

Summary

The aim of the study and research approach

This study is a stocktaking study of the possible effects of legal delay. The aim of this research is to provide insight in the effects of long duration of court cases for the parties involved, their legal representatives and third parties. The following research questions provide a further explanation of the purpose of this study:

1. What can be said, for the selected case types, about the (process) parties and other relevant parties involved?
2. What can be said about the interests of the parties?
3. How is the duration of cases perceived by those involved?
4. How can the economic costs and social consequences of legal delay, for the selected case types, be described or defined?
5. How can these costs be valued in monetary terms?
6. What can be said regarding the relationship between legal delay and the economic and societal consequences of the selected cases?

The inventory of effects of legal delay is done for the following three types of cases:

- Sector administrative: cases in the field of the Disablement Benefits Act (4 cases are being reviewed)
- Sector civil: purchase contracts (where both plaintiff and defendant are companies) (3 cases studies)
- Sector civil: arrangements concerning parental access (5 cases studies).

Note that the cases in the first category are cases of a natural person against a public body; the second category implies cases between two enterprises while the third category includes cases of a natural person versus another natural person.

With regard to the aforementioned case types, cases were selected in such a way that the sample for each case type includes cases with a normal as well as a long duration. A 'normal duration' is defined here as a duration around the median, whereas a 'long duration' in this study is considered a duration of the court procedure just under the ninth decile.

Creating a list and description of the nature of all possible effects of legal delay is a goal in itself. The effects at the level of individual cases then give an indication as to the importance or extent of the various possible effects. Therefore the effects of legal delay in this study are mapped at two levels:

- The effects at the level of individual cases are mapped through interviews with all the parties involved in a number of selected cases: plaintiff and defendant as well as their professional legal representatives.

- A list of all possible effects at a more general level is acquired by completing the effects we found during the case studies by additional possible effects according to professional ‘hands-on’ experts we interviewed: lawyers, jurists of legal expenses insurers, judges and other professional experts such as the social security agency UWV for Disablement Benefits Act cases, the Dutch SME Federation (MKB Nederland) for purchase cases and the Child Welfare Council for arrangements concerning parental access.

To indicate the effects of legal delay in the selected cases, we have used three methods:

- We asked the respondents what effects would have been different if the case would have lasted one month, two months or six months longer or, if possible, shorter.
- We posed so-called “willingness to pay” questions to the respondents: “How much would you be prepared to pay to speed up the case by x number of months?”
- We compared the effects of cases with a normal duration with the effects of cases with a legal delay.

As it turns out some aspects of these methods cannot be used optimally or at all.

In this study we present the effects of legal delay within an analytical framework that is inspired by the so-called social cost-benefit analytical framework. Here we use this framework as an ordering device, not as a measurement. For each case in our sample, a framework is constructed with the duration’s possible effects as mentioned by those involved and it is indicated to what extent the effects play a role in the case under consideration.

In this study we make a distinction between individual and not-individual (indirect or external) effects. Individual effects of a court case are the effects on the actors directly involved in the case: plaintiff and defendant, their legal representatives and the court. Non-individual effects are indirect or external effects on third parties: other parties with a current or future dispute, competitors, society, and again the court.

The emphasis in this study is on the individual effects of duration or legal delay on the parties involved, their legal representatives and other possible parties that are directly involved (for example the child in parental access disputes). The individual effects are categorised according to the following types of effects: additional work, more time to perform tasks, emotional effects, effects of a delay in the judgment, other individual effects and the quality of the judgment. The effects are specified for the actors in the case.

Indirect or external effects of the (long) duration of a certain court procedure are not the focus of this research. These effects are only named if one of the interviewees refers to them. Possible indirect or external effects are, for instance, the bumping-down effect of a long case on other cases being processed by the court: if a long case implies additional work for the court, other cases that are being processed might be delayed. Furthermore, a legal delay in a case could lead to the adjustment in the expectations on duration of cases of that type: the expected duration is prolonged that could in the future prevent some plaintiffs to bring a case to court. The loss of trust in the legal system is yet another external effect.

Possible effects of legal delay (research questions 1-4 and 6)

In the following we summarize the possible effects of legal delay in the three categories of cases we studied and we indicate the relevance of the effects.

Additional work

Legal delay can cause additional work, for instance because more preparation time or more time to read up on the case is necessary or due to the communication regarding the delay. This additional work can occur for the parties involved, their legal representatives and the court as well. In addition, a longer duration of a court procedure can lead to additional work as the probability of changes in personnel increases that implies additional costs arising from transferring the case from one person to another within the organisation. These costs could occur to for the parties involved, their legal advisers or the court).

For all three categories of cases we find indications that legal delay results in additional work.

The costs of additional work of the legal representatives are at the expense of the legal representative or the client. If it is possible to bill the client for additional work, these costs obviously are at the expense of the client. If the representation is in the framework of legal aid or representation is done by a jurist of a legal expenses insurer or another comparable association, then the cost of addition work are at the expense of the legal representatives.

More time to perform tasks

More time to perform tasks is a possible benefit of legal delay. Legal delay will, for instance, offer the opportunity to better plan tasks and to work more efficiently. There is also more room for a solid preparation. This possible benefit can occur for the parties involved, the legal representatives as well as the court. Our sample did not provide us with evidence that this effect occurs for cases with a duration around the median or ninth decile.

Emotional consequences

Parties involved in a court case can experience stress and uncertainty. The longer the duration of the court procedure, the longer one will experience stress or uncertainty. With regard to emotional effects there are considerable differences between the three categories of cases:

Disablement Benefits Act cases: With regard to such cases, the duration of the court procedure appears to have little influence on the emotional consequences in our sample. As long as people are informed properly regarding the expected duration of the procedure, the negative effects of a long duration are limited.

Purchase cases: We have found emotional effects in all of the purchase cases that we investigated: stress and uncertainty when certain steps in the procedure are expected to be taken (some of which are eventually postponed), and frustration about the way things are going. The extent of emotional consequences such as these is determined by many factors. The main factor is the size of the company. If it pertains to a company of which the owner and director are one and the same, the case touches closely upon the private life and the emotional effects are considerable. If it pertains to a bigger company, where a paid employee is treating the case, the effects are minimal. In addition, the ratio between the disputed amount and the company's financial power plays a part. The higher the claimed amount (in relation to the turnover, for instance), the bigger the emotional consequences can be.

Not only the litigating parties but also the lawyers can suffer emotionally as a result of long processing times; one lawyer indicates that even he suffered emotionally (frustration) from frequent delays.

Arrangements concerning parental access: The causal link between the duration of the procedure and the extent of the emotional costs is not straightforward here. The duration and these costs partly have the same underlying cause, i.e. the complex situation following a divorce. These costs therefore are to a large degree *not* a result of the duration of the court procedure. In a number of cases investigated by us, we have found indications that legal delay has led to more stress. However, we have not observed alienation effects between parent and child as a result of legal delay in our sample.

Delayed ruling

Delay in the ruling can also have various consequences for the parties involved.

Disablement Benefits Act cases: As long as someone has a case pending concerning his or her Disablement Benefits, the intensity with which one enters the job market could be lower than after the ruling. It could also be the case that employers are less willing to employ someone who has a case pending on his/her benefits. A longer court procedure might therefore lead to slower and poorer reintegration.

Purchase cases: When it concerns business disputes, a later judgment also means a later implementation. Plaintiffs benefit from swift payment and defendants seem to benefit from a delay in payment. The legal interest, which is meant as compensation in the case of delay, does not seem to influence the stakes: it often is a matter of liquidity. What does seem to have an influence is the value of the claim in relation to the company's financial power. The larger the claim, the higher the chance of liquidity problems for the plaintiff and the bigger the liquidity advantage for the defendant.

The time in a long-running case in our sample was used to strip the business of its assets so that it was impossible to implement the judgment. A shorter duration might have offered less opportunities for such practices.

Our sample of cases did not include cases regarding automatic renewal of long-term agreements. It seems, however, that these cases form a specific category of cases. In such instances a delay in the ruling can have a major impact on the value of the claim: if the judge would decide that the agreement is still valid, the "subscription costs" for the entire period – including the case's processing time – would have to be paid.

Cases regarding parental access arrangements: The uncertainty regarding the final arrangement can lead to the postponement of certain decisions or activities until after the judgment. Our sample survey includes one case where a holiday was postponed.

Quality of the judgment

The duration of the court procedure can have an indirect effect on the quality of the judgment in a variety of ways. An example of a possible effect of legal delay on the quality is the parties involved or witnesses are no longer able to correctly reproduce the facts because of memory distortions. This may influence the judgment. The (quality of the) ruling can also be affected by a

change in personnel at the court, the legal representatives or the parties themselves (if it concerns a business). The longer the court procedure, the greater the higher the probability that a change of personnel will take place with regard to one of the actors in the case.

Strictly speaking we have not observed in our sample that the quality of the ruling would indirectly suffer from the duration of the case. In one of the (lengthy) purchase cases, however, the length of the processing time contributed to the fact that implementation of the judgment was no longer possible since the duration of the court case had been used to strip the defendant's company of its assets. In the view of the plaintiff in this case, this has undone the judgment's quality. The plaintiff's trust in the legal system has been severely damaged.

Individual assessment of time (research question 5)

As explained above, legal delay can have different effects for the parties involved, their legal representatives and possible third parties. In this research we have endeavoured to assess the effects at an individual level by finding out the willingness of the parties involved to pay for speeding up the court case by a number of months.

Disablement Benefits Act cases: With regard to Disablement Benefits Act cases, none of the respondents would have paid money to shorten the procedure by six months². It should, however, be noted that all of the respondents experienced the duration of the procedure to some extent as unpleasant. The limited willingness to pay is probably partly due to the respondents' income situation. The plaintiffs' limited willingness to pay confirms the picture that came to the fore from our inventory of the consequences, i.e. that for them the negative effects of the legal delay are limited given that proper information is provided regarding the expected duration.

Purchase cases: With regard to purchase cases, the effects seem to be determined by the role and size of the company:

- Two of the three plaintiffs we interviewed indicate that they suffered damages as a result of the duration of the court procedure. Both businesses are small to mid-size companies. The plaintiff that concerned a large company indicated that he experienced no adverse effects due to the length of the processing time (it concerned a case with a normal processing time where the counterparty had to pay the plaintiff's legal costs).
- All defendants benefited from the duration of the process, because they only had to pay afterwards. Despite this advantage, the two defendants who we interviewed indicate that overall they have suffered damages as a result of the long duration. Both defendants state that they would have been willing to pay an amount of between € 2,000 and € 3,000 for the court case to have lasted half as long as it did. The advantage of a late payment thus does not outweigh the other negative effects of long processing times.

Cases regarding parental access arrangements: When it comes to cases regarding parental access arrangements, time turns out to play a very different role than with regard to the other two case types. The duration of a case regarding arrangements on parental access largely depends on the number of trial visitation arrangements that are tried out for a certain period of time. The willingness to pay question cannot really be applied here.

² Please note that our sample only included cases that were dismissed! The willingness to pay might be different for plaintiffs whose appeal against the ruling of the social security agency is granted.

Is legal delay really a problem?

As it turns out, some effects of the duration of court procedures occur for all types of cases: additional work for legal representatives or a less pleasant interaction with the client were observed for all case types as a possible consequence of the duration of the case. Apart from this, the three case types show considerable differences with regard to the set of possible effects. It seems that the effects that are specific to the case type to be more important for the overall effect.

In the remaining we reflect on the general impressions we got of the effects for the three categories of cases. The perspective is of course the durations as they are at the moment of the research.

Disablement Benefits Act cases: People who have lost their benefits and face a court case on it experience all kinds of negative effects both financially and emotionally. These effects are however mainly caused by the fact that there is a case and not so much by the duration of the case. Or at least this is true in our sample where all claims are dismissed and none of the plaintiffs suffered from psychological problems. Good information on what duration one should expect is however very important on limiting the (emotional) costs of long court case duration.

What cannot really be deduced using a case study approach such as ours, but potentially has economic consequences, is what effects long-running Disablement Benefits Act cases have on the intensity or chances of success with which one enters the job market. Legal delay might lead to slower and poorer reintegration.

Purchase cases: With regard to purchase cases we have found strong indications that the legal delay can have large negative effects for plaintiffs who's claim is a large sum relative to the financial strength of the company. This implies that mainly small and mid-size companies are hindered by long duration of court cases. A relatively small company can sometimes just not survive until the ruling arrives. The expectations on the duration sometimes forces plaintiffs to let go or to accept an unfavourable settlement as it is obvious that they would not survive. Access to justice for small and medium enterprise can be severely hampered by long procedures.

Obviously, the speediness of procedures is influenced by all parties that are involved in the process as well as their legal representatives and the court. For strategic reasons, a party (mainly the defendant) might pursue delay/postponement. Knowing this, it is remarkable that even parties who themselves were (partly) responsible for the delay report negative overall effects of the long duration afterwards.

Regular delay and postponement is widely seen as a nuisance. Parties live up to the date of the next step and being faced by yet another postponement can put a hard burden on the parties. The emotional effects can be large, especially for a relatively small company where the case is not handled by a salaried employer but by the (only or main) shareholder of the enterprise.

Arrangements concerning parental access: When it comes to arrangements concerning parental access, the (length of the) procedure plays an entirely different role than for the other two case types. The duration of a case regarding arrangements on parental access largely depends on the number of trial visitation arrangements that are tried out for a certain period of time. A complex situation between the parents (or the child and the parent who seeks visitation rights) can have a positive but also a negative effect on the duration. The effects of the case on the parents and children are

to a large extent dependent on the situation. The distinction between the effects of the underlying situation and the effects of duration is not easily made.

With regard to cases on parental access, the main fear is that there is alienation between parent and child. A possible hypothesis is that legal delay plays a role in alienation. However the main purpose of trials with different visitation arrangements (that eventually results in long duration) is to prevent alienation. Alienation is a fear if there is no visitation. This could be the case while one is waiting for Child Welfare Council to take the case on or while one is waiting for the final decision.

Therefore, with regard to parental access arrangements it seems to us that, instead of focusing on the effects of duration, it would be a better point of departure to investigate the effects of the waiting time at the Child Welfare Council or the waiting time for the final ruling. However, the clues arising from this research indicate that these effects concern stress and irritation in particular. No evidence was found in this investigation for alienation between parent and child resulting from the waiting time at the Child Welfare Council or due to the waiting time for a final decision.

The choice of taking parental access cases as an example of cases between a natural person versus another natural person, in retrospect is probably not the best choice. Alternatives are divorces or cases on the purchase of property.