

Summary

Claims at the courthouse, 1997-2000

In 1999, a working group of the Dutch Ministry of Justice predicted a growing number of cases of citizens suing each other, claiming increasing amounts of money. This process was due to take place inside as well as outside the courts. In a reaction to the report, Minister of Justice Korthals promised that this development would be monitored closely, so that appropriate steps could be taken when necessary. The WODC was asked to monitor developments concerning the demand for civil court decisions.

The research focusses on civil court cases with a financial value of 4525 Euro (10.000 guilders) or more, handled by the district courts' civil section. This section handles all types of civil cases, except family-, labour- and renting disputes. The research has looked specifically on tortcases and professional liability, in first instance. In these cases, the predicted developments should be more visible than in other types of cases.

This first report describes the developments between 1997 and 2000. It looks at the new cases that were brought to court between 1997 and 2000, and at cases that were settled in the years 1997 and 2000. The latter group contains cases dating back up to five years before the year in which they were finally decided (or settled otherwise). The developments on new cases has been monitored at 11 (out of 19) district courts. The developments in settled cases has been studied at 5 district courts.

Results

Within the timeframe specified, no growth in the number of cases was found.

The amounts of money that were claimed however, increased rapidly.

The median amount claimed rose from 11.881 to 22.624 euro.

The number of cases in which the judges decided a defendant had to pay, as well as the amount of money to be paid showed only a (very) small increase. The median amount that defendants had to pay rose from 9.372 to 10.569 euro (in cases with a judicial decision in favor of the plaintiff). This means a gap is growing between the amount of money claimed and the amount that actually has to be paid.

From these results, it can be concluded that between 1997 and 2000, a change took place in the claims that were brought to the courts. The fact that only a small increase was found in the amounts of money granted by the judges suggests that the change has not been in the severity of the cases or the actual damage that the plaintiffs had suffered. They're simply claiming larger amounts of money in the same type of cases. Just like in negotiations, parties seem to act in line with the idea that one has to claim high to get a good result. Along with this 'players attitude', the growing media attention for high claims may result in higher expectations.

This being said, the question is why this players attitude and higher expectations do not lead to a growing number of claims. A closer look at the claims show that most claims contain a number of smaller amounts, for different types of damages. Some of these amounts concern material damages that can easily be proved, others concern immaterial damages or expected damages that have not yet materialised.

Going to court can easily lead to a loss of money, since the plaintiff has to invest money, while in less than half of the cases studied the judge decides the defendant has to pay. In deciding to go to court, the plaintiff has to make sure that his claim contains at least some 'solid' elements. It is this evaluation that determines the number of cases that go to court. Once the decision to go to court is made the plaintiff can add a number of damages to his claim that may be less 'solid' (or just harder to prove), like psychological damages, damages to his reputation or an expected loss of income in the future. There is little reason not to give it a try, for it will not affect the judges decision on the more solid parts of the claim. The judge may reward some of these elements, or even all of them if the case remains undefended. For that reason, 'pumping up' the claim means that the expected gains rise as well, which makes it wise to do so.

For a full understanding of the 'claiming behaviour', one would have to take a closer look at the plaintiffs' intentions. Claims for damages may not really be about money; it's the legal codification that forces plaintiffs to put it that way. The true intentions may, for instance, be punitive, to put pressure, or to gain attention. In general, the court files studies reveal little of these instrumental or symbolic functions the claims may serve.