Codification of administrative law in the Netherlands

Schuurmans, Y.E.; Barkhuysen, T.; Ouden, W. den; Uhlmann, F.

Codification of Administrative Law

A Comparative Study on the Sources of Administrative Law

Edited by
Felix Uhlmann

• HART •
OXFORD • LONDON • NEW YORK • NEW DELHI • SYDNEY

HART PUBLISHING

Bloomsbury Publishing Plc

Kemp House, Chawley Park, Cumnor Hill, Oxford, OX2 9PH, UK

1385 Broadway, New York, NY 10018, USA

29 Earlsfort Terrace, Dublin 2, Ireland

HART PUBLISHING, the Hart/Stag logo, BLOOMSBURY and the Diana logo are trademarks of Bloomsbury Publishing Plc

First published in Great Britain 2023

Open Access was funded by the Faculty of Law of the University of Zurich.

A catalogue record for this book is available from the British Library.

A catalogue record for this book is available from the Library of Congress.

Library of Congress Control Number: 2023932648

ISBN: HB: 978-1-50995-492-6
ePDF: 978-1-50995-494-0
ePub: 978-1-50995-493-3

Typeset by Compuscript Ltd, Shannon

To find out more about our authors and books visit www.hartpublishing.co.uk. Here you will find extracts, author information, details of forthcoming events and the option to sign up for our newsletters.

CONTENTS

8

Codification of Administrative Law in the Netherlands

YMRE E SCHUURMANS, TOM BARKHUYSEN AND WILLEMIEN DEN OUDEN*

I. The Definition and Delimitation of Administrative Law

The Netherlands has one of the most comprehensive codifications of general administrative law worldwide, in an Act that contains over 500 provisions. That is the Algemene wet bestuursrecht (Awb) (General Administrative Law Act (GALA)), which is partly available in English.[1] On the one hand, this results in a detailed codification of administrative duties and procedures; on the other hand, the limited scope of the Act still leaves large parts of administrative action uncodified. In this chapter we will describe the major topics of this book, but will emphasise the impact a comprehensive codification has on the development of administrative law. One of the effects of the extensiveness of the codification is that 'administrative law' and 'GALA' as concepts seem to coincide. For administrative law practitioners and scholars, it can be hard to see that there may be themes, public law values and legal solutions outside this codification. The GALA is administrative law and administrative law tends to be the GALA.[2]

* Parts of this chapter have been previously published in T Barkhuysen, W den Ouden and YE Schuurmans, 'The Law on Administrative Procedures in the Netherlands' (2012) *Netherlands Administrative Law Library*, DOI 10.5553/NALL/.000005 and in J-B Auby, *Droit Administratif* (Brussels, Bruylant, 2013) 253 ff.

[1] The English version of the Constitution of the Kingdom of the Netherlands can be found at www.rijksoverheid.nl. The GALA (translation in English) can be found on the websites of various public authorities with a partly international audience, such as the tax authorities (www.belastingdienst.nl). The version in English holds all stages, but is not totally up to date. All Dutch legislation and regulations can be found on the governmental website: wetten.overheid.nl. All parliamentary papers on the codification of the GALA be can accessed at: www.pgawb.nl.

[2] In this chapter we chose not to include detailed source references, because more detailed information is almost only available in Dutch-language publications. For general information on Dutch administrative law, we would like to refer to some renowned handbooks. Standard textbooks on Dutch administrative law and the law of administrative procedure include the following: HD van Wijk,

A. Administrative Law

Administrative law can be described as the law of, for and against the government in its relation to citizens. It derives from the law-making powers of democratic institutions, gives public bodies the instruments to shape and interfere in legal relationships, and gives those governed legal protection against these actions. Conceptually we define three functions of administrative law: a legitimising, an instrumental and a protective function. Besides this framing of the essence of administrative law, in the Netherlands there is not a strong dogmatic view or debate on what administrative law is. If a topic falls within the scope of the GALA, this topic will certainly receive full attention from administrative law scholars, practitioners and courts. Moreover, as we will describe later on, civil law is thought to be the general law to be applied; administrative law only applies if a statute so regulates. Administrative law is what the legislator wishes it to be, namely when it deems it necessary to attribute a public law power to the administration.

There are three key definitions in the GALA that denote the fundamental orientation of the Act: administrative authority, interested party and order. Article 1:1 GALA contains a definition of an administrative authority; subsequently, the GALA provides for general rules governing acts performed by administrative authorities. Most rules in the GALA relate to specific acts, namely *besluiten* (orders). Article 1:3 GALA includes a definition of an order: a written decision of an administrative authority constituting a public law juridical act. This provision determines to a great extent the scope of the rules of the GALA and the scope of Dutch administrative law in general. An appeal to the administrative law court lies only against orders of administrative authorities (Article 8:1 GALA). Appeals can be exclusively filed by 'interested parties', a concept defined in Article 1:2 GALA. Prior to the GALA, the right of appeal of interested parties was often restricted to *beschikkingen* (individual decisions). It was the legislator's intention that the GALA should broaden the scope of administrative law and that orders

W Konijnenbelt and RM van Male, *Hoofdstukken van bestuursrecht*, 16th edn (The Hague, Elsevier Juridisch, 2014); M Schreuder-Vlasblom, *Rechtsbescherming en bestuurlijke voorprocedure*, 6th edn (Deventer, Kluwer, 2017); RJN Schlössels and SE Zijlstra, *Bestuursrecht in de sociale rechtsstaat*, 6th edn (Deventer, Kluwer, 2010); AT Marseille and HD Tolsma et al, *Bestuursrecht: Dl. 2, Rechtsbescherming tegen de overheid*, *bestuursprocesrech*t, 7th edn (The Hague, Boom Legal Publishers, 2019); T Barkhuysen et al, *Bestuursrecht in het Awb-tijdperk*, 8th edn (Deventer, Kluwer, 2018); LJA Damen, *Bestuursrecht: Dl. 1, Systeem, bevoegdheid, bevoegdheidsuitoefening, handhaving*, 4th edn (The Hague, Boom Legal Publishers, 2013).

As for English-language and French-language literature, reference is made to the following works: PC Adriaanse, T Barkhuysen, W den Ouden and YE Schuurmans, 'Faciliter la mise en oeuvre de droit communautaire : l'exemple de droit administratif néerlandais' (2009) 129 *Revue Française d'Administration Publique* 131; LJ van den Herik, EH Hondius and WJM Voermans (eds), *Introduction to Dutch Law*, 6th edn (Alphen aan den Rijn, Kluwer Law International, 2022); JG Brouwer and AE Schilder, *A Survey of Dutch Administrative Law* (Nijmegen, Ars Aequi Libri, 1998).

Case law research can be conducted on www.rechtspraak.nl and www.raadvanstate.nl (public databases of the judiciary). Other helpful websites include www.verenigingbestuursrecht.nl (association for administrative law).

(including regulations, policy rules and plans) should be the central concept of administrative law. The Act provided that after five years, the exclusion of the right to appeal against rules would be abolished. However, after several years, the legislator feared mass litigation if such an appeal against rules existed and a distortion of the constitutional equilibrium, and maintained the exclusion (Article 8:3 GALA).[3] As a consequence, Dutch administrative law still focuses on the legal protection against individual decisions, like permits, benefits, administrative fines and revoking decisions. Executive action in general is a much broader concept and falls mostly outside the scope of the Act, and cannot be appealed in administrative law courts;[4] those who wish to litigate against these actions need to approach the civil courts and fall back on tort law.

B. Constitutional Law

While in various chapters in this volume, one can read that administrative law is concrete constitutional law,[5] this is not the case in the Netherlands. Even insofar as constitutional norms do underpin certain sections of the GALA, these cannot be invoked directly to ground a cause of action – in the Dutch context, judicial review of the constitutionality of legislation and treaties is prohibited.[6] This design of the legal system has resulted in a scholarly study of administrative law and constitutional law as two rather separated disciplines. Consequently, there are quite a few themes that might be considered part of administrative law in other legal systems, but that are regarded primarily as being of a constitutional nature in the Netherlands. These include the rules governing the election and appointment of specific officials and the organisation of referenda. In general, the rules concerning the structure and operation of administrative authorities are part of constitutional law, such as the voting system used within administrative authorities of municipalities, provinces and regional water authorities.

As the GALA relates mainly to orders, there is a clear difference between *constitutionally regulated* decision-making processes at the central government level, which result in primary legislation, 'general administrative orders' (comparable to 'orders in council' in the UK and 'executive orders' in the US) and ministerial regulations on the one hand, and *administrative* procedures on the other hand, which usually result in *beschikkingen* (personal decisions). The same difference

[3] Previously this exclusion was laid down in art 8:2 GALA.

[4] Just like the APA in the US, see in this book EL Rubin, 'The United States: Systematic But Incomplete Codification', section IV; only ch 2 and art 3:1(2) GALA do apply to executive action, but the impact of these general provisions is limited (and hardly litigated in costly civil law court procedures).

[5] See, eg, in this book M Heintzen, 'Codification of Administrative Law in Germany and the European Union', section I.B.i; and F Uhlmann, 'Codification of Administrative Law in Switzerland', section IV.B.

[6] Article 120 of the Dutch Constitution.

exists at the decentralised level, when it comes to the preparation of generally binding regulations by municipal and provincial councils, inter alia. The 'constitutional decision-making' is hardly governed by the GALA at all. For example, under Article 1:1(2)(a) GALA, the primary legislator is not regarded as an administrative authority and hence does not fall within the scope of the GALA. Under Article 8:3 GALA, no appeal lies to the administrative law court against rules and policy. The Dutch legal system is not familiar with a concept like the notice-and-comment rule-making procedure or with other modes of formal participation rights of citizens in rule-making. This might be a consequence of the pluralistic political party system and the traditional 'polder model' in the Netherlands.[7] The political system is based on consensus, which may be very hard to reach within coalitions and should not be too easily overturned by courts. That said, interested parties may appeal against their individual implementing decision and then claim that the decision is based on unlawful rules.

C. Civil Law

In addition, there are subjects that are associated with civil law rather than administrative law. Contrary to many other legal systems in the Netherlands, civil law is generally applied in contractual relationships involving public authorities. According to the most commonly accepted 'general doctrine', civil law is the 'general law'. Administrative law only governs relations between the government and citizens on a subsidiary basis, that is, if this is explicitly regulated by law. This 'general doctrine' also means that a public body is allowed to use private law instruments insofar as this does not interfere with its public powers.[8] Law on agreements, including rules on the formation and execution of contracts, is laid down in the Burgerlijk Wetboek (BW) (Civil Code). This code does not contain separate provisions on contracts with the government. However, the civil court may flesh out the open standards defined in the general rules by applying administrative law standards, such as the general principles of sound administration.

In general, the civil law courts fulfil a role as residual courts in disputes with the government. As long as a plaintiff puts forward a civil law-based claim, the civil courts accept competence to rule on the claim made. However, when an appeal within administrative courts has been open to the plaintiff, his or her claim will be

[7] eg, B van Klink and NT Arnoldussen, 'Dutch Legal Culture: Limits to the Soft Approach' in LJ van den Herik, EH Hondius and WJM Voermans (n 2) 13 ff.

[8] eg, L van den Berge, 'Rethinking the Public-Private Law Debate in the Age of Governmentality and Network Governance: An Analyses of French, English and Dutch Administrative Law' (2018) 5(2) *European Journal of Comparative Law and Governance* 119, 119 ff; FJ van Ommeren, 'Governance and the Public-Private Law Divide in the Netherlands' in ALB Colombi Ciacchi et al (eds), *Law and Governance: Beyond the Public-Private Law Divide?* (The Hague, Boom Legal Publishers, 2013).

deemed inadmissible within the civil law courts. As a result, civil law courts can rule on torts, on disputes about contracts and about regulations, and on disputes concerning deeds of fact.

II. Sources of Administrative Law in the Netherlands

A. The GALA

The source of administrative law is definitely the GALA, as it lays down a broad range of general rules, from the different forms of action, to the principles to be applied, to the forms of legal protection that can be obtained. It regulates both the decision-making within the administration and the appeals procedure within courts (or, to frame it in a German comparison: the GALA is both a Verwaltungsverfahrensgesetz as a Verwaltungsgerichtsordnung). Comparatively it is supposed to be one of the most extensive administrative law codifications. It consists of 11 chapters, encompassing over 500 sections at the time of writing. Many provisions are rather technical in nature with numerous procedural aspects, while the codification of general administrative law principles is rather sober, which is described below in section III.D. For example, the principle of equality and the legal protection of expectations have not been codified.

Besides the GALA, there are hundreds if not thousands of statutory provisions that grant administrative authorities the power to act for the purpose of performing a public service and that regulate such action in a detailed way. This includes specific rules in numerous branches of law, such as social security law, immigration law and environmental law. In any given case, there is a strong interaction between these sector-specific rules and the GALA: administrative powers are created within the specific laws (eg, to grant a subsidy or permit, or to fine an offender); the GALA itself provides hardly any powers. Whenever a special law empowers any administrative authority to issue an order, it is required, when exercising such powers, to comply with the GALA rules.

B. The Relationship between the GALA and Specific Legislation

The relationship between general and special rules is more precisely defined by the GALA. In this context, four kinds of general rules can be distinguished. First, the GALA contains mandatory provisions. These are rules that are applicable, without any exceptions, to all administrative law interactions – for example, the rule that administrative powers may not be used for a purpose other than for which they were conferred (Article 3:3 GALA). Secondary legislators cannot make any exceptions to this. Apart from mandatory law, the GALA includes rules that are

considered the 'best regulation' for normal cases, but that can be departed from in special cases, as well as by secondary legislators. This holds true, for example, of the provision that an application for an individual decision must be submitted in writing (Article 4:1 GALA): sometimes it should also be possible to do so orally, because the standard rule includes the phrase 'unless otherwise provided by law'. In addition, there are situations where it is hard to define a generally applicable rule, but where it is desirable to create a 'residual provision' in case the drafters of special legislation fail to include a provision. An example of this can be found in Article 4:13 GALA. The time limit for an individual decision depends on the type of decision applied for and that is why this time limit had better be laid down in a special law. However, in the absence of a special time limit, the general (and waivable) GALA provision applies, which states that the decision must be rendered within 'a reasonable period', which cannot exceed eight weeks in that case. Finally, the GALA contains provisions that may well be called 'optional'. The GALA contains an extended preparatory procedure for orders that involve many interested parties or have a significant impact on the surroundings. This uniform preparatory public procedure of Division 3.4 is applicable if it is so provided by the special legislator or by the relevant administrative authority making the order. Especially in the field of environmental law, this preparatory procedure is prescribed.

Consequently, the GALA provides for an inherently flexible regulatory framework for Dutch administrative procedures, leaving the drafters of special laws and administrative authorities with wide scope for discretion in some respects. In addition, it should be borne in mind that the GALA does not have a special status as an Act of Parliament. This means that special laws of the same status (other statutes) may permit departures from the GALA. Even so, the 'Aanwijzingen voor de regelgeving' (Drafting Instructions for Legislation)[9] provide that departures from the GALA should be permitted only where these are necessary and that the reason for the departures must be stated in the explanatory memorandum to the special statute. Important specific statutes containing departures from the GALA include the Vreemdelingenwet 2000 (Aliens Act 2000) and the Algemene wet inzake Rijksbelastingen (General Act on Government Taxes).

C. Policy Rules

In legal practice, administrative policy rules form an important source of detailed administrative law. Once an administrative power has been vested upon an administrative authority, this power implies the competence to establish policy rules. Article 4:81 GALA explicitly states that an administrative authority may establish policy rules in respect of a power conferred to it, which is exercised under

[9] A circular of the Prime Minister of 18 November 1992 (see wetten.overheid.nl), used at government ministries.

its responsibility or which has been delegated by it. These policy rules lay down a general rule for weighing interests, determining facts or interpreting statutes (Article 1:3(4) GALA). Citizens can invoke the application of policy rules on the basis of the principle of legal certainty. However, the rules are not formally binding in the way that regulations are. The administrative authority shall act in accordance with the policy rule unless, due to special circumstances, the consequences for one or more interested parties would be out of proportion with the purposes of the policy rule (Article 4:84 GALA).

Where in some legal systems there can be a debate as to whether administrative authorities have the competence to draft policy rules (because that may interfere with the legislator's competence), in the Dutch legal order the discussion is rather if an authority is obliged to draft policy rules to ensure legal certainty, consistency and equality. Within government, administrative efficiency is highly valued, which leads to the practice of very detailed policy rules, from which public authorities hardly deviate in practice. Currently it is under debate as to whether the possibility to deviate under Article 4:84 GALA should be transformed into a *legal duty* to deviate if the proportionality principle so requests. This is part of a broader debate on how to transform a rather technical, bureaucratic administrative law into a more responsive legal order and a more principle-based administration (see below, section IV.B).[10]

D. Additional Sources of General Administrative Law

Though the GALA itself is broad in terms of regulated topics, it does not cover all topics that one might expect to find in a general codification. Most notably, the access to public information is left out of the Act; it is codified in the Wet openbaarheid van bestuur (Access to Information Act). This is quite striking, because it had been the plan from the outset to incorporate this piece of legislation within the GALA, as it uses the same general concepts and definitions like 'order' and 'administrative authorities'. Over the years, the incorporation plans were delayed and eventually abandoned, with the argument being that in essence access to information is a constitutional right linked to the proper functioning of democracies. The legislator considered it to be 'inappropriate' to adopt these democratic rights within a general Act on administrative law, which may illustrate a distorted relationship between administrative and constitutional law.

There have also been topics that were not that relevant, or too controversial, or not fully formed at the time of enactment of the GALA. As will be described below in section III.C, one of the main goals of the GALA was to systematise and codify existing case law. Topics like data-handling and the protection of personal

[10] See, eg: www.prettigcontactmetdeoverheid.nl; and YE Schuurmans, AEM Leijten and JE Esser, *Bestuursrecht op maat* (Leiden, Leiden University, 2020).

information is an example of a field of law that was not fully formed to codify at that moment. The legislator also considered some general legal principles to be underdeveloped in case law, so that they could not be codified in the 1990s. For example, the principle of equality, the principle of legal certainty and the principle of legitimate expectations were left out of the GALA not because the legislator denied their importance, but because the criteria and conditions to invoke these principles were not yet crystallised. This illustrates that for a long time, legal principles, especially those granting rights to citizens, were not that well developed in the legal system. Dutch administrative law traditionally grants public powers to public authorities, and states instructional norms and procedures with which the administration needs to comply. The notion that citizens could pose subjective rights against the state was for a long time commonly rejected and, consequently, more substantive legal principles have only materialised more recently in case law. The codification of administrative law principles within the GALA is not meant to be exhaustive. People may still invoke unwritten legal principles that are developed in case law. As a consequence, unwritten general administrative law is still relevant, especially in the field of principles of action.

There is one specific statute that makes general exceptions to the rules of the GALA. During the financial crisis that started in 2007/2008, the government wished to accelerate the realisation of major infrastructural projects to stimulate the economy. It had the impression that the GALA contained too many burdensome administrative procedural rules that caused delays in large building projects. In order to reduce these burdens, it experimented with variations from the GALA in the Crisis- en herstelwet (Crisis and Recovery Act). For example, in procedures (on environmental law projects) that fall within the scope of the Crisis and Recovery Act, local public authorities are denied legal standing and the time limits for raising grounds of appeal are far more strict than under the GALA. The government highly valued this system of 'efficient procedures', and it eventually decided to convert the temporarily Act into a permanent law and to transfer some provisions (like the introduction of a *Schutznorm* for plaintiffs) to the GALA (see Article 8:69a GALA).

E. The Constitution

The importance of the Grondwet (Constitution) as a source of administrative law is rather limited in the Netherlands. The Constitution defines the organisational structure of government, from municipal to provincial and nationwide authorities, and confers powers upon the various branches of government. But, as stated above in section I, this tends to be framed solely as a part of constitutional law and not of an administrative law nature. To understand this perception, it should be noted that the Netherlands does not have a constitutional court and nor does it grants courts with the power to undertake a review on constitutionality. Article 120 of the Constitution explicitly states that the constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts. Consequently, the constitutional

provisions hardly form an integral aspect of administrative law. However, the political climate is changing after various scandals over harsh legislation and the current government plans to draft a bill to change Article 120 of the Constitution. Courts have neither jurisdiction to review whether the formal procedures for making statutes have been properly followed, nor the power to review statutes on their compliance with legal principles[11] Finally, within the Constitution, provisions on the administration are scarce. Article 107 of the Constitution holds that the general rules of administrative law shall be laid down in an Act of Parliament, but it does not lay down any individual right to a good administration or administrative justice.[12]

F. European and International Law

The above-mentioned specific feature of the Dutch Constitution partly explains why the influence of international and EU law on the Dutch administrative law system can hardly be overstressed. In particular, the European Convention on Human Rights (ECHR), the Treaty on European Union and the Charter of Fundamental Rights of the European Union[13] have partly taken over the function of the national Constitution. These can be seen as important sources for Dutch administrative law, especially in terms of the regulation of legal principles and administrative law protection.[14] This impact is greatly increased due to Article 93 and 94 of the Dutch Constitution, which give direct effect to international law within the Dutch legal system. Individuals can invoke self-executing treaty provisions in court, and in the event of any conflict, these will prevail over national law.

A codification of European administrative law in the future will likely have an effect on the GALA. In 2021 a scholarly committee composed of eminent administrative law professors published a report on this subject. In this report they foresee, amongst other things, the introduction of various new principles of good administration and more attention for citizens' rights, a section on the withdrawal and rectification of decisions and a section on international administrative assistance.[15] In general, the orientation towards European administrative law in

[11] HR 27 Januari 1961, ECLI:NL:PHR:1961:AG2059 (*Prof Van den Berg*); HR 14 April 1989, ECLI:NL:HR:1989:AD5725 (Harmonisatiewet).

[12] See generally:H Corder, 'A Right to Administrative Justice: "New" or Just Repacking the Old?' in A von Arnauld, K von der Decken and M Susi (eds), *The Cambridge Handbook of New Human Rights* (Cambridge, Cambridge University Press, 2020).

[13] Charter of Fundamental Rights of the European Union [2012] OJ C326/391.

[14] Recently the ECJ ruling of 14 January 2021, Case C-826/18 (*Varkens in Nood*) on art 9 of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus) had a huge impact on the system of administrative adjudication, as members of the public could no longer be forced to participate in the uniform preparatory public procedure before they had access to the courts.

[15] Commissie Europeanisering algemeen bestuursrecht, *Europa en het algemeen bestuursrecht* (The Hague, Boom Juridisch, 2021), with a summary in English.

Dutch scholarship is quite positive. Although the committee opposes a mandatory applicability of a European GALA, it favours a voluntary adoption of many rules, concepts and principles by the Dutch legislator or courts, with the ambition of achieving a harmonised general administrative law.

G. Conclusion

In general, one can say that the GALA is *the* source of administrative law, combined with sector-specific legislation, regulations and policy rules. Principles of action are partly codified in the GALA (eg, the duty to state reasons and the duty of due care), are derived from the ECHR and EU law, and still form an important part of unwritten law. So, if an administrative law topic is not regulated in either the GALA or sector-specific legislation, the courts may find a basis of administrative law in unwritten legal principles or international and European law. Though, as will be described below in section III.B, Dutch administrative law has a tradition of judicial deference to administrative decision-making. Consequently, if an administrative law topic falls outside a regulation, courts regularly decide that it is up to the discretion of the administration on how to deal with that topic (eg, how to withdraw certain decisions).

When it comes to forms of administrative action and administrative organisation, the GALA provides less guidance. Some forms of action, such as rule-making, policy-making and contracts, are not considered to be part of Dutch administrative law. Also, the organisation of the administration mainly falls outside the scope of administrative law. The Constitution lays down the basic rules for the organisation of the state, but as there is no constitutional review within courts, these constitutional provisions are non-appealable norms. However, administrative protection is extensively regulated in the GALA. The ECHR and EU law form an important additional source of administrative law.

III. The Codification of Administrative Law

A. Historical Development: Before the GALA

The development of the Dutch GALA should be viewed in relation to the nature and extent of government action in the Netherlands. Until the second half of the nineteenth century, such government action primarily comprised, apart from legislation, the regulation and maintenance of public order. The major expansion of government action did not take place until the second half of the nineteenth century as a result of the democratisation of society and the adoption of general suffrage, first for men (in 1917) and, soon afterwards, for women (1922). The subsequent socialisation of society meant that the government adopted many measures

in such fields as working conditions, public housing and public health. Due to the economic crisis of the 1930s and the emergency measures the government took to deal with this crisis, government regulation of economic matters became common. After the Second World War, the reconstruction of the Netherlands required government action in a variety of fields in society. The nation's rapidly growing prosperity soon prompted the government to create an extensive social security system, bringing the scale of government action and the underlying legislation in the Netherlands to a climax.

In that time of sharp increase in government action, the technique of 'gelede normstelling' (delegated rule-making power) reached its full potential in the Netherlands. This technique means that specific rules are not just laid down in statutes, but that, quite frequently, rule-making powers are delegated to subordinate legislators. Besides, such legislation often confers discretionary administrative powers on public authorities on a large scale. Due to the enormous size and diversity of administrative law and the phenomenon of delegated rule-making powers, administrative law became a complex branch of law.

Accordingly, calls for systematisation and simplification through codification were to be expected. Already in 1905 there had been an attempt to create administrative justice by means of a first draft of a Code on administrative actions, drawn up by Secretary JA Loeff. This draft tried to expand the competence of civil law courts to administrative law disputes. After a fierce scholarly debate, specifically with Professor AAH Struycken, the bill was withdrawn, because judicial review (at that time with many noblemen on the courts) was seen as a danger to modern democracy. Administrative decision-making primarily asked for expertise and policy considerations, and was thought to be hardly limited by legal norms. For a long time, this event set the stage for the political and scholarly debate on the system of legal protection in the Netherlands.

Consequently, legal protection was mainly organised within the administrative system. Administrative powers were regulated in separate statutes, which also frequently created special legal procedures. This has given rise to a highly fragmented system of administrative procedures, somewhat like the British tribunal system.[16] It would take until 1976 (*Wet* administratieve rechtspraak overheidsbeschikkingen, Wet Arob) before the Netherlands would have a general procedure for judicial review, but many specialised tribunals and courts remained in place until the enactment of the GALA.

[16] See in this book S Nason, 'Codification of Administrative Law in the United Kingdom: Beyond the Common Law', section IV.B. Nowadays, there is a clear-cut divide between administrative and judicial bodies in the Netherlands, but this has not always been the case. The Dutch supreme administrative law court (the Administrative Jurisdiction Division of the Council of State) has developed out of an administrative body and for a long time, appeal lay mainly to this administrative body ('the Crown'). Article 6 ECHR prompted the replacement of this kind of legal protection by a final appeal to a 'real' court, ECtHR 23 October 1985, App No 8848/80 (*Benthem v The Netherlands*).

In 1983, it was laid down in Article 107 of the Dutch Constitution that the general rules of administrative law had to be adopted by an Act of Parliament. It is not without reason that this constitutional provision refers to 'general rules of administrative law'; it was expressly not the legislator's intention to come to a comprehensive, exhaustive administrative code.

B. The Role of Doctrine and Dutch Legal Culture

Mainly because of this long absence of general administrative law courts and the patchwork of relevant statutes and regulations, administrative law as a scholarly discipline emerged rather late. The first handbook on administrative law was published in 1932.[17] The majority of the subsequent scholarly work was invested in systematising this new field of law, in the creation of a common vocabulary and in trying to derive common notions and principles to map an administrative law system. The Association for Administrative Law (VAR)[18] was of paramount importance in terms of the development of legal doctrine in this field of law. From 1939 onwards, it published *Preadviezen* annually, in which eminent law professors, judges and attorneys conceptualised many themes of administrative law. It also created special committees or working groups on major themes such as administrative law principles, the future of the administrative justice system and the EU influence on national administrative law.

Doctrine did look to other countries to see how an administrative law system could be shaped and what kind of general administrative law principles were developed in countries with a more mature administrative law system. For a long time, the French and German legal systems have been the ones that Dutch law professors mainly studied and looked to for inspiration.[19] Although the impact on the courts system (mainly a French blueprint) was evident and legal theory was clearly inspired by German (and Austrian) scholarship,[20] it is hard to say whether the Dutch system is orientated towards one of these systems. The strong German focus on the *Rechtsstaat* and a full jurisdiction of the administrative law courts does not relate to Dutch legal culture, where the emphasis is instead on democracy and the sovereignty of Parliament (and a constitutional prohibition on courts from reviewing the constitutionality of parliamentary acts). The French legal system

[17] CW van der Pot et al (eds), *Nederlandsch bestuursrecht,* (Alphen aan den Rijn, Samsom, 1932).

[18] www.verenigingbestuursrecht.nl.

[19] JP de Jong, *Bestuursrecht van vreemde herkomst: een onderzoek naar de bronnen en grondslagen van een drietal centrale elementen van de Nederlandse bestuursrechtstheorie* (Zwolle, WEJ Tjeenk Willink, 1988).

[20] In particular, Professor Buijs studied Austrian and Prussian administrative law extensively as a form of inspiration to Dutch law: see JT Buijs, 'De administratieve rechtspraak in Duitschland', *Bijdragen tot de kennis van het staats-, provinciaal en gemeentebestuur in Nederland*, Deel 21 (1877), pp 1 ff (Deel I), pp 145 ff (Deel II).

did not fit smoothly, with a broad jurisdiction for administrative law courts (while the Netherlands favours the general doctrine of civil law as the general law to be applied). Also the procedural law of the Conseil d'État met with opposition in Parliament because it was considered far too complex and costly for adoption within the Netherlands.[21] From a constitutional and separation of powers perspective, the Dutch system instead has parallels with the British system: both have a strong focus on the role of Parliament, grant wide discretionary powers to the administration and have a legal tradition in which courts show deference to administrative decision-making.

Moreover, the interplay between academia and legal practice is strong within the Netherlands. Many law professors also function as deputy judges in courts. For a long time, there has existed a publication culture in which academics write extensive case notes on important court rulings. There are numerous legal journals that exclusively publish case law and case notes.[22] Consequently, a lively academic debate exists, which is strongly fuelled by case law, that legal scholars recognise in common law scholarship. Many study whether the GALA has been properly applied in these cases, whether the interpretation of the law is coherent compared to similar cases, and whether a more dynamic interpretation is needed due to developments in, for example, society, technique or European and international law.

C. The Codification of the GALA

The preparation of the GALA took a long time. As early as 1982, the government set up an initial working party led by the then State Secretary of Justice, Michiel Scheltema, which was assigned the job of drafting general rules of administrative law. In addition to legislative staffers, administrative law academics invariably sat on this commission. The Scheltema Commission stated that the most important objective of the codification of general rules of administrative law was the promotion of uniformity of administrative legislation. Further, administrative legislation had to be systematised and, where possible, simplified, and significant administrative case law developments could be codified. Finally, the Commission considered the possibility of adopting general rules for administrative law subjects that, by their nature, are not suitable for specific statutes. In the end, the preliminary drafts drawn up by the Scheltema Commission evolved into the GALA.

[21] KAWM de Jong, *Snel eenvoudig en onkostbaar: Over continuïteit en verandering in de aard en de inrichting van het bestuursprocesrecht in 1815 tot 2015* (The Hague, Boom Juridische uitgevers, 2015) pp 26 ff.

[22] Administratieve Beschikkingen (AB, published by Kluwer) and Jurisprudentie Bestuursrecht (JB, published by Sdu) are the most commonly read. Landmark cases of Dutch administrative law are collected in T Barkhuysen et al (eds), *AB Klassiek* (Deventer, Kluwer, 2016).

The GALA is a piece of legislation that continues to evolve. By design, it is a 'modular Act', as it is called, which means that it is enacted in stages. The first two major stages of the Act entered into force on 1 January 1994. These laid a solid foundation of an Act designed to provide a regulatory framework for administrative authorities that issue orders and to grant interested parties the ability to undertake judicial review. In 1998 a third stage was enacted (mainly on supervision over administrative authorities) and 2009 saw the enactment of a fourth stage (mainly on rules of enforcement, including administrative fines). In addition, minor and major legislative proposals designed to supplement the GALA are instituted quite regularly, which means it is an ongoing legislative process. More recent adaptations include a revision of Chapter 8 of the GALA to make court procedures more efficient[23] and adaptations relating to the digitalisation of government, which result in possibilities to communicate and litigate electronically.[24]

i. The Nature of the GALA

Given the objective of making administrative law uniform, the legislator had to make some fundamental choices. In the explanatory memorandum[25] to the first stage, the legislator mentions themes that may show a 'fundamental orientation'. In quite a detailed fashion, it deals with the general approach of the legal relationship between administrative authorities and citizens. It argues that this relationship has developed into a 'mutual relationship' between the administration and individuals. The legislator advanced a larger responsibility for individuals, resulting in procedural duties such as the duty to state the grounds of appeal and to adduce evidence. Many scholars objected to this view because of the unilateral law-making power of the administration. Many years later, we have to conclude that although the procedural obligations of individuals have increased significantly, the concept of a mutual relationship did not take root.

It was judicial procedure law in particular that prompted the legislator to present fundamental considerations about the nature of administrative law and the duties of the court. An important development is that the legislator gave priority to legal protection over the principle of legality. This means that if any order conflicts with specific rules but the interested party has not objected to these illegalities, the order does not have to be annulled. In doing so, the legislator has opted to develop procedural law in the direction of a 'recours subjectif', trend that has indeed become stronger over time. The conditions for having standing have

[23] Wet aanpassing bestuursprocesrecht of 2013 (Parliamentary papers 32450, *Stb* 2012, 682).

[24] Vereenvoudiging en digitalisering procesrecht of 2016 (KEI; Parliamentary papers 34059, *Stb* 2016, 288) and a proposal to transform the possibility of electronical communication into a right of digital access to the administration, Wet modernisering elektronisch bestuurlijk verkeer, (Parliamentary papers 35261).

[25] All parliamentary papers on the GALA, including the explanatory memoranda, can be found at: www.pgawb.nl.

been specified and individualised, a *Schutznorm* has been added and the possibilities to settle disputes definitely have been extended.[26] The legislator attaches great significance to judicial efficiency; procedural law should be both effective and efficient. In addition, there should be a low threshold for administrative proceedings. Individuals should be able to go to court without incurring high costs, with few formalities and without an attorney-at-law. The court is active and may, if necessary, counterbalance the inequality between the individual and the administrative authority.

Apart from the above, the GALA – and, indeed, Dutch administrative law in general – is not defined by dogmas to a great extent; the Act is of quite a practical, detailed and procedural nature. There are multiple rules on modes of communication, hearings, fact-finding possibilities and publication duties, to name but a few. General legal principles are more scarce (those present are noted in the text below), and those of a more substantive nature are almost entirely absent. If we combine these features with a culture of wide discretionary administrative powers and judicial deference, it may be clear that procedural law is very well developed, but the system scores less on substantive values and principles governing public administration.[27]

ii. The Structure of the GALA

After the key definitions in the Chapter 1, Chapter 2 of the GALA continues with general rules about the relationship between citizens and administrative authorities. These rules apply to all dealings between individuals and administrative authorities, and are of a general nature, like the language that can be used to communicate.[28] There are some relatively new provisions about electronic communication between administrative authorities and interested parties, which are already proposed to be revised in order to grant citizens a right of digital access to the administration.[29]

Chapter 3 contains general provisions on 'orders' (called decisions in most other systems), such as provisions concerning the preparation and notification of orders, and the duty to state reasons for them. This chapter places important quality requirements on the decision-making practice. For example, orders must be prepared with due care (Article 3:2 GALA), powers may not be used for any purpose other than that for which they were conferred by the legislator

[26] KJ de Graaf and AT Marseille, 'On Administrative Adjudication, Administrative Justice and Public Trust: Analyzing Developments of on Access to Justice in Dutch Administrative Law and its Application in Practice' in S Comtois and KJ de Graaf (eds), *On Lawmaking and Public Trust* (The Hague, Eleven International Publishing, 2016) 103 ff.

[27] *cf* the Netherlands Opinion on the Legal Protections of Citizens of the Venice Commission, Opinion No 1031/2021.

[28] Communication in another language is allowed if it is more effective and does not harm the interests of third persons (art 2:6 GALA); communication in English is generally accepted.

[29] Articles 2:13–2:17 GALA; see above n 24.

(Article 3:3 GALA) and the interests concerned must be weighed in a proportionate manner (Article 3:4 GALA).

Next, Chapter 4 of the GALA includes provisions on specific types of orders, such as individual decisions and, particularly, on orders granting subsidies and orders relating to money debts arising from administrative law. For example, there are provisions allowing interested parties to express their views and to participate, on the time limit for orders and on what an interested party can do if the administrative authority fails to meet this time limit for decision-making.

Chapter 5 of the GALA relates to the enforcement of regulation by administrative authorities. It provides for general rules for inspections and for administrative sanctions that are important in practice, including the 'last onder bestuursdwang' (administrative enforcement order) (ie, an administrative measure for the restoration of a legal situation) and the administrative fine.

Chapters 6, 7 and 8 contain rules for legal protection under administrative law. Review within the administration is still a key feature of the system of legal protection. Interested parties can only ask for judicial review if they previously lodged an appeal within the administration.[30] The benefits of administrative review are still highly valued: it is an informal procedure, in which errors of the administration can be easily corrected and many disputes get resolved. It functions as an important funnel; about 90 per cent of all objectives get resolved, which lowers the burden on the administrative law courts. In most cases, rulings of administrative courts are open to appeal to the Administrative Jurisdiction Division of the Council of State.[31] Chapter 9 of the GALA deals with complaint handling by administrative authorities (like the National Ombudsman) and Chapter 10 contains provisions on the conferral of powers and the delegation of the power to make orders, and on the supervision of administrative authorities. The final provisions of the Act, which include the duty to draw up evaluation reports, are laid down in Chapter 11.

As a result, the GALA has become a 'layered' act, structured from general towards ever more specific provisions. For example, where an administrative authority makes an order to pay an advance in anticipation of a sum of money to be paid later (Article 4:95 GALA, included in Division 4.4 GALA), the rules of Chapter 2 concerning dealings between individuals and administrative authorities are applicable to this order, as are the provisions on orders laid down in Chapter 3. Further, the specific provisions relating to individual decisions of Division 4.1 of the GALA are applicable.

iii. Towards Uniformity in Administrative Law

All in all, the enactment of the first four stages of the GALA and some smaller legislative proposals formed a legislative operation that cannot be easily surpassed,

[30] Articles 8:1 juncto 7:1 and 6:13 GALA.

[31] The Dutch appeal system is fragmented. In some cases, appeal lies to other appellate courts, such as the Central Appeals Tribunal, the Trade and Industry Appeals Tribunal, and the Tax Courts.

in terms of its scope and speed, in the Netherlands. The operation not only introduced a general Act with a broad scope of application, but also triggered a huge operation to amend other legislation. The legislation needed to amend special laws, so as to bring them into line with the provisions of the GALA, comprises thousands of amendments spread across hundreds of statutes. The impact of this Act on Dutch administrative law has therefore been great; some have even called it a cultural revolution in the field of administrative law. The GALA has triggered a process leading towards greater uniformity. This huge codification project was broadly supported by political factions, as a paramount incentive of the operation was to increase the accessibility of administrative law, to simplify it and hence to contribute to effective administration.

IV. Dynamics and Debates

A. The Effects of Codification

Over the last 25 years, the administrative law community has periodically celebrated through conferences and publications the fact that the GALA has been in force for 5, 10, 15 or 25 years.[32] Praise for the GALA seems primarily related to the clear systematisation of a previous dispersed field of law. This systematisation with uniform rules has various benefits. Administrative law as a field of law has become far more accessible, in which legal rules are better known. General codification fuels deliberation. The full attention of the legislator and parliamentary and scholarly debates results in a higher quality of law. Now that all legal actors share the same vocabulary, they have the language to discuss the objectives of legal norms and the desirability of their application. In general, it is thought that the GALA has formed a true accelerator for legal development, both within the administration and the courts.[33]

It is hard to say more exactly what the effect of a general codification is. In a study into the effect of the codification of the fourth stage, it appeared that the topic codified and the primary objective for codification were of relevance.[34] If the main objective is the codification of an already-existing practice, the effect of the codification seems limited and hardly steering the direction of legal development.

[32] FAM Stroink et al (eds), *Vijf jaar JB en Awb* (The Hague, Sdu, 1999); FAM Stroink et al (eds), *Tien jaar JB en Awb* (The Hague, Sdu, 2004); T Barkhuysen, W den Ouden and JEM Polak (eds), *Bestuursrecht harmoniseren: 15 jaar Awb* (The Hague, Boom Legal Publishers, 2010); T Barkhuysen et al, *25 jaar Awb. In eenheid en verscheidenheid* (Deventer, Kluwer, 2019).

[33] M Scheltema, 'Codificatie van het bestuursrecht' (1996) *Nederland Tijdschrift voor bestuursrecht* 2, 2 ff; BJ Schueler, 'De Awb en de bijzondere delen van het bestuursrecht' in T Barkhuysen, W den Ouden and JEM Polak (eds), *Bestuursrecht harmoniseren: 15 jaar Awb* (The Hague, Boom Legal Publishers, 2010) pp 173 ff.

[34] R Ortlep, W den Ouden, YE Schuurmans et al, 'Nut en noodzaak van een algemene codificatie van bestuursrecht' (2014) *Netherlands Administrative Law Library*, DOI: 10.5553/NALL/.000020.

If, on the other hand, the codification strives to harmonise a highly dispersed legal topic, the codification seems to be able to truly direct legal development, as was the case for subsidies and inspections in the Netherlands. Another factor that is in play concerns the burdensomeness of the rules for the administration. If the codification facilitates the decision-making process or grants broader powers to administrative authorities, one can expect a willingness within the administration to apply the new rules. The GALA, for example, broadened the fact-finding possibilities for administrative authorities during inspections, which were highly welcomed in practice. If, on the contrary, the rules raise administrative duties, one sometimes sees the reflex that public authorities draw up 'new' uncodified legal instruments so as to evade administrative duties. In financial law, administrative authorities created new financial instruments that supposedly purposely did not fit in the definition of subsidies within the GALA and consequently had less clear rules to comply with.[35]

Codification does not inherently lead to uniform law in practice. As described above in section II, the GALA has no special status as a statute; deviations can be made by the legislator and sometimes even by the administration itself. Relatively little is known of how often these deviations appear in practice. The Ministries of Finance and of Education in particular are notorious for their desire to draw up their own specific rules. The general rules of the GALA would leave insufficient room for carefully shaping the decision-making with due regard for the special characteristics of the branch of law concerned. In an evaluation of the rules on money debts in administrative law (Title 4.4 GALA), researchers found that in practice, sector-specific rules were far more often applied than the 'general' rules of the GALA.[36] A rule does not become inherently 'general' in practice if it makes it to a general rule in the GALA.

There might also be the effects of non-codification of certain themes. As systematisation improves the accessibility of law, non-codification may leave certain themes underdeveloped. Naturally, case law can fill that gap, but scholarly and professional attention for these dispersed themes seems more scarce. When it comes to the GALA, many scholars are of the opinion that the ratio between procedural and substantive norms is off-balance. In particular, the lack of more substantive legal principles, granting citizens subjective rights, has been criticised. Sometimes the impression arises that the GALA legislator sticks to provisions of a more procedural and technical nature to avoid the need to make difficult material choices. Given its general nature, the GALA contains mostly procedural rules and, as a result, decision-making practice – and legal scholarship – shows a strong focus on procedure.

This supposedly leads to a 'juridification' of the relationship between citizens and the administration, which is reinforced by the jurisdiction provisions in

[35] R Ortlep, W den Ouden, YE Schuurmans et al (n 34).

[36] W den Ouden, CNJ Kortmann et al, *De bestuursrechtelijke geldschuldenregeling. Titel 4.4 Awb geëvalueerd* (The Hague, WODC, 2013).

the GALA. Individuals cannot submit their entire 'relationship' with the administration to the court, but only the issues that arise from orders that have been issued. Consequently, a multitude of fragmented procedures may arise. This strong orientation of the GALA on the 'order' concept is increasingly being criticised, but it is doubtful whether this fundamental orientation will soon be discarded.

That said, the legislator is willing to experiment with general administrative law. A recent phenomenon is that legal concepts which differ from the GALA rules are put to the test in special laws, also for the purpose of ascertaining whether they could eventually be incorporated into the GALA. Various provisions to improve the efficiency of legal procedures were firstly introduced in the Crisis and Recovery Act (see above, section II.D) and later on were adopted in the GALA. Currently the government plans to experiment with a broader concept of jurisdiction, making it possible for administrative law courts to review the legal relationship integrally in a specific field of social welfare.

B. Debates on Future Developments

Finally, it is debated whether the pursuit of generally applicable administrative law has gone too far or whether provisions have become too detailed. Many experts have come to regret the absence of a comprehensive view on the legislative project of the GALA. Over the years, it seemed that the legislator paid particular attention to sub-topics, which were put on the political agenda more or less randomly. Even now, it is often pointed out that the present GALA fails to deal with obvious topics, such as provisions on the withdrawal of decisions, data-handling and a right to information, as well as provisions on administrative contracts. But political interest in the GALA has been poor in recent years[37] and little capacity to improve the GALA has been left within the Ministries of Justice and Internal Affairs. As a result, the expectations for a new stage for the GALA are low.

Undeniably, the GALA has contributed to the positive development of administrative law in the Netherlands, but the question arises as to whether there should be more room for variability, less attention paid to technicalities and a stronger focus on legal principles. Possibly, legal principles and principles of good administration bring more coherence and logic to a system than an extensive codification does. Former State Secretary of Justice Scheltema stated that if he were to work again on the GALA from scratch, he would define the objectives of the codification differently. Back then, the objectives fitted within the bureaucratic administrative state, focusing on systems, internal logic and legal certainty. However, nowadays he would aim for more reflection on the concept of the rule of law and how the GALA helps citizens to perceive they truly live in a *Rechtsstaat*. In recent years,

[37] For this political notion, see also in this book M Heintzen (n 5) section I.C.

he has made it his mission to transform administrative law so as to fit into a more responsive legal order.[38] Now that we have so much more knowledge and awareness of the (sometimes limited) capacities of citizens and the complexity of many specialised administrative fields of law, we need to reconsider if the GALA really adds to administrative justice. The instrumental and procedural nature of the GALA sometimes seems to strengthen the position of the administration rather than that of citizens.

As is the case in the UK, it has been debated whether proportionality should be recognised as a general principle of domestic administrative law and a ground for review, meaning that all administrative decisions must be proportionate to the aims they seek to achieve.[39] Should the GALA be adjusted so as to force public authorities to always consider the proportionality of their decisions, even if statutes leave little room for such a proportionality review?[40] Many scholars see the need for a more principle-based orientation within the administration and a more rigorous review of administrative action, especially when fundamental rights are in play. This general opinion is not only influenced by notions of legitimacy and a more responsive government, but also by a desire for a better alignment with European law. In a legal opinion of the Advocates-General of 2021, it is recommended to develop a proportionality test in line with the three-step test of the European Court of Justice, a recommendation which has been adopted by the highest administrative law court.[41] Increasingly, the idea that Dutch administrative law should develop towards stronger subjective citizens' rights and a broader spectrum of legal principles is taking root. 'The GALA is a general administrative law Act that, according to Dutch tradition, does not build a strong bridge between constitutional guarantees and the requirements of good governance. This can and must be (gradually) changed under the influence of EU Law.'[42] The Act should be written less from the perspective of lawyers and more from that of citizens. Consequently, legal principles should be formulated less as administrative rules of conduct and more as general citizens' rights. For instance, a duty of due care can be transformed into a right to transparent administration, a right to have a participative and responsive administration, and a right to understandable an accessible information.

[38] M Scheltema, 'Bureaucratische rechtsstaat of responsieve rechtsstaat' (2015) 37 *Nederlands Tijdschrift voor Bestuursrecht* 287, 287 ff; M Scheltema, 'De responsieve rechtsstaat: het burgerperspectief' (2019) 24 *Nederlands Tijdschrift voor Bestuursrecht* 246, 246 ff.

[39] *cf* S Nason (n 16) section II.

[40] eg, JCA de Poorter, 'A Future Perspective on Judicial Review of Generally Binding Regulations in the Netherlands: Towards a Substantive Three-Step Proportionality Test' in J de Poorter, E Hirsch Ballin and S Lavrijssen (eds), *Judicial Review of Administrative Discretion in the Administrative State* (The Hague, TMC Asser Press/Springer, 2019) 83 ff.

[41] Opinion of Advocates-General Widdershoven and Wattel 7 June 2021, ECLI:NL:RVS:2021:1468; ABRvS 2 February 2022, ECLI:NL:2022:285.

[42] Commissie Europeanisering algemeen bestuursrecht, *Europa en het algemeen bestuursrecht* (The Hague, Boom Juridisch, 2021) p 82 (citation originally in Dutch).

In the extension of this development, more attention is paid to insights into procedural justice.[43] Administrative authorities should focus less on the legal side of objections and more on the importance and nature of the objection lodged by individuals. Within academia and Parliament, discussion has occurred on whether a legal obligation for the administration to investigate the possibility to meet the objections of citizens should be incorporated into the GALA, even if the objections do not relate to the unlawfulness of the decisions. Although no major stages are expected, the GALA is still adjusted on a regular basis so as to steer administrative law development in a certain direction.

V. Conclusion

The GALA has been a milestone for Dutch administrative law and is definitely the main legal source. With the introduction of this Act on general rules of administrative law, more uniformity and systematisation has been achieved, and hence the clarity and accessibility of administrative law has been improved. Through this standardisation, the GALA has raised administrative law as a field of study to a higher level. Administrative authorities, courts and legal scholars use the same vocabulary to explain the rules and principles.

Even so, this extensive codification also has its drawbacks. The GALA tends to be a system on its own with its focus on systematisation. Its detailed rules may overshadow the general principles and public law values that are behind these detailed provisions. The procedural nature of many general rules is thought to have led to an imbalance in scholarly and practical attention for substantive versus procedural administrative law topics. Critical comments on this do not fall on deaf ears and lead to various plans to adjust the GALA in order to make it contribute to a more responsive administrative legal order.

[43] This development is also promoted by the Ministry of the Interior and Kingdom Relations; see K van den Bos, L van der Velden and EA Lind, 'On the Role of Perceived Procedural Justice in Citizens' Reactions to Government Decisions and the Handling of Conflicts' (2014) 10(4) *Utrecht Law Review* 1, 1 ff.