

Summary

Paths to justice in the Netherlands 2019

Access to justice is widely seen as an essential component of good governance and promoting equal opportunities for all. In the Netherlands, the Minister of Justice and Security is responsible for maintaining an adequately functioning and accessible legal system. This Paths to Justice study provides insight into the experiences of Dutch citizens with the legal system. The study describes the justiciable problems pertaining to civil and administrative law that Dutch citizens experience, which actions they undertake to address these problems, the results obtained, and their evaluation of legal services and procedures.

The first Dutch Paths to Justice study was published in 2003, the study was repeated in 2009 and 2014. The current research covers the years 2015-2019. Because the Paths to Justice studies are repeated every five years, it is possible to observe changes over time and to identify preliminary trends.

Research questions

The following research questions were addressed:

- 1 To what extent were (potential) civil-law and administrative-law problems prevalent among the population and which circumstances affected their occurrence?
- 2 What courses of action did citizens take to resolve these problems? To what extent did they use legal services and/or extrajudicial and judicial dispute resolution, and which circumstances affected their choices?
- 3 How were the problems concluded? What were the results obtained and which side effects occurred?
- 4 Which legal and other costs did citizens incur in the course of resolving their problems, and which circumstances affected their occurrence?
- 5 How did citizens evaluate legal advisors, mediation, and procedures consulted? What were citizens' general attitudes towards lawyers and courts?
- 6 With respect to the above questions, to what extent have changes occurred compared to the measurements of 2014, 2009, and 2003?

In answering these research questions, we look at justiciable problems of citizens as they relate to other citizens, companies, or the government. Legal problems between companies or between companies and the government fall outside the scope of this research, as does legal advice sought by companies in problems involving citizens.

Theoretical background

Justiciable problems are not rare events, but occur frequently among all social groups. The chance of encountering justiciable problems depends on one's participation in society in general, and more specifically on one's participation in the social structures that form necessary preconditions for the problem's occurrence (for example: being employed, renting a house). People who are more actively involved in society are more likely to encounter justiciable problems, all else being equal.

Furthermore, people with fewer economic, social, or psychological resources are relatively likely to encounter justiciable problems. This can cause a vicious cycle in which justiciable problems trigger loss of resources, resulting in more problems. Finally, societal developments such as demographic ageing, economic growth or shrinkage, and technological and policy developments also affect the occurrence of justiciable problems.

How problems are addressed depends most of all on the characteristics of the problem: the type of problem, its severity, and its financial cost. To some extent, citizens who encounter justiciable problems engage in cost-benefit analysis to determine their course of action. International comparative research also shows that the majority of justiciable problems is resolved outside of formal justice systems. One possible explanation for this finding is that citizens are not always aware that there might be a legal solution to their problem. Moreover, studies show that the ability of people to collect and assess relevant information and use this to make informed choices in response to a justiciable problem is limited. This is all the more the case for citizens in economically or socially vulnerable positions and citizens who face multiple problems at once. Research into self-efficacy demonstrates that people's psychological resources are not always sufficient in case of stressful and mentally taxing events.

Trust in the Dutch justice system is high relative to other European countries, and has increased slightly in recent years. Trust in the justice system does differ between population groups and is influenced by citizens' own experiences. Citizens' experience of procedural justice, their motivation to start a court case, and their expectations beforehand play key roles.

Research method

Data were gathered using an Internet survey among a stratified sample of adult Dutch citizens. The survey was conducted among members of two Internet panels: the I&O Research Panel and the LISS-panel. Selected panel members (n=5,513) were asked whether they had experienced one or more justiciable problems in the period January 2015-December 2019, and if so how many and what kind. Respondents who indicated having experienced one or more non-trivial problems during this time period (n=3,220) answered further questions on their actions to resolve this problem and how the problem ended (in case respondents had experienced more than one problem, the questions only applied to the oldest problem). Survey weights were applied to the data. The weighted data are representative for the adult Dutch population in terms of gender, age, migrant background, household income, educational attainment, and urbanity. However, highly vulnerable groups such as people with low literacy are not as well represented, nor are people who do not speak the Dutch language.

Number and types of problems

Over the 2015-2019 period, 57% of respondents were faced with one or more justiciable problems. In these five years, respondents with one or more problems faced 3.3 problems on average.

Problems relating to the purchase of goods and services were most prevalent (30%), followed by employment problems (24%), problems related to the living environment (15%), family and relationships (8%), real estate (7%), and tenancy (6%).

Respondents reported on average that they were 'somewhat preoccupied' by their problems (average severity of 3.2 on a 1-5 scale) but this varied greatly depending on the type of problem. The duration and financial stakes of problems also varied greatly.

The probability of encountering a problem mostly depended on the degree of economic and social activity (educational attainment, employment, age, hours spend on the Internet, buying and selling over the Internet) and participation in specific social structures (being employed, being a renter). This indicates that when exposure to activities or contexts in which problems can occur increases, the probability of actually experiencing problems also increases. Looking specifically at vulnerable groups, we observe that citizens who received welfare benefits and those who reported being in bad health had a higher probability of experiencing problems than employees and citizens who reported having good health.

Actions taken

Of all respondents with a problem, 11% did not (yet) undertake action. Almost half (49%) of respondents took action themselves, without consulting advisors. The majority of this group took action by contacting the other party. The remaining 38% of respondents consulted one or more advisors, of which 28% consulted one or more legal advisors and 10% only consulted non-legal advisors. Among legal advisors, lawyers (9%), legal expenses insurers (8%), the Legal Services Counter (5%), and the police (5%) were consulted most frequently. Among non-legal advisors, healthcare providers were most commonly consulted (7%). The majority consulted one (legal) advisors (64%), the remainder consulted more than one.

Mediation took place – or was planned to take place – in 5% of problems. Of all mediations, 10% was conducted online. A judicial procedure was started in 3% of problems, an extrajudicial procedure – such as an appeal to a complaints committee – in 5%. In a large majority of cases, only one procedure was started (90%).

Actions taken mostly depended on characteristics of the problem, characteristics of the respondent mattered less. If the problem was severe and the expected duration and financial stakes were high, respondents were more likely to take action. If the financial stakes were higher, respondents were more likely to consult a legal advisor. This was also the case if the respondent had legal expenses insurance or was a union member. Young adults, those with lower educational attainment and those with a non-Western migrant background were more likely to not take any action, independent of problem characteristics. In case of problems relating to family or relationships, mediation and judicial procedures were more likely. Judicial procedures also occurred relatively often in case of severe problems with high financial stakes and a long expected duration. Extrajudicial procedures often involved appealing a government decision. These were more likely if the problem was more severe, but the problems that involved extrajudicial procedures had lower financial stakes on average than problems involving judicial procedures.

Results

By the time of study, 89% of all problems were concluded, meaning that respondents reported not taking further action. Of all concluded problems, 34% resulted in an agreement between the parties and 5% in a decision by a judicial or extrajudicial body. The other 61% was concluded in another way: here, 50% reported having taken action to resolve the problem while 11% had not. Of this group of 61% that

was not concluded by agreement or (extra)judicial decision, three quarters of respondents nonetheless reported that their problem no longer exists. This may be because they gave up trying to resolve the problem, the problem situation no longer exists (because of a move or change of employment), the other party conceded or because they did reach an agreement.

The probability of reaching an agreement mostly depended on the type of problem and the expected duration. In case of problems relating to family and relationships and problems that respondents expected to be solved within the year, agreement was more likely. Failure to reach an agreement was mostly due to the other party not recognizing the problem, the positions of the parties being too far apart, or because obtaining a judicial decision was mandatory – as is the case for some types of civil-law problems.

The contents of agreements and/or decisions varied greatly. In 39% of cases, the other party had to fulfil financial obligations, in 4% of cases the respondent had to do so. Nineteen per cent of obligations were non-financial in nature, including behavioural changes and children visitation agreements. In 93% of cases, the other party (partially) adhered to their financial obligations; for non-financial obligations this was the case in 95% of cases.

Of all respondent who have taken action, 67% (partially) achieved their goal. In case the problem had been concluded (i.e. respondents no longer undertook action), 60% was satisfied with the results while 18% was dissatisfied. Agreements between parties were deemed just in 77% of cases, in case of (extra)judicial decisions this was 72%.

Whether respondents achieved their goal depended on the expected duration and severity of the problem: when problems were less severe and could be solved within a year, goal achievement was more likely.

Almost a third of all respondents with a justiciable problem reported experiencing stress, 17% had trouble sleeping and 15% reported health problems as a result of their problem. Furthermore, 16% of respondents reported having regrets: they mostly regretted not taking action sooner or thought they should have stood up for themselves more.

Legal and other costs

One fifth of all respondents who consulted legal advisors and/or used mediation or procedures reported having had legal costs, such as legal fees or court costs. For around a third (35%) of respondents, legal costs were (partially) reimbursed by a third party, most frequently through legal expenses insurance, employers, or the Legal Aid Board in case the respondent qualified for subsidized legal aid. Eleven per cent was (partially) reimbursed by the other party. The level of costs varied greatly. Respondents with a problem relating to family or relationships, respondents who consulted a lawyer, and respondents with a judicial procedure were more likely to have legal costs.

Apart from legal costs, 35% of respondents who consulted legal advisors and/or used mediation or procedures also reported other costs, notably travel expenses and loss of income. Respondents with a judicial procedure, self-employed respondents and respondents on welfare benefits more often reported having had such costs.

Evaluation of legal services and attitudes towards lawyers and courts

Respondents were generally positive about the services provided by legal advisors, differences between types of advisors were small. Mediation was likewise evaluated mostly positively. However, only half of respondents indicated they would opt for mediation again in the future, and less than half (48%) thought the mediator was impartial. Respondents with a judicial or extrajudicial procedure were positive about the professional expertise of the organisation and (where applicable) the court hearing and how the decision was motivated. Half of respondents thought the decision-making organisation was impartial. Respondents who reported having won their case (in full or in part) were more positive than respondents who had lost. All respondents, regardless of whether they experienced a justiciable problem in the last five years, were given a number of statements on the functioning of courts and lawyers. Overall, respondents were more positive than negative, although they were more favourable towards judges than lawyers. Respondents were divided on the question whether the justice system functions the same for rich and poor people. Respondents with below average income and respondents on welfare benefits more often thought this was not the case. Trust in the justice system depended on the number of justiciable problems experienced (respondents who experienced more problems were less positive) but did not depend on prior experience with lawyers or judicial procedures. However, respondents who experienced higher procedural justice during their court hearing reported more trust in the justice system. Respondents with lower educational attainment, bad health and/or lower self-efficacy had less trust in the justice system. Respondents with a non-Western migrant background were slightly more trusting, all else being equal.

Changes over time

Compared to the previous (2014) study, the share of respondents who have experienced at least one justiciable problem has remained the same at 57%. However, the average number of problems per person has increased. Previous studies found both a decreasing share of respondents with justiciable problems and a decreasing number of problems per person. This might indicate that the share of respondents facing several problems at once is on the rise. In terms of problem type, there was an increase in respondents reporting problems with goods and services and problems with neighbours. Problems relating to money, mortgages, and real estate tax decreased. It should be noted that it is likely that problems relating to goods and services and debts are underreported, both in this study and previous ones. The number of problems where the other party was located outside of the Netherlands also increased, this mostly concerned problems relating to the purchase of goods and services.

In terms of actions taken, we see an increase in the share of respondents who do not take action and those who attempt to resolve the problem by themselves, without recourse to legal advice. The share of respondents who consulted a (legal) advisor peaked in 2009 and has decreased since. Compared to 2014, consultation of lawyers and legal expenses insurance both decreased by three percentage points. Financial costs are not often mentioned as reason to forego legal advice. It is possible that increased availability of online information and legal tools obviate the need for personal legal advice for some respondents. Changes in the relative share of problem types over the years and the broadened competency of district courts in 2011 may also play a role: both developments may result in fewer problems for which representation by a lawyer is compulsory.

The share of problems involving mediation is comparable to that of previous studies. Compared to 2014, mediation is more often used for problems relating to renting out real estate. Use of both judicial and extrajudicial procedures has decreased compared to 2014. Looking at judicial procedures, we see a gradual decline from the first measurement in 2003, when 6% of respondents reported having used a judicial procedure. Currently, only 3% say the same. Costs of a judicial procedure do not seem to be a deterrent for respondents. However, increased costs may prevent other entities, such as corporations or the government, from starting procedures which means that citizens are also less likely to become involved in one. With regard to extrajudicial procedures, we see a change in trend compared to earlier studies: the share of respondents with an extrajudicial procedure increased from 6% in 2003 to 11% in 2014, but fell to 5% in the current measurement. This decline is also evident in registration data. Part of this decline might be explained by the fact that different government bodies are experimenting with a more informal and responsive approach to citizens' appeals of government decisions.

The number of problems that ended with an agreement between the parties declined from 53% in 2009 to 34% in 2019. The number of problems that was concluded with a decision by an (extra)judicial body likewise declined. The decline of agreements means that less respondents reached their goal. However, respondents who quit without reaching agreement or a decision were also less likely to achieve their goal. Increased complexity of problems and changes in the prevalence of different problem types might partially explain this decline. Compared to 2014, respondents who came to an agreement more often thought this agreement was just, and commitments were more often adhered to by the parties.

In 2019, respondents reported having had legal costs less often (20%) than in 2014 (26%). They also had less other costs (35% compared to 40% in 2014). The amount of money spent was somewhat higher in 2019 compared to 2014, for both legal costs and other costs.

Evaluation of legal advisors, mediation, and procedures has remained the same. However, the share of respondents who thought that either the mediator or the decision-making body was impartial has decreased relative to earlier measurements. With regard to their attitudes towards the courts and lawyers, respondents answered similarly or slightly more positively.

Concluding remarks

This study has shown how many and which justiciable problems citizens have encountered in the past five years, which actions they have taken in response to these problems, how the problems have ended and what they have achieved. Due to its broad scope, this study is particularly well suited to show general societal trends. The findings cannot be used to provide detailed insights into the experiences of specific social groups or to evaluate specific judicial bodies. In addition, because of the study design the experiences of highly vulnerable groups such as low-literate people could not be taken into account.

Compared to the previous Dutch Paths to Justice studies, the current study provides indications that access to justice has declined, such as a decrease in the use of legal advisors and procedures and a decrease in the share of respondents who have achieved their goal. Whether these trends are in fact indicative of less access to justice – in general or for specific groups of citizens or for particular types of problems – is difficult to say. Answering this question will require more in-depth research into the possible underlying causes of problems and the considerations of respondents.