



## **Chapter VIII**

# **The Use of Legal Expert Systems in Administrative Decision Making**

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## **INTRODUCTION**

Welfare states offer their citizens many complex services such as social assistance, (health)care, education and pensions. Generally, such services are tuned to the needs and the circumstances of the citizen in question. This means that the provision of each service requires an individualized administration. During the last century, there has been an enormous increase in the number and complexity of the services provided, as well as in the number of citizens making use of them. The typical modern welfare state has developed specialized institutions, in which numerous bureaucrats are systematically involved in allocating services to individual clients.

A naive perspective on the welfare state and its institutions generally provides an uncomplicated and idealistic picture of this service provision. It is the picture of a democratic political body which determines the services to be provided to citizens in different circumstances, and large administrative bodies which simply administer these legal prescriptions to determine for each citizen whether he or she is entitled to them. However, as indicated, such a perspective is rather naive and does not withstand the scrutiny of administrative practice in most (if not all) street-level bureaucracies. In fact, the administration of welfare state programs is often problematic. Not only do the organizations demand a lot of resources, their functioning as effective administrators of provisions is often criticized. As several studies of “street-level bureaucracies” and “human service organizations” have shown, the practice of bureaucratic service provision is not simply a matter of applying formal regulations to the characteristics of individual cases. Authors like Prottas (1979), Lipski (1980), Hasenfeld (1983) and Van der Veen (1990) point out that the question of who actually gets what is not only determined by the legal statutes. The street-level

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bureaucrats play a substantial and sometimes questionable role as well. As Prottas argues, much of what will happen to an individual is determined by the preliminary, magical process of turning people into clients to be processed. In his eyes, the street-level bureaucrats who perform this task are like modern-day wizards. Although they seem to be bound by all kinds of formal regulations, they have in fact large discretion in the way they label citizens and consequently in the access people will get to services they may or may not require.

This large, often unintended discretion of the street-level bureaucrat in decision making raises questions. Does this decision making really conform to central legal principles such as predictability and equality before the law? Is there not the danger of bureaucrats abusing their discretionary powers? Can we help street-level decision makers to conform to the formal regulation?

As such questions are asked, different individuals have different opinions. Some argue that street-level discretion is nothing to worry about and may in fact be a very good thing. Some argue that street-level bureaucracies should invest more in the quality of their personnel, that something should be done to reduce the time pressure in these organizations and that street-level bureaucracies should be monitored more closely. Some argue that the rules should be simpler.

As such suggestions are certainly valuable in different situations, there may also be another way to approach the problem of discrepancies between the formal rules and existing administrative practices. Maybe bureaucracies could make a better use of ICT and more specifically, of knowledge-based systems or expert systems to improve their administrative quality?

This chapter investigates the idea that expert systems may be used to improve administrative quality. It does so by looking intensively and critically at one example of knowledge-based system support in street-level bureaucracies, namely that of the use of expert systems in the administration of the Dutch General Assistance Act. In this field the idea of expert system support now exists for over a decade, and it has not only been a topic of scientific research and scientific debate, but it actually has become administrative practice. As I write this, about 40% of the Dutch municipalities use expert systems in the administration of this act.

In my opinion, it also is a very interesting case for three additional reasons:

- The case concerns a sizeable application in a rather complex domain, and thus gives good insight in the possibilities of expert systems.
- The case concerns a rather successful, accepted application in a type of field in which the applicability of these systems has been strongly debated (and contested) by social and legal scientists.
- The case may be viewed as one example of the fact that expert systems are regaining attention as possible tools for modernizing administrative practice.

The chapter will now start with a short introduction into the Dutch General Assistance Act, its administration and the problems concerned with that administration.

Then, I will discuss the idea of expert systems support and present the results of several investigations into the application of expert systems, in this context. Given these results, some have been quick to argue that expert systems are indeed important and valuable tools in the administration of welfare state programs.

The next section will present important arguments against too much optimism. Both from a legal scientific as well as from a social scientific perspective, objections against the use of expert systems have been formulated. On the one hand, these

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