

Summary

Justice in better times

On the effectiveness of measures to accelerate civil proceedings

Subject of this study is the effectiveness of measures, taken between 1996 and 2003, to speed up civil proceedings in the Dutch courts. It focuses on the most troublesome segment in the caseload of civil sections of the Dutch courts in the 1990s: cases in which amounts of money exceeding 5.000 euros are at stake (as well as cases without any financial value specified), which are brought before the courts to undergo a full procedure. Halfway that decade nine courts participated in an experiment to accelerate these civil proceedings. This experiment inspired a program of nationwide changes in civil proceedings, implemented between 1999 and 2002. These include changes in the civil code, case management and an increase of the capacity of the courts.

The research design consists of measurements before and after implementation of said changes, and makes use of the 'spontaneous' variation that occurred in the nineteen courts during the process of implementation of the interventions. The courses of 25,000 court cases have been analysed in relation to the case characteristics, court characteristics and court policies. The design allows comparisons between (types of) cases, between (groups of) courts and comparison in time.

This design is an important feature of the research. It allows more thorough research on the effects of measures than has been provided by the classic civil delay studies in the past. Another difference concerns the environment in which the study takes place. While studies comparing courts in the USA have included courts from many states, bringing in variance in laws, legal institutions and legal culture, this Dutch study is concerned with courts within a unified system that can be considered as one legal culture. Given the problems faced in many delay studies in the past, this is an advantage: the results are less diffused by unwanted variation.

Developments in the Dutch civil court procedure, 1996 – 2003

In the early 1990's, most civil cases would undergo a 'paper trial': an exchange of written statements from plaintiff, defendant, the judge and possibly an expert, without any public hearing. The pace of the exchange was set through a master calendar. Each of the 19 courts had its own set of rules regarding the amount of time that could be taken for each step in the procedure and the conditions in which extra time would be allowed. In practice, this often lead to a very slow exchange of statements. A common strategy would be that parties play their cards one by one, saving the best ones for the last round. Normally, a procedure would start with two rounds of exchanges of statements, lasting at least 6 months. After those, a judge would review the case for the first time, and give instructions for the next steps to take. Defended cases, including those that would settle at

an early stage, would take 525 days (median; mean 700 days). About 10% of the cases would exceed 4 years; about a half percent would take more than 10 years. The common practice of lawyers asking for postponement and judges granting them more time seemed ineradicable.

In 1996, eight courts introduced an experimental procedure, which should put an end to the 'endless' delays. In this procedure a court hearing at an early stage becomes a central part of the procedure. Also, higher standards were set for the information provided in the first round of (written) statements. Parties would have to present all relevant information (their statements, evidence and witnesses) in the first round, thereby making a second round superfluous. This first exchange of written statements would be followed by a court hearing, in which judges would encourage parties to reach a friendly settlement. If such settlement was not reached, and the judge needed more information for a final decision, the next procedural steps would be discussed and planned with the parties.

Under the conditions of the experiment, parties would decide to have a case handled under the experimental code, thereby committing themselves to play by the rules of the experiment. The evaluation of this experiment showed that cases handled under the experimental conditions would be closed much faster than under normal conditions. However, only a small percentage of the cases had been handled under the experimental conditions, and the overall speed (in both experimental and non-experimental cases) at the courts participating did not improve. Whereas the experimental cases had been closed much quicker, the speed of handling in the other cases had gone down.

This finding could well be explained by selection effects: the courts that participated were generally the faster courts, the judges that handled the experimental cases were more experienced and 'quick' judges, the cases handled under the experimental conditions were cases in which parties wanted a speedy resolution. So the question remained whether the experimental procedure would 'work' if courts and judges not eager to speed up the process would participate, and cases would be handled in which parties had not chosen for and committed themselves to a quick resolution.

A second conclusion from the evaluation of the experiment was that too little attention had been paid to the logistical consequences of speeding up the handling of cases. A main consequence of acceleration of court procedures is that more cases than in the standard situation are being handled and closed, for which extra capacity is needed. If that capacity is not available, the slowing down in 'normal' cases is a logical consequence of the speedy resolution of experimental cases. An overall improvement in speed could have been achieved in the experiment, if only additional capacity had been made available.

The experimental procedure became the model for renewal of the Dutch civil code. Parallel to the development of that code, a committee of judges developed a set of rules regarding time frames and case management that would be applied by all courts. During the implementation of these measures, a flying brigade of judges would assist the courts in reducing the numbers of cases in stock.

The new Case Management rules and the Flying Brigade were introduced in the year 2000. Formally, the new Civil Code became effective on 1-1-2002. Most courts however had introduced elements of the new Civil Code before their formal introduction. Also, many courts had made improvements in their case management.

On the other hand, in line with findings with many studies on change in public agencies, 'filtering' of the intervention took place as well. Generally, courts that had tried hard to speed up procedures during the 1990's, spent more effort in the implementation of the program. The most problematic courts, regarding the duration of procedures, tended to spend less effort.

Results

For all nineteen courts together, the median case processing time in defended cases dropped by 20%, from 525 days (in 1996) to 413 days (in 2003). The percentage of cases terminated within one year rose from 34% to 49%. Seventeen out of nineteen courts reduced case processing time between 1996 and 2003. At four courts, the median duration of a defended case dropped by 50%.

Table s1 shows an analysis of the relationship between the 'urgency' of the interventions for the various courts, the efforts for implementation of the measures, and the reduction of case processing time. While a strong relation can be found between implementation and effect, no significant relation could be found between 'urgency' and the reduction of case processing time.

Table s1 The reduction of case processing time (1996 – 2003) explained by 'urgency' (for the reduction of case processing time) and the effort spent in the implementation of the program

	R	R ² adj	df	F	significance
urgency	0,066	-0,054	18	0,075	0,787
implementation effort	0,836	0,662	18	18,614	0,000

The table shows that 66% in the variation in reduction of case processing time can be explained by the effort for implementation. This proves that, generally speaking, the interventions were 'good' interventions: the

better they were implemented, the more reduction of case processing time would result. No significant relationship is found between 'urgency' and the reduction of case processing time. From a policymaker's point of view, it would be best if the strongest effect would be found at the slowest courts. This is not what happened.

Analysis

In the analysis, the variation that occurred in the implementation of the various measures is used to determine how effective those measures have been in speeding up the procedures. For instance, the assumption that an early hearing will speed up the procedure is tested by analysing the correlation between the percentage of cases in which such a hearing takes place (the independent variable) and the median case processing time (the dependent variable) as well as the correlation between the increase in the use of the early hearing between 1996 and 2003 (the independent variable) and the reduction of case processing time that was realised through that period (the dependent variable).

In the analysis, the various measures that were taken to speed up procedures were combined into three general strategies:

- concentrating the early stages of the procedure;
- improving case management;
- reducing the number of pending cases.

Also, it was tested to what extent characteristics of cases could explain the variation in (reduction of) case processing time.

Table s2 The amount of variance in three dependent variables explained by case characteristics and interventions (single regressions, defended cases only)

	account for the variance in the duration of cases	account for the variance in case processing time between courts	account for the variance in reduction of case processing time between courts
case characteristics	5%	10%	not tested
course of proceedings	43%	54%	38%
compliance with time frames	18%	35%	not tested
amount of pending cases	not applicable	71%	56%
total variance accounted for	50%	77%	78%

Table s2 shows the amount of variation in three dependent variables that can be explained by these factors. The three dependent variables are the variation in case processing time in cases, the variation in case processing time between courts and the variation in reduction of case processing time realised by the various courts. It should be noted that not all cells in the table are filled. For instance, the number of pending cases is a variable

on court level and for that reason can not be applied on case level. For some variables, lack of data regarding the situation in 1996 made it impossible to analyse trends of case processing time reduction over the whole period of 1996 – 2003.

The table shows that the course of proceedings and the amount of pending cases account for most the variation in the dependent variables. Combining the independent variables into multiple models learns that case characteristics do not add to the amount of variance explained by the course of proceedings. This means that the effect of case characteristics shows through the way a procedure develops. Similarly, compliance with time frames does not add to the amount of variance explained by the amount of pending cases. The research shows that most of the variance in compliance with time frames can be explained by the number of pending cases. The number of pending cases more or less ‘dictates’ the length of the queues for the various steps in the procedure. While the movement of cases through the court procedure is not completely in line with the assumptions of queuing theory, in the long run the relation between the number of pending cases and case processing time is as would be predicted by queuing theory.

Table s3 shows a multiple regression model that uses three factors to explain the variation in case processing time reduction that was realised by the Dutch courts. Next to the course of proceedings and the reduction of pending cases it uses a separate measure for the overall effort, by the courts, for the implementation of the program. The model accounts for 82% of the variance in reduction of case processing time.

Table s3 The amount of variance in case processing time reduction (1996 – 2003) explained by the reduction of pending cases, course of proceedings and implementation effort (multiple regression, defended cases only)

	R	R ² adj	df	F	significance
reduction of pending cases	0,750	0,536	17	20,600	0,000
course of proceedings	0,897	0,778	17	30,711	0,000
implementation effort	0,992	0,819	17	26,608	0,000

Side-effects and alternative explanations

Within the study, attention has been given to possible side-effects of the measures to reduce case processing time, and to alternative explanations for the results of these measures. First, in the common sense, speeding up court procedures is often being associated with hasty work and loss of quality. So, within the framework of the study, attention has been paid to the development of quality and efficiency in the courts. ‘Quality’ is not

fully operationalised and measured; mainly qualitative information is being used.

Second, the program of speeding up civil procedures took place in the course of a more general program of modernisation of the courts. Especially the period between 1998 and 2003 has been one of great change. For instance, a Judicial Council was created, integrated management was introduced, smaller courts fused with bigger courts and the number of court personnel grew by 50%. It is most unlikely that these changes have had no effect on the program of reduction of case processing time. Regarding the developments in quality and efficiency, the study shows that quality has improved, while efficiency has dropped. Regarding the development of quality, judges and scholars share a strong belief that the recent changes in the civil procedure have been for the good. The procedure is more 'to-the-point' and is more tailored to the needs of the parties in the dispute. Within the course of the broader program of modernising the courts, the courts have introduced quality control systems, surveys on client satisfaction and have made major improvements in their service levels.

The development regarding efficiency – the ratio between output and the money or working time spent to realise the output – is less straightforward. On the one hand, the program to modernise the courts started with the political recognition for the problem of understaffing of the courts. The scarcity of judges became a political issue and purses that had been closed for years suddenly were opened. At the same time, 'efficiency' was the most important – if not: only – indicator used to evaluate court performance. Despite good intentions – for instance, the systematic measurement of quality, case processing time and the number of pending cases in the civil sections of the courts – during the period this study is concerned with – only the number of cases handled has consistently been measured. The courts are financed on the basis of the number of cases handled. In the year 2000 the system for the allocation of funds was changed from input based (the courts get money for the number of incoming cases) to output based (the courts get money for the number of cases closed).

The combination of rapid growth and the emphasis placed on efficiency lead to various side effects, affecting, among other things, the program of case processing time reduction. Overall, efficiency dropped. The main reason is that the number of personnel grew faster than the number of cases handled. A side effect of the rapid growth is that many experienced judges left the civil sections of the courts and great effort had to be spent in educating new personnel. The system of output based financing rewards the reduction of the number of pending cases. At the same time, other parts of the program of case processing time reduction suffered from the emphasis on efficiency. Especially measures to concentrate the early stages of the procedure were not implemented by some of the

courts, since they believed they might have a negative effect on efficiency. The research does not support that view. Investing in the early stages of the procedures does lead to an increase in the amount of working time invested, as well as the duration of this stage. The effect on the later stages of the procedure however, is impressive and leads to a reduction of time (duration as well as invested working hours) in the later stages. The overall effect on case processing time is strong; the effect on efficiency tends to be moderately positive.

Conclusion

The research clearly supports strategies of case processing time reduction that focus the early stages of the procedure and on reducing the amount of pending cases. Even more important, it is clear from the research that the various measures taken can not work as isolated interventions. Reducing case processing time almost certainly means that the number of pending cases will have to be reduced. Reducing the amount of pending as an isolated measure, however, will at best have a temporary effect only. It is necessary that behavioural patterns and informal norms held by the professional actors in the system will have to change accordingly. In fact, behavioural patterns and the number of pending cases within in the system are strongly interrelated and preserve each other, as well as (lack of) speed in procedures.

Another dimension of programs of case processing time reduction concerns getting unwilling actors to participate in change. In the literature, three types of relations are pointed out. First, the ability of the 'environment' (users, politicians, government) to stimulate change in the court systems or get unwilling courts to participate. Second, relations within the professional system, where informal leaders (believers, enthusiasts) will stimulate and inspire their peers to participate in change. Third, the ability of courts to get other professional actors in their network (attorneys, bailiffs) to participate in change.

Generally, it seems that courts or professional systems that are committed to reduce case processing time, will find their way. The harder part is to stimulate change in the courts and professional systems that do not prioritise case processing time reduction to change. The problem of getting 'professionals' to change is well known in both the public and the private sector. The problem is even greater in when it concern the independent actors in the judicial system. Systematic and intentional efforts to change the behaviour of judges are a most delicate issue. Typically, in the Dutch program this issue has not been addressed formally. It has worked from the assumption that reduction of case processing time is good thing, and professionals (or at least, judges) would therefore support efforts to change. In the experimental stage, with voluntary participation, mainly faster courts participated. In the stage of standardisation, again, the faster courts tended to put more effort in the implementation, while

at the more problematic courts, most of the 'filtering' of the interventions took place. While theories on change in professional systems will emphasise the active participation of professionals, the Dutch program does not show clear effects of such participation. The new case management rules were created by judges in a highly participative setting, while the new civil code was created in a far less participative setting. Clearly, the courts have spent much more effort in the implementation of the new civil code. There are serious doubts however, whether the amount of participation is the reason for this difference. The new civil code was very much in line with developments that already took place within the courts; to some extent, the new code formalised developments that had already taken place. The new case management rules were more controversial.