

Preface

As a result of the liberalization, privatization and globalization of the late 20th century individual citizens have been given more and more responsibilities – as employees, as patients and as consumers, for example. Like newly starting ‘sole traders’ – citizens work their way through the healthcare, labour, education, pension and consumer markets, sometimes even across borders. In many areas the government’s role is changing to that of facilitator and regulator. The balance between rights and obligations is shifting.

At least – that’s what it looks like. This issue of Tilburg Research is devoted to the changing position of individual citizens. Will they be able to fulfil their new role as small-time entrepreneurs and if so how will they do it? Will this not mean sacrificing solidarity and justice in society? Is the pendulum not swinging back too far? But also – is the scenario outlined above true?

For Tilburg University’s experts on people and society asking and reflecting on these questions is their daily work. For example, in the Tilburg Law School research programme Access to Justice researchers examine legal practice to see how people seeking justice might find their way more easily. In collaboration with partners in the field the researchers then develop internet tools that are accessible to everyone. In this issue of Tilburg Research you will also find other tips and tools for the self-reliant citizen, as well as the usual in-depth analyses and discussion.

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TILBURG RESEARCH

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PHOTOGRAPHY IN THIS ISSUE

Self-reliance may be of crucial importance in modern society, but it has always been of importance to everyone. Photographer Ton Toemen created a series of photographs for Tilburg Research in which people’s self-reliance is shown in different stages of their lives: spring, summer, autumn and winter. The series is presented throughout this issue.

FEATURES

- 2 THE SELF-RELIANT CITIZEN
- 5 ROUTES THROUGH THE LEGAL SYSTEM
- 10 ALL POWER TO THE MARKET VERSUS EMPLOYEE PARTICIPATION
- 14 NEW-STYLE PENSIONS: A NUDGE TOWARDS SELF-RELIANCE
- 17 LEGAL AID FOR THE POOR THROUGH MICROJUSTICE
- 21 HEALTHCARE: OUR CHOICES HAVE BECOME EXPLICIT
- 27 MIGRANTS IN TIMES OF GLOBALIZATION AND A RECEDING WELFARE STATE
- 31 CUSTOMERS BENEFIT FROM SIMPLE BANKING PRODUCTS

COLUMNS

- 19 POVERTY AND THE LAW: OLD ENEMIES OR NEW FRIENDS?
- 25 TRANZO’S CONTRIBUTION TO PATIENT SELF-RELIANCE

NEWS

- 13 FAMILY MAKE DECISIONS ABOUT ORGAN DONATION
- NEW CHAIR: PSYCHOLOGICAL CONSEQUENCES OF DISASTERS
- 20 COORDINATING JUDGE HAS POSITIVE EFFECT IN DIVORCE PROCEEDINGS
- HEALTHCARE CHOICE SITES COULD BE BETTER
- 26 WHY PEOPLE SOMETIMES MAKE IRRATIONAL CHOICES

RESEARCH PORTRAITS

- 8 DUTCH CONSUMERS SHOW LITTLE CONCERN OF THEIR CARBON FOOTPRINT
- 9 EMPOWERING BUSINESSES WITH COMPLIANCE SERVICES
- 16 FAMILIES PROVIDE 80% OF CARE
- 29 EU GETS CLOSER TO THE PUBLIC
- 30 STILL AT THE FOREFRONT IN POLICY YOUNG DISABLED PEOPLE

The self-reliant citizen

It looks as though individuals are being given more and more responsibility – for building up their pensions, as employees, as patients, as entrepreneurs and as consumers. The state's role seems to be shifting to that of facilitator and regulator. The changes are partly due to the fact that the welfare state was becoming too expensive, but also to the free market ideology of the late 20th century and to globalization, which often lacks coordination. But do citizens actually want more responsibility? Or have they grown used to not having it? Will solidarity and justice still be safeguarded?

'Everyone has to contribute' is the motto of the Netherlands Council for Social Development. Politicians and policy-makers want individual citizens to take more responsibility – instead of relying on the state – in all sorts of areas and to participate more intensively in the community. The Social Support Act introduced in 2007 was inspired by the idea of participation, and according to the Labour Force Participation Committee (2008) 'the Netherlands needs everybody quickly and everybody must be constantly deployable'.

'There is a stronger appeal to people's sense of responsibility, but the state has not withdrawn'

According to the Council for Social Development it is not the state, but citizens themselves who are responsible for their own well-being and prosperity. Usually employment is the key factor in this. In view of major social challenges such as individualization,

the ageing population, globalization and growing diversity of our society, the Social Economic Council (2006) also says that the contributions of individual citizens are indispensable in health care, education and civil society. How exactly should citizens give expression to this responsibility? Is it true that the government is leaving more up to individuals and is that the right thing to do? Tilburg researchers are exploring these issues from the perspective of a range of disciplines. Their research shows that the government's role changes constantly: sometimes it withdraws, but sometimes it does not.

ANTOINE JACOBS, PROFESSOR OF EMPLOYMENT LAW AND SOCIAL POLITICS:

"A great deal has changed in Dutch employment law since the 1990s. The national insurance schemes have not been abolished, but people can no longer benefit from them longer than is necessary and are forced to stop relying on social assistance. The idea behind this is that you are happier if you are earning your own income. From an economic point of view, the more people are on benefits, the fewer people there are with an income from which social security

contributions have to be paid. This means that steering people from benefits to paid work has a double result. This is necessary to maintain the capacity of the system and ultimately to remain competitive in the world market. Now there is a stronger appeal to people's sense of responsibility, but the state has not withdrawn. However, the government is less closely involved in the implementation of the law and less actively

businesses to capitalist interests, driven by shareholders. At present a great deal is agreed in 'soft law': documents which profess good governance. But it is not made mandatory by the government. We need to look into systems for calling entrepreneurs to order. I will continue to advocate employee participation as a way to say no to major decisions such as purchase, sale and closure of businesses – but without eliminating liberalism.

'The government has always shared its responsibility for health with patients and health care providers'

engaged with individuals. For example, in the past the government was the payment office for sickness benefits, but now the employer continues to pay wages and is insured for this. On the other hand all the industrial insurance boards are now united in the Employee Insurance Agency (UWV), which has brought them closer to the state. The government and the business sector have also grown further apart since the neo-liberalism introduced by Reagan and Thatcher and the globalization of the market. The government is only in charge of the basic prerequisites of a smoothly operating market: good infrastructure, civil law, a knowledge economy and a good labour market. I must admit I don't agree with that. If the borders are as open as that, we can't simply expose

We have lost our equilibrium; we need a counterbalance."

ROLAND FRIELE, PROFESSOR OF SOCIAL SCIENCE ASPECTS OF CARE LEGISLATION:

"It may look as though with the new Dutch health care system the government is suddenly throwing responsibilities over the fence to the patient, but that is not the case. The government has always shared its responsibility for health with patients and health care providers. The Medical Treatment Contracts Act, which has regulated Dutch patients' right of self-determination since 1995, was developed on the basis of the idea of empowerment, in the interests of the patient: it is best for patients to make their own choices. In many cases it is not at all desirable for the government to determine what will happen to the patient or indi-

vidual needing care. For instance, it is much better for hospitals to be in charge of quality assurance and innovation than the government. Doctors, municipalities and individual citizens should each play their role in the health care system, based on their own expertise. In recent years it has become increasingly clear that it is impossible for the government to take care of everything. One consequence of this is that health insurers have been assigned a more prominent role. They can exert influence at the meso level, on individual hospitals or care networks. We are now starting to see insurers assume that role. However, the government is still ultimately responsible for the system as a whole and is searching for new expressions of this role – in some cases by direct intervention after all, but also by thinking carefully about monitoring. Patients have been given a major responsibility in the new health care system: responsibility for the whole system. The idea is that by making more choices between different health care providers they will stimulate competition, which will lead to higher quality and efficiency. This final step is a big one, and it is not at all clear – let alone proven – that it works. How many people have to choose before health care providers start to do things differently? Who chooses: young healthy people or elderly people who have different needs? Are people actually willing and able to choose? We are still right in the middle of this transition."

**MAURITS BARENDRECHT,
PROFESSOR OF PRIVATE LAW:**

“We are investigating how we can strengthen the client’s position in private law. The process of law could be made cheaper and more efficient, for instance through arrangements which are better matched to people’s needs. This would also lead to greater client involvement and a greater sense of autonomy. We are therefore investigating what clients want and whether the solutions offered to them really work. This empirical and interdisciplinary approach is unique.

We have also designed a conflict resolution system aimed at getting people involved in a conflict around the table at an early stage. That provides more opportunities for finding a solution and is therefore also cheaper. In conjunction with the Legal Aid Council we are working on an online legal guide called *Rechtwijzer* (www.rechtwijzer.nl) which helps people to make the right choices. It includes a section on how to write a letter to the opposing party inviting them for a talk.

In collaboration with NGO Oxfam Novib and several other partners we are also working on microjustice in developing countries. This entails self-help mechanisms for solving disputes within communities in a way that is fair and transparent.

Our research brings up ethical questions, however. How much choice should you give people? To what extent should you predetermine routes for people seeking

justice? What should you leave to the client and what to the professional lawyer? If you make the client stronger, what role remains for the professional? Does self-reliance really lead to justice?”

‘The current return to more regulation in the financial sector may be too interventionist’

**THORSTEN BECK, PROFESSOR
OF ECONOMICS:**

“Since the financial crisis there has been a trend towards more rather than less state intervention in the financial sector. It’s a fine line: the financial sector needs more guidance through regulation, but if there is too much regulation, the benefits of an efficient system will no longer apply. The current return to more regulation may be too interventionist. Take taxation: the need is felt for a tax regime to ensure that banks take less risk. The purpose of transaction tax is to make money and therefore it would be wrong to introduce it. It would not change the way of banking.

In the recent crisis state intervention was necessary. ABN Amro and some other banks had to be bailed out by the state because there was no resolution framework with alternatives, for instance selling off divisions that cost too much. The taxpayer has to pay the price.

What we need is not more intervention, but smarter intervention. More intervention will not work because bureaucrats are

not better bankers than bankers. Bankers on the other hand know all about banking, but do not take the taxpayer and external costs into account. The challenge is to reform the system in such a way that the bankers are forced to take

these factors into account and to behave more responsibly, while still aiming for a profit. I think the government should intervene through a regulatory framework within the European Union and aim for a European financial system.”

Corine Schouten

Routes through the legal system

Thanks to the internet aggrieved citizens are becoming smarter and smarter at sorting out their own conflicts and legal issues. Take for example the Dutch divorce plan website www.echtscheidingsplan.nl, where people who are breaking up can draft a divorce and parenting plan without having to meet face to face. With one of these plans a lawyer can then file an official divorce petition more quickly and therefore more cheaply. “The website was launched in September and has turned out to fill a gap in the market,” says legal expert Corry van Zeeland, Managing Director of Tilburg University’s research institute TISCO. “Studies have shown that people are very keen to hear what the usual agreements are in a divorce or other conflict.”

Three years ago legal experts from Tilburg Law School and the Dutch Legal Aid Council jointly launched a first version of the much-visited online legal guide *Rechtwijzer*. “It is intended as a route through the legal system,” says Van Zeeland, who is working on a PhD thesis about effective routes to conflict resolution titled *Justice Journeys*. “We want to show

Online communication can sometimes improve the conflict resolution process

people the way through our sometimes complicated legal system and hopefully to make what can often be a long trek through that

system a little easier. At the same time we are investigating how the public and private systems of conflict resolution can be made to correspond better to the needs of individuals seeking justice.”

“This fits in with the trend that people are becoming better and better at finding information on the internet,” adds TISCO researcher Jelle van Veenen. “You also see that with medical problems people do extensive searches on the internet before they go to the doctor. A lot of information about legal matters is also circulating on the internet. However, it is not always entirely clear what the interests are behind that information. Sometimes a site which seems to be offering legal aid is just a front for a law firm with a commercial background. We recruited people for research via open forums where people discuss their divorces. But you don’t always get the most objective information from people who are still so fanatical about these things years after their divorce.”

LEGAL GUIDE

The first version of the legal guide *Rechtwijzer* was a simple decision aid relating to matters such as home and work, family, consumer affairs or disputes with the government. For every problematic case a recommendation is generated. Van Zeeland: “You offer people several questions. With some

problems the system concludes that it is important for the parties involved to talk to each other and solve the problems together, in which case the recommendation is: get in touch with the other party. For other problems a different intervention may be required; for instance, the system may recommend that the inquirer should find out what a reasonable division of property would be and it will say who might be able to help with that. Then the Rechtwijzer also gives information about what this option is likely to cost.”

The site is constantly improved and expanded, in consultation with professional practitioners. It is regularly tested by members of the public; the Legal Aid Council recruits volunteers for that purpose. Corry van Zeeland: “In our

examples of polite, problem-solving letters to send to shopkeepers or suppliers, for instance,” says Van Zeeland. “Recently we have been working on the same kind of model for letters of objection to government authorities, for instance about building permits or applications for social assistance.” The latest version with the divorce and parenting plan is also very successful. Since March 2009 a parenting plan has been mandatory in divorces involving children in the Netherlands. The website offers practical advice and objective criteria relating to children and contact arrangements, division of care duties, maintenance, division of matrimonial property, pensions, etc.

On the website spouses can log in separately to their joint digital file,

whole process and the stress. It’s a fact that long drawn-out conflicts cause a lot of stress, insomnia, etc. To make sure it doesn’t escalate you need to call in a neutral mediator as soon as possible if you can’t work it out together. The sooner and more appropriately you can resolve conflicts the better. We incorporate this kind of knowledge into the Rechtwijzer. It’s hugely satisfying to play around with it and develop simple tools people can use to help themselves.”

NON-LEGAL SOLUTIONS

Individuals are quite capable of resolving many disputes themselves, according to Van Zeeland. With some forms of legal aid you can question whether it’s a good idea to help people by taking over from them. The best thing is for them to choose an approach to solving the problem together; that leads to better outcomes. Besides, it’s cheaper for the individuals. But it also leads to less employment for providers of legal services – and that can cause friction. However, it is illuminating for individuals if deep down they know what the outcome of their conflict would have been if they had opted for a legal solution. And sometimes professional assistance is simply indispensable. “A personal injury file about loss of earning capacity can be mathematically and legally so complicated that an ordinary person can’t figure it out.”

where they can make proposals to each other until they manage to reach an agreement. If they don’t succeed they can always enlist the aid of an expert – a lawyer, mediator, financial expert or pension expert. If they do reach a consensus, then they can go to a lawyer with their divorce and parenting plan.

Van Zeeland: “It really isn’t our intention to sideline the legal profession. But you can try to limit the costs, the duration of the

‘It’s hugely satisfying develop simple tools people can use to help themselves’

original version we had lots of long texts, but we saw that people who visited the site immediately started to click without reading the text properly first. It’s better to offer clear graphic blocks to choose from and to use simple, lucid language. For instance, we have replaced ‘*geschil*’ (dispute) with ‘*ruzie*’ (row).”

In the second version of the Rechtwijzer recommendations were added about how to resolve consumer problems. “We give

The challenge is to interweave practical experience of the legal system, the experience of ordinary people and academic knowledge

Jelle van Veenen will be defending a PhD thesis in December about online dispute resolution. He thinks the digital Rechtwijzer is important as a map of the legal system. “The Rechtwijzer shows what routes there are, how you can choose and how you can get people to talk to each other.” Another big plus of online support is that you don’t have to make appointments and you don’t have to travel. Of course you miss all kinds of non-verbal aspects of human communication. But with a divorce, it can be a real advantage if you don’t have to confront each other face to face. Online communication can also improve the process in other conflicts in which people are nervous about how they come across.

Van Veenen has examined models for integrative negotiation – ways for two parties to solve a dispute together. You can get online support for some elements of the proceedings. For instance, there are calculation tools for working out the ideal outcome of an action. But online tools are also helpful for examining what exactly is going on – what interests the two parties have.

According to Van Veenen divorces can be divided into a few main categories. The ‘quick and rational’ category consists of people who have not been married very long and will really be finished with each other once the property has been divided. A much larger group consists of people who have been married for a long time and will continue to meet each other after the divorce, usually because of the children. In these cases there is often a great deal of emotional baggage. The category of couples who end up in a truly acrimonious divorce battle is much smaller than say fifteen years ago. In about ten per cent of divorces the problems involved are so major – such as alcohol or drug abuse or violence – that not only legal assistance, but also other professional help is needed. Actually even after a divorce has been granted conflicts still often arise. This is why an aftercare page has also been developed for the online parenting and divorce plan. For instance, what can you do if the co-parent plans to move to the other side of the country? Sometimes men are so afraid of losing their children that they are far too quick to hand over the house or pension. Then afterwards they start to regret it, especially if they have less access to the children than they had hoped.

EVIDENCE-BASED JUSTICE

The Tilburg private law experts distinguish three layers of exper-

tise: practical experience of the legal system, the experience of ordinary people (‘what’s the best way to tell my children?’) and academic knowledge. “The challenge is to interweave these three strands,” says Corry van Zeeland. The views on which the new Rechtwijzer is based are now being tested by psychologists at the University of Twente. “Together we are trying to design a ‘learning circle’ for cooperative conflict resolution. By testing this you can continually improve the outcomes. In doing this we are working on evidence-based justice, a concept that is still in its infancy in the legal world.”

Van Zeeland herself always has a thick manual issued by the Dutch College of General Practitioners within reach; there is a lot to be learnt from other disciplines, for instance how to arrive at a careful diagnosis of legal problems and how to design effective ‘routes through the legal system’ using standardized protocols. “But no matter what arrangements you make in a divorce, you can never be sure that people won’t knock each other’s brains out later.”

Marion de Boo

RESEARCH PORTRAIT

Dutch consumers show little concern of their carbon footprint

Name: Rachel Pownall-Campbell

Position: Associate Professor of Finance

Institute: Tilburg Sustainability Center

Research: Financial decision making, portfolio analysis, emotional assets, sustainable investments

“Recently, we held the first edition of the Tilburg Sustainability Monitor with over 1400 respondents. Analysing these unique results was fascinating and very exciting. To me, it felt like exploring territory that has hardly been touched. We asked some general questions to get an in-depth look into the extent of the carbon footprint of Dutch consumers, something which is not altogether in great shape.

Are consumers aware of their carbon footprint? And what action do they take to reduce it? These are the questions that lie at the very heart of the Tilburg Sustainability Monitor. The encompassing goal is to foster knowledge building and education about climate change, environmental issues and social issues within three main categories of society: individuals, corporations and policy makers. Within the field of sustainability these are also known as the three P's: People, Planet, Profit.

‘People’ concerns human behaviour: understanding how individuals make decisions about the impact of climate change and the concept of sustainability. ‘Profit’ concerns product design: to help corporations provide the products necessary for the sustainable consumer. ‘Planet’ means policy making: to help national and local government take decisions through an improved understanding of the impact of those decisions on the national economy and the environment.

In order to reach the encompassing goal, you first need to understand the mechanisms and decision-

making behaviour of these individual groups. We decided to start with the first group, the consumers. With the Monitor we gauge consumer interest and concern about climate change, sustainable issues and social well-being. The monitor is conducted on a semi-annual basis among CentERdata's household panel, a cross section of the Dutch population.

I'll give you a sneak preview of the results. We found that 45% of the respondents are not concerned about climate change. Although the majority of households think they are informed about the consequences of climate change, the majority feel that their own behaviour is not a cause of climate change. Dutch consumers do think it is important to reduce their carbon footprint, and they believe that they already have reduced and shall continue to reduce their carbon footprint. We also found that households are willing to substitute quantity for quality of food, yet only a small percentage of households buy organic food. It seems that the awareness of the consequences of non-organic food is low, since quality is not associated with organically produced food.

Monitoring how households behave is the first step in addressing how governments and corporations could respond more effectively to issues of climate change and sustainability. Even though the results of this first edition of the Tilburg Sustainability Monitor show that there is much room for improvement, I believe it to be very important to have gathered this information in order to start changing things.” [RP]

RESEARCH PORTRAIT

Empowering businesses with compliance services

Name: Mike Papazoglou

Position: Professor of Computer Science, Executive Director of ERISS

Institute: European Research Institute in Service Science (ERISS),
Department of Information management

Research: Service Science, Service Analysis & Design, Cloud Computing,
Internet of Services, Business Process Management,
Business Transaction Management

“We all remember the recent major compliance scandals of Enron in the USA, Albert Heijn in the Netherlands and HIH in Australia. These scandals have led to an increasing number of compliance regulations (such as Sarbanes-Oxley), which require all organisations to establish an internal control system, audit their processes, and ensure that they meet the compliance standards set forth in laws and legislation. Without effective and powerful compliance frameworks and approaches, they face litigation risks and even criminal penalties.

Most organisations now achieve compliance only on a per-case basis and typically as ad-hoc solutions. Checking whether an organisation is compliant is mostly handwork- leaving room for lots of errors. At ERISS, we have developed a toolset environment with which organisations can check whether they are compliant to the regulations, and if not what action needs to be taken in order to be compliant. With this toolset environment, called Compliance Request Language Toolset (CRLT), auditors and business analysts can both record and express compliance requirements, which are automatically checked and verified on the basis of compliance regulations and best practices.

CRLT is one of the first environments that will provide a comprehensive support for managing business process compliance, particularly during the design-time phase of business processes in corporate organisations, government and healthcare. It has several unique fea-

tures and functionalities that are focused on aiding organisations in managing their compliance information in a very intuitive manner by allowing specification of the desired compliance requirements in any type of organisation. The toolset then enforces these requirements and spots processes that are in violation of the requirements and provides information on how to correct them.

Throughout the development of the prototype environment, we had the chance to drive the implementation and demonstrate its use through real-life scenarios brought by this EU FP-7 project's industrial partners (Price Waterhouse Coopers and THALES). They provide us with a ‘reality check’ and helped us design the toolset in such a way, that it can be used by many organisations in the future.

Providing a sustainable, cost-effective and a generic compliance solution that addresses unique requirements of today's business environment in various business domains (such as banking, healthcare, aviation, manufacturing, etc.) is one of the most significant challenges that researchers and practitioners face. I find it very inspiring to be at the forefront of services research by creating a system that provides a realistic solution to a very challenging problem. Although we are still in the pilot phase, I am already looking at the future. What I see there is our toolset being implemented by an IT partner in organisations around the world. A future in which we provide ‘compliance as a service’.” [RP]

All power to the market versus employee participation

Do Dutch employees have to just sit and watch while foreign multinationals take over their workplaces and close them down? Or do they actually have a lot of clout through the Works Councils? Is a globalizing labour market a blessing for the economy, or above all a bomb under employee participation? There is something to say for all of these statements. A heated discussion between Antoine Jacobs and Willem Plessen of the Tilburg Law School.

Antoine Jacobs and Willem Plessen enjoy a good fight – an academic fight, that is, and not without friendly smiles on either side. The event that prompted this discussion was the takeover of the Organon company (part of MSD) in Oss by the American pharmaceutical group Merck. After the takeover the decision was made to dismiss over half of the Dutch employees. The Organon Works Council is now challenging this decision. In a letter to the newspaper *Brabants*

If the entrepreneur has good lawyers, he will always win

Dagblad (13 July) Jacobs, Professor of Law and Politics, referred to the public outcry about this matter as ‘crocodile tears’. “Organon is not exceptional at all,” he explains. “Companies are constantly bought up by foreign multinationals. Dutch companies like Philips also close down and open foreign companies to their hearts’

content.” According to the professor employees are sidelined when it comes to decisions like this.

Plessen, Associate Professor of Employment Law and Social Policy, thinks this is rubbish. He combines his academic work with a job as manager of social affairs at Randstadgroep NL. According to him Works Councils definitely have a strategic position. For instance, managers must submit important economic decisions to the Works Council for recommen-

dations. If the management fails to follow these recommendations, the Works Council can appeal to an independent court.

Plessen: “Entrepreneurs certainly can’t do whatever they like. Going against the Works Council’s recommendation costs time and energy, and may mean that the momentum of a merger is lost.

There’s no reason why a business can’t collaborate internationally, but remain a national legal entity

That leads to complications and trouble. So the Council really does have some influence.”

Jacobs: “The Works Council can play for time, yes. But it’s questionable whether they can do more than that. The case law shows that the Enterprise Division actually only review procedures. You would have to be very much out of line with procedure before the Enterprise Division disapproved. The Division has never yet turned down a proposed plan on substantive grounds.”

Plessen: “Of course lawyers review procedure. All the same, it takes a long time for the Division to reach its judgment. That gives the Works Council time to negotiate.”

Jacobs: “But ultimately the entrepreneur gets what he wants. If the entrepreneur has good lawyers, he will always win.”

Plessen: “In the meantime there may be rivals on the lookout.

Entrepreneurs lose their edge.” Jacobs smiles and shakes his head. “I think Willem is inflating the Works Council’s position a bit. Entrepreneurs can take the sting out of employee participation by bribing the Works Council. If you want to close down a company, you give the management a bagful of money for a good social plan with a generous redundancy

package. That puts the Works Council in a very difficult position. The employees who can easily find a new job immediately say: just give me the money.” Plessen: “I think to call this bribery is demeaning. Actually it shows just how strong the Works Council’s negotiating position is!”

Jacobs advocates a system whereby fifty per cent of the Board of Supervisory Directors are appointed by the Works Councils and the shareholders decides on the other half. In Germany the Works Council now chooses 49% of the Board of Supervisory Directors. “Then the management understand better that they have to find a balance between employee’s interests and the market,” says Jacobs. “In the Netherlands that balance has been lost. The management is appointed by a Board of Supervisory Directors; that Board itself is appointed by the shareholders; so ultimately the

management listens to the shareholders.”

Plessen, almost groaning: “The Netherlands can’t afford a system like that in an international environment. No company would ever set up business here again.” Jacobs: “That was often said in Germany too, nevertheless it was one of the first countries to start to pick up during the crisis. Several factors play a role in business location decisions, such as industrial harmony, good roads, an airport; employee participation is only one factor.”

Plessen: “It’s not for nothing that it’s a 49% ratio in Germany. That means there is still a safeguard that ultimately the entrepreneur can cut the Gordian knot. That’s essential.”

Jacobs: “Managers have their own interests. If the company gets bigger, their salaries go up. They have shares in the company. They have access to all the information and can present the figures in a way that suit themselves. Are they cash grabbers? You can read that they are in the newspaper every day!”

Plessen: “Now you’re really simplifying matters. It’s very difficult for an outsider to form a judgment about strategic decisions. The company’s interests are different from the employees’, which is why the fifty-fifty system is a bad idea. For instance, by definition it is in employees’ interest that their job is not made redundant or moved somewhere else. Obviously they will often say no.” Jacobs: “No, because then the

business will go into liquidation. Ultimately employees realize that too.”

Plessen: “They don’t realize that! During the negotiations at TNT postmen were offered the option of wage reductions so that there would be fewer dismissals. They rejected that offer and now half the postmen have been sacked.”

Jacobs: “It’s a learning process. We had to learn democracy the hard way too – by helping dictators take control. I’m not saying everything will be fine if participation is fifty-fifty.”

Plessen: “You call it a learning process, but I don’t want to see it happen. It would be really stupid to give the Works Council 50% appointment rights.”

Jacobs: “In the past they also thought it was stupid to give everyone the vote.”

The present legislation governing employee participation in the Netherlands was developed in the 1970s. It is a product of democratization processes. In Jacobs’s opinion the globalization and flexibilization of the labour market have now turned the consultative bodies into toothless tigers. “The labour market is becoming fragmented. Agency workers have different interests from permanent employees. Outsourcing is on the rise. The company as a community of human beings is being ripped apart. As a representative body a Works Council has its work cut out getting everyone on to the same page.”

Plessen: “It’s true that there’s more fragmentation. A UWV [Employee Insurance Agency] study showed that 32% of workers are hired flexibly. But the vast majority of workers are still employed permanently, for an indefinite period. They can make themselves heard.”

Jacobs: “Outsourcing is not included in figures like that. Flexible working is growing and it’s a bomb under employee participation. As is internationalization. Businesses have become part of international markets. Is

‘Management have to find a balance between employee’s interests and the market’

the whole game of employee participation still going to work in that situation? How are you going to organize it? This whole trend has arisen because managers see it as an ideal business vision. A multinational business is better than a national business. Why?”

Plessen: “Let’s face it, the economy is international. If we don’t watch out, in ten to fifteen years the economy will be dominated by China.”

Jacobs: “I would prefer to see globalization in different areas. There’s no reason why a business can’t collaborate internationally, but remain a national legal entity.

Why does a Dutch bank have to take over Italian banks? Because then you can put your own products on that market. But I don’t regard that as a sacrosanct law of the market.”

Plessen laughs ironically. “But we’ve got Europe!”

Jacobs: “It may be old-fashioned, but I think it’s debatable whether entrepreneurs should be given the chance to buy up businesses in other countries.”

Plessen: “You’re saying we should put fences around the Netherlands. But if Smiths discover that labour costs are too high in the Netherlands, we can’t stop them from producing the crisps in Poland in the future. According to your model the employees can stop that happening.”

Jacobs: “As a Works Council I would say: let’s see if we can make products that we can operate with internationally. Why do you always immediately have to close down?”

Plessen: “All the same, it makes no sense to give employees that decision-making power. It’s economically irresponsible.”

Jacobs: “For me what makes sense is something different. Being socially and philosophically responsible – that’s what makes sense.”

Enith Vlooswijk

NEWS

Family make decisions about organ donation

Changing the Dutch donor registration system would probably not result in more donor organs. It would be better to resolve problems in the donation process in hospitals and to reduce the number of refusals by surviving family. This was the conclusion of a study initiated by the Netherlands Institute for Health Services Research (NIVEL) for which Remco Coppen recently obtained his PhD at the Tilburg research institute Tranzo.

In the Netherlands approximately 1300 people are on the waiting list for a donor organ, but there are no more than about 220 donors per year. While the number of living donors (mostly family members) has risen in recent years, there is still a serious shortage of donor organs. Coppen’s study shows that changing the Organ Donation Act or the registration system to make everyone a donor by default would not solve the problem. It looks as though countries with this kind of decision system have a lot more donors, but after correction for the number of road deaths and strokes these dif-

ferences largely disappear. Only in Spain and Austria is there a consistently higher number of donors than in the Netherlands, and that can probably be explained by cultural and organizational differences. However, usually surviving family have the last word, regardless of the system used.

According to Coppen better information is needed to get people to think about the issue of organ donation during life, so that they are more likely to register as donors or to talk to their family about it. It is also important to ensure doctors are better prepared when they have to raise the question of organ donation with surviving family members. However, little is known about which communication styles might be effective; and we also know very little about why people refuse donation. In conjunction with the Erasmus University’s Medical Centre and Institute of Health Policy and Management NIVEL is now investigating the organ donation process in hospitals to identify possible stumbling blocks.

New chair: Psychological consequences of disasters

Tilburg University has appointed Dr Peter van der Velden Professor by Special Appointment of ‘Psychological Consequences of Disasters and the Use of Mental Health Care Services’. Van der Velden’s research will focus mainly on the self-management skills of people affected by disasters and calamities. The chair is sponsored by Stichting Arq, Psychotrauma Expert Group and has been placed under the management of Tilburg University’s International Victimology Institute

Tilburg (INTERVICT). In the past Peter van der Velden (1957) has conducted research into the consequences of the Hercules disaster, the Achille Lauro disaster, the outbreak of avian flu, the fireworks disaster in Enschede and the New Year’s Eve fire in Volendam, and has many international and national publications relating to disasters, calamities, aggression, violence and war to his name.

New-style pensions A nudge towards self-reliance

The new Dutch pension system means that individuals will have to take more responsibility. Even automatically collected monthly pension contributions will no longer guarantee a financially secure old age.

The pension paradise of the Netherlands has been rudely shaken. Suddenly phrases like ‘early retirement’ and ‘early pension access’ sound old-fashioned. Soon the old-age pension will begin at 66. Or later – we will see what the future brings. Pension benefits are also unclear. The standard is no longer 70 per cent of the last wage earned. And indexation depends on the funding ratio of the pension fund in question.

“The years of absolute certainty of a good pension are definitely behind us,” confirms Theo Nijman, Professor of Investment Theory and director of Netspar (Network for Studies on Pensions, Ageing and Retirement). Nijman was a member of the Goudswaard Committee, which was commissioned by the government to analyse the sustainability of

the Dutch pension system. The Committee’s conclusion was that pension funds can no longer provide the same guarantees. Because life expectancy is rising,

Self-employed workers without employees: set up a partner’s pension!

In the Netherlands the number of self-employed workers without employees has risen to more than 600,000. They have to make their own old-age pension arrangements. Gerry Dietvorst can’t say it loudly enough: if you have a one-person business, set up a partner’s pension! “When a self-employed worker without employees dies, his or her surviving family’s income drops. A life insurance policy for your partner and/or children will prevent this. Particularly if you opt for an insurance policy with payments that decrease with age, the premium for one of these products will only be a few euros per month. A small price that may prevent a lot of distress.”

the ratio of retirement years to our lives as a whole has risen from less than a quarter to a third. And that is proving to be unaffordable. “We have to step away from the classic idea of retirement,” says Professor of Pension Law Gerry Dietvorst. “Forget the palm beaches and yachts – lots of people will have to keep working after reaching 65.” However, for Dietvorst this is not a grim picture. “Older people’s biggest fear is not physical decline, but loneliness. People who keep working remain involved in society. Continuing to work is fun, interesting and cool. But the work has to be appropriate to the age: fewer hours and less stress.”

PENSION FIRST AID

So pensions will become smaller. Is saving for your own retirement the solution? “Yes and no,” says Nijman. “It’s not the case that

everyone now has to make their own arrangements for their old-age pensions. And that’s just as well, because people usually save too little and the costs of pension products are high. But pension awareness needs to be raised. Everyone needs to have an understanding of their own pension arrangements and the uncertainties involved, so that if necessary they can take extra measures in good time.” In February 2010 Dietvorst organized the first ‘Pension First Aid’ day in Tilburg. There was a great deal of interest; over 300 people signed up. Some of them left the hall relieved – things were not as bad as they’d thought.

One woman was positively delighted: to her surprise, she had found out she was entitled to partner’s pension. For others the message was disappointing: early retirement was not going to be an option. Dietvorst: “It turns out that people actually want to have insight and an overview. Apparently in practice the pension information they receive is too complex. The sector should take this to heart.”

Nijman: “What I would like to see is a colour code for annual pension statements: a red pension statement for people with a pension shortfall, an orange one for people who will lose a substantial amount of income, and a green one for people who have sound arrangements. That would stimulate people to think and to become more self-reliant.” This point has not yet been

www.mijnpensioenoverzicht.nl

On 4 January 2011 the Dutch Pension Register Foundation’s website [mijnpensioenoverzicht.nl](http://www.mijnpensioenoverzicht.nl) will go online. With a digital signature and citizen service number every Dutch citizen will be able to see online what he or she can expect from the state old-age pension and from pension funds. The site will also enable people to calculate the financial consequences of retiring earlier or continuing to work for longer. Within a few years annuities and other personal pension products will be added, so that the picture provided will be as complete as possible.

The idea for this website came from Professor Gerry Dietvorst’s research group at Tilburg University about seven years ago. “In the first instance there was a great deal of resistance,” says the professor. “The pension funds thought a system like this was too expensive or technically unfeasible, but now everyone has come around and the pension funds are now a driving force behind the online overview.”

reached, but Netspar is working on a star system which will make it immediately clear how rosy a person’s retirement looks.

OPTIONS

Very cautiously pension funds are starting to offer more customized facilities – savings options geared to employees’ personal wishes or situations. For instance, employees can now opt for extra pension accrual in order to retire earlier, and in some cases young employees can take extra investment risks.

In Sweden, however, things went wrong recently. People had to choose investment funds for their old-age pensions from a guide containing no fewer than 900 funds in alphabetical order. The first ten funds proved to be surprisingly popular: many people

were unwilling or unable to make a choice.

The default option – the one everyone gets if they don’t choose – needs to be a reliable, low-risk package, says Nijman. Research into factors that influence economic choices is clearly very important. For instance, it has turned out that a savings plan which only begins when the salary is raised for the first time draws many clients. In economic jargon this is known as a Save More Tomorrow scheme. Nijman: “You can make good use of schemes like this to stimulate saving. Richard Thaler, a big name in behavioural economics, calls it a nudge in the right direction.”

Marga van Zundert

RESEARCH PORTRAIT

Families provide 80% of care

Name: Deirdre Beneken genaamd Kolmer

Position: Coordinator Academic Workplace for Ageing Policy and Family Care

Institute: Tranzo, Scientific Centre for Care and Welfare

Research: Family care, ethics of care, health care policy, philosophy of education

“The heart of family care is where care is being given: in the family. Increasingly, family members are made responsible for care giving which is a consequence of the changing society. Welfare states are changing into management states. This civil responsibility has important consequences for practice, where patients and family caregivers meet. Often family care givers who are providing care are doing fine and experience joy. But many family care givers are overburdened.

In the Netherlands 80% of all care is provided by families themselves; only 20% can be regarded as professional. Clearly if families cannot manage any more there will be a huge problem. All the more reason to support families involved with care in areas such as work, the experience of loss, role reversal, loyalty, parentification and the stages of family life.

My research has shown that the main reason why people continue to take care of each other is their relationship. This means that couples, families and both young and older people must have a chance to shape this relationship. Family care givers who are motivated by relational motives experience less stress than family care givers who do it out of a sense of duty or individual conviction. Health care policy needs to respond to this.

Nowadays health care policy and the support options available make no structural contribution to solutions. In my opinion the relationship factor should be the point of departure for care support. Everything revolves around coordination between patients, family carers and professional care workers. In the Netherlands this care triad is the heart of health care at the micro level, while at the macro level another care triad is important: coordination of practice, policy and research in this field.

The Family-Based Care Method was a result of my study and tries to bridge the gap in both care triads. This method enhances efficiency in care services and emphasizes on the relational approach. Families don't want to be assisted by four different professional care workers, they want to be helped by just one or maybe two, and only if necessary. Patients and their family care givers want to be seen and approached as couples and families and not as individuals. It seems that patients and their loved ones are in need of a more natural approach.

As a country we have all the ingredients to make the Netherlands outstanding in giving and receiving care. I hope we will actually use these ingredients. The focus of a relationship is 'you-and-me' and not 'you-and-it'.” [CvD]

Aid for the poor through microjustice

Legal empowerment

An Egyptian man who wants a divorce decides for himself whether or not he will pay child maintenance. Egyptian courts can be rather slow. “By the time a settlement is reached with Dad, the children are practically grandparents themselves,” says Professor of Private Law Maurits Barendrecht jokingly, “that is, if there is a court case at all.” Many women who are chronically abused simply do not have the money to travel to a court far away in a big city, let alone to pay a lawyer. Moreover, it takes years for a court to pass judgment, so that a court case does not pose any threat. Barendrecht: “It's wonderful to have law books and courts and all, but in practice many poor people in the world have no access to the law.”

According to the Tilburg professor, the secret to solving legal issues is to ensure that people can enter into relationships which are safe and inspire confidence, and which have good results. “A friend of mine once said that when he visited our Dutch court he felt very intimidated.” This is why Barendrecht has put ‘microjustice’ high on the Tilburg research agenda.

ACCESS TO THE LAW

The philosophy behind microjustice is similar to that of ‘microcredit’, which gives poor people who are turned away by ordinary banks the opportunity to take out a small loan and to start their own business. The aim of microjustice is to improve poor people's access to the law and legal aid, for example through an effectively operating network of mediators. Drawing on a variety of disciplines, Tilburg researchers are examining the basic requirements for this system. They have paid several two-week working visits to legal aid projects run by Oxfam Novib, mostly in urban settings in five countries: Egypt, Ruanda, Mali, Azerbaijan and Bangladesh. Most of the problems were related to divorces, inheritances and associated family matters. Both in post-conflict areas like Azerbaijan and in areas undergoing rapid urbanization land disputes are also very common. Then there are work conflicts, disputes between neighbours and cases in which individuals were unable to obtain

what they were entitled to from the government because – for instance – certain documents were not issued. “In all those completely different places it turned out that people with little money and little access to legal aid have a better chance of resolving conflicts if they can start to talk to the opposite party again,” concludes Barendrecht. “In the Netherlands you see more and more often that government bodies don’t wait for a member of the public to submit a formal objection. Civil servants

People have a better chance of resolving conflicts if they can start to talk to the opposite party again

now just ring complainers and ask them what’s bothering them. It looks as though together we are reinventing our legal system.” A legally substantiated nasty letter is often counterproductive, adds Barendrecht’s colleague Jin Ho Verdonshot. “In each of the countries we visited we saw that it is much better if a mediator approaches the other party in an open and amicable way to hear their side of the story and to look for a solution together.”

CONFLICT RESOLUTION

The civil law researchers of the Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems (TISCO) have been studying conflict resolution for years, for instance in the context of divorces, land disputes and

disputes between businesses. What standards do those resolutions have to meet? What skills must the facilitators have? How can you control the costs? Jin Ho Verdonshot has observed a change of perspective in development assistance. “In the past initiatives relating to law and development were very much focused on drawing up good legal codes, setting up courtrooms and training good judges and lawyers. But these things do not reach the poorest

people. They benefit much more from having neutral facilitators with good communication and mediation skills close at hand, clear sharing rules which give them concrete information as to what a reasonable outcome might be, and a neutral individual who is accessible and can make a decision quickly if the parties are unable to reach a settlement. “The strength of microjustice is that we develop a great deal of expertise about condensing helpful legal knowledge, so that you don’t need to consult hefty codes of law,” says Barendrecht. Jin Ho Verdonshot is developing practical tables to calculate child maintenance. “It’s a huge help if you can produce a concrete proposal, in line with standard practice and the provisions of the law.”

NAILS

The research group is constantly on the lookout for partners to strengthen the microjustice. “I just heard that a university in Uganda wants to join in,” says researcher Jobien Monster. “A Ugandan PhD student is soon going to start on a project in Tilburg about land disputes.” Jobien Monster herself is trying to distil best practices from various kinds of solutions – methods which have proved themselves as practical tools, for instance ways of getting in touch with the other party. An Egyptian facilitator called Waheed was an inspiring example. “He had a great flair for talking to the husbands of unhappy women. He used wonderful stories and metaphors to make these men understand that a turnaround was needed to get the relationship running smoothly again. He once told me about a failing marriage in which the wife hammered a nail into the door after every row. When the whole door was full of nails the wife said she was prepared to forgive her husband if he could tell her what had gone wrong in the case of each nail. The result was that they finally started to talk, and for each explanation he gave she pulled a nail out of the door.”

Marion de Boo

COLUMN

Poverty and the law: old enemies or new friends?

Farah Karimi, Executive Director Oxfam Novib - Ambassadeurs van het Zelfdoen [Ambassadors of DIY]

The law should be neutral, but in the everyday lives of people in countries like Bangladesh, Egypt, Mali or Rwanda it seldom is. In practice billions of people all over the world cannot claim legal protection when their economic, social, civil, political or cultural rights are compromised. For all sorts of reasons people living in poverty see the law and its enforcers as a threat rather than something that offers them protection. Too often it is still an instrument of power for rich and powerful elites. However, the law should and can work in their favour. For us internationally recognized human rights are the main reference point, both for national legislation and for informal law. This is why Oxfam Novib is investing in setting standards and improving access to the law for people living in poverty, and for this purpose we have entered into a collaborative arrangement with TISCO.

The story of Hadijatou Mani, a 25-year-old woman from Niger, proves that the law can work for people who live in poverty. In 2008 she won a lawsuit against the government of Niger with the support of our local partner organization Timidria. At the age of 12 Hadijatou was sold to a master with four wives. She became their slave; she had to do all their work and the master forced her to have sex. Hadijatou was freed in 2005, but when she married the man of her choice her master took her to court for bigamy. Because according to customary law a freed slave remains the wife and property of her former master, the court sentenced Hadijatou to six months in prison. Timidria offered Hadijatou legal aid and brought the case before the court of the Economic Community of West African States (ECOWAS). She sued the state for not having done enough to protect her from slavery. The ECOWAS court ordered Niger

to pay Hadijatou EUR 15,000 in compensation. With this ruling the court acknowledged that slavery existed in Niger – something the Niger authorities had always denied. A positive and encouraging example.

In connection with TISCO and Oxfam Novib’s joint action research project, researchers visited several local organizations in five countries. On the one hand their working methods and experience have provided valuable evidence on the basis of which the TISCO researchers can develop new models of legal action; however, this research has also shown that there is still a lot of room for improvement in local legal aid organizations. Particularly in relation to reaching larger numbers of people with common but urgent conflicts at lower costs, Oxfam Novib and TISCO see new possibilities for getting the law to work for people living in poverty. This is not only about providing legal aid in strategic lawsuits (involving gross violations of human rights), but also mediation in land disputes, divorces and labour disputes. Key concepts in this context are empowerment – enabling people to claim what they are entitled to – and accountability: both formal and informal courts must be held responsible for passing neutral judgments. After the action research project a new phase of collaboration has begun in which Oxfam Novib’s practical experience and TISCO’s academic expertise can continue to enrich each other.

NEWS

Coordinating judge has positive effect in divorce proceedings

If divorces are handled by special coordinating judges, the result is that settlements are reached more often, fewer cases are appealed and the divorcing couples are more satisfied about the procedure. This has been shown by an experiment carried out in The Hague by Tilburg University researchers at the request of the Netherlands court-connected mediation agency (Landelijk Bureau Mediation naast rechtspraak, LBM).

More and more often divorcing couples manage to resolve the unpleasant consequences of their divorces peacefully. This is mainly due to the advent of mediation by a lawyer without court intervention. But mediation is not always enough, which is why efforts are still being made to find other ways of preventing or resolving unnecessary distress caused by divorce.

In 2009 a pilot scheme was carried out at the Hague divorce court with a 'coordinating judge' – an experi-

enced divorce judge who coordinates the entire divorce procedure, whereas normally a case is handled by several judges. This coordinating judge also devotes more attention and time to the emotional aspects of the divorce.

Tilburg legal experts Paul Vlaardingerbroek, Machteld de Hoon and Karlijn van Doorn examined divorce cases coordinated by specially trained coordinating judges by means of observation, interviews and comparison with standard cases. The participating divorcing couples proved to be extremely satisfied with the procedure. During the hearings most of the judges tried to provide guidance to improve communication between the couples, which was often no longer constructive because of unprocessed emotions. More settlements were reached than in standard cases, the judge referred cases more often to mediation and the parties appealed less frequently. The researchers conclude that the concept of a coordinated hearing is promising and deserves a future.

Healthcare choice sites could be better

The presentation of healthcare choice information on web-sites could be better. To make these sites easier to use the information should be limited to points people consider when making their choice, it should be clear what the information means, and it must be presented unambiguously. This was shown by a PhD study conducted by Olga Damman.

Merely providing choice information is not enough to enable healthcare users to make informed choices – one of the prerequisites for the success of regulated market competition in Dutch healthcare. Olga Damman examined how this information is presented online throughout the world. For this purpose she used the Consumer Quality

Index (CQ-index) – the Dutch standard for measuring patients' healthcare experience.

Damman's conclusion is that online choice information is still much too complex. It is striking, for example, how many people make the 'wrong' choice when the right choice seems easy. In an experiment 12% of the respondents failed to choose the best healthcare provider. It also turned out that a quarter of the questions about the choice information provided were answered incorrectly. "There is too much information," says Damman. "The information is often irrelevant, the language used is too difficult, and all kinds of symbols and figures are presented at once. It's really no wonder people just give up."

Debate about the patient's role in the new health care system 'Our choices have become explicit'

In 2006 regulated market forces were introduced in the health care system in the Netherlands; the change is still in full swing. In a recent advisory report the Dutch Council for Public Health and Care made new recommendations for the system (Perspectief op gezondheid 20/20). To avoid a dichotomy in health care, says the Council, health care providers and insurers must perform their public role more effectively. Moreover, patients should not just lean back and be health care consumers, but should take responsibility for and control of their own health as much as possible. But how self-reliant can patients be? Is the state fulfilling its duty of care? Who is responsible for what in the new system? A debate between Roland Friele, Professor of Social Science Aspects of Health Care Legislation and Eric Tjong Tjin Tai, Professor of Private Law and philosopher, who obtained a PhD in 2007 with a thesis on obligations and ethics of health care.

Tjong Tjin Tai: I do believe in the patient's own responsibility as a consumer. Over the last few decades or perhaps even the last hundred years society and the state have unconsciously discouraged people from taking responsibility for themselves. Of course there were good reasons why this happened. An example is

the limitation of the plea of self-defence – the idea that you should not use violence but run away if possible. The intention behind this is undisputed, but the resulting message is: don't get involved. And what is even worse is that you are deprived of the necessary means anyway. Perhaps we have gradually educated citizens to

believe that the government takes care of things. I'm not blaming anyone, but I do think we need to change this.

Friele: In the Netherlands the first health-care legislation was associated with protection – specifically against people who claimed to be doctors and were not. After that

the state took on more and more responsibilities, both in health care and in other areas. It created safeguards so that citizens could rely on a number of things being well regulated. Around the time of World War II the issue of finance came into play as well – making sure health care was affordable for everyone by means of an insurance system. But ultimately the time came when the state had to realize it could no longer assume that new knowledge and technology and a growing budget would solve

‘The state had to realize it could not do everything’

the problems. The reforms with regulated market forces and the Social Support Act are the result. But evidently we perceive this as being as if the government is throwing responsibilities over the fence to individual citizens.

Tjong Tjin Tai: That image is typical of the health care sector. You could also say: people are living longer and keeping healthier, so things are getting better and better. But it does seem as though

we are approaching the point at which that trend can no longer be expected to continue across the board.

Friele: Thanks to the success of health care, in ten years’ time everybody will be ill, so to speak. That’s because everyone has some diagnosis or other, or has recovered from a life-threatening disease. In the past illness was an exceptional condition, and you withdrew from social life. But if everyone is ill, that will no longer be possible. We will have to look for a different model of being ill. That is where the need to confront people with their own responsibility comes from.

Tjong Tjin Tai: That was a good diagnosis. But you can distinguish different responsibilities: responsibility for your own health, for your whole life really, on which you can exert influence, and responsibility when you are sick. This last kind is the tough one. But I think this debate is about that general condition which you yourself can influence. It’s about how much support you need and how much you can do yourself. That may be worthwhile, but then you also have to give people the opportunity to make their

own choices. It’s only then that they are able to bear the negative consequences of those choices.

Friele: The Council for Public Health and Health Care’s concept of the patient’s responsibility is derived from the constitutional responsibility of the state to make efforts to enhance public health. On the basis of that responsibility it is perfectly logical to approach people with prevention, for example by discouraging smoking. Prevention leads to greater health benefits than providing treatment in the last year of life to gain an extra three months. And you don’t need any pills for prevention – people have to do it themselves.

Tjong Tjin Tai: Actually that’s crazy. The government has to make efforts to enhance public health, but it’s primarily up to individuals themselves. It would be more appropriate to say that the government facilitates people’s efforts to enhance their health.

Friele: Of course there are also plenty of people who don’t feel they have a grip on their lives. For them taking responsibility for themselves is a big challenge. In that area there are still some

things that don’t add up. And take a look at the Social Support Act. It now covers part of the health care to which people used to be legally entitled, but which is now more of a co-production between the municipality and the patient. The government only provides support if you have no family or neighbours to help you. In certain cases the court has called councils to order and ruled that in specific situations people are in fact entitled to care.

Tjong Tjin Tai: Nevertheless, the intention behind the new system is one I think we should be working towards. Otherwise you would be depriving people of their room to manoeuvre. Some of the choices are painful, but you shouldn’t deprive people of those painful choices either. Perhaps we are afraid of the pain that comes with more responsibility.

Friele: Fortunately in health care responsibility is not cold responsibility. By virtue of health law doctors have a duty of disclosure, a mechanism which helps patients to make decisions. Various organizations associated with the Social Support Act help people to find their way through the red tape. This goes some way towards solv-

ing the dilemma. And in the past people were actually also responsible for themselves, because there was scarcity – but then it was not

‘Perhaps we are afraid of the pain that comes with more responsibility’

so visible. If you only have one GP for 10,000 people, many people have to solve their own problems. Now there are far more possibilities and the debate about people taking responsibility is more pronounced.

Tjong Tjin Tai: There is scarcity now too, and the solution is market forces. But if your point of departure is that health care is a fundamental right, you are sending conflicting signals.

Friele: That really is a remaining inconsistency. On the one hand you match health care to the demand, so that costs are reduced through competition, and on the other hand you say that people have to take their own responsibility for things the government can no longer provide.

Tjong Tjin Tai: The government is between a rock and a hard place. The essence of the market is that

people make their own choices. I think it’s a hopeful sign that initiatives are now appearing that respond to what patients want.

But on the other hand the government also wants to be able to steer towards results. How else could it be done? Perhaps we should move towards a system whereby you make choices for a life plan – I’m thinking of philosophical concepts like ‘care of the self’ and ‘life as a work of art’ – and accept the good and bad sides of those choices. That’s better than a uniform ideal of healthy living. Health insurers could respond to this by offering policies for people who take part in sports, for instance.

Friele: What we have now is a basic package for everyone and I think that’s right. We are responsible for that as a society.

Tjong Tjin Tai: But how important is health to our society? In terms of responsibility the point is that people are responsible for their own health, and how they want that to be is their own choice.

Friele: In my opinion there are a few objections to that. I think obesity and excessive alcohol consumption definitely harm society. As a society it is very much in our interest for our population's BMI (Body Mass Index) not to exceed 25.

Tjong Tjin Tai: That the costs are borne by others is a result of our system. Ideally in a liberal society the consequences of poor health should be your own responsibility if they are due to your own choices. But it seems as though we can't make that really clear. I'm thinking about the COPD campaign, which uses images of young peo-

sibility you give people, the more they will take care themselves.

Friele: But then you are assuming that people can cope with that responsibility. As a father you can respond very sensitively to what your son can and can't take on, but obviously the government can't customize its rules like that. To some extent we've given insurers that role, but you don't really see it happening yet. It's better for insurers to consult with health care professionals than for a government to determine what is possible through legislation. Of course now insurers are being condemned for

that it will really work like that. Probably mainly young, relatively healthy people will change health care provider, whereas people with chronic illnesses, for whom good health care is much more important, will not do that for reasons of loyalty. I would have been happier with a system whereby the insurer acts as an 'agent' for individuals. Look what's happened with physiotherapy – in the Netherlands it's been liberalized, and the result is that the highest number of people in the world receive treatment for their backs.

Tjong Tjin Tai: What I'm worried about is that we'll get a race to the top, with insurers only opting for the best hospitals and no-one wanting to go to mediocre hospitals any more. We can't have that.

Friele: What is crucial is that insurers will purchase care in a much more targeted way. The need to do that is not yet embedded in the system, for instance because hospital can also treat patients covered by insurers with whom they do not have contracts. It's now up to the insurers to shape the market forces.

Corine Schouten

'sitting in the doctor's chair', but they have to. Doctors often don't think in terms of budgets.

Friele: A different matter is that as citizens we have also been given responsibility for the whole system, since we have to choose, and that is supposed to make health care providers work more efficiently and deliver higher quality. At least, that's the theory behind the policy, and there are great expectations for it. But as yet there is little evidence

'It is crucial that insurers purchase care in a much more targeted way'

ple smoking and saying 'later I'll go on oxygen'. People don't realize what the consequences are.

Friele: Unlike 30 years ago the choices we're faced with are now explicit. And those choices can be very complicated.

Tjong Tjin Tai: The more you provide for as a state, the more people rely on that and push the boundaries. I see the same mechanism with my son. And the more respon-

COLUMN

Tranzo's contribution to patient self-reliance

By Joël Gijzen, Care Director of Health Care Insurer CZ

Patient self-reliance is a valuable asset. When health insurers say this it is often misinterpreted. 'Self-reliance doesn't cost anything, that's why those insurance people are so keen on it...', people on the sidelines often say. These 'opinions' impact on our very roots – our non-profit character. The gain we are keen on is health gain. And the heart of the real competition for health insurers is to be able to offer our customers more health gain with the – limited – financial resources budgeted by the government.

As health insurers, we have two axes of approach in our attempts to create additional health gains: the first is subjective health gain, the other is objective health gain. Classic health economics focuses mainly on objective health gain, which can be expressed in a multitude of parameters. For us subjective health gain is about the extent to which individuals and patients themselves perceive improvement of health.

CZ wants to improve this subjective health situation as well – for instance for people who will not get better, are chronically ill or have a disability. Even if support in their life situation and care process is often not aimed at recovery. Activities of this kind are regarded as 'informal care', as a counterpart to (funded) formal care. This informal care, which is often focused on enhancing the patient's self-reliance, is of inestimable value both to the individual in his or her perception of health and life satisfaction and to the community as a whole. Just think of all the billions that would be needed if patient self-reliance were massively undermined. The health care market has seen these opportunities in the market and big groups will devise clever applications to support individuals in a wide range of aspects of everyday life

– things aimed at compensating for the difficulties arising from disease or disability or resolving them with the help of technology and IT.

However we look at it, the new technologies and services offered will undoubtedly cost money – and money is scarce in health care and is becoming even more so. Of course the providers of these services and products claim that this is a capital-deepening investment – and as a health insurer how could you say no to that?

In this framework Tilburg University's health care institute Tranzo can offer academically sound research findings to support health insurers and help them to make choices – enable them to opt for sound investments that will really improve patients' health and life satisfaction. This allocation function in health care, which we see as the primary justification for the existence of health insurers, should be based on the latest evidence-based insights relating to efficacy and cost-effectiveness, and specifically the right balance between the two.

Apart from the research facilities an institute like Tranzo has, it is important that the institute is an authority acknowledged by society, beyond any suspicion of vested interests, image issues or preoccupation with the latest trend...

PUBLICATION

Why people sometimes make irrational choices

The trend towards liberalization, privatization, deregulation and shifting risk to the individual means that more is now left to market forces. Health insurance, energy suppliers, life-course savings schemes – in all sorts of areas individuals are now supposed to make well-considered choices. Often it is assumed in such cases that so long as people are provided with sufficient information, they will then choose the option that best matches their preferences. This approach is based on the ‘rational choice model’: if people are properly informed, they will make well-considered choices. But behavioural scientists question this. Not only are cognitive skills at making choices limited, but preferences are sometimes inconsistent and often people lack the willpower to execute the choices they have planned. Moreover, many choices are made unconsciously, so that they cannot be influenced by information.

Take lack of willpower. Many people say that having a slim and fit body is important to them and that they therefore want to eat more healthily and exercise more, but their behaviour is not always in line with this. According to the classic theory the conclusion would be that this ‘injudicious’ behaviour is evidently what these people really want, and that good intentions are irrelevant. However, according to behavioural economics this is a problem of willpower, say Tilburg behavioural economists Henriëtte Prast and Jan Potters. What people say really is relevant, and what they do is not necessarily what is the most beneficial to them. This perspective is not only helpful in the domain of healthy behaviour, but may also help to clarify why – for instance – financial information leaflets seldom contribute to prudent financial management. Behavioural economics makes it clear that in both areas people can benefit from assistance with ‘self-binding’ strategies.

Behavioural economics also offers insights which help to clarify prosocial behaviour. Models based on behavioural economics pay more attention than the rational choice theory to the empirical observation that people really do care about benefiting other people. Another important finding is that financial incentives and persuasion to promote prosocial behaviour can have a predictable adverse effect. For example, if blood donation is made financially rewarding, the consequence may be that fewer people opt for this altruistic behaviour. The reason is that financial incentives seem to change disinterested behaviour of this kind into a business transaction, driven by self-interest. The result is that the intrinsic motivation is undermined.

From W.L. Tiemeijer, C.A. Thomas and H.M. Prast (eds.) De menselijke beslisser. Over de psychologie van keuze en gedrag [The Human Decision-Maker: on the Psychology of Choice and Behaviour], Amsterdam University Press, Amsterdam 2009. This report is part of a project initiated by the Scientific Council for Government Policy and led by Tilburg professor Henriëtte Prast about the significance of the psychology of choice and behaviour for politics and policy. In 2011 a book by Henriëtte Prast on this topic will be published. It will contain both a ‘diagnosis’ based on behavioural economics and policy recommendations for the Netherlands.

The rise of homo economicus

Migrants in times of globalization and a receding welfare state

Because of the receding welfare state, citizens will increasingly be thrown back on their own resources. Self-reliance is the creed that will apply to everyone.

But groups which are more dependent on government provisions will have a particularly rough time.

Migrants and their children will be hit harder than others. Where does this dependency come from? And what can they do to acquire a better position?

Migrants are over-represented in benefit applications – more than might be expected on the basis of their demographic statistics in comparison with the indigenous population. According to Jan Blommaert, Professor of Language, Culture and Globalization and director of Babylon, Center for the Study of the Multicultural Society, there is no doubt that they are major consumers of the welfare state. “The reason is that they originally came to work in specific sectors such as the production industry. Then they were unable to cope with the transition of those sectors to a service-based economy. They have also failed to benefit from the economic growth of the past fifteen years. Now that the provisions of the welfare state

are up in the air – pensions, care services and benefits for example – this group will be hit disproportionately hard.”

HOMO ECONOMICUS

The welfare state’s formal manifestations of solidarity are now disappearing and increasingly people’s claims to provisions are individualized and made subject to conditions, says Blommaert. He calls this a ‘risk community’, in which to an increasing extent individuals have to manage their own lives by means of risk control. Rights and obligations will now be organized on a neo-liberal basis in the context of the free market. According to Blommaert, claiming entitlements will be a matter for the private sector. Until recently individual citizens

had a number of inalienable rights and obligations. The state was there to safeguard those rights and obligations. But now the welfare state has become a matter of costs, not of rights, says Blommaert. The individual citizen has become an economic concept; homo classicus has evolved into homo economicus.

This applies even more strongly to a migrant, whose main objective in leaving his or her own country is economic: he or she is looking for a better life, a better job and more opportunities. Blommaert: “Migration deprives you of your basic rights, makes them conditional. There is only room for you in the immigration country if you can make yourself economically useful. Someone who applies for a residence permit or asylum renounces full social and political rights by asking for recognition as a purely economic subject.”

Since migrants are among the most vulnerable people in the community they may have to ‘privatize’ themselves, says Blommaert. Their own lives will become ‘businesses’ – they will develop their capabilities in such a way that they become interesting to the market. “Who is perfectly mobile? Someone who is no

longer dependent on the state. If people cannot manage that, they are reduced to matter – to mere production tools, and there is no shortage of those.”

Blommaert points out that a trend of this kind will obviously lead to more poverty with all the ensuing consequences: more crime,

“Migrants may have to ‘privatize’ themselves”

more unsafe streets, and possibly even epidemics and costly diseases like tuberculosis, which is now cropping up again occasionally in Europe after being absent for years. “There is a price tag attached to abolishing the welfare state and adopting neoliberalism.”

CATCHING UP

Professor of Labour Economics Jan van Ours is less pessimistic about the future of migrants, and particularly of their children and grandchildren, in spite of the crumbling welfare state. Second and third generation migrants are not doing at all badly in the labour market. This has a lot to do with the ageing population and the shortage of workers, but also with increased training levels.

“Unemployment is strongly related to level of training in combination with age. The first generation of migrants were recruited to work in certain sectors where hands were needed rather than minds. Training and language skills were not relevant then. Economically this group

has lagged far behind: 70% of the older men of non-Dutch descent are working, whereas that percentage among men of Dutch descent is over 90%. But my figures for young non-Dutch people show that from 2004 onwards the labour market position for migrants in particular has improved spectacularly. Many more young people from migrant backgrounds have found jobs. It is clear that they are catching up: employment among young non-Dutch people is almost at the same level as for low-skilled Dutch people. They have been able to benefit from the shortage in the labour market. The recent downturn of the economy has not reversed this trend.” Nevertheless, in recessions people with fewer skills have a hard time across the board. Low-skilled people are the first to be dismissed. This applies particularly to migrants, who have often been the last to arrive and now, with short-term contracts, can be let go more easily. Apart from their

“From 2004 onwards the labour market position for migrants has improved spectacularly”

lack of training, migrants are also handicapped by language deficiencies.

Although young people from migrant backgrounds have been catching up in recent years, they still do not have the overall high level of training of the indigenous

population. Approximately 20% of men of Dutch descent aged 25-34 have low skills, whereas among men of migrant background this is nearly 40%. Thirty-five per cent of the ethnic Dutch men have higher education, as opposed to only 15% of men with a migrant background. Higher education not only leads to a higher salary, but also to a higher chance of getting a job.

Until recently we would have said it was the task of the government and the welfare state to help these people move forward by stimulating them to pursue higher education. But according to Van Ours research has shown that the success of some individuals from migrant backgrounds is not due to government policy, but to their own efforts. Some of them even think that government intervention is counterproductive, because it makes it look as though migrants succeed in spite of themselves.

Van Ours: “Recovery of the economy and shortage in the labour

market will ensure that migrants are sorely needed. That will provide a better remedy than any specific policy whatsoever. It will be the solution at least for some integration problems.”

Tineke Bennema

RESEARCH PORTRAIT

EU gets closer to the public

Name: **Simona Constantin**
Position: **PhD student**
Department: **Department of European and International Public Law**
Research: **Subsidiarity**

“I think it’s fascinating to see that we still have a common European framework, even though the subject matter is very complex because so many different interests have to be taken into account.

My research focuses on European law, but it is interdisciplinary and has a lot of common ground with political science and philosophy. This close collaboration between the various disciplines was one of the reasons why I wanted to come to Tilburg University. I am studying the operation of the principle of subsidiarity in the EU; this principle applies to the political and legal relationship between the central authority and lower authorities. Basically the principle of subsidiarity means that a central authority should not introduce and implement any laws or decisions where lower authorities can do that themselves. It is better to let the member states manage their own affairs as much as possible. For laws to be implemented and to operate efficiently you need to be as close as possible to the public. You can only achieve a better result in implementing laws if you involve everyone.

This idea became particularly popular after the EU’s central decision-making processes were criticized. The principle of subsidiarity was laid down in the Maastricht Treaty of 1992. The member states thought it was a good idea for the public to be consulted before a decision-making process got underway. More attention also needed to be paid to the

separate views of minority states, which sometimes disagreed with a majority decision. One example is the referendums held about the constitution. Another example of a way to involve the public more closely in the decision-making process is the blueprint now being developed for an ‘own-initiative proposal’. The idea is that if a minimum of one million citizens from various countries have a joint proposal, they can submit it to the European Commission to be drafted as legislation.

But within the EU it has not been laid down how far the authority of the member states goes in relation to the European Commission and Parliament. The exact details of the legal concept of subsidiarity have not been determined. My research focuses on two areas – in the first place, inter-institutional dynamics. The European framework is not always clear, nor are the criteria for who does what. The outcome is therefore determined by the political balance of power.

In the second place I am investigating how legislation operates in practice. So far most of my research has been empirical. Sometimes laws work well, but sometimes political circumstances make them difficult to implement. If there is no political will to implement a decision, it will not function. Subsidiarity is far from well defined.” [TB]

RESEARCH PORTRAIT

Policy on young disabled people: still at the forefront

Name: Irmgard Borghouts
 Position: Senior Researcher
 Institute: Reflect: Research Institute for Flexicurity, Labour Market Dynamics and Social Cohesion at Tilburg University
 Research: Integration and mobility in the labour market

“The Dutch programme to support young disabled people in the labour market (set out in the Young Disabled Persons Act = Wajong) is fairly unique; nowhere else in Europe is this group separated from the wider group of people with disabilities. This means we have a better idea of the group, which is in the interests of designing new policy and the effectiveness of that policy. The Wajong scheme consists of a benefit and assistance in finding work on the basis of the young disabled person’s capabilities, for instance through a three-month trial placement.

The study of various systems Frans Pennings and I carried out showed that all over Europe employers are hesitant to employ disabled people. But when they do employ them, they are more likely to do so again. In our report we advocate good supervision and information provision, both for the young disabled people and for the employers. The employers need to know what they are taking on: for instance, an autistic person can perform certain tasks very well, but needs a lot of structure. Others may need coaching. Clear agreements are also needed about productivity on the shop floor. Ultimately the most important thing is to achieve an optimal match between employer and employee.

In my own environment I have also got to know people with disabilities and that gives me extra motivation. I now know how much is involved, for these people’s partners as well. The more I know about these

problems, the more it interests me. But I remain objective in my research – that is really about facts. When I get angry, as I did today when I read in the paper that social services want to abolish the Wajong programme and incorporate it into municipal services so that there would be just one arrangement for people far removed from the labour market, then I join the public debate.

Of course I understand that costs have to be cut, but first we should take a good look at the group in question. Young disabled people are dependent on their own motivation and that of a potential employer, and on the extent to which they have the capacity to take on a job, but also on the opportunities they get to prove themselves. Those opportunities are still scarce, particularly as regards long-term employment contracts. But from an international perspective the Netherlands is not doing at all badly. In my opinion we can’t just throw away what we’ve achieved. Let the programme do its job properly first; the effectiveness of the scheme has hardly been measured at all yet.

In my current research I focus on helping people to move from one job to another, for instance people who have lost their jobs through the economic crisis. They have a different status in the labour market than young disabled people, because they already have some work experience. But later – if the occasion arises – I will be able to use the knowledge I gain from this project to help young disabled people.”^[CS]

Customers benefit from simple banking products

As recent events have made painfully clear, banks do not always have the best intentions towards their customers. But in times of crisis they get the government to bail them out. How can we get banks to make more provisions for their customers? And what can consumers themselves do to accumulate wealth safely? Tilburg Research asked Henriëtte Prast, Kees Koedijk and Thorsten Beck..

To ensure that that banks are better equipped to cope with extreme circumstances such as the recent bank crisis, in September regulators from around the world agreed to the Basel III capital requirements. Under this agreement, banks

will have to hold much larger capital buffers. Previously they only had to have capital reserves of 2 per cent of their outstanding investments. This will now be 7 per cent (4.5 per cent hard reserve and 2.5% extra margin in hard times). However, they

‘It seems that in too many cases banks abuse consumers’ irrationality’

will have until January 2019 to get to that point. A step in the right direction, in the opinion of Kees Koedijk, Professor of Financial Management at Tilburg University. “Only I would have preferred this system to be introduced sooner. Banks have become much too vulnerable in recent years.”

CAPITAL BUFFERS ARE NOT ENOUGH

According to Thorsten Beck, Professor of Economics and Chair of Tilburg University’s European Banking Center, bigger capital buffers alone are not enough. “In view of the interaction between different banks and the overall credit cycle, macroprudential regulation is important. Furthermore, failures of banks will continue to happen.” Therefore, efficient resolution plans are necessary. “Liquidating large banks through the standard insolvency process is not an option, given the negative repercussions of a prolonged bankruptcy proceeding for the rest of the sector and the overall economy. Being able to intervene early to avoid further loss and being able to split a bank and sell the good part to another bank (even one outside the Netherlands) are important options for regulators to have.”

According to Koedijk it is at least equally important for banks to change their culture. “Banks must shift from being supply-driven to being demand-driven. It is very important for banks to tighten up their ethical guidelines. An example: for years very complex products have been sold to consumers, who understood much too little about them and did not realize the risks they were taking.” The share lease case and later the profiteering policy case are examples of the excesses this can lead to. “I think that a bank

‘Higher financial literacy is critical for consumers’

that offers simpler products, consisting of simple building blocks, will attract many customers in the future.”

COMPLEX WASHING MACHINE

Complexity does not automatically mean that a product is risky, however, says Henriëtte Prast, Professor of Financial Planning at Tilburg University and member of the Supervisory Board of the regulatory body the Netherlands Authority for the Financial Markets. “The machinery behind the control panel of my washing

Five lessons we can learn from the DSB debacle

Kees Koedijk, Professor of Financial Management at Tilburg University, is a member of the Scheltema Committee, which is investigating the course of events leading to the fall of the Dutch DSB Bank in 2009. In late June 2010 the Committee presented its final report, in which it made the following recommendations to lower the risk of similar events in the future:

- Banks must specify how they are planning to safeguard their customers' interests and the public interest. The financial world is changing rapidly and becoming increasingly complex. This makes it impossible for the government and regulators to set out in legislation and guidelines how a bank must act in every situation. The banks themselves should have greater responsibility.
- The legislator and regulators must be given opportunities to call banks to account with regard to their quality and professionalism. Testing only for standards such as liquidity and solvency is not enough now that the financial markets have become so complex. Corporate governance must be a core component when a licence application is considered.
- Greater disclosure of details relating to bank regulation is desirable. The Financial Supervision Act (*Wet op het Financiële Toezicht*) is opposed to this for reasons of confidentiality. As a result we have no access to major insights gained by banks which – unlike the DSB – have not broken down.
- An investigation should take place as to whether inciting a bank run can be made a punishable offence. On 1 October 2009 Pieter Lakeman, Chair of Stichting Hypotheekleed [Mortgage Distress Foundation], called on DSB customers to withdraw their funds from the bank.
- Dutch regulators DNB and AFM must monitor media coverage of financial institutions more closely, in view of the heavy impact complaints and media attention can have on the survival of a financial enterprise.

‘Banks should be more sensitive to the customer’s goals in life’

machine is also very complex. That doesn’t mean I have to go back to using a washtub. The most important thing is for customers to know what they can and can’t expect from a product. There’s a lot of room for improvement there in the financial world.”

According to Prast it seems that in too many cases banks abuse consumers’ irrationality. “For instance by luring customers with a high savings interest rate and then very quietly lowering that rate. Or by making it hard for customers to pay off consumer credit. These days you can set up anything through internet banking, but to close a consumer credit account you have to go to the bank during office hours.”

Consumer confidence in financial institutions has dropped considerably due to the bank crisis. “Banks now really need to show that they are going to tackle the problems through strong self-regulation,” Prast argues. The Bank Code introduced on 1 January 2010 was a good start. In

this code banks themselves have made agreements about matters including remuneration policy and risk control. “Regulators must monitor this properly.”

CONSUMER’S OWN RESPONSIBILITY

But consumers also bear a great deal of responsibility when it comes to organizing their own financial affairs. Thorsten Beck: “It is important for customers to be capable and able to compare financial products and services. Higher financial literacy is critical for consumers and here the role of consumer protection agencies (both public and private) and even academics is important. Being transparent about products and their risk is crucial and more enforcement is needed in this respect.”

However, Henriëtte Prast puts the impact of good information and education into perspective. In recent years she has done a great deal of research on how people make financial choices. “We have found that more information has very little effect. The fact is that consumers make unwise choices, such as not saving enough for retirement. This is due not so much to lack of information as lack of willpower. Secondly, making the best financial choices when risk is involved is much too complicated.

Providers should make sure that when they develop products it is clear what they are offering the customer – not how it works.”

SELF-KNOWLEDGE

According to Prast it is very important for banks to take customers’ characters into account when providing information. “For instance, you can recommend a maximum mortgage to a customer because it is financially attractive, but if the customer is someone who doesn’t save what’s left over but spends it, that is not a good choice for that person. Just as you shouldn’t buy a kilo of liquorice if you know you’re going to eat it in one go, even if it is cheaper than buying 100 grams ten times.”

Kees Koedijk thinks that consumers should dovetail their financial choices more closely to what they really want and need in their current life phase. Banks should be more sensitive to this when giving advice. “Money should not be the motivation, but the customer’s goals in life. The present financial crisis is not only a financial crisis, but above all a crisis of value. Banks were not focusing sufficiently on the value they were offering their customers.”

Heidi Klijsen