Voorspelbaarheid van bestuurshandelen. Een onderzoek naar rechtsregels en beslissingen over het volgen van scholing met behoud van uitkering
Marseille, Albert Theodoor

IMPORTANT NOTE: You are advised to consult the publisher's version (publisher's PDF) if you wish to cite from it. Please check the document version below.

Document Version
Publisher's PDF, also known as Version of record

Publication date:
1993

Link to publication in University of Groningen/UMCG research database

Citation for published version (APA):

Copyright
Other than for strictly personal use, it is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), unless the work is under an open content license (like Creative Commons).

The publication may also be distributed here under the terms of Article 25fa of the Dutch Copyright Act, indicated by the “Taverne” license. More information can be found on the University of Groningen website: https://www.rug.nl/library/open-access/self-archiving-pure/taverne-amendment.

Take-down policy
If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

Downloaded from the University of Groningen/UMCG research database (Pure): http://www.rug.nl/research/portal. For technical reasons the number of authors shown on this cover page is limited to 10 maximum.

Download date: 05-06-2024
Can citizens predict administrative behaviour?

An inquiry into the legal rules and the decisions about attending a training while remaining in receipt of benefit

1 Starting points

One of the fundamental principles of the constitutional state is the principle of legal security. The purpose of this principle is to bring about predictability in the relations between government and citizens on the basis of legal rules. The principle of legal security entails certain requirements that have to be met by legislators and by the administration: legal rules should be clear and unambiguous, and the administration should act in accordance with these rules. The doctrine of the constitutional state presupposes that the purpose of the principle of legal security can be realized if these requirements are met, and that citizens will thus possess clarity about their legal rights and duties.

However, it remains doubtful to what extent the principle of legal security is realized when legal rules are administered. Are laws always clear, and are they administered in accordance with the rules concerned? Even if this is the case it remains to be seen whether individual citizens really have clarity about their legal rights and duties.

The inquiry under discussion in this book focuses on the question as to how far the principle of legal security actually induces behaviour on the part of the administration that can be predicted by individual citizens. Can this behaviour be predicted on the basis of laws and regulations? Is it possible for individual citizens to predict what decisions the administration will take when these citizens try to validate their claims?

2 Theory

If legal security is considered as an ideal which is realized, more or less, then this thesis can be characterized as a quest for factors which contribute to or detract from the realization of this ideal of legal security.

If administrative behaviour is based on laws, and thus meets the requirement of legality, this can be a contributing factor to the realization of the principle of legal security. However, the transition of the classical to the social constitutional state has made it more and more difficult to meet
of Social Affairs and Employment dating from 1988 stating requirements a training has to meet if they are to grant permission.

Industrial Insurance Associations use two kinds of criteria in judging whether or not attending a training can be permitted: the object-test and the subject-test. The object-test is used to examine whether the training itself meets a number of criteria. Determining the criteria regarding the contents of the training is delegated by the WW to the Social Security Council, an organization which supervises the execution of social security laws. The Social Security Council laid down these criteria towards the end of 1990, four years after the WW came into force. The subject-test helps to judge whether a training should be considered ‘necessary’ for an individual receiver of benefit. The criteria to be used in the subject-test can not be found in the WW itself. Moreover, these criteria are very vague and they are not knowable to receivers of WW-benefit.

4 Predictability of administrative behaviour as seen from the perspective of the citizen

In order to get a picture of the actual clarity people wanting to attend a training have about their legal rights and duties, interviews were held with 205 receivers of WW- and RWW-benefit who considered attending a training between July 1989 and June 1991. Due to the manner of selecting the respondents it is doubtful whether they form a representative sample. It is therefore necessary to be careful with interpreting the results of the inquiry.

To what extent do the legal rules about attending a training and the execution of these rules by the administration influence the clarity receivers of WW- and RWW-benefit possess about their legal rights and duties? ‘Clarity about legal rights and duties’ has three different aspects: the knowledge about legal rights and duties, the speed with which executive bodies inform receivers of benefit of their decision, and the ability to correctly predict the decision of the administration.

There is not much difference between receivers of WW-benefit and RWW-benefit as regards their knowledge about their rights and duties, although receivers of WW-benefit appear to be slightly better-informed. Next, the speed with which executive bodies inform those wanting to attend a training of their decisions. Here, the difference between receivers of WW- and RWW-benefit is considerable. On average, receivers of RWW-benefit get to know the decision of the administration much earlier than receivers of WW-benefit. Two-third of the receivers of WW-benefit do not know the decision of the Industrial Insurance Association at the moment their training starts. Furthermore, it appears that the nature of the decision is connected with the amount of time known. It takes considerably more time for the administration to inform him of a positive decision (i.e. permission) than of a negative one (i.e. refusal). Finally, if we consider the ability to correctly predict the decision, receivers of WW-benefit appear to be no more able than those of RWW-benefit to predict the decision of the administration. The explanation for the difference may be found in the nature of the decision taken by the administration.

5 Predictability of administrative behaviour as seen from the perspective of legal scholars

How predictable are the criteria and conditions set by the relevant laws and regulations? Municipal Social Service Agencies regarding the execution of WW and RWW-benefit do not appear to be consistent. Receivers of WW-benefit do not know the decision of the administration at the moment their training starts. Furthermore, it appears that the nature of the decision
Summary

is connected with the amount of time that expires before a decision becomes known. It takes considerably longer to inform someone of a negative decision (i.e. permission refused or training tolerated), than it takes to inform him of a positive one (i.e. permission granted).

Finally, if we consider the ability of receivers of unemployment benefit to correctly predict the decision of the administration, it appears that receivers of RWW-benefits are better at this than receivers of WW-benefits. Both groups share their relative optimism about the decision to be taken by the administration. This optimism may also be a part of the explanation for the difference between those receiving WW-benefit and those receiving RWW-benefit. The optimism of the last group is nearly always justified, whereas the optimism of the first group is far from always justified. Information given by the District Employment Exchange Agencies regarding the expected decision turns out to be a major influence on the ability to correctly predict the decision of the administration. Those who are informed by the District Employment Exchange Agencies are better able to predict the decision to be taken by the administration than those who are not.

5 Predictability of administrative behaviour as seen from the perspective of legal rules

How predictable are the decisions of the administration as seen in the light of the relevant laws and regulations? Firstly, it appears that the fact that Municipal Social Service Departments always grant permission to attend a training does not mean that all types of training attended by receivers of RWW-benefit meet the requirements laid down in a recommendation by the Department of Social Security and Employment in 1988. 40 percent of all types of training permitted by Social Service Departments do not meet one or more requirements laid down in this recommendation.

The chance that an Industrial Insurance Association grants permission to someone receiving WW-benefit becomes greater as the training he wants to attend meets more of the requirements of the object-test. However, Industrial Insurance Associations do not apply the object-test very strictly: types of training are permitted which do not meet all requirements, while other types of training which do, are quite often not permitted. The way in which Industrial Insurance Associations judge the necessity of a specific training for an individual receiver of benefit (the subject-test) is not very consistent. Receivers of WW-benefit with a weak position on the labour-market do not appear to receive permission more often than those with a relatively strong position.
A striking result of our inquiry is the distinction Industrial Insurance Associations make between younger and older people: older people more often get permission to attend a training than younger people. This distinction can partly be explained by the fact that giving permission to a younger person is more expensive to the Industrial Insurance Association than giving permission to an older person. For a receiver of WW-benefit over the age of 30 the chance of getting permission is always big, irrespective of the financial consequences granting permission has for the Industrial Insurance Association. For a receiver of WW-benefit below the age of 30 on the other hand, the small chance of getting permission gets even smaller when giving permission costs the Industrial Insurance Association much.

Do the District Employment Exchange Agencies and the receivers of benefit know which factors play a part in the decision of the administration? It appears that District Employment Exchange Agencies are better able to predict than the receivers of WW- and RWW-benefit whether or not the administration allows the contents of a training to influence their decision. District Employment Exchange Agencies can predict both that Industrial Insurance Associations allow the contents of a training to play a role in their decision-taking process and that Municipal Social Service Departments do not. Receivers of RWW-benefit — incorrectly — think that the contents of a training influences the decision of the Social Service Department, while receivers of WW-benefit are — equally incorrectly — of the opinion that the contents of the training does not play a role in the decision of the Industrial Insurance Association.

A remarkable finding is that District Employment Exchange Agencies do not appear to be aware of the fact that age can be a determining factor in the granting of permission to someone receiving WW-benefit. In contrast, some of these people themselves do know that age is a relevant factor.

6 Actual behaviour of receivers of unemployment benefit

Whether a receiver of unemployment benefit is, or is not informed about the decision to be taken by the administration hardly seems to influence his own decision whether or not to attend a training: most receivers of benefit interviewed in this inquiry began attending a training. The fact that the decision of the administration was still not known could hardly ever be found among the reasons to refrain from attending a training. Furthermore, hardly anyone stopped attending their training when they received a negative decision in the course of their training. On the whole, not only the majority who receive permission to attend a training started doing so, but also those receivers of benefit denied permission by the administration.

7 Conclusion

It is difficult to predict the legal rules regarding unemployment benefit. In addition, other causes can be mentioned which prevent administrations from taking decisions: it has been waiting nearly four years for the recommendations of the Labour and the Department of Social Security. The absence of a decision at which the necessity of a training is assessed and the use of discretionary power by the insurance bodies and the Municipal Social Service Departments are detrimental to the process.

Changes in the legal rules should be limited to those that are beneficial in spite of the discretionary power granted to the administration. Receivers of RWW-benefit, especially by the Municipal Social Service Departments, should be required to attend a training when the administration has decided whether the contents of the training are necessary. They should refuse the choice of the administration on the setting of the training.

However, when one looks at the actual behaviour of the receivers of benefit in reaction to a decision by the administration, it is not so easily toned down. For we hear that on average training will nearly always start. It is therefore not unlawful to regard the obligation to attend a training as a duty.
but also those receivers of WW-benefit whose training is tolerated or forbidden by the administration.

7 Conclusion

It is difficult to predict the decisions of the administration on the basis of the legal rules regarding training while remaining in receipt of unemployment benefit. In addition to the obscurity of the legal rules themselves, other causes can be mentioned as well. Thus, the Social Security Council waited nearly four years before it laid down the criteria according to which attending a training could be allowed. And even though there are recommendations by the Federation of Industrial Insurance Associations and the Department of Social Affairs and Employment about the administration of the rules concerning training, executive bodies have not committed themselves to those rules. Furthermore, they hardly structure their discretionary power by laying down rules of policy. The way in which Industrial Insurance Associations judge the necessity for an individual receiver of benefit to attend a training is not very consistent. Moreover, in judging the training factors play a part which fall outside the discretionary power granted to the Industrial Insurance Associations, i.e. the costs of granting permission for the Industrial Insurance Association.

Receivers of RWW-benefit are better able to predict the decisions of the administration than receivers of WW-benefit. The ability to predict the decision of the administration is especially important to the receivers of WW-benefit, especially because in most cases the decision of the Industrial Insurance Association is announced only after the training has started. The absence of a decision at the start of the training, the inconsistent way in which the necessity of a training is judged by Industrial Insurance Associations and the use of the category 'tolerate' which offers little security are detrimental to the principle of legal security.

Changes in the legal rules seem to be called for. Thus, executive bodies should confine themselves to judging only the contents of a training. They should refrain from judging the necessity of a training. The category 'tolerate' should no longer be applied. Finally, permission to attend a training should automatically be given if it takes too long for the administration to take a decision.

However, when one looks at the importance of predictability in view of the actual behaviour of receivers of benefit in anticipation of, or in reaction to a decision by the administration, these claims should be slightly toned down. For we have seen that someone wanting to attend a training will nearly always carry out his intentions. Apparently, he does not regard the obligation to conform to the decision of the administration as
the only obligation he has to meet. By attending a training he has committed himself not only to the District Employment Exchange Agency and to the body providing the training, but also to himself and the people in his vicinity. The obligation imposed by the administration is seldom the one he gives priority to.