

Conference “Activation” Policies on the Fringes of Society...” in Nuremberg 15-16 May 2008

On the Right to Participation in Activation Processes in Three Nordic Countries.

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Summary

The trend to involve clients in the decision-making concerning their own case raises questions about the consequences of this development for the position of the recipient of social services. The paper examines the legal provisions on the right to participation in Denmark, Finland and Sweden and the conditions of implementation of such provisions in general. The author concludes that offering the client an opportunity to exert a real influence on decision-making requires a policy of implementation ranking high on the agenda of the officials. This policy should include the elaboration of criteria which can be used to determine an adequate level of participation.

Introduction

At the end of the 20th century there was a shift in social policy in a number of western countries. One important development was the redistribution of tasks between the public and the private sector. Another move was the introduction of so-called active social policies, which chiefly target recipients of unemployment benefits and social assistance. In some countries activation has also been introduced in social welfare for the disabled. Activation policies require the client to be active in order to obtain gainful employment, improve his employability or his quality of life. The beneficiary has an obligation to look for a job and to participate in job-seeking programmes, training courses or other activation measures. Usually there are sanctions attached to the participation duty of the recipient. The activation approach implies that the client also has an active role in the processing of his case by discussing his situation and options with front line decision-makers and by contributing to the proceedings in other ways. Such participatory elements are not confined to activation legislation. In some countries, e.g. Denmark, Finland and Sweden, legal provisions confer a general right to participation on the clients of social services. The enactment of these provisions in the three countries was inspired by a political will to strengthen social citizenship and to counterbalance the dominant position of the officials in the power relations between the client and the social services. The drive towards participation has been supported by another school of thought advocating certain neo-liberal ideas. According to these views citizens in need of social services or benefits are

primarily users or consumers who have the right to put forward demands concerning the way their case is dealt with and other relevant matters.¹

Both discourses included a conception of empowerment, a device which can be used to fulfil the goals of participation but may also be construed as a process intended to turn the decision-making power over to the client. Empowerment and participation have been a subject of political and theoretical debate for several decades and have to some extent been applied in social work.² They can be used to improve the implementation of the rights of the claimant of social services by increasing his awareness of these rights, by enabling him to defend his interests efficiently and by allowing him to propose alternative solutions. The purpose of this paper is to examine the factors affecting the implementation of participation norms and to conceive ways to improve it.

Participation

Delimitation of the Concept

Participation (or user involvement) is a broad concept. Clients may participate in the proceedings concerning their case for example by:

- giving information and being informed
- being consulted
- being directly involved in the elaboration of the decision on a co-operative basis
- being allowed to use delegated power.

Moreover, the participating clients may act as individuals or collectively. They may be voluntary or involuntary users, long- or short-term recipients and actual or potential clients.³ Here I shall concentrate on individual claimants of social services or social assistance and use Denmark, Finland and Sweden as examples. Participation as a concept is closely connected with empowerment and individualisation. Empowerment presupposes participation. The term empowerment has different meanings, which partly overlap with those of participation. It is often used in a stronger sense than participation, as delegation or transference of power, and refers more frequently than participation to an outcome and not to a process. As a process it is usually associated

¹ See e.g. Braye and Preston-Shoot, pp. 26-27; Slettebø, p. 78; van Berkel and Valkenburg, p.13.

² See e.g. Barry and Sidaway, p. 14.

³ See Barry and Sidaway, pp. 17-20; Julkunen and Heikkilä, pp. 88-90; Slettebø, p. 78.

with enhancing self-esteem, skills and critical awareness.⁴ Participation generally requires a certain degree of individualisation as the client is encouraged to put forward his individual wishes.

In this paper I shall examine participation within the framework of decision-making involving a client and the officials dealing with his case. I shall leave aside popular movements and collective activities intended to influence this decision-making directly or indirectly. Moreover, I shall use the concept of empowerment (unless specified otherwise) only as a subcategory of participation indicating its highest level, i.e. a redistribution of decision-making power in favour of the client.

Participation in the legislation of Denmark, Finland and Sweden

If we start with the weakest form of participation, i.e. the right to information on one's own case, we can note that there are generous legal provisions on access to information in all three countries. More importantly, in Sweden the 2001 Social Services Act demands that the social services should work out and carry out measures concerning an individual together with him. The same Act lays down that the action of the social services should be based on respect for the self-determination and the integrity of the people involved. With regard to activation measures the Act stipulates that these should be decided taking into account the recipient's individual wishes and abilities to an appropriate extent.⁵ The Act does not specify what these rather vague formulations mean. According to a legal commentary of the Act the statutory co-operation between the social services and the client does not imply that he is entitled to a certain service or measure of his choice. His options depend on the alternative resources made available by the local administration.⁶ Otherwise the interpretation of the provisions concerned is left to the implementers – principally the front line decision-makers. The data on the implementation of the provisions point to a low level of implementation or implementation deficit.

⁴ See Barry and Sidaway, pp. 14-20; McKenzie, p. 197; Miley and DuBois, p. 3.

⁵ See chapter 1, section 1, subsection 3, chapter 3, section 5, subsection 1 and chapter 4, section 4, subsection 2 of the Social Services Act (2001:453).

⁶ See Norström and Thunved, p. 67.

In a survey⁷ of the development of the social services in Sweden the National Board of Social Welfare notes that increasing the client's influence is one of the priorities of the legislator. The Board hints that user involvement is often nothing more than rhetoric in the area of social services and demands that it should be defined more precisely. The Board specifies that the client should have the possibility to influence the planning, decision-making and evaluation of social services. The Board regards user involvement and the individualisation of decision-making as means to strengthen the position of the client and wants to integrate user involvement in quality requirements and in programmes organised to improve the competence of the staff. The survey also refers to certain negative developments in old-age care such as shortage of labour and increase in workload, which reduce the client's opportunities for communicating with the people taking care of him and for influencing the service he is receiving. Also some problematic issues raised by user involvement are mentioned. One of these is the imbalance in the power relations between the client and the official which can be changed by legislation but never be eliminated. Another problem is that user involvement may lead to favouring certain categories of claimants who have a strong position, at the expense of the clients who are most in need of help. Furthermore, offering many alternative solutions to the recipient may require an overproduction of services. Another publication, a study concerning local activation programmes arranged in Sweden in 2002 showed that in many municipalities the programmes did not take the individual wishes and abilities of the participants into account.⁸

The implementation deficit is still better documented in the case of Denmark. The relevant piece of legislation sets securing the citizen's rights and influence as one of its goals in regulating the decision-making of the social welfare administration. This is further developed in a legal provision stipulating that the citizen should have an opportunity to participate when his case is being processed and that the municipality should arrange administrative proceedings in such a way that this can be realised. The implementation of this legal provision was the subject of a study published by the Danish ministry of social affairs. The study established first that the provision has an individual and an organisational aspect. Moreover, it specified that the client's right to participate "when his case is being processed" relates to the proceedings taking place

⁷ See Socialtjänsten i Sverige. En översikt 2003, pp. 246-262.

⁸ See Salonen and Ulmestig, p. 89.

before a decision is made and does not allow him to take part in drafting the decision itself.⁹ The research material of the study included social services organised by the local authorities for children and young people, adult disabled persons and the elderly. It was carried out from 2002 to 2004.

The results showed that the elected officials and the regular staff working in the local social services did not know or knew only vaguely the legal provision on participation. However, they assured they were in favour of the principle. Those in a leading position were confident that their subordinates would take care of applying the principle as a matter of course. The front line decision-makers again considered client involvement to be a part of professional ethics rather than a legal obligation. Many of them declared more in general that they did not want to formalise their relations with their clients by introducing legal elements. In their view this would lead to an adversarial relationship between the client and the front line decision-maker instead of an advantageous co-operation. They thought they gave their clients sufficient opportunity to participate, but this claim was refuted by the latter.

The study established indeed that client involvement ranked low on the priority list of the front line workers. In contrast to other client-related questions they did not discuss it with their colleagues. The officials focused on material questions and wanted to preserve their liberty of action and wide discretionary powers. They conceived of their professional role as centred on helping clients, implying that they could decide on whether the client's participation was relevant or not. However, they also had a pragmatic approach to participation in the sense that they would not allow it e.g. when they had no time for it or when the client was troublesome. The authors of the study justly remarked that these were typical bureaucratic coping strategies corresponding to the findings of Michael Lipsky. They argued that the practices pursued by the front line officials negated the fact that participation is a right and instead made it conditional on their discretion. The (paternalist) professional attitude adopted by the officials

⁹ See section 1, point 1 and section 4 of the Act on Legal Security and Administration in the Social Field ("Lov om retssikkerhed og administration på det sociale område" - LBK nr 56 af 18/01/2007). Moreover, in the legislation on activation there is a provision according to which the client's wishes and abilities should be taken into account when activation measures are considered – see section 15 of the Act on Active Employment Contribution ("Lov om en aktiv beskaeftigelsesindsats" – LBK nr 685 af 29/06/2005). In Denmark the participation principle is also called "dialogue principle" – see Ketscher, p. 317.

See on the implementation of the participation provision the study "Undersøgelse af retssikkerhedslovens § 4", p. 6. In the following I shall no longer refer separately to page numbers in the study.

weakened the position of the client and undermined the implementation of the participation provision. Unfortunately the front line workers viewed this matter in the opposite way. From their perspective they tried to build an informal relationship based on trust and to facilitate this process by avoiding referring to the law or to their official capacity. This was counterproductive because many clients stated in interviews that they were uncertain of their position and wanted full information on their rights and on the power relationship in which they were engaged.

The study also included proposals to improve the implementation of the participation provision. As the organisational culture prevailing in the social services was identified as a negative factor this should be changed by the superior decision-makers. Participation and other legal security goals should be made important priorities to be realised in practice by the front line workers directed by their immediate superiors. Guidelines and models of processing cases are some of the methods which could be used to achieve this. Moreover, systematic follow-up should be organised with feedback to the top-level local authorities. The legislation concerning specific social services could be complemented by legal provisions ensuring the implementation of the participation requirements and other procedural safeguards. This should be combined with a considerable increase in resources. New legislation could also oblige the local authority to draw up and approve regularly a report on the results of the implementation measures.

In Finland the Constitution enjoins the authorities to promote the citizen's possibilities to influence decision-making which concerns him. Under the so-called Client Act the social services should give clients the opportunity to participate in and influence the planning and realisation of the services they receive. The recipient's individual needs, wishes and opinions should be taken into account and his right to self-determination respected. This Act also applies to activation organised by the local authorities together with the national employment service.¹⁰ Apparently there are no data available on the implementation of these legal provisions (except some preliminary information concerning activation legislation).

¹⁰ See article 14, section 3 of the Finnish Constitution of 11 June 1999, section 4, subsection 2 and section 8, subsections 1-2 of the Act on the Client's Position and Rights in Social Welfare (2000/812).

General Remarks on the Right to Participation and its Implementation

As a right participation reflects the indeterminacy of social policy and its implementation. Its purpose is to increase the client's influence on decisions concerning his own life and even (in the case of Sweden and Finland) to promote his self-determination. Yet the legislation reserves the ultimate decision-making powers for the officials. This is logical because the officials are accountable for their action to their superiors and to the public at large. To understand the meaning of participation we need to examine the complexities of decision-making. Indeed, the implementation of a participation provision is entangled in the conditions of implementation of the other legal provisions with which it has an interface. The rationale of participation is to introduce or strengthen democratic elements in decision-making or to assert the role of the client as a consumer, as was indicated above. Real participation presupposes that the client gets adequate information on all possible alternatives and on the consequences of his choice. He should be allowed to influence the planning of the measures concerning him or to change their contents. Furthermore, he should have an opportunity to consult an adviser and be given time to make up his mind. Ideally, he should be permitted to try out different alternatives. It is obvious that authentic participation puts heavy demands on the administration, and the same applies to genuine individualisation, which aims to adapt services to individual needs and preferences. Both arrangements call for flexible decision-making supported by considerable resources.

As a formal device contributing to the appropriate implementation of social or other material rights participation is connected with other procedural rights, e.g. the right to access to information, the right to be heard and the right to have one's case adequately examined. The right to participation has still other functions. It is part of a form of governance and legitimises decision-making institutions.¹¹ These institutions, however, generate various constraints on decision-making, for example financial limitations, efficiency requirements and the demands of organisational culture and professional practices. These factors are, in turn, influenced by current political trends, topical issues raised by the media, prevailing views on social policy, the attitudes of individual decision-makers, and so on. Moreover, the social policy discourse is beset with moral

¹¹ See Borghi and van Berkel, pp. 6-7; Julkunen and Heikkilä, p. 99.

questions. One of these is to what degree society should support people who are unable to be self-sufficient. Which people deserve to be supported and which people don't and under which circumstances? Legal provisions stipulating that those in need of support should also be given the opportunity to influence decision-making may increase the legitimacy of providing and receiving social welfare but do not determine to what extent assistance should be made available. The legitimising effects of participation can be counteracted by a restrictive interpretation of other rights. In the case of activation programmes the scope of participation may be restricted by providing only a small number of measures or reducing the quality of their contents.

Furthermore, one of the main features of activation is to increase the obligations of the recipient and therefore his participation in the decision-making process is easily reduced to little more than giving information.¹² It is true that, from another perspective, activation may also be conducive to empowerment in the sense of enabling the beneficiary to cope with his difficulties by providing him with resources and offering him opportunities to solve his problems. Activation focuses on the client's strengths instead of on his weaknesses. Hence the dynamics of activation and participation aiming at empowerment may coincide. It is also possible that this movement goes in the opposite direction in situations where the client is unable to meet the requirements of the activation measures and is disempowered by his failure. Another deterioration of his position may occur when he is penalised because of non-compliance with his activation obligations. Moreover, the mode of participation or empowerment offered to the client (not only in activation programmes but also in other contexts) may have a regulatory or paternalist bias. His possibilities to exert an influence may be conditional on fulfilling the expectations of the officials (e.g. to accept low-standard services) or on his willingness to live in conformity with majority values.¹³

The communication and interaction between the official and the client tend also to affect the implementation of participation norms. According to one scenario the official presents the elaboration of a decision tentatively and encourages the client to express his views. A decision-maker following a second scenario, on the contrary, sets the agenda based on a pre-established pattern of decision-making which is taken for

¹² See Borghi and van Berkel, p. 18.

¹³ See Beresford, p. 269.

granted. In a third scenario the front line worker only pays lip service to the principles of user involvement and adds adequate information to the dossier just to fulfil some minimum requirements. The negative attitude of an official will inevitably affect the client's behaviour and his perception of his possibilities to influence decision-making. Clients, for their part, may respond in different ways facilitating or obstructing participation. They may be unable or unwilling to contribute to the treatment of their case, disagree with the official or try to negotiate.¹⁴ Even in the markedly imbalanced power relationship typical of decision-making concerning social services articulate or resourceful clients may turn the situation to their advantage.¹⁵ All these varying conditions and contingent elements make it difficult to determine what participation as a normative concept should include. To be effective participation legislation should be specific and be complemented by a policy of implementation as proposed by the Danish study referred to above.

Conclusions

Participation can be used to improve the implementation of social rights by actively involving the client in the proceedings concerning his case. This presupposes, however, that the implementation of participation ranks high on the agenda of the decision-makers. It also requires the elaboration of a policy of participation including criteria of adequate participation and the allocation of sufficient resources to realise this policy. In the absence of such a policy and of preferential treatment participation as an obligatory component of decision-making will not achieve the goals set by the legislator. This is due to the crucial role of implementation processes and structures and the key role of front line decision-makers, who have to put into practice competing policies with scarce resources.¹⁶ The consequences of leaving participation provisions unspecified depend on the action of the implementers. The front line workers tend to turn participation into various applications which may differ considerably from the objective of the legislator (thus creating an implementation deficit) and from each other (which amounts to infringing the principle of equality). Moreover, this increases the fragmentation of the legal system. One could call this only one of the forms of legal

¹⁴ See Braye and Preston-Shoot, pp. 109-111; Miley and DuBois, pp. 4-5.

¹⁵ See Ketscher, p. 319.

¹⁶ See Hill, p. 180; Tala, pp. 227-237.

pluralism¹⁷ but in practice this kind of fragmentation has certain negative effects. It diminishes the predictability of administrative action based on legislation, which is an important legal safeguard. Besides, it weakens the status of legislation as a democratic device protecting the rights of the citizen.

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¹⁷ See e.g. Mathiesen, p. 215.

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