

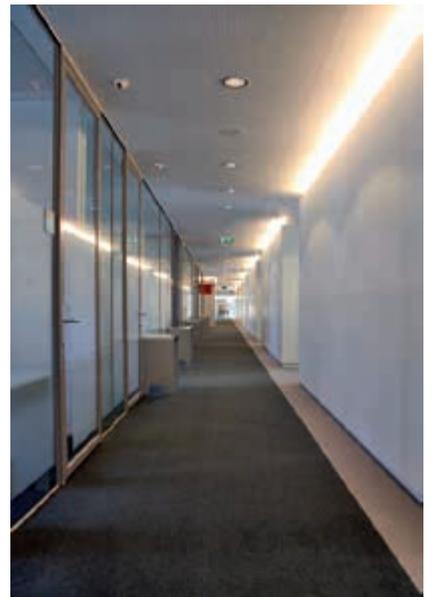
The Dutch Council of State

Advising on legislation and governance and
Adjudicating in administrative law disputes

Advisory body on legislation and administrative court

The Council of State has two primary tasks, carried out by two separate divisions. The Advisory Division, as its name implies, advises the government and Parliament on legislation and governance, while the Administrative Jurisdiction Division is the country's highest general administrative court. The basis for these responsibilities can be found in articles 73 and 75 of the Constitution.

Like the House of Representatives and the Senate, the Netherlands Court of Audit and the National Ombudsman, the Council is one of the High Councils of State. These are bodies regulated by the Constitution, which carry out their tasks independently of the government.



Composition and organisation

**His Majesty the King is the President of the Council of State.
The Council consists of the Vice-President and a maximum of ten members.**

The Vice-President is in charge of the running and organisation of the Council as a whole. As well as members, the two Divisions have State Councillors and Extraordinary Councillors, and at present there are about 60 State Councillors working within the Council. The maximum number of members and State Councillors that may work in the two Divisions simultaneously is limited by law to ten.

Members and State Councillors are appointed for life by Royal Decree, though members of the Advisory Division may be appointed for a fixed term. The Cabinet nominates candidates and the Council itself makes recommendations.

The Council is also consulted regarding the choice of candidate for Vice-President.

Members and State Councillors are appointed on the basis of their expertise and experience in legislative, administrative or judicial matters. They are drawn from the ranks of academia, public administration, the judiciary and government. Members and State Councillors who work solely in the Administrative Jurisdiction Division must have legal background.

The Council of State has a support staff of about 630 people, some 300 of whom are lawyers. Headed by the Secretary, the organisation comprises the following:

- the Advisory Department provides support to the Advisory Division in its work. The Department is divided into sectors staffed by legislative experts and support staff;
- the Administrative Jurisdiction Department, made up of units comprising lawyers and support staff, assists the Administrative Jurisdiction Division in its work as an administrative court;
- the Support Services Department, which includes the personnel, ICT, and library and records units;
- the Management Support Department provides administrative and other assistance to the Vice-President and Secretary. It includes the Communication Unit.

Advisory Division

Tasks

The Advisory Division of the Council of State provides the government with independent advice on:

- all Bills introduced in Parliament by the government;
- all orders in council, before they are promulgated by the Crown;
- all treaties that the government puts before Parliament for approval;
- all matters on which its advice is required by law, such as the Budget Memorandum and expropriation orders;
- other matters on which the government seeks the Council's advice.

The House of Representatives also seeks the Division's advice on Bills introduced by one or more members of parliament before considering them in the House. In addition, the government and both Houses of Parliament may ask the Division to provide information concerning legislation and public administration.

Advisory opinions are prepared by one of the Division's four sections, each of which deals with Bills originating from three or four government ministries. A section drafts an advisory opinion on a Bill, which is then submitted to the Division, adjusted as necessary, and adopted.

Members of the Advisory Division meet every Wednesday afternoon to consider their recommendations on legislation. The Advisory Division of the Council of State for the Kingdom, which includes extra members appointed by the other countries of the Kingdom, meets once a month. Both bodies meet in closed session.

The Vice-President of the Council of State is the chair of the Advisory Division. Queen Máxima has a seat. Members of the Royal House who have a seat on the Council of State (Advisory Division) may take part in discussions, but they may not vote.

Assessment framework

In assessing Bills and other requests for advice the Advisory Division uses an assessment framework made up of three elements: policy analysis, legal issues and technical aspects. This gives rise to the following questions:

Policy analysis

- Is the problem being addressed one which can or should be solved by legislation?
- Will the proposed legislation be effective, efficient and balanced as regards costs and benefits?
- Will it be possible to implement and enforce the proposed legislation and to monitor its effects?

Legal issues

- Is the Bill compatible with higher law: the Constitution, treaties (such as the human rights conventions) and European law?
- Is it in accordance with the principles of democracy and the rule of law?
- Is it compatible with the principles of good legislation, such as equality before the law, legal certainty, proper legal protection and proportionality?
- Can it be easily incorporated into the existing legal system?

Technical aspects

- Is the Bill well drafted from a technical point of view?
- Does it establish a logical, systematic regime?

Judgment

At the end of the advisory opinion, the Advisory Division gives its judgment (the *dictum*). If negative, the dictum will recommend against introducing the Bill or promulgating the order in council, or it may recommend waiting until substantial amendments have been made. In such cases, the proposed legislation is returned to the Cabinet.

Once the Advisory Division has issued its opinion, the relevant minister formulates his view of the opinion in a report (*nader rapport*) presented to the King. The report proposes that the Bill should or should not be submitted to the House of Representatives and may contain amendments to the Bill. The Division's opinion on a Bill is only made public at the point when the Bill is introduced into the House. Its advisory opinion on a draft order in council is made public when the final text of the order is published in the Bulletin of Acts and Decrees.

The full text of all advisory opinions that have been published is available on the Council of State's website.

Independent budgetary surveillance

In the Sustainable Public Finances Act, the legislature expanded the Advisory Division's tasks. The Advisory Division is the Netherlands' designated authority for independently monitoring compliance with the fiscal rules agreed by the European Union.

The Advisory Division reviews whether the draft budget complies with EU fiscal agreements. The tools it uses for this purpose include the forecasts of the CPB Netherlands Bureau for Economic Policy Analysis. This scrutinising role is distinct from the advisory role the Advisory Division already had in respect of the Budget Memorandum.

In addition to its assessment of the Budget Memorandum in September, the Advisory Division also issues a budgetary surveillance report in the spring.

The Advisory Division publishes the full text of its reports on the Council of State's website.

Administrative Jurisdiction Division

Tasks

The Administrative Jurisdiction Division is the highest general administrative court in the Netherlands. It hears appeals lodged by members of the public or companies against decisions or orders given by municipal, provincial or central government. Disputes may also arise between two public authorities. The decisions or orders on which the Division gives judgment include:

- decisions in individual cases (e.g. refusal to grant planning permission or an environmental licence);
- orders of a general nature (e.g. a land-use plan).

Not included are acts under civil law (for example the purchase of land by a municipality or maintenance contracts entered into by a government ministry).

Composition

The Administrative Jurisdiction Division is divided into three chambers.

Spatial Planning Chamber:

Cases under the Spatial Planning Act, Underwater Excavation Act, Transport Infrastructure (Planning Procedures) Act, Noise Abatement Act, Aviation Act, Nature Conservancy Act, etc.

Aliens Chamber:

Cases under the Aliens Act 2000 (regular and asylum residence permits, detention).

General Chamber:

Cases under the Environmental Permitting (General Provisions) Act, Water Act, Soil Protection Act, Government Information (Public Access) Act, general municipal byelaws and cases concerning such matters as education, grants, compensation, and housing and healthcare benefits.

The Administrative Jurisdiction Division is the court of sole and last instance in cases concerning spatial planning, certain cases involving education and health care and in several specific environmental cases. It also hears appeals from judgments given by the district courts in cases concerning such legislation as the Aliens Act, Environmental Permitting (General Provisions) Act and the Government Information (Public Access) Act.

The Administrative Jurisdiction Division is not the only supreme administrative jurisdiction in the Netherlands. The Central Appeals Court for Public Service and Social Security Matters in Utrecht is the highest court in that sphere, while in the area of socioeconomic administrative law the highest court is the Administrative Court for Trade and Industry.

Court hearings

The Administrative Jurisdiction Division hears many administrative disputes in open court. Hearings take place on every working day. At a hearing, parties may express their views orally and the members of the Division may put questions directly to the parties. Cases are heard by a panel of three judges (full-bench chamber) or by a judge sitting alone (single-judge chamber).

The Division holds one daily session where it makes its judgments public. The sessions are open to all.

Provisional relief

Applications for provisional relief may be submitted to the President of the Administrative Jurisdiction Division.

In general, the judgment given in such proceedings lapses once judgment is given in the proceedings on the merits. Provisional relief allows the court to take special short-term measures, for example to prevent a decision by an administrative authority from having irreparable consequences.

Reviews

In appeal proceedings, the Administrative Jurisdiction Division reviews whether an authority acted in accordance with the law. The question in such proceedings is whether a decision was compatible with the law and with the general principles of proper administration, in both *formal* and *substantive* terms.

The *formal principles of proper administration* involve such questions as:

- was the decision prepared with care and without bias on the part of the authority?
- were appropriate reasons given?
- is the decision clear and unambiguous?

The *substantive principles of proper administration* involve such questions as:

- did the authority strike a reasonable balance between the interests involved?
- were the interests of the individual harmed disproportionately?
- did the authority use its powers for a purpose different from the one set out in the legislation?
- is legal certainty guaranteed for the individual?

Judgment

The Administrative Jurisdiction Division's judgment may take one of the following forms.

- It may declare the appeal well founded and quash all or part of the authority's decision or the district court's judgment. The authority will then often have to give a new decision.
- It may declare the appeal well founded but uphold the legal consequences. This means that the content of the quashed decision continues to apply, because the government has rectified the decision's shortcomings during the proceedings.
- It may declare the appeal unfounded: the authority's decision or the district court's judgment is upheld.
- It may declare the appeal inadmissible. In this case the Division cannot rule on the merits because certain conditions have not been met: for instance, the notice of appeal was not submitted within the set time, or the court fees were not paid or were paid too late.
- It may find that it has no jurisdiction: the claim must be heard, and judgment given by a different court.

A judgment given by the Division is final and irrevocable, in other words no further appeal is possible. The full text of the majority of the Division's judgments appears on the Council of State's website immediately after being made public.

Information and contact

The Advisory Division of the Council of State produces about 500 advisory opinions on legislation annually, about 95% of them within three months. Every year, an average of around 1,800 cases and 400 applications for provisional relief in the field of spatial planning are brought before the Administrative Jurisdiction Division, over 5,300 cases and 800 applications for provisional relief are brought before the Aliens Chamber, and over 3,400 appeal cases and 300 applications for provisional relief are brought before the General Chamber.

The Council of State is located in the centre of The Hague. The Advisory Division meets at its Binnenhof premises every Wednesday. Hearings before the Administrative Jurisdiction Division take place in the recently renovated Council of State building at Kneuterdijk 22.

More information on the Council of State is available from its website www.raadvanstate.nl (with a summary in English). Or you can call its Communication Department (Public Information; Afdeling Publieksvoorlichting) on 00 31 (0)70 426 4251 or 00 31 (0)70 426 4033.

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