

Summary

Paths to Justice in the Netherlands

2009

Background

The 2003 Paths to Justice study provided a quantitative total overview of the so-called 'landscape of disputes', as seen from the perspective of Dutch citizens. This created insight into the extent to which citizens are confronted with justiciable problems and the courses they follow to resolve those problems. Six years have passed since then. Social developments and changes to the legal system at that time may possibly have led to changes in the pattern of the occurrence and settlement of justiciable problems experienced by citizens. In addition, there was a need to further explore and refine the findings in some areas. For example, it was concluded that non-Western persons of foreign heritage and other, vulnerable social groups are underrepresented in the 2003 study. To provide as accurate a picture as possible of developments in the creation and settlement of justiciable problems experienced by citizens, the investigation of 2003 was first repeated within the context of the current report, again making use of an Internet panel and with minimal changes to the questionnaires. Secondly, additional face-to-face surveys were conducted, with the intention to explore the 'landscape of disputes' of (a) non-Western persons of foreign heritage and (b) socially vulnerable citizens. The face-to-face survey was also conducted among a control group: a group of respondents whose background characteristics are comparable with those of the participants in the Internet survey. This was done to be able to compare both parts of the investigation.

Questions

With a view to comparability, the four main questions of the 2003 Paths to Justice study were left intact and two comparative research questions were added. One of the added questions concerns a comparison over time and the other a comparison between population groups. The research questions are:

- 1 To what extent are (potentially) civil-law and administrative-law problems prevalent among the population?
- 2 To what extent are certain judicial or extrajudicial solution strategies used, and what circumstances influence this choice?
- 3 What are the results of the choices made in achieving a solution, and how do they relate to the aims of the person seeking justice?
- 4 To what extent do citizens have confidence in the operation of legal provisions?

- 5 To what extent have changes occurred with respect to the occurrence and settlement of justiciable problems when compared with the measurement in 2003?
- 6 What differences are there with respect to the occurrence and settlement of justiciable problems between, on the one hand, the average Dutch citizen with an Internet connection and, on the other hand, non-Western persons of foreign heritage and those who are socially vulnerable?

Theoretical perspective

The theoretical basis of this study is similar to that of the previous edition. Said theoretical basis consists of two components. Firstly, what is decisive for the extent to which a citizen is confronted with justiciable problems? Secondly, what is decisive with respect to the choice of a solution process? The chance of encountering justiciable problems is not considered equal for everyone. This depends on the extent of social participation, and consequently on the various background characteristics of citizens, such as education and income. The baseline, that is, the social relationships in which certain types of problems can occur, plays a role in this connection (such as having employment, having children or owning one's own home). If a citizen is faced with a problem, he is confronted with the task of having to select a solution process (taking action or not, engaging expert help or doing it yourself, starting an official procedure, trying to reach agreement with the other party).

The alternative choices available in a specific case depend to a large degree on the type of problem. This determines which official procedures are available and which are not. It also largely determines to what extent a solution is available 'in the shadow of the law'. The availability of legal aid also plays a role. For example, does the interested party have insurance for legal expenses? The issue of which of the available solution strategies is chosen by the person seeking justice is subsequently a matter of weighing the expected benefits and costs involved in that strategy. The expected benefits are determined by the interests involved in the case, both material and immaterial, and by the estimated chances of success. The anticipated costs depend on the rates and the accessibility of legal aid and official procedures. The above matters in turn are related to the economic and socio-psychological resources available to the citizens involved. Persons with a higher income cannot, for example, rely on assignment of (legal aid) counsel. On the other hand, those with a higher education will probably grasp more quickly which options are available, and will have better communicative and negotiation skills when they try to enforce their rights.

Approach

The investigation consists of two parts: (1) an Internet survey among a representative group of Dutch citizens, and (2) an additional face-to-face survey among three groups: a control group comparable to the Internet group, a group of non-Western persons of foreign heritage and a group socially-vulnerable persons, in respect of which we have selected the non-Internet users who reside in one of the 40 'Vogelaar Districts'.

Internet survey

The Internet survey consists of two surveys, a screening survey and a problem-solving survey. For reasons of comparability, the structure of the two questionnaires has been left unchanged when compared with 2003; changes have only been made in some areas. As in 2003, a random sample was selected from the Capi@home van TNS NIPO Internet panel for the screening survey.

The screening survey was returned by 5,166 of the 6,969 respondents who were sent the survey (a response of 74.1%). The screening survey investigated the extent to which citizens aged 18 and over were faced with (potential) civil-law and administrative-law problems in the period of January 2004 to December 2008. To the extent persons experienced problems, the respondents were asked what type of problems were involved, and to what degree these were experienced as serious problems. The survey furthermore enquired whether the interested parties had taken any action, and if not, why not. And finally, the respondents were asked several questions with respect to the extent of confidence in the operation of the law. Of the 2,940 respondents who, according to the screening survey had experienced one or more problems in the period under investigation and therefore qualified for the problem-solving survey, 2,268 (a response of 77.1%) filled in this second structured questionnaire. This survey asked the respondents to describe in detail, with respect to one problem (the first one that had occurred after 1 January 2004), the steps that had been taken to achieve a resolution of the problem.

Face-to-face survey

In order to be able to carry out a valid check – within the financial boundary conditions – for differences in the occurrence of legal problems and in the solution strategies applied, the target number of participants in the face-to-face survey was set at a minimum of 114 respondents per group. It turned out to be difficult – with respect to achieving due observance of the desired representativeness – to fill the groups of non-Western persons of foreign heritage and the socially vulnerable. Ultimately, 419 interviews were realised: 116 in the control group, 192 in the group of non-Western persons of foreign heritage and 111 in the group of socially-vulnerable persons.

The respondents in the three face-to-face groups were asked questions that were as similar as possible to those asked of the participants in the Internet survey. The questionnaire of the problem-solving survey was shortened, however, because the number of answers per answer category would otherwise have become so small that no conclusion could be drawn from them anyway. This had the advantage of ensuring that the screening and problem-solving survey could be conducted during a single interview.

Results

Extent and nature of the problems

Over a period of five years, 60.5% of the citizens were faced with one or more justiciable problems. Those who experienced problems between 2004 and 2009 were faced with 3.1 problems per person on average. The frequency of justiciable problems for the population as a whole comes down to 1.9 problems per person on average.

The largest contribution to the whole was provided by problems experienced in connection with the purchase of products and services (26%) and the problems at or connected with work (22.5%). They are followed at a respectable distance by problems related to money and ownership of immovable property (each 13.2%). The percentage of the other types of problems lies below 10%.

Most problems by far (82.4%) are related to civil law, the percentage of administrative-law problems comes down to 13.2% (the remainder could not be classified).

The chances of encountering problems are not the same for everyone. On the basis of demographic and socio-economic background characteristics, a distinction can be made regarding groups within the population which differ significantly in the extent to which they are confronted with justiciable problems. Apart from age, civil status, education and social group, the degree of urbanisation and the level of the household income seem to be of influence on the frequency of problems encountered. Taking into account all other factors, education has the strongest effect: as the level of education increases, the number of problems per person increases. The relationship to the factor income can be considered as 'U-shaped'. Persons in the lowest and highest income groups experience more problems than persons with an average income.

Passives, do-it-yourselfers and legal aid users

A citizen experiencing a problem can take many different routes towards the resolution of disputes. In most cases, people with a justiciable problem take action to find a solution. A group of 52% requests advice or assistance from one or more expert persons or organisations. This group of citizens was designated as 'legal aid users'. A somewhat smaller group of 42% deals

personally with the problem, the 'do-it-yourselfers'. The remaining 6% remains passive, does not seek contact with the other party nor does it engage assistance.

Half of the legal aid users consults one agency, the other half consults two or more experts. On average, the legal aid users had 2.14 contacts with experts during the period under investigation. The legal profession (11.3%) and the legal expenses insurance (10.9%) are consulted most often, followed by trade unions (8.6%), Legal Desk (8.6%) and the police (6.4%). All things considered, there is a great variety of institutions that are consulted. In addition, all manner of non-legal agencies or experts, such as social work, are also asked for advice.

The solution strategy applied – remaining passive, doing-it-yourself or seeking legal aid – turns out to be more closely related to the type of problem than with general background characteristics. Problems with the purchase of products and services and problems with tenancy are often dealt with personally, whereas legal aid is often engaged if persons experience problems related to relationships or family or problems with children younger than 18. Several specific characteristics of the problem and the respondent are much more important: the seriousness and complexity of the problem and the expected benefits that are at stake, the nature of the other party, and the possession of a family insurance policy for legal expenses. This constitutes a clear indication that those seeking justice, if only to a certain extent, weigh the costs and benefits of the various solution strategies.

Procedures

Only with respect to a small minority of the resolved problems (12.7%) is a start made with official proceedings (by means of a notice of objection, with a judicial authority, rent assessment committee, disputes committee etc.). Legal proceedings are started with respect to 4.9% of the problems, and in 7.8% of the problems an extrajudicial procedure is concerned. As parties can decide during the course of proceedings not to continue, or as yet to reach agreement, and because parties can reach further agreement following a decision by a third party, the decision of a third party is ultimately responsible for a final solution in only 6.5% of the problems. Official proceedings are significantly more frequent with respect to problems related to ownership of immovable property and with respect to problems related to family, and to a lesser extent with respect to the purchase of products and services. Administrative-law problems similarly lead significantly more often to official proceedings than problems of civil-law nature.

The opinion regarding the course of the proceedings is generally positive. If the interests are represented in court by third parties, the parties involved are generally very satisfied; those who represented themselves did

not feel at a disadvantage as a result. If the same situation arose again, 87% of the respondents would (probably) present the case again to the agency in question.

Decision or agreement

If we look at the outcome of the dispute settlement process, it turns out that in 53% of the cases a form of agreement was reached, while with respect to 6.5% of the cases a decision by a third party rendered in official proceedings constituted the outcome. No result is achieved in the other 45% of problems assessed, either because the interested party did not take any action or because the interested party cancelled his action at a certain moment.

Agreement can be reached in various ways and at various stages of the dispute settlement process. As a result of this diversity and the often informal nature of the consultations, it is impossible to provide any detailed description of the settlement process. This is different with respect to mediation, which is a more structured form of consultation under the supervision of a trained third party. With respect to the total statistics involved in dispute resolution, the mediation percentage is extraordinarily limited. With respect to cases in which a form of agreement is reached, less than 3% is the result of mediation (and that share is also a distorted one, as a result of the fact that the respondents seem to have classed other forms of conflict resolution under mediation). In the context of the lack of familiarity with the concept of mediation among the general public, this distortion can not be considered strange.

Both the do-it-yourselfers and the legal aid users book results in (well over) 60% of problems. The manner in which this occurs, however, differs significantly between these two groups. It is clear that legal aid users let it come down to a decision from a third party more often, and choose relatively less often to settle the problem directly with the other party. The difference becomes much smaller, however, if an assessment is made regarding the characteristics of the problems and the parties involved. To the extent legal aid providers already guide their clients in a different direction than would seem appropriate on the basis of the relevant problem, this happens only in a rather small number of cases.

With regard to the course taken in the resolution of problems, significant differences are observed in respect of the education and income classes of the respondents. This is remarkable because the use of legal aid actually decreases as income and education increase. All things considered, the impression arises that any gaps in the legal infrastructure are not so much located in the capacity and scope of legal aid or in access to the judicial authorities, but rather in the nature of the services. It is perhaps less in line

with the (limited) abilities of certain population groups to take advantage of – in itself useful – advice and procedures.

Legal expenses insurance

A special point for attention in the present investigation concerns legal expenses insurance. Holding a family insurance policy that includes legal expenses insurance clearly influences the choice of solution strategy: insured persons rely significantly more often and more intensely on legal assistance than those without insurance. A division by level of income presents remarkable differences. There is a magnetic effect with respect to higher incomes. The legal expenses insurance ensures that it is a lot more inexpensive to engage a lawyer in the event of problems. Substitution predominantly occurs with respect to lower income levels. The price of services of the legal profession does not change fundamentally for this income group, because they are also eligible for assignment of (legal aid) counsel. What this legal expenses insurance does do, is to open an extra desk for advice and assistance. For the lower income groups, contacts with legal expenses insurance agents mainly replace contact with the legal profession.

All of the above has resulted in the fact that, among insured persons, there is, contrary to expectations, hardly any difference between the income groups as regards reliance on the legal profession.

Objectives and results

Objectives of a financial and material nature appear to be important for those seeking justice, but are far from being the only objectives sought. Enforcement of one's own rights, and altering the behaviour of the other party also achieve a high score.

In the attainment of the main objective, the manner of dealing with the problem, whether as do-it-yourselfer or as legal aid user, appears not to lead to a significant difference. The settlement, however, does make a significant difference. In the event of extra-judicial agreement, no less than 89.1% of respondents turns out to have achieved the main objective in the end, while only 65.9% achieves the objective in the event of a final outcome that is settled through a decision in official proceedings. For that matter, 56.5% of those seeking justice who at any time in the process had cancelled the proceedings, will also still achieve the original objectives.

If the content of the agreement or decision does not correspond with the original objectives, this does not necessarily mean that the interested party is severely disappointed. Expectations can, after all, be adjusted in the course of the dispute settlement process. In the event of agreement, it turns out that 83.3% of those involved consider the result just, while only 58.4% considers this the case if a decision in official proceedings constitutes the final outcome.

With respect to the respondents' experience of justice with official proceedings, the outcome seems to carry more weight than procedural aspects. There are no indications that those citizens who have been better informed in advance, who were able to follow the course of the hearing and who had more of an opportunity to speak their mind, judged the fairness of the outcome more positively in the event that they lost the case. And, vice versa, respondents who lost their case judged the course of affairs during the procedure less positively than respondents who won.

Confidence in and appreciation of legal provisions

As regards the enforcement of own rights, the respondents, on average, seem to assign considerable importance to the legal system, and, in that context, they have considerable confidence in fair treatment. On a five-point scale, the average score is 3.5 to 3.8, which means: very satisfactory. If it is asked, in a general sense, whether the legal system operates equally for everyone, irrespective of whether someone is rich or poor, the average score drops to 2.9. And the score reaches a meagre 3.1 when asked whether access to the courts leads to a solution of the problem. Furthermore, citizens are not very enthusiastic about the legal profession. Honesty and reliability receive no more than a 3.0, while the assertion that lawyers ask too much money for the work they do is widely held.

If we differentiate these general notions about the operation of the Dutch legal system a little further, we have to conclude that precisely those respondents that were faced with legal problems and actually had to deal with judicial agencies, are the least positive.

Differences between respondents can also be established on the basis of background characteristics. The most important difference is perhaps that confidence in fair treatment and the reliability of the courts decreases as the level of education and income of the respondents decrease.

The 1998-2002 period compared with 2004-2008 period

The frequency of problems is, according to the present investigation, more than 20% lower than according to the previous Paths to Justice study: the average number of problems across the population decreased from 2.5 to 1.9. Today, fewer people are faced with problems (from 67.2% to 60.5%) and the people faced with problems experience fewer problems per person (from 3.7 to 3.1). The drop in the frequency of problems seems to apply to all types of problems, but not each time in the same degree. The drop is small in particular with respect to problems concerning the purchase of products and services, whereby the large number of problems concerning defective services by telephone and cable providers is remarkable.

The economic situation seems to be a serious contender when searching for an explanation for the decrease of the problem frequency. There are also many social developments (such as the start of a general aging of the

population, an increasing level of education, an increase in owner-occupied houses, and a growing labour participation) that could have played a role. It furthermore cannot be excluded that there are – partial – measuring errors present in the analysis.

For the time being, we have – with two measurements – little to go on in the endeavour of discovering causal connections in this context.

As the regards dealing with problems, there are more legal aid users and fewer passives and do-it-yourselfers than six years ago. The number of contacts with experts per legal aid user has risen from 1.73 to 2.14. With respect to the use of legal aid, the legal profession, with a market share of 11%, has taken over the lead from the unions, whose market share dropped from 11% to little less than 9%. The largest growth is experienced by the legal expenses insurance (from 6% to 11%). The Legal Desks make up for nearly 9%.

One of the explanations for the increased use of legal aid could be the increased and more accessible offer by agencies that provide legal aid. But the empowerment and willingness of citizens may have increased as well. The Internet and legal expenses insurance may also have had a facilitating effect.

Today we know that respondents more often reach agreement with the other party than six years ago. A decision in official proceedings equally often constitutes the final outcome of the dispute settlement process. The percentage of problems in which the respondents failed to achieve any result has dropped. It is possible that the initiatives of the government and judicial authorities, aimed at giving the parties involved greater personal responsibility in the settlement of their disputes, may have had an effect.

Non-Western persons of foreign heritage and socially-vulnerable persons

The non-Western persons of foreign heritage turn out to experience slightly more problems (2.1) than the average Dutch person (1.9), and the composition of those problems differs somewhat in some areas. The differences are, however, rather modest. This is different with respect to socially-vulnerable persons, where those involved mention fewer justiciable problems (0.9) than the average Dutch citizen, in particular in the categories work and the purchase of products and services. The frequency of problems experienced by the socially vulnerable is clearly higher than for other groups only in the subcategory ‘discourteous treatment by an official or government service’.

Non-Western persons of foreign heritage and socially-vulnerable persons make use of legal aid to the same degree as Dutch citizens, and their average opinion about the advice provided and assistance is at least as positive. The most popular agency among non-Western persons of foreign heritage is the legal profession, followed by the police and social services. The po-

lice seems to be the most important port of call for the socially-vulnerable, followed at a respectable difference by the unions. As regards the possible obstructions to access to legal aid, the face-to-face survey does not show results that differ from the Internet survey.

Non-Western persons of foreign heritage and the socially-vulnerable do not use official proceedings as often, and are less able to achieve results (in the form of agreement or a decision by a third party) in the event of problems than the average Dutch citizen.

All things considered, the patterns identified, in particular with respect to socially-vulnerable persons, bear a reasonably strong resemblance to those with the lowest level of education. If the persons with the lowest level of education are represented in the Internet survey, it is not deemed necessary to in the future again conduct a separate survey among non-Western persons of foreign heritage and socially-vulnerable persons.