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The Changing Perceptions on Benefit Recipients in Dutch Social Security Policy in the Past 30 Years

Frans Pennings*

☞ keywords to be inserted by the indexer

Abstract

Perceptions of human beings have played a significant role in the development of social security schemes in the Netherlands; in particular, in periods when it wanted to introduce or change legislation, the Government explicitly refers to the perception it adheres to. Throughout time, a development can be seen from a change of a perception in which human beings are members of their communities (in particular religious ones), to a perception in which the State has responsibility to protect its citizens from want and has to ensure the right to benefit and income certainty, to a perception in which human beings have to be responsible for themselves and be guided by financial incentives in order to comply with the benefit rules. After the affair of Child Care Supplements, the Dutch Government has accepted that it is not clear whether all persons are really self-responsible. This article reviews the role of perception in Dutch social security, concluding with a discussion on how this analysis in terms of perceptions on human nature relates to the typology of welfare states as developed by Esping-Andersen and others.

Introduction

The editors of this Journal asked me, on the occasion of the Journal's 30th anniversary, to analyse a development in Dutch social security over the past 30 years. After some deliberation, I decided to write about developments in the successive perceptions on the nature of human beings in society that underlie social security policies in the Netherlands.

A perception regarding human beings (*mensbeeld* in Dutch) can, for instance, be that humans have high moral standards and generally comply with their obligations. Another perception is that human beings are, in general, capable of caring for themselves. A third, quite different one, is that citizens may need considerable support in order to be able to realise their social rights, since they are not bureaucratically competent enough to deal with all benefit requirements. They have problems in making the decisions required by the law, even if these are in their own interest.

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Interestingly, Dutch government papers themselves occasionally explicitly refer to a particular perception that is the basis for a proposed measure. An analysis of these enables us to study the development of the afore-mentioned perceptions and the accompanying policies. Of course, it can be argued that a particular perception is not based on empirical research or that a particular measure that is taken does not fit with the perception that was mentioned as its basis. However, the perceptions as such give a good insight into why and how a particular policy was designed and can put the ensuing legislation and problems with these in perspective.

I will first describe the perception that became dominant after the Second World War, in response to the frugal pre-war period, that human beings have to be ensured subsistence security. Then, I will discuss the change to a perception that citizens are, and (since the perception also has a normative dimension) have to be, self-responsible. The context in which this new perception was developed will be also dealt with. This perception sees people being led by financial incentives. In line with this, the legislation introduced in the 1990s for income in case of sickness and disability shifted responsibility for income security to the employers. The rights and levels of disability benefit were made much more dependent on re-integration into work activities than before. From this concept of self-responsibility, it also followed that if the beneficiary did not comply with the rules, he or she had to be sanctioned by strict penalties, feeding in to the perceptions, by some politicians, that beneficiaries were fraudulent persons. I then describe how a beneficiary is seen as a member of the Participation Society and discuss which obligations follow from this. Although financial incentive, focus on fraud and participation can be distinguished from each other, they are basically elaborations and variants of the more basic perception that persons are, and have to be, responsible for their own living.

I will then describe the recent Child Care Supplements Scandal that forced the Government and also the judiciary to reflect fundamentally on this perception of the self-responsible and competent person. Finally, I will reflect on how perceptions can be used to understand social security developments and what their place can be alongside traditional welfare system typologies.

The development of a general obligation of the State to ensure livelihood security

The need for a “legal basis” before World War II

At the beginning of the 20th century, the Netherlands adopted legislation on employees' insurance schemes after the example of the German Bismarckian laws on employees insurance. The Dutch Acts were adopted much later than the German ones; one of the obstacles for the development of the Dutch statutory social security system was that the political parties in power shared the view that the power of the State should remain limited. This was not only the view of the Liberals, but also that of the Christian-democratic parties.¹ The latter parties, that were developing their own communities and organisations at the time, wished to protect these from State interference, in order to make them stronger. By introducing compulsory

¹ The Social Democrats were not in Parliament yet, in this time before a universal right to vote was established.

social insurance and contributions, the State restricted individual liberties, they argued. Therefore, they were opposed to such interference, unless there was an absolute need for this.

This approach led to a typical Dutch element in the discussions: in case a particular social scheme was proposed, it was required that a “legal basis” was accepted before Parliament was willing to adopt it. The “legal basis” was not a statutory or constitutional provision, but solely a particular reason for justifying statutory interference. Such reason was proposed by the Government if it considered that interference to solve a particular social need was absolutely necessary. If the legal basis was accepted by a majority in Parliament, the ensuing bill could be adopted. There could be a different legal basis for each risk for which interference was considered; before the Second World War, however, there were only few risks for which the State accepted responsibility (i.e. accidents at work, sickness, old age and widows’ benefits for the poorest).

From an adopted legal basis, it followed also which groups were to be protected by the ensuing legislation (employees, all residents or only the low income workers), who had to pay for this (employers, employees, both of them or the State) and who was to administer the scheme. When there was no legal basis, the State must not interfere.

The need for a legal basis meant that progress of the development of social security was slow, that the schemes remained restricted to particular groups and that, as a result, many people remained outside the protection of the State. Unemployment and poverty remained high during the 1930s.

A new legal basis

The view on the role of the State and the protection it should ensure began to change during the Second World War. At that time, the Dutch Government was in exile in London, where in 1942, the Beveridge Report was published as a blue print for British social security.² The Dutch Government was inspired by this report and established a commission to write a white paper on the future of Dutch social security.³ Like Beveridge, and many persons in the Dutch exile society, the commission argued that there should be a new, better community after the War, in which poverty should be banned. It proposed a new legal basis for the system of social security as a whole, that became very important for the development of Dutch social security: “the Community, organised in the State, is responsible for the social security and the protection against poverty of all its members, on condition that these members do all they can reasonably do to provide for their own protection against poverty through their own efforts”.⁴

This legal basis had important implications: it put the responsibility for social protection on the State and no longer on private organisations. Moreover, it extended the protection by the State to all members of society (“residents”), and no longer to employees only. And thirdly, the legal basis implied that the “members” of the community must undertake all they can reasonably do in order to fulfil their own responsibility. Thus, the legal basis still appealed to the

² W. Beveridge, *Social Security and Allied Services* Cmnd. 6404 (London, 1942).

³ Its report was published as *Sociale Zekerheid* (Social Security) (The Hague, 1945).

⁴ *Sociale Zekerheid* Vol.II p.10.

self-responsibility of citizens, but it was further elaborated in each Act about how much emphasis was to be laid on the required own efforts of individuals.

This proposed legal basis was accepted by the Government and made it possible to extend the scope of the social security system beyond the category of employees. A series of residence schemes was developed, i.e. schemes which covered all residents and offered flat-rate benefits. These included the Acts on old-age pensions (1957), survivors' benefits (1959), disability benefits (1967) and exceptional medical costs (1967).

Unlike the British Government, the Dutch Government did not choose to implement just one system of social security. Instead, the national insurance schemes mentioned were added to employees' insurance schemes. Both types of social security insurance are still part of the present system. Employees' schemes continued or were introduced for sickness, disability and unemployment, respectively.

Since the pre-war, employees' Acts were considered to provide insufficient protection, new employees' schemes were adopted to replace them. An important Act was the employees' insurance for the disabled, the *Wet op de Arbeidsongeschiktheidsverzekeringen* (WAO—Law Relating to Insurance against Incapacity for Work) of 1966. The new Act provided for a wage related benefit (80% of the previous wage) to disabled employees after they had been incapacitated for work for a period of 52 weeks. There was no requirement on the work record for eligibility for benefit; the amount of benefit was related to the loss of earnings capacity of the claimant. In addition to these insurance schemes, social provision schemes, such as a Public Assistance Act, were implemented.

The development of the perception of a human being as a self-responsible person

The context of the change

The WAO was a large “success” as it attracted numerous beneficiaries. One factor was the lack of requirements on the work record; a person falling ill or having an accident at work on the first working day who becomes disabled, received the full benefit amount in case of full disability. Another factor for the growth of its success was that the threshold for the disability degree required for benefit entitlement was low: 15%. And thirdly, under the provisions in force until 1987, a full benefit was paid also to persons who were partially disabled, but who were considered to have more than average problems in finding work. This rule was extensively used in the 1970s and the beginning of the 1980s, when mass dismissals were a daily phenomenon. In other words, the WAO system was used for mitigating the effects of the economic crisis. There was a silent consensus among many of the responsible authorities that this benefit could be used for this purpose.⁵

When it appeared in the 1980s, that the Dutch disability figures were comparably high, several measures were taken in order to reduce sickness and disability figures.

⁵ See, e.g. the *Parliamentary Papers II 1992/93 22.730, Parlementaire Enquête Uitvoeringsorganen Sociale Verzekeringen* (Parliamentary Investigation Report of Benefit Administration) (The Hague, 1993).

However, these measures appeared not to be very successful, as disability figures kept growing. It was said that the WAO was “policy resistant”.

Towards a new perception

In order to examine this policy resistance, a Parliamentary investigation was undertaken on the administration of the statutory employees’ insurance schemes.⁶ The committee concluded that the administration of the benefit schemes was, to a considerable extent, influenced by individual and collective interests of the actors, such as the use of sickness benefit in case of a labour conflict and payment of disability benefits to soften the effects of restructuring industries. The investigation committee made a number of recommendations,⁷ including that the administration of the schemes was to be transferred from employees’ and employers’ organisations to a public body (UWV) and that benefit administration was to be under strict supervision of the government.

The examination also led to the development of the perception that human beings were led by financial interests. Financial incentives thus became an important steering mechanism in social security. It was pointed out, for instance, that in the “old situation” in case of a labour conflict with an employer, an employee often was sent home and was given an income by means of sickness benefit. Actually, this meant that the “solution” for the employer’s problem was shifted to the public purse. In response to this, it was proposed that benefit schemes were to be designed to steer employers’ and employees’ behaviour according to their financial interests.

The measures relating to sickness benefits

The main measure to reduce absence from work due to sickness was introduced in 1994, creating the statutory obligation of employers to continue to pay wages during the first six weeks of sickness.⁸ The assumption underlying the obligation was that when employers were made responsible for income provision during sickness, they would more carefully check whether an employee was rightfully absent. Although it was not clear whether the law really had the desired effects, two years later, the employer’s obligation to pay wages to their sick employees was extended to a period of 52 weeks.⁹ Ill employees were statutorily entitled to 70% of their wages during 52 weeks (up to a ceiling comparable to that in the Sickness Benefits Act).¹⁰ The Sickness Benefits Act itself remained accessible for those who could not claim wages from an employer, e.g. when their contract for a definite period had expired before or during the sickness period.

In 2004, the period the employer is obliged to pay Sick Pay was further extended, to 104 weeks. These measures were possible, since employers cannot really escape their obligations: they fit in a context of strict dismissal protection in case of

⁶ *Parlementaire Enquête Uitvoeringsorganen Sociale Verzekeringen* (Parliamentary examination of administration of social insurance schemes) (Den Haag, 1993) (Kamerstukken II 1992/93, 22 730).

⁷ *Kamerstukken II 1992/93* (Parliamentary Papers), 22 730, nr. 7–8, p. 123.

⁸ *Wet terugdringing ziekteverzuim* (Sickness Absence (Reduction) Act) 1993 Stb (OJ) 750.

⁹ *Wet uitbreiding loondoorbetalingsplicht bij ziekte* (Continued Payment of Salary (Sickness) Act) 1996 Stb (OJ) 134.

¹⁰ Act of 5 June 1913.

sickness. Employers cannot dismiss a worker who is ill during the first 104 weeks of sickness.

The impact of the measures on sickness benefit is hard to assess. In 2000, the absence level was 5.5%. It decreased to 3.8% in 2014, but now it is 5.5% again.¹¹ It is therefore hard to know what exactly the impact of the measures has been.

The measures relating to disability benefits

Another measure was the replacement of the WAO by the WIA (Wet Inkomen naar Arbeidsvermogen—Act on Income according to Working Capacity) in 2006. Note that the name of the Act stresses participation in work rather than provision of disability benefits.

Essentially, under the WIA, is the assessment of disability of the claimant. The assessment is made by a medical doctor working for the benefit administration, who has to assess on strict medical grounds. Problems in finding work are thus not relevant to the assessment. A labour market expert, also working for the benefit administration, investigates which work the claimant still can do with his or her remaining capacities: this is to determine the remaining earning capacity. It is irrelevant whether actually vacancies exist in the jobs selected for the determination of the disability rate.

Although the WIA is, like the WAO, an Act compensating partially the loss of income, its objective is to promote re-integration into work and therefore contains several financial incentives to have beneficiaries increase their number of working hours. Still, the Act exempts persons who are permanently and fully disabled from these incentives and obligations and from re-integration into work measures. A wholly and permanently disabled person is defined as a person who is, for objective medical reasons unable to work, i.e. cannot not earn more than 20% of his or her previous income. The permanent element of the disability is defined as where recovery is not possible or the chance is only small that the remaining earnings capacity will become more than 20% within five years.¹²

Persons who do not meet this criterion are treated as *partially capacitated* persons (the Government deliberately no longer calls them “incapacitated”). These persons, disabled by more than 35 and less than 80%, and the not permanently disabled, receive a wage-related benefit, the duration of which depends on the work record and is the same as that of the Unemployment Benefits Act.

After this benefit has expired (the maximum entitlement period is 24 months), claimants receive another type of disability benefit. This depends on whether they actually work or not and is therefore a very prominent example of a financial incentive for beneficiaries to keep their work or take up a new job. This benefit, supplementing the income from this work, is paid if the claimant realises at least 50% of the remaining earnings capacity. It can be paid until pension age.

Persons who do not realise 50% of their remaining earnings capacity have to rely on the so-called “follow-up benefit”, which is a very low benefit, in many

¹¹ See Centraal Bureau voor de Statistiek at <https://www.cbs.nl/nl-nl/nieuws/2021/21/hoogste-ziekteverzuim-werknemers-in-17-jaar>. If sickness absence is 4.7%, it means that of each thousand working days, 47 are not worked due to sickness.

¹² They are given a benefit which is even more generous than the WAO; the amount is 75% of the previous wage (up to a ceiling) payable until pension age.

cases, below the subsistence benefit rate applicable in the Netherlands (consequently, top-up by public assistance is necessary). For persons disabled under 35%, there is no right to disability benefit. Their employer is responsible for them, the Government argued, and if they lose their job, they have to rely on unemployment benefit or social assistance.

The tightening of sanctions

In 1996, the *Wet Boeten en Maatregelen* (Law on Fines and Measures) was adopted, which tightened considerably the rules on administrative sanctions.¹³ Until this law came into force, the benefit administrations had discretionary powers to impose a sanction. The new law introduced an obligation for them to impose a sanction on a beneficiary who did not comply with the obligations as defined in the relevant Act. Also, the sanctions under the new Act were much higher than in the preceding one. For instance, the benefit administration could refuse unemployment benefit completely for the *full* benefit period in the case of an unjustified resignation from a job, in case of a proportional period and/or amount.

In addition to the measures that had to be imposed when case benefit conditions were not complied with, the Act also introduced *finen* to be imposed in cases where the beneficiary had not complied with the duty to provide information on the circumstances that were relevant to the particular benefit. The information to be provided concerned, for instance, where the person lived and, for some Acts it was also relevant with whom he or she lived, and what earnings he or she received.

The fine was, in principle, 10% of the sum by which the benefit fund was disadvantaged, with a maximum of about 1,000 euros. In addition, the Act obliged the benefit administration to revise the benefit or to withdraw it if the benefit was unjustly paid or fixed at a too high amount and reclaim the excess payment. This was also the case if the unjustified payment was not the result of any fault or activity of the claimant and was paid many years ago.

The rules were further tightened in 2013 by an Act called Tightening, Enforcing and Sanction Policy in Social Security Legislation.¹⁴ This introduced draconian sanctions in situations where beneficiaries had not given the relevant information which might have affected their benefit position. Until that time, there was a maximum fine; under the new Act, the fine became 100% of the benefit sum that was involved and 150% in case of recidivism. In other words, the fine was the gross amount of benefit that was unduly paid due to the fact that the person concerned had inadequately provided information to the benefit administration. For instance, if a person did not notify the benefit administration that he or she was not eligible for child benefit anymore since their dependent child had found work, which led to undue payment of 1,000 euro, not only this undue benefit had to be reimbursed, but in addition a fine of 1,000 euro was incurred.

The benefit conditions were strictly imposed. An example that drew much attention in the press was the so-called Shopping Affair. It concerned a case of a woman whose mother did the shopping (and paid for this herself) for three years.

¹³ Act of 25 April 1996 (*Wet Boeten en Maatregelen*—Law on Fines and Measures) Stb 1996, 248.

¹⁴ Act of 4 October 2012 (*Wet aanscherping, handhaving en sanctiebeleid SZW-wetgeving*, Act concerning tightening, enforcing and sanction policy in social security legislation) Stb 2012, 462.

Since the beneficiary saved on the costs of living in this way and did not report this to the benefit administration, she had to pay back 7,000 euros.¹⁵

We now jump forwards in time to 2023, when a Parliamentary Survey investigated this sanction policy (see below). A remarkable interrogation interview was that of Mr Henk Kamp, on 13 September 2023; Kamp was the Minister of Social Affairs responsible for the Act tightening the measures. He appeared to be still convinced of the need at the time to tighten the fraud measures. In his view, he stressed, the strict approach was broadly supported by the population at the time; it was necessary to maintain a support base for social security. However, he also had to acknowledge that he did not know exactly how big the fraud problem was. According to his staff, 90 to 95% of the beneficiaries complied with the rules, but according to Mr Kamp only 1% of the fraud cases were discovered. Therefore, in his view, not only the information by the staff had to be taken into account, but also the views he had heard from society.

This shows that his perception of beneficiaries as fraudulent persons played a large role in the Acts that were proposed and subsequently adopted. Mr Kamp's lack of insight into the actual effects of the measures and the weak basis for the tightening of the sanctions at that time led to considerable criticism in the media after his interrogation in 2023.

Decisions in "fraud cases" following the new rules were disputed before the courts. The Central Appeals Court on social security did not accept the rule that the fine must always be as high as the amount of the benefit that was unduly paid.¹⁶ Instead, it ruled that the fine had to be adjusted to the individual situation of the public assistance recipient. Inhoud 1 It added that now that the sanctions were set so high, the court must more strictly test whether the level of the fine was proportional to the obligation that was not observed. In this way, the court made important changes to rules on the fines to be imposed.

The Participation Society

In his yearly speech on behalf of the government in 2013 ("State of the Union"), King Willem Alexander officially stated that the classical welfare state had to change to a Participation Society. The Participation Society is a normative concept that requires that everyone who is able to do so, to be responsible for, and to actively contribute to, his or her own life and society. This concept was generally accepted in society at the time; this may be explained by the fact that it leaves room for flexible interpretation, depending on the ideology to which one subscribes. Liberal and Conservative parties stressed the freedom for citizens and the opportunity they were given to develop themselves; Social-democratic parties claimed that in the Participation Society, mutual solidarity can be promoted. A common denominator of the concept was, however, that the self-responsibility of citizens was appealed to, so it can also be seen as an elaboration of the perception of human beings as self-responsible persons.

¹⁵ The court decided that the obligation to reimburse is according to the Act, but reduced the amount to 2800 euros, since the benefit administration could not prove that the goods were received during all the three years, CRvB 23 August 2021, ECLI:NL:CRVB:2021:1918.

¹⁶ CRvB 23 June 2015, ECLI:NL:CRVB:2015:1801.

At the time of its introduction, the Participation Society term was also used to defend and guide austerity operations, by shifting the care for other persons (such as ill and elderly relatives or neighbours) from public bodies to individual citizens and to encourage citizens to expect less public support. Since the term Participation Society suggests that the reduced public support is compensated by the participation of others (like family members), the cut in public welfare was presented as less problematic.

The effects of the new concept were mainly seen in the support in domestic activities (like cleaning the house of a disabled or elderly person) and in social assistance. The Public Assistance Act¹⁷ was replaced by the Participatiewet (Participation Act).¹⁸ The name change was meant to stress the obligation of beneficiaries to participate in work, and if that was not possible (yet), to do (unpaid) activities for society.¹⁹

Conclusions on the development of the perception of beneficiaries

Whereas before the Second World War, citizens had to be, for the main part, responsible for their own living, and statutory protection was very limited, after the War a general responsibility of the State was adopted. This responsibility still expected efforts of citizens where possible, as we saw in the legal basis proposed in 1945, but overall, the income provision was much more strongly elaborated than the conditions were enforced. At the time, the justification was presented as the need for a “legal basis”, but this can also be seen as the mirror image of the perception of human beings: the legal basis at the time presupposed that persons could and should be self-reliant.

This perception of human beings in the post-war period until the 1990s can be seen as a reaction to the preceding period that was characterised by a very frugal policy. The new perception developed in the 1990s was in turn a reaction to the preceding period. The revised schemes of the 1990s and later can be said to have provided basically the same protection as before.

However, the new rules expected a rational person, fully capable of doing what is expected from him or her and taking the right decisions, e.g. as regards the (adjusted) work that can still be done. This person also fully complied with the rules and provided all relevant information spontaneously and in time. If the person did not comply with this perception, however, there could be trouble: a much lower or no benefit at all.

The system has deliberately left no safety net to some of the problems that occur, such as that people with less than 35% disability have a high chance of unemployment; another is that the follow-up disability benefit can lead to hardship.

¹⁷ Act of 9 October 2003, called *Wet werk en bijstand* (Act work and assistance), the successor of the Public Assistance Act of 1995, that on its turn succeeded the Public Assistance Act of 1965.

¹⁸ Act of 2 July 2014.

¹⁹ Since some of these projects were seen as meaningless work by some of the beneficiaries, there were cases on benefit measure that were imposed on those who refused to participate. Although claimants were generally not successful, the court developed a general framework for testing the obligation to accept work against the European Convention on Human Rights (ECHR) art.4 (the prohibition of forced labour), see CRvB 8 February 2010, ECLI:NL:CRVB:2010:BL1093.

The Child Care Supplements affair: will it lead to a new perception?

The legislature and government

Recently a large affair, sometimes even called a “scandal”, concerning Child Care Supplements has prompted a fundamental reflection on the human perception predominant in social security in the past decades. Child Care Supplements are subsidies by the State to parents for the costs of child care; the child care is provided by private parties, such as child care companies. The subsidies are paid by the Tax Office as advances to the parents, and are recovered by this service when later it appears that the situation is different from that described in the application (e.g. the costs are lower or the income of the parents higher). The advance is reclaimed when an administrative mistake is made (such as missing signatures or if particular information is missing) or if the contribution of the parents is not (fully) paid.

The rationale for paying advances is that this is more beneficial for the parents, as they do not have to wait long for payments. The problem with advances is, however, that they can be recovered and that can cause parents, in particular those on lower incomes, big problems. After all, mistakes are easily made and also variations in income and costs through the year are not always easily noticed. Advances, however, appealed significantly to the bureaucratic competency of the parents.

The Tax Office developed a policy according to which it reclaimed the *full* advance, even in case of a minor shortcoming, e.g. when the own contribution was not fully paid or in case of a missing signature of one of the persons involved. In other words, when part of it was paid to the child care company, still the full amount had to be reimbursed by the parents, leaving them with a financial disaster.²⁰ This was called the “all or nothing approach”. As a result of this approach, several thousands of parents ended up with large problems, not only financial, but also social, inter alia, since in some cases their child was put in child custody as the parents had such high debts. The Government was presented with several reports on cases of hardship, e.g. by the Ombudsman and lower-ranking civil servants of the Tax Office, and it was frequently asked by members of Parliament to come up with a solution. However, it took a long time before the problem was acknowledged; and also after that acknowledgment it appeared extremely difficult to remedy all the situations.

In July 2020, Parliament decided to install a Parliamentary Interrogation Committee on Child Care Supplements. The committee received recommendations that future legislation should allow tailor made solutions in case of unforeseen effects and that the administration and courts should be allowed to take into account that citizens may not be able to comprehend all rules.²¹ The report made clear that the response by the Government to the affair had been wholly inadequate, upon which the Government decided to resign.

In the Coalition agreement made for the succeeding Government, it was acknowledged that a new approach was needed: “the strong public sector that we

²⁰ ABRvS 27 July 2011, ECLI:NL:RVS:2011:BR3219.

²¹ Parlementaire ondervragingscommissie Kinderopvangtoeslag, *Ongekend onrecht*, p.32.

envisage also has an eye for the human scale, is understandable and approachable, and restores in this way the confidence in it".²² The Government did not survive long enough (it resigned on 12 July 2023) to be able to realise substantial reforms, but several initiatives were taken to investigate possibilities to give a follow-up to the new approach. The reports, most of them still to be delivered, may have an impact even now the Government has resigned. This is also true after the elections of November 2023, since the analysis was widely adopted. However, the actual measures still have to be designed before we can judge them.

In 2021, Parliament decided to start another Parliamentary Survey on the Child Care Supplements affair, after the previous report by the Interrogation Committee. The committee had to further investigate discriminatory practices on basis of nationality, how fraud was examined and also the role of Parliament itself in deciding and supervising fraud measures. The commission held public hearings in Autumn 2023 and plans to publish its report in January 2024.²³

The judiciary

The judiciary also came under pressure, since the highest administrative court (*Afdeling Rechtspraak van de Raad van State*) accepted, as we saw, the all or nothing approach for several years, despite the many cases in which it was confronted with the effects of the approach and despite some lower courts trying to change the case law. This Court argued that the full recovery of the advance was required by statutory law. On 23 October 2019, however, it took two decisions in which it departed from the all or nothing approach.²⁴ It now interpreted the Act as giving the Tax Office the room to determine the right to a child care supplement if only part of the own contributions were paid and not to reclaim the full advance in case of minor shortcomings.²⁵

The acknowledgment of the deficits of the previous perceptions

For our purposes, the effects of the Child Care Supplements Affair are important (even though it does not belong to social security *sensu stricto*), since the affair led the public authorities and administrative courts to reflect on their role in social security as a whole and there were extensive reports. The reflections and reports on the affair have led to the acknowledgment that the individual circumstances of claimants and litigants before the court have to be taken more fully into account and that, wherever possible, room must be given to the proportionality principle.

Also, it was acknowledged that claimants are not always fully bureaucratically competent and that many mistakes are not made on purpose. Subsequently, studies were initiated on various social security Acts to investigate whether the system can become less complex and whether there can be more room to take individual circumstances ("the human scale") into account when deciding on benefit conditions

²² *Omzien naar elkaar, vooruitkijken naar de toekomst, Coalitieakkoord 2021-2025 VVD, D66, CDA en ChristenUnie*, 2021, p.2.

²³ At the time of completing this article, the report had not been published yet. From this hearing, we learnt about the view of Mr Kamp, the former Minister of Social Affairs, mentioned above.

²⁴ Zie ook WRR, *Weten is nog geen doen. Een realistisch perspectief op zelfredzaamheid* (Den Haag, 2017).

²⁵ ECLI:NL:RVS:2019:3535 and ECLI:NL:RVS:2019:3536.

and sanctions. Therefore, this affair is not only relevant to Child Care Supplements, but to all social security benefits.

The judiciary

The judiciary reflected on its case law in order to investigate whether there had been enough attention vis-à-vis “hardship” in cases. Several working groups were established and reflection days were organised to examine where and why things went wrong and what possibilities exist to avoid this in the future. The discussions were, of course, not easy; after all, if too much room for discretion is given or taken, this can lead to legal uncertainty and inequalities that are hard to explain.

Subsequently, there have been developments that show that individual circumstances are now taken into account more than occurred under the previous case law. As we have seen, one problem with the Child Care Supplements was the “all or nothing approach” that was based on an interpretation of a statutory provision on recovery of advances. This provision read that the sum to be recovered had to be paid in full. Until the change in the case law in 2019, it was argued that as this provision required the full sum, nothing could be done, since a statutory provision (not imposing a punitive fine) cannot be tested against the proportionality principle of ECHR art.6.

In order to examine the possibilities in future cases, in 2021, the President of the Administrative Court asked the Advocates General (AGs) to write an advice on the room for the proportionality test in administrative law. The AGs wrote an extensive report and explored several ways to give more room for the proportionality test.²⁶ The main conclusions were subsequently confirmed in a decision of a Chamber of the Court, in which the presidents of the other two administrative higher courts (for economic and social security cases, respectively) also participated, so it became relevant to all administrative courts, including for social security.²⁷

The impact on the Government

The Government received advice on new approaches to reconciling self-responsibility with administrative and legislative obligations. One report examined the “callous effects” of the administration and legislation of social security and social assistance schemes and concluded, inter alia: the legislature has imposed a (too) large responsibility on citizens to have to report themselves all relevant information in order to receive or keep benefit. The researchers stated that the perception of human beings as being individualistic, rational and self-reliant citizens who know the law, is unrealistic. According to them, the system is too rigid and takes insufficient account of the individual situation.²⁸

²⁶ ECLI:NL:RVS:2021:1468. They argued that a *contra legem* application of general principles of law is possible if there are special circumstances that were not or not fully taken into account by the legislator when adopting the statutory provision concerned when these circumstances make that application of the statutory provision are that much contrary with general principles of law that it must not be applied.

²⁷ Decision of 1 March 2023 ECLI:NL:RVS:2023:772; also decision of the same date ECLI:NL:RVS:2023:852.

²⁸ R. Oomkens, *hardvochtige effecten op burgers door knelpunten in uoering) wetgeving wet- en regelgeving binnen de sociale zekerheid* 2022, pp.10–11.

This analysis was subsequently accepted by the Ministers of Social Affairs.²⁹ The Shopping Affair, mentioned above, is an example of such strict application, and the minister has now proposed new, more relaxed rules, including how to deal with gifts. Another follow-up initiative to address this criticism is the project Simplification of the Unemployment Benefit Act, initiated by the Minister of Social Affairs and Employment. Its task is to examine, from the perspectives of employers, employees and benefit administration, which problems exist in the administration of this Act. The letter presenting the project remarked that “for the employee it may be difficult to fathom the Unemployment Benefits Act and to estimate to which he or she is entitled or not. This requires much from the ‘ability to do’ of the employee”.³⁰ Therefore, one of the project’s questions is whether employees need customisation and personal service, and if so, which categories need which help.

Another initiative is the establishment, in 2022, of a commission to examine how a new system of disability benefits without having the current hardships could look like. The report should be ready at the beginning of 2024. One of the issues to be examined by the commission is that of persons who are less than 35% disabled. This problem, mentioned above, is now finally acknowledged. Another problem now mentioned, and for which a solution is to be found, is that many persons who reach the end of the initial, wage related benefit suffer a considerable decrease in income, i.e. when they reach the follow-up benefit.

The third initiative is the Public Assistance Act, which led to an analysis of the complexities and obstacles for a “human scale”.³¹ The minister of Poverty Policy, Participation and Pensions accepted the conclusions and wrote that the Public Assistance Act was “out of balance”.³² She argued that taking care for, respectively, income security and employment is, in both cases, mentioned in the Constitution in terms of being a core obligation for the State. These include provision of safety nets, which have to be sustainable: “In order to be able to ensure income security for everyone a change of culture and a different perception of human beings are necessary: from thinking in terms of systems to take into account what people need and work on the basis of trust”. Thus, indeed explicit references to the perception of human beings are made a basis for policy making.

Discussion and conclusion

In studies on the characteristics and typologies of social security systems, the seminal work on welfare state regimes by Esping-Andersen is often taken as a starting point.³³ Esping-Andersen distinguished three types of welfare states: the Liberal, Social-democratic and Corporatist-conservative welfare state regime types.

²⁹ *Brief van de ministers van Sociale Zaken en Werkgelegenheid en voor Armoedebeleid, Participatie en Pensioenen*, Kamerstukken II 2022-2023, 26448, nr.313, p.8.

³⁰ *Plan van aanpak opdracht vereenvoudiging WW* (2022), p.4.

³¹ Panteia, *Andacht voor vertrouwen en oog voor de menselijke maat binnen de Participatiewet* (Attention for trust and an eye for the human scale in the Participation Act) (Zoetermeer, 2021).

³² Letter by the Minister for Poverty Policy, Participation and Pensions, “De Participatiewet in balans: uitkomsten beleidsanalyse” 21 June 2022.

³³ G. Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Cambridge: Polity Press, 1990); G. Esping-Andersen, *Social Foundations of Postindustrial Economics* (Oxford: Oxford University Press, 1999).

Over the past three decades, this typology has been both acclaimed and criticised.³⁴ As to the European welfare systems, one important criticism is that in the 30 years that have elapsed since Esping-Andersen first published his typology, regimes have changed fundamentally and therefore his typology no longer applies.³⁵

The Dutch system is an example of the problems with characterising a system according to Esping-Andersen's typologies. It initially consisted of schemes that fit very well in the Corporatist-conservative regime, i.e. employees' insurance schemes administered by employer and employee organisations. These schemes still exist, i.e. for disability and unemployment, but they are not really corporatist anymore, since they are administered by a public organisation. However, they still are restricted to employees and require contributions for eligibility and compensate (partly) the previous earned wages. The Sickness Benefit Act also has these characteristics, but the obligation for employers to pay Sick Pay has largely taken over its role.

In addition to the employee schemes, after the Second World War, residence schemes were adopted for, inter alia, old-age and survivors' benefits. They were inspired by the Beveridge report, and fit in the Social-democratic type. They cover all residents, are flat-rate, but are—unlike those from the Nordic residence schemes—not paid from taxes, but from contributions. However, since those who cannot pay contributions are still covered, the difference with payment from taxes is small. Thus, the Dutch system has schemes with Social-democratic and schemes with Corporatist characteristics. One could argue that the introduction of the obligation of employers to pay Sick Pay is a liberal element. However, the conditions and obligations for this payment are strictly governed by Acts and aim to give comparable guarantees as the Sickness Benefit Act.

Consequently, it is very difficult to characterise a system as a whole in Esping-Andersen's typology. The legislature keeps changing the system in order to address societal needs and political desires; after all, it is not bound by the typology. However, for each of the schemes still existing it can be argued that several of its basic characteristics have survived through time, such as the restriction to particular categories and the level of benefit.

How does the concept of perception of human beings fit within typologies of social security? One difference between the perception and the typologies is that the governments themselves mention perceptions of human beings as a basis for their policies and discuss these in Parliament, whereas the typologies are made by “outsiders”, such as Esping-Andersen.

The perceptions appear to be generally supported by the public authorities and legislature during a considerable period of time. In society and academic papers, the perceptions are frequently referred to and supported. In other words, their support is not restricted to a particular political party or political movement, such as the Conservatives, Liberals, Christian-democrats or the Social-democrats. Instead, large parts of society support the particular view. For instance, the

³⁴ For overviews, see W. Arts and J. Gelissen, “Three worlds of welfare capitalism or more?” (2002) 12(2) *Journal of European Social Policy* 137–158; W. Arts and J. Gelissen, “Models of the welfare state” in F.G. Castles, S. Leibfried, J. Lewis, H. Obinger and C. Pierson (eds), *The Oxford Handbook of the Welfare State* (Oxford: Oxford University Press, 2010), pp.569–583.

³⁵ See, e.g. S. Leibfried and S. Mau, “Introduction. welfare states: Construction, deconstruction, reconstruction” in S. Leibfried and S. Mau (eds), *Welfare States: Construction, Deconstruction, Reconstruction* (Cheltenham: Edward Elgar, 2008), Vol.I pp.xi-lxiii.

normative perception that work has to be given priority to income and that beneficiaries therefore have to be self-responsible and participate in society, which can be seen as a typically liberal approach, was advocated prominently by the Social-democratic Prime Minister Wim Kok.³⁶

As we have seen, the consensus for the respective perceptions can be found in both the preceding societal and economic circumstances (as a reaction to this) and the context existing at the time the perception was developed. For instance, the long-term period of poverty and economic decline in the 1930s made the introduction of a general responsibility for income protection very hard, but the effects of this lack of policy created the space for a new perception; this led to measures enabled by the economic growth in the post-war period. The reaction in the 1990s to a policy and administration that was considered to pay too little attention to the self-responsibility of the actors led to a new perception that fitted with the economic decline of the 1980s and 1990s, requiring austere politics.

Furthermore, the interests of societal groups have been important for the development of the perception of human beings. The high pressure of religious communities before the Second World War to organise their own communities is a factor explaining the restrictive role of the State at the time. In the 1960s, this “self-organisation” of the various organisations ordered on the basis of their denomination was continued, which led to the administration of employees’ insurance schemes by employers and employees’ organisations, but now at a societal cost. From the 1990s, insurance companies and consultants began to play a large role, having an interest in privatisation of parts of social security. The fact that Dutch governments have always been constituted by several parties (coalition governments) made that long-term perceptions were useful as a basis for policies.

Maybe the most important reason, however, is that perceptions have an appealing force. It seems self-evident that persons must do as much they can to support their own lives. It is also broadly accepted that the State has to protect everyone from poverty. Or, in another period, it is a common view that people should only rely on benefits when this is unavoidable. This corresponds with the view that financial incentives will be a better instrument to have people comply with the rules than simply expecting people to follow the rules.

Problems occur, however, as is also the case with ideologies, if policies follow the perceptions too strictly and have, with hindsight, undesirable effects. A system that is so generous that compliance and reintegration policies and obligations are weakened eventually becomes a problem. The same is true with a system that too strictly presupposes that persons are fraudulent or that beneficiaries are all fully bureaucratically competent.

Because of the long-term and “self-evident” character of the perceptions, however, they are not easy to change. It seems that only radical shocks are able to lead to revisions. The Second World War, a heavy economic crisis and the Child Care Supplements Affair were mentioned as factors in the previous sections.

Coming back to the welfare typologies, it can be said that perceptions of human beings have, in any case in the Dutch situation, added value for describing the developments of the system and explaining the differences and similarities of its constituent parts (the benefit schemes). For instance, the WIA (Disability Act) has

³⁶ “Work, work and again work” was the motto of his first government (1994).

important elements in common with the WAO, i.e. the personal scope, the coverage of disability regardless of its cause, the compensation of loss of wages, the calculation of disability in terms of loss of earnings capacity and the relatively low threshold. Both WAO and WIA fit the corporatist tradition. However, the differences between the schemes can be explained by the perception of human beings: the tightened definition of disability, excluding any unemployment element and the conditions for the wage-related follow-up benefit, with its prominent financial incentive purpose. And Sick Pay as an obligation for employers to pay to their ill employees belongs, as part of labour law, to a branch completely different from the Sickness Benefits Act. However, these sickness compensation instruments have important similarities, such as the level of compensation (even the maximum ceiling for benefits applies to this obligation) and the restriction to employees.

Thus, the traditional schemes define, to a large extent, the conditions and benefit rules through time (path dependency), but changes in the perceptions of human beings explain the revisions that have been made in certain periods. It must also be pointed out, that regardless of their place in the typologies, there are also developments that are common to all schemes, be it employees, residence or even public assistance schemes. Examples are the tightening of fines and measures, with the underlying idea that everyone should be able to comply with the laws completely and understand their objectives. And the ideas on activation of Public Assistance beneficiaries resemble those on activation of recipients of unemployment and disability benefits, regardless of the differences between the schemes.

What the further development of the perception of human beings underlying Dutch social security will be, is hard to predict. One has to be cautious, as politics can change. And, moreover, a social security system is not easy to change. One can therefore also be cynical about the developments mentioned in the previous section. However, since the need to change the perception of human beings is addressed as such in official documents, it can be expected that the change has a strong and general basis in society.

Questions for politicians and policy makers are will the activation approach only be mitigated to take into account the limited competences to deal with administrative obligations of some groups in society? Or will there be a more general adjustment? One may be inclined to think that the former approach will be followed, since the present perception of human beings has been firmly supported, and since the adverse effects affect, in particular, the less advantaged people in society.

Still, the initiatives and the problems mentioned seem to be of a more general importance. It may still happen that some sorts of assistance, e.g. for reintegration into work, will be improved for particular or select groups of beneficiaries. However, there are also general changes envisaged, such as the reaction of the benefit administration in case of too high benefits that were paid, or the room and obligation for courts to deal with a person who missed a proceedings deadline in his or her case.

In the past 30 years, there have been important changes in Dutch social security. It was impossible and unnecessary to discuss all of them; instead I focused on the variations in the perceptions of human beings that underlie the development of social security. It was argued that an analysis combining such perceptions in

combination with the path dependent characteristics of the (constituent parts of the) system can explain better the developments than solely the typologies of welfare regimes.

It is true that the perception of human beings as derived from the underlying ideas of the schemes and the policy papers and/or the implicit or even explicit wording by the Government is not very precise and does not have a well elaborated and documented foundation. Or, one can say, the conditions under which, for instance, the slogan “activation first” and the protection that remains to be given to beneficiaries (such as against dismissal in case of illness) are not mentioned in the image itself, but follow from the system as a whole. This makes a comparison of perceptions used in different countries not so easy, since the context has to be explained as well. Still, it is an enterprise that can lead to interesting and fruitful results, as it can identify peculiarities of a system and weaknesses that remain more under the surface without such approach. Perceptions of human beings can also be drivers for adjustment to new developments in society and bring more dynamics into the system. It would be interesting to understand whether perceptions on human beings play an explicit role in other countries as well and what experience they have with this.

The *Journal of Social Security Law* has proven the need for its existence and has published many important and expert contributions. This is true for the past 30 years, and will be true for the next 30 to come. What kind of changing perceptions of human beings it will experience in the coming years we cannot know, but it will certainly contribute to the knowledge and comparison of these.