

CALL FOR ABSTRACTS SPECIAL ISSUE 2023

Recht der Werkelijkheid | Journal of Empirical Research on Law in Action

The quest for implementation: can governments still get things done?

Introduction

In the past years much attention is given to policy fiascos¹ as well as to policy successes.² Recent cases, such as the Child Care Benefit Scandal in the Netherlands, the Long Stay Care Affair in Ireland and the Norwegian 'Social Security Scandal' (or NAV-scandal) have highlighted how government decisions are implemented in western societies. Due to different factors, like privatization and deregulation, budget cuts, and the horizontalization of relations between the public sector, markets and communities, the implementing powers of modern government are questioned.

On the macro level, the analysis of these different scandals focuses on the decrease of parliamentary controls, marginal judicial review by administrative courts and shifting regulatory techniques. Generally speaking, trust in the institutions (for example parliament and government) is decreasing. On the meso level, the implementing powers of government agencies, independent administrative bodies and private executive organizations are facing criticism. Implementation is often hindered by diminishing budgets, staffing problems, conflicts between principals and agents and the everpresent information asymmetry. Enforcement agencies are limited in their actions by guiding policy decisions and lacking independence. On the micro level, street-level bureaucrats, screen-level bureaucrats and system-level bureaucrats come into play. Here the tension between general rules and customization gets to the surface. Do laws and regulations provide for enough margin of appreciation to deliver procedural justice, are civil servants capable of delivering tailor-made decisions?

Examples

In the Netherlands, the Child Care Benefits Scandal is a recent example of failing implementation by the Dutch Tax and Customs Administration. In this case, the supervisory system made use of algorithms, resulting in discriminatory effects, broken families and in some cases irreparable damage. Remarkably, there is no discussion on the undoing of the negative impact of the scandal, despite recovery still not working well. Here, there is a similarity with the reparation of damage and strengthening of buildings and houses in the province of Groningen in the Netherlands, where gas extraction led to earthquakes. While huge budgets are spent, actions are only very slowly progressing, due to governance problems and swaying government policies.

Comparable implementation problems have occurred in other western welfare states, like in Norway, where the core issue came down to a combination of rigid legislation aimed at combating welfare fraud and insufficient mechanisms of internal and external control of administrative agencies. The Labour and Welfare Administration (NAV, Nye arbeids- og velferdsetaten) misinterpreted EU regulation for several years. As a result, people were refused benefits they were legally entitled to, were wrongly demanded to stay in Norway or received unlawful claims to repay granted benefits.

Both in the Netherlands and in Norway, detecting and combatting social security fraud was prioritized resulting in a rigid and flawed approach of sanctioning and repaying. Ranchordas analyzed the 'MiDAS scandal' from Michigan in the USA.³ MiDAS was designed to ensure the distribution of unemployment checks only to eligible individuals, but it quickly became a tool to reduce social expenditures as a 'weapon against fraud'. The system turned out to carry numerous structural errors that came with dramatic repercussions. 34,000 false accusations of unemployment fraud were made, resulting in multiple 'personal tragedies' such as evictions, divorces, and homelessness.

Another 'social policy fiasco' comes from Australia, where in a system called 'Robodebt' by the media, a simple algorithm was used to flag individuals and raise debts based on past income tax returns.⁴ From 2017 onwards, it became clear that numerous structural errors had remained unsolved due to a lack of monitoring and responses to malpractices in the governance of the system. The Federal Court judged the sanctioning regime unlawful in

¹ Bovens & 't Hart 1996.

² Paul 't Hart & Mallory Compton 2019.

³ Ranchordas 2022.

⁴ Whiteford 2021.

2019, and in November 2020, the Australian government agreed to repay many debts, drop existing claims and pay 112 million in compensation to around 400,000 individuals.

These cases draw attention to numerous factors implementing organizations have to deal with. The use of big data and algorithms seems to be a very important explanation of several scandals. Rigid enforcement schemes are also suggested as explanations. The irresponsible and late reactions of courts of appeal to complaints are striking.

Call for abstracts

This special issue examines implementation from different angles, at macro, meso and micro levels. The main question is: 'Can governments still get things done?' We call for the submission of abstracts related to questions framed above, such as:

- Is the rule of law still a sustainable starting point, or does effective and responsive implementation need another baseline?
- What is the implication of decreasing trust in the government system for the quality of implementation?
- Do shifting regulatory techniques cause problems for implementation or can they function as stimuli?
- How and to what extent can a balance be struck between general rules and customization?
- How to move from neo-liberal new public management towards new governance and increasing implementing power?
- Can digitalization solve conflicts between principals and agents by bridging information asymmetry?
- Do regulatory and supervising bodies need independence from ministries or is that contrary to the rule of law and parliamentary control?
- Is the use of digital means like algorithmic decision-making resulting in effective implementation or does it lead to a wider gap between output and outcome?
- What is the way forward to procedural justice in implementation?

Practical information

We cordially invite empirical researchers (scholars in the fields of sociology of law, legal anthropology, public administration, legal economics and legal psychology) who think they can contribute to this special issue to submit an abstract for an article (1 A4) to one of the editors. In this, you should briefly describe the central objective of your article, the research method used and the results of the research. The editors of this special issue are dr. Paulien de Winter (p.de.winter@rug.nl) and prof. dr. Heinrich Winter (h.b.winter@rug.nl). You can submit your abstract until December 12th, 2022 at the latest. The editors of this special issue will assess the submitted abstracts within three weeks. If your abstract is selected, we would like to receive your article of a maximum of 8,000 words no later than May 1st, 2023. An online authors meeting will be organized in May 2023, where the authors discuss each other's work. Authors can adjust their contribution based on the comments, after which the usual peer review procedure of *Recht der Werkelijkheid* will take place.

The *Journal of Empirical Research on Law in Action (Recht der Werkelijkheid)* is a journal for the social science study of law. The journal provides an interdisciplinary platform for reflection in the fields of sociology of law, legal anthropology, public administration, legal economics and legal psychology. It focuses in particular on innovative empirical-theoretical contributions on social developments and the current meaning of law. The journal is affiliated with the Society for the Social Science Study of Law ([VSR](#)).

Deadlines

12-12-2022: submission abstract

15-04-2023: deadline first draft

08-05-2023: online authors meeting and feedback other author(s)

01-06-2023: manuscripts to editors RdW

01-07-2023: feedback editors RdW

15-08-2023: authors submit final version

15-09-2023: final version to publisher

01-11-2023: publication