



Wetenschappelijk Onderzoek- en
Documentatiecentrum

Cahier 2023-6

Drempels in de toegang tot het recht

Summary

Cahier 2023-6

Drempels in de toegang tot het recht

Summary

M.S. Hoekstra
G. Teeuwen

Cahier

De reeks Cahier omvat de rapporten van onderzoek dat door en in opdracht van het Wetenschappelijk Onderzoek- en Documentatiecentrum is verricht. Opname in de reeks betekent niet dat de inhoud van de rapporten het standpunt van de Minister van Justitie en Veiligheid weergeeft.

Summary

Barriers to access to justice in the Netherlands

Every five years since 2003, the WODC has surveyed the problems with a potentially legal solution (justiciable problems) of the Dutch population: the Dutch Paths to Justice studies. In the most recent edition – covering the period 2015-2019 – there was a relative decrease in the use of legal aid and (extra) judicial procedures compared to previous measurements. Furthermore, the share of respondents who took no (legal or other) action to solve their problem increased slightly. This study aimed to identify the barriers that citizens experience in addressing their justiciable problems. We focused particularly on citizens who did not qualify for subsidised legal aid. The Legal Aid Act (Wrb) regulates access to subsidised legal aid. This access is subject to eligibility criteria relating to household income and assets. The focus on citizens who are not eligible for subsidised legal aid stems from indications that middle-income citizens in particular experience barriers in accessing the law. In addition, a previous study has already looked at non-use of legal aid by eligible citizens.

This study aimed to answer the following research question:

What barriers do citizens experience in accessing the law, specifically those that do not qualify for subsidised legal aid?

Four types of barriers to accessing justice emerged from this study: a financial barrier related to the material costs of addressing the problem, a practical barrier related to intangible costs such as the time and energy required to address the problem, hesitation to act related to not knowing how to address the problem, and a psychological barrier where respondents experienced feelings of discomfort, fear, or shame.

Using a limited conceptualisation of eligibility for subsidised legal aid, we found no evidence that respondents who did not qualify for subsidised legal aid experienced more barriers in access to justice. Respondents who did qualify for subsidised legal aid were more likely to state that they had not taken action to address their potential legal problems out of a hesitation to act related to not knowing how to tackle the problem, regardless of problem characteristics.

Design of the study

The study was conducted through a secondary analysis of the dataset of the 2019 Dutch Paths to Justice study combined with data from a pilot study. Due to the combination of data sources, the findings from this report cannot be compared one-to-one with the 2019 Dutch Paths to Justice Study. The numbers reported in the study are indicative of the frequency of problem-solving strategies chosen and barriers experienced, but are not representative of the Dutch population. However, in this study we are able to make statements about which barriers respondents experienced, and whether respondents experience different barriers according to their personal characteristics or the characteristics of the problem. Lastly, due to dataset limitations

it was not possible to determine with certainty whether all respondents were eligible for subsidised legal aid. The findings relating to subsidized legal aid should therefore be interpreted with caution.

In the following sections, we discuss the main findings regarding the problem-solving strategies chosen by respondents and the barriers they experienced. In doing so, we compare respondents who are not eligible for subsidised legal aid with those who are. In this way, we can determine whether the actions of citizens who are not eligible and the barriers they experienced differed significantly from citizens who can make use of subsidised legal aid. In addition, we consider the role of other financial resources such as legal aid insurance and look at different types of respondents and justiciable problems.

Problem-solving strategies

This study looked at three moments in respondents' problem-solving trajectory:

- (not) taking action in response to a justiciable problem (both legal and other action);
- missed contacts with legal aid providers: this is defined as respondents having considered to engage or tried to engage a legal aid provider, but ultimately did not receive legal aid from this provider;
- whether or not respondents initiated (extra-) judicial proceedings.

Respondents who were eligible for subsidised legal aid were less likely to take action than respondents who were not eligible. However, when we included the effects of other respondent characteristics and problem characteristics – such as the type and severity of the problem – we found no difference in (not) taking action based on eligibility for subsidized legal aid. When respondents had access to alternative forms of affordable legal aid, such as legal expenses insurance or union membership, they were more likely to take action. The less serious the problem, the less likely citizens were to take action. Respondents were less likely to take action in the case of problems relating to work – such as dismissal or bullying in the workplace – and especially in the case of discrimination and third-party caused health problems. Respondents who were less self-reliant were less likely to take action.

Compared to respondents who were not eligible for subsidized legal aid, respondents who were eligible were more likely to have missed contacts with legal aid providers. Again, this correlation disappears when we include the influence of other respondent and problem characteristics. The more serious the problem, the likelier respondents were to have had a missed contact with a legal aid provider. It appears that part of this group did not receive any legal aid despite experiencing a serious problem. Lower educated respondents were more likely to have a missed contact with a legal aid provider.

Eligibility for subsidized legal aid played no role in whether or not respondents initiated (extra-) judicial proceedings. The more serious the problem was the likelier respondents were to initiate proceedings. Proceedings were initiated much less often for civil law problems than for administrative law problems. Administrative law problems often involved appeal procedures; these are relatively low threshold compared to civil law procedures. Younger respondents initiated proceedings less often, regardless of the nature of the problem.

Barriers in access to justice

Various types of barriers may deter citizens from taking action when they experience a justiciable problem, from seeking legal aid and from initiating (extra-) judicial proceedings. In this study, we looked at the reasons why respondents did not opt for a particular approach. Based on this, we distinguished four different barriers:

- a financial barrier related to the material costs of addressing the problem;
- a practical barrier related to intangible costs such as the time and energy required to address the problem;
- hesitation to act related to not knowing how to tackle the problem;
- a psychological barrier where respondents reported experiencing discomfort, fear or shame.

These barriers are partly interrelated but also have distinctive profiles: they are experienced by different groups of respondents and/or relating to different types of problems.

Respondents who were (potentially) eligible for subsidised legal aid were more likely to experience hesitation to act or financial or psychological barriers. In contrast, those not eligible more often experienced practical barriers. However, when background and problem characteristics are included the relationships found are no longer significant. The exception is not taking action out of a hesitation to act: regardless of other characteristics, those eligible for subsidised legal aid experienced this barrier more often than those who were not eligible.

Respondents without legal expenses insurance and those who did not know whether they were insured were more likely to experience financial barriers as well as psychological barriers and a hesitation to act. Legal expenses insurance not only functions as a financial resource, but also provides a low-threshold way of taking action and lowers the psychological barrier of doing so.

Barriers were more frequently experienced in the case of problems relating to discrimination, renting property – for example, conflicts over rent increases or maintenance – and problems in the direct living environment such as conflicts with neighbours.

In the case of respondents who experienced practical barriers, we see little evidence of a problematic situation with regard to access to justice. These respondents often had problems that were not very serious and did not represent a significant amount of money (<€ 500). Regarding respondent who experienced financial barriers, the findings are more ambiguous. These respondents often had problems of low financial value *or* serious problems with a very high financial value (>€ 5,000). Respondents who experienced financial barriers were also less self-reliant, expressed less confidence in the legal system and were more likely to have a migration background.

Psychological barriers and hesitation to act seem to be relatively problematic in terms of access to justice. Similar to financial barriers, these barriers were experienced more often by respondents who were less self-reliant and had less confidence in the legal system. In addition, hesitation to act occurred more frequently among young adults and (sometimes) lower-educated groups. Finally, both hesitation to act and psychological barriers were more common among respondents with more serious problems.

Het Wetenschappelijk Onderzoek-
en Documentatiecentrum (WODC)
is het kennisinstituut voor het
ministerie van Justitie en Veiligheid.
Het WODC doet zelf onafhankelijk
wetenschappelijk onderzoek of laat
dit doen door erkende instituten en
universiteiten, ter ondersteuning
van beleid en uitvoering.

Meer informatie:

www.wodc.nl