STANDING TO RAISE CONSTITUTIONAL ISSUES IN THE NETHERLANDS

Tom Zwart

1 Introduction

The present report deals with the standing rules applicable in the Netherlands. So as to keep the report within manageable proportions no attention will be paid to the actio popularis prevalent in planning and environmental law, as it is the exception to the rule that the applicant must have a stake in the outcome to succeed. In order to make the Dutch standing rules more accessible, US terminology has been followed wherever possible.

Section 2 will deal with some preliminary constitutional questions necessary to put the rest of the report into perspective. Section 3 will discuss the sources of and the rationale for standing. Section 4 will be devoted to the standing rules applicable to individuals, organisations and political entities respectively. Section 5 will consider the separate issues of mootness and ripeness. Section 6 contains some concluding remarks.

2 Constitutional preliminaries

Before going into the details of Dutch law on standing, three constitutional points should be made at the outset.

First of all, under Article 120 of the Constitution, courts in the Netherlands are not allowed to review the constitutionality of Acts of Parliament. Despite courts not being permitted to look into the constitutionality of Acts of Parliament, no such impediments exist regarding secondary legislation, such as orders in council and ministerial regulations. Additionally, courts may review the compatibility of any national rule with self-executing provisions of treaties and decisions of international organisations due to Article 94 of the Constitution. This article stipulates that self-executing provisions in treaties and decisions taken by international organisations which bind the Netherlands may set aside statutory regulations, i.e. all instruments containing rules, including Acts of Parliament and the Constitution itself. The power conferred on the judiciary by Article 94 has become an important tool which compensates for the absence of constitutional review of Acts of Parliament. For the purpose of the present report, the phrase to raise constitutional issues will therefore be interpreted as covering those cases in which the court is invited to review the validity of legislation, either under the Constitution (secondary legislation) or under self-executing provisions of international law (both primary and...
secondly legislation).

Secondly, the Netherlands has a dual court system, consisting of ordinary and administrative courts which apply private law and administrative law respectively. Constitutional issues may arise in both courts. According to Article 112, section 1 of the Constitution, the adjudication of disputes involving rights under civil law and debts shall be the responsibility of the regular judiciary. According to Article 113, section 1, the same jurisdiction applies to the trial of offences. Under section 2 of Article 112, responsibility for the adjudication of disputes which do not arise from matters of private law, *i.e.* administrative law type disputes, may be granted by Act of Parliament to either the regular judiciary or courts that do not form part of the judiciary. Such jurisdiction has been conferred by Act of Parliament amongst others to the administrative divisions of the courts of first instance, the *Afdeling Bestuursrechtpraak* (Administrative Judiciary Division) of the Council of State, the *Centrale Raad van Beroep* (Central Appeal Board) and the *College van Beroep voor het Bedrijfsleven* (Industrial Appeals Board).

According to Article 8:1, section 1 of the *Algemene wet bestuursrecht* (General Administrative Law Act or GALA), orders of administrative authorities may be contested before administrative divisions of the courts of first instance or on appeal before the *Afdeling Bestuursrechtpraak* and the *Centrale Raad van Beroep*. An order of an administrative authority has been defined in Article 1:3, section 1, of the said Act as a written decision intending to cause legal effect under public law. In challenging the order, the applicant may question the constitutional validity of the underlying legislation.

Alternatively, the constitutional propriety of legislation may also be tested directly. Under Article 112, section 1 of the Constitution, a person aggrieved by an administrative act may bring a tort claim before an ordinary court. In interpreting Article 112, section 1, the Supreme Court ruled in *Noordwijkerhout v. Goldenmond* that the judiciary is competent to try cases in which an administrative authority acts as the defendant, as long as the plaintiff can validly claim to be the victim of a tort committed by that authority. Its competence will be determined by the claim put forward and not by the nature of the relationship between the parties. Although the judiciary has full jurisdiction in this kind of cases, it will dismiss a claim as inadmissible if it concerns an order which can be brought before one of the administrative tribunals mentioned above. In practice plaintiffs tend to rely on tort proceedings only in cases relating to measures to which GALA does not apply, such as Acts of Parliament or orders which have been explicitly excluded from the jurisdiction of the administrative courts, secondary legislation being among them. By seeking private law remedies like an injunction, the applicant may prevent the

6. This approach is generally being referred to as the *objectum litis*-concept.
7. Cf. Article 1:1 (2) (a) GALA.
8. Cf. Article 8:2 (a) GALA.
legislation from entering into effect or render it inoperative. This kind of action is often entertained by public interest groups.

This report will therefore deal both with standing in administrative courts under GALA and with the standing of public interest groups under Dutch tort law.

Finally, contrary to the situation in Ireland\(^9\) and Canada,\(^{10}\) Dutch courts apply the same standing rules in constitutional and non-constitutional cases. The present report therefore will deal with standing in general, making no distinction between these two types of cases.

3 The sources of and rationale for standing rules

The main rules relating to standing have been laid down in legislation. Under Article 8:1 GALA, an interested party may appeal to the court against an order. Article 1:2 (1) GALA describes an interested party as a person whose interest is directly affected by an order. These provisions closely resemble the standing rules laid down in the predecessor of GALA, the Judicial Review of Administrative Decisions Act. According to Article 3:305a of the Civil Code, an association or foundation with full legal capacity is entitled to entertain an action for the purpose of protecting interests of other persons, inasmuch as it promotes these interests according to its articles of association.

However, courts have played a vital part in developing the rules on standing both in the area of administrative and private law. One may even claim without exaggeration that the right of public interests groups to initiate court proceedings in private law is the creation of the judiciary rather than the legislature. In addition, academic commentary has also left its mark. In his very influential thesis entitled \naissance van belanghebbenden\(^{11}\) (Circles of interested parties), Peter van Buuren not only provided an illuminating analysis of the existing standing rules, but also set the tone for the development of those rules during the latter part of the twentieth century.\(^{11}\)

Unlike in the US,\(^{12}\) in the Netherlands there has not been any discussion on the rationale for standing rules. Standing requirements are considered to be of a technical nature and are not usually linked to the concept of separation of powers. This technical approach is probably motivated by the Dutch civil law tradition, which discourages debate on the constitutional and political role of the judiciary.\(^{13}\)

---


The standing rules in practice

4.1 Individuals

4.1.1 Personally affected

4.1.1.1 Factors causing a personal interest

An applicant will only be considered to have standing if he is personally affected by the decision at issue. This would, for instance, be the case if the applicant lives or works in the vicinity of the site to which the decision applies. Thus, when an applicant challenged the permission given by the states deputies to a company to start a quarry, he was considered to have standing because he resided some 1000 metres from the proposed excavation site. The states deputies maintained that no direct interest of the applicant was involved, since his house was too far removed from the location. The court found that the distance was not so great that it should be ruled out the excavation would have consequences for the applicant. It relied on evidence put forward by an expert which showed that the digging could cause damage to the applicant's property. When an authority gave permission to a company to transfer polluted soil to another location, two employees working close to the new site were also deemed to have standing. Similarly, when the board of burgomaster and aldermen granted a permit for the exploitation of a brothel, those working nearby were deemed to have standing. If the distance is considered too great, the appeal will fail. This was exemplified when the states deputies gave permission for the construction of a road. The applicant was considered to lack standing since he lived some 700 metres from the site.

In addition to distance, visibility is sometimes deemed to be important. When the board of burgomaster and aldermen gave permission for the construction of a penitentiary, the applicant's objection was that the prison would harm the peaceful character of the town. The court denied him standing because he lived 2000 metres from the building site and a nearby residential area would block his view of the building.

The case is also noteworthy for the fact that the court decided the building

14. The executive at the provincial level.
16. The executive at the local level.
would not have such an impact as to affect the social climate and the living conditions in the vicinity of the applicant’s home. This implies that even if the applicant lives or works at some distance from the site, he may nevertheless have standing because of the impact the use of the building will have. Such an approach has been adopted in the following cases. Although living outside the municipality concerned, some applicants challenged the building permission for a storage facility for nuclear waste. The court concluded they still had standing because of the use that would be made of the building. However, those living a 100 miles or more from the building site could not validly claim to have standing. When the board of burgomaster and aldermen granted permission to build a school, the court found that the applicants living 115 metres to 750 metres from the site would not be inconvenienced by the building. On the other hand, it was likely that the amount of traffic in their living environment would increase as a result of the coming and going of teachers and pupils. The fact that one of the applicants was living in a dead-end-street did not distract from this conclusion.

Sometimes factors which may not be sufficient separately establish standing when viewed in combination. This point was made in a case in which the applicant challenged a decision of the board of burgomaster and aldermen to grant a license to cut a number of trees in a park. The applicant claimed to have standing because she lived in the vicinity and should be considered a patroness of the trees in view of her special relationship with them. The court ignored the patroness issue, focusing on geographical circumstances instead. It pointed out that the applicant was unable to view the trees concerned from her house. She was nevertheless considered to have standing for three reasons. First of all, as had been acknowledged in official documents, the park was considered to have quite an impact on the neighbouring areas. Secondly, the applicant lived so close to the park, approximately a distance of some 100 metres, that it should be considered part of her living environment when taking into account its impact. Finally, cutting the trees was the first step of a total overhaul of the park, which would undoubtedly affect the applicant’s living environment.

As the following cases demonstrate, the competitors of the beneficiary of the decision are considered to be personally affected by it. When the states deputies decided to subsidise a group of women bargees, in order to enable them to acquire a canal boat for carrying trade, several bargemen objected. The court felt that they had standing since the decision would have ramifications for the inland shipping market and would therefore affect competition in this line of business. In another case the

---

23. President of the Arnhem District Court, 10 January 1995, Asb-katern (GALA quaire) 1995, 86.
board of burgomaster and aldermen had designated a local physician as an established GP within the meaning of the Order on the Establishment of GPs and the Size of their Practices. As a result of this designation, the GP was allowed to increase the size of her practice which was very small at the time the decision was taken. The other GPs in the area objected to this decision. The court found they had standing because the decision might have consequences for the competition between local GPs. A shipyard objected to the decision of the states deputies to grant planning permission for the construction of a marina in the area. It feared that the marina might contain a boatyard and a storage facility which would cause a reduction in its income. The court felt that the mere fact that the shipyard feared its economic interests would be affected was enough to establish standing. When the Transport Minister gave a license to a company to construct a pontoon bridge as a first step in setting up a ferry service from an island to the mainland, the decision was challenged by the company already operating such a ferry service. The court found that the latter had standing as it operated the only existing service and would suffer prejudice as a result of the new ferry.

The case law concerning competitors is not consistent, however. In one case the Culture Minister had given permission to a radio station to depart temporarily from the programming conditions laid down in its license, since it was no longer capable of fulfilling them. This decision was challenged by another radio station which had unsuccessfully applied for the same license. The court of first instance had granted standing to the applicant. It pointed out that by challenging the decision the applicant aimed to force the Minister to withdraw its competitor’s license and to give it to the applicant instead. The appeals court, alternatively, felt that the applicant lacked standing since it had not requested the licence to be revoked. A further illustration occurred when the owner of a building had obtained permission for renovation. After the alteration the building would provide accommodation to a domestic appliances shop. Several retailers in the area objected to the permission because they felt that the unique location and favourable rent conditions would give the new shop a competitive edge. The court found that the retailers had standing, but only insofar as they were active in the same line of business. On the other hand, the courts have shown they can be more lenient. Several retailers challenged the permission given by the board of burgomaster and aldermen to a shop in the area wanting to sell ski-gear. The board contested the standing of some of these retailers because they did not sell sports equipment. Nonetheless, the court maintained the mere fact that they were

Standing to raise constitutional issues

Retailers established their standing 31. Instead of living or working in the vicinity or being a competitor, other factors may cause the applicant to be personally affected, as the following cases illustrate. The owner of an apartment complex had obtained a demolition order. Both the widow of the architect and his former firm opposed the order because they considered the complex an important part of the city’s post-war architectural heritage. The demolition of which would cause irreparable harm to the cityscape. The court ruled that both applicants had standing. 32. The states deputies had authorised the board of burgomaster and aldermen to grant building permission for the construction of a dancing school. The building site was in the proximity of a cemetery where close relatives of the applicant had been buried and for whose graves he was still paying the maintenance costs. The applicant claimed that it would contravene his feelings if a dancing school would be established at such a short distance from the cemetery. As next of kin, he considered it his moral duty to oppose the project. The court found he had standing. 33. The board of burgomaster and aldermen had given permission to E. to moor a houseboat. This decision was contested by H., who was top of the waiting list for mooring places. Since H. claimed that E’s place should be his, the court found he had standing. 34. The education authority had changed the roster of three primary schools in such a way that the pupils and their teachers would have the Friday off every other week. The applicant, who was the parent of a pupil attending one of the schools, challenged this decision. The court felt that he had standing 35.

4.1.1.2 The interest should not be merely emotional

Courts will only deal with cases in which the interest claimed is objective. Thus, when a decision is challenged on emotional grounds the court will find that the applicant lacks standing. This is illustrated by a case concerning the building permission granted to the company running the Concertgebouw (the Amsterdam concert hall) for its renovation. This decision was challenged by the applicant who felt the building should be preserved in its original state. The basis for the challenge was that her father had been a member of the Concertgebouw Orchestra and had therefore grown attached to the building. Consequently, his funeral procession had departed from the Concertgebouw. The applicant therefore considered the renovation projects a personal affront. The court expressed the view that the

32. President of the Judicial Division of the Council of State, 30 August 1988, Gemeentestem (Municipal Voice) 6895, 12.
35. President of the Amsterdam District Court, 19 July 1999, Jurisprudentie Bestuursrecht (Administrative Law Reports) 1999, 236.
applicant lacked standing, because her objections were merely emotional and could not be determined objectively. The court concluded similarly in a case where a student, who had failed an exam, appealed to the exam commission. The commission decided that the student should receive the pass sheet on the basis of her legitimate expectation to have passed the exam. The examiner, who claimed that there was no justification for such an expectation, appealed this decision to the examinations board. The board declared the examiner's appeal inadmissible for lack of standing. The court found that the decision to give her the pass sheet affected the interests of the student, but not those of the examiner. The court recognised the applicant had expressed disagreement with the view that the student had a legitimate expectation and dissatisfaction with the decision of the exam commission, but that did not amount to being directly affected by the decision. The fact that the applicant felt aggrieved by the decision because it discredited her honour as an examiner did not provide her with a direct interest, since it had no legal consequences for her.

As in the U.S., whether or not the interest claimed is merely emotional is clearly a question of degree. The fact that the widow of the architect and his former firm were allowed to fight a demolition order because they considered the building an important part of the city's post-war architectural heritage, proves this point. The same can be said of the case where the applicant objected to the construction of a dancing school near a cemetery where close relatives of his had been buried. Of course in this case, despite that his objections were moral, the fact that he was paying the maintenance costs for the graves might have been decisive.

4.1.2 Causation

According to Dutch case law, the word 'directly' in Article 1:2 emphasises the inextricable and direct link between the interest of the applicant and the challenged decision. As the following cases make clear, an applicant will have standing only if the interference with his interest was caused by the conduct of the authority concerned.

The board of burgomaster and aldermen had granted the Amsterdam Public Works Director permission to build a combined city hall and music theatre. A composer and several set-designers engaged in opera productions objected to this

---

39. President of the Judicial Division of the Council of State, 30 August 1988, Gemeentestem (Municipal Voice) 6895, 12.
decision. They claimed the music theatre would be designed in such a way that it would be impossible to stage their productions in the new building. Although the court acknowledged that there may be a link between the design of a building and the possibility for artists to perform there, it denied standing to the applicants. The court pointed out that they were not so much challenging the building of the theatre, as objecting to its layout. The design of the building is the responsibility of the person commissioning it rather than that of the authority. The Dutch International Development Minister had granted a subsidy to the ANC in exile, enabling it to offer relief to South African refugees in southern Angola. Several Dutch citizens residing in South Africa challenged this decision. They expressed the view that the ANC might use the money to fund its terrorist campaign in South Africa of which they might then become victims. In addition, they pointed out that as Dutchmen living in South Africa they would bear the brunt of the criticism on the decision expressed by the South African people. The court felt that the applicants had standing. It considered that the aim of the ANC was to abolish white supremacy and to establish political independence in South Africa. To further this aim, the ANC was willing to resort to violent activities like sabotage and assaults on South African officials. Since the applicants participated in South African society, it was not farfetched for them to feel threatened by the activities of the ANC. Furthermore, the court did not consider it unlikely that the financial support offered by the minister would be used for other purposes than those for which it was intended. The court found that it had been established that the applicants, as Dutchmen, were the object of criticism resulting from the minister’s decision. The states deputies had approved a budget amendment adopted by a city council authorising the council to buy a traffic lights installation. The court signalled that the applicant opposed the city’s traffic policy, to which the approval was only indirectly related. The states deputies had not approved buying the installation but only the budget amendment authorising the council to do so. The Health Secretary had given a hospital a declaration of necessity under the Hospital Facilities Act for its building plans. Several individuals living in the vicinity of the proposed site challenged this decision. The court considered that, by issuing the declaration, the Health Secretary had only made clear that the building project would be in conformity with the planned hospital services in the region. The declaration did not entail that the project would be carried out, which depended on the building permission to be granted by the responsible authorities. The applicants could not be considered therefore to be directly affected by the declaration.

---

43. *This approach is reminiscent of the position taken by the US Supreme Court in Wickard v. Filburn 317 U.S. 111, 87 L.Ed. 122 (1942).*
It appears that the causation requirement has not always been applied consistently, as the following cases illustrate. The Transport Secretary had approved the new timetable for a bus service. The applicant claimed that as a result of this new schedule a large number of buses would pass by his house everyday causing noise and pollution. The court pointed out that the record showed the applicant’s house bordered on a very busy road which was also used by cars, lorries and buses not covered by the approved timetable. The applicant therefore lacked standing. In a similar case however, the court came to a different conclusion. The states deputies had determined the timetable of the public transport in the province. As a consequence a new bus stop would be constructed near the applicant’s homes. The court found that they were directly affected by the measure. Whilst admitting a thoroughfare was already running close to the houses of the applicants, it pointed out the record showed that the planned bus stop would cause a substantial amount of inconvenience, mainly consisting of noise and a limited view. Although both of these cases were decided on the basis of factual determinations, the difference in outcome is remarkable. It looks as though the court in the first case was taking the merits of the case into account during the admissibility stage of the proceedings.

In the courts view, granting a subsidy to a person will usually not affect the interests of others. This was exemplified when the Amsterdam City Council decided to subsidise an association in order to enable it to make a building fit for habitation by its members. A neighbour challenged this decision, claiming that she would be inconvenienced by the use of the building. The court considered that the objections raised by the applicant did not concern the decision to subsidise the association, but the use that the association would make of the building. The court did not deny that there was a connection between the subsidy and the use in the sense that the money would be used to make the building fit for habitation. It emphasised, however, that the transfer of money from the Council to the association would not in itself aggrieve the applicant. Similarly, a municipal council had decided to grant a subsidy to a youth club enabling it to refurbish its building. The applicants, who lived in the vicinity and were already inconvenienced by the club’s presence, challenged the decision because they feared that the club would expand its activities after the reconstruction. The court considered that the applicants did not so much object to the subsidy rather than its consequences. If the club should wish to expand its activities after the refurbishment of the building it would be needing additional licenses, the granting of which could then be challenged.

An applicant will lack standing if the consequences of the decision are of his

own making. Thus, when a local GP retired, the board of burgomaster and aldermen granted a license to another physician to continue the practice. The retiree opposed the designation of this successor, since his lack of confidence in the proposed GP would prevent him from transferring the goodwill connected to his pharmacy. Since the retiring GP himself refused to transfer the goodwill, any damages would be entirely of his own making. As a consequence, the court denied him standing. The court applied the same reasoning in a case concerning the abolishment of a pedestrian zone. The applicant claimed to have standing to challenge this decision since he used to go to work on foot via the zone. The court considered that the route taken by the applicant to get to work was a self-chosen detour. He therefore lacked standing.

4.1.3 Redressability

A person will only be considered to have standing if a favourable court decision is likely to remedy the interference. This requirement has been developed in three cases relating to the same remedy. In the Netherlands the Supreme Court may, at the request of the Procurator-General, quash a judgment by way of cassation in the interest of the law. This is an extraordinary remedy the application of which will not prejudice the interests of the parties involved. Even if the Supreme Court finds for the plaintiff contrary to the court below, no relief will be offered to him. This remedy is designed to serve the development of the law rather than the interests of the parties.

The issue of redressability was first raised in a case brought by someone who's son had been killed in a road accident. The driver who had caused the accident was acquitted by the court of first instance and this judgment was upheld on appeal. The applicant invited the Procurator-General to apply for cassation in the interest of the law. His refusal was challenged before the court, which felt that the applicant lacked standing because of the extraordinary character of the remedy. The court did not explain why the extraordinary character prevented the applicant from having standing. This point was addressed, however, in a subsequent case, in which the Family Court had denied the applicant visiting rights to his son. He therefore requested the Procurator-General to apply for cassation in the interest of the law. His refusal to do so was thereupon challenged by the applicant in court. The court found that the applicant lacked standing since granting the remedy would not cause legal ramifications affecting the interests of the applicant.

52. President of the The Hague District Court, 21 December 1994, Awb-katem (GALA quire) 1995, 70.
4.1.4 The prohibition against generalised grievances

Since the applicant should be personally affected, he will lack standing if his concern is shared with the public at large. This was made clear in a case where the board of burgomaster and aldermen held decided to ban cyclists from putting away their bicycles in the centre of town. Although the applicant did not live there, he claimed to nevertheless be affected because he regularly visited the area on his bike. The court found the fact that the applicant frequented the centre was neither sufficient to distinguish him from other road users nor to consider him directly affected. Likewise, in the case concerning the abolishment of a pedestrian zone, already mentioned in section 4.1.2, the applicant who did not live nearby claimed to have standing since he used to walk to work via the zone. The court was not convinced by this argument. It felt that the applicant could not be distinguished from other people who frequented the zone. Still another board of burgomaster and aldermen had granted a license to some evangelists to preach the gospel using a sound truck. The applicant, who lived and worked in the village concerned, objected to the decision because he feared that he would frequently and intrusively be exposed to religious beliefs he did not share. He explained that it would be very difficult to avoid the evangelists sound truck in the small community. The court found that his interest of he applicant could not be distinguished from that of other members of he community.

The requirement that the applicant should be personally affected by the decision precludes citizen's actions. Thus, when the board of burgomaster and aldermen granted the Amsterdam Public Works Director permission to build a combined city hall and music theatre, the challenge mounted by several individuals failed. The court found that they lacked standing because they objected to the decision in their capacity of future users of both city hall and the music theatre. The court maintained that in order to have standing a decision should affect the applicant's own personal interest. Their status as potential future users did not provide them with such an interest in preventing the execution of the building plan. Individuals may not claim such supra-individual interests as these are reserved exclusively for organisations.

This principle has been consistently applied by the courts, as the following cases show. The Crown had granted a concession to the authorities of the province of Friesland to dike in some land which had been recovered outside the existing dikes. This decision was challenged by a private individual in his capacity as a citizen and an expert on dike construction. The court found that he lacked

---

56. President of the The Hague District Court, 21 December 1994, Awb-katem (GALA quire) 1995, 70.
The states deputies had authorised the board of burgomaster and aldermen to grant planning permission for constructing a landing stage. Several individuals living in the town challenged this decision. They claimed that due to their religious beliefs and their philosophy of life they were closely concerned with environmental developments in general and those occurring in the town in particular. They were anxious that building the landing stage would attract many tourist to the town, putting pressure on the community. The court found that they lacked standing since they were unable to show that the decision would put them in a position which was different from the other inhabitants. The authorities had given permission to a company to start a quarry. This decision was challenged by a private individual who claimed to be closely involved with the environment in the area. The court considered that this did not provide him with his own personal interest distinguishable from that of other individuals. The states deputies had approved a decision taken by a waterboard, setting the water level in a polder. The applicant, a conservationist who had done some voluntary work in the polder, challenged the decision on the grounds that the level set by the board would harm the environment. The court denied him standing because he lived approximately 5 kilometres from the polder, so he could not have been directly affected by the decision.

The law reports contain one case concerning taxpayer standing. The applicant objected to a project of a waterboard regarding the water supply in a certain area. Although he did not live in the area concerned, he nevertheless felt aggrieved since he was liable to pay taxes to the board. The applicant claimed that the project would force the board to raise taxes. The court felt that his taxpayer status did not give the applicant standing.

4.1.5 The prohibition against third-party standing

According to Article 1:2 GALA an interested party signifies the person whose interest is directly affected by an order. As the following cases demonstrate, this means that the applicant cannot present the claims of third parties who are not part of the lawsuit.

When an authority denied a benefit to an individual to cover his hospital expenses, the hospital to which he owed the money objected. Its creditor status was insufficient to create standing. The Media Commission, an independent agency,

had fined several cable companies for unlawfully transmitting a number of commercials. This decision was challenged by the networks who had included the commercials in their programming, the advertising agencies that had been involved and the companies whose products had been advertised. The court found that they lacked standing because their interest was only subsidiary to the interest of the cable companies. The board of burgomaster and aldermen of A. had refused to register M. as a person allowed to seek housing. This resulted in M. not being able to live in A. Her son, who resided in A. and who took care of her, challenged this decision. He claimed that it was very difficult for him to look after his mother as long as she had to live outside A. The court conceded that the decision affected the son’s interests, but only indirectly and he therefore lacked standing. A laid off employee had applied to the industrial insurance board for an unemployment benefit, while at the same time authorising his former employer to collect the benefit on his behalf. When the benefit proved to be lower than expected, the employer challenged the decision of the industrial insurance board. The court found that the employer lacked standing.

The Telecommunications Minister had resolved an interconnection dispute between KPN, the organisation operating the public telecommunication networks, and the telecommunications company Telfort by setting the rate the former was allowed to charge the latter. Versatel, another telecommunications company, challenged the outcome on the grounds that the rates would in fact apply to the other telecommunications companies as well, despite only being binding on KPN and Telfort. The applicant company relied on Article 6 of the Directive on Interconnection in Telecommunications in this regard, which obliges organisations like KPN to adhere to the principle of non-discrimination in interconnection matters. KPN’s model agreement was further relied on as it stipulated that new rates would apply to all companies seeking interconnection. The court found that Versatel had been affected by the decision of the Minister, albeit not directly, since the company could stage its own interconnection dispute. The applicant was therefore not bound by the outcome of the previous dispute, which applied to no one other than the parties involved.

Some applicants have nevertheless been successful in initiating proceedings in this kind of cases. Thus the court decided that a patient’s interests were directly affected when the Health Secretary revoked the licence of his GP.

The following cases illustrate these principles:

68. 97/53/EC.
70. President of the Judicial Division of the Council of State, 29 June 1982, Ten Berge/Stroink, Administratieve rechtspraak overheidsbeschikkingen (Judicial Review of Administrative Decisions Reports), IV, 81.
organising the Paralympics in the Netherlands, under the condition that no South African teams would be allowed to contend. The decision was contested by the South African organisation of physically challenged athletes. The court considered that the organisation had standing since the absence of its members was a prerequisite for the government grant.\(^{71}\) The court adopted a similar approach when the Royal Dutch Academy of Sciences dismissed one of its employees. The Home Secretary had decided to grant the former employee an allowance. This decision was challenged by the Royal Academy. It claimed it had standing since it would have to bear the costs of the allowance. The court acknowledged standing because the decision to grant the allowance had a direct impact on the financial position of the Academy.\(^{72}\)

Sometimes the applicant rather than the addressee is the true beneficiary of the decision. Thus a municipality had applied for a subsidy from the European Social Fund on behalf of a local corporation. A subsidy was indeed granted, but not to the amount requested. When the decision was subsequently challenged by the corporation, the court found that it lacked standing. Although the corporation was the beneficiary of the subsidy, the application had been made by the municipality. The fact that the corporation had done most of the paperwork and the municipality did not intend to initiate proceedings itself were deemed irrelevant.\(^{73}\) In another case the court proved willing to distinguish between fact and fiction. A school board had applied to the Schools Minister for an exemption of teaching requirements for one of its teachers. When the Minister refused, the teacher herself challenged the decision. The court pointed out that since the application had been made by the school board and since the refusal had been addressed to it, the applicant lacked standing in principle. However, the court found that the applicant had standing because it was established practice that rejections of this kind of requests were directed to the schools, whilst decisions to grant such requests were addressed to the teachers themselves. Furthermore, teachers could still rely on an exemption if they accepted a position at another school.\(^{74}\)

Sometimes the applicant is affected through its contractual relation with the person to whom the decision is addressed. Courts are unwilling to grant them standing, as the following cases demonstrate. The minister had frozen recruitment of staff at an institution. This decision was challenged by the applicant, who was about to enter its service. The court was of the view that he lacked standing since he experienced the consequences of the decision only as a result of his contractual relationship with the institution.\(^{75}\) A hospital board had requested a license from the

---

Health Secretary to perform a type of treatment on patients with heart disease. The Secretary’s refusal to grant the license was challenged by a partnership of cardiologists working in the hospital. The court found that, although the decision affected the interests of the partnership, it did not do so directly. The consequences of the decision were the result of the legal relation between the hospital and the partnership. Therefore they could only claim to have a subsidiary interest.\textsuperscript{76} A contractor had sold several houses. Under the purchase agreement the owners would apply for a subsidy from the Housing Minister. The contractor would act as a guarantor, making up the difference if the application would be rejected. The Minister initially granted the subsidies but subsequently withdrew them. The latter decision was then challenged by the contractor. According to the court, the contractor’s liability resulted from the agreement rather than the Minister’s decision. He could not therefore be considered to be directly affected.\textsuperscript{77} The Health Secretary had granted a temporary license to a clinic to perform DNA-research. In order to fulfil the conditions laid down in the license the clinic was forced to break off the existing co-operation with three medical corporations. These corporations challenged the condition attached to the license which had been given to the clinic. According to the court, the interests of the corporations had not been directly affected by the decision. The adverse consequences were the result of the legal relation existing between the corporations and the clinic rather than the decision itself. The applicants therefore had only a subsidiary interest.\textsuperscript{78} The board of burgomaster and aldermen had granted a license under the Monument Act to the owner of a building for refurbishment and partial demolition. This decision was challenged by the tenant. The court acknowledged that by the grant of the license the interests of the tenant were affected but not directly. The decision only affected the applicant through its relation with the owner.\textsuperscript{79} The Health Secretary had decided to no longer subsidise a health corporation. The corporation thereupon requested the Secretary a once-only grant to cover a redundancy scheme for its employees. The denial of the request was challenged by an employee of the corporation. The court pointed out that generally the employees of a subsidised organisation do not have standing to challenge a decision regarding their employer. Their interest is subsidiary rather than direct. The court did not, however, shut the door completely. It pointed out that in very special circumstances the interests of the employees may be considered directly affected by the decision on subsidy, the contractual relation notwithstanding.\textsuperscript{80}

4.1.6 A zone of interest requirement?

\textsuperscript{78} Administrative Judiciary Division of the Council of State, 10 July 1997, Administratiefrechtelijke Beslissingen (Administrative Decisions Reports) 1998, 88.
\textsuperscript{79} President of the Rotterdam District Court, 10 June 1999, Awb-katerm (GALA quire) 1999, 52.
\textsuperscript{80} President of the Rotterdam District Court, 23 April 1999, Jurisprudentie Bestuursrecht (Administrative Law Reports) 1999, 130.
The courts have repeatedly denied the existence of a zone of interest test, i.e. the requirement that the applicant must be within the zone of interest protected by the statute in question.

This line was adopted in the case of the dismissal, by the Royal Dutch Academy of Sciences, of one of its employees, which was already mentioned in section 4.1.5. The Home Secretary contested the Royal Academy’s standing on the ground that the interests it sought to safeguard did not belong to the interests that had to be taken into consideration when making the decision. The court found this element to be irrelevant for the question of standing.\textsuperscript{81} The appeals court took the same position in the case regarding the license for the pontoon bridge discussed in section 4.1.1.1. The court below had found that the applicant, the company which was already operating a ferry service, lacked standing since its interests were too far removed from the activities made possible by the license. The court of appeal disagreed.\textsuperscript{82} A further illustration occurred when the board of burgomaster and aldermen had approved a plan of a private individual to establish a petrol station within the village, as required by the Conservation Act. Several individuals and companies who were already operating petrol stations in the community objected to this approval. The board of burgomaster and aldermen argued that the applicants lacked standing, since the interests they claimed would be affected by the approval were not protected by the Conservation Act. The court disagreed. In its view, the question whether the interests the applicants would like to see protected belong to those which should be taken into account during the preparation of the decision, should not play a part when determining standing. Since all the applicants were competitors of the proposed petrol station, they had standing.\textsuperscript{83}

Despite of these denials, however, some courts have openly applied a zone of interest test, as the following examples show. In a notorious case, the board of burgomaster and aldermen had granted exemption from the building regulations for the construction of a supermarket. Local shopkeepers challenged the decision because they feared loss of income. The board argued that the economic interests invoked by the applicants should play no part in reviewing the decision. The court disagreed. It pointed out that the applicants had not claimed the interests affected by the decision belonged to those which the provisions from which exemption had been granted aimed to protect.\textsuperscript{84} In another case the applicants objected to the decision of the authority determining the timetables for public transport in the area. Since the new schedule created an extra bus service on Saturdays which would make use of the road on which their houses bordered, they claimed they would suffer additional noise pollution as a result. The court, however, found that the applicants lacked

---

84. President of the Judicial Division of the Council of State, 29 December 1982, Gemeenstem (Municipal Voice) 6755, 10.
standing because the interests they claimed were not related to the schedule itself. The final example is the case mentioned in section 4.1.5 concerning the license under the Monument Act, which enabled the owner to refurbish the building and to partially demolish it. The court found that the interest claimed by the applicant, a tenant, was not an interest the Monument Act purported to protect.

It appears that there is as much confusion on the existence of a zone of interest test as there is in the U.S.

4.2 Organisations

4.2.1 Standing under private law

Although Dutch legislation had already recognised the standing of public interest organisations in certain areas, the breakthrough came in 1986 when the Supreme Court handed down its judgment in De Nieuwe Meer. The dredge from the Amsterdam canals used to be dumped in a nearby lake called Nieuwe Meer. When certain environmental organisations found out that Amsterdam City Council acted without the proper license under the Pollution of Surface Waters Act, they sought an injunction enjoining the dumping to be halted until a license was obtained. The Court of Appeal pointed out that, according to their articles of association, the organisations had been established in order to pursue conservation issues. However, since they had failed to claim that their own actual interests had been affected, the organisations lacked standing. The Supreme Court disagreed. It acknowledged that the object and purpose of a corporation does not in itself authorise it to initiate proceedings if the interests it seeks to protect have been affected. However, exceptions to this rule were conceivable as indeed in the present case.

First of all, in environmental cases the collective interests of large numbers of people are usually involved, whilst the consequences of possible harm to these interests for each and everyone of them are hard to predict. By initiating court action, corporations in fact join these collective interests, thereby establishing an effective remedy which would otherwise be lacking. In addition, the issuing of licenses under the Pollution of Surface Waters Act may be challenged by anyone, while the interest for the promotion of which the corporations have been established should be deemed to be their own interests. Since corporations are fully capable of challenging the issuing of a license in administrative law, it would be inconsistent not to allow them to seek an injunction preventing activities to be performed without a license, which might affect the interests covered by their object and purpose. Under these circumstances the court did not find it necessary to lay down additional standing requirements, such as concerning their representativeness or their actual activities.

86. President of the Rotterdam District Court, 10 June 1999, Awb-katern (GALA quire) 1999, 52.
The judgement has been confirmed by subsequent case law. In 1994 Parliament enacted a new provision of the Civil Code putting this case law on a statutory footing. According to Section 3:305a, a corporation may initiate court proceedings in order to protect the interests of others in so far as promoting those interests has been laid down in its articles of association. The fact that the interests are mentioned in the articles of association will not be enough, the corporation will have to show that it seeks to promote them through its actual activities. Full legal capacity is also a requirement. Before the corporation can initiate court proceedings, it should make an effort to achieve the desired result by conferring with its opponent. If it has failed to do so, its action will not be accepted. The corporation may either seek an injunction or a declaration, but it may not claim damages.

These rather relaxed standing rules have not always been applied to the benefit of organisations. In a recent case several environmental organisations sought a declaration that an order in council, which had just entered into effect, was unlawful. The applicant organisations claimed that the effects of the order, which laid down requirements concerning market-gardening, would harm the environment. In determining the standing of the organisations, the The Hague district court relied on De Nieuwe Meer rather than Section 3:305a of the Civil Code. It emphasised that the object and purpose of an organisation does not in itself authorise it to initiate court proceedings if the interests it purports to promote have been affected, but noted that exceptions to this rule are conceivable. The court pointed out that in De Nieuwe Meer and subsequent cases organisations had taken action because actual harm to the environment was imminent. It considered that such imminent harm was absent in the case at hand. According to the court, the organisations intended to let the judge review the order after it had been extensively debated in Parliament. It held that this is not the purpose of tort proceedings. According to the court there were no actual individual interests which might have been joined but only a general environmental interest not belonging to the interests which Article 6:162 of Book 6 of the Civil Code - the tort provision - aims to protect. This judgment has, however, been overruled by the The Hague Court of Appeal.

4.2.2 Standing under administrative law

Both under GALA and its predecessor, organisations championing the public interest are considered to have standing. According to Article 1:2 (3) GALA, the interests of corporations are deemed to include the general and collective interests which they specially represent in accordance with their objects and as evidenced by their actual activities. An interest is deemed collective if it can be considered

---

separately from that of its members and if it is of a *supra-individual* nature.\(^9^2\) Standing is not reserved only for organisations having legal capacity, the explanatory memorandum to GALA makes clear that the legislature had also other entities in mind.\(^9^3\)

It is not entirely clear whether the organisation, in order to have standing, should already exist when the decision is taken. In a 1996 case the court found that pre-existence is not required. The board of burgomaster and aldermen had given permission to a home owner to change the purpose of his building. This decision was challenged by a residents association which had been established after the decision had been taken. The court nevertheless found that the association had standing. According to the court, it is not a requirement under GALA that the interest predates the taking of the decision. No distinction should be made between individuals and organisations in this respect.\(^9^4\) In a 1998 case, however, the court came to the opposite conclusion. The owner of an apartment complex had obtained a demolition order. A neighbourhood committee challenging the order was not considered to have standing, since it had only been established after the decision had been taken and its interest could not therefore deemed to have been affected.\(^9^5\)

One would expect the same standing requirements applicable to individuals to be employed with regard to organisations. The law reports contain some indications that this is indeed the case. Thus, in the following cases courts have emphasised that for it to have standing the organisation’s purpose should be directly affected. The Transport Secretary had increased the bus fares in a certain area. This decision was challenged by the Union of the Unemployed which promoted an improvement in the living conditions of the unemployed and those relying on benefits. The court found that, in view of the object and purpose of the organisation, it should not be allowed to contest measures that cause an increase in the burden of the general public. Since the increase in the bus fares did not specifically concern the group mentioned in its object and purpose, the organisation could not be considered to be directly affected by the measure.\(^9^6\) In the Paralympics case, discussed in section 4.1.5, the decision had been challenged by various organisations aiming to eliminate misunderstandings in Dutch-South African relations. The court denied them standing. Although this particular public interest was deemed to be affected by the decision, the pursuance of which was covered both by their stated aim and the object of their activities, as non-sports organisations they were nevertheless not considered

---


95. President of the Judicial Division of the Council of State, 30 August 1988, Gemeentestem (Municipal Voice) 6895, 12.

96. President of the Judicial Division of the Council of State, 10 January 1986, Administratiefrechtelijke Beslissingen (Administrative Decisions Reports) 1987, 570.
to be directly affected. The Transport Secretary had approved the schedules for public transport in one of the provinces, resulting in the discontinuation of three bus services. An organisation championing conservation of the environment in the region challenged this decision, claiming that it would force commuters to resort to their cars which would in turn have a negative impact on the environment. The court found that the organisation's interests were only indirectly affected by the decision. If the case would have been brought by an organisation promoting the interests of passengers using public transport, the outcome would have been different.

In one case the court has emphasised that there should be a causal link between the decision and the interest claimed. An association promoting sensible ways to generate, save and use energy challenged the decision of the states deputies to give permission to the board of burgomaster and aldermen to issue a license to construct a storage facility for nuclear waste from a local nuclear plant. The association claimed to be directly affected since building the storage would safeguard the continued operation of the plant, which was an undesirable way of generating power. The court found that the association did not so much object to giving the permission as to the use of nuclear energy. They therefore lacked standing.

The standard applied by the courts in the cases discussed above does not, however, come anywhere near the test used by the US Supreme Court in *Sierra Club v. Morton*. There the Supreme Court pointed out that organisations are not exempt from the requirement that the party seeking review must himself have suffered an injury. A mere interest in a problem is not sufficient by itself to establish standing. Since the Sierra Club had failed to allege that it or its members would be affected in any of their activities by the decision, they lacked standing.

As a consequence, organisations have sometimes succeed where individuals failed. In the Paralympics case, described in section 4.1.5, the decision that no teams from South Africa would be allowed to compete was contested by the South African organisation of physically challenged athletes and some individuals who had been selected to contend. The court considered that the organisation had standing since the absence of its members was a prerequisite for the government grant. However, the court found that the individual athletes lacked standing. The court did not give reasons for this difference in treatment. It observed that the athletes had only been officially notified about their selection after the subsidy decision had already been taken, but since their organisation had already informally filled them in on this before the decision was taken this seems irrelevant. In a remarkable case the Environment Secretary had approved the decision taken by the board of burgomaster and aldermen to exempt a proposed road from application of the rules setting a

---

100. 405 U.S. 727, 31 L.Ed.2d 636 (1972), at 645.
maximum sound-level. This meant that future residents living in the vicinity of the road would have to endure more traffic noise than would normally be the case. Those who had bought the neighbouring sites to build houses challenged this exemption. The court, however, felt that they lacked standing. No direct interest of theirs was affected in view of the fact that the houses had still to be built and the noise pollution would occur in the future. A public interest organisation, on the other hand, was considered to have standing.102

Although Dutch courts do not require organisations to be personally affected in a *Sierra* sense, they do face other hurdles.

In one case the court expressed the view that the organisation's object and purpose did not extend to challenging the decision. The states deputies had authorised the board of burgomaster and aldermen to grant planning permission for constructing a landing stage. The decision was challenged by an organisation set up to co-ordinate and stimulate the activities of environmental organisations in the province in order to influence the conduct of private individuals and governmental institutions in the area. The court found that challenging the decision was not covered by the organisation's stated aim.103

There are some examples of cases in which the object and purpose was deemed not specific enough. The board of burgomaster and aldermen had granted a license to an individual to cut some trees. This decision was challenged by an association aimed at keeping the Netherlands habitable. The court found that the interest of the association was not specific enough for it to be directly affected by the decision.104

The Culture Secretary had decided to give a grant to Dutch national television to enable it to take part in a European broadcasting project. This decision was challenged by a foundation aimed at promoting a just and rational media policy and preventing violations of the statutory instruments relating to the media. The court considered that the mere fact that a decision affected an interest covered by this very broad object and purpose did not give the foundation standing.105 The board of burgomaster and aldermen had given planning permission for the construction of a crematorium. Several organisations promoting the interests of farmers objected to this decision, since constructing the crematorium would diminish the amount of arable land in the area. The court found the object and purpose of the organisations to be so general that they could not be deemed to be directly affected by the decision.106

When a decision is deemed to affect the interest of the organisation's members rather than its collective interest, the organisation will lack standing. This approach proved to be a stumbling block in the following cases. The board of burgomaster and aldermen had given an organisation permission to change the purpose of its building. A residents' association objected to this decision. The court expressed the view that some members of the association living in the vicinity of the building could validly claim to have standing. The court emphasised that the interests of an organisation cannot be considered to be affected if one or more of its members suffer adverse consequences from a decision. Since the organisation had also not been authorised by its members to act on their behalf, it lacked standing.107 When the Christian Farmers Association objected to a plan involving the reconstruction of an embankment because it would result in a loss of arable land for some of its members, the court found that it lacked standing. The object and purpose of the organisation was to promote the social and economic interests of its members. The court found that although the plan might affect some of its members, it would not concern the organisation.108 The board of burgomaster and aldermen had given permission for the construction of a tennis hall. An association of proprietors of existing tennis halls objected to this decision. The court pointed out that although the organisation was aimed at co-operation between the owners of tennis halls, the decision would affect the interests of some owners in the vicinity rather than the interest of the organisation itself. The interests of some individual members did not amount to the same thing as the collective interest promoted by the organisation.109 The Culture Secretary had discontinued the subsidy given to a theatre company. This decision was challenged by the Association of Theatre Companies. The court found that even though the association was aimed at promoting the interests of its individual members, it had no standing to contest a decision directly affecting one of them.110

Determining whether a decision affects the interests of the individual members or the collective interest of the organisation remains a question of degree as the following examples demonstrate. When the council decided to relocate the local market, several stallholders and their national association objected. The court acknowledged that the object and purpose of the association was to promote the interests of market vendors, but it expressed doubt as to whether the association's interest was affected since the decision only concerned a small number of stallholders. It decided to give the association the benefit of the doubt since the court action had also been initiated by individual stallholders and would therefore go ahead anyway.111 The board of burgomaster and aldermen had given permission to a company to use a building for selling furniture. The local chamber of commerce

111. President of the Haarlem District Court, 7 April 1994, Awb-katern (GALA quire) 1995, 10.
challenged this decision. The board expressed the view that it lacked standing, as only the individual members affected by its decision should be allowed to bring proceedings. The court disagreed. Under their statutory object and purpose chambers of commerce promote the interests of commerce and industry in their area. The decision therefore affected the supra-individual interests of the applicant organisation. The board of burgomaster and aldermen had decided to allocate market stands on the basis of seniority. This decision was challenged by the local Market Association. The board questioned the standing of the association but the court found that it was allowed to initiate proceedings in view of its broad object and purpose. The Street Traders Association had requested the board of burgomaster and aldermen to take action against illegal market trading taking place in the town on Sundays, but the board refused to do so. The association challenged this decision, claiming that these illegal activities harmed the interests of law-abiding market traders. The court acknowledged that the association promoted the protection of the interests of market traders. According to the court, seeking observance of the rules relating to market trade was covered by the organisation’s object and purpose. The court therefore considered the association to be directly affected by the refusal.

4.3 Political officers

An administrative authority has standing under Article 1:2(2) GALA when a decision taken by another authority directly affects the interests entrusted to it. An interest has been entrusted to an authority if it has been delegated to it by legislation or transferred to it by another body. This standing-concept is rather restrictive, it does not allow the authority to act as some kind of Attorney-General, as the following cases show. The board of burgomaster and aldermen had granted an exemption from planning regulations, allowing retail trade in an area originally reserved to wholesale business. The states deputies of the province concerned were displeased about this decision and challenged it in court. The court acknowledged that the planning legislation had entrusted many powers to the states deputies, but it emphasised that decisions about exemptions from regulations were the sole responsibility of the board of burgomaster and aldermen. According to the court, it would not do justice to the division of powers laid down in the legislation if the states deputies would have standing to challenge decisions they were not allowed to take themselves. The board of burgomaster and aldermen challenged the permission given in the neighbouring town to erect a billboard. The board had

decided to take court action because the billboard would spoil the view of the inhabitants living close to the border with the neighbouring town. The court decided that the board lacked standing since taking action to protect the interests of its inhabitants did not belong to the interests entrusted to it.\textsuperscript{116}

Under GALA, a political party may not seek to protect collective interests owing to the word \textit{specially} in Section 1:2 (3) GALA.\textsuperscript{117} The law reports contain the following decisions in which standing was denied to political parties. The constituency party challenged a building permit granted by the states deputies to the board of burgomaster and aldermen. The court considered that its aim of promoting the general interest did not provide it with standing.\textsuperscript{118} The authorities had given permission to a company to start a quarry. This decision was challenged by the local branch of a political party. The court pointed out that the aim of a political party is to pursue the general interest in the broadest sense of the word. This does not mean that decisions which are not compatible with its view on the public interest affect them directly.\textsuperscript{119} A local political party objected to the issuing of a demolition permit by the board of burgomaster and aldermen. The party claimed the decision contravened its views on desirable housing policy for the community. The court considered that the party's object and purpose was to promote the general interest. This meant it could not claim to be directly affected by a decision which it held contrary to the views as expressed to further this aim.\textsuperscript{120} A local branch of a political party had challenged the decision of the states deputies to grant a license for the establishment of a crematorium in the village. The court found that the party's object and purpose was too general for it to be directly affected by the decision.\textsuperscript{121}

Members of representative bodies who disagree with decisions taken do not have standing to continue their battle in court, as the following cases demonstrate. The states deputies had approved a budget amendment adopted by the local council. The applicants, who were council members, challenged the approval. The court found that their council member status did not provide them with standing.\textsuperscript{122} The council had decided to establish a caravan camp. One of the members of the council, who had voted against the proposal, decided to challenge it in court. The court pointed out that the applicant could not be considered directly affected by an

\begin{footnotesize}
\begin{itemize}
\item 118. President of the Judicial Division of the Council of State, 17 February 1978, Administratiefrechtelijke Beslissingen (Administrative Decisions Reports) 1978, 401.
\item 120. President of the Judicial Division of the Council of State, 31 October 1977, Administratiefrechtelijke Beslissingen (Administrative Decisions Reports) 1978, 88.
\item 122. President of the Judicial Division of the Council of State, 22 February 1979, Ten Berge/Stronk, Administratieve rechtspraak overheidsbeschikkingen (Judicial Review of Administrative Decisions Reports) 1979, 26.
\end{itemize}
\end{footnotesize}
unwelcome decision taken by the body of which he was a member.\textsuperscript{123} The approach taken by Dutch courts is reminiscent of the one adopted by the US Supreme Court in \textit{Raines v. Byrd}.\textsuperscript{124} On the other hand, when a council member challenged the decision of the council to admit some newly elected members claiming that they did not fulfil the necessary requirements, the court found that he had standing in his capacity as a council member.\textsuperscript{125}

5 Mootness and ripeness

Although mootness and ripeness are not treated as distinct categories in Dutch literature, for the sake of clarity this report will deal with them separately.

The case will be declared moot if the controversy has ceased to exist. This was made clear by the court in a case concerning a student who had been given an extra assignment for failing to turn up at some tutorials. He contested this decision. When the case came to court it emerged that in the meantime he had fulfilled the assignment. The applicant argued that the case was not moot because the court should pronounce itself on the relationship between the tutorials and the final exam. The court was not prepared to do so, pointing out that the applicant could no longer claim an interest in a judgment by the court. It indicated that a judge should only deal with a matter if there is a controversy about a decision of an authority. If such a controversy no longer exists, one cannot require the judge to rule on a case simply to resolve some of the underlying questions of principle.\textsuperscript{126} Courts took a similar position in the following cases. An applicant had failed an exam and subsequently contested the result. When the case came to court, the applicant had passed the exam at her second attempt. She argued that the case was not moot because she had suffered damages as a result of her being forced to take three days off in order to prepare for the second attempt. The court found the case to be moot regardless.\textsuperscript{127}

The applicant, a health corporation, had applied with the Health Minister for permission to buy some real estate. The Minister granted permission under certain conditions. Before the purchase took place, the property changed into the hands of a new owner. Since the health corporation intended to do business with the new owner, the Health Minister maintained the permission whilst changing the conditions. When the health corporation decided to contest the first set of conditions, the court found the case to be moot because no purchase agreement had been

\begin{itemize}
\item \textsuperscript{123} Judicial Division of the Council of State, 5 March 1981, Gemeentestem (Municipal Voice) 6684, 2.
\item \textsuperscript{124} 521 U.S. 811, 138 L.Ed.2d 849 (1997).
\item \textsuperscript{125} President of the Judicial Division of the Council of State, 17 April 1986, Ten Berge/Stronk, Administratieve rechtspraak overheidsbeschikkingen (Judicial Review of Administrative Decisions Reports) 1986, 80; Judicial Division of the Council of State, 29 April 1986, Ten Berge/Stronk, Administratieve rechtspraak overheidsbeschikkingen (Judicial Review of Administrative Decisions Reports) 1986, 91.
\item \textsuperscript{126} Administrative Judiciary Division of the Council of State, 25 January 1996, Administratiefrechtelijke Beslissingen (Administrative Decisions Reports) 1996, 284.
\item \textsuperscript{127} Industrial Appeals Board, 24 June 1997, Uitspraken College van Beroep (Industrial Appeals Board Reports) 1997, 56.
\end{itemize}
concluded.  

In one case the appeals court was willing to deal with the matter, although the court below had decided that the controversy had ceased to exist. A fish seller had applied for a stall at the local market. When the board of burgomaster and aldermen granted a license for three months, the fish seller initiated court proceedings. He objected to the time-limit by pointing out such licences were usually issued for a one-year period. The board defended its action by stating that before granting a license for a longer period, it would need to conduct an investigation into its consequences for a local fish shop. When the case reached the court of first instance, it expressed the view that it was moot. The license had already expired, but the board had assured the fish seller that his presence at the market would be tolerated until the findings of the investigation would be available. The appeals court disagreed. It pointed out that having a license would provide the fish seller with a much stronger legal position than when he was merely being tolerated. According to the court of appeal there was, therefore, a live controversy.  

Some applicants have insisted on pursuing their actions in order to recover the costs. Courts have proved unwilling to allow them to do so, as the following examples show. The board of burgomaster and aldermen had decided to discontinue the applicant's welfare benefits. The applicant challenged this decision but prior to the court hearing the payments were resumed. The applicant insisted on pursuing his case because a favourable judgment would enable him to recover costs and legal dues. The court pointed out that it is able to find for the applicant as far as costs and dues are concerned without finding for him on the merits under GALA. His financial interests therefore did not justify continuation of the case. This would only be different if the applicant intended to recover damages. Since a controversy no longer existed, the applicant lacked standing. The National Social Security Institute had refused the applicant an industrial insurance benefit. The applicant challenged this decision but before the case went to trial the Institute granted the benefit concerned after reconsidering its decision. The applicant was intent on pursuing his claim, since he felt that costs should be awarded to him. Referring to the case mentioned above, the court expressed the view that a judge is only called upon to decide a case if a controversy exists about a decision of an authority. Since the Institute had admitted that its first decision had been incorrect, no such controversy existed. The interest of having on one's costs reimbursed is not enough to justify continuation of the proceedings.  

In spite of this case law, a change of circumstances does not result automatically in a loss of standing. The applicant had sold her property after having objected to the planning permission given to her next door neighbour to extend his

garage. The case was not deemed moot because the applicant had owned the property at the time the decision had been made.  

The courts will not allow actions they consider to be premature, as the following cases illustrate. The states deputies had given permission to the board of burgomaster and aldermen to allow the construction of 70 service-apartments meant for the elderly. The administrators of a nearby estate objected to this decision. They pointed out that the building project would exhaust the last remaining building ground within the municipality, so that it was inevitable that for future projects a claim would be laid on the land belonging to the estate. The court found that since the applicants objected to indeterminable developments that might or might not take place in the future, they were not directly affected by the decision. In the case concerning the traffic noise on a projected road, discussed in section 4.2.2, the court found that those who had bought the neighbouring sites lacked standing since the noise pollution would only occur in the future. The states deputies had authorised the board of burgomaster and aldermen to give building permission for the construction of a bridge. The applicants claimed that the new bridge would increase the amount of traffic in their village. The court denied them standing because they relied on possible future events which might or might not cause them prejudice. The board of burgomaster and aldermen had given permission to a supermarket to expand and renovate its premises. This decision was challenged by a competitor doing business in the same area. The court found the challenge premature. In its view, it was not certain that expanding the supermarket would create excess capacity which would cause prejudice to the applicant. This had not even been claimed by the applicant. On the contrary, at an earlier occasion he had stated that some room existed for an expansion by the other supermarket.

As the case concerning the size of a GP's practice, which was discussed in section 4.1.1., shows, courts can be lenient as far as ripeness is concerned. As a result of her designation as an established GP, the GP was allowed to increase the size of her practice which was very small at the time the decision was taken. The other GP's in the area objected to this decision. The court found they had standing because the decision might have consequences between local GPs. The board had contested their standing, pointing to the fact that the new doctor had not yet increased the size of her practice. The court disagreed. The fact that the consequences had not yet materialised but might occur at a future date did not

132. Judicial Division of the Council of State, 25 May 1987, Gemeentestem (Municipal Voice) 6865, 11; similar questions were raised in an Australian case called Allan v. Development Allowance Authority [1999] FCA 426, which is now pending before the High Court.
136. President of the Assen District Court, 20 December 1994, Awb-katern (GALA quire) 1995, 89.
Sometimes applicants challenge the first step in a process that in the end will lead to undesirable consequences. Before these consequences will take effect further decisions are required. Such challenges have generally been considered premature. In the case concerning the subsidy to the youth club, discussed in section 4.1.2, the applicants challenged the decision because they feared that the club would expand its activities after the reconstruction. The court considered that the applicants did not so much object to the subsidy rather than its consequences. If the club should wish to expand its activities after the refurbishment of the building it would be needing additional licenses, the granting of which could then be challenged. The applicants therefore lacked standing.\textsuperscript{138} Also in section 4.1.2 a case was discussed concerning the declaration of necessity given under the Hospital Facilities Act to a hospital for its building plans. The court considered that, by issuing the declaration, the Health Secretary had only made clear that the building project would be in conformity with the planned hospital services in the region. The declaration did not entail that the project would be carried out, which depended on the building permission to be granted by the responsible authorities. The applicants could not therefore be considered to be directly affected by the declaration.\textsuperscript{139} In the case concerning the construction of the pontoon bridge, mentioned in section 4.1.1.1, the appeals court took a different view. Contrary to the court below, it did not attach importance to the fact that for the moment the license was confined to constructing the pontoon bridge and did not as yet extend to the operation of the ferry service because the license cleared the way for such a service.\textsuperscript{140}

6 Concluding remarks

Unlike in the US, in the Netherlands there has not been any discussion on the rationale for standing rules. Standing requirements are considered to be of a technical nature and are not usually linked to the concept of separation of powers. Dutch courts apply the same standing rules in constitutional and non-constitutional cases.

An applicant will only be considered to have standing if he is personally affected by the decision at issue. This is the case if the applicant lives or works in the vicinity of the site to which the decision applies. If the applicant lives or works at some distance from the site, he may nevertheless have standing because of the impact the use of the building will have. The competitors of the beneficiary of the decision are considered to be personally affected by it. Courts will only deal with

\textsuperscript{137} Judicial Division of the Council of State, 29 December 1987, Administratiefrechtelijke Beslissingen (Administrative Decisions Reports) 1988, 400.


cases in which the interest claimed is objective, *i.e.* they will not consider emotional claims. According to Dutch case law, the word "directly" in Article 1:2 GALA emphasises the inextricable and direct link between the interest of the applicant and the challenged decision. An applicant will be considered to have standing only if the interference with his interest was caused by the conduct of the authority concerned. Furthermore, a court will only look into the case if a favourable court decision is likely to remedy the interference.

Since the applicant should be personally affected, he will lack standing if his concern is shared with the public at large. The requirement that the applicant should be personally affected by the decision precludes citizen’s and taxpayer’s actions. Individuals may not claim *supra-individual* interests as these are reserved exclusively for organisations. According to Article 1:2 GALA an "interested party" signifies the person whose interest is directly affected by an order. As a result, the applicant cannot present the claims of third parties who are not part of the lawsuit. Sometimes the applicant is affected through its contractual relation with the person to whom the decision is addressed, but courts are unwilling to grant standing in those cases. It appears that in the Netherlands there is as much confusion on the existence of a zone of interest test as there is in the U.S. In general the existence of such a test has been denied, but some courts have applied it anyway.

Both in private and public law, organisations championing the public interest are considered to have standing. In the area of administrative law a mere interest in a problem, backed by the organisation’s object and purpose, appears to be sufficient by itself to establish standing. However, when a decision is deemed to affect the interest of the organisation’s members rather than its collective interest, the organisation will lack standing. Members of representative bodies who disagree with decisions taken do not have standing to continue their battle in court.

A case will be declared moot if the controversy has ceased to exist. Courts will not tolerate actions which are pursued only in order to recover costs. The courts will also not allow actions they consider to be premature. Sometimes applicants challenge the first step in a process that in the end will lead to undesirable consequences. Before these consequences will take effect further decisions are required. Such applicants have generally been considered to lack standing.