

Citizens have a right to be treated properly by government. And generally they are. That's what we believe in as a society and the government machine we have created is based on that ethic. But now and then things go wrong. And then it's a good thing if individual citizens who feel aggrieved or unjustly treated can turn to an independent body for protection. That body is the National Ombudsman. The National Ombudsman plays an effective part in restoring confidence in government. He does so by engaging in a constant dialogue with civil society organisations and elected representatives and by acting on his own initiative to draw attention to problems. And, perhaps even more importantly, by taking effective action to solve them. He does this by sharing his expertise with administrative authorities, instituting investigations, or cutting through red tape.

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Beyond conflict

Summary - 2009 annual report
of the National Ombudsman of the Netherlands

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Preface

The Annual Report of the National Ombudsman of the Netherlands traditionally consists of two parts. The first is an account of the performance of the administrative authorities over the year. Poor performance can lead to complaints from members of the public. In 2009 the National Ombudsman received over 12,000 complaints. The second part of this report consists of a thematic discussion.

The thematic section is entitled ‘Beyond conflict’ and deals with escalation and de-escalation in the resolution of disputes. There are two reasons why escalation and de-escalation are topical issues in the relationship between government and citizen. A certain degree of sourness has crept into this relationship and this has led to unnecessary escalation. The National Ombudsman thinks this should be defused. What is more, it has proved essential in a number of specific cases for the professionals employed by the administrative authorities to have the scope and ability to de-escalate conflict where it arises. This applies to the police of course, but also to situations in which people are dependent on government for benefits, permits or licences and the payment of taxes. Using examples taken from the work of the National Ombudsman, the thematic section explains how it is possible to defuse difficult situations.

Government bodies responded enthusiastically to the ‘chain cooperation’ and ‘chain computerisation’ theme of last year’s Annual Report, entitled ‘The citizen in chains’. As a result, a conference was held at the end of 2009, focusing on five specific problems experienced by the public as a result of chain management. Government bodies have since worked together to introduce improvements. This has led to successful solutions to concrete problems and structural improvements to cooperation between the partners in the chain.

To be able to operate effectively, the National Ombudsman has to have a fairly high profile. In 2009 he regularly participated in public debate by appearing in the media and writing columns in the press based on complaints received and resolved. As deputy prime minister Wouter Bos put it at the weekly press conference that follows the Cabinet meeting: ‘We mustn’t get too panicky about it, the Ombudsman is allowed to cause irritation from time to time. (...) He wouldn’t be much good as an Ombudsman if he sat in a corner and nobody knew about him’.

In addition, a radio and online campaign was launched about the Ombudsman as an institution. Entitled *Is the government not listening to you? Call the National Ombudsman free of charge*, the campaign targeted people who have difficulty in defending their own interests. The campaign will be followed up in 2010.

A point of concern is the now frequent use of the term ‘ombudsman’. The banking, insurance, pensions, funeral services and health care industries all have their own ‘ombudsmen’, and political parties are also jumping on the bandwagon. Recently, the VARA broadcasting company even launched a TV programme with this title, focusing on problems with administrative authorities. This can lead to confusion among members of the public: where should they take complaints about what?

Alex Brenninkmeijer
National Ombudsman

Beyond conflict

The National Ombudsman is concerned about unnecessary escalation in disputes between government and citizen. Research has shown that polarisation and escalation cause more harm than good. The most important factor is the standard of proper conduct. Good governance requires administrative authorities to do everything in their power to defuse conflicts with citizens, companies and institutions.

On the face of it, the Netherlands is doing well. Crime rates (including those for juvenile crime) are falling, the economy is far from a disaster zone, and progress with integration of immigrants has exceeded expectations. Nevertheless, the mood is less than upbeat, particularly in relations between government and citizen. Many citizens are worried about how we behave towards each other, and this is in fact the most important social issue for them.

In general, government wants to do its best for its citizens, and the vast majority of them are willing to accept government measures even if the effect on them personally is negative. But there is a paradox here. There is a lot of political and public debate about negative behaviour by members of the public – but also by politicians and administrators. The main culprits are those who use insulting and abusive language. Politicians taunt each other in Parliament and citizens abuse the police. Freedom of speech is inflated to become the right to offend and the police are angered by abuse from members of the public. Could there be a connection between the two? Government (including politicians) should set a consistently good example, since the behaviour of public figures has proved to be a powerful influence on the rest of society. This will be more effective than the impulsive imposition of half-baked repressive measures directed against citizens. Heavier penalties often seem to be an easy solution, but the effectiveness of blanket repression has not been proven. Rather, such unnecessary confrontation risks polarising relations even further, so that they become increasingly characterised by mistrust rather than trust.

At the same time, it is clear that in many fields government is trying hard to establish good relations with citizens. Adopting a helpful approach to the public – sometimes naively confused with being ‘customer friendly’ – is a matter of major concern to most administrative authorities. Treating citizens properly brings rewards for government. It not only leads to better relations, but also increases citizens’ willingness to accept government measures and to see the authority of government as legitimate. Friendly interaction with members of the public can contribute to better decision-making.

A major source of escalation between citizen and government is the latter’s failure to observe the rules of proper conduct, provoking complaints and objections from citizens. Experience shows that, besides observing the relevant procedures laid down under the General Administrative Law Act, government needs to focus attention on good communication with the public. If problems arise (complaints, objections and other procedures), effective communication – an initial phone call, provision of information, if necessary a personal meeting or mediation efforts – can obviate the need for further action in 40 to 60% of cases. A proactive approach on the part of government can avoid

much litigation. Taking steps to avoid juridification is a central issue for the Ministry of the Interior and Kingdom Relations, while the Ministry of Justice is promoting proactive dispute resolution. It is important for government to help officials to improve the skills that enable them to defuse situations, thereby reducing the need for legal proceedings.

What this means in practice is the following.

- ▶ Defusing tense or hostile relationships with citizens, companies and institutions is a basic requirement of good governance.
- ▶ In many situations, government will gain greater authority by refraining from using its legal or de facto powers as a primary instrument, but keeping them in reserve to use as a last resort.
- ▶ Professionals in public administration must make active use of various strategies to resolve tensions and conflict: evasion, accommodation, confrontation and problem solving.
- ▶ If the issue is important, solving the problem through constructive discussion is the best strategy in terms of proper conduct.
- ▶ Professionals must be given the scope to use their skills to defuse conflict and must be trusted to use this latitude responsibly.
- ▶ Administrators and politicians must be fully aware of the need to set a good example. Polarisation and ‘pointless escalation’ are damaging to society. Freedom of speech must not degenerate into the ‘right to offend’, since that right puts unnecessary pressure on social relations and may indeed damage them.

Communication with the public demands a differentiated approach. Government officials should adopt a positive tone in their dealings with the 95% of the population that is generally law-abiding (give or take the odd traffic violation). Repression, exercised in a professional manner, should be reserved for the relatively small group which misbehaves.

The key question is *why* citizens obey the law. The answer is not because there are penalties for not doing so. Most citizens behave in a socially responsible manner and if government treats them properly they automatically respond in a prosocial way. Repressive measures may sometimes be necessary, but their effectiveness should be assessed on a case by case basis. Repression for repression’s sake can never be seen as proper conduct.

Government should take specific steps to enable all officials to develop the skills needed to defuse situations arising in their dealings with citizens and with each other. The use of mediation methods in public administration is essential to improving relations with citizens, companies and institutions. Further incentives and support are needed to promote mediation skills, good communication and the practice of immediately phoning citizens who lodge complaints or objections. In difficult cases, legal proceedings should be avoided by using mediation as a method of conflict resolution.

Statistical overview

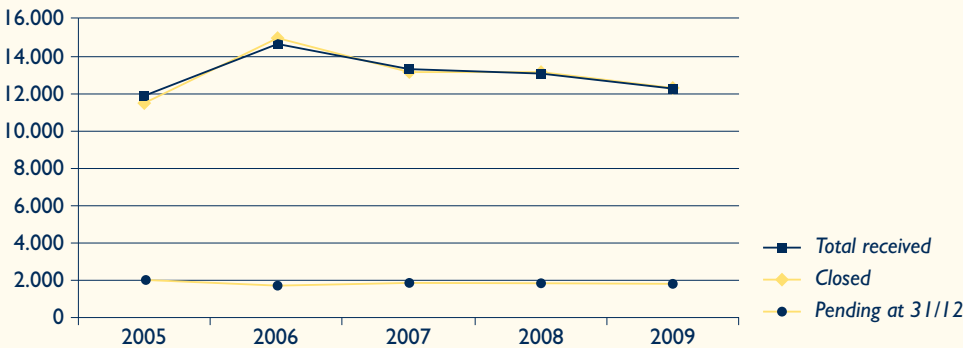
Complaints

In 2009 the National Ombudsman received 12,222 complaints, a decline of 6.5% compared to 2008 (13,073). The peak in 2006 is worthy of note. That year saw major changes in the healthcare system and in allowances of various kinds. The decline which set in after 2006 may be an indication that the greatest problems in introducing these changes have been overcome. In addition, a number of administrative authorities have improved the way they deal with complaints and the service they provide to citizens.

Tabel 1 Volume of complaints accepted for processing, 2005-2009

Complaints	2005	2006	2007	2008	2009
Digital	3,257	5,166	5,340	5,828	4,912
By post	8,595	9,491	7,902	7,245	7,310
Total received	11,852	14,607	13,242	13,073	12,222
Closed	11,451	14,910	13,096	13,102	12,257
Pending at 31/12	2,006	1,704	1,850	1,831	1,800

Figure 1 Volume of written complaints



People who phone the National Ombudsman or walk in off the street are served by front office staff. The front office has a free telephone number (0800 - 33 55555) and is open throughout the working week. A total of 20,957 telephone inquiries were dealt with in 2009. The most frequently asked questions were about the scheme introduced by the Employee Insurance Agency (UWV) and the Tax Department allowing benefit recipients starting their own business to retain their benefits,

the scanning of fingerprints for passports, swine flu and, towards the end of the year, the new public transport smart card.

Table 2 shows the volume of complaints broken down into the various areas of government policy.

Tabel 2 Complaints received about government in 2007-2009

Complaints received	2007		2008		2009	
	Number	%	Number	%	Number	%
Ministries¹⁾						
General Affairs	10	0.1	14	0.1	15	0.1
Foreign Affairs	219	2.0	175	1.6	168	1.6
Justice	978	8.8	1,230	11.0	1,086	10.5
Immigration and Integration ²⁾	439	4.0	-	-	-	-
Interior and Kingdom Relations	83	0.7	87	0.8	77	0.8
Education, Culture and Science	364	3.3	392	3.5	312	3.0
Finance	3,439	31.0	2,778	24.9	2,192	21.3
Defence	71	0.6	73	0.7	67	0.7
Housing, Spatial Planning and the Environment	229	2.0	101	0.9	138	1.3
Housing, Communities and Integration	-	-	2	≈0	7	≈0.1
Transport, Public Works and Water Management	324	2.9	395	3.5	493	4.8
Economic Affairs	35	0.3	39	0.3	48	0.5
Agriculture, Nature and Food Quality	43	0.4	56	0.5	76	0.7
Social Affairs and Employment	1,728	15.6	1,238	11.1	1,209	11.7
Health, Welfare and Sport	472	4.3	1,757	15.8	1,512	14.7
Youth and Families	1	0.1	9	0.1	22	0.2
Development Cooperation	-	-	-	-	2	≈0
Police	918	8.3	956	8.6	1,021	9.9
Public-law regulatory industrial organisations	9	0.1	4	≈0	8	0.1
Sub-national government						
Mayors	3	0.1	3	≈0	5	≈0
Water authorities	140	1.3	120	1.1	140	1.4
Municipalities	1,431	12.9	1,570	14.1	1,509	14.6
Provinces	59	0.5	63	0.6	74	0.7
Joint bodies	76	0.7	89	0.8	130	1.3
Total	11,071	100	11,151	100	10,311	100

¹⁾ Including autonomous administrative bodies.
²⁾ Since 22 February 2007, there has been no separate Cabinet minister with this portfolio; the majority of the complaints previously listed under Immigration and Integration now fall under Justice.

Handling complaints

Complaints may be handled in different ways. The first step is to telephone the complainant to find out what he or she is really concerned about. In these ‘intake interviews’ the focus is on the issue raised, but they also offer the opportunity to explain what complainants can expect from the National Ombudsman. On the basis of the information obtained, staff decide the most appropriate method of dealing with the complaint. This may take any of the following forms.

- *Intervention*: a frequently used and very successful way of achieving a quick solution to the problem. A staff member contacts the administrative authority to discuss the issue and how to resolve it. This approach is effective if a mistake can be corrected or if the real subject of the complaint is the authority’s failure to act.
- *Investigation*: this culminates in a report which is made public and which gives a decision on the propriety of the authority’s conduct. The Ombudsman frequently makes a recommendation to the authority concerned. This may entail a (possibly practical) solution to the problem or steps to restore an individual’s trust in the authority. It may also aim at achieving a structural improvement that will forestall more complaints in the future.
- *Mediation between citizen and administrative authority*: mediators working for the National Ombudsman’s Office talk to both parties, with the aim of normalising relations between the two. In most cases the parties reach agreement on how they will deal with each other in the future. Listening to the other party’s views can, as often happens during a formal hearing, contribute to mutual understanding.
- *Referral to another body or explanation/information*: the National Ombudsman may not be competent to deal with a complaint. For example, if it relates to an administrative decision against which an objection or application for review can still be lodged. Such complainants are referred to the appropriate body.

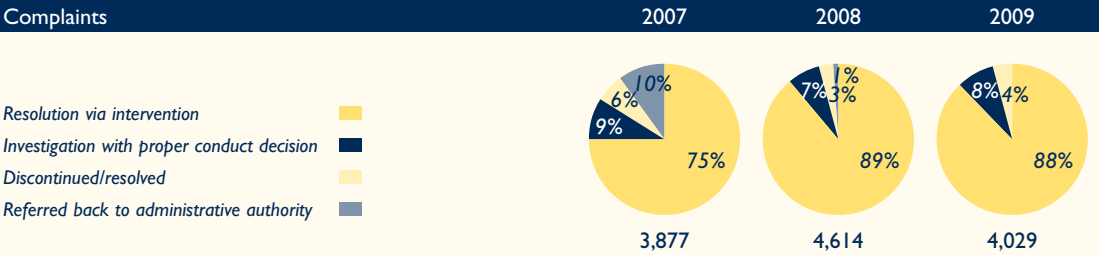
Table 3 shows the figures for each method of handling complaints.

Table 3 Method of resolving complaints accepted for investigation 2007-2009

Complaints	2007		2008		2009	
	Number	%	Number	%	Number	%
Resolution via intervention	2,899	75	4,120	89	3,550	88
Investigation with proper conduct decision	339	9	324	7	303	8
Discontinued/resolved	240	6	134	3	176	4
Referred back to administrative authority	399	10	36	1	0	-
Total	3,877	100	4,614	100	4,029	100

N.B. Some reports deal with more than one complaint.
In 2007 334 reports were issued related to 339 complaints.
In 2008 322 reports were issued related to 324 complaints.
In 2009 295 reports were issued related to 303 complaints.

Figure 2 Method of resolving complaints accepted for investigation 2007-2009



Investigations undertaken on the Ombudsman’s own initiative

The National Ombudsman’s investigations are mostly prompted by complaints. However, he may also conduct investigations on his own initiative to expose structural problems in public administration and help to resolve them. This method enables the National Ombudsman to investigate wider issues which may often give rise to a flood of complaints. There may be even more reason for such an investigation if responsibility is spread throughout the chain so that members of the public are experiencing problems because responsibilities are divided among different government bodies or different units within services, and if human rights are at stake. In 2009 the National Ombudsman published the results of seven investigations conducted on his own initiative.

An example of an investigation prompted by complaints is the one into the transport services offered by municipalities to disabled pupils and the need for a customised approach (report no. 2009/240). Working in close consultation with the Ministry of Education, Culture and Science, the National Ombudsman approached the problem through a particular case study. He based his investigation on the situation of one specific disabled child and the experiences of this boy and his parents. This example and the solutions found in the particular case helped the Ombudsman to arrive at a broader view of the form these transport services should take in policy and practice.

An example of an investigation undertaken on the Ombudsman’s own initiative and concerning human rights (and also the chain responsibility issue, since complaints often relate to more than one problem) is a report entitled *The Healthcare Inspectorate: a paper tiger? Investigation into the IGZ’s supervision of care for the mentally disabled* (report no. 2009/250). The report was prompted by five complaints about the Healthcare Inspectorate (IGZ) which the National Ombudsman received at the end of 2007 and early 2008 from parents and other relatives of mentally disabled people. The complainants believed that the IGZ should take a more critical approach to monitoring the quality of care and should be readier to take enforcement action where necessary. The basis for the investigation was the conviction that citizens should have confidence in government’s ability to guarantee quality of care. The ‘right to health’ is a human right. What is more, people whose impairments compel them to spend 24 hours a day in a care institution have a right to their human dignity. It is precisely this vulnerable group that most needs to be able to rely on adequate protection of their fundamental

human rights. In his report, the National Ombudsman took the view that the IGZ had not adequately fulfilled its task of supervising the quality of health care.

In the course of the year, the National Ombudsman also drew attention to the need to develop standards based on proper conduct. This involved broad subject areas in which the authorities’ approach often disappointed the public, as for example in the handling of compensation claims by various ministries. (*Proper conduct in dealing with compensation claims*, report no. 2009/135). If a citizen has suffered damage as a result of action by government, the latter should not see itself as an ‘ordinary’ opposing party in the matter. In view of the primacy of the courts in such matters, the Ombudsman usually handles complaints about the rejection of compensation claims with caution. As a result, the proper conduct aspects of government action in response to such claims have received little attention. This investigation charted those aspects and translated the findings into guidelines on the subject, containing fifteen rules for the proper response to compensation claims. The National Ombudsman hoped that this would help to improve practice at the ministries.

Reports

When investigations lead to a proper conduct decision, that decision can be communicated in a letter to the complainant and the administrative authority concerned, but can also be published in a report. In 2009, 295 reports were published (2008: 322). In 241 of them (= 80%) the complaint was found to be fully or partially justified. This means that in a considerable proportion of cases in which an investigation took place the National Ombudsman found in favour of the complainant on at least one count.

Handling of complaints about the National Ombudsman or his staff

In 2009 the National Ombudsman received 35 letters that were considered to be complaints about himself and his staff. Six others proved to be inadmissible since on further investigation they were found to be about decisions resulting from investigations. Of the 35 admissible complaints, 31 were resolved, 13 of them informally but to the complainant’s satisfaction. Four complaints were still being dealt with on 31 December 2009. One complaint dating from 2008 was also resolved.

A complaint about a decision resulting from an investigation is regarded as a request for review rather than a complaint as such. In 2009 the National Ombudsman received 44 such requests, of which six were granted.

The complaints concerned various aspects of the services provided by the National Ombudsman’s Office, such as the length of time taken to process complaints (8), telephone services (7), the way intake interviews were handled (3) and reports in the media (2).

Management

Early in 2009 the Office of the National Ombudsman set out its vision based on five key values: service, targeted influence, professionalism, transparency and knowledge sharing. These five values constitute the ethical foundation of the organisation. Every process of change launched within the organisation is linked to one or more of these key values. They offer a basis for organisational and cultural change, staff training and improving the Office’s working methods. These processes continued in 2009. The aims have certainly not been achieved in full, but 2009 has laid a clear basis for further progress.

In 2009 considerable time, energy and funds were invested in matters such as staff training. All investigators and complaints handlers were offered training in conflict management and in writing clear, positive, personal letters to members of the public. In 2009 the number of mediators was increased and they were offered a course enabling them to make effective use of the principles of mediation when handling complaints.

Financial affairs

Table 4 shows the budgeted and actual figures for the income and expenditure of the National Ombudsman’s Office in 2008 and 2009.

Table 4 Budgeted and actual figures 2008-2009

Amounts x € 1.000	2008		2009	
	Expenditure	Income	Expenditure	Income
Finalised draft budget	10,931	39	11,877	39
Supplementary budgets	1,494	39	1,950	75
Total budget	12,425	39	13,827 ¹⁾	114
Actual figures	12,325	144	13,750	131
Difference	100	105	77	17

¹⁾As of 31 January 2010. A marginal correction may be made to this figure in the final Act amending the budget.

In 2009, 73% of total expenditure (€ 13.7 million) went on salaries and 27% on non-staff costs and other costs relating to the deployment of staff.

Staff

Table 5 shows the maximum authorised staffing levels and average actual staffing levels at the National Ombudsman’s Office in 2007, 2008 and 2009.²⁾ These levels are insufficient to cope effectively with the influx of complaints.

Tabel 5 Maximum authorised and average staffing levels (not including office-holders)

	2007	2008	2009
Maximum authorised staffing levels	152	150	149
Average actual staffing levels	141	134	140

The difference between maximum authorised and average actual staffing levels is mainly due to delays in filling vacancies that occurred in 2008 and early 2009.

International

The National Ombudsman actively promotes cooperation with ombudsman institutions in the young European democracies, and supports their further development. The existence of such institutions in these countries is seen as essential to the continuing growth of democracy. These activities are not solely inspired by altruism. They also compel the Ombudsman to reflect on his own role, and provide experience that enhances the way the institution operates in the Netherlands. Projects in which the Dutch Ombudsman worked with the Public Defender of Rights in the Czech Republic and the People’s Advocate in Romania have already been completed.

In September 2009 a cooperation project with the Bulgarian ombudsman was successfully concluded. This was funded under the Ministry of Foreign Affairs’ MATRA programme and managed by the Netherlands Agency for International Business and Cooperation (EVD).The project ran for over two years and produced concrete results in the fields of complaints handling and communication with government bodies.

In October 2009 a twinning project was launched with the Serbian ombudsman. The National Ombudsman is working with his Greek counterpart to provide the relatively new institution in Serbia with support and expertise. The project will run until 2011 and is funded by the European Commission.

The forthcoming constitutional changes in the Kingdom of the Netherlands will have consequences for the National Ombudsman. The Office is currently working on an appropriate procedure for handling complaints that may be expected from the island territories of Bonaire, Sint-Eustatius and Saba. It is also investigating whether concrete support for the Office on Curaçao is possible, and if so, desirable.

2) The maximum authorised staffing level corresponds with the term ‘bezettingsruimte’, as used in the Policy Document on Central Government Reform in the Netherlands (Nota Vernieuwing Rijksdienst).

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