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**Automated Administrative Chain
Decisions & Legal Protection**
PhD Thesis Summary (English)

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PhD Thesis Summary

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In The Netherlands, the execution of legislation by the central government is divided over several specialized agencies that operate at national level. Some of them make administrative decisions that have financial and legal impact on individual citizens. For instance, the Employee Insurance Agency (UWV) makes decisions regarding applications for unemployment benefits according to the Unemployment Insurance Act (WW), the Tax and Customs Administration (Belastingdienst) decides on the annual tax returns, or the Social Insurance Bank (SVB) makes decisions on applications on child benefits. At a macro-economic level these agencies play crucial role in reallocating financial means between citizens in the Netherlands. Tax revenues are transferred from the tax administration via Treasury to agencies that can spend it on social benefits. The collaboration between employers, UWV,

Belastingdienst, enables the reallocation of 156 billion euro (i.e. 60% of the State budget / treasury) and the transfer of 20 billion data per year. They call their collaboration on the 'aorta' of the Dutch economy.

These executive branches of public administration have 'outsourced' their tasks to computers and electronic networks over the years. Technology enabled the agencies to delegate legal administrative decision making to computers. Tasks that require calculations for large numbers of citizens, such as establishing a financial relationship between administration and a citizen, are automated. Arising technological opportunities to share information made it possible for the different government agencies to interlink their systems and share citizen's personal data within supply chains and information networks. Different government agencies became able to build their legal administrative decisions based on data that is already processed by another agency. If we state that administrative decision making is the core business of public administration, then we conclude that computers execute this core business.

However, in public administration itself the administrative decision making is not always recognized as its core business. Public administration tends to focus more on the process, the economics and its results. As a consequence, what is the emerging damage and is the individual benefit or tax return being transferred to the correct bank account?

Media tell us stories about cases when 'automation' in public administration leads to accidents: alive people who are declared dead by the 'system', or people who, according to the computer, live at one address, but in reality they don't live there, or people who receive fines for 'unlawfully' passing through green traffic light because two wires were switched in the automated photo camera. Though the media news can't represent the day to day public service performance, they illustrate our dependence on computers and databases of within the public administration.

Dutch administrative law literature, on the other hand, gives much attention to administrative decisions. The administrative decision is the access ticket to the administrative judge and is seen from all possible government actions. The administrative decision has become an important legal vehicle to ask for legal protection against the government. Nevertheless, how the decision is made, and how the public administration and its bureaucrats (street-level, screen-level or system-level) execute public laws, is often left undocumented. Since it can't be excluded that the way of performing administrative tasks influences the extent and depth of legal protection for citizens receiving decisions, the central question in this thesis is:

What influence do automated administrative chain decisions have regarding a financial interest on the legal protection of individual citizens?

In this thesis the following definition of automated administrative chain decisions is composed:

Automated administrative chain decisions are orders as meant in article 1:3, under 1, General Administrative Law Act (GALA) (a written decision of an administrative authority constituting a public law act), that are made by an autonomous handling (expert) system -without direct human interference, where the system depends on data that are processed by supply chain and the decision on its turn influences another order of another governmental agency in the supply chain or web of agencies.

This research is not about punitive administrative sanctions, even though these too are frequently fully automated.

Chapter one introduces the subject of the thesis. Chapter two describes how the framework of legal protection is built in this research. The following two approaches have determined this framework: 1. instead of choosing to solely study the legal protection as a provision for a citizen to contest the administrative decision in an administrative court (in the Netherlands after a preliminary objection procedure), the author has chosen to study the 'concept of legal protection.' This means that the research looks into norms that can apply to the process of making decisions in order to facilitate solution in a later stage or to identify the treatment unnecessary. 2. the concept of legal protection is studied in a global European dimension. The principles of good administration in Europe play an important role in this concept of legal protection. Note that this thesis doesn't study data protection rules as possible part of legal protection for individuals. This is because legal protection is not the same as data protection and data protection rules can't lead to quash the decisions the same ways as the legal protection provided by administrative courts can do in the Netherlands.

To connect the analysis of relevant legal principles with the similar methods Dutch administrative law literature studies administrative decision making process (preparation, decision-making, notifying, legal protection and finalizing the legal effect), the procedure of automated administrative chain decisions is divided into five elements. These elements represent the central starting point of this thesis specifying that the process of automated administrative decision making is not only a legal process but also a process of information handling. The following elements are distinguished:

1. Collecting information (the information model)
2. Judging/weighing of interests (programming of decision rules / business rules) (the model)
3. Making the administrative decision, as a result (application of the law in an individual case)
4. Receiving feedback (the individual challenges of the decision by filing a formal objection against the administrative authority that made the decision, or by filing a complaint, or by challenging the decision in the administrative court)
5. Propagating the decision (decision is used in the chain / web of other administrative authorities to build another administrative decision, made by another administrative agency).



Figure 1. The distinguished five elements of automated administrative chain decisions

In chapter three the legal framework is narrowed down to four principles which are also seen in the light of the right to good administration enshrined in Article 41 of the EU Charter of Fundamental Rights. This framework could be used to provide norms regarding legal protection on different aspects of automated chain decision making. The principles are:

1. principle of fair play / fairness
2. principle of carefulness (a 'Dutch' principle, including proportionality)
3. the right of defense (Article 41, Sec on 2 of the EU Charter of Fundamental Rights)
4. the principles of equality and non-discrimination.

These four principles are based on systematic study of the advisory report from 1984 on *Algemene beginselen administratief recht*, ABAR (General Provisions of Administrative Law) by the VAR *Vereniging bestuursrecht* (Dutch Society of Administrative Law), leading Dutch administrative law textbooks, where relevant the Awb (GALA, into force since 1994) and its parliamentary history and leading Dutch tax law text books. The European dimension is based on research of Resolution (77) 31 of the Committee of Ministers of the Council of Europe (on the protection of the individual in relation to the acts of administrative authorities), Recommendation 2007 (7) of the Committee of Ministers of the Council of Europe (on good administration) and case law of the European Court of Human Rights. Special attention is paid to the interpretation of the four principles by looking at the extent of the right to good administration of article 41 of the EU Charter of Fundamental Rights and by looking at relevant - mainly Dutch - case law.

Ultimately, the goal of this part of the study is to specify and define the general principles to test the presence of legal protection for citizens in daily practice of automated chain decision making on a financial interest of the public administration.

In Chapter four the results of chapter two and three are used to define specific research questions.

After this legal dimension, the characteristics of the daily execution of legislation with the use of automated chain decisions by public administration are studied. Chapter five contains a description of the collected knowledge gained from (international) literature in public administration science, ICT and law and chain management.

Using concepts on 'system level bureaucrats' (work of Bovens & Zouridis), the characteristics that determine whether or not and how the legislation is executed automatically, characteristics of IT in the light of the human interpretation of the law (works of Bing and Susskind) and characteristics of chains and iGovernment (works of Grijpink and WRR, The Netherlands Scientific Council for Governmental Policy), an overview is made on relevant characteristics of the process of automated administrative decision making in networks of public agencies.

In Chapter six the method for empirical study is determined. To observe and examine the daily practice in public administration, author decided to carry out qualitative field research. After that, choices had to be made on both the process of decision making and the governmental agency that are best suited for this study. In the field of administrative law automated administrative chain decision making, financial interests is used in numerous areas, especially in execution of legislation in social security and tax law. By studying both areas, a broader perspective has been generated: both areas seem similar if we have an information management-perspective, however their legal framework on decisions and legal protection is different. This can be explained by the different kinds of administrative decisions they make. In social security the actions are seen as 'Leistungsverwaltung' - positive performance of the public administration, while in tax law the actions are seen as 'Eingriffsverwaltung' - negative performance, when the public administration intervenes (in this case in the citizens' economic situation).

To perform the case study, two cases were chosen:

1. The process of decision making to determine and grant the right on kinderbijslag (Child Benefit) by the Social Insurance Bank (SVB)
2. The process of decision making on loonbelasting, inkomstenbelasting (wage and income tax) and the determination of the annual authentiek inkomensgegeven (official income data) by the Tax and Customs administration (Belastingdienst)

Chapter seven contains the description of the execution of the Algemene kinderbijslagwet (General Child Benefit Act) and Chapter nine the analysis. The execution by the administrative authority SVB turns out to start before a parent applies for it. After the first child is born and the parents have fulfilled their duty to register the birth in the municipality in which the baby is born, their data are shared with the SVB. Based on this information the SVB automatically generates an application form (bevorderde aanvraag) and sends the receiver to be, a web link to this application form. Though the SVB depends on information that is provided by other governmental agencies, the data are not decisive. If the citizen has the opinion that the data are not correct, he can change them or notify and explain this in the application form. In this case, the SVB will investigate this application manually. The decision rules (SVB calls them business rules) that instruct the computers that make the administrative chain decisions on child benefits, were not provided. During this research it is observed that the computer is programmed to make the distinction between easy cases and hard cases. Easy cases are cases that the computer is programmed to handle. These cases are handled fully automated.

Hard cases can mean that they are too difficult for the computer to handle (e.g. because more information is needed that is not available without help of the applicant, or because the case asks for some kind of human intervention), or the case is too special and uncommon to build new software for it, or the case has elements that tag it as a possible benefit fraud risk.

This leads to the rate of automated administrative decisions on applications for kinderbijslag (Child Benefit) of 77% fully automated and 23% partly automated. However, after the positive decision to grant the kinderbijslag, most of all other decisions or actions are made and executed fully automatically until the child turns 18 years old. If applicants experience problems in the process or have questions or otherwise, they have the ability to contact the agency by telephone or mail. The service teams have the mandate and ICT-facilities to provide personal service at once, if possible, and to not send the applicants to back-offices. With this level of service, the administrative authority tries to eliminate inaccuracies or questions in order to prevent the applicant from using formal legal procedures such as filing a complaint or making an objection. In certain cases parents can receive an addition to kinderbijslag. This is based on the Wet op het kindgebonden budget (Child Budget Act) which legislation is executed by another administrative agency, Belastingdienst/Toeslagen (the Benefits Office of the Tax and Customs Administration). Because receiving kinderbijslag is the first condition of this benefit, this is a perfect example of a chain decision. In practice this means that the administrative decision of the SVB to deny kinderbijslag leads to unsuccessful application for kindgebonden budget (Child Budget). This is the chain effect of the decision making.

Working in a chain appears to have certain difficulties. From a legal point of view decisions that are quashed by the administrative court are whipped out; they are considered to never have existed. If in retrospect it is decided that an applicant does have the right to Child Benefit, it will not be problematic for the SVB to execute this decision. However, in this empirical study it turned out that working with chain computerization makes it difficult for the next in line administrative authority to deal with this new legal condition. It can lead to restraint of the other agencies to review their decisions in retrospect out of fear of unforeseen consequences in their IT systems.

Chapter eight and nine describe and analyze the process of decision making on loonbelasting en inkomstenbelasting (wage and income tax) and the determination of the annual personal income by the Belastingdienst (Tax and Customs administration). In order to understand this process in relation to legal protection, it is necessary to study the specifics of tax law and its administrative procedure law. This study is performed from a general administrative law point of view to find similarities or differences in legal protection with the other case. Next, the execution of the determination of the annual income data is studied. This process starts with employers (or national / local benefits agencies) who are liable to withhold national insurance contributions and wage taxes of the salary (or benefit) and transfer the money and data to the belastingdienst and UWV. It ends with the filing of the authentic income data (official income data) of a citizen in the BRI (the National Personal Income Database) so that it can (or must) be used by other governmental agencies. The Belastingdienst has two separate ways of execution. An execution to handle the collection of taxes for citizens who have the obligation to file

an income tax return and another one for citizens who don't. Both ways of execution of tax law are studied in this research. The starting point is the same for all cases and is a process of collection of personal data and general data by employers. Because the Belastingdienst describes what data are necessary this can be considered as a transparent process. However, it is also a process with a participation of unexpected private parties - the software builders of payroll administrations who receive annually the specs and rules to make software that is compliant with tax law. The focus in this collection of data and money phase seems to be more on the employers with large numbers and big money, then on individual employees and their individual tax obligations. This changes further in the execution stages. The loonbelasting (wage income tax) is executed without any intervention of the citizen it concerns. When the tax year is passed, the overall result of the wage income tax is established. Now the belastingdienst can determine the citizen's authentic income (official income), record it in the BRI (the National Personal Income Database) and make it available for other administrative authorities. When another administrative agency uses this income (official personal income) in an administrative decision, the citizen is provided with legal protection against this part because until then he didn't receive an administrative decision. Because of this special construction, the chain factual effect coincides with legal reality.

In preparation of the aanslag inkomstenbelasting (income tax assessment), the same phenomenon as in the previous social security case is observed. Almost all relevant information is originally collected by other agencies or parties, then it's shared with and collected back, then prepared by the public administration before citizens file their application or in this case their aangifte inkomstenbelasting (income tax return). The citizen has to check the collected data, make changes and file the return officially. The aanslag inkomstenbelasting (income tax assessment) is an automated decision that is facilitated by a system (ABS). A part of the decision rules (as seen in previous case) of ABS were subject to deeper study though it appeared to not be suited for an audit on compatibility with the framework of this thesis.

In this execution the same difference is observed as in the social security case: the difference between the easy and hard cases. In this case it is observed that choices in the designing software process on which cases are considered to be 'hard', do not mean that in practice these cases are actually handled manually. In practice the Belastingdienst doesn't handle the entire work list of hard cases, but narrows down the selection, based on extra selection, mostly based on fraud risks. The rate of fully automated and partly automated is 90% to 10%.

Being labeled as an administrative decision, the citizen can make an objection against the aanslag inkomstenbelasting (income tax assessment) within six weeks. However, unlike the general administrative law, Dutch tax law is more flexible for cases when citizens object the decision in a later stage. Though not very easy to understand, tax law appears to have several ways for citizens who want changes in the decision, but all within a legal and formal framework. It is not possible to receive immediate personal help at the telephone.

One extra result of the decision of the aanslag inkomstenbelasting (income tax assessment) and the execution of the loonbelasting (wage income tax) is that it enables the Belastingdienst to determine the authentiek inkomensgegeven (official income) of the citizen. The establishment of the authentiek inkomensgegeven (official income) by the designated authority makes it possible for other governments to use this data. In legislation it is prescribed when the other administrative authority is obliged to use the authentiek inkomensgegeven (official income) as base of another administrative decision. This is the chain effect of this case. Finally, it is observed that the execution at the Belastingdienst is commissioned to many very specialized employees who have specific tasks but don't oversee the entire process nor experience the point of view of the citizen.

The thesis is concluded in chapter 10. The results of the empirical study of both cases are compared and discussed per element of the process of automated administrative chain decision making. The execution in *element 1*, Collecting of information (the information model) seems to meet the norms that were derived from the fair play principle and the principle of carefulness. However, this was not the same for the execution in the light of the principle of equality / non-discrimination. The administrative authorities depend on data in databases and unlawfully don't take into account the relevant information they don't have, such as the information of circumstances which may have legislative consequences.

For *element 2* (the decision rules of the system) the overarching observation is that the decision rules are not available in a way they can be assessed. This leads to the conclusion that the execution and therefore the making of the administrative decisions can't be verified or reviewed. This makes it impossible to assess how the transformation of the legal rules into decision rules of the system took place at the administrative authorities. This has consequences as for the citizen who can't fully contest the decision, as well as for the administrative judge who is not able to fully determine whether or not the decision is made within the law. If questions do arise, it is likely that in practice the decision will be reconstructed for each individual case. This makes the current execution on the part of the decision rules the first weak link in automated administrative chain decisions on financial interests.

The execution appears to meet the principle of fair play for *element 3* (the decision). For the proportionality of the decision, a norm formed as part of the Dutch principle of carefulness, two different images were found: in the social security case the execution meets the standard of proportionality, while in the tax law case a gap was found between the norm and the practice. This has to do with some financial accounting rules that enable a gap between financial reality and administrative accountant reality. For instance, in tax law it is established that a key data are decisive, the choice is made for a fictional state of the facts. Perhaps a good choice originally, but in this case the decision is used outside its context and influences another decision; moreover, the choice might have disproportionate consequences. Other observed aspects however were found to be in accordance with the principle of carefulness and partly in line with the principle of defense and the principal of equality /non-discrimination.

Element 4 is the feedback element where the individual challenges the decision by filing a formal objection at the administrative authority that made the decision, or by filing a complaint, or by challenging the decision in the administrative court). For this element it is observed that in almost every situation when the citizen uses feedback instruments, a human civil servant comes in. They look into the case and advise by telephone or handle the complaint or objection. Findings in this thesis are that the execution of element 4 can be considered to be in line with the principles of carefulness and defense. This is not the case for the principle of equality and non-discrimination; the execution in element 4 is not in line with neither principle. Firstly, because the decision rules are not accessible for citizens who want to invoke protection of equal treatment. Secondly, because the administrative authorities execute legal acts that might violate international law if they follow the national act which not always allows them to consider any specific circumstances of the citizens that can indicate violation of non-discrimination.

Element 5 is the propagation of the administrative chain decision, meaning the decision is used in the network of other administrative authorities to build another administrative decision, made by another administrative agency. The empirical study shows the execution is likely not compatible with the norms. Because not all possible negative consequences of the decision can be undone by making an objection, the principle of defense is violated. Negative consequences are specifically related to chain or network character of these kind of decisions and the propagation of the decision. It is observed that a possibly wrong decision is already made a part of the chain, enabling the situation that even if a decision is quashed and legally in retrospect non-existent, not all results may be annulled. Neither the principles of equality and non-discrimination are met in this element. This is because administrative authorities don't systematically weigh special individual circumstances that arise because of the cumulative effects of chain decisions. If one administrative authority builds its decision on another administrative decision, cumulative effects are inescapable. Especially the common and accepted frictions between reality, the translation of reality in data and the legal reality appear to multiply by the reuse of it. The use of one key date can therefore have too many negative consequences. This makes the execution not in line with the principles of equality and non-discrimination. Therefore, the propagation of automated chain decisions form the second weak link in legal protection against automated administrative chain decisions on financial interests. It sets something in motion without proper oversight of all consequences for the administrative authorities, let alone the citizen or the administrative judge. And when the consequences are visible, they are not considered to belong to the competence of the administrative authority that made the chain decision.

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