Framework legislation in the Welfare State

Introduction
During the last 15 years the Dutch legislator has been replacing detailed laws by a different kind of regulation. Because of a growing complexity of society and fast technological developments the Dutch legislator argues that it cannot prescribe any detailed rules. Instead laws are issued which only state the goal which should be reached by the norm-addressee. The norm-addressee then has to work out what means to use, to reach the objective stated in the law.¹ For example: until 1996 the ministry of Health, Welfare and Sport had regulated health care into detail, such as the rule ‘Hospital beds should stand 80 cm from each other’. In 1996 these detailed rules were replaced by the ‘Care Institutions Quality Act’, which only prescribes that care institutions should provide ‘reliable care’.

The Swedish legislator has been using this new type of legislation already for a longer period, mostly in ‘welfare state legislation’, such as environmental law, health care law, labour law et cetera. The Swedes call it ramlagstiftning: framework legislation. It contains “goals, general guidelines and principles which are to be filled in with more specialised regulations by the government, by the administration and often by individual municipal councils.”²

In Sweden the arguments for using this kind of legislation are slightly different from the Dutch arguments. In the Netherlands the most used argument is that professionals should have more freedom to decide on the means to reach a certain goal, since they have greatest knowledge about how these goals can be reached. In Sweden a variation on this argument is used: politicians should decide on the goals, and experts (often civil servants in the administration) should then decide on the details. Framework legislation is in the first place used to separate politics and its execution: the government (and ministries) decide the policy and make the framework laws, while national independent public agencies execute these policies and laws, and should decide on what means to use to reach the policy goals.

Hypothesis
The use of framework legislation raises some important questions. Annika Kronsell already stated that in Sweden “the reliance on framework laws implies that political problems are transformed into administrative problems, which are then settled by administrative experts.”³ Politicians pass on the balancing of interests to a lower level, by only setting abstract goals which are not weighed against each other. These goals are concretised by civil servants, without real co-ordination between the different goals, and the norm-addressee has to balance the different interests and goals against each other.

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¹ P.C. Westerman 2006, Overregulation in the welfare state (research design)
My pilot case study in the Swedish psychiatry has indicated that this replacement of decision taking to a different level does happen, and can lead to serious problems. Difficult psychiatric patients, who have a triple diagnose (addicted, psychiatric and aggressive) are sometimes not admitted into Swedish psychiatric health services, since the responsible doctors have to balance the goals of two different framework laws: providing good health care for the patients and providing a good working environment for their staff. The balancing of interests takes place on a non-political, concrete level. The doctors cannot take into account the interest of society as a whole (treating dangerous patients) in the same way a parliament could, because they have to give greater weight to what their staff wants. Both society and these patients would benefit if the goals of the two framework laws were weighed against each other on a higher level, where the interest of society as a whole also counts.

The central hypothesis of this research project is that framework legislation leads to political problems being passed on to a lower level: to the administration or even to the norm-addressee. This leads to coordination problems between different framework laws. Since interests of different laws are not balanced by politicians on an abstract level, the balancing of interests takes place in concrete situations and is therefore distorted, as in the pilot case study of the Swedish psychiatry.

Methods
In this research project I will investigate in a qualitative study whether this hypothesis can be verified in Sweden and in the Netherlands. I will both do case studies and literature review. The study will be a comparative study between how framework legislation is dealt with in Sweden and the Netherlands. To narrow down the topic I will focus on the framework legislation which affects care institutions. In these care institutions different framework laws meet, such as the health care laws, the working environment laws, the laws on fire-safety, etc. In case studies of different care institutions both in the Netherlands and in Sweden I will try to find answers to questions such as: Who decides with what measures the goal of the framework laws will be reached? Where do the different framework laws meet? Who balances the goals of different framework laws? What problems arise in balancing these goals? These case studies should show whether in these care institutions problems of co-ordination and distorted balancing of interests arise, between different goals of framework laws. I will use different methods (triangulation) to find these answers: review of documents, interviews with key persons in the care institutions and observation in the care institutions.

Also of importance is the role of inspection institutes, such as the Health care inspection and the Working Environment Inspection. Their interpretation of the framework law and their approach to inspecting the care institutions is a key feature in how the framework laws are implemented, and how the different laws are co-ordinated. Therefore I will also interview different key persons at these inspections, study their documents and observe several inspections of care institutions.

Parallel to these case studies I will do literature research on the theoretical background of framework legislation. The following topics are most important in this literature study: regulation styles; governance styles; welfare state systems; better regulation and quality of legislation debates; the use of regulatory agencies; the use of experts in law-making; theories on balancing of interests; and co-ordination of legislation and policy.