



**Seminar organized by  
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*“Due process”*

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**Answers to questionnaire: The Netherlands**



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# Answers to the Questionnaire for the ACA Seminar in Talinn, April 26-17 2018

## (contribution of the Council of State - Netherlands)

### Introduction

In Dutch administrative procedural law the normal mode of handling cases consists of number of procedural steps: a check on formalities after the appeal is lodged, a pre-trial investigation, a hearing and a oral or written decision. The hearing can be set aside in normal proceedings with the consent of parties; see article 8:57, first paragraph, of the General Administrative Law Act (hereafter: GALA).<sup>1</sup>

Next to the normal proceedings Dutch administrative procedural law is familiar with two special ways of settling cases. Both the General Administrative Law Act and a number of special laws (*lex specialis*) provide for:

1. the expedited procedure (the regular time-limits for the proceedings are shortened and or the statutory limit for the judge to decide on the case is shortened – for example in the Elections Act);
2. the simplified procedure (certain procedural steps are left out, for example the hearing).

The Crises and Recovery Act (Crises- en herstelwet) and the Aliens Law Act 2000 both include examples of a combination of expedited and simplified procedures.

The simplified proceedings will be elaborated on in Part A of the questionnaire.

Besides these two special ways of handling cases, the GALA also provides for another option; see article 8:86 GALA.<sup>2</sup> This option can only be used in summery proceedings. If the judge who is handling the request for summery proceedings considers - after the hearing - that further inquiry cannot reasonably be expected to contribute to an assessment of the case, he may give immediate judgement of the merits. This option is called 'kortsluiting' ('short circuit'ing'). In

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<sup>1</sup> Article 8:57 of the General Administrative Law Act (GALA) states:

'If the parties consent, the district court may order that there shall not be a hearing. In that case the district court shall close the inquiry.'

<sup>2</sup> Article 8:86, par. 1, GALA states that if the request is made when an appeal has been lodged with the district court, and the president considers after the hearing (...) that further inquiry cannot reasonably be expected to contribute to an assessment of the case, he may give immediate judgment on the merits.

cases where the administrative court is the first and last instance to decide on the case, this option can and may only be used with the consent of all parties.

## Part A

### 1. Simplified proceedings

*Does your administrative procedural law provide for the possibility of resolving administrative cases in simplified proceedings: on the level of the highest administrative court and/or in lower administrative courts?*

Yes, Dutch administrative procedural law provides for the possibility of resolving administrative cases in simplified proceedings, on the level of lower administrative courts AND on the level of the highest administrative courts.

### 2. Prerequisites of simplified proceedings

*2.1 To hear a case in simplified proceedings, is the prerequisite:*

*a. that the dispute is in a specific area of law? Please specify which areas (for example, minor traffic violations, administrative fees, aliens' cases, extradition etc.);*

*b. a minor infringement? Please specify criteria for which infringements are considered minor (for example, is the breach of law in question of a low priority or is the amount of the claim small; is it characterised by a monetary limit and if so, what is it?). If possible, please submit the legal definition of a minor infringement or a small claim, as well as examples or definitions from case law;*

*c. that the solution to the case is clear and obvious;*

*d. something else (please specify)?*

There is a general form of simplified proceedings and a more specific form of simplified proceedings in immigration law. The general form has as prerequisite that the case or the appeal is clear and obvious (the appeal is manifestly inadmissible or manifestly unfounded / well-founded); article 8:54 GALA.<sup>3</sup>

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<sup>3</sup> Article 8:54 GALA:

1. Until the parties have been invited to appear in court, the district court may close the inquiry if continuation thereof is not necessary because:

(a) the district court manifestly lacks jurisdiction,

(b) the appeal is manifestly inadmissible,

(c) the appeal is manifestly unfounded;, or

(d) the appeal is manifestly well-founded.

In immigration law if a case does not lead the highest administrative court (the Administrative Law Division of the Council of State) to quash the ruling of the lower court, it can limit its ruling to stating that without further substantiation. This is provided in Article 91, par. 2, Aliens Law Act 2000.<sup>4</sup> Notwithstanding this more specific provision article 8:54 GALA (general simplified proceedings) also applies in immigration law.

If the above mentioned simplified proceedings apply parties will not be invited for a hearing<sup>5</sup>; the ruling will be given on the submitted documents only.

*2.2 Have the possibilities of hearing a case in simplified proceedings been exhaustively defined in law or is it case law instead that has a decisive role in whether it is used (for example, a discretionary decision)?*

The simplified proceedings are exhaustively defined in law.

*2.3 Can the court use simplified proceedings regardless of whether the parties to the proceedings agree to it?*

Yes, it can, but only if the prerequisites defined in law apply.

*2.4 Can a person appeal the implementation of simplified proceedings separately from the final court decision?*

If article 8:54 GALA has been applied the interested party can oppose the implementation and the outcome of simplified proceedings in the so-called *verzetprocedure (opposition procedure)*. This procedure applies with the district courts and the appeal courts, and is regulated in article 8:55, par. 1, GALA.<sup>6</sup> However, a similar proceeding does not exist for appeal proceedings in immigration law cases. If the opposant requests to be heard concerning the opposition the court has to arrange a hearing.

*2.5 Can simplified proceedings be carried over into general procedure and vice versa?*

Yes, simplified proceedings can be carried over into a general procedure, but only when the article 8:54 GALA is applied. By means of the abovementioned

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<sup>4</sup> Article 91 of the Aliens Law Act 2000:

1. When giving judgment the Administrative Law Division of the Council of State may confine itself to an assessment of the grounds of appeal.

2. If the Administrative Law Division of the Council of State is of the opinion that a ground of appeal does not warrant the setting aside of the decision it may confine itself to this opinion when stating the grounds of its judgment.

<sup>5</sup> In immigration law cases the application of article 91, par. 2, of the Aliens Law Act 2000, implies that if the case is manifestly unfounded, this subsequently leads to the application of article 8:54 GALA. This also means that no hearing is held.

<sup>6</sup> Article 8:55, par. 1, GALA: An interested party and the administrative authority may oppose the judgment referred to in article 8:54 (...). The opposant may request the opportunity to be heard concerning the opposition. (...)

'verzetprocedure' (opposition-procedure): the judgement against which was opposed shall become void and the inquiry shall continue from where it was left off.

The district court may close the preliminary inquiry and continue in simplified proceedings until the parties have been invited to appear in court for the hearing. After that moment it is no longer possible to apply the simplified proceedings.

### **3. Nature of simplified proceedings**

*3.1 Which rules of administrative court procedure are mandatory in simplified proceedings (for example, hearing the parties, general principles of administrative court procedure, etc.)?*

In both types of simplified proceedings (the general one and the one concerning immigration law cases) there will be no hearing in court of the parties involved. If the court decides to apply simplified proceedings, it closes the inquiry. From that moment on, parties are no longer allowed to deliver documents relating to the case. Simplified proceedings therefore, take much less time than normal proceedings. All the other normal general principles of administrative court procedure do apply.

*3.2 Which general rules of administrative court procedure do not need to be followed in simplified proceedings (are there exceptions, for example, in taking the minutes, procedural deadlines, format requirements, delivering the procedural documents, pre-trial proceedings, the formatting of a decision, the court panel, holding an oral hearing, public announcement etc.)?*

See the answer above.

*3.3 Are there differences in using simplified proceedings across the court instances?*

No, there are no such differences in using the simplified proceedings across the eleven district courts. As mentioned above, if simplified proceedings are applied in immigration law cases, however, the exception of article 91, par. 1, Aliens Law Act 2000 (providing that the court may confide itself to the opinion that the appeal does not warrant the setting aside of the decision) is reserved for the highest administrative court in this field of law, the Administrative Law Division of the Council of State. A similar provision does not exist for district courts.

*3.4 What are the limitations on the right to appeal in case of simplified proceedings? Can an administrative case that is resolved in simplified proceedings be appealed up to the highest instance? If there are differences compared to general procedure, please describe how a case for which simplified proceedings are used moves through the court system (for example, the appeal might be submitted directly to the highest court, etc.).*

When the general form of simplified proceedings is applied the ruling of the district court can NOT be appealed before the appellate court. However, instead, the interested party can oppose the ruling of the district court and ask for a review in the so-called 'verzetprocedure' (opposition procedure; see the answer to question 2.4). In the opposition procedure a hearing is to be held if the opposant requests so.<sup>7</sup>

**3.5 In simplified proceedings, can a court issue a judgment without the statement of reasons? (YES/NO)**

*If NO, then why is such a possibility not provided?*

*If YES, then:*

*a. what kind of information does that judgment have to contain?*

*b. do the parties to the proceedings have the right to demand for the judgment to be supplemented with the statement of reasons?*

As mentioned above the Administrative Law Division of the Council of State can, but only in immigration law cases, when simplified proceedings apply, issue a judgment without a statement of reasons. It can limit its reasoning by stating that the grounds for appeal do not concern matters that require answers to legal questions in the interests of the legal uniformity, the legal development or the safeguarding of constitutional or fundamental (human) rights.<sup>8</sup>

The parties to the proceedings do not have the right to demand for the judgment to be supplemented with a statement of reasons. If the Administrative Law Division of the Council of State is of the opinion that that the grounds for appeal raise questions concerning legal uniformity, the legal development or the safeguarding of constitutional or fundamental legal rights in the broad sense that require answering, it will include its reasoning in the decision. This may also be at order if the grounds of appeal do not warrant the setting aside of the decision.

In the general form of simplified proceedings the court has to issue a judgment in which the grounds for the decision have been stated. If the appeal is manifestly inadmissible or the appeal is manifestly unfounded or manifestly well-founded, the court only has to state the reasons for this judgement.

#### **4. Simplified proceedings in court practice**

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<sup>7</sup> There's one exception to the rule: if the judge decides that the opposition is well-founded, he may issue a written ruling on the opposition without hearing.

<sup>8</sup> The law on the judicial organisation (Wet op de rechterlijke organisatie) states in artikel 81 for the cassation procedure in criminal-, civil-, and tax cases: 'If the Supreme Court judges that a complaint submitted can not lead to cassation and does not necessitate answers to legal questions in the interests of the unity of law or the development of law, he may limit himself to this opinion when stating the reasons for his decision.'

*4.1 What is the share of cases resolved in simplified proceedings out of all resolved cases? (%)*

About 25 to 30 % of all cases are resolved in simplified proceedings. In immigration law cases before the appellate court this is about 90 % of all resolved cases.

*4.2 Has the case law in your country pointed to any problems related to simplified proceedings, and if it has, what kinds of problems were they? Please give up to 3 examples.*

In some cases, immigration lawyers complain that they have substantially motivated in their notice of appeal, the reasons that have led them to the opinion that the grounds for appeal concern matters that require answering in light of the legal uniformity, the legal development or the safeguarding of constitutional or fundamental (human) rights, while the Administrative Law Division of the Council of State decides to use of the simplified procedure of article 91 of the Aliens Law Act 2000. As mentioned before, in those cases, the judgment does not include the grounds for the decision.

## **Part B**

*1. Are there any types of administrative cases or any court instances in which only oral proceedings are allowed (i.e. written proceedings are prohibited)?*

No, there are no types of administrative cases or court instances in which only oral proceedings are allowed. Dutch government is however thinking about introducing so-called neighbourhood judges for simple cases with simplified proceedings that consist only of a hearing followed by – if necessary – an oral or written decision.

*2. Under which circumstances may cases be resolved in written proceedings? Can the justification be, for example:*

- a. exclusively legal questions;*
- b. highly technical questions;*
- c. the case raises no questions of fact or law that cannot be adequately resolved on the basis of the case file and the parties' written observations;*
- d. other bases, for example at the request of one of the parties to the proceedings?*

Cases may be resolved in written proceedings in the circumstances as mentioned in the answer to question 2.1 of this questionnaire.

*3. Can oral proceedings also be carried out via videoconferencing (i.e. in a manner where either a party to the proceedings or their representative or counsel can be in a*

*different place during the hearing and carry out procedural acts in real time, through an audiovisual transmission)? (YES/NO)*

*If NO, then has the creation of such a possibility been discussed? What were the main positions on the issue?*

*If YES, then:*

*a. what are the legal limitations (for example, in which kinds of cases is it not permitted)?*

*b. have the risks of videoconferencing and the protection of a person's rights been discussed? What were the main positions on the issue?*

Article 8:40a, par. 3, GALA provides that rules may be given by General Administrative Order to allow for the use of videoconference. Such rules are currently only in order for cases concerning aliens in detention. The judge may decide to use videoconference in these cases without seeking the approval of the parties. Article 2 of the 'Besluit videoconferentie' (Stb. 2006, 275) set out the rules of the use of videoconference in these cases.<sup>9</sup> There are no further rules about the use of videoconference laid down in the procedural regulations of administrative courts. There is no case law on the use of videoconference for the hearings by any of the Dutch courts.

*4. Can oral proceedings also be carried out outside the court-room (in prison, hospital etc)? In which circumstances is this possible?*

Under special circumstances (i.e. a party is in custody and it is not possible that an authorised representative can represent that party) a hearing can take place outside the courtroom.

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<sup>9</sup> Article 2 states: The system by means of which videoconference is applied is designed such that: a. the persons involved get a true-to-life view of what is happening in the other room; b. consultation can be conducted without being heard by third parties; c. documents or papers can be exchanged, and d. the system is protected against loss or against any form of unlawful processing.