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Procedurele waarborgen in materiële EVRM-rechten

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Summary

Procedural safeguards read into substantive ECHR rights

1 INTRODUCTION AND RESEARCH TOPIC

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) contains explicit procedural requirements such as the right to a fair trial (Article 6) and the right to an effective remedy (Article 13). However, the procedural requirements which the Member States are obliged to observe in their national procedures do not appear to be limited to these explicit procedural requirements. More substantive rights such as the right to life (Article 2) and the right to respect for private and family life (Article 8) also state positive procedural obligations for the Member States.

The first goal of this study is to provide an overview of the procedural safeguards which the European Court of Human Rights (ECtHR or Court) has recognised under the more substantive ECHR provisions. The second goal is to monitor the review of the Court in order to examine whether more indirect procedural requirements can be derived thereof. In addition, the possible added value of these safeguards and the implications with regard to the procedural requirements of Articles 6 and 13 ECHR will be considered for both the more explicit procedural safeguards as well as the indirect procedural implications.

In *Chapter 1* the three research questions are formulated as follows:

1. *Which procedural safeguards does the ECtHR recognise under Articles 2, 3 and 8 ECHR and Article 1 FP ECHR?*
2. *Which indirect procedural implications arise from the Court's method of review under Articles 2, 3 and 8 ECHR and Article 1 P1 ECHR?*
3. *What is the possible added value of these procedural safeguards and implications with regard to the procedural requirements contained in Articles 6 and 13 ECHR?*

2 ARTICLES 6 AND 13 ECHR

In *Chapter 2* the procedural requirements of Articles 6 and 13 ECHR are considered. Article 6 concerns the right to a fair trial and access to court. In principle the procedural safeguards under Article 6 ECHR apply at the judicial stage. In certain cases, some of these requirements already apply at the preliminary administrative stage. Article 13 ECHR concerns the right to an effective national remedy on the grounds of which a decision can be challenged. This

can imply that the possibility of payment for damages should also be available in the national law.

PART I

3 PROCEDURAL SAFEGUARDS OF ARTICLES 2, 3 AND 8 ECHR AND ARTICLE 1 P1

Chapters 4 and 5 deal with the key procedural obligations in standard Article 2 and 3 ECHR cases. This obligation deals with holding an effective official investigation into an occurrence that was potentially a violation of the right to life or prohibition of torture. The obligation applies *in retrospect*, and is not preventative, as is usually the case in substantive positive obligations under these rights.

In order to qualify an investigation under these articles as effective, the investigation should be carried out independently and the circumstances surrounding the (fatal) incident should be clarified. This entails that the parties responsible must be identified and must be able to be held responsible under criminal law (or otherwise) in the national proceedings. For this purpose, an autopsy must be performed under specific circumstances, and evidence examined further. In addition, the investigation should be started on time and may not continue for an unreasonable length of time. Finally, the surviving relatives, family members or other persons involved (in the case of Articles 2 and 3 ECHR) or the applicant himself (in the case of Article 3 ECHR) should be sufficiently involved in the investigation. The interpretation of these requirements will depend on the circumstances of the specific case. It is therefore difficult to draw up a simple list of actions which the national authorities are obliged to perform during an investigation.

The executive and judicial authorities are responsible for implementing the procedural obligation to investigate. However, in practice the executive authorities are responsible in the first instance for carrying out an investigation in the event of an alleged violation of Article 2 and/or 3 ECHR. These authorities usually have the most expertise to hand, and with a view to securing evidence it makes little sense to wait until the case has come to court. At the same time, certain shortcomings at the preliminary stage of the investigation can be compensated at the judicial stage, such as the duration of the investigation.

In *Chapter 5* attention is also paid to the procedural safeguards of Article 3 ECHR (and in combination with Article 13 ECHR) in expulsion cases. Under Article 3 ECHR (prohibition of torture) separately and in conjunction with Article 13 ECHR, the Court in Strasbourg has formulated the obligation as carrying out a meaningful assessment of the claim of the asylum seeker that if he is deported to his country of origin (or another country) he will be

exposed to a real risk of an incident that would be in breach of Article 3 ECHR. This obligation arises from both articles and is applicable to both the executive and the judicial authorities of the State that is to take the expulsion decision.

The meaningful assessment should comprise, in accordance with the standards of the ECtHR in (non-exhaustive) consultation of sufficient objective and current sources and (medical) experts, hearing the asylum seeker and collecting (contrary) evidence. The content of this investigation is greatly determined by the specific circumstances of the case. There are, however, three factors which can offer some clarity in these types of cases and at the same time can act as a warning signal to national actors. In the first place, the imminent irreversible harm that can arise from the expulsion of the asylum seeker. If this is the case, it is up to the authorities to be extra vigilant in their actions and therefore to investigate the arguments of the asylum seeker even more thoroughly. Second, an infringement of a fundamental and absolute right activates the duty to assess the credibility of the account of the asylum seeker. An infringement of such a right is moreover automatically a serious matter, and also the severity of the (irreversible) harm is often a reason for the Court to adopt a stricter approach. And finally, third, the interference in the right of a person (asylum seeker) who belongs to a vulnerable group (e.g. asylum seekers, children, the elderly, Roma) can motivate the authorities to offer special substantive and procedural protection to this person. These three factors are almost always present in cases involving the expulsion of an asylum seeker.

The obligation of an accessible asylum procedure also arises from the combination of Articles 3 and 13 ECHR. In this procedure, information must be provided in good time to the asylum seeker and he must be heard before a decision is taken on the asylum application. Hearing an applicant is a typical obligation arising from Article 6 ECHR. By applying this obligation via the articles referred to, the Court circumvents the restriction of applying Article 6 ECHR in the area of immigration law. Furthermore, this obligation also already applies prior to the judicial stage, and even before a decision is taken. This last point is an extension of Article 13 ECHR, since this article provides for an effective remedy against a decision in cases where the decision has (usually) already been taken.

Chapter 6 focusses on the procedural safeguards of Article 8 ECHR. Under the right to respect for private and family life, the ECtHR recognises various procedural safeguards that are applicable to different areas of law. For example, procedural obligations are developed in environmental cases, cases involving placement of children in care and relocation cases (of Roma). In addition, this study looked at the procedural obligations developed by the ECtHR in privacy cases (access to personal or confidential information) and (though in less detail) cases involving the application of authorisations under criminal law. The 'proceduralisation' of Article 8 ECHR is clearly evident in these types of cases. The decision-making process should be done with due care, where the parties

involved are informed in a timely manner and are heard where necessary. In certain circumstances prior investigation is also a procedural obligation under Article 8 ECHR, and the execution of the judgment should actually be carried out.

Generally speaking, procedural trends under Article 8 ECHR have provided a number of findings. Firstly, the wide *margin of appreciation* which the States are afforded under the law on the right to respect for private and family life, is eminently appropriate for the recognition of procedural safeguards. The substantive margin of appreciation of the national actors is wide; the procedural margin is (more) limited. Moreover, the Court has made this substantive margin of appreciation in certain cases dependent on the presence of procedural safeguards in the national proceedings and the importance that is attached to the interests of the parties involved in the national procedure. The greater the national procedural safeguards, the wider the *margin of appreciation*.

Secondly, the precise application of the procedural safeguards under Article 8 ECHR remains very case-related, similar to under Articles 2 and 3 ECHR and Article 1 FP ECHR. An important difference however with the obligation to investigate in non-expulsion cases under Articles 2 and 3 ECHR, is that the procedural requirements under Article 8 ECHR can also apply *prior to* the interference.

The following four factors are derived from casuistic Article 8 ECHR case law of the Court and can serve as a point of reference and sound the alarm for national authorities.

The first factor is the fundamental nature of the right involved. The more fundamental the interest of the applicant, the greater the weight the Court attaches to a prudent national procedure.

The second factor concerns the severity of the interference and the related (detrimental) consequences. The more serious the interference, the more serious the consequences usually are. The possible irreversible harm also plays a role here. If the harm is irreversible, it implies that the interference is serious. The severity of the interference and the irreversible harm lead to a tightening of the procedural obligations. In addition, within a relative right the Court can differentiate what procedural protection must be offered to the separate (fundamental) specific interests. The distinction between the strictness of the procedural obligations under an absolute right and a relative right is therefore smaller on certain points than would appear at first glance.

The third and fourth factors concern the special protection of vulnerable groups and the best interests of the child. A substantive criterion such as being part of a vulnerable group or the interests of a minor child can affect the procedure.

When it comes to the question of at which authority the procedural safeguards under Article 8 ECHR are aimed, it is important to consider the nature of the

case, the type of obligation and the possible irreversible harm. In the case of irreversible harm, fast action at an early stage is required. As a result, it is often the decisive body which considers the case first. The irreversibility of the harm is also linked to the nature of the case. Once again, the circumstances can require that prior action is necessary, as mentioned before in the case of issuing a licence to a factory. After all, the notion of the effective safeguarding of human rights is not served if it is only considered at the judicial stage whether granting a licence is detrimental to the living environment of the party involved. Thus also in this case, the executive authority is in practice responsible in the first instance for the implementation of the obligation. Finally, the type of obligation plays a role. Consulting with Roma about the displacement intention of executive authorities is done by the same authorities and this should be done earlier at the decision-making stage.

Chapter 7 considers the procedural safeguards which the ECtHR recognises under the right to property. The most important procedural obligation and the one which occurs most often which the Court has created with regard to property rights, concerns the existence in national legislation of an effective legal remedy to contest violations of property rights. This obligation displays many similarities to Article 13 ECHR. In addition, in the case of property rights procedural safeguards also apply that are related to hearing the party involved (by the executive authority) and the timely notification of the measure that infringes upon the property rights.

Casuistic case law pertaining to the right to property can in part be indicated using a number of factors referred to in Article 8 ECHR and Article 13 ECHR. Also under Article 1 FP ECHR, the more fundamental the interference is, the greater the necessity for the national authorities to observe the procedural obligations. Less clear is the case law concerning property rights on the role of possible irreversible harm and belonging to a group of vulnerable persons who should be given special (substantive or procedural) protection. Disputes concerning property do not always involve possible irreversible harm, such as in expulsion cases under Article 3 ECHR.

4 POSSIBLE ADDED VALUE PROCEDURAL SAFEGUARDS OF SUBSTANTIVE ECHR RIGHTS WITH RESPECT TO THE PROCEDURAL REQUIREMENTS OF ARTICLES 6 AND 13 ECHR

Chapters 4, 5, 6, 7 and 8 provide an answer to the question concerning the possible added value of these procedural safeguards with respect to Articles 6 and 13 ECHR.

Firstly, the procedural requirements as part of a substantive ECHR right have the most added value if these requirements are new in relation to the procedural requirements of Article 6 ECHR. In addition, added value exists

in the procedural requirements that are of significance at the preliminary stage. This implies an extension of the stage at which Article 6 ECHR was originally applicable. In addition, the added value became clearly evident in cases in which not only the stage under which Article 6 ECHR is applicable was extended, but also in the scope of application. Via the prohibition on torture and the right to respect for private and family life and also (in combination with) Article 13 ECHR, some requirements of Article 6 ECHR became applicable in cases under immigration law, and in tax disputes via property rights in some cases.

Providing a clear answer to the question concerning the possible added value of the procedural safeguards with respect to Article 13 ECHR proved difficult, and the answer is not clear-cut. When Article 13 ECHR under the influence of a substantive right acquires a different significance, these procedural safeguards are of added value with respect to the right to an effective remedy of redress. It is not so much the substantive ECHR article itself that provides the additional procedural safeguards, but it does have an effect on the procedural requirements under Article 13 ECHR. It is slightly easier to answer the question to what extent Article 13 ECHR has a potentially added value compared to Article 6 ECHR. In the cases in which via Article 13 ECHR a requirement under Article 6 ECHR is applied independently in an immigration law case, these new procedural safeguards of Article 13 ECHR can be of added value compared to the procedural requirements of Article 6 ECHR. In this case the number of procedural requirements is not increased via a substantive ECHR right, but via the procedural right to an effective remedy (Article 13 ECHR). Extra obligations now apply in an area in which they were not originally applicable.

5 SUMMARY ANALYSIS

In *Chapter 8* an attempt is made to explain the trend in which a procedural safeguard is attached to substantive ECHR rights by considering three questions.

In answer to the first question: the specific nature of the substantive ECHR right requires in certain cases a different type of procedural protection. The procedural requirements of Articles 6 and 13 ECHR do not always provide this protection. To close this gap in procedural protection under the Convention and to implement the substantive rights, the Court has recognised procedural safeguards under ECHR rights in accordance with their nature.

Secondly, it was considered whether the absolute or relative nature of the rights has an effect on procedural requirements under the substantive ECHR provisions. The procedural scope for the national authorities is more or less the same under both categories. The extensive *margin of appreciation* accorded to the State under the relative right to respect for private and family life and the right to property, pertains to the substance and not the procedural degree

of discretion of the authorities. Under both absolute as well as relative rights, the Court can set requirements on the procedural margin of appreciation of the national actors. Moreover, the differences with regard to the procedural requirements under absolute and non-absolute rights become even smaller if we take the severity of the interference as a starting point. The substantive right does not have the most effect on the procedural requirements. The severity of the interference and the corresponding (serious or irreversible) harm have a greater effect on the procedural requirements. Under Article 8 ECHR, in the event of a serious interference in a vital interest with serious consequences, comparable strict requirements can apply such as those in the case of an interference in the right to life (Article 2 ECHR). Within a relative right, the Court can thus differentiate in the procedural protection required. This depends on the severity of the interference and the harm and the (fundamental) interest that is or will be interfered with.

Thirdly, to conclude, it was considered to what extent there are other, more general, factors that can be derived from ECtHR case law which affect the procedural requirements under the substantive ECHR rights. These factors can be most clearly derived in the case law concerning Article 3 and Article 8. However, these more general factors can also be of value under other Articles in creating more structure in the ECtHR judgements.

PART II

6 INDIRECT PROCEDURAL IMPLICATIONS OF SUBSTANTIVE ECHR RIGHTS

Chapters 9 (introduction), 10 and 11 in Part II of this research deal with the question whether indirect procedural implications can be derived from the method of review of the ECtHR itself. The establishment of the facts and the evidentiary rules applied by the Court constituted the main focus in this examination.

6.1 Indirect procedural implications of Articles 2 and 3 ECHR

Establishment of the facts

Most clear are the indirect procedural implications under Articles 2 and 3 ECHR with regard to the establishment of the facts. In cases where the right to life or the prohibition of torture is at stake, the facts themselves are often disputed. In certain cases the ECtHR must therefore establish the facts itself. For this purpose, the ECtHR can for example at its own initiative consult supplementary reports. By independently ascertaining the facts, the Court deviates from the main rule that in principle the Court acts as a 'linesman', and is not a court of fourth instance. However, with the introduction of the procedural obligation

to investigate under Articles 2 and 3 ECHR, there is less necessity for the Court to establish the facts on its own. The development of this obligation to investigate under these Articles has also led to a decrease in the number of *fact-finding missions* undertaken by the ECtHR.

Evidentiary rules

The indirect implications that can be derived from the way in which the Court deals with evidence and evidentiary rules are most prominent under Article 3 ECHR in expulsion cases. The same reasoning applies for the standard Article 2 and 3 ECHR cases which were mentioned above within the scope of the establishment of facts.

Under Article 3 ECHR, for the credibility assessment of the account of the reasons for requesting asylum in expulsion cases the Court consults more objective and up-to-date sources, and it may adapt the evidentiary burden in favour of the applicant. The Court does so if the applicant belongs to a group that has systematically been treated in a degrading manner in the country to which the applicant is being expelled or when the general situation in that country is very poor. The Court also reviews the expulsion *ex nunc*, if this has not yet been done, in order to be able to implement Article 3 ECHR. The importance of this review is underlined and confirmed by possible irreversible harm.

6.2 Indirect procedural implications of Article 8 ECHR and Article 1 P1

Establishment of the facts

Indirect procedural implications that arise from the establishment of the facts by the Court under Article 8 ECHR and Article 1 P1 ECHR are virtually non-existent. In the proceedings before the Court, the focus of the dispute concerns whether there exist a *fair balance* in the national proceedings. The situation is 'frozen' at the moment the complaint is put to the Court in Strasbourg for review. Moreover, an extensive *margin of appreciation* is accorded to the State under the right to a private and family life and the right to property and for this reason the Court will not repeat the national balancing of interests.

Evidentiary rules

No indirect procedural implications can be inferred from the handling of evidence under property law, because in the proceedings before the Court the emphasis lies on whether a *fair balance* was sought in the national proceedings. This is different, however, in certain cases concerning the right to private and family life. Under Article 8 ECHR the Court can decide to review the facts and circumstances *ex nunc* in cases related to Article 3 ECHR (proposed expulsion) including cases involving placement of children in care. In this case, the Court does not limit itself to a review of the national proceedings up to

the judgment of the highest national court (i.e. the procedure 'as a whole'; the *ex tunc plus* assessment), but reviews the facts and circumstances *ex nunc* in the cases where a minor delinquent is threatened with deportation or in family reunification cases or abduction cases. Finally, the *ex tunc plus* review of the Court, included in the assessment method of the Court, entails that the national court reviews the decisions of the administration preferably *ex nunc*.

6.3 Potential added value of indirect procedural implications in respect to articles 6 and 13 ECHR

The indirect procedural evidentiary implications that arise from the ECtHR review under Article 3 ECHR in expulsion cases, have the greatest added value in connection with Article 6 ECHR. The indirect obligation to include more current and objective sources in the assessment of the credibility of the applicant's account cannot be found in the right to a fair trial. The same applies for the obligation to review *ex nunc* or to adjust the evidentiary burden. More limited is the added value of the indirect procedural implication under the standard Article 2 and 3 ECHR cases to independently establish the facts, because the more explicit procedural investigation obligation has led to a decrease in the cases in which the Court independently establishes the facts under these articles.

The added value of the indirect procedural implications arising from the standard Article 2 and 3 ECHR cases and Article 3 ECHR expulsion cases is not so clear-cut in respect to Article 13 ECHR. Under these articles, the national authorities are already obliged to start a thorough investigation and to assess the credibility of the account under Article 3 ECHR respectively. These are the more explicit procedural requirements which part 1 of this research considered extensively. When independent procedural safeguards are created under Article 3 ECHR, these have added value (in so far as they are not present under Article 13 ECHR). The consequence of this, however, is that the added value of the indirect procedural implications decreases, because the obligations already arise (more clearly) from Article 3 ECHR independently, or under the combination with Article 13 ECHR. However, the overlap that exists between the more explicit procedural safeguards under Article 3 ECHR (and possibly in combination with Article 13 ECHR) confirms the significance of these safeguards and implications. Not only does the Court place extra procedural requirements on the national proceedings via a substantial ECHR right, but the assessment of the Court itself is also more thorough in these expulsion cases.

Finally, the *ex nunc* review which the Court applies in certain cases under Article 8 ECHR is of added value in relation to Article 6 ECHR and Article 13 ECHR. Neither of these articles provide the obligation to hold an *ex nunc* review under the right to private and family life.

7 MORE GENERAL INDIRECT PROCEDURAL IMPLICATIONS AS HUMAN RIGHTS ADJUDICATION CHARACTERISTICS

Chapter 12 provides an explanation of the method of review of the Court in more general terms. Distinctive of the ECtHR review is firstly the individually orientated approach or the customised approach. Illustrative of this is both the more accommodating attitude of the Court towards the applicant in an Article 3 ECHR expulsion case as well as the interpretation of the minimum level of the severity of the nuisance experienced by the applicant in order to fall within the scope of application of Article 8 ECHR. In the case of Article 3 ECHR, the Court is prepared to reduce the burden of proof, because this would better reflect the difficult position of the applicant with regard to providing evidence. Whether the Court under Article 8 ECHR deems that a 'minimum level of severity' of nuisance is present, depends greatly on the hindrance that is experienced by the applicant and what the national authorities have done to prevent or limit this. In other words: if the authorities offer alternative living arrangements to the applicant, it can stand in the way of the application of Article 8 ECHR. It is therefore advisable that during the national proceedings due attention is paid to both substance and procedures and the concrete consequences (such as hindrance) of decisions for the individual concerned.

Moreover, the importance that is attached to children in the review by the Court is illustrative of the customised approach the Court takes. An indirect obligation in national proceedings to also give special protection to (vulnerable) individuals arises from this. The judgment of the Court that a general application of regulations is not consistent with the special circumstances of individuals is typical of the customised work the Court (generally) delivers. However, in certain cases the Court does seem to prefer a more general application of regulations taking consideration of the notion of legal certainty.

Secondly, the special protection of vulnerable groups is typical in human rights adjudication. Again, the customised work of the Court under Article 3 ECHR in expulsion cases when it comes to considering evidence is an example of this.

8 THE PROS AND CONS OF THE 'PROCEDURALISATION' OF SUBSTANTIVE ECHR RIGHTS AND THE (PROCEDURAL) ADJUDICATION OF THE ECtHR

To conclude *Chapter 13* evaluates the trend whereby procedural safeguards are recognised under a substantive ECHR right and indirect procedural implications arise as a result of the method of review of the Court itself. The perspective of the Court, the State and the applicant formed the starting point for the evaluation of the trends outlined in part I and part II of this study. This evaluation is more normative in character and therefore differs from the more descriptive answers to the first, second and third research question.

It should be noted in advance that the ECtHR can be seen to have three tasks. First, as a supranational Court it offers an alternative remedy. When the national authorities fall short in their obligations under the ECHR, remedy can be sought in Strasbourg. The protection of human rights is and remains primarily a task for the States. Second, the Court is a human rights court which passes judgment on alleged ECHR violations in individual cases. Third, and finally, the Court can be seen as a (semi) constitutional court where it gives more directive judgements with regard to the interpretation and application of the provisions arising from the ECHR. These various roles can in some cases lead to tension. The three different roles moreover affect the evaluation of the procedural trends and the method of review of the ECtHR as discussed in this study.

In short, to conclude, the recognition of procedural safeguards in substantive ECHR rights can in itself be seen as something positive and moreover compatible with the ECtHR as a supranational court. After all, procedural protection of the individual is on the rise and the Court is fulfilling its alternative role. Having said this, a purely procedural protection, consisting of the procedural safeguard under the substantive ECHR articles and the procedural assessment of the Court without dealing with the substance of the complaint, is not something to be desired. The Court then offers no clarity with regard to the substantive standard of protection under the ECHR. One of the perceptions of the tasks of the Court is that it functions as a (semi) constitutional court, and it should therefore make judgements that serve to guide. Moreover, it can be expected from a human rights court that it assesses the actual substance of an individual complaint from an applicant. These two perceptions can be incompatible. In addition, the lack of a judgment concerning the substance of the complaint of an applicant can give the applicant the feeling that he is left with an incorrect judgment or a judicial assessment, but one that is procedurally correct and therefore irreversible.

The more active approach taken by the Court in Article 3 ECHR expulsion cases and in certain Article 8 ECHR cases with regard to the establishment of facts and the handling of evidence, can be seen as something generally positive for the Court as a human rights court and from the perspective of the applicant. This can thus be considered an advantage. Both parties, after all, benefit from the best possible substantive and procedural protection being provided under ECHR rights. It is conceivable that the State in some cases takes a different view. The national substantive assessment can in certain circumstances be rejected.

An unambiguous evaluation of the trends outlined in this study cannot be given. The aim is to find the right balance which recognises on the one hand the Court as a supranational, human rights and (semi) constitutional court, and on the other hand the interests of the State. And on top of this, the best possible effective legal protection must be provided to the individual applicant.

A challenge therefore remains to bring these different, and at times opposing, interests into line with each other as far as possible.

9 CONCLUSION

This study has made clear that procedural protection offered under the ECHR is not limited to just Articles 6 and 13 ECHR. The substantive ECHR provisions contain far more obligations than would appear *prima facie* when reading the text of the Convention. Under these rights, an extensive number of procedural requirements has arisen that include various obligations for national authorities. The general procedural requirements and the procedural requirements of due care under the substantive right to life, the prohibition of torture, the right to private and family life and the right to property already play an important role in the administrative preliminary phase. Many of these procedural requirements also contain obligations for the national courts. A number of the procedural requirements outlined in part I and part II of this study appear to have added value when it comes to the procedural requirements of Articles 6 and 13 ECHR. It also proved to be worthwhile studying the method of review of the Court to acquire a complete picture of the procedural implications and obligations under substantive ECHR rights contained in Articles 2, 3 and 8 ECHR and 1 P1 ECHR.

The outcomes of this study call for further investigation. Subsequent research could compare human rights procedural law with administrative procedural law. It could be investigated to what extent the standard uniform General Administrative Law Act (Awb) is sufficiently tailored to the human rights assessment which is centred on the individual. After all, in certain circumstances the Court requires that a differentiated approach is taken to do justice to the protection of the rights of the individual under the ECHR. Moreover, the question could be asked to what extent the presence of fundamental rights calls for an adjustment in the procedural law of the Awb. The outcomes of this study can serve as a starting point for this follow-up study.