

## Summary

### **Increasing the small claims limit to 25,000 euros Interim report on the evaluation study**

Small commercial disputes in the Dutch court system are handled by 'canton' judges.<sup>37</sup> Over the last decade, the jurisdiction of these canton judges has increased. Recently, on 1 July 2011, commercial civil disputes with a financial value of between 5,000 and 25,000 euros were added to the competence of canton judges. Before that date, these cases were handled by the civil sections of the district courts. Under the jurisdiction of canton judges, the cases are expected to be handled less formally. Important changes for the parties involved include that hiring a lawyer will no longer be compulsory (they are allowed go to court unrepresented, or to be represented by anyone they choose) and that it will be possible to present their case orally (as opposed to presenting the case in writing).

In the empirical research to evaluate the measure of 1 July 2011, various aspects are taken into account. These include the way cases are handled; the choices that parties make regarding representation and how they feel about the quality of the representation they receive; the number of cases that are brought to court; and possible effects in the market of legal representation. The study consists of a pre-measurement (which looks at the original situation in which cases were handled by the district courts and legal representation by a lawyer was compulsory) and an after-measurement (aimed at the new situation). This report presents and discusses the results of the pre-measurement. The research also examines the development of the number of cases in the new situation.

Regarding the way cases were handled in the former situation, a majority of cases (64 %) remained undefended. Most of the undefended cases received a ruling by default. In defended cases, the common route was an exchange of written documents followed by a court hearing, which generally takes 1.5 hours. In the documents exchanged before the court hearing, parties need to describe their position in the case, sum up the evidence they can present, and name possible witnesses to be heard. During the court hearing the judge will encourage the parties to reach a friendly settlement, and leave them alone for a few minutes to make that possible. About 40% of the defended cases end in a friendly settlement. If no friendly settlement is reached, the judge will usually rule after the (first) court hearing. In less than 20% of the defended cases, further action will follow such as hearing witnesses, or a second exchange of written documents. Default cases are processed within six weeks (median time is 28 days, mean is 34; only a few percent take more than 42 days). Defended cases generally take between 6 and 12 months. Median time for a friendly settlement is 191 days, median time for a ruling in a defended case is 287 days. About 5 percent of the defended cases take more than two years.

In the 'old' situation, all parties were represented by a lawyer. The research examines the quality of the representation provided. Various surveys were (and will be) carried out. First, parties have been asked to complete a survey on the services of

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<sup>37</sup> The canton judge in the original formula is comparable to the 'justices-of-peace' that exist in various European countries: community-based judges that handle small cases (both civil and criminal cases). In recent years, many of the small court locations that were used exclusively by canton judges have been closed. The remaining locations have become locations of the district courts. Canton courts no longer exist, but canton judges are still considered an important element in the justice system.

their lawyer. Second, judges have been asked to rate the representation by lawyers in court hearings. Third (and not yet completed), groups of judges and lawyers will be asked to rate the quality of the written documents that are provided by the lawyers as the first step in the processing of the case. Special attention is given to the role of legal insurance companies. A substantial number of Dutch families have a legal insurance that will arrange a lawyer if they need to go to court. While Dutch lawyers are usually hired for an hourly fee, the lawyers that work for the insurance companies usually work for a fixed fee per case. Under the conditions of insurance, parties are usually not fully free in their choice of the lawyer. Most insurance companies have the right to pick the lawyer. Empirical research was carried out to measure the quality of the services of lawyers, including a comparison between the 'hourly fee' and the 'fixed fee' (assurance) condition. For this purpose, judges were asked to 'rate' the performance of the lawyers during the hearing. Their clients were asked to complete a survey after the hearing. The general results indicate that both judges and clients are very satisfied with the quality of services of Dutch lawyers. While the general ratings for lawyers working in the hourly fee and the fixed fee condition are not far apart, substantial differences do emerge when focusing on the (scarce) negative ratings. Judges gave 8 negative ratings, while the parties/clients gave 4 of 'their' lawyers a negative rating (on a total of 116 lawyers rated, of whom 21 were hired by an insurance company). An interesting point is that the negative ratings of judges all concerned lawyers working for an hourly fee, while the four negative ratings given by parties concerned both self-employed lawyers (2) and lawyers hired by an insurance company (2). Authors like Mintzberg (1983) state that only peers can really 'judge' the quality of services provided by professional actors (such as lawyers). The results of this study underline the difference in review by peers and non-professionals. Moreover, the fact that all negative peer ratings are for self-employed lawyers strongly suggests that (a) there are lawyers who provide poor services and (b) clients that personally hire their lawyers risk hiring the wrong lawyer. (The problem of finding the right lawyer has been addressed in previous research; there is a lack of public information about the specific knowledge and experience of lawyers, and some lawyers will misrepresent what they can do). Insurance companies will drop lawyers that deliver poor services and develop knowledge on the strong and weak points of lawyers.

Although the number of negative ratings by clients is low, their distribution, compared to the peer ratings, is interesting. Lawyers hired by an insurance company get a relatively high number of negative ratings from clients. While some insurance policies allow clients to pick a lawyer themselves, most do not. Both negative client ratings were for lawyers picked by the insurance company. By contrast, the small group of insured clients that were allowed to pick a lawyer personally showed the highest ratings of the survey (even higher than those for the self-employed lawyers). This suggests – consistent with previous research – that being able to choose the lawyer freely or at least personally contributes to a less critical evaluation by the client (whereas not being able to choose freely makes clients suspicious).

Bringing cases under the competence of the canton judge should make the legal system more accessible. The process is less formal, quicker and less costly. One would expect these conditions to stimulate the use of court procedures. The research shows that the number of cases with a financial value of between 5,000 and 25,000 euros increased after the measure, while at the same time, the number of cases with other financial values decreased. It should be noted, however, that the increase in cases from 5,000 to 25,000 euros can not be attributed solely to people bringing cases to court that otherwise would not have been brought before a judge. Instead, the increase is mainly due to cases migrating from other segments to the 5,000 to 25,000 euros segment.