



Dispute settlement in the Netherlands

Civil and administrative dispute proceedings in the legal system

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Policy context and study object

The policy of the Minister of Justice is aimed at creating a workable legal system that provides for suitable and effective facilities and arrangements for all types of dispute. A workable legal system offers various options for the settlement of disputes. After all, not all conflicts are the same and require the same manner of settlement. Forms of extrajudicial dispute settlement such as mediation, arbitration and binding advice can be suitable forms of dispute settlement, in addition to recourse to the court, and can enable the legal system to maintain the responsiveness it needs.

This fact sheet offers a limited overview of policy information about the use of various forms of dispute settlement, based on available WODC studies in this field. It paints a picture of the current civil and administrative dispute settlement processes. The question is: *How are civil and administrative disputes settled in judicial and extrajudicial procedures in the Netherlands?*

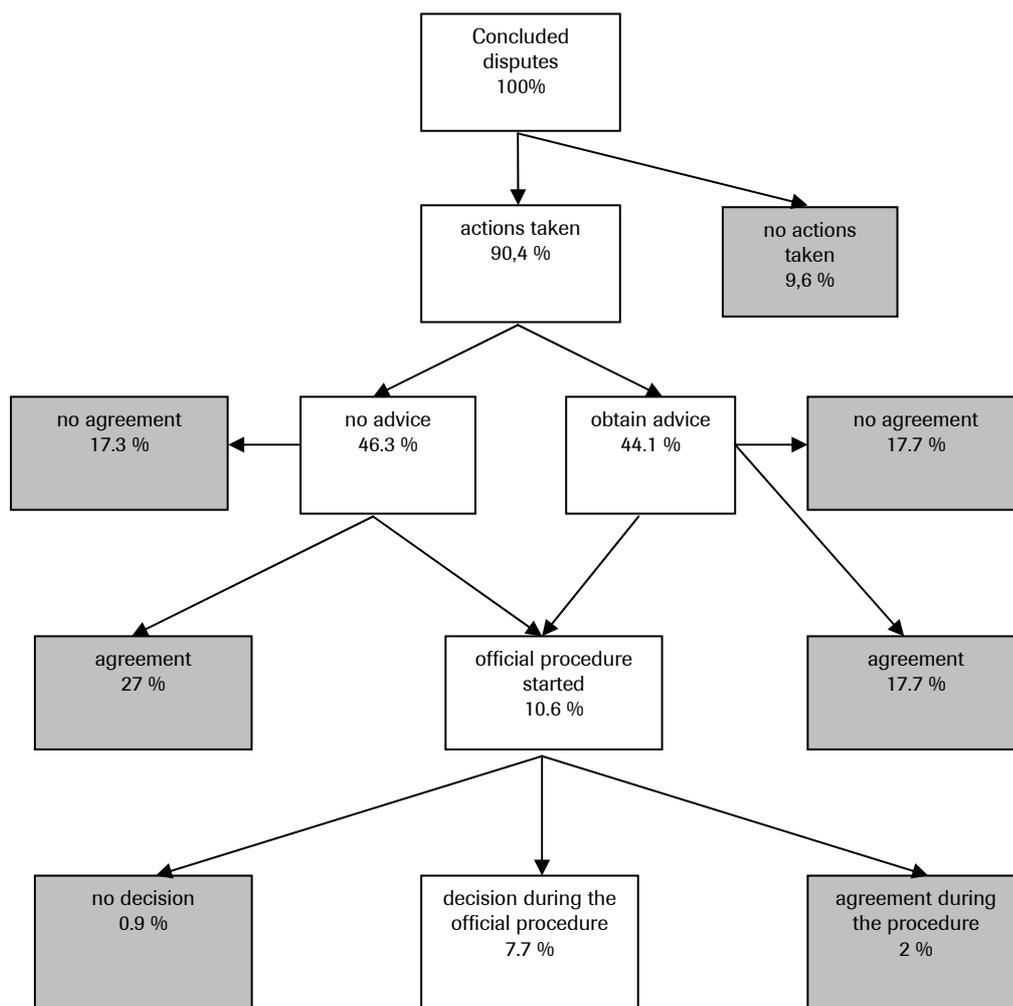
This fact sheet provides an overview of legal problems that may occur in society, and the solution strategies opted for. This is followed by a discussion of the relationship between judicial and extrajudicial dispute settlements, which in turn is followed by a discussion of the nature and scope of civil and administrative justice.

Box 1 presents an overview of the studies on which this fact sheet is based. Together these studies present an image of the current situation with regard to dispute settlement in judicial and extrajudicial procedures. This fact sheet gives a limited account of these developments. A wider summary is provided in the Periodic Information Supply Dispute Settlement, which sets out the state of affairs and developments in the civil and administrative dispute settlement chain every two years.

Box 1 Research

- The Dispute Settlements Delta 2003 (Van Velthoven and Ter Voert, 2004) presents an overview of the degree in which (potential) civil and administrative problems occur in society, and the ways in which citizens solve these problems. The research offers points of departure that can be used to determine how personal responsibility in the choice of dispute settlement by those seeking justice can best be shaped, from an administrative point of view. The data have been collected via an Internet survey. While the random survey is representative for the Dutch population as regards gender, age and level of education, please note that Internet users have certain characteristics that may influence the study's outcome. People of a non-western foreign heritage are underrepresented in the random survey. Moreover, the survey was set up from the citizens' perspective, while many disputes arise with or between legal persons. Separate literature studies have been carried out into the dispute behaviour of people of foreign heritage and legal persons.
- The exploratory survey "The filter operation of extrajudicial procedures" (Van Erp and Klein Haarhuis, 2006) offers an initial insight into the nature and scope of extrajudicial dispute settlement and the degree in which such procedures influence appeals to the court, and therefore the factual relationship between judicial and extrajudicial dispute settlement.
- The report "Quantitative developments in the administration of Justice" (Van Erp and Van der Heide, 2006) was set up within the framework of the evaluation of the modernisation efforts within the administration of justice. This report offers an overview of the nature and scope of the administration of justice and the developments in the period 2000-2005. The report is based, amongst other things, on the data files held by the Council for the Judiciary and the appeal courts. Moreover, the results of various customer satisfaction surveys ordered by the courts have been included. The report also comprises an overview of the costs of the administration of justice.

Figure 1 Overview of solution strategies for concluded disputes (2003)



Source: Dispute settlement delta 2003.

Legal problems and solution strategies

The Dispute Settlement Delta shows that (potential) legal problems are present all around us in every-day life. People solve many of these problems themselves. Legal aid is called upon in few cases only, and only a relatively small part of all problems finally end up in court. The share of extrajudicial dispute procedures is equally limited. Figure 1 provides an overview of the various solution strategies and their relative scope for (settled) disputes.

The research provides no indications that the offer of legal aid is, on the whole, insufficient, or that the quality is below standard. There is a very broad range of institutions that will advise and render assistance which citizens use, often to their satisfaction regarding the services offered. A number of results have been set out below.

- About two thirds of all citizens experienced at least one (potential) legal problem over a five-year period. People who had experienced a problem, usually experienced more than one (3.7 per person on average). The degree in

which citizens experienced problems varied according to the type of problem. Almost one third of all citizens had been confronted with problems concerning the supply of goods and services (32%) and job-related issues (30%). These were followed by money issues (22%), real estate ownership issues (20%), issues concerning the rent of living accommodation (12%), relationship and family affairs (10%), health problems caused by third parties (7%), problems due to children under the age of 18 (3%) and renting out rooms or property (3%).

- To tackle a problem, about 44% called in advice or help from an expert or organisation and 46% dealt with the problem themselves without advice or help. The other 10% did not seek any contact with the other party, nor any help.
- In 48% of the problems parties reached an agreement, in another 3% of the problems the decision in an extrajudicial procedure concluded the matter and in 4% of the cases the problem was concluded with a decision by the court. In 35% of all problems no agreement or decision was reached, despite actions taken,

and in 10% nothing was done to solve the dispute.

- In 40% of the problems citizens sought compensation for material damage or claimed other financial compensation. Immaterial objectives often included justice being done or a change in behaviour by the other party. Eventually, 73% of all citizens achieved their objective. Where a resolution had been reached by mutual agreement, these objectives were achieved more often than when a decision was taken by a third party. Half of all people for whom the problem was not concluded with a decision or agreement also fulfilled their objective. The problem was solved in another manner or had disappeared all by itself.
- Citizens were generally positive about the legal facilities used. They often relied on being given a fair treatment in court and found judges reliable and honest. People were less positive about the equal operation of the legal system for poor and rich: 42% found that people of differing financial means were not treated equally. People tended to think less positively about lawyers than about the judiciary. Lawyers were often said to be too expensive and were regarded as less trustworthy than judges.

The relation between the administration of justice and extrajudicial dispute settlement

People unable or unwilling to solve legal problems themselves may start an official procedure. The Dispute Settlements Delta showed that this was the case in almost 10% of all disputes, with 4% court procedures and 3%

extrajudicial procedures. In the remaining 3% agreement was reached during the procedure or no decision was taken. This means if there are one hundred disputes, four end up in court and three turn to an extrajudicial institution.

The Netherlands has a broad range of extrajudicial dispute institutions. Sometimes an extrajudicial procedure is an obligatory procedure, as is the case in administrative reconsideration procedures. Sometimes the choice for an extrajudicial procedure has been laid down in a contract, as is often the case in arbitration. Sometimes parties in a dispute opt for an extrajudicial procedure because it is a low-threshold alternative to official court proceedings, such as a dispute committee. Box 2 presents an overview of extrajudicial dispute procedures.

If an extrajudicial procedure fails to yield a satisfactory solution, a person looking for justice may also start a legal procedure (the other way around is also possible). However, this happens to a very limited extent only, and extrajudicial procedures therefore have a filter operation (also referred to as sieve operation) in the administration of justice. The scope of this filter effect varies per procedure. In the Dispute Settlements Delta 14% of all respondents initiated judicial proceedings following the extrajudicial procedure. The filter effect of the dispute agencies that were approached for the study “The filter effect of extrajudicial procedures” ranged on average from 8 to 10%. While this will not apply for all procedures, we can say that the filter effect of extrajudicial procedures is between 8 and 15% on average. Table 1 provides an overview of the filter effect where known.

Table 1 The filter effect of a number of extrajudicial dispute procedures (averages for 2000-2004)

Administrative reconsideration procedures, various administrative bodies*	Average 91%
Rent Assessment Committee	95%
Joint Sectoral Committees for Government and Welfare	95% and 89.5% resp
Equal Treatment Commission	95.2%
Architectural Arbitration Institute	98.5%
Tamara	100%
National Home Warranty Institute	100%

* This is an average of the filter percentages established from the various surveys on objection proceedings.

Box: 2 Extrajudicial dispute procedures

The survey “The filter effect of extrajudicial dispute procedures” (Van Erp and Klein Haarhuis, 2006) has yielded an initial image of the nature and scope of the more institutionalised forms of dispute settlement in formal procedures. There are 33 procedures or clusters of procedures. Below is an overview of the extrajudicial procedures that deal with over 50 disputes per year.

Procedure	Function	Average number of cases per year (2000-2004)
(Procedures based on the General Administrative Law Act)		
reconsideration procedure in administrative law	Review of decisions by administrative bodies	Few hundred thousand
National Ombudsman	Complaint settlement concerning administrative bodies, following a complaint to the body in question.	9,817
Arbitration		
Arbitration Board for the Building Industry (RvA)	Arbitration in disputes between constructors and clients (business or private). The GIW also has a mediation facility	1,139
National Home Warranty Institute (GIW)		910
Netherlands Arbitration Institute (NAI)	Independent institute for arbitration	158
Architectural Arbitration Institute (AiBK)	Arbitration and binding advice in disputes that have arisen between clients and interior designers and architects	69
TAMARA	Arbitration in the field of shipping , transport and international trade.	50
Advice and mediation in work-related disputes		
Objection committees for job assessment and Appeal committees for job issues in education	Opportunity for employees to submit objections regarding job assessments and job content to an Objections Committee or regarding labour law decisions to an Appeal Committee. All 8 committees are managed by SGO.	223
Business committees for the private sector; government; Welfare	Advice / binding advice during disputes between WC/ employer in the public sector, the welfare sector and the private sector (15 specific committees in a range of areas).	About 80
Advice or binding advice – pertaining to private law		
Foundation for Consumer Complaints Boards (SGC)	Binding advice by more than 30 disputes committees in a wide range of consumer fields. The Dispute Committee Childcare is new in 2005	11,830
Dutch Securities Institute (DSI)	Complaints, dispute settlement, disciplinary law and appeal following acts or failure to act by a participating institution within the framework of securities services.	504
Appeal Committee Access to Health Insurance Act	Binding advice in disputes between insurers and insured (health care)	160
Mediation		
The Netherlands Mediation Institute (NMI)	Umbrella organisation to stimulate mediation and to monitor quality. Registers data on mediations carried out by recognised mediators	2,810
Complaint procedure pertaining to private law		
Rent assessment committee	Decision in private or businesses disputes between lessee and lessor	65,012
Insurance Complaints Board (SKV)	Dealing with customer complaints and disputes on insurance contracts.	5,063
Advice / decisions based on regulations or Articles of Association		
Advertising Code Committee and the Appeal Board	Complaint handling involving Dutch Advertising Code.	2,523
Equal Treatment Commission (CGB)	Testing complaints / incidents based on the Equal Treatment Act and other relevant anti-discrimination legislation.	333
Press Council in the Netherlands	Assesses if the challenged journalist behaviour has violated what is deemed socially acceptable in respect of journalistic responsibility requirements.	72

Developments in the nature and scope of civil and administrative justice

Figures 2, 3 and 4 present the inflow and outflow of civil and administrative court cases for the period 2000-2005.

With the exception of immigration law, all legal fields witnessed an enormous increase in the inflow in the period 2000-2005. Very strong increases occurred in cases of civil summons in the district court sector, which increased by two thirds in the period 2000-2005, and the number of administrative settlement cases in the district sector (so-called Mulder cases), which almost doubled. Also, the number of applications in the district and civil sectors experienced a stable, albeit somewhat more moderate growth. In the

courts, the number of administrative cases rose by almost one third between 2002 and 2005. The drop in the inflow of immigration affairs is the result of the introduction of the Immigration Act in 2000. Also in the general and in the administrative appeal courts, (figures for which are not presented here) the number of appeals increased considerably.

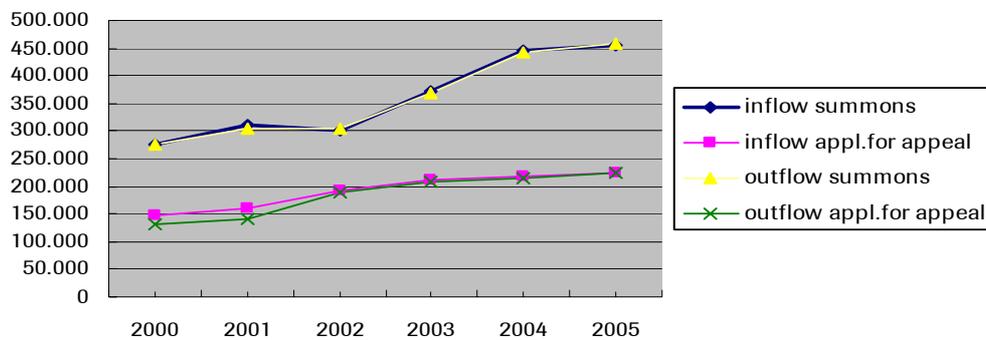
Economic developments, with a recession in the past few years, were the main reason for the increase in the number of cases. Job dismissal cases, outstanding electricity and telephone bills and insolvency applications accounted for a very large part of the increase. In the administrative sector, benefits cases accounted for the biggest increase. The developments also related to a number of legal and policy changes. The

Immigration Act 2000, which made going to court less attractive in these cases, reduced the number of immigration affairs cases in three years time from 98,000 to 59,000. An increase in the number of traffic fines immediately led to more administrative appeal procedures. Other external developments (concerning the administration of justice) also create sudden peaks in the number of cases. The review of the Valuation of Immovable Property Act every four years inspires many tax cases, while the Foot and Mouth crisis in 2002 caused a temporary doubling of cases with the Appeal Committee for Business and Industry.

The main developments to have taken place in the field of the administration of justice itself in the period 2000-2005, were the increase in court

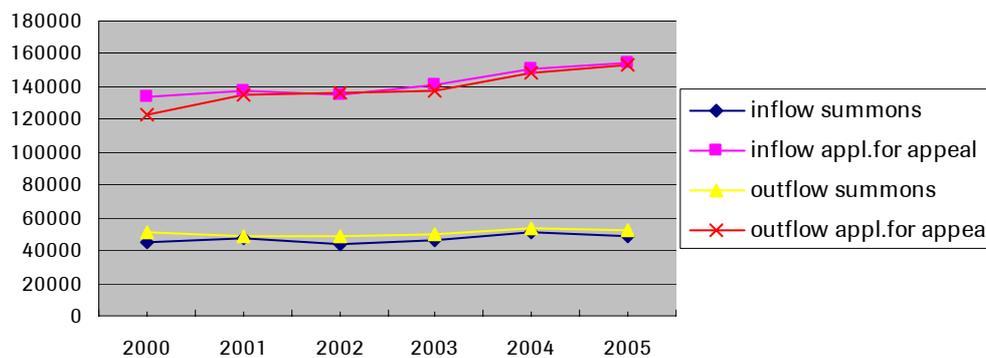
fees and the widening of the competence area for the district court. The effect of these developments is much less visible. Research has shown that an increase of the court fees often leads to a decrease in the number of appeal procedures (Leertouwer e.a., 2005). While the court fee has increased considerably since 1999, this has not led to an absolute decline in the number of cases. Perhaps the large number of legal expenses insurances provided a correcting effect, or else the number of cases would be even greater. The increase of the competence area of the district court in 2002 has yielded more district court cases, although the number of civil court cases has remained stable.

Figure 2 Inflow and outflow court, district court sector, 2000-2005



Source: PCSII.

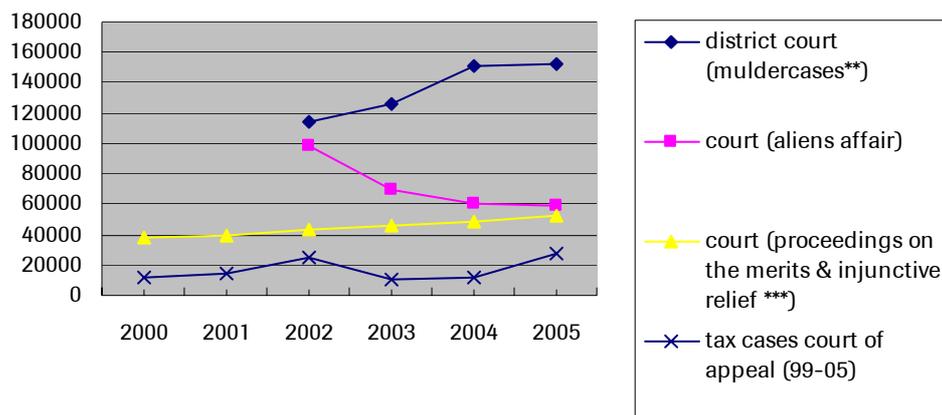
Figure 3 Inflow and outflow from court, civil sector, 2000-2005



Source: PCSII.

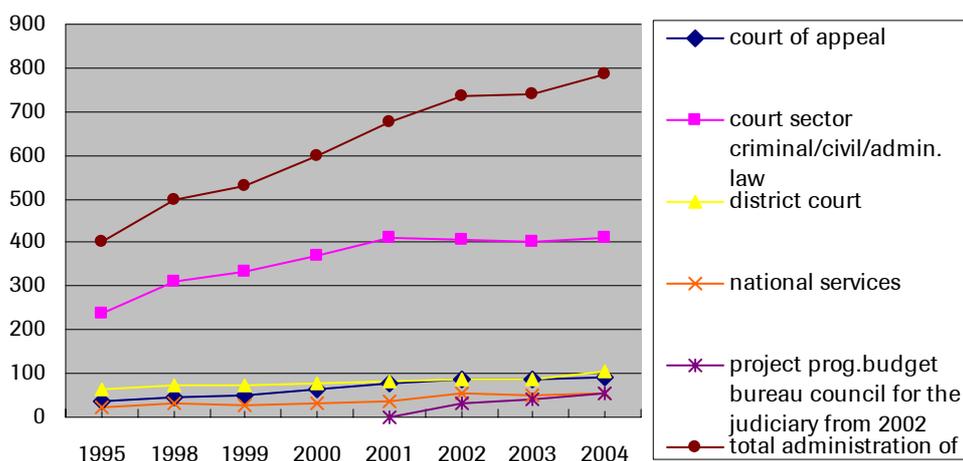
- * The outflow data are inclusive of withdrawals. A distinction in the outflow data between legal decisions and settlements is not possible.
- * In the data on summons the summons for trade and interim injunction proceedings have been added up. Summons for family law (a small number) have not been included.
- * The number of applications is the total sum of the family case applications (divorces, psychiatric hospitals act), juvenile court (placed under supervision and custodial placements) and business applications, including applications for insolvencies.
- * Due to a new measurement method in cases of bankruptcy, the data for 1999 and 2000 as regards the applications in the civil sector are not entirely reliable.
- * Presidents' requests and deeds and certifications have not been included in these data.
- * The data for the civil sector include district court appeals. Following the introduction of the district court division in 2002, the appeal court receives appeals from the court districts. In the years 1999 and 2000 the inflow in the civil sector covered some 2000 district appeals, in 2004 and 2005 this fell to 5 and 2 respectively.

Figure 4 Inflow court, administrative sector, 2000-2005



Source: PCSII (Council for the Judiciary), and Leertouwer et al (2005).
 The data for 2000 have been compiled based on CBS data and data provided by the Council for the Judiciary (see Leertouwer et al (2005) page 198 to 193).
 The number of Mulder cases and immigration cases are available for comparison from 2002 only.
 The outflow data are not available.
 ** Including "address unknown"
 *** Excluding immigration affair and district court cases.

Figure 5 Expenditure administration of justice, 1995-2004*



- mn euro, rates 2004; costs on administration of justice, staff and material, including accommodation.
- incl. appeal courts, Supreme Court and Council of State

Source: budget/final Act Min of Justice, annual reports Council for the Judiciary, Annual reports Supreme Court, workload measurements 1994-1998, processed by WODC.

Costs of administration of justice

As the number of court cases grows, the costs of the administration of justice also increase rapidly. Figure 5 sets out the development of the costs of the various parts of the judiciary. From 2002 onwards the costs for the Council for the Judiciary and associated projects are also included.

The total costs spent on the administration of justice, including high courts, Supreme Court and Council of State, totalled 786 million euro in 2004. This is 48 euro per capita; and for each case heard by the court, 656 euro. These costs are compensated by revenues of 170 million euro, mostly from court fees. The civil administration of

justice accounts for the biggest part of these costs. Measured in workload, the relationship between civil, administrative and criminal administration of justice is 44%, 31% and 24% (at court level).

Since 1995 the overall costs of the administration of justice have almost doubled (corrected for inflation). The biggest relative increases can be found in criminal cases in district courts: 8 times more is spent on these than in 1995. Costs of special administrative boards increased tenfold, but this is caused particularly by the set up of the Central Appeals Tribunal in 1999. The costs spent on civil cases are reasonably stable; costs for criminal justice increased and those for administrative justice fell somewhat.

The budget for national services more than doubled in the period 1995/2004 (from 25 to 55 million euros). From 2002 it was increased by another 55 million for the budget for the Council for the Judiciary and related projects and

programme budgets. In 2004 the total of national services and Council for the Judiciary accounted for 14% of the costs spent on the administration of justice.

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