

Council of State of the Netherlands

1. History

The Council was founded in 1531 and its task was to advise the Head of State on affairs of State, including religious matters, governance, security, defence and foreign relations. In the first two hundred years the position of the Council of State was unclear and it did not enjoy great prestige. In 1795 the Council was abolished when France occupied the Republic. In 1814, when the Netherlands regained its independence, the Council of State was enshrined in the Constitution, which stated that the Sovereign could perform sovereign acts only after having submitted the matter to the Council of State for consideration. However, a year later, the 1815 Constitution restricted the obligations of previous consultations to legislative acts and measures of internal administration, while the Sovereign could consult the Council on other matters as he wished.

In 1976 the judicial function was introduced. Since then the Council has had the power to pass judgements on administrative disputes as defined by law.

2. Organisation

The Queen is President of the Council of State. In addition to the Queen there are one or more members of the royal family also seated in the Council. They may participate in the deliberations, but are not allowed to vote. However, the members of the royal family are hardly ever present at the meetings of the Council.

In practice the Vice-President is responsible for running the organisation. He presides over the weekly meetings of the Plenary Council and supervises the work of the Council and its staff. The Queen consults the Vice-President on the formation of a new Government after a general election.

The Plenary Council consists of 28 members, known as State Councillors, and its task is to give advice on new legislation. The Council is divided into sections corresponding to the government ministries. These sections make recommendations to be discussed in the Plenary. As the government's highest adviser on legislation, the Council is called upon to

monitor the quality of legislation both from the legal point of view and from the point of view of good policy. This means that the Council not only examines the legal and legislative aspects of bills and draft Royal Decrees, but also considers whether there are sound reasons for the policy to be pursued. However, the Council shall refrain from comment on the political dimensions of government policy. All State Councillors, with the exception of the Vice-President, participate in the work of the Administrative Jurisdiction Division. This division has a general jurisdiction in administrative law.

Under the Vice-President we have the Secretary, who is the head of the staff of the whole organisation. The staff forms two main divisions: the legislation division and the administrative jurisdiction division. The Secretary and the directors of both divisions form the management team.

3. Two main divisions

a. Legislation division

Let us first look at the legislation division. The legislation division consists of a director and about 15 jurists, who assist councillors in scrutinizing draft legislation. In particular three aspects are systematically examined: legal aspects, policy aspects and technical aspects. The examination of legal aspects considers whether the draft legislation is compatible with the Statute of the Kingdom, the Constitution, the Kingdom's international obligations and European Community

Law. The examination of policy aspects considers whether the bill will in fact alleviate or solve the problem it is intended to address, whether other approaches might be more appropriate and whether the proposed legislation is effective and the proposed solution is efficient. The division also checks if there are more effective and efficient alternatives and if these were duly considered while the bill was being drafted. When examining technical aspects, the division considers in particular whether the general technical rules for legislation have been properly taken into consideration. Each year approximately 700 draft proposals for new legislation are dealt with.

b. Administrative Jurisdiction division

The Administrative Jurisdiction division consists of a director and about 200 lawyers and is responsible for settling administrative disputes in cases in which no other administrative tribunal has jurisdiction. Alongside the Division as the highest general court, the Central Appeals Tribunal acts as the highest court for the specific areas of social security and public service law. The Trade and Industry Appeals Tribunal acts as the highest court for competition law and related matters. These three bodies cooperate in a number of ways, to ensure legal uniformity within the entire field of administrative law.

The Division administers justice not only in the first, but also in the last instance in disputes concerning mainly the Spatial Planning Act and related legislation and environmental legislation. In other cases the Division listens to appeals on decisions given by the administrative law sectors of district courts. These appeals focus on objections to administrative decisions, for example building permits, grants, media law and decisions based on local-authority ordinances and the Government Information Act. Since 1 April 2001 the Division has also been responsible for judging appeals based on the new Immigration Law.

The Division deals with approximately 3000 cases in total each year.