Questionnaire of the International Association of Supreme Administrative Jurisdictions

“Alternative dispute resolution in administrative matters.”

This questionnaire was finalised by The Council of State of the Netherlands, under the responsibility of State Councillors P.J.J. van Buuren and J.C. Kranenburg. For any inquiries or questions please contact: Asha Osman via: a.osman@raadvanstate.nl

Introductory questions

1. **How do you define alternative procedures? How do you distinguish them from jurisdictional procedures and arbitration procedures?**

- **Defining alternative procedures**

In the Netherlands, “alternative procedures”, are defined as those that take place outside the administrative court. These procedures are an alternative for the common proceedings at the administrative courts and were introduced to complement and unburden the courts. Traditionally, two procedures are understood to be part of ‘alternative procedures’ in the Dutch legal system: mediation and arbitration. Arbitration is very rarely used in administrative law cases and we will therefore not discuss arbitration in this questionnaire.

For the purpose of this questionnaire however, as suggested in the introduction of the questionnaire, we will presume a broader definition of alternative procedures. This will include procedures before the administration, prior to referral to the administrative court.

The Dutch administrative law system distinguishes two of these procedures. Applicants can either lodge an objection (*bezwaar*) or an administrative appeal (*administratief beroep*), prior to referral to the administrative court. The General Administrative Act (*Algemene Wet bestuursrecht*) defines these and the ‘ordinary’ appeal at the administrative as follows:

> **Article 1:5**
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> 1. 'Lodging an objection' means exercising the right conferred by law to request the administrative authority that took a decision to reconsider it.
> 2. 'Lodging an administrative appeal' means exercising the right conferred by law to ask an administrative authority other than the one that took a decision to review it.
> 3. 'Lodging an appeal' means lodging an administrative appeal or lodging an appeal with an administrative court.

Most administrative court proceedings are preceded by an obligatory objection procedure as provided for by the first paragraph of Article 1:5 of the General Administrative Act. This procedure allows the administrative authority to “reconsider” its initial decision. Many administrative authorities consult independent advisory commissions, who conduct the hearing process and provide the administrative authority advice on what decision to take.

Administrative appeal procedures - where another administrative authority reviews the decision - are relatively uncommon and rather the exception.

These two procedures are known as *bestuurlijke voorprocedures* meaning as much as “administrative pre-procedures”. We will use the term administrative pre-procedures for these two procedures in this questionnaire.

- **The distinction between alternative procedures, judicial procedures and arbitration procedures**

The Dutch administrative pre-procedures are judicial procedures of which the legal framework is laid down in the General Administrative Act or, in exceptional cases, in any of the *lex specialis* in the field of administrative law applicable to the case.

Mediation and arbitration procedures take place outside of the court. Arbitration leads to a judgement of the arbitrator and mediation leads to an agreement between the parties. There

is no legal framework for the execution of the agreement in mediation. However, any of the parties to the mediation agreement, can request the civil court to provide a title to execute the agreement based on Article 1062 of the Dutch code on civil procedures (*Wetboek van Burgerlijke rechtsvordering*).

2. **Do alternative procedures such as those defined above exist in your country? If no alternative procedures exist in your country, do you plan to create such procedures? Can you articulate your current thinking in this domain?**

Administrative pre-procedures
Yes. All the above mentioned alternative procedures – including the administrative pre-procedures – exist in the Netherlands. Most administrative court proceedings are preceded by an objection proceeding, as explained in the answer to question 1. In our opinion, the objection procedure, together with the rarely used administrative appeal procedure, are useful instruments to unburden the administrative courts.

Mediation
Mediation can be used in different stages of the decision-making process, including the objection procedure. During appeal procedures before the administrative court, the judge is competent to refer the parties to the dispute to a mediator. In such cases, the court proceedings are suspended until the outcome of the mediation procedure. This is merely a competence of the judge, meaning the judge is free to do so, but there is no obligation. The parties to the dispute are not obliged to go into that offer. Mediation is always conducted on a voluntary basis. Refusing to continue the case before a mediator by one of the parties is not in itself a ground for inadmissibility.

In 2013, a Member of Parliament (Van der Steur) introduced a bill to further promote the use of mediation during court proceedings (both in civil law proceedings and in administrative law proceedings).[1] He also introduced a bill concerning the registration and the quality of the mediators.[2] These initiatives provide an obligation for administrative authorities to prevent, to the best of their ability, disputes with citizens through active and timely communication. They also provide for a legal basis for judges to refer parties to registered mediators and introduce the possibility to settle parts of the dispute in accelerated procedures before a court during a mediation procedure. Once a mediation agreement is achieved, any of the parties may bring the agreement before a judge to confirm the agreement, in which case the judge can provide the title to execute the agreement.

This bill was withdrawn in June 2015; three months after Van der Steur became a member of the Cabinet. The government is now working on an own bill to further promote the use of mediation.

[1] *Kamerstukken II*, 2012-2013, 33 727 and 33 723, nr. 2.
[2] *Kamerstukken II,* 2012-2013, 33 722, nr. 2.

The goals and scope of alternative procedures

1. **With what objectives are these procedures deployed? What advantages and benefits are expected to result from them?**

Administrative pre-procedures
Objection procedures and administrative appeal procedures both have the advantage of unburdening the administrative courts. In many cases, this leads to the end of the dispute without further appeal before the administrative court. If the case is brought before the administrative court, having had an objection procedure will allow the judge to further define the legal aspect of the dispute.

Mediation
Mediation is an instrument to resolve conflicts, by appointing a third person - the mediator – to guide the parties to a joint solution to the conflict. Mediation is conducted under the principle of equality, and is only useful in cases where the parties to the conflict are willing to come to a joint agreement. The instrument of mediation is no longer useful in cases where the conflict between the parties has escalated, or where parties fundamentally wish to get a court's decision.

The main advantages of mediation are its speediness, its cost efficiency and the fact that it can resolve the underlying conflict. It furthermore unburdens the courts and allows parties to broaden the scope of the agreement by including non-legal aspects of the dispute into the agreement.

2. **Are alternative procedures used in your country in administrative matters? Since when? What factors contributed to their development and what is the proportion of administrative disputes that are resolved each year by such procedures?**

Administrative pre-procedures
Objection procedures and – less often – administrative appeal procedures are the (obliged) first step in almost all administrative proceedings in the Netherlands and therefore very often used. Procedural administrative law, except for some special fields of administrative law (for instance: social security law), is a fairly young field of law in the Netherlands and was developed over the last 40 years.

However, administrative appeal procedures date back to the 19th century. A number of laws and ordinances provided for the right to ask another administrative authority to review the decision at dispute. The administrative authority reviewing the decision usually had any authority (in hierarchical terms) over the administrative authority who took the initial decision. The two most known administrative appeal procedures were the Kroonberoep (appeal to the Crown)[3] and the Gedeputeerde Staten-beroep (appeal to the provincial executive). To date, a number of administrative laws provide for an administrative appeal procedure before another administrative authority (most commonly the minister or the provincial executive), but as mentioned before, these cases are rare.

The discussions in Europe concerning the rule of law in the 19th century (including the introduction of independent administrative proceedings before the French Conseil d'État in

[3] This procedure was later repealed following the judgement of the European Court of Human Rights in the Benthem case, where it ruled that the Kroonberoep was not a procedure before an independent and impartial judge ex Article 6 of the European Convention on Human Rights. ECHR 23 October 1985, nr. 8848/80.

1827) contributed to the development of procedural administrative law.[4] A number of independent administrative courts where established until World War II, but these only had competence in a specific field (for instance: social security law).[5]

Procedural administrative law progressed considerably in 1976 with the *Wet administratieve rechtspraak overheidsbeschikkingen* (AROB). This Act provided for an appeal at the judicial department of the Council of State against all decisions of administrative authorities, in cases where appeal was not yet possible. Administrative law – including its administrative pre-procedures as elaborated on in the answer to question 1 – was further unified in 1994 with the coming into force of the General Administrative Act (*Algemene wet bestuursrecht*).

We have no numbers available concerning the proportion of administrative disputes that are resolved with any of the administrative pre-procedures.

Mediation
Mediation is an instrument that is used in administrative law proceedings since the 1990's. Currently, there is no written legal framework for the use of mediation in disputes concerning administrative law. However, it can be used in any stage of the "formal" proceedings (administrative pre-procedures or appeal before the administrative court). It is always conducted on a voluntary basis.

In 2013, a Member of Parliament introduced a bill to further promote the use of mediation during court proceedings and provide a formal legal basis for the use of it in administrative law proceedings. It was withdrawn and the government committed to introduce its own bill on this subject.

The desire to unburden the administrative courts, to introduce more flexibility and efficiency and to include non-legal aspects of the dispute in the agreement, where all factors that contributed to the development of mediation.

The numbers show that mediation is used more often in administrative pre-procedures than in later appeals before the administrative courts.

3. **Do rules restricting recourse to alternative procedures in administrative matters exist in your country? In your opinion, what are the types of litigation for which these procedures would not be appropriate?**

Administrative pre-procedures
The objection procedure can only be used if the case is admissible before the administrative court. The admissibility criteria include time limits and rules concerning the interest of the appellant that restrict who can appeal against the decision.

Other rules restrict the use of the objection procedure as such. Part 3.4 of the General Administrative Act (*Algemene wet bestuursrecht*), deals with one of these exceptions. It provides for a so called Uniform Public Preparatory Procedure in cases where many interested parties or even citizens have the right to give their comments on the draft for an administrative act. Specific laws – e.g. the Spatial Planning Act (*Wet ruimtelijke ordening*) prescribe the use of the Uniform Preparatory Procedure. After this procedure the administrative authority takes the decision. Only interested parties have the right to appeal to the administrative courts against the administrative act that was taken after using the Uniform Public Preparatory Procedure. The objection procedure is not used in these cases.

[4] Van Wijk, Konijnenbel & Van Male, "*Hoofdstukken van bestuursrecht*", Kluwer, Deventer, 2014, p.19.
[5] Van Wijk, Konijnenbel & Van Male, "*Hoofdstukken van bestuursrecht*", Kluwer, Deventer, 2014, p.17.

Mediation
No rules exist that restrict the use of mediation.

4. **Do instruments organising the use of administrative procedures in administrative matters exist in your country? If so, are these instruments legally binding (hard law/soft law)?**

Yes. Chapter 6, 7 and 8 of the General Administrative Act contain binding rules that organise the use of administrative procedures in administrative matters including admissibility.

Chapter 6 deals with general provisions on objections and administrative appeals (pre-procedures) and appeals before the courts.

One of the most fundamental rule is laid down in Article 6:2, which states that a written refusal to take a decision or a failure to take a timely decision are both equated with a decision. This means that these instruments (objection procedure, administrative appeal and the appeal before the courts) are also applicable in these circumstances. All three procedures are lodged by filling a notice. This notice must be signed and contain the name and address of the person filing the notice, the date, a description of the decision against which the objection or appeal is directed and the grounds for the objection or appeal (see Article 6:5 of the General Administrative Act). The time limit for filing a notice of objection or appeal is six weeks and commences on the day following the day on which the decision is notified in the prescribed manner. A notice of objection or appeal sent by mail is timely filed if it is posted before the end of the time limit, provided it is received within one week after the end of the time limit. However, there is an exception to the rule concerning the time limit. A notice of objection or appeal filed after the end of the time limit shall not be declared inadmissible on this ground, if the person filing the notice cannot reasonably be held to have been in default. This includes cases where the person filing the notice was unable to file the notice in time on the grounds of pressing personal circumstances (e.g. in exceptional cases due to illness or accident) or in the event the administrative authority omitted to inform the person of the possibility to object or appeal against the decision.

An objection or appeal does not suspend the operation of the decision challenged, unless otherwise provided by or pursuant to law.

Chapter 7 is focused on special provisions on objections and administrative appeals.

As a general rule, a person who has the right to appeal a decision to an administrative court, must first lodge an objection. Exceptions to this rule are laid down in the first paragraph of Article 7:1 and includes (amongst others) decisions that were taken in an objection procedure or administrative appeal procedure, decisions that are subject to approval and appeals that are directed against the failure to take a timely decision. The decision on the objection is then open to appeal. In derogation of article 7:1 the applicant may in his notice of objection request the administrative authority to consent to direct appeal to the administrative court. The administrative authority may consent to the request if the case lends itself to such a procedure. If the administrative authority consents to the request, it shall without delay forward the notice of objection to the competent court after endorsing it with the date of receipt.

Before giving a decision on an objection an administrative authority shall give interested parties the opportunity to be heard. However, an administrative authority may decide not to hear interested parties if the objection is manifestly inadmissible, or unfounded or the interested parties have stated that they do not wish to exercise the right to be heard, or the objection is satisfied in all respects and this cannot prejudice the interests of other interested parties.

The administrative authority shall give its decision within six weeks from the day after the day on which the time limit for filing a notice of objection has expired, or within twelve weeks if a committee has been established as referred to in article 7:13 (which provides the use of an advisory committee – this will be discussed hereafter). The administrative authority may postpone the decision for six weeks at most. It may only further postpone the decision if all parties agree or, the person who filed the notice of objection agrees and the postponement cannot prejudice the interests of other interested parties, or postponement is necessary in connection with the observance of procedural rules of law.

For the purpose of deciding on the objection, the administrative authority may establish an advisory committee consisting of a chairman and at least two members. The chairman may not be a member of the administrative authority or work under its responsibility. The advisory committee must furthermore satisfy any other requirements prescribed by law. If a committee is to advise on the objection, the administrative authority shall as soon as possible communicate this to the person who filed the notice of objection. The hearing shall be conducted by the committee. The administrative authority may entrust the hearing to the chairman or a member who is not a member of the administrative authority and does not work under its responsibility. A representative of the administrative authority is invited to attend the hearing and shall be given the opportunity to explain the position taken by the administrative authority. The recommendation of the committee is given in writing and shall include a record of the hearing. If the decision of the administrative authority on the objection departs from the committee's recommendation, the reasons for this departure shall be stated in the decision, and the recommendation shall be enclosed with the decision.

Chapter 8 follows with special provisions on appeals to the district court. Chapter 8 is with a few adjudications also applicable in higher instances.

This chapter contains 119 articles that deal with the procedures before the administrative chambers of the district courts. In includes rules on interim procedures (to provide provisional relief) accelerated procedures (in urgent cases) and simplified procedures (e.g. in manifestly unfounded or inadmissible cases). Since the coming into force of the General Administrative Act in 1994, this chapter has been amended and expanded significantly. This includes rules concerning the 'administrative loop', and the power – within certain limits - to rectify the content of an administrative decision.

5. **If your State is a member of the European Union, how was the Directive 2008/52/EC of the European Parliament and the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters transposed into national law?**

In The Netherlands, this Directive was transposed in the Act *implementatie richtlijn nr. 2008/52/EG betreffende bepaalde aspecten van bemiddeling/mediation in burgerlijke en handelszaken*. Article 2 of that Act excludes administrative matters from its application. This Directive therefore, does not concern administrative matters.

The stakeholders in alternative procedures

1. **What categories of natural or legal persons have recourse to alternative procedures? Can all legal persons governed by public law use them?**

Mediation
Any natural and legal person can use mediation, including administrative authorities that are governed by public law.

Administrative pre-procedures
Any natural or legal person with 'an interest' has recourse to the administrative pre-procedures (objection procedure and administrative appeal). As set out above, these procedures are an obligatory first step to the appeal procedure prior to the appeal before the administrative court. That is why the same rules governing the access to the administrative court apply to the administrative pre-procedures.

Article 8:1
1. An interested party may appeal a decision to the district court.
2. Where the interested party is a public employee within the meaning of article 1 of the Public Employees Act, affected in that capacity, or a conscript within the meaning of Chapter 2 of the National Service Framework Act, affected in that capacity, or a surviving relative or successor in title of such a person, an act of an administrative authority other than a decision is equated with a decision.
3. The following are equated with a decision:
    a. a written refusal to approve a decision laying down a generally binding regulation or policy rule or revoking or determining the entry into force of a generally binding regulation or policy rule, and
    b. a written refusal to approve a decision taken in preparation of a private-law juridical act.

Article 1:2 of the General Administrative Act provides the following definition of an 'interested party':

Article 1:2
1. 'Interested party' means a person whose interests are directly affected by a decision.
2. Interests entrusted to administrative authorities are deemed to be their interests.
3. The interests of juristic persons are deemed to include the general and collective interests which they particularly represent pursuant to their objects and as evidenced by their actual activities.

Natural persons
What is considered to be of interest to a natural person is largely developed in the jurisprudence. Natural persons with an objective, personal, direct, currently existing, actual (not fictional) and own interest that is directly affected by a decision can appeal a decision of an administrative authority.

Administrative authorities
Administrative authorities are deemed to have interest for the responsibilities that are entrusted upon them. What exactly is entrusted upon them is laid down in the legislation concerning their competence.

Juristic persons (legal entities)
What falls under the general and collective interests of juristic persons (legal entities) follows from their statute or actual activities.

2. **Can the parties to an administrative dispute entrust the conducting of a mutual agreement procedure to a third party? What role is this third party called upon to fulfil?**

The answer to this question is no with regard to the administrative pre-procedures (objection procedure and administrative appeal procedure).

In mediation procedure, a mediator guides the parties towards an agreement. Aside from the mediator, a third party is (in principle) not called upon. Parties may however be assisted by a lawyer or third party.

3. **Do standards regulating the activity of these third parties exist in your country (required qualifications, continuing vocational training, remuneration, deontology etc.)? Do authorities with responsibility for the supervision of compliance with these standards exist (public bodies, professional, non-profit organisations – possibility operating under license, etc..).**

Administrative pre-procedures
Not applicable for administrative pre-procedures.

Mediation
The Dutch Federation of Mediation has set out quality standards and a register where mediators that meet these standards can register. Mediators that are listed on this register must:

- comply with the entry requirements;
- meet the profile of professional mediators;
- comply with the mediation regulations and the code of conduct for mediators;
- comply with the disciplinary rules;
- have experience in mediation, and
- keep their knowledge and competences up to date (through permanent education).

4. **Can the administrative courts invite or oblige parties to litigation brought before them to pursue an alternative procedure? Can the administrative court entrust a mediation mission to a third party?**

Administrative pre-procedures
The administrative courts can invite parties to pursue mediation. The parties have to agree and choose their own mediator. The court cannot oblige parties to bring the matter before a mediator. As far as pre-procedures are concerned there is no possibility for the courts to oblige parties to make use of those. The law prescribes - except for some categories of cases - the use of the relevant pre-procedure.

Mediation
Mediation is always conducted on a voluntary basis.

5. **Can the administrative court itself conduct mediation proceedings? In your opinion, what are the advantages and drawbacks of a mutual agreement procedure conducted by a judge? In what types of litigation does the direct intervention of a judge appear most appropriate?**

Judges in administrative law proceedings cannot conduct mediation proceedings themselves. They must refer parties to a list of mediators that are accredited by the courts – these only include mediators that are listed on the quality register of the Dutch Federation of

Mediators. Referring the parties to mediation is very common in private law cases, for instance in divorce cases where children are concerned.

Judges in administrative law proceedings can however, guide the parties towards a settlement (schikking), in which case the judge writes down what is agreed upon between the parties during the oral hearings of the case in the ‘procès-verbal/ minutes of the hearing. Sometimes a settlement will be laid down in a written agreement to be signed by the parties. A settlement leads to a withdrawal of the appeal. Settlements are quite often reached in tax law cases. In cases where third parties are involved, it is rarely possible to reach a settlement. There are no written rules about these settlements. Some judges are more in favour of trying to reach a settlement than others.

A disadvantage of guiding parties towards a settlement is that one of the parties may feel pressured to settle because it fears that refusing to settle may lead to a unfavourable outcome of the court proceedings (in other aspects of the case). Whether mediation or a settlement is appropriate in a given case depends on the willingness of the parties to negotiate, the discretion / leeway of the administrative authority, possible precedential authority and if the appellant feels it is treated equally.

The procedures of alternative procedures

1. **Can you detail the different alternative procedures applicable in administrative matters in your country. How do parties choose between the various alternative procedures available?**

Administrative pre-procedures
There are two types of administrative pre-procedures in the Netherlands: the objection procedure and the administrative appeal procedure. These are mandatory procedures prior to the appeal at the administrative court and aimed at reconsideration by the administrative authority. The law prescribes which of these two procedures to follow in the particular case, parties cannot choose between the two. In case of an objection procedure, the appellant makes his objection before the same administrative authority that took the contested decision. In many cases, the administrative authority makes use of an advisory committee (internal or external) before reconsidering their decision. These advisory committees hears the appellants and advices the administrative authority on what decision to take.

In case of an administrative appeal, that appeal is made before another administrative authority that is higher in hierarchy. Administrative appeal procedures are rare.

Mediation
Mediation is always conducted on a voluntary basis. Parties are free to choose mediation at any stage of the proceedings (administrative pre-procedure or appeal before the administrative court).

2. **Do administrative appeals, mandatory prior to referral to the administrative court, exist in your country? Are these appeals optional? How are they organised? Does the lodging of an administrative appeal modify the conditions governing the filing and review of subsequent recourse to the court? For example, can the parties present arguments, not produced during a prior administrative appeal, before the administrative court?**

Administrative pre-procedures
Yes, mandatory administrative appeals prior to referral to the administrative court exist in the Netherlands in the form of an objection procedure or an administrative appeal procedure. These procedures are not optional. The administrative authority has six weeks (as a standard) to reconsider its initial decision. In cases where an advisory committee is requested to advise the administrative authority, this term is extended to thirteen weeks.

The General Administrative Act provides conditions governing the filing and review of subsequent recourse to the court. Article 6:13 provides the following:

> **Article 6:13**
>
> An interested party may not lodge an appeal with the administrative court if he has not expressed a view as referred to in article 3:15 or has not lodged an objection or administrative appeal and can reasonably be considered at fault for having failed to do so.

Lodging an objection or administrative appeal is therefore, a mandatory first step. Appellants may present additional arguments before the administrative court, but only concerning matters of the decision of the administrative authority that they contested against in their objection or the administrative appeal procedure.

Mediation
This question is not related to mediation.

3. **What are the general principles regulation alternative procedures (adversarial principle, impartiality, rules of confidentiality, time limits etc..)? How much autonomy do parties have with regard to the organisation of the deployment of an alternative procedure?**

Administrative pre-procedures
Chapter two of the General Administrative Act contains some of the most important general principles regulating the administrative pre-procedures and the contact between administrative authorities and citizens in general. These include the written general principles of proper administration (*algemene beginselen van behoorlijk bestuur).* The most important principles concerning the administrative pre-procedures that are mentioned in this chapter are the principle of impartiality (Article 2:4), official secrecy and the general principle that appellants should be heard.

Parties have no autonomy concerning the use of one of the two administrative pre-procedures. In most administrative law cases, it is a mandatory first step and the law prescribes which one of the two administrative pre-procedures should be used. If they are not followed, the case is declared inadmissible before the administrative court.

Mediation
No legal framework for mediation in general and the general principles regulating mediation in particular. Its voluntary basis and the principle of non-disclosure are fundamental principles. When parties opt for mediation during court proceedings, the administrative court usually sets a time limit of 12 weeks in which the proceedings are suspended. If parties do not come to an agreement within that time, the court proceedings are resumed.

4. **Does the initiation of an alternative procedure allow the suspension or interruption of the periods of limitation? And of time limits for judicial appeals?**

Administrative pre-procedures
No. The time limits in which the appeal must be lodged are strict, both for the appeal in administrative pre-procedures and in the appeal before the administrative court. Appellants have six or thirteen weeks (in case the administrative authority makes use of an advisory committee) to lodge an objection or administrative appeal. After this second decision of the administrative authority, the appellant has six weeks (in general) to appeal before the administrative chamber of the district court. So, the initiation of an alternative procedure does not allow for the suspension or interruption of the time limits for judicial appeals.

What is interesting to note is that there are general rules developed by jurisprudence concerning the reasonable time. In a landmark decision of 29 January 2014, the grand chamber of the Administrative Law division of the Dutch Council of State set a uniform period of four years as the reasonable time for the disposal of disputes under administrative law involving an objection procedure and court proceedings. This period includes two years for the objection procedure and the application for judicial review (based on six months for the objection to the administrative authority and 18 months for review by the administrative chamber of the district court) and two years for the appeal. If these time limits are not adhered to, the state must pay €500 in compensation for non-pecuniary damage for every six months by which a time limit is exceeded.

Mediation

No. Mediation may lead to a suspension of the appeal procedure, to allow parties to resort to mediation.

5. **Can the court intervene, even partially, during the course of an alternative procedure? If so, in what way?**

Administrative pre-procedures
During an administrative pre-procedure (this concerns the objection procedure in most cases) the court can intervene if one of the parties asks for provisional relief in urgent cases. Provisional measures can only be considered by the court after the administrative pre-procedures are initiated. Provisional measures aim to suspend the decision of the administrative authority. This decision by the administrative court cannot be appealed against. See the following provision in het General administrative Act.

> **Article 8:81**
> 1. If an appeal has been lodged with the district court against a decision, or if an objection or administrative appeal has been lodged prior to a possible appeal to the district court, the provisional relief judge of the district court that has or may come to have jurisdiction over the main action may, on application, grant provisional relief if, having regard to the interests involved, the situation requires immediate relief.
> 2. If an appeal has been lodged with the district court, any party to the main action may file an application for provisional relief.
> 3. If an objection or administrative appeal has been lodged against a decision prior to a possible appeal to the district court, the person who filed the notice of objection or appeal or an interested party who does not have the right to lodge an administrative appeal may apply for provisional relief.
> 4. Articles 6:4.3, 6:5, 6:6, 6:14, 6:15, 6:17 and 6:21 apply mutatis mutandis. An applicant who has lodged an objection or appeal shall submit a copy of the notice of objection or appeal together with his application.
> 5. If an application for provisional relief is filed after an objection or administrative appeal has been lodged and if a decision is given on this objection or appeal before the application is heard in court, the applicant shall be given the opportunity to lodge an appeal with the district court. The application for provisional relief shall be equated with an application made pending the appeal to the district court.

Mediation
The court cannot intervene during mediation on the merits. It can only intervene to extend the suspension period of the court proceedings and the time limit for the mediation process.

The efficacy of alternative procedures

1. **Do you consider that alternative procedures are faster and/or less costly than court procedures? Can you provide a quantitative comparison?**

Administrative pre-procedures
Yes. The objection procedure and the less often applied administrative appeal procedure are definitely less costly and less time consuming than general court procedures. These procedures aim to resolve the conflict – by obliging the administrative authority to reconsider its initial decision based on the objections raised by the appellant – without recourse to the court. Administrative pre-procedures have strict deadlines: generally six weeks for appellants to object and six to thirteen weeks for the administrative authority to decide.

Mediation
There is no data available that would lead to the conclusion that mediation is faster or less costly than court procedures. However, it could presumably be less costly than court procedures, because it could eventually lead to the withdrawal of the appeal and thus resulting in fewer appeals before the district courts and the highest administrative courts. We have no data available for a quantities comparison.

2. **What is the proportion of administrative disputes that are definitively resolved by alternative procedures? What are the factors in success, or failure?**

Administrative pre-procedures
Studies have been conducted to evaluate the General Administrative Act, but there is no recent study available. Figures about the proportion of administrative disputes that are definitively resolved by the objection or administrative appeal procedures are difficult to find. We have no recent statistics available on this.

An important factor of success in the administrative pre-procedures is the number of appellants. Cases where third parties object to the initial decision are more complex, because different (and conflicting) interests have to be weight against one other.

Mediation
There is no data available on the proportion of mediation in administrative disputes. As mentioned earlier, mediation is not used often in administrative procedures.

3. **What is the legal standing of an agreement reached by means of an alternative procedure? Can such an agreement be referred to the administrative court for approval?**

Administrative pre-procedures
The objection and administrative appeal procedures both lead to a new decision (and not an agreement) of the administrative authority. This new decision is the object of the procedure before the administrative court.

Mediation
Currently, there is no legal framework for mediation in the Netherlands. The agreement that is signed between the parties after a successful mediation is a binding agreement between the parties. It is however not enforceable. Parties can either fix the agreement through a notarial deed or request a title to execute the agreement before the civil court.

4. **What instruments and procedures are available to the parties in the case of a violation of the agreement reached by means of an alternative procedure, potentially approved by the administrative court?**

Administrative pre-procedures
The objection and administrative appeal procedures lead to a new decision of the administrative authority. This is not an agreement. Parties can therefore not violate the decision. The new decision is the object of the procedure before the administrative court.

Mediation
The agreement that is signed between the parties if mediation is successful, is a binding agreement between the parties, but not enforceable. Parties should either fix the agreement through a notarial deed or request a title to execute the agreement before the civil court. This will lead to an instrument for both the parties to execute the agreement.

5. **Do you consider it necessary to further develop alternative procedures in your country? Why? In what form?**

Administrative pre-procedures
The objection and administrative appeal procedure is very well developed in the Netherlands over the past twenty years. The General Administrative Act has been evaluated three times since came into force in the early 1990s. There is no need to further develop these procedures. Appeals before the administrative court are gradually decreasing in numbers. This may be related to the good functioning of the administrative pre-procedures.

Mediation
Yes. Mediation should be further developed in the Netherlands in administrative law proceedings. As mentioned earlier in this questionnaire, the Cabinet is working on an Act to further introduce and promote the use of mediation in administrative law proceedings.