# COMPENSATION OF DAMAGES WITHIN A SYSTEMATIC APPROACH TO LARGE-SCALE WATER AND INFRASTRUCTURE PROJECTS

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## 1 INTRODUCTION

In the Netherlands, both civil and administrative courts have acknowledged government liability for lawful public sector acts, based on the French principle of *égalité devant les charges publiques*.[1] In the Dutch legal system, the French equality principle is generally recognised as the main principle governing no-fault state liability. This system of damage compensation has been developed by the Dutch Government in the field of water and infrastructure, since the implementation of large-scale water and infrastructure projects can cause disproportionately large financial losses for businesses and residents, some suffering more than others. Clearly, it is considered to be unfair if this financial loss were not to be compensated.

In the past, large-scale water and infrastructure projects have often led to massive claims for damages, based on the French equality principle. The Dutch Government is well aware of its obligations to compensate damages and anticipates this aspect in the decision-making process. This article focuses on the impact of the liability arising from the French equality principle on decision-making regarding large water and infrastructure projects.

In order to illustrate the relevance of the topic, it is appropriate to begin with an example. So as to ensure the safety of the riverine area and to address the uncertain risks of climate change, the Dutch Government has adopted several adaptation measures, such as the Room for the River programme.[2] This programme aims at flood protection and the improvement of spatial quality in the riverine areas of the Netherlands.[3] The underlying notion of the Room for the River programme is that protection against floods can no longer only be guaranteed by technical water safety measures and that the river should be given more space to flow freely during periods of large water surpluses.[4] The Room for the River project includes measures such as the relocation of dykes, depoldering, water storage or the reservation of land for the expansion of floodplains. In some cases, these measures have led to restrictions on the use of private property for industrial or other business activities[5] or the cancellation of proposed developments, which would impede future river relief measures from being taken.[6]

Being aware of the liability arising from the French equality principle, the Dutch Government expected the implementation of the Room for the River project to cause financial losses to local residents and companies. Therefore, the Dutch Government adopted a policy rule for the compensation of damages, within the framework of the Room for the River programme.[7] On the basis of this policy rule, the injured private parties can submit an application for the compensation of damages to the Minister of Infrastructure and the Environment.

This policy rule illustrates the way in which the Dutch Government deals with the compensation of damages within the framework of the implementation of large-scale water and infrastructure projects. As Gilissen has pointed out, public authorities consider the obligation to compensate for damages as one of the elements of a large-scale project that should be taken into consideration throughout the entire process of the project.[8]

In this article government liability based on how the French equality principle is taken into account in the

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1 In English, *égalité devant les charges publiques* could be translated as 'equality in relation to public obligations/responsibilities' or 'compensation for disproportionate liability as an equitable remedy'. It will be referred to throughout this article as the French 'equality' principle. See E F D Engelhard, G M van den Broek, F de Jong, A L M Keirse and E N F M de Kezel 'Let's think twice before we revise! "Égalité" as the foundation of liability for lawful public sector acts' (2014) 10(3) *Utrecht Law Review* 55–76; M K G Tjepkema *Nadeelcompensatie op basis van het égalitébeginsel* (Dissertation Leiden University 2010).

2 Spatial planning key decision Room for the River, approved decision of 19 December 2006 http://www.the-netherlands.org/appendices/key_topics/water_management/spatial-planning-key-decision-%E2%80%98room-for-the-river%E2%80%99.html.

3 See also A van Buuren, P P J Driessen, M van Rijswick, G Teisman, P Rietveld, W Salet and T Spit 'Towards adaptive spatial planning for climate change: balancing between robustness and flexibility' (2013) 10(1) *Journal of European Environmental and Planning Law* 29–53; M Wiering, C Green, H F M W van Rijswick, S Priest and A Keessen 'The rationales of resilience in English and Dutch flood risk policies' (2015) 6(1) *Journal of Water and Climate Change* 38–54; D Hegger, P Driessen, C Dieperink, M Wiering, T Raadgever and M van Rijswick 'Assessing stability and dynamics in flood risk governance: an empirically illustrated research approach (2014) 28(12) *Water Resources Management* 4127–42.

4 H K Gilissen 'The integration of the adaptation approach into EU and Dutch legislation on flood risk management' (2015) 24(3–4) *The Journal of Water Law* 156–166.

5 See for instance ABRvS 17 April 2013, ECLI:NL:RVS:2013:BZ7718. This case concerned the rejection of a claim from a company whose activities focused on the extraction, processing and sale of sand and gravel, for damages due to the limitation of the use of their property for certain non-river-related industrial activities.

6 See for instance ABRvS, 16 March 2005, ECLI:NL:RVS:2005:AT0554. This case concerned the award of damages to a developer, owing to the cancellation of a project including a hotel and a marina with associated facilities.

7 Beleidsregel schadevergoeding Ruimte voor de Rivier, Stcrt. 2009/82.

8 H K Gilissen 'Adaptatie aan klimaatverandering in het Nederlandse waterbeheer: Verantwoordelijkheden en aansprakelijkheid' (Dissertation Kluwer 2013) 408–409.

decision-making process will be examined. First, the Dutch system of compensation of damages based on the principle of equality vis-à-vis public burdens (section 2) will be explained, together with the way in which this is involved in the decision-making process. Finally, the article will conclude that a systematic approach to large-scale water and infrastructure projects will necessarily anticipate the payment of compensation for damages. This strategy also implies that measures are taken to prevent or limit liability (section 3).

## 2 THE PRINCIPLE OF *EGALITE DEVANT LES CHARGES PUBLIQUES*

### 2.1 Liability for lawful government action

In Dutch legislation there are several Acts that provide the right to compensation for certain designated categories of administrative decisions, such as environmental regulations or zoning plans, which could impose restrictions on the use of real estate or business activities. Examples are Articles 15.20 and 15.21 of the Environmental Management Act (Wet milieubeheer) and Article 6.1 of the Spatial Planning Act (Wet ruimtelijke ordening). In establishing these provisions the legislator was inspired by the French equality principle.[9] As explained above, the principle of *devant les charges publiques* is originally a French administrative law principle based upon equality vis-à-vis public burdens. As Fairgrieve writes:

> According to the principle of 'égalité devant les charges publiques' compensation should be provided for those who have shouldered a disproportionately large burden or loss caused by activities pursued in the common good.[10]

The French equality principle requires a fair sharing of (financial) burdens imposed by lawful government action. The French equality principle may entail that public authorities are held liable, despite having acted lawfully. Classic examples are major infrastructure projects, such as the construction of railways, highways and airports. The public generally benefits from these large infrastructures, whereas a small group of surrounding residents may suffer excessive noise pollution, resulting in a reduction in property values. In view of the principle of equality vis-à-vis public burdens it is considered to be unfair that an individual or a small group of individuals should suffer disproportionally large damages, caused by lawful governmental action pursued for the common good.

In the Dutch legal system, the French equality principle not only serves as an inspiration for legislation, but both civil and administrative courts have acknowledged government liability for lawful public sector acts arising from the unwritten principle of equality. In the famous case of *Van Vlodrop*, the Council of State recognised the French equality principle as an unwritten principle of law, requiring public authorities to compensate lawfully caused loss. In the Dutch legal system, the French equality principle provides an independent legal basis for government liability in addition to the specific regulations established by the legislator.

### 2.2 Categories of cases in which the principle of equality applies

In the Netherlands, the principle of equality applies to various situations where an individual suffers damage caused by lawful governmental action. Tjepkema stated that the French equality principle should be applied only 'in those cases where the damage qualifies as a public burden (*charge publique*), ie damage which is consciously caused to an individual by a public authority, and which is the necessary and inevitable consequence of an action performed in the general interest'.[11]

In the Netherlands, various legal instruments, such as administrative decisions or generally binding regulations, are recognised as causes of damage eligible for compensation. It is generally recognised that such legal instruments may cause loss or damage, for example a loss of income or the devaluation of real estate.

Three major categories of cases can be distinguished. The first category consists of generally binding regulations imposing prohibitive or restrictive measures upon companies in order to protect public interests such as health, nature or the environment. A classic example in this category is the *Leffers v Staat* case, in which the Minister of Agriculture and Fisheries issued a statutory regulation prohibiting the use of offal as pig feed (swill). This ban on the use of swill came into force immediately, in order to prevent a further spread of African swine fever in the Netherlands. This ban affected some pig farmers (to whom the claimant also belonged) much more severely than other pig farmers because the former group had fully equipped their farms for the use of swill (whereas the latter group had not done so).

The Dutch Supreme Court ruled that this sudden drastic prohibition, although lawful (and legitimate for the sake of public health), could not be qualified as a 'normal business risk'. It was unlawful to issue the regulation without taking into account the economic interests of the group of farmers who suffered disproportionate losses as a result of the ban on the use of swill.[12]

The second category consists of administrative decisions, such as zoning plans or other generally binding regulations establishing legal restrictions on the use of land or buildings. Although these administrative decisions are considered to be legitimate and necessary in order to promote or protect public interests such as good spatial planning, climate adaptation, external safety or environmental protection, they could cause a financial loss to an individual landowner. It is generally assumed that prohibitive or restrictive regulations affect the market value of real estate, because a buyer, acting prudently and knowledgeably, will insist on lower purchase prices.

A common example is the revision of a zoning plan that adversely changes the maximum building and utilisation potential of a certain plot of land. For instance, in specially designated areas around airports, industrial areas or highways, the building of new houses or buildings used by large groups or certain categories of 'vulnerable' people such as schools or hospitals is prohibited. In Dutch legislation it is recognised that the competent authorities can

9 Engelhard and others (n 1) 55–76.

10 D Fairgrieve *State Liability in Tort: A Comparative Law Study* (Oxford University Press 2003) 137.

11 Tjepkema (n 1) 968.

12 HR 18 January 1991, *NJ* 1992/638, *AB* 1991/241 (*Leffers v The State*).

be held liable, under certain circumstances, for financial losses resulting from such an adverse revision of a zoning plan.[13]

The third category consists of infrastructure projects, such as the construction of airports, highways or railways, and urbanisation projects, such as the construction of residential or industrial areas. These projects may often lead to massive claims for damages submitted by surrounding homeowners. They encounter disturbances such as noise pollution, the loss of privacy and the loss of unobstructed views, leading to a reduction in the market value of their properties. In the Netherlands, economic studies have shown that the location of houses in a quiet and peaceful area represents a certain market value. The construction of infrastructures or new residential areas changes these peaceful surroundings and reduces the market value of nearby houses.[14]

### 2.3 Conditions

Obviously, not every loss or damage incurred by lawful government action is eligible for compensation. A number of stringent conditions have to be fulfilled before liability arises from the principle of equality vis-à-vis public burdens. The disadvantage or loss with which a citizen or company is confronted must qualify as an 'abnormal and special burden'. These conditions relate to the nature and extent of the public burden that has been imposed upon the citizen.[15]

The Council of State has formulated, in its reference to the French equality principle, the following conditions for administrative liability in this respect: '[a]n administrative authority must compensate disproportionate (*onevenredige*) damage which exceeds the normal social risk and which befalls a certain limited group of citizens and/or organizations, if this damage is caused by serving the public interest'.

First of all, it is a requirement that the public burden goes beyond that which a citizen must accept in the ordinary course of events. This condition refers to the abnormality of the government measure that has caused the damage. Financial losses caused by normal social developments (*normale maatschappelijke ontwikkelingen*) should be accepted, since they do not exceed the 'normal social risk' (*normaal maatschappelijk risico*). The Council of State defines a 'normal social development' as follows: 'Citizens should take into account a normal social development even though there was no view of the extent to which, the place where and the time at which this development would manifest itself' based upon the French equality principle.[16]

Examples in administrative case law of developments that are considered to be 'normal' social developments are 'infill developments' (building on vacant and underutilised land in city centres or urban areas), simple infrastructural developments, short-term road works, the establishment of nurseries or schools in residential areas, work on coastal defences or dike improvements and the promotion of water management purposes. Financial loss caused by such developments does not exceed the normal social risk, unless special circumstances result in disproportionately large financial losses.[17]

Secondly, the public burden must have fallen upon a specific and limited category of persons (a special burden). The public burden must be disproportionate compared to the burden imposed upon citizens who are in similar circumstances.[18] Thirdly, if the claimant acted with an awareness of the risk of sustaining the loss, no compensation will be provided.

The courts take all of the circumstances of the case into account when determining whether the burden is abnormal and special. Relevant factors are the foreseeability of the government measures, the urgency of the government intervention in view of the public interest, the extent to which the government measures fit within the policy that was previously adopted by the public authorities, the question of whether a transition period is granted, whether the development fits within the structure of the area and, eventually, the nature and extent of the damage. Often a combination of the above factors will be a reason for a judge to accept a breach of equality.[19]

Homeowners were compensated quite generously, according to the case law of the Council of State, especially during the 1990s.[20] Examples of infrastructural projects that have entailed large numbers of claims in the Netherlands are the expansion of Amsterdam's Schiphol Airport and the construction of high-speed railway links (HSL and Betuweroute).[21] However, recent case law of the Council of State has shown a rather stringent application of the criterion of 'normal social risk', resulting in a less generous award of damages than before.[22] For governments, this new direction in the case law on the French equality principle might eventually mean, in the long term, that their liability is limited to exceptional cases or cases where disproportionately large financially losses are suffered by citizens. However, since the concepts of 'normal social risk' and 'normal social development' are described in rather vague terms, they are bound to create uncertainties in the short term, for both governments and citizens alike.[23]

13 G M van den Broek *Planschadevergoeding. Het recht op schadevergoeding bij wijziging van het planologische regime* (Dissertation Kluwer 2002) 9–67.

14 G M van den Broek 'Forfaitaire vergoeding van waardevermindering door aantasting van woongenot' in M K G Tjepkema, W den Ouden (eds) *Coulant Compenseren: Over overheidsaansprakelijkheid en rechtspolitiek* (Kluwer 2012).

15 Fairgrieve (n 10) 137.

16 See ABRvS 17 April 2013, ECLI:NL:RVS:2013:BZ7718; ABRvs 5 September 2012, AB 2013/79 m. nt. M K G Tjepkema.

17 Engelhard and others (n 1) 58.

18 M N Boeve, G M van den Broek 'The programmatic approach: a flexible and complex tool to achieve environmental quality standards' (2012) 8(3) *Utrecht Law Review* 74–85.

19 Engelhard and others (n 1) 55–76; Tjepkema (n 1) chs 7 and 8.

20 van den Broek (n 13).

21 Compare B P M van Ravels 'Afwikkeling van massaschade en bestuursrecht' in W J J Los and others *Collectieve acties in het algemeen en de WCAM in het bijzonder* (Boom Juridische uitgevers 2013).

22 G M van den Broek *Planschadevergoeding: de omwenteling. Ontwikkelingen in de jaren 2012–2013* (O&A 2014) 26; G M van den Broek 'De toekomst van nadeelcompensatie in het omgevingsrecht: Ruime reikwijdte van de regeling – beperkte toekenning van schadevergoeding!' (2012) 4 *Tijdschrift voor Omgevingsrecht* 95–107.

23 Engelhard and others (n 1) 55–76.

### 2.4 Procedure

Compensation of damages based on the French equality principle can be obtained by submitting an application to the competent authority. Usually, this is the administrative authority causing the damage. If an application is submitted by an interested party who has allegedly suffered damage, the administrative authority is obliged to respond. Many administrative authorities have adopted procedural regulations concerning the review of the application and the assessment of the damage. In most cases an independent expert will assess the claim and deliver an opinion to the administrative authority on whether compensation should be awarded or not. Subsequently, the competent authority will issue the order, based on the opinion of the independent expert.

If the order is based on a specific regulation that recognises a right to compensation, the order qualifies as an 'administrative decision' as defined in Article 1:3(2) of the Algemene wet bestuursrecht (General Administrative Law Act (GALA)). Such administrative decisions are subject to review by an administrative court (Article 8:1 of the GALA). If the applicant aims to challenge such an order, the administrative route is mandatory.[24]

If the order is not based on a regulation that recognises a right to compensation, then the order is not always subject to a review by an administrative court. Currently, the administrative route is not always available in situations where the damage has been caused by an act which is not subject to a review by an administrative court. This applies inter alia to civil actions, factual acts, generally binding regulations or policy rules issued by an administrative authority. In those cases a tort action may be initiated before a civil court.

As pointed out above, in Dutch legislation there are many specific legal regimes granting a right to apply for the compensation of damages. Over the years a patchwork of different regimes has been developed, creating a labyrinth where citizens (and lawyers) can easily lose their way. Since there are so many separate rules and regulations there is a need for codification and standardisation, particularly since all these different regimes are all essentially based on the principle of equality.[25]

Therefore, the substantive criteria by which applications are assessed should basically be the same. In 2013 the Dutch legislator adopted legislation concerning government liability, which included a liability rule based on the French equality principle for the GALA (Article 4:126 GALA).[26] The legislator recognises that activities lawfully undertaken by a public authority may impose an abnormal and special burden on a particular person who should then be compensated. However, this part of the new legislation has not yet entered into force. There are concerns that the wide scope of Article 4:126 of the GALA might open the floodgates to damage compensation claims.

These concerns are based on the fact that Article 4:126 of the GALA opens the door to administrative litigation. In those cases where administrative proceedings apply, submitting an application for compensation for damages is considered to be fairly simple. First, no strict demands are made as to the contents of such an application. A simple note in which someone claims that he has suffered damage is sufficient. However, it should be mentioned that many administrative authorities have drawn up standard application forms, since Article 4:2(2) of the GALA requires the applicant to supply 'such information and documents as required for a decision on the application as it is reasonable to expect him to be able to obtain'.

Secondly, as also mentioned above, the administrative authority is obliged to seek advice from an independent expert on the assessment of the claim. The costs of preparing the advice are at the expense of the administrative authority. Thirdly, Dutch administrative appeal proceedings are designed to be reasonably accessible, guaranteeing all citizens affordable access to the administrative courts. For instance, all parties are allowed to represent themselves and professional representation by a practising lawyer is not mandatory.

The availability of accessible procedures might very well explain why the construction of large-scale infrastructure projects leads to massive claims being submitted by local residents. In this respect it is important to note that the fact that a legal provision provides a right to apply for damage compensation does not automatically mean that compensation will in fact be awarded. The substantive conditions that can be derived from the French equality principle are quite strict. In many cases the assessment of an application will lead to a rejection. Nevertheless, the assessment of applications and the obligation to seek advice from an individual expert may entail large costs for an administrative authority, even if no compensation is awarded at all.

## 3 INCORPORATION IN THE DECISION-MAKING PROCESS

In the Netherlands, public authorities are well aware of the liability risks arising from the French equality principle. The obligation to award compensation for disproportionate damage on the basis of the French equality principle is considered to be inherent in the exercise of public law tasks or competences related to water and infrastructure. To a certain extent, this obligation serves as an incentive to avoid causing such disproportionate damage. Thus, the obligation to compensate for disproportionate damage will have an impact on certain policy choices regarding the project. As mentioned in section 1, public authorities consider the obligation to compensate for damages as one of the elements that should be involved throughout the entire process of a large-scale project.[27]

The general interests which are promoted or protected by a large-scale infrastructure project will often come into conflict with the individual interests of private parties. Assuming that public interest requires the government to invest in infrastructure, the adverse consequences for

24 G M van den Broek, L F H Enneking 'Public interest litigation in the Netherlands: a multi-dimensional take on the promotion of environmental interests by private parties through the courts' (2014) 10(3) *Utrecht Law Review* 77–90. For more information on the system of Dutch administrative litigation see M van Hooijdonk, P Eijsvoogel *Litigation in the Netherlands: Civil Procedure, Arbitration, Administrative Litigation* (Wolters Kluwer 2012) ch 3.

25 Engelhard and others (n 1) 55–76.

26 Stb.2013, 50.

27 Gilissen (n 8) 408–409.

individuals will not result in renouncing the project. However, the nature and extent of the adverse consequences for local residents or companies will influence the decision-making process, in the sense that the public authorities will preferably choose the least harmful option or at least exclude the most harmful options. At an early stage of the decision-making process a risk survey will be conducted in order to identify the possible liability risks inherent in each different variant of the project.[28] A case study concerning coastal reinforcement at Noordwijk confirms that liability risks resulted in the decision to exclude the inland variants of coastal reinforcement.[29]

In the Dutch administrative law system conducting a risk survey of the adverse consequences of an administrative decision is related to the principle of due care, as codified in Article 3:2 of the GALA, which reads as follows: 'In preparing a decision, the administrative organ shall gather the necessary information on the relevant facts and the interests to be considered'.

The interests of local residents or companies who are most likely to suffer damage or losses are generally considered to be covered by Article 3:2 of the GALA, which not only obliges information to be gathered on the possible adverse effects of an administrative decision but also requires a careful procedure to be followed in preparing the decision.[30] This is set out in public preparation procedures, starting with the publication of a draft decision and enabling members of the public to submit comments and express opinions at an early stage before the final decision is made. The case study concerning the coastal reinforcement at Noordwijk shows that the participation of interested parties at an early stage of the decision-making process results in an adaptation of the measures included in the final plan.

The interests of surrounding homeowners or companies are not only taken into account in the decision-making process, but also at the stage of implementing the work. In the Netherlands, many public authorities plan and carry out the work in consultation with companies which are most likely to suffer financial losses. This method creates support and reduces the damage. For instance, the financial losses for beach restaurants or hotels resulting from dune reinforcements along the coast of Noordwijk was reduced by carrying out the work during the winter.

The strategy of pursuing the least harmful options is founded on Article 3:4 of the GALA. Article 3:4(1) obliges any interests which are directly involved to be weighed. The interests of local residents and companies who are likely to be affected by the project qualify as 'interests which are directly involved'. Article 3:4(2) stipulates that the adverse consequences of an order for one or more interested parties may not be disproportionate to the purposes to be served by the order. As mentioned above, the public interest promoted by large-scale water and infrastructure projects is considered to outweigh the affected individual interests. Nevertheless, the competent authority is required to pursue the least harmful option, or when the least harmful option is not preferable, it should take measures which prevent or reduce the adverse effects for individuals.[31]

At this point it needs to be emphasised that even if all obligations under Articles 3:2 and 3:4 of the GALA are met, and the administrative decision concerning the infrastructure project is considered to be lawful and necessary in order to promote the public interest, the government can still be held liable for the disproportionate damage on the basis of the French equality principle. However, if there are measures taken in consultation with all parties in order to reduce or even repair the negative consequences of a project, then these measures might prevent disproportionate damage from occurring.

The conclusion is that administrative authorities involve the interests of local residents and companies in the decision-making process, in order to meet the requirements of Article 3:4 of the GALA and to reduce liability risks. In this way, compensation and mitigation measures are an important part of a management strategy that focuses on the prevention or reduction of liability on the basis of the French equality principle.

The obligation under Articles 3:2 and 3:4 of the GALA to involve the interests of private parties who are likely to be adversely affected in the decision-making process contains yet another element. In the introduction to this article the policy rule for the compensation of damages that was established within the framework of the Room for the River programme was mentioned. This policy rule aims at creating a 'one-stop shop' for those private parties who allegedly suffer financial losses caused by the Room for the River project, and who are entitled to submit an application to have their damages compensated. To carry out the Room for the River project, governments at all levels are required to take certain measures. This means that many different local, regional and national governments can be held liable and many different administrative authorities are competent to assess an application for the compensation of damages. This situation leads to uncertainty as to which administrative authority may be held liable. The policy rule puts an end to this uncertainty by assigning the responsibility to the minister.

The idea of the policy rule is to provide for efficient procedures, to clarify the substantive norms by which an application is assessed and to prevent discussions on the question of which administrative authority may be held liable. In the author's opinion, the obligation to establish a specific project regulation concerning damage compensation may be based on the principle of due care, as codified in Article 3:4 of the GALA.[32] In recent decades, the national government has established several national project regulations concerning compensation for damages caused by large-scale infrastructure projects. This effort is made to create support from local governments, to provide clarity to citizens and to prevent legal disputes between governments over their liability based on the French equality principle.

28 T ten Have and J J Thoonen *Risicoanalyse planschade 2000* (Samsom 2000) 15–16.

29 Gilissen (n 8) para 10.3.

30 R Seerden, F Stroink 'Administrative law in the Netherlands' in R Seerden (ed) *Administrative Law of the European Union, its Member States and the United States: A Comparative Analysis* (2nd edn Intersentia 2007) 178.

31 L J A Damen and others *Bestuursrecht Deel I* (4th ed Boom Juridische uitgevers 2013) 411–414.

32 G M van den Broek 'Nadeelcompensatieregelingen: bevoegdheid of verplichting?' BR 1999/1.

## 4 CONCLUSION

In the Netherlands both civil and administrative courts have acknowledged governmental liability for lawful public sector acts, such as the implementation of large-scale infrastructure projects. The legal basis for this governmental no-fault liability is found in the principle of *égalité devant les charges publiques*.[33] In view of the principle of equality vis-à-vis public burdens it is considered to be unfair that an individual or a small group of individuals suffer disproportionally large damage, caused by lawful public sector acts. Compensation for damages leads to an equal distribution of burdens between those who benefit and those who suffer disproportionately large losses.

Large-scale infrastructure projects may often lead to massive claims for damages, submitted by local homeowners or companies. Although the number of claims suggests otherwise, the substantive conditions that can be derived from the French principle of equality are relatively strict. The disadvantage or loss with which a citizen or company is confronted must qualify as an 'abnormal and special burden'. In many cases, an application for the compensation of damages is rejected. The large number of claims may be explained by the availability of accessible procedures in Dutch administrative law. Dutch administrative proceedings are designed to be fairly accessible, guaranteeing all citizens affordable access to the administrative courts.

In Dutch legislation there are many specific legal regimes granting a right to apply for the compensation of damages. Although there is a call for codification and standardisation, a recently proposed general provision in the GALA concerning government liability based on the French equality principle has not yet entered into force.

In the Netherlands, public authorities are well aware of the liability risks arising from the French equality principle. In order to reduce liability risks, administrative authorities involve the interests of local residents and companies in the decision-making process. Compensation and mitigation measures are an important part of a management strategy that focuses on the prevention or reduction of disadvantages. This method creates support and reduces the negative impact of infrastructural works.

The obligation under Articles 3:2 and 3:4 of the GALA to involve the interests of private parties which are likely to be adversely affected in the decision-making process has also resulted in the establishment of several national project regulations concerning compensation for damages caused by large-scale infrastructure projects. This effort is being made to create support from local governments, to provide clarity for citizens and to prevent legal disputes between governments over their liability based on the French equality principle.

33 See note 1.