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Stimulering en facilitering van burgerinitiatieven door de overheid: over de invulling van de 'dienende overheid' bij derde generatie burgerparticipatie

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SUMMARY

Government encouragement and facilitation of civic initiatives. On the interpretation of 'serving government' in third-generation civic participation.

In the participation society, citizens are given the possibility to take (joint) responsibility for the execution of public tasks. Throughout the country many (small-scale) projects can be found in which (groups of) citizens are active locally or regionally, in order to contribute to the solution, the fight against or prevention of a problem to which they attach a social value. For example, they take the maintenance of green spaces or welfare work in the neighborhood into their own hands in order to brighten up the street, to get to know each other better, or to give people who are distanced from the labor market a meaningful day's work. There are also citizens who run community centers or save the local swimming pool from ruin in order to ensure that these district or village functions, which are important to them, are not lost and that the quality of life is maintained or even improved. Increasingly, this also involves larger projects involving substantial (financial) interests. Local associations, for example, operate a windmill and invest the proceeds in local projects that deserve support, the neighborhood business helps local residents who are distanced from the labor market get a job or set up their own business, and the neighborhood care cooperative provides innovative, customized care that allows local residents in need of care to stay longer in their familiar surroundings. When citizens dedicate themselves to a task or interest with which they want to contribute to (local) society, this is often called a citizens' initiative.

Citizens who want to get involved of their own accord in social issues such as climate change, the quality of life in villages and neighborhoods, healthy and vital living and ageing can generally count on the general approval and support of (local) governments. After all, these are also issues to which the government, together with other parties, wants to contribute. Governments are therefore looking for forms to stimulate and facilitate these kinds of citizens' initiatives and to steer them responsively rather than unilaterally and directly. The idea here is that the initiative must remain with the citizens and not be taken over by the government, nor smothered in decision-making procedures, legal procedures and rules.

However, research shows that in practice it is difficult to support and facilitate civic initiatives. Both initiators and governments encounter different bottlenecks:

- I. Contact with government – Access to the administration and the internal government organization is often difficult for citizens who want to develop an initiative. Among other things, they find it difficult to find the right entrance, are regularly sent from pillar to post and encounter an (official) organization that is not set up for their way of working.
- II. Financing – The bottlenecks in financing civic initiatives have several facets:
 - a. The quick and smooth financing of civic initiatives is not an easy task within both procurement and subsidy law. Although there are a large number of subsidy schemes that citizens' initiatives can apply to, as a rule the schemes (specifically aimed at citizens' initiatives) do not offer sufficient financial resources, the application requirements do not match well, and they all have (slightly) different justification requirements. This makes applying, funding and subsequently accounting for a concrete plan by the initiators a difficult and time-consuming affair. When funds have to be distributed competitively because a public contract has to be tendered, the chosen distribution system requires this or competition has to be offered based on the jurisprudence of the Dutch (administrative) courts, citizens' initiatives often miss the boat. They find it difficult to come up with a promising plan, in part because, according to them, not enough account is taken of the social added value they provide.
 - b. Citizen initiatives are said to provide social added value. This social added value can take many different forms. Sometimes it involves concrete, measurable goals, such as guiding people with a distance to the labor market into paid work. But often it also involves consequences that are (related to this and) poorly measurable and financially assessable, such as increased self-esteem, greater social cohesion in a neighborhood, or a healthier lifestyle. Citizens' initiatives believe that this value should also be included in financing structures, such as obtaining contracts or real estate.
 - c. Initiatives seeking to claim care budgets such as those based on the *Wmo*, the *Wlz* and the Health Insurance Act have the additional complicating factor that these funds are managed by different budget holders, making it difficult to develop and fund integrated and prevention-oriented care and welfare initiatives.
 - d. Where initiatives engage in economic activities while being supported by public funds such as subsidies or favorable rental or purchase terms, there is a risk of distortion of competition.
- III. Support – In exchange for financial or official support, governments want citizens' initiatives to have support. Initiators themselves regularly claim that they know what is really going on in the neighborhood. It is difficult to demonstrate, substantiate and assess such claims.

- IV. Representation – The relationship between representative and participatory democracy does not have to lead to contradictions, but when representative bodies such as the city council and citizens' initiatives do face each other (substantively), it is a very difficult situation for both parties. This, despite the fact that representative democracy formally always has the last word.
- V. Liability – There are many liability questions among governments and promoters, which can lead to cold feet.
- VI. Legal entity law – Initiators experience legal entity law as a difficult search for a form that is and feels more businesslike than an association or idealistic foundation, but also distinguishes itself from the profit-maximizing *bv* and *nv*.

Research indicates that these bottlenecks cannot be eliminated in a regulation, but perhaps through the inclusion and elaboration of a service principle. It has recently been proposed to include such a principle in the General Administrative Law Act (Awb). This principle reads as follows:

“In performing its duties, the governing body shall render service”

From the fact that citizens develop initiatives, they experience the necessary bottlenecks in doing so and the government would like to facilitate them and support them, the following central research question follows:

“To what extent can a service principle in the Awb contribute to reducing the (legal) bottlenecks experienced by citizens' initiatives and, to that end, how could this principle be interpreted in the context of citizens' initiatives?”

Chapters 3 through 8 each focused on a bottleneck from the above list. We examined what the bottleneck entailed, what the relevant legal framework looked like, what solutions are already possible within the legal framework, and whether these solutions are workable for initiators and the authorities that facilitate them. It regularly emerged that although the relevant legal system was complicated, there were already possibilities for realizing the wishes and plans of initiators.

The proposed solutions discussed in chapters 3 through 8 almost all meet the bottlenecks as experienced by citizens' initiatives in some way. Thus, the first part of the central research question – To what extent can a service principle in the Awb contribute to reducing the (legal) bottlenecks experienced by citizens' initiatives? – can be answered positively. The next question is how the elaboration of this principle can be shaped in the context of citizens' initiatives. The solution directions from chapters 3 through 8 show that providing additional information will not reduce the bottlenecks. An interpretation of the service principle along these lines is therefore not obvious. However, good results can be expected from

adjustments that ensure that initiators and authorities can make better use of the possibilities that the law already offers (the so-called interface-approach). However, the greatest progress can be made when the government adapts its own practices, processes and frameworks. The thesis explored different ways in which this can be done.