

REPORT FROM THE NETHERLANDS

presented by

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1. INTRODUCTION

This paper is divided into sections and subsections numbered in the same way as the questionnaire, with the exception of one slight deviation. In view of the importance of the jurisdiction of the Crown, which permits the quasi-judicial settlement of administrative disputes in a manner peculiar to the Netherlands, a special section 5A has been inserted in which questions 5b and 5c are dealt with in relation to both the administrative courts and the Crown when they have jurisdiction in matters of environmental law.

2. DEFINITION

a. What is generally meant by the term «legal interest»?

In Dutch administrative law concerning «standing», the right to lodge complaints against administrative decisions is not dependent upon a legal interest of the complainant (in the sense of an interest protected by law) having been infringed. The complainant does not need to show that a subjective right has been violated by the decision challenged or to assert that the interest violated by such a decision is protected by law in general or more specifically by the law on which the decision is based. A purely factual interest suffices in all those cases in which the «standing» of a complainant is dependent on his having an interest that has been affected by a decision.

b. How are the conceptions «personal interest», «collective interest» and «actio popularis» understood?

If an interest is required by law as a condition for lodging a complaint, Dutch statute law expresses this in various ways. The right to complain is vested either in the «interested party or parties» or in those «directly interested», or, as in the case of appeals to administrative courts like the Judicial Section of the Council of State, in a natural or legal person whose interest is directly affected by an administrative decision.

Although sometimes, depending on the interpretation given to the statutory provision in question, the use of «party» in the singular form may mean only the party to whom the decision is addressed or whose legal situation will be modified by the challenged decision, third parties are in general comprised among the «directly (or otherwise) interested parties». No special meaning should be attached to the inclusion or omission of the term «directly». Generally speaking, according to Dutch administrative law as applied by administrative courts and the Crown, a (directly) interested party is someone who is able to show that a personal interest of his has been directly affected by the challenged decision. This means that the interest affected must be the party's own interest and to some extent susceptible of individualization. A pertinent example of this is Crown decisions concerning appeals against road traffic measures. According to the Road Traffic Order appeals to the Crown can be lodged by «any interested party». Accordingly the Crown requires the appellant to have a personal interest in the annulment or modification of the decision establishing the traffic measure and explains this requirement in the following way:

«that a person who travels on the road as a normal road-user cannot be regarded as having such a personal interest and is therefore not an interested party in the sense of the law; that if this were otherwise, nearly everyone could lodge an appeal against such decisions and consequently the statutory restriction of the right of appeal to interested parties would lose its meaning which surely can not have been the intention of the legislator.»

A «collective interest» is generally understood as an interest which a number of people have in common. Such an interest can be of a material (economic or financial) or immaterial nature. A distinction is sometimes made between collective interests peculiar to one category of people (shopkeepers, road-users or consumers) and collective interests which concern the public at large (protection of the environment, full employment, public transport). Such a distinction is, however, not normally considered to be of much relevance to the rules on «standing».

By an «actio popularis» is meant the facility for a citizen to lodge an appeal against an administrative decision, without alleging that a personal interest is affected. An «actio popularis» exists in Dutch administrative law in those relatively few cases in which statutory provisions recognize a right of appeal to «anyone». More common is a form of »actio popularis« which is allowed on condition that the appellant has filed preliminary objections during the preparatory stage of the administrative decision-making process. In such cases «anyone» has the right to file an objection, but only those who have done so possess a right of appeal against the decision once it has been taken. This kind of conditional «actio popularis» exists in the field of environmental law, for instance, and will be discussed later.

c. How is the term «environment» defined?

The «environment» is generally understood as a complex of organic (animal, plant and human life) and inorganic (climate and soil) factors that act upon the living organism. Environmental policy is concerned with the protection of the environment through measures to limit harmful effects and promote favourable developments. In this wide sense environmental law embraces: (i) the law with regard to the condition of the soil, the water and the air and the prevention of noise nuisance (antipollution law); (ii) the law concerning the protection of nature and natural scenery (environmental protection law); (iii) town and country planning law, the statutory regulation of water control and the law concerning the production and use of energy and other scarce natural resources.

The increasing attention paid to the protection of the environment in the Netherlands has led to a whole set of new laws and amendments to existing ones in order to check hazards to the environment caused by private or public activities. For example, the government recently submitted a bill to Parliament to amend the Road Traffic Act to permit traffic control measures to be taken on environmental grounds in addition to the more traditional ones of promoting road safety and preventing traffic jams.

This paper will mainly deal with environmental law in the narrower sense of anti-pollution law. For the purpose of the paper it offers sufficient illustrations of the way the rules of »standing« have developed in the Netherlands. Only occasional examples will be drawn from environmental law in the wider sense.

3. THE MAIN SUBSTANTIVE PROVISIONS OF ENVIRONMENTAL AND RELATED LAW

An account will be given of only those aspects of environmental legislation that are relevant for the kind of administrative decisions that can be appealed against in this domain.

The oldest anti-pollution law still in force is the Public Nuisance Act. The latest version of this Act dates from 1952, and it has been repeatedly amended. Its aim is to limit or prevent danger, damage or nuisance caused by «establishments» in the fields of industry, agriculture and trade, as specified in the Public Nuisance Order, in which activities are carried on that may produce such nuisance. A licence is required for anyone who wants to set up, to operate, to expand or to alter such an establishment. Normally the competent authorities for granting such licences are the Burgomaster and Aldermen. They also have the power to close down an «establishment» if it is operated without a licence or in violation of the conditions attached to the licence.

Recently amendments to the Act have been adopted making it possible to withdraw a licence wholly or partially if the external nuisance produced is deemed intolerable and the problem can not be solved by altering the conditions attached to the licence. Another new provision enables the authorities to award equitable compensation if the expenses or damages arising from their decisions are such that they should not reasonably be borne by the licensee.

Provisions of this kind are fairly common in more recent anti-pollution legislation. The Public Nuisance Act has lost part of its impact as a result of new legislation of this kind, such as the Nuclear Energy Act (1963), the Pollution of Surface Waters Act (1969), the Marine Pollution Act (1975), the Chemical Waste Act (1976), the Waste Act (1977) and the Noise Nuisance Act (1979).

The provisions of most of these Acts override those of the Public Nuisance Act.

Potentially harmful activities, as specified in these Acts, are prohibited or subject to a licence system. Most of these Acts provide for levies on the basis of the «polluter pays» principle. The authorities responsible for administering these laws vary. The Nuclear Energy Act, the Marine Pollution Act and the Chemical Waste Act are administered by the responsible ministers. The Pollution of Surface Water Act is implemented by the responsible Minister as far as waters controlled by the State are concerned. For other waters the competent authority is the Provincial Executive, unless it has delegated its powers to District Water Control Boards. The other Acts mentioned are implemented by the Provincial Executive.

Recently the Environmental Protection (General Provisions) Act (1979) has entered into force. It seeks to coordinate the licensing policies of the various competent authorities, which badly needs doing in view of the sector-by-sector approach of Dutch legislation. Often a number of licences from different authorities are required for the same complex of activities. Moreover, the Act contains uniform rules concerning licensing procedure and appeal against decisions taken by the competent authorities. This Act applies (or will shortly apply, as in the case of the Noise Nuisance Act) to all the Acts mentioned above and to some other Acts as well (the 1903 Mines Act and the 1957 Dry Rendering Act). They have been amended accordingly.

4. ACCORDING TO YOUR NATIONAL LEGAL SYSTEM WHICH POSSIBILITIES DO YOU RECOGNIZE OF LODGING COMPLAINTS AGAINST ADMINISTRATIVE DECISIONS?

a. How are the administrative bodies responsible for trying complaints organized?

A uniform organization for dealing with appeals within the administration itself does not exist in the Netherlands. Whether one can appeal against an administrative decision to another administrative authority or, as is sometimes the case, to a representative body, will depend on the legislation or regulations in question. Often such legislation or regulations provide this kind of remedy. In some cases the Municipal Council is competent to deal with appeals against decisions by the Burgomaster and Alderman, while in others legislation confers responsibility for hearing administrative appeals against decisions of the municipal authorities upon the Provincial Executive or the Crown. It can also be the case that appeals are dealt with by a two-tier structure, e.g. with regard to some decisions by District Water Control Boards appeal against which is first to the Provincial Executive and then to the Crown.

The most important form of administrative appeal is undoubtedly the quasi-judicial procedure for appeals to the Crown. It is laid down in the Council of State Act (1962). The Administrative Disputes Section conducts an inquiry

into the case by means of written and oral proceedings in a public session in the course of which both the plaintiff and the administrative authority may submit their views. Finally it makes a recommendation in the form of a draft decree presented to the Crown. The Crown may disregard such a recommendation, but in practice it rarely does so. If the Minister who is responsible for bringing about the decree of the Crown holds views different from the recommendation made by the Administrative Disputes Section he can explain these views in writing to the Section. If the Section persists in its recommendation, the Minister has a choice between letting the matter rest there so that a decree will be taken by the Crown according to the Section's recommendation, or bringing about a decree of the Crown according to his own views. In the latter case he has to consult the Minister of Justice (or the Prime Minister, if he is himself the Minister of Justice); the decree of the Crown is published in the Bulletin of Acts, Orders and Decrees together with the Minister's report containing the recommendations of the Section, the exchange of views between the Minister and the Section, and the opinion of the Minister of Justice (or the Prime Minister as the case may be).

It is to be noted that in the field of anti-pollution legislation appeal against most of the decisions, whether they are taken by a Minister, by the Provincial Executive, by District Water Control Boards or by the Burgomaster and Aldermen, lies directly with the Crown. The Environmental Protection (General Provisions) Act lays down uniform rules on the decision-making procedure with regard to licensing. These rules do differ according to whether the decision is made on application (e.g. the granting of licences) or not (the amendment or revoking of licences). The preliminary procedure is characterized by publicity and the possibility of filing objections. The decisions, once taken, are appealable according to the rules laid down in this Act.

b. Who is entitled to lodge a complaint?

In the absence of a generally organized system of appeal within the administration, the question who is entitled to lodge a complaint can only be answered by reference to the legislation or regulations involved. As stated above (section 2 b) the right of administrative appeal is in general given to the interested party or parties, meaning the party or parties which can demonstrate that a personal and direct interest of their own has been affected by the challenged decision.

In the field of anti-pollution measures the situation is different and more complicated. As explained before, the Environmental Protection (General Provisions) Act distinguishes between the procedure according to which decisions are made on application on the one hand and the procedure for amending or revoking earlier decisions on the other hand.

In the first case the procedure can be divided into several stages. At the first stage the application, if not dismissed on account of insufficiency of the information submitted, is published and displayed for public inspection, together with the documents annexed to it and any other relevant documents. Anyone has the right to object orally or in writing. Public agencies and officials to whom, according to the relevant law, an opportunity should be given to express their opinion on the application, may do so.

The second stage commences with the publication of a draft decision by the authorities. The agencies and officials mentioned again have the opportunity to submit their opinions. The applicant, those who have objected at the first stage and anyone who shows that he could not reasonably have done so at that stage, may file written objections. This second stage can be passed over in the case of an application of a simple nature. In such a case the application and the draft decision are published at the same time. Objections can then be filed and opinions delivered only once.

The last stage starts with the competent authorities taking their final decision. Appeals against it may be made to the Crown by the applicant, the aforementioned government officials, those who have filed objections at the preliminary stage(s) and any other interested person who shows that he could not reasonably have filed objections at an earlier stage in the procedure.

Another procedure is applied where decisions amend or revoke earlier decisions. The administrative authorities are required to communicate their intention of taking such decisions to those affected by the decision that is to be amended or revoked and to the public agencies who, according to the relevant law, are involved in the decision-making process in an advisory or other capacity. Opinions can be submitted by these agencies and officials and written objections can be filed by those to whom the decision is addressed and, as the case may be, by the person who petitioned for such a decision. If the administrative authorities persist in their intention to *amend* the earlier decision, their intention is made public and anyone may file objections. For obvious reasons such publicity has not been deemed necessary in the case of a revocation.

Appeals against the final decision to amend or revoke may be made to the Crown by the person to whom the decision is addressed and, as the case may be, the petitioner for such a decision, the public agencies and officials and those who filed an objection or any other interested person who shows that he could not reasonably have filed objections at the earlier stage of the procedure.

Each of the specific Acts to which the Environmental Protection (General Provisions) Act applies indicates the categories of decisions that are subject to either of these two procedures. As has been noted, the first procedure is

usually applicable to the granting of licences and the second to amending and revoking licences. The General Provisions Act contains rules concerning appeal to the Crown which the individual Acts can declare applicable to decisions that are not subject to either of the two decision-making procedures described here. In this case only persons whose interests are affected are entitled to appeal.

From this review of the Environmental Protection (General Provisions) Act the conclusion can be drawn that a conditional »actio popularis« has been created in this domain as far as the main decisions taken under the various licensing systems are concerned. To put it in another way, not only the applicant or addressee but anyone who has filed an objection at a preliminary stage of the decision-making procedure is considered to be an interested party and as such entitled to appeal to the Crown. As anyone can file such an objection, the »actio« is granted to any attentive member of the public. Others are only entitled to appeal if they demonstrate that their interests are affected and produce acceptable reasons for having failed to file an objection.

c. Is an administrative superior authority competent to try a case ex officio?

Under Dutch law the Crown is entitled to annul of its own accord decisions by, for instance, the executive and representative bodies of the provinces and of the municipalities. Often procedures leading to annulment decrees are set in motion by petitions addressed to the Ministers concerned by private persons. But the power of annulment is a right of the Crown, not a duty. Annulment can only be based on violation of the law or on conflict with the public interest. The Council of State is consulted on the draft decree of annulment. Its opinion is prepared by the Administrative Disputes Section, which may hear the interested parties in closed session if it is deemed desirable. While an appeal against the decision in question is pending, it cannot be annulled by the Crown of its own accord. A decision to implement the judgement of a court or a decision that has been upheld by a court on appeal cannot be annulled on account of violation of a legal provision on which the judgement of the court was founded.

5. TO WHAT EXTENT ARE YOU ENTITLED TO BRING BEFORE A COURT (ADMINISTRATIVE COURT OR ORDINARY COURT) AN ACTION BASED ON A DECISION BY THE FINAL ADMINISTRATIVE AUTHORITY?

As explained in the preceding section, most administrative decisions taken under the licensing systems concerning environmental matters are subject to appeal to the Crown. In the opinion of the Supreme Court of Cassation of the Netherlands the availability of such an appeal provides the citizen with an adequate judicial remedy to exclude recourse to ordinary courts.

For another special category of decisions in the field of environmental law, those regarding the imposition of levies, the various Acts discussed above accord jurisdiction to the ordinary Courts of Appeal which already have administrative jurisdiction in tax matters in general.

Only in the absence of appeal to the Crown or administrative appeal to the Courts of Appeal for annulment of environmental levies can recourse be had to the Judicial Section of the Council of State to obtain a judgement on the lawfulness of the administrative decisions, possibly resulting in the annulment of such decisions. It is expressly provided in the Act attributing administrative jurisdiction to the Judicial Section that no appeals can be heard against decrees of the Crown issued on the recommendation of the Administrative Disputes Section of the Council of State.

As the ordinary courts for obvious reasons do not admit actions based on decisions by a final administrative authority if appeal lies with the Courts of Appeal acting in their capacity of administrative courts or with the Judicial Section of the Council of State, it is hardly conceivable that actions concerning the validity of administrative decisions will be judged by them. Only if such decisions have been annulled by the Crown or the Judicial Section do these courts have jurisdiction to hear claims for damages for torts committed by the authorities as a result of the decisions annulled.

a. Who is entitled to exercise this right?

If appeal lies with the Judicial Section of the Council of State any natural or legal person whose interest is directly affected by the decisions has »standing«. It is to be noted that in the case of decisions by administrative authorities that do not form part of the machinery of central government, as for instance the organs of the municipalities, the provinces, and the District Water Control Boards, recourse should first be had to a complaints procedure. These complaints are to be heard by the authorities by whom or on behalf of whom the challenged decision has been taken. Their ultimate decision after the case has been reconsidered is appealable to the Judicial Section of the Council of State.

The situation is different in the case of administrative decisions originating from central government authorities. Appeals against these decisions should be addressed directly to the Judicial Section by persons aggrieved. The president of the Section, however, may provide the opportunity to the responsible Minister to hear the appellant and to reconsider the decision according to the rules applicable to the complaints procedure. If the Minister takes this opportunity, appeal against the decision taken upon reconsideration lies with the Judicial Section.

The case law of the Judicial Section shows no deviation from the general practice concerning administrative «standing» expounded in the previous sections. As well as the addressee of a decision, third parties may have »standing« provided their interests have been directly affected by it. A few examples from case law may be given.

There should be a direct connection between the challenged decision and the interest thereby affected. An appeal in the interest of others is only admitted if the appellant has been formally authorized by them to appeal. The fact that the financial consequences of a certain decision of a municipality are a public expense can not be adduced as a sufficiently personalized interest. Complaints against building-permits are not admitted if the complainant does not live in the immediate neighbourhood and does not overlook the structure to be built. General considerations of town and country planning are by themselves an interest too vague to provide »standing«.

The rules concerning «standing» applied by the Courts of Appeal in tax matters are considerably more restrictive. Appeal against decisions imposing levies is only open to the addressees of such decisions.

5A. THE RIGHT OF APPEAL TO THE CROWN AND THE JUDICIAL SECTION OF THE COUNCIL OF STATE IN THE CASE OF ASSOCIATIONS, UNIONS AND GROUPS WHOSE PURPOSE INCLUDES ENVIRONMENTAL PROTECTION ETC.

Legal personality as a requirement. Groups of individuals wishing to avail themselves of the right of appeal to the Judicial Section of the Council of State must possess legal personality, although this requirement is not expressly laid down in the various Acts that attribute administrative jurisdiction to the Crown.

Since the entry into force of the new section of the Civil Code concerning legal persons this difference has lost most of its significance in the case of groups forming an association. According to these new rules the old distinction between associations with and without legal personality has been abolished. At present all associations are legal persons, whether they have gone through certain legal formalities or not, provided they have come into being by a multilateral legal act whereby the parties intend to create a legal person in which they want to cooperate according to certain rules and for a certain purpose.

The question remains what criteria are applied by the Judicial Section to determine whether a group of individuals qualifies as an association. This is the case, in the opinion of the Section, if the group has a membership, has an organization with a stated objective, and acts as a unit in its legal relations with others. Evidence of the existence of an association can be found in the existence of a membership list, the payment of regular subscriptions by its members, a structured way of dealing with the affairs of the group (a board, a general conference and an allocation of powers), a well-defined objective and recognition by others and by the authorities as an entity or discussion partner. Written rules and regulations may help, but are not absolutely required. It should be noted that local branches of national associations cannot derive their »standing« from the legal personality of their parent association.

There still remains a difference between the way in which the Judicial Section and the Crown deal with the «standing» of groups of individuals. Due to the absence of an express requirement concerning legal personality the Crown is less inclined to go into the question whether a group is a sufficiently organized body to be recognized as an «interested party» having «standing». In the case of a right of appeal for «anyone» such as an inquiry would, of course, be out of order.

Organizations as parties whose interests are directly affected

Until 1975 the Crown (and the administrative courts) usually refused to admit appeals by organizations because they lacked a personal interest of their own. In the sixties this position met with increasing opposition both from the legal profession and in Parliament. Criticism came to a head in 1969, when the Crown refused to allow the National Association for the Conservation of the Waddenzee (the shallow waters between the Frisian islands and the coast of the northern provinces) to appear as plaintiff in a mining case. It was considered unsatisfactory that as a result of this decision there was no-one to plead the cause of conservation in such a unique and vulnerable region in litigation and that it was consequently left to the Minister for Economic Affairs to protect such interests.

At about the same time the opponents of the restrictive position of the Crown concerning «standing» arranged for a breakthrough in legislation. At the insistence of members of Parliament the government amended a bill on air pollution so as to provide that the purposes for which private organizations are established should be regarded as their interests for purposes of «standing». Several later bills concerning environmental protection contain a similar provision (e.g. the Environmental Protection (General Provisions) Act of 1979). Soon afterwards, when the bill attributing administrative jurisdiction to the Judicial Section of the Council of State came up for debate, the «standing» of private organizations was thoroughly considered. A parliamentary amendment was submitted with a view of securing such «standing» by inserting a special provision. It was only withdrawn after a statement by the government that the rules on «standing» in the bill should not be understood restrictively and that, should the need nevertheless arise, due to the Judicial Section of the Council of State adopting an adverse position, a bill would be introduced by the government in order to amend the Act in such a way as to place the «standing» of private organizations beyond any doubt.

In this way, the ground was prepared for a reversal of the traditional position of the Crown in these matters. Since 1975 the Crown has followed a different course with regard to the «standing» of organizations. In that year the Crown ruled «that a private organization whose stated purpose and actual activities indicate that it is promoting an interest that is directly affected by a decision, is to be considered as having an interest which is directly affected by that decision». The Judicial Section of the Council of State has adhered to the same point of view since its inception in 1976.

It is to be noted that under this ruling not only must the interest affected relate to the purpose of the organization, but the organization must also have been actively promoting the interest in question. The more general the purpose, the more important it will be for the organization to show it has engaged in activities to promote the kind of interest that is affected by the challenged decision. Thus an association of residents in a given area of a town whose objective was the promotion of the common good thereof was admitted by the Crown in the case of a decision concerning the restoration of historic buildings. Though the preservation of such buildings had not ranked first among its activities, it had been engaged among other things in improving the social climate and preserving the character of the neighbourhood, an important aspect of which was its historic buildings.

The objectives of an organization, however, may be so broad, as in the case of political parties, that «standing» must be denied to them. In that case the lack of a more precise objective is considered an impediment. This point of view, which has been adopted by both the Crown and the Judicial Section of the Council of State, is sustained by the prevailing opinion in the Netherlands that political parties should confine their battles to the political bodies in which they are represented and should not try to gain in court what they have lost or fear they may lose in those bodies. A more flexible position is taken towards other «public interest» plaintiffs having broad objectives. Thus appeals by the Dutch Committee of Jurists for Human Rights were admitted in summary proceedings before the president of the Judicial Section in cases where fundamental rights were allegedly at stake.

The geographical range of action of an association, as laid down in its regulations or articles, may play a role, as the North Sea Foundation, whose aim is to preserve the environmental quality of that sea, had to learn by experience. Its application to the president of the Administrative Disputes Section of the Council of State requesting the suspension of a ministerial decision to allow the dumping of radioactive waste in the Atlantic Ocean was declared inadmissible by reason of the geographical description in its regulations of the limited area covered by the term «North Sea». However, the Foundation for Environmental Monitoring in the city of Nijmegen was considered to have a right of appeal to the Judicial Section in a case concerning construction work outside the municipal boundaries because of the importance of the area in which the building was to be erected for the recreation of the inhabitants of the city.

At the conclusion of this section the reader should be reminded of the fact that in the case of specific Acts conferring a right of appeal to the Crown upon »anyone« the problem of associations or other legal persons having to show that their interests are affected by the challenged decision does not arise. This means that applications to the Crown under the Environmental Protection (General Provisions) Act of 1979 which entered into force on 1 September 1980, are hardly likely to give rise to decisions concerning the «standing» of private organizations, because in most cases the right of appeal is given to those who have filed objections during the preliminary administrative decision-making process. As explained above (section 4b) »anyone« can file such objections.

6/7 ARE CHANGES TAKEN INTO CONSIDERATION AS TO EXTENSION OF THE EXISTING POSSIBILITIES OF LODGING COMPLAINTS AND BRINGING ACTIONS BEFORE THE COURTS CONCERNING THE ENVIRONMENT AND SIMILAR FIELDS?

Is it considered desirable - from the point of view of a judge - to extend the possibilities of lodging complaints and bringing actions before the courts to a wider circle than hitherto recognised?

As the possibilities of lodging complaints and appeals against administrative decisions have only recently been considerably enlarged by both legislative and judicial action, no change in the rules concerning «standing» are at present under consideration, nor are such changes considered desirable from the point of view of the courts. It is generally felt that more years of experience with the present rules are needed before any changes in them should be considered. It is expected, however, that the rules concerning «standing», as laid down in the Environmental Protection (General Provisions) Act, will be extended to administrative appeals under other Acts in this field that have been adopted or will be adopted in the future by Parliament.

8. ANY FURTHER REMARKS AND CONCLUSIONS

One of the problems arising in a system favourably inclined to group action is, of course, how to prevent abuse of the right of appeal. In such a system it is fairly easy for grievance-mongers to set up organisations purely for the purpose of securing «standings» in cases in which their personal interests are certainly not at stake. It is only a matter of claiming that one wishes to further a public interest and of becoming active in that field. By lodging appeals on a large scale such organized groups may be able to hamper local government considerably, especially in smaller municipalities.

Rules on »standing« can not easily be framed in such a way that abuse of access by groups can be ruled out, as it is open to them to adapt their regulations or activities in order to fulfil any new condition resulting from refinements in such rules. A judge can only deal with this problem on a case-by-case basis and has to proceed with the necessary caution in order not to deny access to organized groups that pursue a public interest in good faith and do so in a generally accepted way.

Apart from certain inevitable problems, the existing system appears to function satisfactorily. It should be noted that since the granting of a right of appeal to organizations by both the Crown and the Judicial Section of the Council of State it has become less necessary to expand the right of appeal of individuals in cases in which they consider their interests somehow at stake but in which such interests are not sufficiently distinct to be regarded as personal interests.

It may be concluded that the granting of access to organized groups has provided an adequate solution to the problem of finding ways and means of obtaining a judicial ruling on the question whether public interests or the interests of larger groups have carried sufficient weight with the authorities when taking a decision. The acceptance of group action as a means of filling the gap which existed in the administration of justice before 1975 was generally thought to be preferable to the introduction of an »actio popularis«. In this way, it was hoped, the number of appeals could be kept to a manageable level. So a broad interpretation of the kind of interest that has to be affected in order for appeals by organizations to be admissible goes hand in hand with a rather narrow interpretation of such interests in the case of individuals.

Thus in the case of the dumping of radioactive waste in the Atlantic Ocean that has been mentioned earlier both the Green Peace Foundation and the Foundation for Nature and Environment were deemed to have »standing«, but access was denied to a number of individuals pleading that permission to dump this kind of waste would in the long run endanger their lives and those of their offspring. According to the provisional opinion of the president of the Administrative Disputes Section of the Council of State this interest was not sufficiently distinguishable from that of any other person seeking justice. In another case in which the authorities had decided to permit the discharge of effluent from a chemical manufacturing plant into the Rotterdam Waterway, an appeal by an inhabitant of a nearby town lying on another part of the same river was not admitted by the Crown, because he could not show that his interest could be distinguished, as to possible harm done by the discharge, from that of any other inhabitant of the area concerned. In the same case, however, two associations promoting environmental interests in the area were granted a right of appeal.

One may wonder why, so soon after the adoption of a more favourable position towards group action in administrative cases, the Environmental Protection (General Provisions) Act had to introduce a conditional »actio popularis« by granting a right of appeal to anyone who has filed objections during the preliminary stages of administrative decision-making. It was, however, not so much the desire to accord a right of appeal to »anyone« in environmental matters as the wish to improve the quality and acceptability of administrative decisions in this field that led to the establishment of the rather complicated set of procedures described above. The granting of a right of appeal to all those who have filed objections prior to the taking of a decision was seen as a device for compelling the administrative authorities to take those objections seriously. It was not meant as a necessary means of rectifying a situation caused by the inadequacy of group actions.

It is too early to assess whether the procedural safeguards concerning the methods of administrative decision-making under the Act will succeed in keeping the number of appeals within bounds. But one may question the readiness of all those who filed objections to acquiesce in decisions made by public authorities, however carefully they may have been taken, when such objectors have not fully got their way.