

Summary

Dispute resolution: a comparison between non-western immigrants and native Dutch people

A theoretical-empirical study

Background

About 10% of the people living in the Netherlands are non-western immigrants. Although this is a considerable part of the population, we know very little of their paths to justice and possible barriers to justice. In light of the social-economic and cultural position they are in, they may be vulnerable to specific types of problems. Because of the likeliness of language problems, for example, they may have trouble finding appropriate help or they may be less capable of solving problems themselves.

Three matters prompted the initiative to take a closer look at the group of non-western immigrants and the way they resolve disputes. Firstly, the RMO study '*Toegang tot recht*' ('Access to justice') identified immigrants as a vulnerable group in terms of access to justice. Secondly, as its response to this study, the cabinet proposed to pay specific attention to dispute resolution in the group of non-western immigrants. Thirdly, immigrants are underrepresented in the WODC study '*Geschilbeslechtigingsdelta 2003*' ('dispute resolution delta 2003') into potential problems that citizens encounter in matters governed by civil and administrative law and their strategies to solve these problems. To get a more complete picture of disputes and problem-solving strategies of the population of the Netherlands, it is advisable to map the problems and problem-solving strategies of non-western immigrants residing in the Netherlands too.

Research questions

This exploratory study only addresses *non-western* immigrants. Within the group of non-western immigrants, we have limited ourselves to the four largest groups in the Netherlands, because they constitute a substantial part of the population in the Netherlands. The four biggest groups of non-western immigrants are: Turks (2.2%), Moroccans (1.9%), Surinamese (2%) and Antilleans/Arubans (0.8%).

This study follows the theoretical assumptions of the *Geschilbeslechtigingsdelta* study. The participation theory is used, among other things, to explain the extent to which people experience problems. The more people participate in society in a social and economic sense, the bigger the chance that they encounter problems in any of those interactions. The rational-choice theory is used to explain problem-solving strategies.

This study addresses the following questions:

- 1 Which theories are important in terms of nature and scope of (potential) justiciable problems of immigrants and the ways in which they solve those problems?
- 2 What can we expect to derive from the participation theory and any other theory in respect of the nature and scope of (potential) justiciable problems of the four identified groups of immigrants compared to native Dutch people and what empirical data can be found in that respect?
- 3 What can we expect to derive from the rational-choice theories and any other theories in respect of the problem-solving strategies of the four groups of immigrants compared to native Dutch people and what empirical data can be found in that respect?

Method

For this exploratory study, literature was studied with a view to list theories and existing data on problems and the behaviour of immigrants with regard to dispute resolution. Another element of the study involved obtaining data from organizations (legal and others), such as social advisors and the *Raad voor Rechtsbijstand* (Legal Aid Board). Last but not least, we carried out in-depth interviews with eight key informants that act as contact for immigrants with potential and actual legal problems: staff at social advice bureaus, Legal Services Counters, *Landelijke Vereniging van Anti Discriminatie Bureaus en Meldpunten* (National Federation of Antidiscrimination Bureaus and Hotlines, LVADB), FORUM (Centre of Expertise on Multicultural Development), *Surinaams Inspraakorgaan* (Surinam Consultative Body) and two lawyers representing immigrants.

Theories and expectations

Risk of problems and expectations

To explain any differences in the nature and scope of (potential) justiciable problems of immigrants and natives, we have approached the issue from four different angles: the immigrants' participation in society, availability of resources, socio-cultural elements and legal aspects. A distinction has been made between the risk of problems in general and the risk of specific problems.

According to the *participation theory*, the more people become involved in society (i.e. enter into more specific financial and social relationships), the higher the risk that they run into *general* (and *specific*) problems. This theory is based on the assumption that the higher the levels of education and income and the more people are active in the labour market, the more they are involved in society. Moreover, people aged between 25 and 45 presumably participate more than people in other age categories, because there are more changes in that stage of life and they enter into more relationships (such as work, family, home). The reasoning following from the participation theory is that the more a group becomes involved in society, the higher the risk of problems. This is called the risk of *general* problems. Following the participation theory, we expect immigrants *in general* to

run a bigger risk of having justiciable problems as the age group of 25 — 45 is bigger in comparison to that group of Dutch natives. On the other hand, we expect that natives have more potential justiciable problems, because, on average, they are more often employed, are better educated and have more income than immigrants. On the basis of these expectations, it is therefore not clear whether immigrants run a higher or lower risk to encounter general problems than natives.

For the risk of a *specific* problem, the existence of a relationship in which the problem may arise is important. People without jobs will, for example, not run into problems with their employers. To study the risk of specific problems, we have to look into the extent to which people are involved in society or enter into a relationship in specific realms of life. Baseline conditions considered in the *Geschilbeslechtigingsdelta* study include whether the respondent had been employed over the past five years, owned immovable property, rented a property, or had children younger than eighteen. Given the differences in baseline conditions between immigrants and natives, we expect immigrants to run a higher risk of facing justiciable problems regarding benefits, renting property and having children younger than eighteen. Natives, on the other hand, have a higher risk of running into work-related problems and problems associated with buying property.

Secondly, we expect that a serious lack of or a steep decrease in *financial or socio-psychological resources* can make people more susceptible to problems. Limited financial and emotional options and/or drastic changes in a person's financial and social resources, for example due to unemployment or divorce, may lead to minor problems becoming really serious ones. From this perspective, immigrants run a higher risk of facing problems because they, more than native Dutch people, are from the poorer population groups, more often live on benefits and have less command of the Dutch language.

Thirdly, we expect that *socio-cultural* differences may also be a source of problems. The fact that immigrants have their roots in another culture may lead to clashes with the prevailing culture in the host society; such problems are discrimination and communication problems. On the basis of these socio-cultural elements, we expect immigrants to run both a higher risk of *general* problems and *specific* problems. Their risk of general problems is possibly higher because their cultural background differs from that of the natives in the host society and misunderstandings in communication may play a role. Their risk of specific problems is possibly higher with a view to discrimination and religious matters. We would like to make a clear distinction between Surinamese and Antilleans on the one hand and Turks and Moroccans on the other hand. We expect that the latter group runs a higher risk of problems, because they have less command of the Dutch language and differ more in terms of culture and religion from those native to the host society.

Fourthly, we expect that *legal* aspects pertaining to immigrants may lead to problems. We expect that immigrants, because of their position viz. immigration law, face more problems than natives. Aspects that relate to immigration law include residence permits, naturalization, family reunion and marriage migration. In all of these fields, immigrants may experience problems, for example where they

are unable to prove their identity without a residence permit or want to bring their family to the Netherlands. Immigration law may also play a role in matters that primarily have no bearing on said field of law. Fear of problems in respect of residence permits may lead to people experiencing problems that possibly are no problem (yet).

Problem-solving strategies and expectations

This study distinguishes between three kinds of problem-solving strategies: take no action, obtain advice or self help. In order to explain the differences in problem-solving strategies, the rational-choice approach is used. According to the rational-choice approach, any individual's acts have a purpose. Individuals chose from the alternatives available to them, opting for the alternative that is the best in terms of cost and benefit under the circumstances. Aspects that play an important role in the selection of a problem-solving strategy are the options available, and the cost-benefit analysis of the person seeking justice. He/she weighs the benefits and cost with a view to the economic and socio-psychological resources available.

Comparing immigrants and Dutch natives, we expect that four factors have an impact on differences in problem-solving strategies.

Firstly, we expect that the *kind of problem* plays a significant role in an individual's choice to take action. The kind of problem affects the choice in the sense that it is decisive in the ways and procedures available. For instance, some problems will never be heard before a court, because they can be solved through other channels. Other problems cannot be solved without judicial intervention, such as divorces. As we expect there to be a different extent to which immigrants and natives encounter a specific type of problem, we also expect there to be a different extent to which each group opts for specific problem-solving strategies.

Secondly, we expect that differences in *financial resources* between immigrants and natives are important. The financial resources of someone seeking justice determine, for one, whether the person in question qualifies for legal aid and the organizations from which they can ask help. As immigrants in general have less money at their disposal, we expect that they depend sooner on legal aid or ask help from organizations that provide help to people of the lower-income classes, such as social advisors or Legal Services Counters. This is especially true for Turks and Moroccans and less so for Surinamese and Antilleans, because Turks and Moroccans on average have less income.

Thirdly, we expect that differences in *socio-psychological resources*, such as language skills and level of education, are important. It will be easier for people who have a command of Dutch to make themselves understood in the Netherlands and to get in touch with social workers. In addition, the knowledge that someone has is also important. Consider for example aspects such as knowing means and possibilities to represent one's interests. We expect that immigrants have fewer socio-psychological resources available compared to native Dutch people, and therefore will be less capable of solving problems independently, but rather decide to take no action or to obtain advice. Socio-psychological resources also include social networks and social capital. The choice of a problem-solving strategy is different when someone can rely on a big social network and has access to social capital. The more social capital there is available within a specific group, the more problems can be solved in an informal way. Our expectations are that Moroccans

have least access to social capital and therefore depend most on organizations that offer legal advice.

Fourthly, we expect that different *cultural backgrounds* result in immigrants and natives using different problem-solving strategies. As the Dutch culture is less based on collectivism than cultures of immigrants, it may well be that social cost and benefits weigh more heavily for immigrants than for natives. The social environment may have a greater impact on the resolution of disputes among immigrants than among native Dutch people.

Empirical data

Once we had worded our expectations on the differences between immigrants and native Dutch people, we studied the extent to which these expectations correspond with existing empirical data. Data from the 2005 Legal Aid Monitor shows that immigrants have slightly more justiciable problems than Dutch native people. In addition, the kind of problems that Dutch natives and immigrants face largely corresponds to our expectations. Compared to immigrants, natives have, as expected, more problems regarding work and owning immovable property, while immigrants have more problems relating to benefits or problems with government bodies. In addition, immigrants have more problems in respect of relationships and their family; problems that arise from having children younger than 18 may be counted among those. Compared to Dutch natives, they also have more problems with a bearing on immigration law.

In conformity with our second hypothesis, empirical data available shows that immigrants invoke the Dutch Legal Aid Act (*Wet op de Rechtsbijstand*) and social advisors more often than native Dutch people. Although they are only approx. 10% of the population, 49% of the clients of social advisors are non-western immigrants. About 32% of their clients are natives. In addition, immigrants obtain legal advice more often than natives (80% and 70% respectively), they are less likely to be self helpers than natives (9% and 23% respectively) and slightly more immigrants take no action at all compared to natives (11% and 7% respectively). These findings corroborate our third expectation that immigrants require legal advice more often, because they have fewer socio-psychological resources available. As for our fourth expectation, we found very few empirical data. The interviews do show, however, that the impact of social environment may play a bigger role in the choices that immigrants make.

Conclusion

In this study, we have worded a number of expectations, without being able to test them by carrying out an empirical study. We collated existing data and checked the extent to which they correspond with the theoretical expectations. From the empirical data available, we were able to deduce that differences in social-economic, socio-psychological and cultural aspects between immigrants and native Dutch people indeed have an impact on the nature of their problems and

the problem-solving strategies selected. We have, however, not been able to establish the level of impact of these different factors.