

STAB, a government funded answer to technical questions from judges in environmental law



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The logo for the Raad van State, featuring the text "Raad van State" in a white serif font on a dark blue background with a subtle dot pattern.

Raad
van State

The Council of State of the Netherlands

Two primary tasks, carried out by two separate divisions.

- The **Advisory Division** advises the government and Parliament on legislation and governance;
- The **Administrative Jurisdiction Division** is the country's highest general administrative court.

The Council of State

The **Administrative Jurisdiction Division** is the court of sole and last instance in cases concerning spatial planning and in several specific environmental cases. It also hears appeals from judgments given by the district courts in cases concerning such legislation as Environmental Permitting (General Provisions) Act.

The Division is divided in several chambers.

The Council of State

Environmental issues are addressed in two of the three chambers:

- **Spatial Planning Chamber** - Cases under the Spatial Planning Act, Underwater Excavation Act, Transport Infrastructure (Planning Procedures) Act, Noise Abatement Act, Aviation Act, Nature Conservancy Act, etc.
- **General Chamber** - Cases under the Environmental Permitting (General Provisions) Act, Water Act, Soil Protection Act, Government Information (Public Access) Act, etc.

The Council of State

Project of combining chambers to new **Environmental and Planning chamber.**

Reason: new **Environmental and Planning Act** (Omgevingswet, Ow). This act will replace 26 acts dealing with different aspects of the environment, such as water, nature protection, environmental protection and planning. The Ow is expected to come into force in 2021 or 2022.



The Council of State; organizing technical knowledge

Effective judicial protection in environmental law cases

- requires that the courts be able to at least understand complex technical issues like standards of Best Available Techniques for installations or the effect of proposed measures in a plan according to the desired air quality limits.
- the more intensely the courts review the facts and the technical assessments made by the administration, the more the courts need assistance in order to be able to understand those very facts and assessments.

The Council of State

Which requirements are needed? (1)

- There is no explicit reference in either international or in EU law concerning the requirements with regard to the scientific knowledge of the judge in environmental matters.
- However, such requirements could perhaps be read into Article 9(2) Aarhus Convention that provides for the possibility of a review of substantive and procedural legality , as well as into the requirement of effective judicial protection in EU law.

The Council of State

Which requirements are needed? (2)

- The CJEU has stressed that national courts have to be able to assess all aspects of the legality of the technical assessment on which a challenged decision was based.
(Case C-72/12 (ECLI:EU:C:2013:712) and case C-137/14 (ECLI:EU:C:2015:683))
- Organizing the technical knowledge of the courts is done very differently throughout the EU and beyond. The question whether there are similarities, best practices and whether mutual learning from different approaches would be possible has not yet attracted much attention in legal scholarship.

The Council of State

How it is organized in the Netherlands? (1)

The technical knowledge needed by judges to decide cases in the area of environmental and planning law is in the Netherlands organized in an atypical way. A special institution, the **Stichting Advisering Bestuursrechtspraak voor Milieu en Ruimtelijke Ordening**, in short and hereafter: **STAB** (the Foundation of Independent Court Experts in Environmental and Planning Law) exists for the sole purpose of supplying the technical expertise needed by administrative judges to thoroughly scrutinize environmental and planning law cases submitted to them.

The Council of State

How it is organized in the Netherlands? (2)

It is an independent and impartial institution which is mainly financed by the Dutch Ministry of Infrastructure and Water Management (Ministerie van Infrastructuur en Waterstaat). The legal basis for the STAB is now laid down in the three main acts dealing with environmental and planning law. In the future, its legal basis is expected to be found in Article 17.10 of the Environmental and Planning Act (Omgevingswet, Ow).

The Council of State

Procedure (1)

Decision to engage STAB at the Council of State in 3 to 5 % of the cases:

- in instructional phase;
- following preliminary investigation;
- following hearing session at the council/deliberation in the council chamber

Questions asked are sometimes general (provide a general overview of the facts of this case) and sometimes specific (are the input-data for the noise-survey in this case correct?)

Drafting a STAB-report may take up to three months or two months if the Crisis and Recovery Act (Crisis-en herstelwet) applies to the case.

The Council of State

Procedure (2)

The Council handles the sending of the concept-report of the STAB to parties and gives them the opportunity to submit views for two weeks (exceptions in cases under the Crisis and Recovery Act). The views are then sent to the STAB which gets two weeks to respond.

The STAB-advisors can be invited to the hearing itself, where the Council-judges can decide which questions are asked.

The Council uses a Process Regulation and a Code of Conduct.

The Council of State

Added value

- Good quality reports, useful for good judiciary
- Impartiality assured and admitted
- More efficient proceedings esp. in complex cases: the reports help structure the cases
- Time saving (no need to search for a suitable expert)
- STAB can bridge technical knowledge and demands of proceedings
- STAB knows legal framework of technical questions

The Council of State

Added value:

- Contributes extensively to the equality of arms
- Can settle a battle of experts

Questions:

- Parties have limited influence on the questions asked
- Not in all cases the opportunity is given to react on a draft-report

Some facts

- 40 experts
- financed by the government (budget app. 5.2 million €/year)
- 200 reports/year (70% courts/30% council of state)
- process time negotiable but 3 months is average

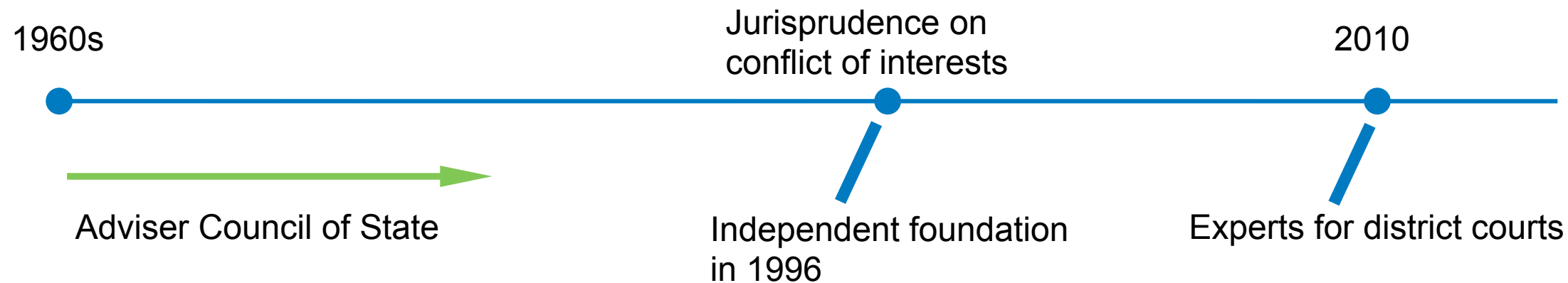
Independent and impartial

- Independence and impartiality is guaranteed by the law and the governmental funding: no need to work for parties
- Sole purpose of STAB is to supply the judiciary with the technical expertise in environmental and planning law cases

Areas of Expertise

Bats
Wind turbines
Hydromorphology
Foundations
External safety
Chemical industry
Trees
Acoustics
Cultural history
Fire protection
Vibration nuisance
Geodesy
Urban planning
Ammonia emissions
Nitrogen deposition
Traffic volumes
Dyke reinforcement
Immission test
Parking pressure
Aircleaning units
Habitat test
Radiation
Shadow/wind effects
Aquatic ecology
Land use
Taxation
Dangerous waste materials

Origin



We offer

General information on

- The legal framework; for example which regulation applies in this case
- Technical issues; describe the difference between a magnetic field zone for a new type of high voltage pole vs. the old type
- Technical-legal context; to what extent are the most recent environmental-technical insights processed in a policy line

Also

Case specific information

- To what findings does the appeal give cause?
- Does the planned waterpowerplant effect aquatic life and does that effect surpass the boundaries set by European law?
- Which of the four acoustic reports from the parties is correct on the effects of the intensified traffic movements due to a new highway?
- Describe the actual situation and the consequences of a new plan

Our approach

After arrival file folder(s) with court-question(s)

Intake; a thorough scan of

- Legal framework, clarity of question(s) and the professional grounds on appeal;
- Fields of expertise and number of experts needed;
- The feasible deadline.

Work starts with

Preparation

- Examining files
- Request additional info
- Make appointments for location visits and meetings

Visit on site

- Interview with all parties (license holder, local residents, administrative bodies and their representatives)
- Determine circumstances and facts to be observed

Deskresearch & writing

The expert's report

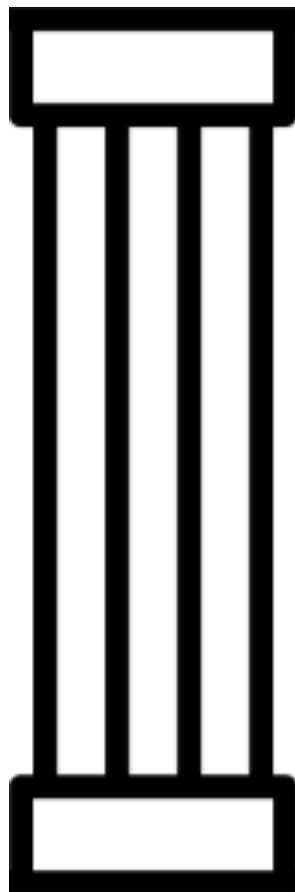
- Template for form
- Photos and additional documents (for better understanding of the arguments of the parties)
- Review by specialist(s) and second reader (quality assurance)
- Concept to parties / final draft to court

Depending on court

- Additional reporting based on reactions of parties (on hearing)
- Appearance at the hearing session

Quality Control

STAB Academy
&
Evaluation



Combinations of Experts



Peer review



Transparency

- Code of conduct
- Background experts is public (training, specialization, track knowledge)
- Full disclosure statement of expert(s) to court/parties
- Overview of additional functions of experts
- Regular internal audits (quality board)
- Registration in judicial experts register (LRGD/EEEEI)

Thank you for your attention

For more information please
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