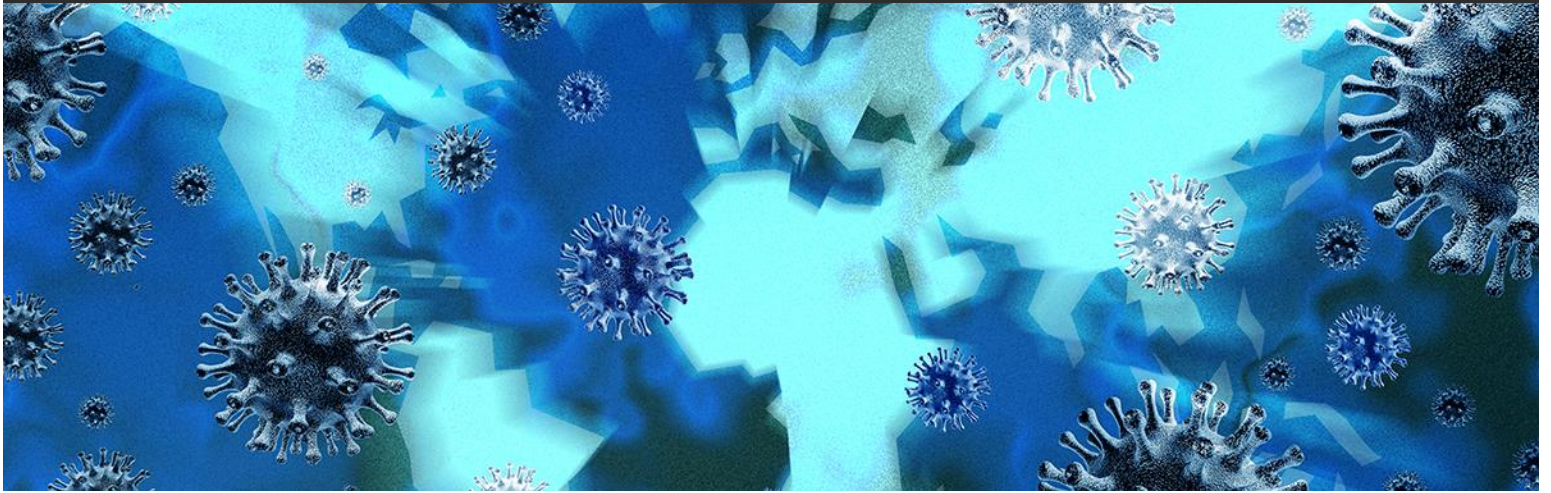


**Alert | Health Emergency Preparedness Task Force:
Coronavirus Disease 2019**



April 16, 2020

Dutch Law: The Administrative Jurisdiction Division of the Dutch Council of State Continues Operations During the COVID-19 Crisis

*In its **ruling of 6 April 2020** the preliminary relief court of the Administrative Jurisdiction Division of the Council of State (Afdeling Bestuursrechtspraak van de Raad van State) suspended the effect of a decision of the Municipal Executive of Rijswijk. Due to COVID-19-related measures, the president of the Administrative Jurisdiction Division opted to hear the parties via written submissions instead of a physical hearing. This is the new standard procedure during the COVID-19 crisis for non-urgent cases, according to the rules published 9 April 2020.*

The Underlying Case

The Municipal Executive (*burgemeester en wethouders*) of Rijswijk imposed an order subject to penalty (*last onder dwangsom*) on the applicant to abort all its business activities not in line with the applicable management bylaw (*beheersverordening*). After the applicant's objection and appeal for judicial review were declared unfounded (respectively by the Municipal Executive and the administrative court), the applicant filed an appeal with the Administrative Jurisdiction Division (the highest Dutch court for administrative matters). In addition, the applicant submitted a request for preliminary relief via suspension of the order.

The applicant's main argument was that the management bylaw – on which the decision of the Municipal Executive was founded – was no longer applicable, since a new zoning plan (*bestemmingsplan*) for the same region had been adopted. Adoption of the new zoning plan had caused the management bylaw to lapse by operation of law, according to the applicant.

The Municipal Executive argued, however, that adoption of the parking-related zoning plan did not cause the management bylaw to lapse, because the new zoning plan only covered parking. In the view of the Municipal Executive, the plans cover the same physical area, they do not cover the same subject matter. Therefore, the newly adopted zoning plan must be regarded as an addition to the management bylaw, not as a replacement. Otherwise, a new spatial plan would cause an existing spatial plan to lapse. The Municipal Executive maintained that the legislator could not have aimed to create such a blind spot in the spatial planning system.

In the preliminary relief proceedings, the president of the Administrative Jurisdiction Division ruled that because there is no clear way to interpret the legal framework in this matter (article 3.39 of the Spatial Planning Act, *Wet ruimtelijke ordening*), the Administrative Jurisdiction Division must decide the case in the proceedings on the merits. Therefore, the preliminary relief court, and due to the significant financial consequences of the decision for applicant, granted the request for preliminary relief.

In principle, the adoption of a new zoning plan replaces an already applicable management bylaw for the same area (and vice versa). The question is, to what extent does this principle apply if the new spatial plan only covers specific subject matter (such as parking in the aforementioned case). If the Administrative Jurisdiction Division rules that adoption of a new spatial plan always leads to the lapse of an existing spatial plan, some zoning plans and management bylaws that are currently considered to be in force and effect may actually have lapsed by operation of law.

Administrative Jurisdiction Division Procedures during the COVID-19 crisis

A physical hearing was scheduled for 26 March 2020. Due to the COVID-19 crisis, which has led to a so-called “intelligent lockdown” in the Netherlands, the hearing could not take place. Accordingly, the preliminary relief court held a written hearing, which led to the abovementioned verdict.

On 9 April 2020, the Administrative Jurisdiction Division published its [procedures for the month of April](#) on its website; the procedures may be extended if the COVID-19-related measures are prolonged). In short, the Administrative Jurisdiction Division will not hold physical hearings in April. Exceptions may be made in urgent cases. Otherwise, hearings will take place at a distance (in writing or by phone). Parties may also request such written or telephonic hearings, which may expedite the matter. Through these procedures, the Administrative Law Division continues to operate during these challenging times.

** This GT Alert is limited to non-U.S. matters and law.*

For more information and updates on the developing COVID-19 situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

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