

## SUMMARY

### AIM, LIMITATIONS AND METHOD

*Aim.* The goal of this report is to sharpen the relationship between characteristics of the legal infrastructure and social consequences on a scientific basis. On the basis of the report, areas where further theoretical and empirical research is needed should become clear.

*Limitations.* The focus lies on the legal infrastructure *sensu stricto* (enforcement, adjudication and execution, not substantive law). Because of the vastness of the literature, we mainly deal with issues of civil procedure. The comparative law paragraphs are limited to 3 traditions and 6 countries : the United States, England, France, Germany, Belgium and the Netherlands. The chosen characteristics are those that are important for a wide category of cases and that have been analysed extensively in the law and economics literature (rules determining who bears the costs of a trial, offers to settle, the degree of subsidizing trials, methods of support for financially weaker parties, regulation of payment methods for lawyers, discovery, the active role of the judge, whether appeal is allowed and limitations of appeal, formalism, rules against abuse of civil procedure, the number of judges, unitary versus sequential trials, precision of the law and time of precision, mediation and rules concerning the execution of verdicts). The social consequences match the building bricks of the societal cost function : the costs per trial and settlement, the number of cases (settlements and trials) and the frequency of settlement (relative to trial), the duration of trials and settlements, the accuracy of trials and settlements, *ex ante* behaviour and economic growth.

*Method.* First we give a short summary of the basic principles of law enforcement, adjudication and execution. Then we do the same, but more elaborate, for the basic principles of civil procedure (Chapter 2). In Chapter 3 we give an elaborate synthesis of the relationships between the chosen legal characteristics and the social consequences that have been studied in the theoretical and economical literature. First we compare the laws in the six countries, then we consider the influence of every characteristic on each social consequence. In chapter 4, we draw our conclusions and give suggestions for further research.

### THEORETICAL PRINCIPLES OF LAW ENFORCEMENT, ADJUDICATION AND EXECUTION

*Assumption of rationality.* We consider individuals as rational behaving actors that try to maximize their utility. For every alternative they weigh the respective costs and benefits and choose the alternative with the highest net benefits.

*Social goal.* The legal infrastructure should minimize the sum of three types of costs : compliance costs, (expected) damages and enforcement costs. In principle, this goal can be accomplished by letting individuals pay for every cost attached to their behaviour (damages and enforcement costs). When the probability that the injurer will be caught is not 100 %, the sanction has to be adjusted by dividing the costs by that probability. Sometimes, non-financial, penal sanctions will be necessary. This will be the case when the expected sanctions that can be created with financial sanctions are relatively low in comparison with the harm that can be generated. Whether the government or private parties should enforce the law, depends crucially on whether private parties are naturally capable of identifying those that caused harm.

*Models explaining the social consequences.* 1. Some models consider the legal expenses of the parties as exogenous : they can not be influenced by the parties. In more realistic models, the legal expenses of the parties are considered endogenous : the parties can augment the probability that they will win by spending more resources (extra proof, extra arguments etc.).

2. A person will sue whenever the benefits (expected judgment) outweigh the (expected) costs. 3. If a person is prepared to sue, this does not necessarily imply a trial. The parties can settle too. There are five reasons why parties do not always settle : the parties estimates of what the judge will decide can diverge. The plaintiff can estimate his probability of winning higher than the defendant (relative optimism). Second, one of the parties can have more information than the other party (asymmetric information). Third, the parties can try to get a too large share of the settlement surplus (strategic behaviour). Fourth, under some payment schemes, a trial can be in the interest of the lawyer (principal-agent problem). Fifth, a party can have other interests than the amount at stake during the trial (external effects). 4. The duration of trials is partly within and partly outside the power of the parties. The waiting time depends on the proportion of judges relative to the number of incoming cases. The processing time increases with the expenses of the parties (more proof, arguments etc.). Frequently, one party has an incentive to stall proceedings so that the other party will forfeit or accept a low settlement amount. 5. The accuracy of a verdict depends on the effort of the judge and the parties. It is usually assumed that the accuracy increases when the parties spend more resources. The accuracy of settlement amounts increases with the accuracy of verdicts. Parties settle in the shadow of the law. The relative bargaining strength of the parties also influences the accuracy of the settlement amount. 6. When parties decide whether they will comply with the substantive law, they choose for the alternative with the least total costs (sum of compliance costs, the part of the expected harm they think they will bear and expected trial and settlement costs). 7. Some empirical studies suggest a link between rules of civil procedure and economic growth.

## RELATIONS AND CONCLUSIONS

After looking at the relationships between the characteristics and the consequences, it is clear that much theoretical and empirical research is still required. In the theoretical literature, there is a lack of research that examines the influence of combinations of characteristics for the social consequences. Some parts of the literature that focus on one specific characteristic still need improvement. Possibly, some basic models are still unexplored. There still is scope for fundamental insights. Empirical research is abundant (relative to the other two phases) for the trial phase. For the phase during which the parties negotiate before the formal initiation of a case and the phase during which the parties choose their ex ante behaviour, empirical research is rather rare.

