

RAPPORT NATIONAL DE LA DELEGATION NEERLANDAISE

NATIONAL REPORT OF THE NETHERLANDS DELEGATION

Introduction

This report follows the plan of the questionnaire. Except in the case of questions 4 and 5 the rules concerning the right to be heard dealt with here relate to the phase before a decision is taken. The compiler of the replies to the questionnaire gratefully acknowledge the use of a report entitled "Due process in the Netherlands administrative procedure" issued by the Netherlands Association for European Law (Social and Economic Legislation, (SEW) 1978,p.242 et seq.)

1. The source of the right to be heard

a) Is the right derived from

i) provisions of the Constitution?

The Constitution of the Kingdom of the Netherlands, as last revised in 1983, contains no provisions on the right to be heard, although the inclusion of such a provision was advocated on the ground that this is one of the basic principles of a constitutional state.

ii) statute law?

There are no general regulations dealing with the right to be heard, although the amended Constitution of 1983 contains a provision (article 107, 2) stating that the general rules of administrative law shall be laid down by Act of Parliament. A State Commission was inaugurated on 23 August 1983 with a view to preparing the relevant legislation. The report of the working party which advised the setting up of the State Commission stated that the Commission's proposals for a bill should include provisions on hearing interested parties and the procedure to be followed at a hearing. Proposals for provisions of this nature have been put forward in the past. In 1974, for instance, a report was published containing a proposal for a statute laying down the general principles of administrative law, including provisions

relating to the hearing of interested parties (the report was prepared by a commission set up by the Association for Administrative Law and will be referred to hereinafter as the ABAR report) . Section 5 of the proposed statute states that a government body should, in those cases it deems relevant, involve interested parties in the preparation of a decision. The central provision of the legislation proposed in the report is section 6 which provides that: "In cases in which this might reasonably be taken into consideration the authority shall, before adopting a decision, place interested parties in a position to express their interests either orally or in writing." The general obligation to hear parties, on which this provision is based, is restricted by the word "reasonably" and by the exceptions set out in section 7. These relate to cases in which it can be assumed that interested parties have no objection to a decision, where the authority has no discretion, where the persons concerned have already had the opportunity to express their views in another manner, or where this procedure would cause undue delay in reaching a decision.

To sum up, it may be said that although there is no general statutory provision governing the right to be heard, the right is increasingly being included in special legislation. Examples are given in the answer to question 2a) .

- iii. general legal principles, such as "the rules of natural justice" or "les principes generaux du droit"?

A number of statutory regulations on administrative law provide that those persons whose interests are directly affected by a decision may lodge an appeal against it

on the ground that it was taken "in some way contrary to the principles of what is generally held to be just and proper administration". This principle is enshrined in section 5 of the Trade and Industrial Bodies (Administrative Jurisdiction) Act 1954, section 27 of the State Taxes Act 1959, section 144 of the Customs and Excise Act 1961, and section 8 of the Administrative Justice (Public Orders) Act 1975.

One of the principles which is generally recognised as such is the principle of the duty resting on an authority to exercise due care in all its dealings, both of a legal nature and otherwise, and not to act to the detriment of the interests of third parties without good cause. This can mean, ^{that} in some cases an authority, before taking a decision, must on its own initiative or upon request hear the persons concerned, although this is not laid down by statute.

The Central Board of Appeal (Centrale Raad van Beroep), the appeal body for matters concerning civil servants and the application of various social insurance acts, stated on 5 March 1981 (Administrative Law Reports (AB) 1981, 432) that even if the law does not explicitly require the hearing of the interested party in a decision relating to him, a hearing can nevertheless be required if only on the ground that a decision should be prepared with due care. This is especially true of cases in which the decision is likely to be to the disadvantage of the interested party.

A similar judgement was delivered by the Judicial Section of the Council of State on 11 October 1978 (Municipal Council Gazette no. 6547) when, in view of the arguments put forward by the applicant at the session, it stated that it did not preclude the possibility that, had the respondent heard the views of the applicant this would have produced information leading to a different decision. Although the hearing of the applicant was not prescribed by statute, the Judicial Section, in view of the aforementioned circumstances, held that the respondent, by not taking this step, had acted in a way contrary to the general principle of just and proper administration, namely that due care should be employed in the taking of a decision.

If the right has been established and developed by means of judicial decisions, has this occurred in administrative courts or in civil courts? Is the development of recent origin?

The right to be heard in administrative cases has developed first and foremost in the administrative courts (see above at 1. a) iii) and the following).

Central Board of Appeal, 27 May 1952, AB 1952, 679: A number of teaching periods were assigned at another school without reference to the plaintiff; the relevant decision was declared null and void, even though the relevant regulation, which was generally binding, did not prescribe such consultation.

Central Board of Appeal, 19 December 1967, AB 1968, 197: The Board was of the opinion that the municipality had acted contrary to the general principle of just and proper administration that due care should be taken in the preparation of a decision by, inter alia, not hearing the party concerned before taking the decision.

2. The scope of the right to be heard

a) Are there specific statutory provisions which confer the right to be heard

i) generally

Subject to the provisions of sections 5 and 6 (which mention a number of exceptional cases in which no appeal can lie), section 7 of the Administrative Justice (Public Orders) Act 1975 gives natural and legal persons whose interests are directly affected by an order the right to lodge an appeal with the Judicial Section of the Council of State if the order has been made by an administrative body or official at the national, provincial or municipal level, unless such an order is subject to a review procedure.

This review procedure (the hearing of objections) is particularly relevant to question 2. *It* permits an application for review to be submitted to the body which made the order and gives this body the opportunity of reconsidering the original order. Before taking a decision on the objection the body is obliged to hear the person concerned and, if necessary, other interested parties, either in person or through a proxy. The task of hearing the applicant and making recommendations on the decision to be taken in respect of the application may be entrusted to a committee (section 14) .

Following a decision on an application for review, an appeal may be submitted to the Judicial Section of the Council of State. If an applicant is satisfied with the outcome of the review procedure he will in all probability not avail himself of the right of appeal.

(ii) or in specific and special cases?

The right to be heard is expressly granted in a large and increasing number of special statutory instruments, the most important of which are dealt with below.

A. Environmental Protection (General Provisions)
Act 1979 (Wet Algemene Bepalingen Milieuhygiëne)

This act contains a number of general provisions relating to the way decisions must be taken on applications for permits or exemptions in respect of various statutory provisions, the most important of which are: the Public Nuisance Act 1952, the Nuclear Energy Act 1963, the Pollution of Surface Waters Act 1969, The Air Pollution Act 1970, the Pollution of the Sea Act 1975, the Chemical Waste Act 1976, the Waste Act 1977 and the Noise Nuisance Act 1979.

The competent authority to which an application for an order is made is obliged to give notification of the application as soon as possible in one or more daily papers or other newspapers or circulars and in special cases in the Government Gazette (Staatscourant) . A copy of the application must be displayed for public inspection, together with documents, reports and recommendations or opinions which are relevant and/or which may already have been received. Notices must also be posted at the Town Hall, and the occupants of buildings in the vicinity of the site or establishment concerned are notified.

The above-mentioned notices must mention the time and place of the public hearing at which any person may submit oral objections provided they are accompanied by reasons. During the meeting views may be exchanged between the authority concerned, the applicant and other persons present. A public hearing need not be held if there are reasonable grounds for assuming that it is not necessary. In such cases the competent authority must provide anyone who so requests with the opportunity to make reasoned oral objections and the applicant is given the opportunity of being present on such an occasion.

On the occasion of an evaluation of the Environmental Protection (General Provisions) Act, the Minister made the following observations in a letter to the Lower House of Parliament:

"The present regulations assume that in principle a public hearing will be held. In cases where it can reasonably be assumed that a public hearing is not necessary it need not be held. The evaluation committee desires to retain this rule. In practice, however, it has become evident that it is quite difficult to assess whether a public hearing is called for: there have been instances of hearings attended only by the applicant and the competent authority. In order to avoid unnecessary work and expense the Government has decided that the regulations shall be amended in such a way that the opportunity to submit objections orally need be provided only on request. This will of course be done after the draft of the order containing a decision on an application has been made public."

If a competent authority proposes to amend or retract an order, it must inform the person to whom the order is addressed, who may then submit written objections. If the authority decides to amend an order, any person may submit reasoned objections in writing.

B. Earth removal Act 1965 (Ontgrondingswet)

Applications for permits for the removal of earth or amendments to such permits are subject to notification procedures and must be deposited for public inspection. Any person may then submit objections to the granting of an application within thirty days (section 10).

C. Continental Shelf Mining Act 1965 (Mijnenwet
Continentaal Plat)

The regulations are similar to those applying to B. above

D. Expropriation Act 1851 (Onteigeningswet)

Section 72a deals with the expropriation of roads, bridges, verges and canals, as well as expropriation for the construction and improvement of roads, bridges, railways, canals, port works, works for combating the pollution of surface water, and airfield construction work. Compulsory purchase takes place under a Royal Decree after the Crown has heard the Council of State.

Before a Decree is issued interested parties may submit objections to the proposed expropriation to a committee appointed for the purpose from among the members of the Provincial Executive. The committee must hold at least one public meeting in each of the municipalities where the property in question is situated

Section 77 deals with compulsory purchase under a development plan. In such cases, the expropriation is effected by means of a decree issued by the municipal council which has been approved by the Crown after having heard the Council of State. Before the council takes a decision interested parties may submit written objections to it.

E. Town and Country Planning Act 1962 (Wet op de Ruimtelijke Ordening)

This act lays down regulations for one or more parts of the province which describe the proposed element of the region in broad outline (streekplan) . A draft plan must be deposited for public inspection for a period of two months, notification to this effect being given in the Government Gazette and in one or more daily papers, newspapers or advertising papers on sale in the province. Any person may submit written objections to the Provincial Council during this period.

The municipal council draws up a development plan for the municipality, which indicates the uses to be assigned to the land covered by the plan (bestemmingsplan) . A draft plan is deposited for public inspection at the Town Hall for at least one month. After the draft has been published in various newspapers etc. any person may submit written objections to the council during this period.

F. Housing (Distribution and Requisition) Act 1947
(Woonruimtetwet)

This act permits the requisition of dwellings by the Burgomaster and Aldermen after consultation with an advisory committee. The person from whom property is to be requisitioned is heard by the commission before a recommendation is made.

G. General Civil Service Regulations 1931 (Algemene Rijksambtenarenreglement)

Disciplinary measures may be taken against civil servants, but before this is done they must be heard (article 82) . The same rule applied in the case of a civil servant who has culpably caused loss or damage and the amount of damages to be paid has to be calculated (article 66) . A civil servant cannot be obliged to accept another Government post without first being heard (article 57) .

H. Aliens Act (Vreemdelingenwet)

The Aliens Act lays down in detail what steps an alien may take if he is refused a residence permit or such a permit is withdrawn. The alien may apply to the Minister of Justice for review of the relevant decision. The Minister then hears the Advisory Committee on Aliens Affairs; he is obliged to do so in the following cases :

- a) if the alien in question has had his principal place of residence in the Netherlands for at least five years at the time the application is submitted;

- b) if the case concerns the refusal to admit as a refugee an alien who by such refusal would be forced to return immediately to a country in which he has good reason to fear that he will be persecuted because of his religion, political views or nationality, or because he belongs to a particular race or social group;
- c) in certain other cases described in detail in section 29, such as changes in the restrictions applicable to a residence permit, withdrawal of a residence permit, designation as an undesirable alien etc.

The Advisory Committee may also be heard in other cases. In such cases it affords the alien the opportunity to put his case before it.

I. State Taxes Act 1959 Algemene Wet inzake Rijksbelastingen)

Persons who have objections to a tax assessment may submit an application for review to the inspector of taxes, who takes a decision on the matter. Under section 25, the person concerned may be heard, at his request, before the decision is taken.

- b) In the absence of specific provisions, in what circumstances will the law imply an obligation to grant a hearing to a person likely to be affected by an administrative decision?

In particular, in deciding whether the right exists will the court take into consideration

- i) the nature of the organ of the administration that takes the decision, or
- ii) the nature of the power which the administration is exercising, or
- iii) the fact that the decision may affect the personal liberty, the property or economic interests of the person to whom it is addressed?

In answering this question reference is made in the first instance to the reply to question 1 a) iii) where it was made clear that the courts are definitely inclined to view failure to hear an interested party as evidence of lack of due care in preparing a decision.

It is partly for this reason that authorities usually adopt the practice of hearing interested parties before a decision is taken, especially in cases where the decision is likely not to be to the advantage of the party concerned (see: Central Board of Appeal, 5 March 1981, AB 1981, 432 mentioned at 1 a) iii) above). It will be clear that the practice of the competent authorities on this point goes much further than the obligations laid down by statute.

There are no clear indications that the courts will take into consideration the matters mentioned in items i), ii) and iii) of the question.

c) Does the right exist in

i) dismissal cases?

It is generally assumed that the principle of just and proper administration referred to earlier, namely that an authority must act with due care in all its dealings both of a legal nature and otherwise, requires that a person will not be dismissed before he has been heard. Two judgements will illustrate this.

- Royal Decree of 26 November 1981, AB 1982, 48: because of the faults evident in the investigation in question - including failure to hear the person dismissed - it was held that the council's decision could be deemed to conform to the principle of just and proper administration which requires the taking of due care in the preparation of decisions.
- Royal Decree of 12 June 1982, AB 1982, 490 which arrived at a similar conclusion.

ii) disciplinary cases?

See the observations at 2 a) ii) (G) .

iii) when it is proposed to revoke or not to renew a licence or permit?

See 2 a) ii) (A) above in connection with licences or permits in cases concerning the protection of the environment.

See also the observations at 2 a) i) on procedure for applications for review. If the Administrative Justice (Public Orders) Act applies to the licence or permit, section 14 of the Act requires the hearing of the person concerned.

In other cases, too, observation of the principle of due care will often mean that the interested party is heard.

iv) prior to the granting of a licence or permit?

See under iii) above.

v) in the expulsion of aliens?

See 2a)ii)(H) above.

- d) Does the right exist incases where the administrative decision is a discretionary one?

This question can be answered in the affirmative. However, if the decision is not a discretionary one, the answer is less likely to be in the affirmative. The ABAR report referred to at 1 a) ii) proposes a provision to the effect that a hearing need not take place "if the hearing, under the statutory provisions upon which the decision will be based, cannot influence the decision." The explanatory note contains the following observation:

"This exception concerns situations in which an authority is bound by statute to take a certain decision, having thereby no freedom of choice. An example is the granting of an old-age pension. In such a case the administration has little scope for exercising its own discretion and, whatever arguments the interested party may put forward, they are unlikely to influence either the decision to grant the pension or the amount. In this type of case, therefore, a hearing could at most serve to produce useful information for the interested parties, but this is insufficient reason to make a hearing compulsory."

- e) What exceptions to the right will the law permit?

In particular,if the administrative decision is taken in the interests of public health, or public security,or in a particular emergency will the law excuse a failure to afford a hearing to the person affected by it?

If the disclosure of information could be prejudicial to the public interest will the law excuse a failure to afford a hearing?

In addition to the exception mentioned at d) above, the ABAR report refers to the following cases in which a hearing need not take place:

1. if it may be assumed that the interested parties will have no objection to the decision;
2. when there would be undue delay in taking the decision;
3. when the persons concerned have already had an opportunity to make their interests known by other means.

With regard to 2. the explanatory note states that there are all kinds of cases in which the benefits of a hearing would be out of all proportion to the disadvantages, either to the interested party or the authority concerned or to a public interest for which that body is responsible.

With regard to 3. it should be pointed out that the opportunity to participate in the deliberations of the municipal council or of an advisory committee is not deemed to be equal to a hearing as referred to, for instance, in article 390, paragraph 3, of the Building Regulations (decision of the Judicial Section of the Council of State, 5 June 1980, AB 1981, 125) which states: "Before deciding on an appeal the municipal council must afford the person concerned the opportunity to be heard by the council or by a committee appointed by the council."

3. The nature of the right to be heard

- a) What i) is the form of notice ii) the length of
iii) the contents of the notice, to be given to a
person likely to be affected by an administrative
decision?

To begin with, a few remarks on the decision itself. Any administrative decision should be well-grounded and have a sound factual basis. This does not however mean that a decision should always expressly state the grounds and facts on which it is based. In the case of a decision in favour of the applicant this is unnecessary if the decision affects only the person concerned, e.g. in the case of a request for sickness benefit or unemployment benefit. Since the authorities are required to produce such decisions in large quantities it would be a hopeless task to have to prove the facts and grounds on which a decision is based in every case. A number of statutory measures in the field of social insurance therefore lay down that a simple standardised notification is sufficient. If a person so wishes he may request a more detailed notification stating the reasons for and the factual basis of the decision, against which an appeal can be submitted. Of relevance here is a Royal Decree of 10 June 1978, AB 1979,329, in which the Crown adjudged a very brief statement of the reasons for a decision to be sufficient since the facts and circumstances applying were the same as those set out in an earlier decision relating to the same applicant.

There are no general rules relating to the form of the notice. Notice will usually be in writing.

With regard to the length and contents of the notice, it may be observed that it will be necessary to make it clear to a person likely to be affected by the administrative decision what the decision is about and in what ways he can put forward any objections he may have to the proposed decision.

- b) What information is required to be given to a person likely to be affected by an administrative decision? Is he entitled to see the official file in its entirety or merely excerpts from it?

As a general rule a person likely to be affected by an administrative decision has the right to see all the relevant documents.

The Government Information (Public Access) Act 1978 is of relevance here, especially section 1 which provides that a request for information shall be complied with unless there are objections to this on one of the grounds set out in section 4. The latter section states that a request may be refused in a number of cases: a) if the unity of the Crown (the Sovereign plus the Ministers) could thereby be endangered or b) if national security could be prejudiced. A request may also be refused if c) the information relates to commercial or manufacturing data given to the authority in confidence by natural or legal persons. Another case is where the interest served by the granting of the information does not outweigh the following interests: d) the relations of the Netherlands with other countries; e) the economic and financial interests of the State and other bodies governed by public law; f) investigations and prosecutions with reference to criminal offences; g) inspection, control and supervision by or on behalf of authorities; h) the right

of everyone to respect for his privacy and to the confidentiality of the results of medical and psychological examinations in respect of individual cases; i) the prevention of any unjustified advantage or disadvantage to natural or legal persons or to third parties.

Requests for information contained in documents drawn up for the purpose of internal consultation will be acceded to unless they relate to a) data which are still in preparation or which, although in a form which could be presented, would present an incomplete and therefore misleading picture in themselves and b) personal views of Ministers, public authorities or civil servants on matters relating to policy.

Information may be provided on factual details contained in such documents concerning the matter to which the request relates and on prognoses and alternative policies derived from these facts. A draft general administrative order (algemene maatregel van bestuur) on the subject which has already been published states in article 1 that the information referred to section 1 of the Act must be understood to include written documents and other material containing information which are held by public authorities and by institutions, departments and enterprises (in so far as the latter come within the sphere of responsibility of the other bodies) .

There is a right of appeal against refusal to provide information pursuant to the Administrative Justice (Public Orders) Act.

The proposed legislation contained in the ABAR report states in section 12 that an interested party may request information or perusal of documents in order to be able to defend his interests; the authority concerned may refuse only if the request is contrary to the law or to the interests of the authority or third parties. The authority is obliged to furnish only such information or to produce such documents as may be regarded as indispensable to the person concerned in defending his interests.

c) What is the nature of the hearing to which a person likely to be affected by an administrative decision is entitled? In particular, in what circumstances is he entitled to an oral hearing?

If an oral hearing is held, in what circumstances is he entitled to be represented by a lawyer, to call witnesses, to cross-examine witnesses?

In most cases the hearing will be oral, although there are a large number of cases in which an interested party must make submissions in writing to an authority. Examples include the acts mentioned at 2.a)ii), B, C and E above.

An interested party may apply to give an oral explanation of written objections. If the authority deems this to be of use and it would not delay the procedure unduly permission is usually given.

The submission of written evidence in support of a written or oral objection will not generally meet with objections on the part of the authority, since the duty to take due care in the preparation of a decision will oblige the authority to take account of all relevant

facts. For this reason there will in practice be few objections to the calling of witnesses at a hearing, although it should be borne in mind that such "witnesses" cannot be officially summoned and are not under oath. They will usually be experts in a particular field, brought in to lend weight to an objection.

A lawyer or other authorised person may lodge written objections on behalf of another. In general no problems will arise if an interested party is represented at hearings either, especially if the hearings are public and any person is entitled to submit objections. A number of acts granting the right to be heard to interested parties provide expressly that representatives may be appointed. It cannot, however, be concluded from the fact that a measure contains no provision on the admission of representatives that an interested party is permitted to appear in person only.

Section 9 of the ABAR report allows an interested party to be represented or accompanied by another. The explanatory note states: "The right of an interested party in administrative proceedings, as well as in judicial proceedings, to be represented by a proxy or to be assisted by an expert is generally considered to be self-evident." In proceedings which are conducted entirely in writing a rule regarding assistance by third parties is scarcely necessary since such assistance is never evident.

- d) If the administrative decision is taken after a prior consultative procedure (e.g.the holding of a preliminary public enquiry) does the right to be heard exist both at the consultative stage and before the final decision is made?

There is no general rule on this point. With regard to the Environmental Protection (General Provisions) Act referred to at 2.a)ii)A the answer is in the affirmative. The right of appeal to the Crown however is dependent on whether or not use has been made of the right to be heard at the consultative stage.

Reference is also made to the observations at 2.a)i) on the procedure for applying for review. If the authority heard the interested party before the original, decision was taken, that person will again have to be heard, under section 14 of the Administrative Justice (Public Orders) Act, with regard to his objections to the original decision.

4. Remedies for a denial of the right to be heard.

- a) If the right to be heard is denied does this render the impugned decision void? If so, has it any legal force prior to an order annulling it?

If the right to be heard is denied the decision will not be void. The interested party must apply to an administrative court competent to deal with his case with a request to annul the decision.

b) What are the remedies for a denial of a right? In particular, does an aggrieved person have a right to

i) damages?

It is possible to have recourse to private law by filing an action for damages against the authority. Failure to exercise due care may constitute an unlawful act.

The Hague Court of Appeal, 23 June 1971, Dutch Law Reports 1971, 308: failure to hear the claimant before withdrawing a subsidy constituted a serious fault in the decision to withdraw such subsidy.

's Hertogenbosch Court of Appeal, 25 June 1974, Dutch Law Reports 1975, 12: In withdrawing a subsidy which had already been granted, without affording the party concerned the right to make known its views, a municipality was held to have been guilty of a serious failure to exercise due care in performing its administrative task.

Middelburg District Court, 6 September 1973, BR 1973, 673: cases are conceivable where the authorities may take a decision which affects the interests of certain persons or groups without there having been any prior publicity or any contact or discussion with the person affected. The current view is that in such a case an infringement of the general principle of just and proper administration can be held to exist.

Recourse to administrative law is also possible; see section 58b, subsection 4 and section 73, subsection 2 of the Council of State Act, sections

48 and 49 of the Central Government Personnel Act and section 60 of the Trade and Industrial Bodies (Administrative Justice) Act. If a court believes it justified it may order compensation to be paid to an interested party without prejudice to any right he may have to damages under any other statute.

Royal Decree 26 November 1981, 13, AB 1982,48:

The claimant was not heard in connection with his dismissal. Compensation of Fl.10,000 granted under section 58b, subsection 4 of the Council of State Act

ii) an injunction?

A court order or prohibition may be sought by means of summary proceedings (kort geding) before the president of a district court. A case in point would be an alien who is refused a residence permit and whose application for review is refused by the Advisory Commission on Aliens Affairs. He may appeal to the Judicial Section of the Council of State, but such an appeal cannot suspend the procedure which has been set in motion and he may be deported from the country before the Judicial Section arrives at a decision. To prevent this the alien may apply to the president of the district court for an interlocutory injunction to prohibit his deportation. Deportation of an alien may constitute a tort if the Minister were found not to have acted reasonably in the given circumstances in making his decision. An important factor could be the expectation that the appeal to the Judicial Section has a reasonable chance of success or if the expulsion could be

deemed to be contrary to the general principle of just and proper administration (President, Arnhem District Court, 1 July 1983, AB 1983, 464). The fact that the alien was not heard or not properly heard could be deemed to be contrary to such a principle . (Judicial Section, 10 February 1983, AB 1983, 283).

c) What are the time limits for the institution of proceedings?

The right of appeal is virtually always subject to a time limit. Reference must be made to the relevant legislation, for this is not always uniform, the most frequently employed time limit being 30 days. The time from which this period runs is also stated in the various acts. Section 9, subsection 1 of the Administrative Justice (Public Orders) Act 1975, for instance, states that an appeal must be entered within 30 days of the day on which the disputed order was issued or deemed to have been refused.

d) Is there a discretion to refuse relief even though a denial of the right to a hearing has been established?

In general it would have to be assumed that failure to comply with a requirement so fundamental as the right to a hearing would be unacceptable and that an administrative court would declare the decision null and void. This does not however apply to tax law (see 2a)ii)I above). If an inspector of taxes fails to hear a person who has requested a hearing the decision on the application for review cannot be challenged (Supreme Court 28 January 1981, BNB 1981, 128).

e) Can the administration which has denied the right to a hearing successfully plead in defence:

i) that if a hearing had been held the administrative decision would have been the same; or

ii) that the injured person failed to appeal to a higher administrative body as provided by law

As was stated at d) above failure to hear an interested party will generally result in the decision being annulled, although a number of decisions of the Judicial Section of the Council of State appear to indicate that this need not always be the case.

Judicial Section, 30 June 1977, AB 1977, 392: the Judicial Section did not annul the decision in question, its reason being that the interests of the party concerned were not prejudiced by the lack of a hearing.

In its decision of 26 August 1977 (AB 1977, 392), in which the Judicial Section did annul a decision on the grounds of failure to grant a hearing, it expressly stated that in view of the facts put to the Section by the party concerned at the sitting, a hearing could have produced information favourable to him which could have influenced the decision.

f) What are the requirements for locus standi in an application to review an administrative decision taken in breach of an obligation to grant a hearing?

The claimant- a natural or legal person whose interests are prejudiced by the decision - must submit his objection to the court in writing and supply the grounds on which his appeal is based. In some cases the grounds

may be submitted later. The claimant is required to submit a copy of the decision to which he objects as well as other relevant documents. A small sum in court fees is often payable.

5. The right to be heard in the context of an application to review an administrative decision.

- a) In proceedings in a court (administrative or civil) with jurisdiction to review an administrative decision has an applicant the right to obtain prior to the hearing all documents on the official file of the organ of the administration concerned with the impugned decision?

The general rule is that no judicial decision can be taken with regard to documents whose contents are not known to either or both of the parties; the principle is embodied in various acts (see the Government Information (Public Access) Act 1978 referred to at 3(b) above).

There are exceptions to this principle, namely if publication would be contrary to the public interest or to the interests of one of the parties.

- b) What procedures in a court referred to at a) exist so that third parties who may wish to support or challenge the validity of an impugned decision may take part in the proceedings?

In almost all cases the relevant statutory regulation states who may appeal, although this varies considerably from one statute to another.

In social security and tax legislation only those persons against whom the decision is made may appeal. The right of appeal is in some instances restricted to certain groups, e.g. civil servants.

In the case of development plans, however, any person may submit an objection to a draft development plan to the municipal council. Between these two extremes lies a range of possibilities which extends in any case further than simply the person against whom the decision is directed, i.e. to interested third parties.

Many acts employ the term "interested party" or "those whose interests are directly affected" to indicate who has the right of appeal.

CONCLUSIONS

1. The right to be heard is not embodied in the Constitution.
2. There is no general statutory provision relating to the right to be heard: a draft is in preparation,
3. The right to be heard is laid down in a large number of specific acts.
4. In cases where there is no statutory provision, the principle of proper and just administration that an administrative body must act with due care and must not unnecessarily prejudice the interests of others will usually ensure that interested parties have the right to be heard.