 General Act on Environmental Permitting (*Wabo*).	Article 8:1 of the General Administrative Law Act (*Algemene wet bestuursrecht*) stipulates that only an interested party (*belanghebbende*) has the right to lodge an appeal against a decision made by a public authority. An interested party is a person whose interest is directly affected by a decision (Article 1:2(1) General Administrative Law Act). Before an appeal can be lodged, an objection procedure is obligatory according to Article 7:1 General Administrative Law Act, unless the decision was prepared in accordance with the extensive preparation procedure described in section 3.4 General Administrative Law Act .
NGOs	Article 1:2(1) GALA states that an interested party is a person (or any legal entity) whose interest is directly affected by a decision. Article 1:2(3) General Administrative Law Act . stipulates that in regards to 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. In environmental matters there are however specific provisions that will allow not just an interested party, but anyone to submit his or her views on a draft decision.	Article 8:1 GALA stipulates that only an interested party (*belanghebbende*) has the right to lodge an appeal against a decision made by a public authority. Article 1:2(1) General Administrative Law Act .states that an interested party is a person (or any legal entity) whose interest is directly affected by a decision. Article 1:2(3) General Administrative Law Act . stipulates that 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.
Other legal entities	See individuals and/or NGO's	See individuals and/or NGO's
Ad hoc groups	Will have to meet the demands of either individuals or NGO's	Will have to meet the demands of either individuals or NGO's before the appeal period ends
foreign NGOs	See individuals and/or NGO's	See individuals and/or NGO's
Any other	See individuals and/or NGO's	See individuals and/or NGO's

The rule that stipulates that only an interested party has the right to appeal a decision by a public authority (Article 8:1 and 1:2 General Administrative Law Act .) is applicable for all administrative court proceedings. Since October 2005 Dutch administrative procedural law doesn't have an *actio popularis* anymore. The sectoral, environmental legislation does not diverge from this general rule of legal standing; therefore it applies in cases concerned with EIA and IPPC. However, Sectoral legislation does, in environmental matters, state that not just an interested party but anyone shall be entitled to submit his or her views on a draft decision. Legal standing for governmental bodies is arranged for in Article 1:2(1 and 2) General Administrative Law Act, which reads that an administrative authority can be an interested party because the interests entrusted to them by the legislator are deemed to be their interests. The public tasks attributed to them and the competences they have are decisive in assessing which interests are entrusted to them. In accordance with Article 1:1 General Administrative Law Act . the National Ombudsman is not deemed to be such an administrative authority. Furthermore there has been no evidence of any proceedings before an administrative court initiated by the public prosecution.

VIII. Legal Representation

Lawyers play an important role in judicial procedures in environmental matters as environmental law is getting more and more complex. If a case is won in administrative court, the public authority could reimburse costs for legal counsel if the court so orders. The amount that can be awarded is maximized and is usually well below the actual costs (Article 8:75 General Administrative Law Act .). However, in administrative procedures legal counsel is not obligatory. The same is true for all administrative courts. Legal counsel is therefore not compulsory in administrative judicial procedures. In other words, the General Administrative Law Act (General Administrative Law Act ., *Algemene wet bestuursrecht*) doesn't prescribe legal counsel for lodging an appeal, nor for legal representation in court. In civil court proceedings legal representation is obligatory, although there is an important exception for cases in which the financial interest of the case is not larger than 25.000 euro. The same applies for criminal court procedures. All lawyers are members of the Bar ('Orde van Advocaten', http://www.advocatenorde.nl/). On their website you can find lawyers through some keywords, like areas of specialization such as environmental law (*milieurecht*). In some cases NGO's, such as Greenpeace (http://www.greenpeace.nl/), *Stichting Natuur en Milieu* (www2.natuurenmilieu.nl) or Milieudefensie (http://www.milieudefensie.nl/), will be able to help the public lodge appeals.

IX. Evidence

The Netherlands does not have specific rules of evidence that apply only in environmental matters. In criminal and civil court procedures there are specific rules on how to provide evidence and who shall bear the burden of proof. In civil procedures the parties have to propose all of the evidence for their statements to the court as soon as possible. The state prosecutor prosecutes and must provide all evidence in criminal procedures concerned with environmental matters. In the rules on administrative court procedures there are some on providing evidence but none are about which one of the parties will have the burden of proof. Providing new evidence in court for the first time is usually allowed unless the principle of due process is harmed. Although the legislator once explained that administrative courts should seek the material truth and the courts are competent to request evidence on its own motion (*ex officio*), the current proceedings before the administrative courts, in many ways, resemble the procedure in civil courts where the parties are expected to provide their evidence. Parties are able to present expert opinions, have an expert heard as a witness and ask the court to appoint an expert to conduct an investigation (see division 8.2.2 General Administrative Law Act .on the preliminary inquiry). The court will evaluate all the evidence presented and conclude which evidence is most probably in line with the truth. When an expert opinion is presented it is of course not binding on an administrative judge, although judges are likely to follow the opinion of the expert it appointed. The opinion of an expert is also not binding in cases where the court did not appoint the expert but a party presented a report. The courts are always able to assess the quality and the consistency of the report and will take into account whether the expert has reported in accordance with the principle of due care. In procedures about administrative decisions on environmental matters there is the

possibility that the court will appoint a specific independent expert, the Foundation for advising Administrative Courts in environmental and zoning cases (*Stichting Advisering Bestuursrechtspraak* or *StAB*). This foundation is funded by government and has a specific expertise in environmental matters. The law provides that it will write a report on any environmental case at the request of an administrative court. Because of the availability of this Foundation the chance that the court will appoint an expert to review a specific decision, seems slightly better in procedures on environmental matters.

X. Injunctive Relief

In general a decision by an administrative authority will take effect when it has been notified in accordance with the general rules on notification in the General Administrative Law Act .. However, most important environmental decisions will only take effect when the period to appeal against those decisions has ended, because sectoral legislation so orders. In general an appeal against a governmental decision in the Netherlands does not have a suspensive effect (see Article 6:16 General Administrative Law Act .). However, sectoral or specific legislation sometimes diverges from this general rule. Therefore in general administrative decisions can be immediately executed, irrespective of an appeal or a court action. Any execution of a decision that is later annulled by court, may however lead to liability.

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, the president of the district court which has or may have jurisdiction in the proceedings on the merits may, on request, grant a provisional remedy where speed is of the essence because of the interests involved. So as soon as an objection is made or an appeal is lodged (pro forma), courts are competent to grant an injunctive relief at the request of any interested party that has lodged the objection or the appeal and has proved the urgent need for a injunctive relief because of the interests involved (see Article 8:81 General Administrative Law Act .).

The injunctive relief can consist of any court ordered action but will, in practically all cases consist of awarding a suspensive effect or removing the suspensive effect of a decision that was taken by the administrative authority. There is no appeal against an injunction by the administrative court.

XI. Costs

Administrative procedures are free of charge. For an administrative court to hear an applicant's case it is necessary to pay a fee. The fee for court proceedings in first instance is stipulated in Article 8:41 of the General Administrative Law Act (*Algemene wet bestuursrecht*). In general the fee is not considered to be very high. It varies on the basis of the type of person that instigates the procedure and the type of case and substantive law that applies to the case. Article 8:41(3) General Administrative Law Act .mentions the different fees explicitly. In 2013 the fee is 44 euro for any natural person that lodges an appeal or an injunction against a decision by an administrative authority that is concerned with social security and related legislation (see Article 8:41(3) General Administrative Law Act .). It is 160 euro for a natural person in any other case and 318 euro for any legal person lodging an appeal or an injunction. Fees for proceedings before an administrative Court of Appeal are somewhat higher and are stipulated in the legislation applicable to the procedure before the courts of appeal. When the appeal has success, these costs usually will have to be paid by the administrative authority (Article 8:75 General Administrative Law Act .). In very rare cases of abuse of the right to appeal the court might decide that the applicant should bear the (fixed) costs of the administrative authority. The 'loser pays principle' does not apply in most cases. In civil court proceedings costs are a bit higher. The fee for court proceedings in a District Court is differentiated (in most common cases in 2013 it is 274 euro for a natural person and 589 euro for any legal person, but could be higher when the interests of the case are bigger). When a case is concerned with claims that are either above 25.000 euro or above 100.000 euro the fees get higher respectively. Under specific circumstances one could be classified as needy or poor and a special low fee applies. In civil matters the ' loser pays principle' prevails. In all cases other costs might be the costs for professional legal assistance in legal procedures. These costs differ on the basis of the type of lawyer (and his specialisation) the applicant hires. If the claimant or applicant is considered needy or poor he could ask for subsidised legal aid but will have to pay a personal contribution.

XII. Financial Assistance Mechanisms

The courts cannot provide exemptions from court fees. However, the Dutch legislation does provide for subsidized legal aid and for a reduction of fees for those applicants that could be considered needy or poor. Furthermore there are special bureaus that provide legal aid on an informal basis although this will in most cases lead to normal costs for legal assistance, for which subsidy could be provided under the same conditions that apply for the reduced fees. On top of that law firms could be persuaded to provide pro bono legal assistance and some of them say that they do on a regular basis, but most law firms will probably not provide legal assistance for free in relatively normal cases. There are no legal clinics dealing with environmental cases that are available to the general public. However, in some cases NGOs like Greenpeace will organize the protests against decisions by public authority and help with lodging appeals.

XIII. Timeliness

If a decision is applied for the administrative authority should deliver a decision within either the term provided in sectoral legislation or – if no such term is provided – within a reasonable time period, which is deemed to be eight weeks according to the Article 4:13 General Administrative Law Act .. The time limit for an application for a (complex) environmental license is six months and it is eight weeks in less complex cases such as a building license. Both are stipulated in the General Act on Environmental Permitting (*Wet algemene bepalingen omgevingsrecht*). There are at least two different kinds of sanctions when an administrative authority doesn't deliver a decision in time. The applicant should notify the public authority that the decision wasn't delivered in time and two weeks after this formal notice, there are two consequences. First, the applicant is awarded the right to appeal to court directly for the fact that no decision was delivered. When the competent court decides that the public authority is indeed in breach of its duty to deliver a decision in time, it will order the public authority to deliver the decision and set a financial penalty for each day that the public authority doesn't deliver the decision. The second consequence of the fact that two weeks have passed since the notification by the applicant is, that from that day he is awarded a financial compensation for each day that the public authority is in delay with a maximum of 1260 euro. If you want to challenge a decision an appeal has to be lodged within six weeks after the decision has been notified. In most cases one is allowed to submit a *pro forma* appeal which means that another term is awarded to submit grounds for the appeal. Although courts recently have tried to set court dates sooner, usually a hearing will be held after three quarters of a year. This allows the parties to submit grounds for the appeal and doesn't impair their rights to react to each other's writing. There is no time limit for the court to set a date for the hearing. If a court date has been set the parties have until ten days before the hearing to deliver new information or new ground for their appeal, but they should be aware that the principle of due process could limit the freedom to send in new information or grounds. The General Administrative Law Act .sets a time limit for delivering judgment after the hearing by an administrative court. This time limit is six weeks and can be extended for another six weeks. There are however no sanctions against courts delivering judgments in delay. Usually a court will need 9 to 12 months to deliver judgment. Recently it has been emphasized both by the legislator and the judiciary that court procedures should as much as possible lead to the final resolution of an administrative dispute. Therefore several instruments have been implemented to allow the courts to try and reach this ideal; for instance, when a court has assessed that a decision is in breach of the law, it has been awarded the competence to demand that the administrative authority tries to repair the irregularities (this is called the 'administrative loop'; Article 8:51a - 8:51 and Article 8:80a and 8:80b General Administrative Law Act .ACT).

XIV. Other Issues

The environmental decisions are usually challenged in the juridical administrative procedure by submitting views and challenging a draft decision. In (complex, large) environmental cases it is common to discuss the project at hand with the public involved before the formal administrative procedure starts. In most cases the views submitted will probably be known to the public authority because of the information that was gathered when preparing the draft decision. Information on environmental impact in general is not systematically provided for in a structured and easily accessible manner, but asking for

information will lead to a decision on making the information public, which decision can be challenged in court. Information on environmental impact assessments is to a large extent accessible through the website of the Commission for the Environmental Impact Assessment (http://www.commissiemer.nl/). Furthermore information on legal issues is provided by an agency of the government (http://www.agentschapnl.nl/), which has several websites with information on the environment in the Netherlands and on environmental law (http://www.infomil.nl/). Governmental organizations in the Netherlands are more and more convinced that alternative dispute resolution can be a good alternative for court proceedings. This is also the case in environmental matters. Furthermore some administrative courts, including the highest administrative court in environmental cases, offer parties the possibility to call in a mediator and try to settle their conflict by finding consensus and without the courts delivering judgment.

XV. Being a Foreigner

Discrimination based on country of origin and/or language is forbidden by the Dutch Constitution (Article 1). In general the (procedural) law demands that all lawsuits, appeals and other writings are submitted to the court in the Dutch language. The judgment and other writings of the court will also be in Dutch. There are however possibilities to have relevant documents that are written in another language translated. Furthermore, when someone participates in a court hearing and he is unable to speak the Dutch language sufficiently he is allowed to use his own language and the court will arrange for an interpreter free of charge (see Article 8:36 GENERAL ADMINISTRATIVE LAW ACT).

XVI. Transboundary Cases

There are no general procedural rules in the Dutch law on environmental issues in another country. In most cases transboundary cases are dealt with in accordance with the normal procedural rules. Of course the environmental impact of Dutch projects in other countries is relevant for the decisions to be taken by the Dutch authorities, but there are no general rules on transboundary cases. The (foreign) individuals affected by the decision taken by the public authority can be considered interested parties (Article 1:2 General Administrative Law Act .) and will therefore have standing in Dutch administrative courts and are eligible for practically all the legal and financial assistance that was mentioned above.

Related Links

http://wetten.overheid.nl/zoeken/ (search for Dutch legislative acts)
http://www.rechtspraak.nl/ (Dutch case law database)
https://www.milieurecht-advocaten.nl/ (association of Dutch environmental lawyers)
http://www.advocatenorde.nl/ (Dutch bar association)
http://www.nationaleombudsman.nl/ (Dutch Ombudsman)
https://www.om.nl/onderwerpen/milieucriminaliteit/ (Dutch public prosecutor's office: environment)
http://www.infomil.nl/ (Information on Dutch environmental law)

[1] All Dutch legislation mentioned on this website can be found on the internet by consulting http://wetten.overheid.nl/zoeken/.
[2] Information on the Dutch judiciary is available on the internet by consulting http://www.rechtspraak.nl/.

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