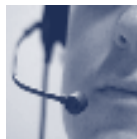
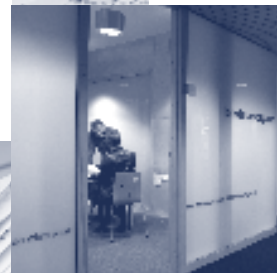


de Nationale ombudsman

Institution, task and procedures of the National Ombudsman of the Netherlands



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Preface



The National Ombudsman Act (*Wet Nationale ombudsman*) entered into force on 1 January 1982. The Act introduced a new office to add to the existing public institutions in the Netherlands. Since 25 March 1999, the office of National Ombudsman has also been enshrined in the Dutch Constitution. This brochure gives brief details of the status and work of the National Ombudsman. It contains information about the origins of the institution, the office-bearers and the National Ombudsman's support staff. Most importantly of all, however, it explains the duties, powers and procedures of the National Ombudsman and discusses the impact of his work.

A handwritten signature in dark ink, consisting of a large, stylized 'C' followed by a series of connected loops and a horizontal stroke.

Dr A. F. M. Brenninkmeijer
the National Ombudsman of the Netherlands

1. Introduction



Origins of the institution

As early as 1801, the Netherlands had a ‘National Syndicate’ charged with overseeing the activities of government officials in much the same way as the National Ombudsman is expected to do today. However, this institution existed only briefly and disappeared again in 1805.

The first true ombudsman institution was established in Sweden in 1809 but more direct models for the Netherlands were the Danish office of *Folketingets Ombudsman* (established in 1955, following the Swedish example) and the British Parliamentary Commissioner for Administration (established in 1967).

The idea of appointing a national ombudsman in the Netherlands was first explored and discussed in the 1960s. It originated in academic circles but was soon taken up by politicians. In 1969 the government published a policy document on the issue. This favoured the option of an independent institution to deal with complaints from members of the public about the actions of government, to exist alongside the traditional Petitions Committees of the two houses of the Dutch Parliament (the States General). Draft legislation establishing an office of ‘Investigations Commissioner’ was presented to Parliament in 1976. The name ‘National Ombudsman’

was introduced in an amendment which was agreed to in 1980. The National Ombudsman Act (*Wet Nationale Ombudsman* – Bulletin of Acts and Decrees 35) became law on 4 February 1981 and on 1 January 1982 the institution came into operation. In its preamble, the National Ombudsman Act states: ‘... that the need exists for special provision for investigating the way in which government has acted in a particular matter towards the individual citizen and that it is desirable in this connection to proceed to the establishment of the office of National Ombudsman...’.

Since 25 March 1999, the office of National Ombudsman has also been enshrined in the Dutch Constitution. This was effected by Act of 25 February 1999 (Bulletin of Acts and Decrees 133). A new section 78a inserts the Ombudsman in Chapter 4 of the Constitution, directly after the Council of State (which advises the government and Parliament on legislation and governance and is the country’s highest administrative court) and the Court of Audit (which investigates whether Dutch public funds are collected and spent regularly and effectively). The first paragraph of article 78a reads as follows: ‘The National Ombudsman shall investigate, on request or of his own accord, actions taken by central government administrative authorities and other administrative authorities designated by or pursuant to Act of Parliament.’

Role of the National Ombudsman

The institution of National Ombudsman was established in order to give individuals an opportunity to place complaints about the practices of government before an independent and expert body. The mechanism works alongside existing provisions, such as Parliament, the courts, and internal complaints procedures. Applying to the Ombudsman may result in steps being taken in particular cases (perhaps contrary to the authority’s original intention), and, in a broader context, help to restore public confidence in government. In view of this role vis-à-vis the individual, the National Ombudsman Act deliberately elects to make a single person, the National Ombudsman, represent the institution in the eyes of the outside world, as a counterbalance to an often faceless bureaucracy.

The National Ombudsman can also contribute to the quality of government by providing feedback as to how the authorities are performing their tasks. This is important for government organisations that want to do their work in a customer-friendly way and therefore attach great importance to high-quality policy implementation. Complaints are signals, constituting a valuable source of information for quality assurance. Observing the standards of proper conduct applied by the National Ombudsman can, in short, contribute to the rationality and legitimacy of public administration.

For the National Ombudsman to fulfil his role, he must be visible to the public, which must have confidence in his impartiality and methods. Where the government is concerned, it is important to note that the National Ombudsman's decisions are not legally enforceable. Respect for the authority of the National Ombudsman and his decisions is therefore of particular importance, if they are to have any impact at all. That authority is determined in the first instance by the quality of the work itself: a brisk and thorough investigation, well-reasoned decisions, and readable reports. High-quality work is a sine qua non, but not sufficient in itself. It is the internal mainstay, but the external one is also vital: political support for the National Ombudsman and public awareness of his work.

Mission of the National Ombudsman

The mission of the National Ombudsman is to protect individual citizens against government actions that are less than proper.

International setting

The importance that is attached to the existence of the institution in the Netherlands is reflected at international level. The Council of Europe, the European Union and the Dutch government all regard the existence of national ombudsman institutions in young

democratic states as a necessary precondition for the further development of the countries concerned. Since established and experienced ombudsman institutions are in a position to provide useful assistance in this respect, the National Ombudsman of the Netherlands takes an active part in cooperation with, and the further development of, ombudsman and other similar institutions elsewhere in the world. Cooperation projects have already been completed with the Public Defender of Rights in the Czech Republic and the People's Advocate in Romania.

These international activities and the resulting cross-fertilisation of ideas with institutions in other countries force the National Ombudsman to reflect on his own work. This is more than a useful side-effect: it is one of the reasons for engaging in such international contacts. Projects with other ombudsman institutions and participation in the networks of the Council of Europe and the European Ombudsman offer the National Ombudsman a wealth of experience that can be used to enhance the operations of the Dutch institution. Such international work is also consistent with one of the core tasks in the National Ombudsman's remit: that of knowledge transfer.

The international circles in which the National Ombudsman moves feature a number of key players. At European level, they

include the Council of Europe (in the form of its Commissioner for Human Rights) and the European Union (in the form of the European Ombudsman). In addition, there is the International Ombudsman Institute. This is at the heart of the worldwide network of ombudsmen and its European section plays a major role in communication and knowledge transfer between the various ombudsman institutions in the European region. Needless to say, the National Ombudsman of the Netherlands works hand in hand with these institutions to enhance and expand his international activities.

Further information

For further information about other ombudsman institutions, visit:
ombudsman.europa.eu/links/nl/natomeu1.htm
www.coe.int/t/commissioner

2. Office and support staff



The office of the National Ombudsman

The National Ombudsman of the Netherlands is a High Council of State on a par with the two Houses of Parliament (the States General), the Council of State, and the Court of Audit (see Introduction). Like the judiciary, the High Councils of State are formally independent of the government. Another mark of the National Ombudsman's independence from the executive is that he is appointed by the lower House of Parliament (the House of Representatives), not by the Crown (see section 78a, paragraph 2 of the Constitution and section 2, subsection 2 of the National Ombudsman Act). This is highly unusual in Dutch constitutional law. The appointment of the National Ombudsman by the House of Representatives follows a recommendation by a committee comprising the vice president of the Council of State, the president of the Supreme Court, and the president of the Court of Audit (section 2, subsection 2 of the National Ombudsman Act). The National Ombudsman's appointment is for a term of six years (section 2, subsection 3), but re-appointment is possible. The Act recognises that it would not be proper for the Ombudsman to hold certain other public offices or any position 'which is incompatible with the proper performance of his official duties or with his impartiality and independence or with public confidence therein' (section 5). It prescribes no formal qualifications for the

post but legal expertise and a knowledge of public administration are obvious selection criteria.

The House of Representatives can dismiss the National Ombudsman only on the grounds specified in the Act, which are similar to those applying to members of the judiciary. One of the grounds for dismissal is if 'in the opinion of the House of Representatives, he has as a result of his acts or omissions seriously undermined the confidence placed in him' (section 3, subsection 2g).

The legal status of the National Ombudsman is established by law and is the same as that of members of Parliament (section 6). His salary is laid down in a separate Act.

Support staff

'The Ombudsman shall be provided with an office' (section 11, subsection 1). Day-to-day management of the National Ombudsman Office is in the hands of a director. The director and team managers are appointed and dismissed by the Crown, on the recommendation of the National Ombudsman. Other staff (mostly lawyers) are appointed and dismissed by the National Ombudsman.

The National Ombudsman is assisted by over 160 members of staff. Almost 70% of them are investigators, who work in investigation teams assigned to the different policy areas. There is also a front office team which deals with telephone and e-mail enquiries from members of the public, and various support departments in areas such as policy-making, public relations, and information and communications technology.

The National Ombudsman's budget is allocated under Chapter II of the National Budget (High Councils of State and the Queen's Office).

External contacts

Members of the public

Members of the public can phone the National Ombudsman Office or contact it in writing. There is a toll free number that they can use to check whether their complaint falls within the jurisdiction of the National Ombudsman. If it does not, they are offered advice and information about appropriate alternative procedures.

During investigations, contact is chiefly in writing or by phone. Depending on the nature of their complaints, complainants may also visit the National Ombudsman Office, or staff from there may interview them and/or other relevant people 'on site'.

There is a policy of actively educating the public about the duties and role of the National Ombudsman. The image of the institution that is projected is that of an easily accessible and approachable form of supplementary protection for the rights of individuals. The main channel of communication is regular commercial advertising on radio and television and in the print media. The National Ombudsman's information office also maintains active contact with the news media, there is a weekly column in a major national newspaper, and part of the Ombudsman's website is designed specifically for the general public.

Intermediaries such as lawyers, legal aid offices and welfare officers have a major role to play in referring members of the public to the National Ombudsman or in approaching him on their behalf. To increase the familiarity of such professionals with the jurisdiction and procedures of the National Ombudsman, a quarterly newsletter is sent to them and presentations are provided by members of the National Ombudsman's staff for professional bodies.

Administrative authorities

Contact with administrative authorities, their departments and staff also takes place in writing, on the telephone, and face to face. It generally occurs in the context of specific investigations. A network of officials designated by their departments to liaise

with the National Ombudsman and his staff plays an important role in the exchange of information. In addition, the National Ombudsman and his deputy have regular meetings with politicians and senior officials heading administrative authorities within his jurisdiction. Finally, the National Ombudsman, his deputy and members of staff make working visits to individual authorities within his jurisdiction.

The National Ombudsman has particularly close relations with the Minister of the Interior and Kingdom Relations, who is responsible for legislation concerning the National Ombudsman, and for the chapter in the National Budget which concerns the High Councils of State.

Parliament

In a sense, the office of National Ombudsman can be seen as supplementing and supporting parliamentary scrutiny of the executive. The House of Representatives' standing Committee on the Interior and Kingdom Relations is responsible for institutional matters concerning the National Ombudsman, such as legislation, budgetary issues, appointments and the annual report. Each year, the National Ombudsman goes in person to present his annual report to the president of the House of Representatives. Since 2008, the presentation has been accompanied by a brief explanatory

address to a plenary session of the House. The standing Committee on the Interior and Kingdom Relations and other relevant parliamentary committees then discuss the annual report with the National Ombudsman. Finally, there is a plenary debate on it in the House of Representatives.

The National Ombudsman also sends the chairman of the House of Representatives' Petitions Committee a quarterly review of responses received from administrative authorities to his past recommendations. This gives the Committee the opportunity to monitor the impact of this part of the National Ombudsman's work and, if necessary, to speak to the ministers or state secretaries responsible.

The legal profession and fellow ombudsmen

The distribution of the National Ombudsman's reports in professional circles enhances the impact of his work. His decisions are published in various legal journals, sometimes in annotated form and lawyers can consult the National Ombudsman's case-law database via the Internet. In addition, staff from the National Ombudsman Office maintain relations with various target groups, such as academics and students, by providing presentations etc.

Finally, the National Ombudsman keeps in regular touch with local ombudsmen in the Netherlands, especially those in the larger Dutch municipalities.

The media

Coverage of the National Ombudsman's work in the news media and professional journals is important for a number of reasons. Firstly, the media are a vital channel for publicising the work of the ombudsman and enhancing the public image of the institution. Secondly, publicity helps to increase the impact of decisions and recommendations. Finally, publicity can help to familiarise various target groups with the National Ombudsman and his mission.

International relations

The National Ombudsman also maintains an international network. This includes, for example, the International Ombudsman Institute (IOI), which counts most of the world's ombudsmen and comparable institutions among its members. The activities of the IOI include the organisation of a four-yearly international conference and the publication of a 'Yearbook'. To join the IOI, institutions must meet a number of criteria, one of the most important being their complete independence. The IOI is divided into various regional constituencies, including a European one.

3. Task and jurisdiction

Within the European Union, the European Ombudsman plays an important role. His remit is to deal with complaints about the institutions of the European Union. The Council of Europe's Commission for Human Rights has a different role in relation to the Council's member states. Ever since 1999, his responsibilities have included supporting the activities of ombudsmen in relation to the protection of human rights. The Commissioner organises a round table conference every two years and is extremely active in the young democratic states. Finally, there is also a European Ombudsman Institute (EOI). Like the IOI, this is a not-for-profit institution.

The National Ombudsman also maintains his own bilateral relations with ombudsman institutions in other countries. This produces a cross-fertilisation of knowledge and experience that enhances the operations of the Dutch institution.



Task

The National Ombudsman's main task is to investigate the actions of administrative authorities and decide whether or not they were proper. There are two avenues that can lead to an investigation:

- *a petition*

Section 9:18, subsection 1 of the General Administrative Law Act (Algemene wet bestuursrecht – Awb) states that 'Any person has the right to petition the National Ombudsman in writing to investigate the way in which an administrative authority has acted towards him or another person in a particular matter'. Section 9:20, subsection 1 of the same Act provides that the petitioner must in principle first have submitted the complaint to the relevant administrative authority, body or public servant, and the latter must have had the opportunity to respond. This provision accords with title 9.1 of the Act, which entered into force on 1 July 1999 and contains a number of rules for the internal processing of complaints by administrative bodies. Section 9:28, subsection 1 of the Act provides that the petition must be signed and must include:

- the name and address of the petitioner;
- the date;
- a description of the action concerned and the details of the person responsible;

- the grounds for the complaint;
- details of the way in which the complaint has been submitted to the administrative authority concerned and, if possible, the findings of the investigation of the complaint by that authority.

• *an initiative by the National Ombudsman*

Section 9:26 of the General Administrative Law Act gives the National Ombudsman the additional power ‘to institute an investigation on his own initiative into the way in which an administrative authority has acted in a particular matter’. This option provides the opportunity to focus on problems of a more structural kind in the practices of administrative authorities. This can be done either as an extension of investigations into specific cases or as a separate investigation in its own right.

Jurisdiction over administrative authorities

The task of the National Ombudsman is to investigate the actions of administrative authorities as defined by the General Administrative Law Act (section 1, subsection 1). For this purpose, any act carried out by a public servant in the performance of his/her duties is deemed to have been carried out by the administrative authority under whose responsibility s/he is working (section 1a, subsection 4 of the National Ombudsman Act).

The jurisdiction of the National Ombudsman includes the actions of government ministers and administrative authorities charged with duties relating to the police (section 1a, subsection 1a and 1c of the National Ombudsman Act). This has been the situation since 1 January 1982.

In addition, his jurisdiction also includes other administrative authorities that are not hierarchically subordinate to a government minister and do not belong to the group of administrative authorities of the provinces, municipalities, water boards and bodies set up under the Joint Arrangements Act. This category of ‘other administrative authorities’ includes the autonomous administrative authorities.

In the past, these ‘other administrative authorities’ only fell within the jurisdiction of the National Ombudsman if they were specifically designated to do so by order in council. This situation existed from 1 November 1993 (or, in the case of universities and colleges of higher professional education, 1 November 1995) until 30 June 1998, when the system of specific designation was ended by an amendment to the National Ombudsman Act. Since that date, the National Ombudsman's jurisdiction has automatically included all administrative authorities with the exception of those in the subnational government field (which can opt in or out as described below) and a few others specifically excluded by order in council (section 1a, subsection 1e of the National Ombudsman Act).

The National Ombudsman Act also provides a basis (in section 1a, subsection 1b) for bringing the administrative authorities of the provinces, municipalities, water boards and bodies set up under the Joint Arrangements Act within the National Ombudsman's jurisdiction. Since 1 January 1999, this has been done by ministerial order, at the request of the bodies concerned and at their expense. Since 1 January 1994 the administrative authorities of all the water boards have come under the jurisdiction of the National Ombudsman, as have those of the provinces since 1 July 1996. The same applies increasingly to the administrative authorities of the municipalities.

According to the definition contained in section 1:1 of the General Administrative Law Act, the legislature, the two Houses of Parliament, the judiciary, the Council of State and the Court of Audit are not deemed to be administrative authorities and therefore fall outside the National Ombudsman's jurisdiction. The Judiciary (Organisation) Act and the Council of State Act contain separate provisions for dealing with complaints against judges.

In practice, just under a fifth of all petitions received are judged to be inadmissible because they relate to administrative authorities which fall outside the jurisdiction of the National Ombudsman. The petitioners concerned receive a written explanation of the

reasons why the complaint cannot be accepted for investigation and are referred, if possible, to an appropriate alternative body.

Jurisdiction over actions

The remit of the National Ombudsman does not encompass every kind of action by the administrative authorities specified in the preceding section as falling within his jurisdiction. It covers only the manner in which they carried out public tasks. This is to some extent apparent from the definition of the term ‘administrative authority’ contained in section 1:1 of the General Administrative Law Act, from section 1a of the National Ombudsman Act, and from various limitations contained in section 9:22 of the General Administrative Law Act.

The National Ombudsman's remit does not cover general government policy-making and generally binding regulations (General Administrative Law Act, section 9:22, opening words and at a and b). This restriction concerns the actions of administrative authorities in their legislative capacity, a sphere in which they cooperate with and are accountable to Parliament. Similar arrangements exist for political accountability with respect to general government policy. It would clearly not be right for the National Ombudsman to intervene between government and Parliament on matters like these.

However, this limitation applies only to the National Ombudsman's competence to institute investigations; there is nothing to stop him recommending changes to a piece of legislation or policy, if the results of his investigation of a specific action taken in carrying out public tasks give him reason to do so.

The National Ombudsman's powers are also subordinate to the relationship between the executive and the judiciary. In a number of cases, the National Ombudsman must give precedence – temporarily at least – to the jurisdiction of the courts (see General Administrative Law Act, section 9:22, opening words and at c, d, e and f).

For example, the National Ombudsman may not investigate a case in which:

- the petitioner may still have recourse to a complaints or judicial review procedure under administrative law (to which extremely short time limits normally apply);
- a complaints or judicial review procedure has been instituted, or court proceedings are pending.

Nor can the National Ombudsman investigate any matter:

- on which an administrative court has already pronounced;
- subject to the jurisdiction of the courts.

However, if a remedy is available to the petitioner under administrative law in respect of the failure of an administrative

authority to reach a decision in good time, the National Ombudsman remains entitled to institute an investigation.

A situation may occasionally arise in which an individual actually applies to the National Ombudsman when s/he can still have recourse to objection or judicial review proceedings. In such cases, the National Ombudsman is bound to forward the petition to the appropriate judicial body (General Administrative Law Act, section 9:19), although it is established policy to discuss this first with the petitioner.

The limitation on the National Ombudsman's competence in relation to the jurisdiction of the administrative courts has consequences for the kind of actions that the National Ombudsman investigates. Where government takes action affecting private individuals in the specific form of administrative decisions, appeal in the Netherlands lies, with only rare exceptions, to the administrative courts. In practice, this means that the jurisdiction of the National Ombudsman is principally confined to the day-to-day administrative practice of government.

As a result of these limitations on the competence of the National Ombudsman, a proportion of the petitions submitted to him are ineligible for investigation. These petitioners are also informed as soon as possible.

Scope of powers

The National Ombudsman's remit is to investigate actions by government bodies, or what the law calls 'administrative authorities'. But what exactly does this term mean at a time when government is increasingly farming out its activities to private-law constructions such as not-for-profit foundations and sometimes complex forms of public-private partnership?

The General Administrative Law Act specifies two different types of administrative authority:

- a. organs of legal entities established under public law (known as 'a-authorities') and
- b. other persons or bodies which are invested with any public authority (known as 'b-authorities').

In the past, the National Ombudsman's understanding of his powers has always been based on the interpretation of the term 'administrative authority' by the administrative courts. The case law of the courts relates mainly to the interpretation of the words 'invested with any public authority', found in the definition of the 'b-authorities'. In the administrative case law, this is taken to mean a body that has statutory powers to make unilateral decisions affecting the legal standing of individual citizens.

However, the National Ombudsman has come to realise that this definition takes too little account of his mission. The courts have defined the term in the light of their own focus on administrative decisions. This is understandable, given that the jurisdiction of the administrative courts is limited to government actions taking the form of administrative decisions. However, administrative decisions generally lie outside the jurisdiction of the Ombudsman, because the jurisdiction of the courts takes precedence. As a rule, therefore, the cases considered by the Ombudsman concern government actions which do not take the form of administrative decisions. They are not so much unilateral decisions affecting the legal standing of individual citizens as actions which can have a major influence on their lives and wellbeing if not carried out in accordance with standards of proper conduct. It would not be right for such actions by b-authorities to be excluded from the National Ombudsman's jurisdiction simply because of the courts' narrow interpretation of the phrase 'invested with any public authority'. It is extremely hard to explain to members of the public that the National Ombudsman lacks the power to deal with complaints about an institution which the public perceives as an arm of 'government'.

In 2007 the National Ombudsman devoted special consideration to the limitations on his powers. This was one of the subjects

4. Procedures

discussed with leading experts at his 25th anniversary symposium, held on 1 November 2007. There proved to be strong support for the idea that the National Ombudsman should adopt his own interpretation of the term ‘administrative authority’, tailored to his remit. One suggested criterion for determining whether an activity can be regarded as an action of government was ‘everything funded, decided or organised by government’. The National Ombudsman feels that the expert opinion expressed at the symposium supports his own view of what he should deem to be government action. A suitable parliamentary opportunity might be taken to amend the General Administrative Law Act to replace the present definition of ‘administrative authority’ by one that more closely reflects this criterion.

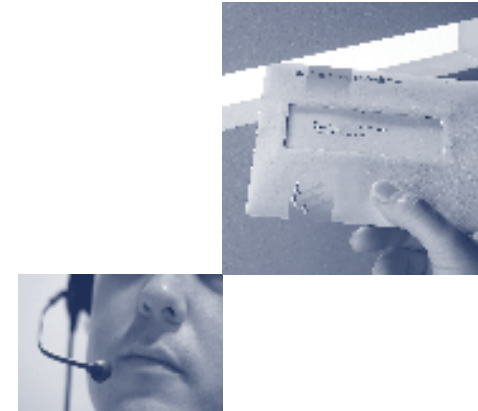
Institutions which the National Ombudsman has not in the past regarded as administrative authorities but which the public perceives as arms of ‘government’ include:

- those involved in probation work and the care and resettlement of offenders;
- victim support organisations;
- the Advice and Reporting Centres for Child Abuse and Neglect (which come under the Youth Care Offices);
- the crisis intervention teams (which likewise come under these Offices).

Individual citizens should have the right to complain to the National Ombudsman if they are entitled to the assistance of these institutions and the body or one of its employees fails to respond, or if they receive disrespectful treatment, or if their right to personal privacy is violated through the actions of the institution or a member of its staff.

The National Ombudsman will contact the boards of these institutions to explain this new understanding of his powers but intends to adopt a hands-off approach in cases where the institution has a statutory procedure for dealing with complaints via an independent complaints body.

Although the National Ombudsman believes that this new approach will provide a provisional way of satisfying the justified wish of the public to be protected against non-proper conduct by the authorities, he would nevertheless advocate a more effective interpretation of his powers in the General Administrative Law Act, based on the criterion of ‘government decision-making, organisation and funding’.



Personal telephone contact

The day-to-day work of the National Ombudsman’s support staff reveals that it is often quite difficult for members of the public to decide when to seek help from the National Ombudsman. Campaigns to educate and inform the general public about the powers and role of the National Ombudsman and to correct misapprehensions are therefore essential. The preferred approach in such campaigns is to refer the public to the brochure and the website for further information. Great stress is also placed on the existence of a free telephone hotline and people are encouraged to use this to make their initial approach. They can then explain their complaint personally to a member of the National Ombudsman’s front office staff, who can decide whether they should be referred to another authority or invited to submit a written petition to the National Ombudsman. This helps to reduce the number of people who write letters to the National Ombudsman and are then disappointed because he has no power to investigate their complaints. In addition, the existence of the free telephone hotline helps to make the National Ombudsman more approachable in the minds of the general public. This is desirable in view of his role in supplementing the powers of the courts by providing additional protection for the rights of individual citizens.

Checks on competence and admissibility

When the National Ombudsman receives a petition, the first step is to determine whether he has jurisdiction under the various provisions of section 1a of the National Ombudsman Act and section 9:22 of the General Administrative Law Act. If so, the next step is to decide whether the petition is admissible.

In a number of circumstances, laid down in section 9:23 of the General Administrative Law Act, the National Ombudsman is free to decide not to institute or continue an investigation, even though he has formal jurisdiction. The most important provisions in this respect relate to:

- the requirements that a petition must meet (section 9:23a). In practice, the requirements relating to the details of the complaint and the supporting evidence are applied fairly flexibly;
- whether the petition is manifestly unfounded (section 9:23b). If it is immediately clear from the information provided by the petitioner that the complaint is unfounded – for example because a request was dealt with in full accordance with the appropriate procedure – the National Ombudsman will not institute an investigation;
- whether the interest of the petitioner or the seriousness of the action is manifestly insufficient (section 9:23c). The second of

these grounds will only rarely lead to the petition being refused; the first ground might, for instance if another body has found the complaint entirely well-founded but the petitioner wishes to hear the same conclusion from the National Ombudsman;

- whether the petitioner is the person in relation to whom the action in question took place (section 9:23d). If not, the consent of that person is usually sought before proceeding;
- whether an objection can be lodged against the action in question or whether an objection is pending (section 9:23e);
- whether an objection or application for judicial review could in the past have been lodged against the action in question but the petitioner has failed to seek such a remedy (section 9:23f). In general, investigations are not pursued in such cases in order to prevent the statutory time limits being eroded;
- whether the complaint has first been communicated to the appropriate administrative authority or public servant (as laid down in section 9:20, subsection 1, and section 9:23h)
- whether the complaint is being investigated or has been dealt with by an independent complaints body pursuant to a statutory complaints provision (section 9:23m);
- a one-year deadline (section 9:24). In practice, this is applied fairly strictly;
- whether recourse has also been had to a parliamentary committee empowered to deal with petitions, and whether the petition has

been dealt with there (section 12 of the National Ombudsman Act). Working agreements have been made with the two Petitions Committees in order to prevent duplication of proceedings. The choice in this respect lies with the petitioner.

A proportion of petitions are rejected as inadmissible on one or other of these grounds. The main reasons for rejection are that the complaint:

- has not first been submitted to the appropriate administrative authority or public servant;
- concerns actions which took place more than a year before the complaint was submitted;
- is manifestly unfounded.

In such cases, the petitioner is of course notified of the rejection and if possible advised what further action to take.

Two approaches to investigation

Once the National Ombudsman has decided that a petition is eligible for investigation, he may adopt one of two approaches. The first is the intervention method. The second is to investigate the actions of the relevant administrative authority and its staff. As a rule this leads to a report, as referred to in section 36, subsection 1 of the General Administrative Law Act, containing a decision by the National

Ombudsman on whether the investigated action was ‘proper’ in terms of section 9:27, subsection 1 of the Act. This is the procedure prescribed in the General Administrative Law Act. It is fairly time-consuming, because both sides have to be given a fair hearing, including the chance to comment on each other’s evidence, and because those concerned have to be notified of the Ombudsman’s findings, as required by section 9:35 of the Act, and given the opportunity to comment on them prior to publication of the final report.

Intervention method

The intervention method is the approach used by the National Ombudsman in the majority of cases. It is appropriate where cases present no complex legal issues and it should clearly be possible to resolve the problem quickly (for example, where the complainant has been kept waiting for some time for a response from the relevant authority). The intervention method is also used in cases where it is important to the complainant that the National Ombudsman should act quickly (for example, in a situation where the complainant is being pursued by a debt collector on behalf of the authority and faces major financial problems as a result). In such circumstances, the National Ombudsman will inform the relevant administrative authority about the complaint, and ask whether there is any prospect of a solution. In practice, this often produces a swift response from the authorities, either clarifying the matter or promising action.

The complainant has then usually achieved his/her goal and has no interest in the continuation of the investigation (see General Administrative Law Act, section 9:23c and l). Nor, in general, will the issue of a report in such a case serve any other useful purpose. After a successful intervention, therefore, the National Ombudsman will simply discontinue the investigation and send all parties written notification that he has decided to do so (as required by section 9:25 of the Act). However, if the National Ombudsman later decides that there is reason to start an actual investigation, he can resort to the full procedure leading to a report at any time. This is indeed done from time to time.

Method leading to a report

• *Investigation procedure*

In cases where the National Ombudsman chooses not to use the intervention method, the investigation usually begins with the preparation of a summary of the complaint as described in the petition. The petitioner is notified that, in response to his petition, it has been decided to institute an investigation. He then has an opportunity to comment on the summary. The administrative authority is sent the summary of the complaint, the petition itself, and sometimes a list of specific questions. It is generally allowed four weeks to respond. Where possible, copies of these documents are also sent directly both to the department concerned and to the

official about whose conduct the complaint has been made, if his identity is known. In principle, the responses and/or the information obtained during the investigation are made known to the petitioner, who may comment on them. Where appropriate, his response is in turn put to the administrative authority.

This ensures that both sides of the argument are heard in full, a basic prerequisite for any proper process of investigation (section 9:30 of the General Administrative Law Act). The National Ombudsman plays an active part in the investigation, initiating action, asking questions, and deciding when in his view those involved have had adequate opportunities to comment on each other's evidence. He then draws up an account of his findings. In some cases, it may not be possible to establish the facts beyond doubt, because there are contradictions between the parties' statements and no grounds on which to establish which version of events is the more accurate. In such a case, the Ombudsman will issue a report but refrains from passing judgement on the propriety of the action in question.

• *Powers of investigation*

The National Ombudsman possesses a number of far-reaching statutory powers of investigation (sections 9:31 to 9:34 of the General Administrative Law Act and sections 13 and 15 of the National Ombudsman Act). These include the power to conduct on-site investigations, and the power to summon the administrative

authority, the petitioner, witnesses and experts. Summonses can, if necessary, be enforced by the police – a power which has so far never had to be used. Witnesses may be heard under oath, though this rarely happens. The administrative authority is under an obligation to supply information requested and to allow the National Ombudsman access to all places where it carries out its duties. Staff from the National Ombudsman Office sometimes visit administrative bodies to gather evidence 'on site'. The duty to supply information extends to papers and information classified as confidential, as in the case of the intelligence and security services, and some judicial and fiscal data. The National Ombudsman himself is bound by a statutory duty of confidentiality (section 2:5 of the General Administrative Law Act). Information is provided in many cases in writing or, in simple cases, often by telephone. This is supplemented where necessary by information given directly in the presence of an investigator, and the official concerned may be questioned. Very occasionally, a formal hearing may be held.

• *Account of findings*

The investigation of the facts concludes with the preparation of a written account of the Ombudsman's findings (section 9:35 of the General Administrative Law Act). This is sent to the petitioner, the administrative authority and (where appropriate) the official whose action is under investigation. They have two weeks to respond and

their comments occasionally lead to some last-minute changes. This procedure ensures that the facts in relation to the action under investigation are established as firmly as possible. This is important because any subsequent dispute about the facts of the case may undermine the authority of the eventual decision on it.

Investigation sometimes reveals that the administrative authority has in the meantime responded to notification of the complaint by taking steps to satisfy the petitioner. This may cause the petitioner subsequently to withdraw his complaint. The National Ombudsman then decides in each individual case whether to discontinue the investigation without issuing a report (the most frequent outcome of such cases) or to go on to publish his findings, together with a formal decision.

The report

Section 9:36, subsection 1 of the General Administrative Law Act states: "Once an investigation has been closed, the Ombudsman shall draw up a report containing his findings and his decision." This decision must be based on his findings: "The Ombudsman shall determine whether or not the administrative authority acted properly in the matter under investigation" (section 9:27, subsection 1). It may be accompanied by recommendations (section 9:27, subsection 3).

5. Decision

The investigation ends with the publication of the anonymised report and its dispatch to the petitioner, the relevant administrative authority and (where appropriate) the official concerned.

The National Ombudsman's reports are in the public domain. They are actively publicised and access to them is provided e.g. via the Internet.



Formulation of the decision

The National Ombudsman formulates his decision on the basis of the account of his findings. He has two options in this regard: either the action under investigation was proper or it was not (section 9:27, subsection 1 of the General Administrative Law Act). In giving his decision, the National Ombudsman states the facts on which it is based and the specific standards relevant to it. The combination of standards and facts leads to a reasoned decision on the propriety of the action concerned. The report then concludes with the translation of the decision into an opinion as to whether the complaint was well-founded or not.

The formulation of the decision and conclusion give prominence to the action under investigation. Where applicable, the report identifies the department of the administrative authority or the official actually responsible for the action. In the conclusion, the Ombudsman always names the administrative authority bearing formal responsibility for the conduct in question. Where the relevant action consists of a number of different elements, this is reflected in the decision, where each element is the object of a separate assessment. In many such cases, the final picture will not be a straightforwardly black-and-white affair.

Frequently, the administrative authority will have taken steps in the course of the National Ombudsman's investigation which go at least

some way towards satisfying the complainant. In these cases, the National Ombudsman always mentions in the report that he approves of the steps taken. If none have been taken and the National Ombudsman feels it desirable that the authority should consider taking steps, he makes a recommendation to that effect at the end of the report.

Status of the decision

The National Ombudsman's decision is not legally enforceable: it is up to the administrative authority to decide what action, if any, should be taken in the light of it and of the report generally. That is the difference between a decision of the National Ombudsman and a judgment given by a court. The fact that the National Ombudsman's decision is not legally enforceable means that the quality of his work is all the more important, since it forms the essential basis for his authority and hence for the effectiveness of his work. It is vital, therefore, not only that the investigation of the facts should be carried out conscientiously, but also that it should produce conclusions that are beyond dispute, and that the decision and any recommendation are persuasive. The persuasiveness of the decision and any recommendation will depend in particular on the quality of the reasons given for the decision. This aspect is of particular importance because there is no right of appeal against a decision given by the National Ombudsman. Experience shows, however, that the National Ombudsman's decisions tend to carry great authority.

Decision criteria and their use

When is an action under investigation proper or not-proper? To answer this question, the National Ombudsman refers to a list of standards of proper conduct. This list translates the general criteria of proper conduct laid down in section 9:27, subsection 1 of the General Administrative Law Act into a set of specific standards for the actions of government. If the conduct of the administrative authority concerned satisfies the standards relevant to it in the particular context of the case, the action will be found to have been proper. The translation of the proper conduct criterion into a number of specific standards is helpful in a number of ways: the standards form the basis for the reasons given for decisions on actions under investigation and they encourage uniformity in the way the National Ombudsman arrives at such decisions and formulates them. Their existence offers the same benefits in relation to the decisions of local ombudsmen if they adopt the same list as the basis for their decisions.

The National Ombudsman invariably states in his reports which of the standards of proper conduct have been used to assess the action under investigation. By doing so, he fulfils the statutory requirement laid down in section 9:36, subsection 2 of the General Administrative Law Act that, if the ombudsman decides that an action has not been proper, he should specify the standard of proper conduct that has

been breached. Wherever possible, he also uses the selected standards of proper conduct to produce guidance on the way the administrative authority ought to act in the type of circumstances in which the action under investigation took place. In addition, he draws attention to any statutory provisions that apply to the action under investigation.

If the investigation has shown that the alleged action actually occurred, the National Ombudsman uses the most appropriate proper conduct standard, and if possible translates it into guidelines tailored to the specific context. His decision is formulated in accordance with the standard and states whether the action was proper or not.

Many of the standards of proper conduct reflect legal norms, as laid down in conventions and statutes. Some standards of proper conduct relate to respect for fundamental and human rights, such as freedom from discrimination, privacy of the home, respect for personal privacy, and protection against unlawful deprivation of liberty. Others relate to principles that play an important role in administrative law, such as the prohibition on the misuse of power and the principles of reasonableness, proportionality, equal treatment, fair play, and that government action should be supported by reasons. A third category relates to the authorities' broad duty of care in their dealings with individual citizens. These criteria include promptness, administrative

accuracy, active and adequate information provision and correct treatment in terms of common courtesy and helpfulness.

The fact that many of the standards of proper conduct correspond to legal norms does not mean that the National Ombudsman reviews the action under investigation only in the light of the provisions of written law, or that legal rules as such form part of the system of standards of proper conduct. It is much more a case of a system of legal standards and a set of standards of proper conduct existing side by side, each with its own area of application. In view of the fact that written law underlies and regulates many forms of government action, the substance of relevant legal rules will in many cases provide strong guidance for the standard of proper conduct that the National Ombudsman will use to assess actions under investigation. However, the standards of proper conduct will remain the basic touchstone. This can mean that an action which does not contravene any legal rule is nevertheless found to be not-proper either because it breaches one of the standards of proper conduct or for some other reason. For example, the promptness standard can mean that an authority should reach a decision in a particular case well inside the relevant statutory time limit for it. If the individual concerned complains in such a case that a decision was taken only at the very end of the statutory period, the authority's conduct will be found to be not-proper due to a breach

of the promptness standard, even if it was not in contravention of the relevant statutory provisions. The opposite may also be the case: action in contravention of the law may occasionally be found to have been perfectly proper.

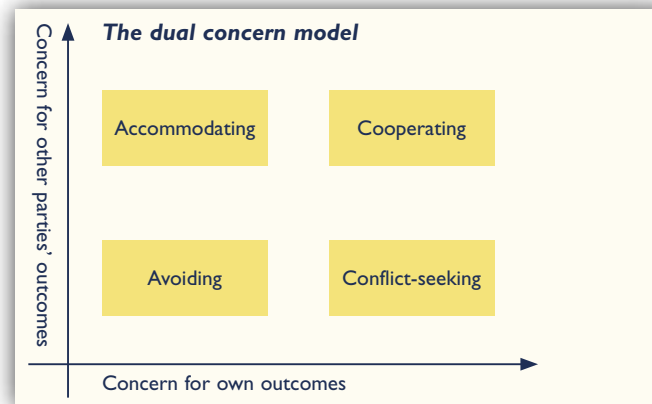
Both in cases that end in a report and in cases dealt with via the intervention method, a record is kept of the standards applied and (where relevant) of the decision on the propriety of the action under investigation. These records are an important aid to the annual analysis of the cases encountered by the National Ombudsman. They provide an insight into the nature of the complaints that have prompted investigations. The breakdown of the decisions (proper/not-proper) for each standard reveals problem areas in the activities of government and provides a basis for comparisons between the way different administrative authorities are performing in relation to individual standards, or the way individual authorities have performed over time.

The ombudsquadrant

Linking lawfulness and proper conduct

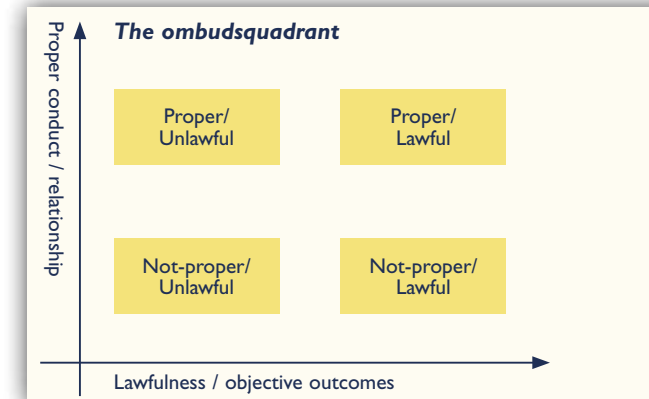
Used alongside the standards of proper conduct, the ‘ombuds-quadrant’ is an important tool for assessing the actions of an authority that is the subject of a complaint from a member of the public.

The ombudsquadrant shows proper conduct and lawfulness in relationship to each other. The diagram derives from what is known as the ‘dual concern model’, itself based on research by sociologists. This model relates to interpersonal communication (for example, between an official and an individual citizen) and reveals how concern about a participant’s own outcomes relates to concern about those of the other party. It is used as a basis for the analysis of styles of negotiation and conflict. The horizontal axis shows concern for own outcomes, as opposed to concern for those of other parties, shown on the vertical axis.



The dual concern model recognises four basic positions. A party that attaches little value to achieving either its own outcomes or those of the other side will tend to avoid conflict. One that attaches a lot of value to achieving its own outcomes and little to achieving those of the other side will adopt an aggressive, competitive attitude. This is conflict-seeking behaviour. One that attaches a lot of value to achieving the outcomes of the other party but little to its own will tend to be accommodating. And one that attaches equal value to achieving both sets of outcomes makes it possible to achieve cooperation on integrating the two. If each side gives some ground, a compromise can be found somewhere in the middle.

Translated to the work of the National Ombudsman, the message of this dual concern model can be expressed in the form of the ombudsquadrant. This is a diagram showing the concepts of ‘proper conduct’ and ‘lawfulness’ in relation to each other. The first party’s outcomes stand for the desired outcomes of a government institution, while the outcomes of the other side are those of the individual citizen with whom that institution is involved in a transaction. At this institutional level, lawfulness (the desired outcome of the institution) is opposed to proper conduct (primarily the concern of the citizen). This can also be viewed as the interaction between a concern for objective outcomes on the one hand and for the relationship on the other.



The horizontal axis represents lawfulness or concern for objective outcomes, while the vertical axis represents proper conduct, in which the relationship with the other party is a vital factor. An authority which attaches little importance either to lawfulness or to proper conduct will fail to take decisions and simply turn a blind eye to unsatisfactory situations. An authority which strives to achieve lawfulness but disregards proper conduct (the bottom right-hand position) may, for example, deliver a decision that is lawful in itself, but is not accompanied by reasons and is therefore liable to be perceived by the citizen as not proper. Such a decision is likely to be seen as high-handed and may well give rise to conflict (and complaints). Situations can also occur in which authorities act in a more than usually proper manner, which is nevertheless not lawful.

6. Effectiveness

From the point of view of good governance, the ideal situation is one in which the authority acts both properly and lawfully, for example by producing a decision that is not only lawful, but is also delivered on time, with reasons and in accordance with standards of proper conduct. Such a decision is likely to be perceived by the recipient as both just and fair.

Problems most frequently encountered in the actions of government

Based on statistics derived from the application of the standards of proper conduct, the National Ombudsman reports annually on the problems he has most frequently encountered in his investigations of the actions of government over the previous year. Six such problems have stood out in recent years:

- Lack of promptness: delays in dealing with individual cases.
- Lack of information provision: a sometimes protracted official silence on the rights and obligations of individuals and the progress of their cases.
- Non-compliance with generally binding regulations (e.g. statutory regulations giving the police the authority to use coercive measures).
- Disregard of principles of reasonableness and proportionality (e.g. when an official has a choice of ways of dealing with a case).

- Lack of administrative accuracy, for instance careless management and updating of files.
- Discourteous and unhelpful treatment of individuals (betraying a lack of professionalism on the part of officials).

The first two problems, relating to the standards of promptness and active provision of information, are the most common and are to some degree interrelated. Both these criteria, as well as that of administrative accuracy, relate directly to the management of the large-scale information flows that are frequently a feature of the work of large bureaucratic organisations. The remaining problems, by contrast, relate much more to the actions of government towards individual members of the public in specific cases.



The National Ombudsman's work can prove effective in a number of ways. The quickest way of achieving a result is the intervention method, which is usually sufficient to resolve the problem that gave rise to the complaint.

The announcement and institution of an investigation can also be effective in itself. The mere fact that the National Ombudsman has decided to investigate a case brings the matter to the attention of senior officials and/or politicians. This regularly results in steps being taken even before the National Ombudsman has published his report. From the point of view of speed and what the organisation learns from the incident, this is an extremely important and valuable effect.

In addition, there are cases where no steps have been taken by the authority concerned even at the point when the Ombudsman reaches his decision that the action under investigation was not proper. In such cases, the Ombudsman may exercise his power to issue recommendations. These may be aimed either at achieving a resolution of the specific case or at a more generic beneficial effect on the authority's operations. Experience shows not only that authorities respond to recommendations reasonably promptly, but also that they almost always implement them.

The effectiveness of the National Ombudsman’s work can take a variety of forms. Where the National Ombudsman finds that a complaint is well-founded, the administrative authority may take measures benefiting the individual complainant. But apart from this sort of impact in individual cases, there are also more structural effects: in order to avert complaints in the future, authorities may modify their administrative procedures or existing rules in response to a problem or pattern of problems signalled by the National Ombudsman in individual cases or in the annual report. A good example is the introduction of the practice of sending a notice ad interim if it is likely to take some time to deal with a letter from a member of the public. In this way, the work of the National Ombudsman can have a preventive effect.

In a wider sense, moreover, the very existence of the National Ombudsman can be said to have had an impact in any case where an administrative authority decides on its own initiative to improve its administrative practices in order to avoid complaints to the National Ombudsman, or to establish its own internal complaints procedures. Moreover, members of the public often find it effective merely to indicate that they are considering complaining to the National Ombudsman.

Appendix 1

Constitution; National Ombudsman Act; General Administrative Law Act

CONSTITUTION (GRONDWET)

Chapter 4: Council of State, Netherlands Court of Audit, National Ombudsman and permanent advisory bodies
(...)

Article 78a

1. The National Ombudsman shall investigate, on request or of his own accord, actions taken by central government administrative authorities and other administrative authorities designated by or pursuant to Act of Parliament.
2. The National Ombudsman and a Deputy Ombudsman shall be appointed by the Lower House of the States General for a period to be determined by Act of Parliament. They may resign or retire on reaching an age to be determined by Act of Parliament. They may be suspended or dismissed by the Lower House of the States General in circumstances prescribed by Act of Parliament. Other aspects of their legal status shall be regulated by Act of Parliament.
3. The powers and methods of the National Ombudsman shall be regulated by Act of Parliament.
4. The National Ombudsman may be charged with other tasks by or pursuant to Act of Parliament.

(...)
(The heading of Chapter 4 was altered, and article 78a added, by Act of 25 February 1999 (Bulletin of Acts and Decrees 133) which entered into force on 25 March 1999).

NATIONAL OMBUDSMAN ACT (WET NATIONALE OMBUDSMAN)

Act of 4 February 1981 (Bulletin of Acts and Decrees 1981, 35), most recently amended by Act of Parliament of 3 February 2005, (Bulletin of Acts and Decrees 71).

We Beatrix, by the grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc. ...

Greetings to all who shall see or hear these presents! Be it known:

Whereas We have considered that the need exists for special provision for investigating the way in which government has acted in a particular matter towards the individual citizen and that it is desirable in this connection to proceed to the establishment of the office of National Ombudsman and to the amendment of certain Acts;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

Section I. National Ombudsman Act

Chapter 1 Definitions and scope

Section 1

- In this Act:
- a. Ombudsman means: the National Ombudsman referred to in section 2;
 - b. public servant means: a public servant, a former public servant, a person employed by an administrative authority under a contract of employment governed by civil law, a person formerly so employed, or a conscript either before or after termination of the period of compulsory military service, and other persons working or having formerly worked under the responsibility of an administrative authority.

Section 1a

1. This Act shall apply to the actions of the following administrative authorities:
 - a. Our Ministers;
 - b. the administrative authorities of the provinces, municipalities, water boards and bodies set up under the Joint Arrangements Act, unless separate systems for dealing with petitions have been instituted for such administrative authorities by virtue of section 79q of the Provinces Act, section 81p of the Municipalities Act, section 51b of the

Water Boards Act or section 10, subsection 4 of the Joint Arrangements Act, as the case may be;

c. administrative authorities charged by or pursuant to a statutory provision with duties relating to the police, in relation to the performance of those duties;

d. the administrative authorities of the provinces, municipalities, water boards and bodies set up under the Joint Arrangements Act in relation to the actions of special investigating officers working for them;

e. other administrative authorities, unless they have been excluded by order in council.

2. *[Lapsed on 30 June 2003]*

3. Subsection 1 notwithstanding, this Act shall not apply to the actions of the Equal Treatment Commission, as referred to in the Equal Treatment Act.

4. An action performed by a public servant during the exercise of his duties shall be deemed to be an action of the administrative authority under whose responsibility he is working.

Section 1b

1. If the Ombudsman receives an order as referred to in section 79q, subsection 2 or 3 of the Provinces Act, section 81p, subsection 2 or 3 of the Municipalities Act, section 51b, subsection 2 or 3 of the Water Boards Act or section

10, subsection 4 of the Joint Arrangements Act, he shall confirm receipt of it forthwith.

2. The Ombudsman shall keep a register of the provinces, municipalities, water boards and bodies set up under the Joint Arrangements Act which have a separate system as referred to in section 1a, subsection 1 (b). He shall publish this register.

Section 1c

1. Provinces, municipalities, water boards and bodies set up under the Joint Arrangements Act as referred to in section 1a, subsection 1(b), shall make a payment to cover the costs involved in handling of petitions relating to their administrative authorities. The amount of the payment shall be established by Our Minister of the Interior and Kingdom Relations.

2. Further rules shall be established by or pursuant to an order in council concerning:

a. the calculation of the payment to be made;

b. the way in which payment is to be made;

c. the date on which payment is to be made.

Chapter II. The National Ombudsman

Section 2

1. There shall be a National Ombudsman.

2. The Ombudsman shall be appointed by the House of Representatives of the States General. In making an appointment, the House shall take account, as it sees fit, of a recommendation made, after joint consultations, by the vice-president of the Council of State, the president of the Supreme Court and the president of the Netherlands Court of Audit containing the names of at least three persons.

3. The appointment shall be for a term of six years.

4. If the House of Representatives wishes to re-appoint the current Ombudsman, it may set aside the second sentence of subsection 2.

5. If it proves to be impossible for the House of Representatives to appoint a new Ombudsman in time, the House shall provide for the temporary occupation of the office of Ombudsman. Section 10, subsections 5 to 7 shall apply mutatis mutandis.

Section 3

1. The House of Representatives shall terminate the employment of the Ombudsman at the commencement of the first month following that in which he reaches the age of sixty-five.

2. The House of Representatives shall also terminate the employment of the Ombudsman:

a. at his request;

b. if he is permanently unable to carry out his duties because of illness or disability;

c. if he accepts an office or post declared by this Act to be incompatible with the office of Ombudsman;

d. if he loses his Dutch nationality;

e. if he is convicted of a serious offence, or deprived of his liberty by a final and conclusive court judgment;

f. if he has been made the subject of a guardianship order, has been declared bankrupt, has agreed to a debt rescheduling arrangement, has been granted a moratorium on the payment of his debts or has been imprisoned for non-payment of debt by a final and conclusive court judgment;

g. if, in the opinion of the House of Representatives, he has as a result of his acts or omissions seriously undermined the confidence placed in him.

Section 4

1. The House of Representatives shall suspend the Ombudsman if:

a. he is being held in pre-trial detention;

b. he is convicted a serious offence or deprived of his liberty by a court judgment which has not yet become final and conclusive;

c. he has been made the subject of a guardianship order, has been declared bankrupt, has agreed to a debt rescheduling arrangement, has been granted a moratorium on the payment of his debts or has been imprisoned for non-payment of debt by a court judgment which has not yet become final and conclusive.

2. The House of Representatives may suspend the Ombudsman if he is the subject of a preliminary judicial investigation instituted in respect of a serious offence, or if there is a strong suspicion that facts or circumstances exist which could lead to dismissal, other than those referred to under section 3, subsection 2 (b).

3. In the case referred to in subsection 2 of this section the suspension shall end after three months. The House of Representatives may however extend the suspension for periods of up to three months at a time.

4. The House of Representatives shall lift the suspension as soon as the reasons for suspension cease to exist.

5. The House of Representatives may order, when suspending the Ombudsman, that he is to receive no salary, or only a specified part of his salary, during his suspension.

6. If the suspension ends otherwise than by dismissal, the House of Representatives may decree that all or a specified part of the salary the Ombudsman has not received shall be paid to him.

Section 5

1. The Ombudsman may not:

a. be a member of a public body to which elections take place in a manner prescribed by law;

b. hold public office for which he receives a fixed salary or remuneration;

c. be a member of a permanent government advisory body;

d. act as an advocate, procurator litis, or notary.

2. The Ombudsman shall not hold any position which is incompatible with the proper performance of his official duties or with his impartiality and independence or with public confidence therein.

3. The Ombudsman shall publish a list of any offices he holds other than the office of National Ombudsman.

Section 6

The provisions of the General Pensions (Holders of Political Office) Act shall apply to the Ombudsman, on the understanding that he is treated as a member of the House of Representatives of the States General.

Section 7

We shall lay down by order in council rules governing entitlements in the event of illness,

and the other rights and duties of the Ombudsman which pertain to his legal status, insofar as these are not prescribed by statute law.

Section 8

Before accepting office the Ombudsman shall swear on oath or solemnly affirm in the presence of the President of the House of Representatives:

- a. that he has not given or promised anything on any pretext whatsoever to any person, either directly or indirectly and either in his own name or that of any other person, to obtain his appointment, and that he has not accepted and will not accept any present or any promise from any person, either directly or indirectly, to do or to refrain from doing anything in the exercise of his office;
- b. to observe faithfully the Constitution.

Section 9

- 1. At the request of the Ombudsman the House of Representatives shall if necessary appoint one or more persons as Deputy Ombudsman. For this purpose, the Ombudsman shall draw up a recommendation containing the names of at least three persons.
- 2. Any Deputy Ombudsman shall be appointed for the term of office of the Ombudsman requesting his appointment, plus one year.
- 3. If the House of Representatives wishes to

re-appoint a Deputy Ombudsman, it may stipulate that the second sentence of subsection 1 shall not apply.

- 4. Sections 3 to 8 and 15 of this Act and sections 9:21 and 9:30 to 9:34 of the General Administrative Law Act shall apply mutatis mutandis to a Deputy Ombudsman.
- 5. The Ombudsman shall determine the activities of the Deputy Ombudsman.
- 6. The Ombudsman may stipulate that the powers referred to in section 16, subsection 3, of this Act and sections 9:27, 9:35 and 9:36 of the General Administrative Law Act, may also be exercised by a Deputy Ombudsman. The Ombudsman may draw up guidelines for the exercise of those powers.

Section 10

- 1. The Ombudsman shall make arrangements for his replacement by a Deputy Ombudsman, in case he is temporarily unable to perform his duties.
- 2. If no Deputy Ombudsman is present or available, the House of Representatives shall provide for a substitute as soon as possible. In such cases, substitution will end as soon as the Ombudsman is able to resume his duties, or, if the Ombudsman has been suspended, when the suspension is lifted.
- 3. If the Ombudsman dies or is removed from office under section 3, the House of

Representatives shall provide, as soon as possible, for the office of Ombudsman to be occupied temporarily by a Deputy Ombudsman.

- 4. If no Deputy Ombudsman is present or available, the House of Representatives shall provide for the office of Ombudsman to be occupied temporarily by a substitute as soon as possible.
- 5. Substitution shall end automatically when a new Ombudsman takes up his duties.
- 6. Section 2, subsection 2, second sentence and subsections 3 and 4, section 3, subsection 1, and sections 6 and 9 of this Act shall not apply to the person deputising or substituting for the Ombudsman pursuant to subsections 2 or 4.
- 7. If the person deputising or substituting for the Ombudsman as referred to in subsection 6 holds or is about to hold an office or membership as referred to in section 5, subsection 1, (b) and (c), the office or membership shall automatically be suspended for the period in which he is deputising or substituting.

Section 11

- 1. The Ombudsman shall be provided with an office.
- 2. The personnel of the office shall be appointed, promoted, suspended or dismissed by Us on the recommendation of the Ombudsman.
- 3. We shall decide in which cases members of the office personnel may be appointed, promoted, suspended or dismissed by the Ombudsman.

Chapter III. Supplementary provisions concerning the investigation

Section 12

The Ombudsman shall not be obliged to institute or to continue an investigation as referred to in section 9:18, subsection 1, of the General Administrative Law Act if a petition concerning the same action is being considered by a parliamentary committee empowered to deal with petitions, drawn from the Senate or House of Representatives or from the States General in joint session, or – unless a new fact or a new circumstance has come to light which might justify a different evaluation of the said action – if the parliamentary committee concerned has presented its conclusions on the petition to the Senate or House of Representatives of the States General or to the States General in joint session.

Section 13

Section 9:31, subsection 1, third sentence, of the General Administrative Law Act shall not apply to Our Ministers.

Section 14

Our Ministers may deny the Ombudsman entry to certain places if in their opinion entry would be detrimental to the security of the state.

Section 15

The Ombudsman may order that persons who fail to appear despite an official summons to attend shall be brought before him by the police to discharge their obligations.

Section 16

- 1. The Ombudsman shall submit an annual report of his activities to both Houses of Parliament and to Our Ministers, and also to the representative bodies of provinces, municipalities and water boards and the boards of bodies set up under the Joint Arrangements Act as referred to in section 1a, subsection 1 (b), insofar as the Ombudsman has dealt with petitions relating to their administrative authorities. Section 10 of the Government Information (Public Access) Act shall apply mutatis mutandis, on the understanding that the Ombudsman may add items to be communicated confidentially to members of Parliament and Our Ministers.
- 2. The Ombudsman shall publish the report and make it generally available.
- 3. The Ombudsman may also, immediately after closing an investigation, communicate his findings and decision to both Houses of Parliament and to the representative bodies of provinces, municipalities and water boards and the boards of bodies set up under the Joint Arrangements Act, whenever he deems

earlier communication necessary for the bodies concerned or whenever any of the bodies referred to in this subsection request such information.

Chapter IV Transitional and final provisions

Section 17

Proposals for decrees implementing this Act shall be submitted to Us by Our Minister for the Interior and Kingdom Relations.

Section 18

If a province, municipality, water board or body set up under the Joint Arrangements Act has instituted a separate system for dealing with petitions as referred to in section 1a, subsection 1 (b), the Ombudsman shall retain his competence to deal with petitions relating to its administrative authority which were received by him before the date on which its own system was instituted.

Section 19

Up to one year following the entry into force of an order in council as referred to in section 1a, subsection 1 (e), a petition may be submitted to the National Ombudsman relating to an action of the administrative authority concerned which took place before the administrative authority

concerned was granted exceptional status by that order in council.

Section 20

This Act may be cited as the National Ombudsman Act.

(Sections II – XV of the Act establishing the National Ombudsman Act contain amendments to various Acts and a provision concerning the entry into force of the Act and are not included.)

GENERAL ADMINISTRATIVE LAW ACT (ALGEMENE WET BESTUURSRECHT)

Chapter 9, title 9.2

Title 9.2 Handling of complaints by an Ombudsman

Part 9.2.1 General provisions

Section 9:17

In this Act Ombudsman means:
a. the National Ombudsman, or
b. an ombudsman or ombudscommittee appointed in accordance with the Municipalities Act, the Provinces Act, the Water Boards Act or the Joint Arrangements Act.

Section 9:18

- 1. Any person has the right to petition the Ombudsman in writing to investigate the way in which an administrative authority has acted towards him or another person in a particular matter.
- 2. If the petition is submitted to an ombudsman who is not competent to deal with it, the date of receipt shall be recorded and the petition shall be sent as soon as possible to the ombudsman within whose competence it lies; at the same time, the petitioner shall be notified that this has been done.

- 3. Unless section 9:22, 9:23 or 9:24 applies, the Ombudsman shall be obliged to institute a petition as referred to in subsection 1.

Section 9:19

- 1. If the Ombudsman believes that recourse may be had to an objection, judicial review or complaints procedure, he shall inform the petitioner of this possibility as soon as possible and he shall submit the petition to the competent body, once the date of receipt has been noted on it, unless the petitioner has let it be known that the petition is to be returned to him.
- 2. Section 6:15, subsection 3 shall apply mutatis mutandis.

Section 9:20

- 1. Before submitting the petition to an ombudsman, the petitioner shall submit a complaint about the action to the appropriate administrative authority, unless this cannot reasonably be expected of him.
- 2. Subsection 1 shall not apply if the petition relates to the way in which the appropriate administrative authority has dealt with a complaint.

Section 9:21

Chapter 2, with the exception of section 2:3, subsection 1, shall apply mutatis mutandis to dealings with the Ombudsman.

Part 9.2.2 Competence

Section 9:22

The Ombudsman shall not be entitled to institute or continue an investigation if the petition relates to:
a. matters of general government policy, including general policy on law enforcement or the general policy of the administrative authority in question;
b. generally binding regulations;
c. an action in respect of which a complaint or an application for judicial review may be lodged, unless the action consists of the failure to give a decision in good time, or if a complaint or review is pending in respect of the said action;
d. an action in respect of which judgment has been given by an administrative court;
e. an action in respect of which proceedings have been instituted before a judicial body other than an administrative court, or if appeal lies from a judgment given in such proceedings;
f. an action which is subject to the jurisdiction of the courts.

Section 9:23

The Ombudsman shall not be obliged to institute or to continue an investigation if:
a. the petition does not meet the requirements listed in section 9:28, subsections 1 and 2;
b. the petition is manifestly unfounded;
c. the interest of the petitioner or the seriousness of the action is manifestly insufficient;
d. the petitioner is not the person in relation to whom the action in question took place;
e. the petition relates to an action in respect of which an objection may be lodged, unless the action consists of the failure to give a decision in good time, or if an objection is pending;
f. the petition relates to an action in respect of which the petitioner could have lodged an objection, an application for judicial review or a complaint in the past;
g. the petition relates to an action concerning which judgment has been given by a judicial body other than an administrative court;
h. the requirements of section 9:20, subsection 1 have not been met;
i. a petition concerning the same action is being considered by him, or – unless a new fact or a new circumstance has come to light which might justify a different evaluation of the said action – has been dealt with by him;
j. proceedings are pending before a judicial body concerning an action of the administrative authority which is closely related to the

substance of the petition, or if such proceedings are pending before any other body pursuant to an objection, an application for administrative review or a complaint;
k. the petition relates to an action which is closely related to an issue concerning which proceedings are pending before a judicial body other than an administrative court;
l. the intervention of the Ombudsman has, in his opinion, led to proper steps being taken to satisfy the grievances of the petitioner;
m. a petition relating to the same action is being dealt with or has been dealt with by an independent complaints body pursuant to a statutory complaints procedure.

Section 9:24

- 1. The Ombudsman shall likewise not be obliged to institute or to continue an investigation if the petition is submitted after more than a year has elapsed:
a. since the administrative authority gave notification of the findings of the investigation, or
b. since the handling of the complaint by the administrative authority ended in some other way, or should have ended pursuant to section 9:11.
- 2. Notwithstanding the provisions of subsection 1, the time limit shall be one year after the action took place, if the petitioner cannot

reasonably be expected first to submit a complaint to the administrative authority. If the action in question has been submitted to a judicial body other than an administrative court within one year of the date on which it took place, or if an objection, an application for administrative review or a complaint has been lodged, the term of one year shall end one year after the date on which:

- a. the court gave a judgment from which no appeal lies, or
- b. the proceedings ended in some other way.

Section 9:25

1. If the Ombudsman decides not to institute an investigation or not to continue an investigation on the grounds referred to in sections 9:22, 9:23 or 9:24 he shall give the petitioner written notification of this as soon as possible, stating his reasons.
2. In the event that he does not continue an investigation, he shall also send the notification referred to in subsection 1 to the administrative authority and, where appropriate, the person to whose action the investigation relates.

Section 9:26

Unless section 9:22 applies, the Ombudsman shall be entitled to institute an investigation on his own initiative into the way in which an

administrative authority has acted in a particular matter.

Section 9:27

1. The Ombudsman shall determine whether or not the administrative authority acted properly in the matter under investigation.
2. If a judicial body has given judgment in respect of the action to which the Ombudsman's investigation relates, the Ombudsman shall take into account the legal grounds on which the judgment was partly or wholly based.
3. The Ombudsman may, in the light of his investigation, make recommendations to the administrative authority.

Part 9.2.3 Procedure

Section 9:28

1. The petition should be signed and contain at the minimum:
 - a. the name and address of the petitioner;
 - b. the date;
 - c. a description of the action concerned, details of the person to whose action the petition relates and details of the person in relation to whom the action took place, if this is not the petitioner;
 - d. the grounds of the petition;

- e. details of how a complaint has been submitted to the administrative authority, and if possible the findings of the investigation of the complaint by that authority, its views on the complaint, and any conclusions that it may have reached.
- 2. If the petition is couched in a foreign language and the proper processing of the complaint makes a translation necessary, the petitioner shall provide a translation.
- 3. If the requirements of this section are not met or if the petition is wholly or partly amended by virtue of section 2:15, the Ombudsman shall give the petitioner an opportunity to remedy the omission within a period to be specified by him.

Section 9:29

No person who was involved in the action to which the petition relates may assist in processing that petition.

Section 9:30

1. The Ombudsman shall give the administrative authority, the person responsible for the action in question, and the petitioner the opportunity to explain their points of view.
2. It shall be at the discretion of the Ombudsman whether they explain their points of view in writing or verbally, and in each other's presence or otherwise.

Section 9:31

1. The administrative authority, persons employed under its responsibility, persons formerly so employed, witnesses and the petitioner shall provide the Ombudsman with the information necessary for his investigation, and must appear in person before him if so requested. The same obligations rest on any official body, on the understanding that the body itself shall decide which of its members is to discharge its obligations, unless the Ombudsman designates one or more members. The Ombudsman may order persons whose attendance is required to appear in person.
2. The Ombudsman may obtain information concerning the policy conducted under the responsibility of a Minister or an administrative authority from the persons and bodies concerned only through the Minister or the administrative authority in question. The body through which information is sought may be represented when public servants are interviewed.
3. Within a period to be specified by the Ombudsman, the administrative authority, the person to whose action the petition relates, and other parties shall supply any documents in their possession which the Ombudsman has requested in writing.
4. The persons whose attendance is required pursuant to subsection 1 or those who are obliged to supply documents pursuant to

subsection 3 may, if there are weighty reasons for doing so, refuse to give information or supply documents or may notify the Ombudsman that the information or documents may only be disclosed to him in person.

5. The Ombudsman shall decide whether the refusal or restriction on disclosure referred to in subsection 4 is justified.

6. If the Ombudsman decides that the refusal is justified, the obligation shall lapse.

Section 9:32

1. The Ombudsman shall be entitled to entrust certain activities to experts. He shall also be entitled to obtain the assistance of experts and interpreters to further his investigations.
2. Persons summoned as experts or interpreters shall be obliged to appear before the Ombudsman and to render their services impartially and to the best of their professional ability. Section 9:31, subsections 2 to 6 shall apply to experts and public servants *mutatis mutandis*.
3. The Ombudsman may determine that witnesses shall not be heard and interpreters shall not be permitted to perform their duties until they have taken an oath or made a solemn affirmation. Witnesses must in that case swear on oath or solemnly affirm that they will tell the whole truth and nothing but the truth and interpreters that they will carry out their duties conscientiously.

Section 9:33

1. Petitioners, witnesses, experts and interpreters required by the Ombudsman to attend shall receive payments. The cost of such payments shall be met by the legal entity with responsibility for the administrative authority to whose action the petition relates, if it is a municipality, province, water board or body set up under the Joint Arrangements Act. In all other cases, the cost of such payments shall be met by the State. The provisions laid down by or pursuant to the Criminal Cases (Fees) Act shall apply *mutatis mutandis*.
2. Persons referred to in subsection 1 who are public servants shall not receive any payment if they are summoned to appear in that capacity.

Section 9:34

1. The Ombudsman may institute an on-site investigation. For this purpose, he shall be entitled to access any site, other than a dwelling without the consent of the occupier, insofar as reasonably necessary for the performance of his duties.
2. Administrative authorities shall provide any assistance required in the interests of the investigation referred to in subsection 1.
3. An official report of the investigation shall be prepared.

Section 9:35

- 1. Before closing the investigation, the Ombudsman shall communicate his findings in writing to:
 - a. the relevant administrative authority;
 - b. the person to whose action the investigation relates;
 - c. the petitioner.
- 2. The Ombudsman shall give them the opportunity to comment on his findings within a period to be specified by him.

Section 9:36

- 1. Once an investigation has been closed, the Ombudsman shall draw up a report containing his findings and his decision. In doing so, he shall take account of section 10 of the Government Information (Public Access) Act.
- 2. If the Ombudsman decides that the action in question was not-proper, he shall specify in his report which of the standards of proper conduct was breached.
- 3. The Ombudsman shall send his report both to the administrative authority concerned and to the petitioner and the person to whose action the petition relates.
- 4. If the Ombudsman makes a recommendation to the administrative authority as referred to in section 9:27, subsection 3, the administrative authority shall notify the Ombudsman within

a reasonable period of time of the action it intends to take on the recommendation. If the administrative authority is considering taking no action on the recommendation, it must notify the Ombudsman of this and state its reasons.

- 5. The Ombudsman shall provide anyone who makes a request to that end with a copy of or an extract from the report referred to in subsection 1. The Civil Cases (Fees) Act and provisions made pursuant thereto shall apply mutatis mutandis to the decision as to whether these shall be provided for a fee or free of charge. He shall also deposit a copy of the report for public inspection at a place to be designated by him.

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