de Nationale ombudsman

In 2007 the institution of the National ombudsman of the Netherlands celebrated the 25th anniversary of the establishment of the institution. This anniversary was marked by the publication of a collection of articles entitled "Werken aan behoorlijkheid - De Nationale ombudsman in zijn context".

'The Architecture of Good Administration' reflects on some of the conclusions reached in that volume and at the conference held in relation to it on 1 November 2007. This article was published in the Dutch Journal of Administrative Law on 2 February 2008.

The Architecture of Good Administration

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The contribution made by the National Ombudsman of the Netherlands to proper administrative conduct over the last 25 years

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1 25 years of the National Ombudsman

The Netherlands has now had a National Ombudsman for a quarter of a century. Thanks in part to its explicit constitutional basis, the institution has gained a permanent place in the country's system of government. What is the role of the National Ombudsman and what developments have occurred in his area of work: the propriety of government actions and the relationship between government and the public?

This article deals firstly with the differences between the National Ombudsman and the administrative courts and between lawfulness and propriety. It then goes on to address the question of what 'the government' actually is, and why the powers of the National Ombudsman in relation to administrative authorities are a thorny issue. Following this discussion of government as an umbrella term, its focus switches to 'the public' and what citizens expect from government. The final topic is the complex relationship between individual citizens and government bodies and how to deal with it. The article ends with a number of conclusions.

2 The administrative courts and the National Ombudsman, lawfulness versus propriety

The position of the National Ombudsman is governed by the National Ombudsman Act (*Wet Nationale ombudsman*) and chapter 9 of the General Administrative Law Act (*Algemene wet bestuursrecht or Awb*). There are many parallels between the objection and review procedure on the one hand and the complaints procedure on the other. Both involve a statutorily structured procedure ensuring that both sides receive a fair hearing and both produce a final decision of 'inadmissible', 'well-founded' or 'unfounded' resulting in a system of 'case-law' (legal precedents in the case of the administrative courts, 'ombudsprecedents' in the case of the National Ombudsman). In each case, moreover, there is both an internal avenue and further external recourse, respectively to the courts and to the National Ombudsman.

But there are also important differences between the administrative courts and the National Ombudsman. Decisions of the courts are binding, while those of the Ombudsman are not. The Ombudsman does not confine himself to delivering a decision on whether the complaint is well-founded; he also offers recommendations to the administrative authority concerned and if necessary engages it in a dialogue. Moreover, the Ombudsman may choose to intervene with the authority rather than issue a report. In 2006, for example, he made 4281 such interventions and issued only 401 reports. The aim of intervention is to find a practical solution to a problem. Complaints frequently concern the failure of an administrative authority to give a response or make a payment; sometimes the problem is more specific. In addition, section 9:26 of the General Administrative Law Act gives the National Ombudsman the power to institute investigations on his own initiative. Such investigations are frequently large-scale and concerned less with the concrete actions of administrative authorities in individual cases than with problems experienced by whole sections of the public in their dealings with particular authorities.

Propriety versus lawfulness

Over the years, successive Ombudsmen have evolved a set of standards of proper conduct. The first National Ombudsman of the Netherlands, J.F. Rang (1982-1987), tended to take a subjective approach but his successor, Marten Oosting (1987-1999), devised a set of standards in the form of the 'Oosting criteria'.

The next Ombudsman, Roel Fernhout (1999-2005), commissioned a systematic study of the way proper conduct criteria were being applied both by the National Ombudsman and by municipal ombudsmen in the Netherlands. This study of ombudsprecedents by Langbroek and Rijpkema was a major contribution to the ombudsman profession.[1)] It led to the development of a set of guidance notes on the standards of proper conduct to be applied. The guidance notes refer to standards which are important in relation to the fundamental rights enshrined in the Dutch Constitution and the general principles of proper administration developed in the field of Dutch administrative law. However, the authors also introduced a system of precedents by which the proper conduct

1) *Langbroek & Rijpkema 2004.*

criteria are used in combination with standards established in the past by their practical application in actual cases. Applied on a case by case basis, this approach means that the application of standards established by precedent leads to further development of the set of proper conduct criteria. Since the introduction of this system, the National Ombudsman Office has made major strides in its application, although further refinement and expansion certainly remains possible.

Proper conduct criteria are not the same thing as legal norms. Among lawyers, there is often some confusion about this.[2] Proper conduct criteria deserve to be considered in the legal discourse side by side with the general principles of proper administration and on an equal footing with them. The actions of government should be both lawful and proper. This is expressed diagrammatically in the Ombudsquadrant published in the National Ombudsman's annual reports for 2006 and 2007.[3]

The legality of a particular administrative action is important, but so is its propriety, and that is a separate issue.[4] The Ombudsman must not reason that because an action is unlawful it is necessarily improper: on the contrary, he must find the action improper only if it is in breach of a specific proper conduct criterion. That proper conduct criterion may be enshrined in law, but it need not necessarily be. The advantage of this approach is that it clarifies the distinction between the judgments of the courts and decisions by the Ombudsman. The courts decide whether an action is lawful; the Ombudsman whether it is proper. Conduct which a court finds lawful may still, when assessed in the light of the proper conduct criteria, prove to be improper. And it is frequently a lapse in propriety that prompts citizens to resort to either complaints or objection and review procedures.

From the legal point of view, it is clear that an unlawful decision must always be overturned. But what is the position if an action is improper and what is the effect of the impropriety of the action on any decision taken in the context of that action? An 81-year-old woman lodged an appeal against a parking fine incurred when, in the panic surrounding her husband's emergency admission to hospital, she left her car in a bay reserved for the disabled. The public prosecutor replied that the circumstances of the offence were irrelevant. She complained to the National Ombudsman about this reply: she was prepared to pay the fine but she resented the public prosecutor's flat refusal to consider the difficulty of her position at the time of the offence. The public prosecutor had based his reasoning implicitly on the doctrine that what matters is whether or not an offence has been committed irrespective of the question of fault, whereas an ordinary member of the public was entitled to expect some explanation of this. The lapse in propriety lay in the failure in communication with the woman concerned. Approached about the complaint, the public prosecutor remitted the fine, apparently as compensation for the lack of satisfactory information.

The fact that an action is improper need not have any legal consequences. Many members of the public are content simply to have been able to say what they thought about the authority's conduct and perhaps to have it confirmed by a finding that the action was improper. In practice, however, administrative authorities are increasingly inclined to offer some form of redress, for example by talking to the complainant, offering an apology or making some other gesture. In some cases, a decision may be reversed, a fine or debt remitted or compensation offered. In many cases, administrative authorities attempt to modify their procedures and approach. Administrative authorities that take a more strictly legalistic attitude may sometimes find redress difficult. Their responses often betray the fear of massive financial compensation claims, while that is usually not at all what the complainant has in mind.

Although the results of an investigation by the National Ombudsman and a finding that an action was improper can sometimes play a major role in legal proceedings, the court will nevertheless base its judgment primarily on the issue of lawfulness. On occasion, the European courts have likewise held that the European Ombudsman's finding of 'maladministration' does not automatically lead to the conclusion that the action in question was unlawful.

'The government' as an umbrella term

Since chapter 9 of the General Administrative Law Act gives citizens the right to lodge complaints with the National Ombudsman about an 'administrative authority' (*bestuursorgaan)*, the jurisdiction of the National Ombudsman is directly linked to this term. This delimitation of his jurisdiction sometimes has unfortunate consequences in practice and deserves to be reconsidered.

In the first place, the term 'administrative authority' does not sit well with the mandate of the National Ombudsman, which is to assess actions rather than decisions. Section 1.1. of the General Administrative Law Act specifies that:

1. 'Administrative authority' means:
   a. an organ of a legal entity which has been established under public law, or
   b. another person or body which is invested with any public authority.

A positive feature of the legislation is that all actions by the authorities specified under a. fall within the jurisdiction of the National Ombudsman. The problem is mainly with the authorities specified under b. and is sometimes caused by some form of privatisation. These b-authorities are parts of legal entities constituted under private law but invested with public authority. They are administrative authorities only when exercising this public authority. In such cases, therefore, the National Ombudsman's jurisdiction extends only to this aspect of their activities.[5] For example, the Central Office for Motor Vehicle Driver Testing (CBR) is a charitable foundation (*stichting*) but when it issues driving licences it is exercising public authority. The Ombudsman is competent to deal with complaints only if they relate to this activity. For example, he can pronounce on the conduct of driving test examiners. In the definition of these authorities specified under b., it appears that the criterion is whether or not public authority is being exercised, for example by taking official decisions. For the National Ombudsman, however, what is important is the conduct of administrative authorities, irrespective of whether it is connected with the taking of official decisions.

For example, some actions taken by the foundation that runs the Dutch probationary service *(Stichting Reclassering Nederland*) or by foundations active in the youth care field have dramatic and far-reaching consequences for individual citizens. An example is the role of social workers supervising problem families. Their actions are important to the individuals concerned but cannot be regarded as official decision-making. It would be unfortunate if the National Ombudsman were to disregard complaints about such actions. In interpreting the provisions governing his jurisdiction, therefore, he takes

2) See Daalder & Heukelom-Verhage 2007.
3) See Brenninkmeijer 2007, pp. 58-65.
4) Langbroek & Rijpkema 2007, pp. 269-296.
5) Drexhage 2007, p. 340.

account of additional criteria, such as the issue of whether the body performs statutory tasks, receives government funding or is under government control.

Secondly, the jurisdiction of the National Ombudsman often includes some administrative authorities within a sector or chain of organisations, but not others. In education, for example, it includes only publicly-run educational institutions, part of the university sector, the Ministry of Education itself and the Education Inspectorate. In cases like this, parts of the sector or chain are excluded from his jurisdiction, even though the responsibilities of all the administrative authorities within the sector are inextricably linked. By dealing with complaints concerning some of authorities and rejecting those concerning others, the National Ombudsman fails to meet the public's needs. After all, people find themselves with a real problem if things go wrong in the linkage between administrative authorities. An additional complication is that the General Administrative Law Act assumes that a complaint is directed against a particular administrative authority and places the primary onus for dealing with it on that body. It is only if the body concerned fails to do so satisfactorily that the National Ombudsman can take action. These statutory principles mean that the law makes it difficult for the Ombudsman to tackle complex problems resulting from imperfections in administrative chains (such as poor cooperation between authorities) and members of the public facing such situations are often unable to find out how to exercise their right of complaint. This situation is exacerbated when such problems occur between institutions in the public and the private sector, as for example in the youth care field.

Thirdly, the word 'government' means more to most members of the public than the term 'administrative authority'. We know a lot about what the public thinks about 'the government' and expects from those it regards as responsible for the quality of government action: the police and public officials.[6)] The public also have views about the tasks that government should perform or for the performance of which it can be regarded as ultimately responsible. They ignore the fact that in the Netherlands many care services and much education are provided by private-sector organisations. The quality and availability of such services are simply regarded *en bloc* as the responsibility of government. In this respect it is worth noting that the public perception of 'the government' is in line with the fundamental social rights specified in chapter 1 of the Dutch Constitution.

Part of the solution might be to reduce the emphasis on the 'subject of the complaint' by analogy with 'the subject of the dispute' that plays such an important role in the General Administrative Law Act. If a member of the public reported a problem, the Ombudsman could then himself seek to identify the factors relevant to the analysis and solution of the problem, and subsequently to provide feedback on these to the administrative authorities involved. The Ombudsman would then have the freedom to investigate where the core of the problem lies in his official capacity. On the other hand, the Ombudsman already has the power to launch an investigation on his own initiative and this is a powerful remedy. The pattern of complaints reaching the National Ombudsman may lead him to conduct systematic investigations on his own initiative, revealing for all those dependent on poorly performing government bodies the underlying reasons for their problems and what can be done about them.

6) *Schnabel 2007, p. 178.*
7) *Schnabel 2007, p. 178.*
8) *Euwema et al. 2007, pp. 225-247.*
9) *Euwema et al. 2007, pp. 225-247.*
10) *See also the guidelines for preventing and processing objections (Menukaart Bezwaarschriften) published under the auspices of the Dutch Ministry of the Interior and Kingdom Relations.*
11) *Van den Bos 2007, pp. 183-198.*
12) *De Boer 2007.*

3 'The public' and its expectations

Fair treatment

There is a grave misunderstanding about the source of public 'satisfaction' with government. The general assumption is that public satisfaction is greatest where the work of government is most concrete in nature and most visible. Public satisfaction with 'the government' tends to be low and largely dependent on the popularity of the national government team currently in office and, in particular, on the state of the economy.[7)] Where concrete services delivered at municipal level are concerned, however, things are different: in the case of services like refuse collection and the registration of births, deaths and marriages, satisfaction is high to very high, although for permitting activities it is much lower. Satisfaction with the concrete services delivered by the Office of the National Ombudsman is likewise very high.[8)] However, the primary cause of dissatisfaction is not whether members of the public get what they want. An individual citizen may indeed be dissatisfied with the amount of a benefit payment, surcharge or fine, or with a particular permit, but research shows that such dissatisfaction is significantly greater if the individual concerned feels that the treatment he has received was unfair or improper.[9)]

The aim of administrative law is to ensure that decision-making is lawful; objection and review procedures are important corrective mechanisms in this respect. We now know that in 40 to 60% of cases where an individual lodges an objection, the cause of the objection could be eliminated almost instantly by direct personal contact. The agency that implements employee insurance schemes in the Netherlands (the UWV) has gained promising experience of this as part of its 'Alternative Approach' programme.[10)] A direct personal approach removes the necessity for formal review proceedings under the General Administrative Law Act. The objection is resolved by providing an explanation or information or by correcting an obvious error or failure in propriety. The work of the National Ombudsman reveals that a quick practical solution is more satisfactory to the individual involved than legal proceedings, however well-conducted they may be. Ombudsman interventions score an 8, while his reports score only 6. Psychologists talk about the 'myth of self-interest', meaning that almost everyone believes that the outcome of a procedure is more important to people than the way they have been treated during it, whereas research shows that the opposite is the case. In other words, distributive justice is not in fact more important to them than procedural justice.[11)]

Justice

Public acceptance of government decisions frequently depends on citizens judging whether justice has been done in the absence of complete information. It is often hard for people to decide whether or not the government decision is fair. For example, it is difficult for them to know whether equal cases are accorded equal treatment, since they frequently know only about their own cases. In such circumstances, the individual's appraisal is apt to focus on the perceived fairness of the procedure. *Procedural and interactional* justice will therefore colour the perception of *distributive* justice. People who lodge complaints are critical of the interaction with the administrative authority concerned.[12)] Factors producing a low level of perceived interactional justice are tardy communication, apparent lack of sympathy with the individual's legal position, an unwillingness to take time over individual

cases and lack of visible respect. People who complain to the National Ombudsman are not generally pathological complainants: they are 'ordinary people'.[13] As a rule, his investigations show that administrative authorities need to invest more energy in the proper treatment of individual members of the public. This means turning work around faster, communicating clearly and providing careful, accurate information.[14] The proper conduct criteria applied by the National Ombudsman are a great help in achieving procedural justice.

Research shows that complainants give the National Ombudsman high marks (7.7) for the way he deals with their complaints and are more satisfied with him than with other government bodies.[15] They give him good scores for both procedure and interaction (8.2 and 8.3 respectively). For proper conduct, he scores 7.9. Confidence in government is low: 3.8. Satisfaction with the Ombudsman is greatest as regards the treatment of complaints concerning non-payment. This is linked to greater complainant satisfaction with the intervention method, which scores 8.0 compared with only 5.8 for the report method. The intervention method also produces significantly greater client satisfaction with the justice of the outcome: 8.1 compared to 5.9 when a report is issued. This is due to some extent to its greater rapidity. To conduct a full investigation and issue a report can take up to a year. The quick practical results achieved by intervention produce greater satisfaction. But it would be wrong to conclude that people are only satisfied when they get what they want. Euwema concludes that 'Complainants who feel that the outcome is fair are certainly less satisfied if they feel they have not been treated as they should have been'.

Diverging expectations

Over the years, public expectations have increasingly diverged from those of government. This is apparent, for example, in the public's interaction with the police. Van den Brink & Van Os have produced an analysis of the nature of complaints against the police.[16] They conclude that changes that have occurred over the last 25 years in the way the Dutch public and police interact mean that there is now a growing risk of escalation. They note that in 1982 conflict was generally only verbal, whereas in 2007 the situation is more explosive. It is a two-way process and not just a matter of the public's fuse getting shorter. Members of the public are behaving more aggressively, while the police are now acting in a more authoritarian way. Police officers have a choice: they can book people immediately or they can give them a chance to give their side of the story first. In 1982 they still did the latter, whereas in 2007 they responded with zero tolerance. Meanwhile, the public has greater self-esteem and assertiveness can sometimes turn into aggression. Van den Brink & Van Os feel that this trend calls for a courtesy offensive.[17] Especially in a country as densely populated as the Netherlands, there is a greater risk of conflict if people show less respect or fail to live up to expectations. The public expect the police to be cooperative but the police expect people to obey the law. If they do not, they display little tolerance, perhaps because of performance standards requiring them to issue a certain number of fines. The result is a divergence between public conduct and police behaviour and a greater likelihood of aggression in confrontations between the two. Insults, shouting and walking off prompt impulsive attempts at physical restraint and the use of handcuffs, pepper spray and even police dogs. The National Ombudsman expects the police to adopt a de-escalatory approach. Accordingly, this aspect is also taken into account when assessing the propriety of police conduct.[18]

13) *See also Van den Bos 2007, pp. 183-198.*
14) *See also Herweijer & Winter 2007, pp. 235-244.*
15) *Euwema et al. 2007, pp. 225-247.*
16) *Van den Brink & Van Os 2007, pp. 149-168.*
17) *Van den Brink & Van Os 2007, pp. 149-168.*
18) *See e.g. Nationale ombudsman 8 oktober 2007, nr. 2007/216.*
19) *Annual Report 2005: De maakbare overheid, Kamerstukken II, 2005/06, 30 530, nr. 2.*
20) *Barendrecht, Harchaoui & Janssens 2007, pp. 91-107.*
21) *Nationale ombudsman 24 oktober 2006, nr. 2006/370.*

4 Contact between the public and government, a complex relationship

Complex systems

What causes poor performance on the part of government and what can be done about it? Experience shows that this is an important question. To arrive at an answer, we first need to know what individual citizens think is important in their dealings with administrative authorities. Inevitably, administrative authorities act as Weberian bureaucracies - *as systems* - in their interactions with individual people. Individuals and systems can get along better with each other if attention is paid to the interfaces between the two (like the interfaces between people and computers). These interfaces can be deduced from the various elements that determine the perception of procedural justice: personal contact, proper conduct and participation. It is therefore perfectly possible to design a government agency which will predictably produce public satisfaction: good governance is a question of good institutional design.[19] So why do things go wrong in practice? Individual officials are not usually to blame. Even in cases involving excessive use of force by the police, for example, an analysis of the problems will reveal that police officers were operating in a context that allowed excesses to occur. It is unfortunate, therefore, that when excesses do occur there is a growing tendency to consider criminal proceedings against individual officials, while the problems can usually be traced back to faults in the system.

We live in an increasingly complex society and this is reflected in the growing complexity of the government machine and the system of legislation and policy that regulates the work of government. We are inclined to use the word 'complex' without further analysis, but complexities have many aspects. The development of an advanced welfare state has spawned a multitude of statutory arrangements and a plethora of public and private-sector bodies and tiers of administration to administer them. The complexity of our society is connected, for example, with the number and nature of the functional contacts that we need to maintain in order to live our lives in this day and age: think of all the contracts we each have (house rental, energy, medical insurance, etc.) and the number of administrative decisions we constantly have to apply for (tax, rent and health care allowance, permits etc.).[20] Our lives may be further complicated by the particular circumstances in which we find ourselves: caring for an elderly person with dementia, having disabled children, occupying a weak position in the employment market, having a disability etc. Difficult circumstances - often involving ill health - can also lead to debt problems, which all too easily become a vicious circle in which the individual becomes permanently trapped.

Heavy case-loads and interference

A heavy case-load is a major complication for government authorities. Legislation is based on the idea of general categories. The government agencies implementing it have to communicate at the appropriate moment with all the thousands or millions of people who fall into a particular category and then process all their details correctly.[21] The use of general categories assumes that all the inevitable differences and exceptions are irrelevant, but this is not always the case. This is a problem

when the manpower available for implementation is necessarily limited. One solution would be to assign an official to consider each citizen's individual needs - as Denmark has actually done - but frequently there is simply too little manpower available to intervene quickly when things go wrong. Time is also a complicating factor. The application of many acts and regulations depends on cycles and deadlines. Delays frequently lead to complex disruptions in implementation. The relationship - or, indeed, lack of it - between different regulatory systems is often another complicating factor, as are ICT systems and, in particular, the way they interrelate. Interference between systems can disrupt the general application of the rules. However, the main complicating factor is the effect produced by the interaction of the many different forms of complexity.

Finally, the public itself is a uniquely complicating factor. Our system of administrative law assumes that all 16 million inhabitants of the Netherlands not only 'know the law', but - still more importantly - comply with their bureaucratic obligations at the right time and in exactly the right way. Our society requires every one of its members to display considerable bureaucratic survival skills. The fact that it includes 1.5 million people who are functionally illiterate is therefore a problem. But it is not the only one. There are many more human factors that disrupt the machinery of government. For a mother with two disabled children, it is practically a full-time occupation to assemble all the relevant information and fill out the necessary forms to obtain the support to which she is by law entitled. The new Social Support Act (Wet maatschappelijke ondersteuning or WMO) is based on the idea that every individual should arrange his or her own support facilities; social support now includes support to get the support you need.

Minor hiccups, major consequences

The system of government administration usually works well in ordinary cases. This means that a 90 or even 99% success rate can often be achieved. Despite the multitude of complaints against the Tax Department's handling of the new rent and health care allowances, the percentage of cases concerned is not actually very great. In absolute numbers, however, such problems often affect very many people, all of whom need up-to-the-minute information, for example via the telephone. The knock-on effects of a minor hiccup in the work of the Tax Department can ultimately produce chaos in implementation. Data from the Tax Department affect both the administration of employee insurance schemes by the UWV and the work of the Immigration and Naturalisation Service (IND). Another important factor is the complex network of inter-relating powers and responsibilities and the fact that often, as a result, nobody feels personally responsible. In complex situations, therefore, nobody takes on the task of coordinating the work of the various authorities involved.

The dividing line between automated areas of work and cases that require individual handling is often a high-risk area. Based on case studies at the UWV, the IND and the Tax Department, researchers at the Utrecht School of Governance (USBO) came to the conclusion that dealing with non-standard cases is the most complex and threatening task facing public service workers.[22] So it is a question not just of proper conduct, but even more vitally of proper organisation. One factor in the latter is the quality of the contact between individual and government. Standard cases can be dealt with entirely via automated systems but non-standard ones require individual attention. The question is how to organise it.

22) Noordegraaf & Meijer 2007, pp. 67-89.
23) Nationale ombudsman 30 mei 2006, nr. 2006/193. The National Ombudsman has launched a project to combat such behaviour amongst complainants.
24) Van Dijk, Leeuw & Choenni, 2007, pp. 297-325.
25) De Jong 2007, pp. 135-148.
26) See also Van de Brink & Van Os 2007, pp. 149-168
27) De Jong & Zuurmond 2007, pp. 49-66.
28) Barendrecht, Harchaoui & Janssens 2007, pp. 91-107.

Many of the individual cases brought to the National Ombudsman are ones in which there has been a slip-up of some kind between the individual and an administrative authority. The problem can generally be resolved simply by the Ombudsman bringing his expertise to bear on the complexities of the problem and if necessary contacting one or more administrative authorities. This explains the growing use of the intervention method. Administrative authorities are also beginning to realise that the lodging of an objection need not mean that there is a legal problem, but simply that there has been a slip-up. As already stated, between 40 and 60% of cases can be resolved by a single telephone call.

Complex individuals

Finally, there remains one more problem of complexity to be mentioned: complex individuals. A small proportion of the Dutch population makes life difficult for public administrators simply because that seems to be their mission in life. While it would hardly be proper to call them 'troublemakers', they are certainly people whose habit of constantly complaining is perceived as troublesome.[23] There are municipalities who find it necessary to designate a separate official to deal with all the legal complications caused by a single individual. Some projects are delayed for years by the efforts of a single, sometimes fanatical, member of the public. Fortunately, the number of individuals who repeatedly lodge complaints with the National Ombudsman is very small.[24] Over the last 25 years, only 180 people have lodged more than 10 complaints: equivalent to 1.6 in every thousand complainants. Nevertheless, it is with good reason that De Jong is calling for a national 'Official's Day' to balance the 'Citizen's Day' launched in 2007 by the National Ombudsman.[25] In their dealings with government, members of the public should do as they would be done by. Respect for competent authorities is an indispensable part of good citizenship.[26]

Possible solutions

What can be done about complex problems? The researchers at the University of Leiden who dub themselves the Kafka Brigade say focused attention is the answer.[27] They say representatives of all the administrative authorities involved should be called together to try to work out why things have gone wrong despite the best intentions of each individual body. As a rule, if each individual administrative authority confines its attention to its own area of responsibility, it will be impossible to solve complex problems, let alone prevent them. Efforts to achieve concerted action by different parties will also need to become a growing part of the work of the National Ombudsman. It is not enough to deal with 'complaints'. Given the complexity of public administration system, the Ombudsman needs to focus on the problem underlying the complaint.[28]

For the small section of the population who know how to access the National Ombudsman's services, the use of the intervention method is creating a kind of short cut to avoid the bureaucratic traffic jams that are the bane of all our lives. In the words of statesman and constitutional expert Tjeenk Willink, the National Ombudsman - who was meant to act as a brake on the inexorable machinery of government and provide a final safety net for individual citizens - has more or less automatically become part of that government machine. Hertogh speaks of a kind of Matthew effect in this context: people in higher socio-economic groups, who know their way around the system of government, are able to exploit the work of the National Ombudsman, whereas those in lower

socio-economic groups, who really need the Ombudsman to intervene on their behalf, don't even know how to contact him.[29] A solution to this problem is for the National Ombudsman to use his power to launch investigations on his own initiative.

5 Conclusions

The strength of the National Ombudsman as an institution is the Ombudsman's ability to exert his influence. Unlike the administrative courts, he cannot issue binding decisions. However, he can have a far wider influence than them because his approach is reflective rather than merely repressive.

Any overly legalistic approach to the National Ombudsman's role as laid down in the General Administrative Law Act would tend to limit the effectiveness of the institution. The intervention method, with its focus on finding informal solutions, has proved far more important than the report-writing method for which chapter 9 of the General Administrative Law Act provides. The intervention method also produces greater complainant satisfaction. The Act organises the right of complaint around the concept of the administrative authority. This has proved rather unfortunate. Firstly, a member of the public with a complaint about 'the government' often finds it hard to know which administrative authority is causing the problem. An associated difficulty is that many such problems relate to administrative chains involving more than one authority. Secondly, many of the government tasks giving rise to complaints are performed by bodies which are not administrative authorities within the meaning of the Act. The powers of the Netherlands Court of Audit extend to legal entities performing statutory tasks. The National Ombudsman could be more effective if his remit were not confined to administrative authorities. Members of the public think more in terms of 'the government' than of 'administrative authorities'. To take up a suggestion made by M. Scheltema during the *Werken aan behoorlijkheid* conference, 'the government' might be taken to include all actions in which the authorities exert a perceptible influence in the form of decision-making, organisation and/or funding. These wider powers would enable the National Ombudsman to gear his work more closely to new ways of organising the work of government.

Another concern is the relationship between the role of the National Ombudsman and the objection and review system. The Ombudsman refers complainants to the bodies involved in that system, but not vice versa. Individuals lodging objections or applying for review are not referred by the relevant authorities or the administrative courts to the National Ombudsman. That is odd. There are many cases in which the conclusion is that an administrative authority 'could have handled things better'. In other words, there have been failures in propriety, even if the situation involved nothing that can be judged to have been 'unlawful'. Such cases are important not just for the individuals concerned, but also as warning signs of underlying structural problems. Cooperation would be more effective, in particular between the administrative courts and the National Ombudsman, if it were not only the Ombudsman who referred cases to the courts, but also the courts that referred cases to the Ombudsman and drew issues to his attention.

29) Hertogh 2007, pp. 199-221.

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