Re-integratie volgens plan

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Introduction
The development plan is the signed appendix to the benefit decision notice in which the administrative agency defines the client’s path towards employment and in which the rights and obligations of both parties to ensure the successful completion of the plan are laid down. The development plan is given shape in accordance with the resources to be put in. The administrative agency is authorised to draw up this plan, or to issue instructions for it to be drawn up, in consultation with the client, on grounds of legislation in a formal sense or a municipal ordinance. The development plan as a tool was included in the Dutch National Assistance Act (Abw), the Dutch Act on Income Provisions for Older and Partially Disabled Unemployed Persons (IOAW) and the Dutch Act on Income Provisions for Older and Partially Disabled Formerly Self-employed Persons (IOAZ) in 1996 and in the Dutch Jobseekers Employment Act (WIW) in 1998. In 2002 the tool was also included in the employee benefit schemes with the introduction of the Dutch Act on the Structure of the Implementation of the Work and Income Act (SUWI Act). The purpose of this research is to answer the question whether this tool should be used in reintegration projects and why the development plan is the right tool. The research question reads:

Is the development plan a suitable tool for the reintegration of benefits recipients and unemployed persons not entitled to a benefit?

The government uses the contract or ‘contract-type tools’ to achieve policy targets in numerous legal fields. A tool is a ‘contract-type’ tool when, although the parties involved accept (mutual) obligations, the enforceability of these obligations is not laid down. The introduction of the development plan to Dutch social security law was accompanied by debate as to the legal character this development plan should assume. The Dutch Labour Party (PvdA) believed the rights and obligations of the administrative agencies and benefits recipients should be laid down in a contract with the intention of facilitating customized strategies and creating clarity with regard to the mutual rights and obligations of state and citizen. The government was reluctant to agree to such a contract as the conclusion of a contract requires the equality of the parties and no such equality exists between administrative agencies and benefits recipients. Whether the legal quality of the development plan (administrative decision or contract) affects the
suitability of the tool is, however, the question. This dissertation also addresses this issue. The second research question reads:

*Does it make a difference to reintegration whether the development plan is laid down in a contract or adopted by an administrative decision?*

The suitability requirements
In administrative literature different rationalities are distinguished with which government policy and the tools to be used to implement this policy should comply. Snellen defines four rationalities. Alongside the legal rationality he distinguishes the economic rationality (efficiency), the political rationality (what is politically acceptable, what is the opinion of the society, legitimacy) and the scientific rationality (effectiveness). To find out whether the development plan tool is a suitable tool with which to facilitate the reintegretion of clients, a check was carried out to find out whether these four rationalities are satisfied. To this end four suitability requirements were defined, these being the concrete realisation of the four rationalities with regard to reintegration. These are stated in the figure below:

The four categories of suitability requirements are closely connected. The reintegration targets and the principles and requirements of the social and democratic constitutional state indicate what needs to be achieved and which safeguards should hereby apply for the citizen. The formation requirements indicate the way in which the legislator intends to realise these targets, principles and requirements. These requirements are derived from the legislative provisions in the social security acts (as well as the parliamentary history of these acts), given that these reflect the shape the legislator intends the reintegration to be given.
The development plan is just one of the tools with which the legislator wishes to realise the targets, principles and requirements. The legislator believes the development plan can make a contribution because it fulfils a number of functions in the integration process. The development plan must fit within the legal framework (formation requirements).

To determine the suitability of the development plan as a tool, it first had to be assessed whether, in practice, the plan can fulfil the functions defined by the legislator. To this end case managers at the Dutch Institute for Employee Benefit Schemes (UWV), municipalities and reintegration companies in the north of the country were interviewed. Questionnaires were sent to clients participating in a development plan.

Secondly it was assessed whether, from a legal angle, the development plan is able to fulfil the suitability requirements. Because in order to do so there must be clarity with regard to the legal framework of the development plan, research into this was conducted first. Research was also carried out into the legal differences between the use of the administrative decision and the contract in a reintegration process. Finally, to make it possible to determine the suitability of the contract and the administrative decision, empirical research focused on the differences between a unilateral approach to the client and a ‘contract-type approach’ to the client.

Suitability of the development plan

*Legal character of the development plan*

The development plan as provided for in the social security acts is an administrative decision and not a contract. It is not a contract because it does not require mutual consent with regard to the rights and obligations of the parties. Parliamentary history shows us that the client merely has a right to consultation. This is confirmed in diverse rulings by the Dutch Central Board of Appeal (CRvB). Even if there is mutual consent between the client and the administrative agency with regard to the contents of the plan, no contract is made. The legal consequences arising from a contract take effect as soon as there is mutual consent; those arising from an administrative decision only become effective once the administrative agency has adopted the decision. The fact that the administrative agency adopts the decision, and thus has the final say, is confirmed by the legislator in parliamentary history. Therefore, even if there is mutual consent, the legal consequences of the plan do not become effective until the administrative agency has adopted the plan.

The plan is also an administrative decision as the plan and the decision to grant a benefit are closely intertwined. This close intertwining is demonstrated in the statutory provisions on which the authority to draw up a development plan for the implementation of the Dutch Work and Income according to Labour
Capacity Act is based. Herein it was stated that the plan is an appendix to the benefit decision. The legislator emphasises this close intertwining by stating in the parliamentary history that the plan contains the explicit conditions attached to the benefit. Finally, the client does not have to sign the plan for approval, as is required in the case of a contract. Measures can even be imposed on a client if he or she does not wish to sign the plan.

**Suitability of the development plan in practice**

Empirical research carried out at the administrative agencies and reintegration companies shows that each respondent sees added value in the use of the plan, although there are differences of opinion with regard to the function fulfilled by the plan in practice. The case managers at the UWV see the plan as a tool with which the reintegration can be positively encouraged (among other things through the function ‘motivation’). The case managers at municipalities and reintegration companies see the plan more as a tool with which to improve the reintegration procedure. In practice, however, there are problems that hinder a proper fulfilling of the functions.

**Improved procedure**

In practice the development plan fulfils a limited role in improving the reintegration procedure. The informative function is, in the eyes of the municipalities and reintegration companies, an important function. Surveys among clients show that if a client knows what is expected of him, he more frequently complies with the plan. Client awareness with regard to their rights, duties and penalties also contributes to the reintegration of the client. However, the function is often not fulfilled because the client does not sign the plan as seen but signs it for approval. Furthermore, the rights and obligations are rarely set forth in the plan.

In practice standard packages are often offered to clients, which do not appear to be particularly customized. The reintegration companies claim they do this because the means and resources they have at their disposal as a result of contracts with the purchasing agencies are restricted. Clients are less negative about the use of standard packages than the administrative agencies and reintegration companies. The majority of clients state that the plan connects to their personal situation.

The function ‘encouraging quick reintegration’ is clearly put forward in the plans; the plans contain a timetable. However, the target was achieved only by one quarter of the clients. Important causes here are the characteristics of the client and the economic situation. The survey among clients shows that the actual carrying out of all the agreements also has a great deal of influence on the achievement of the target. Personalized strategies and information with regard to the rights and obligations also have a stimulating role to play. This does not detract from the fact that agreeing time plans is important for quick reintegration. Research among clients shows that agreed time periods are complied with.
The development plan does make a major contribution to a systematic approach to reintegration, but at the UWV the plans are rarely adjusted because clients are offered standard packages. Municipalities and reintegration companies also face problems that hinder a proper fulfillment of the function. Both institutions indicate that the targets are regularly set too high for clients. This is due to the absence of a proper diagnosis and the fact that the administrative agencies only accept paid work as a target. If the target is set too high, the plan will have to be adjusted in the course of time or the plan will fail.

**Balance between rights and obligations**

In practice the function ‘strengthening the obligatory character of reintegration’ is an important function for the case managers. However, the development plan does not seem to have improved the client’s position. A substantial number of clients indicate that the administrative agencies fail to fulfil their obligations. Alongside this the development plan has a control function and serves to emphasise the connection between rights and obligations. These functions are not fulfilled given that the plan often lacks any measurable agreements. Rights and obligations are not usually included in the plans. Thus, in turn, UWV and municipalities indicate that they frequently lack insight with regard to what is taking place at the reintegration companies. Furthermore, the function ‘emphasising the connection between rights and duties’ is not expressed in practice given that clients are (initially) informed of their rights and obligations by word of mouth. Stating the rights and obligations in a plan then no longer has any added value.

**Influencing the behaviour of client and administrative agency**

According to the case managers the plan cannot fulfil the ‘motivation’ function. They believe that motivation can only be encouraged by the supervisor. The plan only fulfils the function ‘promoting commitment’ with regard to the clients but fails to do so with regard to the case managers. The case managers indicate they feel bound to put the plan into practice because it is their work to do so. Furthermore, the Purchasing Department of the UWV signs the plans, not the case manager who has contact with the client.

Empirical research shows that in practice the function ‘promoting emancipation’ is partly fulfilled. Thus clients are consulted with regard to the drawing up of a plan. Apart from that the UWV and municipal case managers’ argument that it is hard for clients to make a well-reasoned choice of reintegration company holds water. Clients indicate that when they are allowed to choose a reintegration company themselves, they still turn to the case managers for advice before making a decision.

Looking at the way in which the development plan fulfils its functions in practice it is apparent that the development plan tool is not always a valid tool with which to fulfil the functions intended by the legislator. For instance the devel-
opment plan cannot be used to fully fulfil the function ‘promoting commitment’,
given that the case managers themselves do not feel bound as a result of signing.
With respect to the majority of the functions the plan is not in itself an ineffective
tool with which to fulfil the functions, but there are other (external) circumstances that make it impossible to fulfil the functions (in full). For instance a quick reintegration of clients is highly dependent on the state of the economy.

A number of functions are not fulfilled (in full) because the plan is not used as intended by the legislator. This refers to the ‘informative function’, the function ‘emphasising the connection between rights and obligations’ and the function ‘facilitating control and enforcement’. These functions are not fulfilled because the rights and obligations are rarely contained in the plans. The absence of the rights and obligations appears to be the result of a lack of understanding at the administrative agencies with regard to the functions of the plan.

An irregular realisation of the plan is also evident in the meaning given by the administrative agencies and reintegration companies to the clients’ signature. In practice clients are asked to sign for approval, although the law states they must sign as seen. A lack of knowledge seems to lie behind this too. Or, on the contrary, is there a good awareness of the legislator’s psychological ‘trick’ and is this an attempt to strengthen this by requesting the client to sign for approval? Perhaps the involvement of a new party (the reintegration company) in the drawing up and implementation of plans, following the introduction of the SUWI Act also plays a role here. The client’s signature indicating approval of the plan is, after all, sound evidence that the reintegration company is functioning well.

From empirical research it appears that by engaging reintegration companies in the drawing up and implementation of the plan, the plan has also been granted a new function. The plan now serves as an order confirmation from the administrative agency to the reintegration company. A few case managers at the reintegration companies confirm this function personally, but this new function is also apparent from the procedure at a number of municipalities and the UWV. At these municipalities and the UWV the Purchasing Department signs the plan. This is the same department that is in charge of the conclusion of framework agreements with the reintegration companies and the compliance with these contracts. In the light of this function it is perhaps not a bad thing that rights and obligations are not expressed in the plan. After all, the only information that needs to be shared between the administrative organisation and the reintegration company is that related to the name of the client being reintegrated, subject to which terms, using which resources and at which price. The remaining rights and obligations are set forth in the (framework) contract.

In view of the fact that the development plan proves its value in practice, it is important that this tool remains in use in the employee insurance schemes, so that the UWV and the reintegration companies can continue to use this tool.
Given the advantages of using the development plan I would also recommend that municipalities continue to use it, or, if they are not yet doing so, that they switch to this plan. In particular, as much importance is still attached to reintegration and in view of the fact that municipalities are financed in accordance with the reintegration of clients.

In areas where the development plan does not always fulfil the functions it should fulfil, there is a task for the administrative agencies and the legislator to make better use of the tool’s potential or to bring it more in tune with reality. The fact that the plans set targets that are too high could be prevented if the employer and the administrative agency were to dare to accept that not everyone can be reintegrated (immediately) into paid employment. It is also important that the diagnostic stage will be improved so that a realistic plan can be adopted for a client.

Reintegration companies should be able to deploy other resources in the reintegration process so that clients can more often be offered a suitable plan. To deliver more customized strategies the UWV and the municipalities could also authorise their own case managers to draw up the plans and to purchase resources. The latter would also facilitate the monitoring of the implementation of the plan, given that the case manager is more personally involved in the implementation of the plan. For the majority of municipalities (the UWV now allows the case managers to purchase resources) a less far reaching solution to the problem of lack of insight into what takes place at the integration companies is a ‘triangle meeting’ between client, administrative agency and reintegration company. Thereby it is also desirable that the rights and obligations of both the client and the administrative agency are subsequently included in the plan, if the plan is to fulfil the function ‘facilitating control and enforcement’. The triangle meeting and the inclusion of rights and obligations also provides a solution to the problem that the plan fails to fulfil the informative function.

**Difference of suitability of administrative decision and contract**

After testing the administrative decision and the contract with reference to the suitability requirements it is apparent that justice can be done to most suitability requirements with both tools. There are, however, a number of major differences between these tools. The difference between the use of the contract in the reintegration process and the use of the administrative decision depends partly on the type of agreement concluded between the client and the administrative agency; a competency agreement or an agreement replacing an administrative decision.

The stating of the rights and obligations in a development plan is intended to serve legal certainty. The rights and obligations can be embodied both in an administrative decision and in a contract. Clients who are approached in a ‘contract-type’ way are, however, more often fully informed with regard to what is expected from them, the reintegration company and the administrative agency.
A ‘contract-type’ approach is thus coupled with the statement of the rights and obligations of the parties. The administrative decision cannot include any obligations that cannot be traced to the statutory reintegration obligations. In this respect the administrative decision does justice to the legality principle. However, the use of the administrative decision in the reintegration process of unemployed persons with no benefit entitlement has a disadvantage for the administrative agency. Unemployed persons with no benefit entitlement have no reintegration obligations. The administrative agency can thus not use the administrative decision to encourage these persons to observe a development plan nor to demand their compliance with it. In this respect the administrative decision is not a suitable tool to promote the obligatory character of reintegration.

When using the contract, due observation must be made of the fundamental rights and the ECHR. Contrary to the competency agreement, when using the agreement replacing an administrative decision the rights and obligations in the social security acts are not decisive for the content of the contract. When using an agreement replacing an administrative decision the social security acts can be set aside. This could result in the division of competency as set forth in the law being interfered with.

When using the competency agreement, if it includes rights for the client, it is possible, as is the case with the agreement replacing an administrative decision, to require something in return from the client. It is thus possible in a contract to require something in return for the provision of a reintegration plan from unemployed persons without benefit entitlement. This may, for example, be a clause stating that costs shall be recovered from the client if he fails to start or to complete the reintegration course. Compliance with a contract can of course also be demanded in court.

When an administrative decision is used, the client has a right to consultation. The reintegration company then advises the administrative agency with which it has concluded a contract, with regard to the content of the plan. In a contract the client has a right to co-determination. The contract can thus be considered to be the most democratic tool. On the other hand, when concluding an agreement replacing an administrative decision the democratic control can be avoided. The supervision of the Dutch Inspection Service for Work and Income (IWI) only covers the exercising by the municipality and the UWV of competencies under administrative law. Of course an administrative agency can allow a client to decide jointly with regard to the contents of an administrative decision. This also occurs frequently in other legal fields. However, in an administrative decision the citizen is always dependent on the administrative agency for the degree of influence granted to him.

With respect to the contract tool and the administrative decision tool there is a risk that the client does not dare to apply to the courts for the testing of the con-
tent of the plan. If the client does decide to go to court the legal protection that is
provided is important. If the client disagrees with the content of the administrative
decision he can dispute it and appeal against it. However, the administrative
court only marginally tests the content of the plan. If the plan is not imple-
mented, or there are delays in doing so, the road to the administrative court is
not open. In this case the client can submit a claim for damages on the ground of
unlawful act. The client is not able to demand compliance.

If the client does not agree to the content of the contract, he can turn to the
civil court. Because a contract is made by mutual consent, the civil court exam-
ines the content of the contract in a different way than does the administrative
court. The civil court investigates whether the consent of the client was formed
on sound grounds.

When a contract is used, the client can demand compliance with the agree-
ments made in the civil court. The client can also claim damage compensation.
If a competency agreement is concluded, objection or appeal proceedings will
have to address the question of whether a provision has been refused incorrectly.
Depending upon the expectations created in the agreement, the administrative
decision in which the provision is refused shall be destroyed due to conflict with
the principle of good faith.

There are also differences between the use of the contract and the administrative
decision in the realisation of a client-oriented approach. First and foremost as
regards customized strategies. The contract offers more guarantees that a plan
will be drawn up that is tuned in to the wishes and capabilities of the client in
view of the fact that the client is allowed to participate in decisions related to the
content of the contract. Empirical research shows that clients who have been the
focus of a ‘contract-type’ approach more often feel that the development plan
takes account of their personal situation than do clients who have been the focus
of a unilateral approach.

In the contract it is legally possible to lay down the parties’ intention to co-
operation (client, administrative agency and reintegration company). This is not
possible in the administrative decision, given that the legislator has chosen not
to regulate the relationship between the administrative agency and the reinte-
gration company. The relationship between the reintegration company and the
client cannot be regulated by such a decision as the reintegration company is not
a public body and the administrative decision only lays down the rights and
obligations between state and citizen. The relationship between the integration
company and the client when using the administrative decision is only a factual
relationship.

Because some time may pass before mutual consent is reached, the contract may
delay the pace of reintegration. It is also possible that when using the contract
mutual consent is not reached. In this respect the administrative decision is a
more effective tool than the contract. One argument in favour of the administra-
tive decision is that it makes it possible to prevent public bodies from agreeing compromises that are detrimental to the shortest path to work (the general interest). However empirical research shows that clients in respect of whom a plan has been drawn up ‘contractually’, more often achieve the target than clients who have been the focus of a one-sided approach. However remarkably enough the ‘contract-type’ approach does not score better than the more moderate approach, whereby some degree of consultation is permitted.

In contrast to the administrative decision the contract is acknowledged as the tool with which the individual responsibility can be emphasised and the emancipation, motivation and commitment of the citizen be encouraged. From empirical research it is apparent that clients are indeed more motivated if they are involved in the making of the plan. In practice we see the remarkable situation in which a ‘contract-type’ approach does not result in more commitment. On the other hand it are the clients who have experienced a procedure that can be classed as one-sided and imposing, who are inclined to endorse the stand that the placing of a signature is accompanied by obligations for them. In other respects the ‘contract-type’ approach has positive effects. Thus there is a weak positive link between the meaning given by clients to the signature and the achieving of the target set out in the plan. Clients who place their signature because they agree with the content of the plan, more often achieve the target set out in the plan than do clients who simply sign because they have to. Clients who place a signature are also more satisfied about the course of the procedure.

An administrative decision in the form of a contract (administrative decision with signature and stating the rights and obligations of both parties) is, on the grounds of empirical research preferable to the traditional administrative decision. However, instead of an administrative decision in contract form I recommend that a contract be concluded with clients. The psychological ‘trick’ played on placing a signature under the administrative decision is, in my opinion far from endearing. Especially as today in practice the administrative agencies have opted to require clients to sign for approval. Furthermore, case law shows us that this way of working gives rise to problems. Clients go to court to object to the fact that a measure is imposed on them if they refuse to sign for approval.

A contract is also recommendable because currently the rights and obligations of administrative agencies and clients are rarely expressed in the plans. If a contract is concluded, the administrative agency and the client will be obliged to include the rights and obligations in the plan.

From empirical research it can be concluded that a ‘contract-type’ approach to the client (the work method whereby the client has a large measure of influence on the content of the plan) scores better in almost all aspects than the one-sided approach. Among other things it contributes to the element of informing the client better about his rights and obligations, but also to the achieving of the target set out in the plan. The fact that in practice only 18% of the cases involve
a ‘contract-type’ approach is all the more reason to start using the contract. After all the contract is also the most democratic given that it is only effective once mutual consent has been reached.

There are other advantages of using a contract rather than an administrative decision. The contract promotes emancipation, emphasises the connection between rights and obligations, promotes motivation and ensures a more client-oriented implementation (customization and cooperation). Furthermore, it is important to the administrative agencies that on concluding a contract with an unemployed person having no benefit entitlement they are able to demand compliance with the agreements contained in the plan. The contract can also be comfortably accommodated within the current social security system given that in recent years numerous market principles have made their entrance here.

Although the Work First approach adopted by municipalities gives reason to believe otherwise, the legislator is still striving to reach a balance of rights and obligations between client and administrative agency. The contract has a contribution to make here as it gives the client much more influence than is currently the case on the content of the plan. This is the case both in the preparatory phase of the plan, through the client being able to co-decide with regard to the content, and in court, given that the plans are merely tested marginally by the courts. Furthermore, a client can demand compliance with the contract in practice whereas this is not possible with regard to the agreements in the administrative decision. Contrary to that which the majority of commentators fears, in my opinion with the introduction of the contract to social security the right to assistance will become a right rather than a favour.

The use of the contract does, however, require the creation of a statutory basis. Because there are also disadvantages attached to the use of the contract, these will have to be neutralized in statutory regulations. To prevent the situation in which a reintegration plan is not made due to the fact that mutual consent cannot be achieved, it is important that the law arranges for the possibility to engage an independent third party or expert to give his opinion with regard to the reintegration plan to be adopted.