

Summary

Paths to Justice in the Netherlands 2014

The 2003 and 2009 Paths to Justice studies provided a quantitative overview of the so-called landscape of disputes as seen from the perspective of Dutch citizens. This provided insight into the extent to which citizens are confronted with justiciable problems and the courses they follow to resolve those problems. Five years have passed since then, with social and online developments and changes to the legal system. These might have led to changes in the pattern of occurrence and settlement of justiciable problems. Obtaining insight into citizens' justiciable problems and the way they are resolved has a direct relevance for policy making: the Minister of Security and Justice is responsible for maintaining an adequately functioning and accessible legal (aid) system, by creating optimum conditions. Since this study has been conducted for the third time now, it is becoming possible to observe preliminary trends.

The research questions are:

- 1 To what extent are (potentially) civil-law and administrative-law problems prevalent among the population?
- 2 What courses do citizens follow to resolve these problems? To what extent do citizens use legal services, extrajudicial and judicial dispute resolution, and which circumstances influence their choices?
- 3 How were the problems concluded? Which results have been achieved?
- 4 How do citizens evaluate legal advisors, mediation and procedures? To what extent do citizens have confidence in the operation of lawyers and the courts?
- 5 With respect to the above questions, to what extent have changes occurred in comparison with the measurements of 2003 and 2009?

Theoretical background

This research departs from the following theoretical background. The chance of encountering justiciable problems is considered to depend on: (a) the extent to which citizens experience situations or relationships in which problems *can* occur (participation theory and baseline conditions); (b) whether the involved parties have sufficient economic and social resources to resolve difficult situations. Serious lack of these resources can make people vulnerable to experiencing problems. Various explanations are possible concerning the choices citizens make in tackling problems: to take action or not, 'DIY' or seek help, to start a procedure or to do something else. This study departs from the basic assumption that persons confronted with a justiciable problem make a conscious choice between the available options. Within boundaries set by the problem at hand, the pros and cons of these options are weighed. The previous two studies showed that, to some extent, citizens

make a cost-benefit assessment: the more serious a problem or the higher the stakes and the expected benefits, the more people will invest in resolving the problem. Next to these factors, economic and social resources are deemed relevant for actions taken to resolve problems – in line with insights from socio-legal research. Relevant economic resources are, for example, income level and having a legal expenses insurance or an entitlement to legal aid. Socio-psychological resources, associated with (e.g.) education level, are also relevant: those with many of these resources are more independent in resolving their problem – or in finding the right type of help – than those having little resources. Citizens lacking the socio-psychological resources might be in need of legal services, but at the same time could experience a barrier to use it.

Research method

Data were gathered using an Internet survey among a representative group of Dutch citizens (in terms of sex, income, educational level, degree of urbanisation and internet use), based on a stratified sample drawn by bureau GfK, which conducted the survey. The survey consisted of two parts: a screening survey and a problem-solving survey. In the screening survey (N=5,424), Dutch citizens (aged 18 and older) were presented a list of 67 ‘serious problems’. They were asked whether they experienced such problems in the five-year period between May 2009 and May 2014 and if so, how many. Those who reported one or more problems were asked to complete the problem-solving survey (N=1,928) about how the problem was tackled. If more than one problem was reported in the screening survey, the problem-solving survey applied only to the oldest one.

Number and types of problems

Over the five-year period, 57% of the citizens were faced with one or more justiciable problems. Within this group, citizens experienced 2.9 problems per person on average.

Twenty-five per cent of respondents were faced with employment problems. Another quarter ran into problems in connection to the purchase of products and services. These problem types are followed at some distance by problems related to money (15%), ownership of immovable property (11%) and problems regarding family and relationships (faced by 8% of citizens).

In line with theoretical expectations, the probability of encountering problems depends mostly on background characteristics associated with one’s social and economic participation as well as ‘baseline’ conditions: being in the situation in which certain problems can occur. The risk of facing a prob-

lem increased slightly with a higher educational level, being between 24 and 45 years of age, being self-employed or among those who – were employed, were a property owner or were a tenant during the research period. What is more, online buying or selling enlarges the chance of encountering a problem. Greater exposure thus results in a larger chance of encountering problems. What is more, the vulnerable group of social welfare recipients encountered more problems. In a multivariate analysis these factors accounted for 15% of the variance in problem probability. Hence other characteristics, beyond the scope of our survey, play an important part.

Actions taken

By the time of study, almost 8% had not yet taken action in response to their problem, 46% sought help from one or more (legal) advisors and the remaining 47% did not seek help and handled the problem on their own. Within the group of aid-seekers, a distinction was made between users of legal advisers (37%) such as lawyers, legal expenses insurers and Legal Desk, and users of *non*-legal advisers (9%) such as health care providers and trade/professional associations.

Lawyers are the most consulted legal advisers (in 12% of problems) as well as the legal expenses insurance (LEI) (11%). The Legal Services Counter and trade union both have a share of 5%. Like the previous two studies have shown, a wide variety of institutions and agencies were used.

Mediation took place in 5% of the problems. A judicial procedure was started in 4% of the problems, an extrajudicial procedure in 11% (for example, by a complaints committee, rent tribunal, or conciliation/arbitration committee). The choices made by citizens in handling problems turn out to be much more closely related to the characteristics of the problem than to background characteristics of respondents, like education or income. The more serious and the higher the complexity of the problem and the expected benefits, the more often people took action, used legal services (particularly, an advocate) or started a judicial procedure. The type of problem also matters: those with family or relational problems relatively often consulted a lawyer and started a judicial procedure – in contrast with those faced with problems regarding the purchase of goods and services. Extrajudicial procedures often regarded objections to administrative decisions, as well as problems related to money and immovable property ownership. In contrast with judicial procedures, the expected financial benefits did not affect the probability that an *extrajudicial* procedure was started. Apparently, citizens made cost-benefit assessments; the costs of extrajudicial procedures are generally small or non-existent and no advocate is required. Hence, extrajudicial procedures were used even if less was at stake in financial terms. The use of legal expenses insurances is determined in particular by having this insurance policy: since the insurer is

taking care of (most of) the costs, other factors like financial stakes or problem type become less relevant.

Only a small part of respondents mentioned the costs as a reason to refrain from action or from starting a procedure. In relation to abandoning the use of legal services, costs were mentioned more often, particularly when advocates were considered. Only a small part of citizens actually reported legal costs (15%). About half of this group bore these expenses themselves whereas the others obtained a partial or full refund from, among others, legal expenses insurance, Legal Aid Board, employer or the other party. Respondents who made use of an advocate or judicial procedure reported costs more frequently, as well as higher expenses.

Results of actions

Thirty-seven per cent of all problems resulted in an agreement and 8% in a decision by an extrajudicial or judicial body. In another 37% of the problems, citizens cancelled their action without achieving an agreement or a decision, in 6% no action was undertaken and 13% of the problems were still ongoing when our Internet survey was held. In the end, the following results were reported by respondents:

- Of all who took action, 68% achieved his or her main goal (75% if we exclude the problems that are still ongoing).
- For 79% of the active respondents the problem was resolved or ended (88% if we exclude the problems that are still ongoing).
- In case of an agreement, 77% found the result just, as opposed to 72% in case a decision was made by a court or an extrajudicial body.
- 88% of the agreements or obligations were (partially) fulfilled.

In line with previous editions of this study, we found that those who reached an agreement get the most out of their actions in terms of goal attainment, problem solving and compliance. What is more, those who cancelled their action without an agreement or decision also turn out to achieve quite some results: goal attainment in 63% and problem solving in 88% of the cases. An explanation for this is that, as respondents stated it, the problem was solved in some way. Furthermore, it was reported that the other party to some level had met one's objections or gave up – without this being typified as an agreement.

Evaluations of legal services and general confidence in lawyers and courts

Citizens evaluated the legal services quite positive. On average, the advice and aid from legal advisers were deemed practicable and procedures (extrajudicial and judicial) were found satisfactory. All respondents, regardless of

whether they encountered one or more problems, were asked to react to a number of propositions regarding advocates and the courts. On average, Dutch citizens confide in a fair treatment in a judicial procedure, think the courts are an important means to effectuate one's rights, and think judges are trustful and honest. However, quite a share of citizens do not think that the legal system operates equally for everyone. When it comes to advocates, citizens are less positive: advocates are deemed too expensive and less reliable than judges. Vulnerable groups in socio-economic terms are somewhat less positive than average regarding both advocates and the courts. Having experienced more problems also negatively affects citizens' judgements, as well as having used an advocate or judicial procedure during the research period.

Comparison across time

A decreasing trend is observed in the share of respondents who experienced one or more problems during a five-year period: from 67% in 2003, to 61% in 2009, to 57% in 2014. Also, the average number of problems per person decreased over time, for the group experiencing problems. Between 2009 and 2014, particularly the number of problems relating to the purchase of goods and services went down. What is more, judicial procedures as a percentage of all problems show a decreasing trend from 6% in the first to 4% in the current study. These developments are in line with trends in judicial and Legal Aid Board statistics. The share of extrajudicial procedures, including objectives against administrative decisions, increased over time, from 6% in 2003 to 11% in 2014. This could be due to an increase in the number of complaints and dispute resolution committees and an extension of response categories in the questionnaire.

In comparison with previous editions of this study, problems less often resulted in agreements and respondents more frequently cancelled their actions. However, findings are stable over time as regards to goal attainment and problem solving, implying that those who stopped more often achieved their aims or resolved their problem.

Satisfaction scores on the obtained advice or help are generally stable across time. The same holds for public confidence in advocates and the court system.

Concluding remarks

In the Netherlands, about 95% of the households has access to the Internet and the online economy is steadily growing. Citizens are purchasing more and more online and there is a growing amount of online information available that allows citizens to solve problems on their own. This study

included the description of a range of online provisions to assist citizens in this regard. As of yet, no empirical (large scale) research has been found on how online developments affect citizens' sensitivity to justiciable problems and the actions they take to resolve these. In the current study, however, a small positive effect was found of online buying on problem incidence. In addition, more often than before, the Internet is mentioned as a guidance in handling problems. The use of online procedures like E-court, Paypal and on eBay is still rarely reported. Nevertheless, the digitalisation of the legal system is moving forward. Repeating this study will help unravel whether existing legal provisions still warrant access to justice in the digital era.