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SUMMARY

The problematic situation asking for measures is the action situation. In the administrative action situation these measures have to come from the public administration, sometimes in accordance with citizens and their organizations. Administrative law has this administrative action situation as object. In this situation we see in the Netherlands and other countries the application of norms like prudence, trust, equality and proportionality. In Dutch administrative law norms like these are known as the general principles of fair administration. They have a function as guideline for the central actors in administrative law: lawgiver, public administrator, judge and citizen.

The first chapter starts with a well known explanation of the function of the principles of fair administration in law and society. In this so called 'compensation theory' these principles compensate for a loss of guarantees in written law since the lawgiver withdraws. This theory gives a far reaching explanation of the function of the principles of fair administration but falls short in the end. Aim of this thesis is to try out a way to add to and nuance the compensation theory. Main question is: Is there an explanation more satisfying than the compensation theory gives for the function of the principles of fair administration in law and society? The answer is given by sketching a system of administrative law. The main component of this system is a method for finding answers to questions of law.

The second and third chapter are descriptions of the work of three writers useful for this thesis: Dworkin, Richardson and Habermas. The work of Hart and Raz also gets attention because Dworkin finds a basis in discussing Hart's work, and Raz is an important critic of Dworkin. Two topics receive special attention, because they are important in the rest of this book: these are the differences Dworkin makes between principles and rules and between principles and policies. As far as possible a connection is made between ideas of Dworkin, Richardson and Habermas.

Many of our efforts to keep order and create a good society concentrate on action situations. A central statement in this thesis is that finding answers to questions of administrative law happens in accordance with the elements of the administrative action situation. This asks first for the determination of these elements. Main elements are actor, goals,

means, interests, power, and norms. Second it's important to point out that the action situation over the years has become important in looking at society and law in general and especially at administrative law. This also makes the elements of this situation important. In the third place follows a description of the actual relation between public administration and citizens within the administrative action situation.

The works of Habermas and Glastra van Loon, who see norms as element of the action situation, are used to make clear what role norms have within this situation, and when a norm belongs to the law. Second follow two norms that are important in society, effectivity and efficiency. Question is how they relate to the action situation. Third the focus is on the difference Dworkin makes between principles and rules and the statement that the principles of fair administration are principles not rules. Important is to point out that these principles of fair administration only apply to the administrative action situation. That asks for the argument that shows how the application of a category of principles of law can be limited to an action situation of a certain category. After that the moment has arrived to show how principles of fair administration relate to the administrative action situation.

From the character of principles of law and especially the category of principles of fair administration does not follow that they are at this moment limited to fifteen principles. This limited number however makes them useful to be the basis of a method of finding answers to questions of administrative law. It is possible to check all of these principles in a case in order to support the fairness and justice of the administrative action in this case. That idea is central to the method of finding answers to questions of administrative law. This method is the main component of the system of administrative law that is sought for in this thesis. The case of Schiphol Amsterdam airport helps to further describe this method. The description helps to work out the idea that a division into six groups of principles creates a method wherein the application of the one group serves the application of the other. Going through all groups one more time, or more often, makes that each principle is applied in the light of all other principles.

As the function of the principles of fair administration now comes to surface their role in finding answers to questions of administrative law. Habermas and Teubner argue however that juridical argumentation does not automatically change the world. This must have consequences for the function of the principles of fair administration in law and society. From this also follow consequences for the method of finding

answers to questions of law that is central to this thesis. A second application to the case of Schiphol Amsterdam airport must show how this method can help to be more successful in such a case.

When in reality a case responds to the application of principles of fair administration, then there is proof of their function in society. Cases will also respond to policies. Item in this thesis is the relation between the found method for finding answers to questions of administrative law and existing methods of public administration to optimize making and conducting policies. This serves to show how the application of the principles of fair administration is possible in combination with the criteria of effectivity and efficiency.

Characteristic for the found method for finding answers to questions of administrative law is that it is not only applicable in cases where judges have to rule. The method is also useful for policy analysis, *ex ante* and *ex post*, and in the situation of making and conducting policy. Especially in this last situation the principles of fair administration are instrumental, because they have direct influence on changes in the real world. This instrumental character of these principles has to fit in the system of administrative law that traditionally recognizes these principles as juridical guarantees instead of instruments. This is done by defining instrumentality as a function of giving guarantees, and juridical guarantees as instruments. That results in a system that in accordance with ideas of Dworkin can lead to answers to questions of law that are acknowledged in the concerned community as the answers that give the best possible interpretation of politics and law in this community.

The answer to the main question of this thesis follows from the found system of administrative law. The function of the principles of fair administration in law is that they are arguments for the central actors in administrative law when they have to make a decision. An interconnected number of principles helps to give the best possible interpretation. Their function in society is that these principles help to look for policies that can be legitimate in a society that strives for fairness and justice at the same time. This explanation of the function in law and society of the principles of fair administration must be more satisfying than the one given by the compensation theory. This must serve a better application of these principles. The necessity to look for this follows from the great and growing importance of the principles of fair administration. That asks for continuous attention for their function in law and society. This thesis is a contribution to that attention.