

23 October 2013

State Councillor Advocate General delivers first advisory opinion in administrative law dispute

Since 1 January 2013 the highest Dutch administrative courts have been able to seek advisory opinions in specific cases from an 'advocate general' specialising in administrative law, in the interests of legal uniformity and the development of the law. In May 2013 the President of the Administrative Jurisdiction Division of the Council of State availed himself of this option for the first time. On 23 October 2013 State Councillor Advocate General Rob Widdershoven delivered his first advisory opinion in an administrative law dispute.

An advisory opinion offers a better opportunity than a court judgment to place a question of law in a wider context. The advisory opinion can help to improve judicial development of the law and to make this process more comprehensible. The cases in question primarily involve questions of law concerning more than one of the highest administrative courts which have not previously been answered clearly or indeed at all.

Divergent case law

In his first advisory opinion State Councillor Advocate General Widdershoven was asked to examine the divergent case law of the Administrative Jurisdiction Division, the Central Appeals Court for Public Service and Social Security Matters, the Administrative Court for Trade and Industry and the Supreme Court on the 'reasonable time' guarantee in article 6 of the European Convention on Human Rights. He was asked what periods of time the courts could define as 'reasonable', in the light of European Court of Human Rights case law, for the various stages of proceedings and for proceedings as a whole. It is important to the courts to be able to employ a sound, straightforward system in their judicial practice.

Uniform 'reasonable time' of four years

The State Councillor Advocate General advised the highest administrative courts to observe a uniform reasonable time of four years for cases involving an objection procedure and court proceedings at two separate instances. He put forward two options for the different stages: option A (six months for the objection procedure, 18 months for the application for review, and 24 months for the appeal proceedings) and option B (eight months for the objection, 20 months for the application for review and 20 months for the appeal). The State Councillor Advocate General

indicated a preference for option A. In his advisory opinion he said: 'If the grand chamber also chooses this option, the reasonable time for processing cases involving an objection and judicial review at sole and last instance should be two years and six months, i.e. six months for the objection procedure and 24 months for the review proceedings'.

Preliminary ruling procedure disregarded

State Councillor Advocate General Widdershoven advised the courts to disregard the duration of any preliminary ruling procedure before the European Court of Justice (ECJ) in Luxembourg when determining whether the reasonable time guarantee has been breached in domestic proceedings. This would apply both to cases in which a question is actually referred to the ECJ for a preliminary ruling and to those where proceedings are stayed pending a preliminary ruling in another case. In the latter, the stay of proceedings must be 'reasonable'; in other words, given the limits of the dispute in the stayed case, the question or questions referred for a preliminary ruling must be relevant to the adjudication of that case. In that event, State Councillor Advocate General Widdershoven argued that the period that can be disregarded starts when the parties, once the question has been referred for a preliminary ruling, receive a letter from the court that is staying proceedings notifying them of the stay and the reasons for it, and ends on the date of the ECJ's judgment.

Grand chamber with five members

Since 1 January 2013, it has also been possible for administrative law cases to be heard by a five-member grand chamber. On 12 September this chamber heard the specific case in which the advisory opinion was delivered. The members of the grand chamber were the President of the Administrative Jurisdiction Division, the Presidents of the Central Appeals Court for Public Service and Social Security Matters and the Administrative Court for Trade and Industry and a justice of the Supreme Court (the latter three being Extraordinary Councillors), and a State Councillor from the Administrative Jurisdiction Division. Following the advisory opinion by the State Councillor Advocate General, the grand chamber will give judgment on the case within a few months. The advisory opinion provides information to the Administrative Jurisdiction Division, but is not binding upon it.

See the full text (in Dutch) of the advisory opinion in case no. 201302106/2.

