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The "Status Aparte" of the Aruban Advice Committee for Administrative Appeal: Solution or Problem?

- Brechtje Huiskes & Hannah Meijer



When a citizen requests a decision from an administrative body (often the Minister), for example; a permit to serve liquor in a local restaurant, a standard procedure is established for the administrative body to reach a decision. The decision on the citizen's request is called a 'contestable administrative decision'. If a citizen disagrees with the decision, for example, because the permit is denied or because the citizen does not hear back from the administrative body, the citizen can file an objection with the same administrative body. The administrative body must then fully reconsider the previous decision. The Aruban advice committee for administrative appeal (Advice Committee) is an independent committee that is required to give advice to the administrative body on this matter. Although the administrative law system in Aruba is largely similar to the Dutch system, the establishment of the advice committee is structured differently due to Aruba's small size. In 1993, the idea was to reduce the workload of Aruban administrative bodies, including the courts, by establishing a mandatory advice committee that would provide independent and expert advice on all objections.

Nevertheless, the authors have doubts about the proper functioning of the Aruban Advice Committee for administrative appeal in the legal protection procedure. In practice, the number of cases is increasing, and objection procedures regularly end in a fictitious refusal (an automatic negative decision without substantive review by the administrative body). This is evident from court rulings, the increasing number of administrative law cases without a decision on the objection, and the failure of various administrative bodies to forward objections to the Advice Committee in a timely manner. The Advice Committee themselves are also not processing the objections within the prescribed timeframes due to a lack of human and financial resources. This leads to an increased burden on the administrative court and a longer legal process for the interested party, which puts pressure on the legal protection of citizens.

To protect citizens' rights, the current Advice Committee should be provided with appropriate resources and capacity, or the Advice Committee could be optionally involved in the objection procedure (as is currently the case in the other Caribbean parts of the Kingdom). While an amendment to the Landsverordening on Administrative Jurisdiction will be necessary, it would ensure that the best fitting trajectory can be chosen for each case. Before deciding on such an amendment, the authors recommend conducting further comparative research into the functioning of the advice committee for administrative appeal in other countries of the Kingdom.

