



Universiteit  
Leiden  
The Netherlands

## Paths to Justice in the Netherlands

Velthoven, B.C.J. van; Voert, M.J. ter; International Legal Aid Group (ILAG)

### Citation

Velthoven, B. C. J. van, & Voert, M. J. ter. (2005). Paths to Justice in the Netherlands. *Conference Reports And Papers*, 231-254. Retrieved from <https://hdl.handle.net/1887/42492>

Version: Not Applicable (or Unknown)

License: [Leiden University Non-exclusive license](#)

Downloaded from: <https://hdl.handle.net/1887/42492>

**Note:** To cite this publication please use the final published version (if applicable).

Pp. 231 - 254 uit

*Legal Aid in the Global Era*

Conference Reports and Papers  
International Legal Aid Group (ILAG)  
8 - 10 June 2005, Killarney

Gepubliceerd door het  
Centre for Professional Legal Studies,  
University of Strathclyde, Glasgow, 2008

**SESSION 4**

**Legal Aid in the Wider Government Context:  
Needs Assessment and the Impact of Legal Aid**

**Paths to Justice in the  
Netherlands**

**Ben C.J. van Velthoven**  
Department of Economics, Faculty  
of Law, Leiden University, The  
Netherlands

**Marijke ter Voert**  
Ministry of Justice, WODC, The  
Hague, The Netherlands

**1 Introduction**

In the 1970s the topic of access to justice in the Netherlands judicial policy concentrated on the access to legal aid of people on low incomes. During that time, amongst others, the Legal Advice and Assistance Centres developed. Nowadays judicial policy focusses on the access to effective dispute resolution. Access to justice is not equivalent to access to the court. Policy is directed toward selecting the most effective or qualitatively best way of settling a specific dispute. Since the end of the 1990s there are four main goals that have been focused on:

- delegalization of the settlement of disputes
- the qualitatively best or the most effective way of settling disputes
- the realisation of more multiform access to Justice that primarily gives the responsibility for resolving disputes to the parties, and
- the decrease of pressure on the judicial system (Policy Program ADR 2000-2002).

In this context Alternative Dispute Resolution is promoted (ADR). However, there was no information available on the type and quantity of

law-related problems people experience, the forms of help people obtain and the procedures adopted in resolving these problems. How often do people have justiciable problems and how often do they need legal aid or go to court to resolve those problems? And to what extent are they satisfied with the outcome of the resolution?

Therefore in 2003 the research department of the Dutch Ministry of Justice conducted a survey among 3,500 Dutch citizens into their experiences with problems for which there might be a legal solution. In a replication of the *Paths to Justice* studies for the UK by Genn (1999) and Genn and Paterson (2001), the survey provided information about

- (1) the incidence of justiciable problems within the population;
- (2) the kind of strategies people choose to solve their problems;
- (3) the outcome of different strategies for resolving justiciable problems;
- (4) the public's perceptions of the legal system.

In this paper we present some major findings of these four issues. Finally, some results will be compared with the UK-studies.

## 2 Set-up of the Dutch survey

The Dutch survey closely followed Genn's example and consisted of two main parts. In a screening survey individuals aged 18 or over were asked whether they had experienced problems of various sorts during the five-year period from January 1998 until December 2002. The list of 66 different sorts of problems was organised into ten main categories, followed by three 'catch all' questions asking whether respondents, apart from anything already reported, had had legal action taken against them, had been threatened with legal action, or had considered initiating court proceedings themselves for any reason. Respondents were deemed eligible for the main survey if they had experienced at least one non-trivial<sup>1</sup> justiciable problem that had begun during the five-year period reviewed in the study. They then were asked in detail about the way they handled one specific problem.

The main differences with the British Paths to Justice studies are the following:

- Instead of face-to-face interviews we used Internet questionnaires, which were addressed to a random sample from the TNS NIPO panel, consisting of over 70,000 persons in 30,000 households.<sup>2</sup> Apart from its high speed and high quality answers, the Internet method was chosen because the response rate in the Netherlands for face-to-face interviews is very low.

<sup>1</sup> If the respondent had not taken any action because (a) the problem was not important enough or (b) the respondent did not dispute the outcome or believed that the other side was right.

<sup>2</sup> TNS NIPO is a well-known, specialised survey research bureau in the Netherlands. In 2002 65% of the Dutch citizens of 12 years and older had a computer at home with access to Internet.

- People were directly selected at the individual level, which avoids the difficulty of problems that are shared at the household level.
- In the screening survey we asked for 'difficult' problems, instead of problems that were 'difficult to solve'. It is our feeling that the latter formulation may focus too much on whether any action has been taken.
- In the main survey we concentrated on the first problem that started after January 1, 1998, instead of the second most recent problem. Starting from the earliest possible point we hope to get a better view of those problems that take a long time to reach a conclusion.<sup>3</sup>

In the first two months of 2003 4,250 persons were asked to participate in the screening survey. They returned 3,516 questionnaires (response rate 83%). A total of 2,299 respondents could be classified as eligible for the main interview. When we approached these 2,299 respondents three weeks later for the main survey, they completed 1,911 questionnaires (response rate 83%). The screening sample of 3,516 respondents may be regarded to be representative for the Dutch population with respect to age, gender and educational level.

## 3 Theoretical background

First of all, we will briefly discuss the theoretical perspective on which the data collection and interpretation was based.

### 3.1 The number of problems

Not everyone will encounter problems and conflict situations to the same extent. Firstly, coincidence plays a key role. Secondly, characteristics of a socio-psychological nature that are

<sup>3</sup> In our investigation we explicitly focused on the dating of the problems and the length of time involved in the solution; see also Van Velthoven and Ter Voert (2004).

strictly linked to the person may be important. One person may be dissatisfied more quickly than another person or may have had previous negative experiences that promote the creation of problems. In the present study we will concentrate on the effect of the amount of social relations. According to the *participation theory*, having judiciable problems is correlated with the extent of one's social activities. Risks of disputes are likely to increase as one participates more in social and economic life. The extent of the participation in social activities and relationships coincides with personal characteristics of a demographic and socio-economic nature. Traditionally, one assumed that participation was higher for men than for women. It would also be higher for employed people than for non-employed people and would increase as the level of education and income rose. The age factor would also be of some significance. In particular, social participation for the age group between 25 and 45 years would be higher than for other age categories, because more changes would take place and relationships entered into in this stage of life (employment, family, house, etcetera). If participation is higher in one group than in another group, it is likely that the incidence and frequency of problems would be higher for that group in comparison to the other group.

Of course, the opposite effect may also be possible (Burt, 2000). It is conceivable that comparably unpleasant situations within a tight social network in which people are focused on continued cooperation may be experienced in a different way than within relationships outside the network. It is also conceivable that other members of such a tight social network will sooner feel the need to mediate, making sure that unpleasant situations do not quickly escalate into real conflicts.

The nature of the activities may also play a role. This is where the *baseline* issue enters the scene. To assess the incidence and frequency of a specific problem it is important to know whether the relationship in which the problem

may arise actually exists. For instance, someone who does not rent a space will never have any problems with the landlord about any rent increase or overdue maintenance. In order to understand the chances of developing a specific problem we will therefore have to take a look at the extent to which social groups participate or relationships are entered into in a specific area. We should be aware that such baseline effects may also affect the general number of problems, especially when the chances of developing a specific problem differ according to the type of relationship affected.

### 3.2 Rational choice approach

In our view, modelling the choice of a strategy for resolving a justiciable problem can be based on the rational choice approach.

To this end, we look upon the set of available strategies as a decision tree, consisting of branches and nodes. Members of the general public confronted with a justiciable problem are faced with a series of decisions: the person seeking a solution to his problem must decide his direction at any relevant node.<sup>4</sup> All of these consecutive choices together will determine where he will finally end up.

This implies that the choice made at the first node is decisive for the end result. As soon as a justiciable problem arises, a rational citizen will want:

1. to get a picture of the entire series of decisions, including all the nodes and branches, applicable to his problem;
2. to calculate, for any terminal point, all the costs incurred and benefits received;
3. to determine at which terminal point the balance of the costs and benefits is the most favourable; and

<sup>4</sup> See Baird et al (1994) for more details on this game-theoretical perspective.

4. to choose a direction at the first node that leads to this most favourable terminal point.<sup>5</sup>

When the person seeking a solution thus has chosen his direction, he will have to repeat this decision-making process at each subsequent node. Insofar as the first decision has been taken with the best information available, and the circumstances have not changed in the meantime, each subsequent decision will only provide a reconfirmation of the terminal point chosen in the first instance and of the path towards it. As the conditional formulation of the previous sentence, however, already indicated, that is not always necessarily the case. The rational choice approach, for instance, does not exclude that circumstances may change in the meantime.

Just as important is the fact that the rational choice approach does not, or at least not necessarily, assume that the citizens are fully informed. For instance, one of the decision nodes could refer to the question of whether the citizen would want information from an expert on the legal merits of his claim and about the solution strategies available for his problem. It may happen that the less knowledgeable citizen only realises after the advice that he will have to go to court for his tax problem and starts working towards this. It should however be noted that the rational choice approach assumes that approaching an expert for legal advice as such is based on a weighing of costs and benefits, albeit an incomplete one. A citizen will only contact an expert if the expected benefits outweigh the costs. To be able to make an assessment of the expected benefits, the citizen will have to have some idea of what he wants to achieve and what the chances are that he will achieve that goal – however flawed or perhaps even wrong that perception may be.

<sup>5</sup> This is actually a description of the game theoretical solution principle of 'backwards induction'. Cf. Baird et al (1994).

When applying the rational choice approach to the choice of the resolution strategy, two elements should be clearly distinguished:

1. the set of nodes and branches in the decision tree, i.e. the total number of options for the person seeking a solution; and
2. the balance of the (expected) benefits and costs for each possible resolution strategy.

This distinction is useful when we identify the determining factors behind the choice process. As far as the set of options is concerned, we tend to think of the type of problem and the availability of legal aid. The (expected) benefits and costs of the possible resolution strategies are linked with the specific contents of the problem at hand, with the prices, availability and accessibility of legal aid, with the economic and socio-psychological resources of the person involved and with (the resources of) the other party. We start from the premises that the economic and socio-psychological resources of the person seeking a solution, apart from any individual component, depend on his level of education, his socio-economic status and demographic characteristics such as gender, age and marital status.

#### 4 Justiciable problems

##### 4.1 Incidence and frequency

Table 1 relates to the answer to the first survey question: To what extent are Dutch people faced with justiciable problems? The 3,516 participants of the screening survey indicated that they encountered 8,711 (non-trivial) justiciable problems over a 5-year period, or on average 2.5 problems per person. But the problems are unevenly distributed: 33% of the respondents had never had any type of problem, whereas 67% had been confronted with one or more problems. Even within the group of respondents with one or more problems, the distribution was quite uneven: 25% of them had had only 1 problem, 20% had had 2 problems, 17% had had 3 problems.

Table 1 shows that work-related problems and problems involving the purchase of faulty goods and services were most common. Money and owning residential property are the next most common, but somewhat less frequent, problem sources. The last column of table 1 shows the seriousness of the problems as experienced by the respondents themselves. As table 1 shows problems with children, health problems and family/relationship

problems are on average more serious than problems with faulty goods and services, money or housing (rent) problems.

The data also indicate that there is a certain kind of problem clustering. Those faced with a given problem have a greater chance of facing a similar type of problem or a problem of a different type.

**Table 1: Incidence and seriousness of justiciable problems (N=3,516)**

Type of problem	Incidence, % of respondents with one or more problems	Frequency, average number of problems per respondent	Seriousness of the problem Mean <sup>1</sup>
1. Employment	30	0.53	3.5
2. Owning residential property	20	0.30	3.2
3. Renting out rooms or property	3	0.05	3.2
4. Living in rented accommodation	12	0.19	3.1
5. Faulty goods or services	32	0.53	3.1
6. Money	22	0.32	3.1
7. Relationships and other family matters	10	0.15	3.8
8. Children under 18	7	0.09	3.9
9. Health problems (due to accident or work)	7	0.08	3.6
10. Other (discrimination, immigration etc.)	4	0.05	-
	5	0.05	-
	7	0.08	-
11. Legal action taken against			
12. Been threatened with legal action			
13. Started or considered court proceedings			
Total	67	2.48	

<sup>1</sup> scale from 1 'not at all preoccupied', 3 'fairly preoccupied' to 5 'completely preoccupied with problem'

##### 4.2 Impact of demographic and socio-economic background

We then proceeded to investigate whether and to what extent differences in demographic and socio-economic characteristics of the respondents went hand in hand with differences in incidence and frequency of (non-trivial) justiciable problems. As far as the incidence and frequency of problems are concerned, there appears to be no significant difference between men and women, and between people with a different household income.

Age, marital status, level of education and social group, however, do give rise to significant differences (See Table 2).

- The age category between 25 and 34 years, followed at some distance by those between 35 and 44 years, were faced with problems most often and have the largest number of problems per person; the age category of 65 and over faced the least problems of all.

- Divorced persons and cohabitating persons had more problems, and more often, than widows/widowers.
- As the level of education increases, the incidence and frequency of problems also increases.
- Persons entitled to social benefits and self-employed persons had

more problems, and more often, than employed persons, who in turn had more problems, and more often, than pensioners.

	Incidence	Frequency	Number of respondents
<b>Total</b>	67.2	2.48	3,516
<b>Age (N=3,516)</b>	*	*	
- 18-24 years	57.5*	2.15	346
- 25-34	82.3*	3.55	667
- 35-44	76.5*	3.09	741
- 45-54	70.8*	2.52	664
- 55-64	56.5*	1.73	527
- 65 and over	49.2*	1.25	571
<b>Marital status (N=3,423)</b>	*	*	
- Unmarried	65.9	2.48	727
- Cohabitating	79.7*	3.42	246
- Married <sup>1</sup>	66.5	2.31	2,171
- Divorced	76.9*	3.59	169
- Widow/widower	49.1*	1.49	110
<b>Education<sup>2</sup> (N=3,480)</b>	*	*	
- Primary	52.8*	1.61	178
- Junior secondary vocational (LBO)	61.1*	2.09	879
- Lower secondary (MAVO)	63.0*	1.96	484
- Senior secondary vocational (MBO)	71.4*	2.76	858
- Higher secondary (HAVO)	71.3	2.60	272
- Higher professional (HBO) and university (WO)	74.2*	3.06	809
<b>Income<sup>3</sup> (N=2,874)</b>			
- less than € 15,000	65.9	2.88	226
- 15,000 to 23,000	66.9	2.80	366
- 23,000 to 28,500	62.5	2.36	320
- 28,500 to 34,000	67.6	2.30	432
- 34,000 to 45,000	66.2	2.32	554
- 45,000 to 56,000	68.2	2.44	412
- 56,000 to 91,000	71.0	2.50	411
- 91,000 and more	73.2	2.59	153
<b>Social group (N=2,529)</b>	*	*	
- Self-employed	80.1*	3.34	146
- Employed by the government	75.3	2.80	328
- Employed elsewhere	72.9	2.71	1,655
- Entitled to benefit	82.6*	4.23	132
- Pensioner	50.0*	1.39	268

<sup>1</sup> Including registered partnership.  
<sup>2</sup> highest level of education, whether or not completed.  
<sup>3</sup> gross annual household income in euros.  
\* the difference between the categories is significant at the 0.05 level.  
+ According to the Chi-square test the adjusted residuals in the cases indicated are > +/- 2, demonstrating that the percentage is significantly higher / lower than the average of the column.

These factors retain their significance in a multivariate analysis (logistic regression) of the problem incidence. The analysis also included whether the people involved were employed during the research period, owned residential property, rented housing or had any children under the age of 18, because it cannot be ruled out that baseline effects that play a role at specific problems also leave their traces in the general number of problems. Being employed does indeed seem to add to the general problem incidence.

The results only confirm the participation theory up to a certain extent (see Section 3.1). In a number of ways, the expected positive relationship between the chances of getting into a dispute and the intensity of social activities and relationships does seem to occur. That is when employed people, people with higher education and people between the age of 25 and 44 years, respectively, have more problems, and more often, than pensioners, lower educated people and other age categories. However, we can also point out a number of cases in which exactly the opposite occurs, where the fact that people are excluded from social relationships seems to give rise to problems. Those who are divorced or entitled to social benefits appear to encounter relatively more problems.

## 5. Strategies for resolving justiciable problems

### 5.1 Lumpers, self-helpers and advised

We will now proceed with the second survey question: To what extent are certain judicial and non-judicial resolution strategies used and what circumstances have an effect on this choice?

Figure 1 shows a flowchart to indicate the progress of the 1,704 problems from the main survey which may be regarded as final. We made a distinction between three types of reactions:

- 'lumpers' (10%) do not take any action whatsoever. They do not

attempt to contact the other party, do not go to an expert for advice or help, and do not try anything else to tackle the problem.

- 'self-helpers' (46%) take the problem into their own hands without seeking any form of legal aid.
- 'advised' (44%) turn to one or more experts or organisations for advice and/or help to tackle their problems.

All in all, official proceedings<sup>6</sup> are commenced in 11% of the problems. Depending on the nature of the case, such official proceedings may go through various stages and result in a decision by a third party (8%). However, we also see that parties during the course of the proceedings may still decide to settle the matter (2%). A third possibility is that the party who commenced the proceedings walks away from the matter (1%).

Finally, the decision taken at the end of official proceedings need not be the end of the problem or of the resolution strategy. For instance, the parties may start talking to each other again on the basis of the decision taken in the proceedings and still reach agreement (1%).

<sup>6</sup> Official proceedings are all formal procedures in which a third party takes a decision: e.g. judicial procedures (Court), arbitration, binding advice, administrative reconsideration procedure (*bezwaarschriftprocedure*).

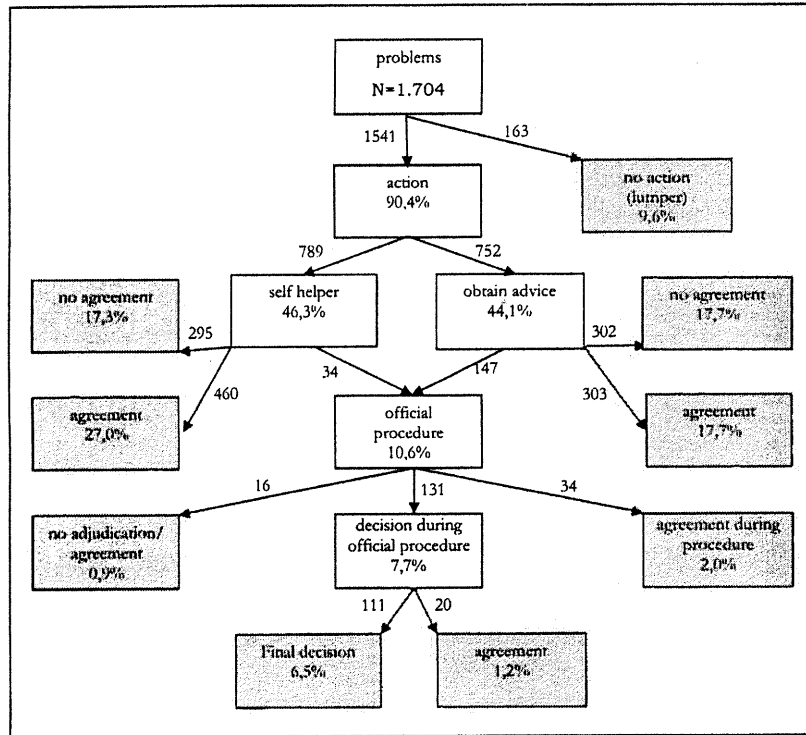


Figure 1 Overview of the resolution strategies taken (all percentages refer to the total number of 1,704 problems dealt with)

Table 3 shows that there are significant differences in the way in which people react to the various types of problems.<sup>7</sup>

<sup>7</sup> The three 'catch all' categories from table 2 are absent from table 4. The reason for this is simple. The respondents were asked in the main survey to describe the problem in their own words. Those descriptions enabled us to classify the problems collected via the catch-all questions in one of the 10 main categories.

Work-related problems result in passive attitudes relatively often. Problems with the purchase of faulty goods and services and money problems are dealt with by the people themselves relatively often. Problems with owning residential property, relationships and other family matters, children under 18 and health problems due to accident or work frequently result in engaging experts for advice or help.

	Lumpers N=163	Self- helpers N=789	Advised N=752	Number of problems
Total	9.6	46.3	44.1	1,704
1. Employment	14.0*	37.8	48.2	436
2. Owning residential property	9.7	36.7	53.6*	248
3. Renting out rooms or property	3.3	46.7	50.0	30
4. Living in rented accommodation	8.0	48.2	43.8	137
5. Faulty goods or services	7.6	66.7*	25.7	381
6. Money	4.4	57.5*	38.2	228
7. Relationships & other family matters	12.8	28.8*	58.4*	125
8. Children under 18	3.8	19.2	76.9*	26
9. Health problems (due to accident or work)	9.3	27.8*	63.0*	54
10. Other (discrimination, immigration and the like)	12.8	30.8*	56.4	39

\* the percentage is significantly higher or lower than the average of the column. Chi-square test at the 0.05 level.

In addition to the type of problem, the reaction pattern may also correlate to the characteristics of the respondents. Gender, urbanisation and social group appear to have little effect on the way problems are tackled. On the other hand, age, marital status, level of education and income do have some effect (See Table 4).

In particular, we find significantly few lumpers among people with a high level of education and relatively many in the income category between €45,000 and €56,000. The group of 65 and over has relatively many self-helpers and few advised, whereas the age category of 35 to 44 is precisely the opposite.

Interestingly enough there is also a relationship between obtaining legal advice on the one hand and the level of education and income on the other. The respondents with a lower level of vocational education seek legal advice most often by comparison, whereas people with the highest level of education make relatively little use of legal aid; only the group with the lowest level of education uses legal aid even less. The relation between legal aid usage and income is essentially a U-shaped curve. People who made relatively the least use of legal aid and the most self-helpers can be found at the middle income groups (between €28,500 and €34,000), whereas legal

aid usage is highest at both ends of the income curve.

The findings are largely confirmed when we switch from cross tabulation to a multivariate analysis. In logistic regressions for the choice between being passive and active and between self-help and seeking legal advice, both the type of problem and the level of education and income appear to have a significant influence, in accordance with the results reported in Tables 3 and 4. According to the logistic regressions, age has no significant influence, while marital status does (on the choice between being passive or active), albeit to a very limited extent.

The findings tie in well with a theoretical framework that is based on the rational choice approach.<sup>8</sup>

To a large extent, the type of problem determines which resolution strategies are left open. The problem (type) also defines the objectives and benefits that

<sup>8</sup> Here we leave aside the direct test of the rational choice approach we employed by looking at the role of the expected financial interest, the expected duration of the resolution strategy, the legal and other costs involved and the use of legal expenses insurance. See in this respect Van Velthoven and Ter Voert (2004).

can be obtained. For instance, the fact that people are passive relatively often in tackling work-related problems can be explained from the often lengthy nature of the employment relationship and the fear of jeopardising the workplace or the work atmosphere.

As for the role of income and level of education: The prices for using legal aid are at least partly dependent on income; furthermore these variables are directly related to the socio-psychological and economic resources of the person involved. Our findings that the relation between the level of education and the use of legal advice is not a linear one, fit in with the conclusion that the effect works in two directions. One the one hand, a lack of socio-psychological skills (of people with the lowest level of education) may be a barrier for seeking legal aid, and on the other hand the need for support will decrease when people (with a high level of education) possess a lot of socio-psychological resources.

Table 4: Lumpers, self-helpers and advised, in % of the total number of problems				
	Lumpers N=163	Self- helpers N=789	Advised N=752	Total number
Total	9.6	46.3	44.1	1,704
Age (N=1,704)				
- 18-24 years	11.5	51.1	37.4	139
- 25-34	9.8	49.1	41.1	399
- 35-44	9.1	38.1	52.8*	417
- 45-54	8.2	47.2	44.6	352
- 55-64	11.2	44.2	44.7	206
- 65 and over	9.4	55.5*	35.1	191
Marital status (N=1,670)				
- Unmarried	11.3	48.2	40.5	336
- Cohabiting	10.9	49.6	39.4	137
- Married <sup>1</sup>	8.1	45.3	46.6*	1,061
- Divorced	14.7	36.8	48.4	95
- Widow/widower	12.2	61.0	26.8	41
Level of education <sup>2</sup> (N=1,699)				
- Primary	12.7	52.4	34.9	63
- Junior secondary vocational	11.5	38.1	50.4*	399
- Lower secondary (MAVO)	12.6	42.8	44.7	215
- Senior secondary vocational	11.5	44.0	44.5	443
- Higher secondary (HAVO)	4.9	47.9	47.2	144
- Higher professional (HBO) and university (WO)	5.5*	56.6*	37.9*	435
Household income <sup>3</sup> (N=1,394)				
- less than € 15,000	9.8	39.3	50.9	112
- € 15,000 to 23,000	13.2	40.1	46.7	167
- € 23,000 to 28,500	8.4	44.8	46.9	143
- € 28,500 to 34,000	11.7	53.4*	35.0*	206
- € 34,000 to 45,000	8.6	47.4	44.0	266
- € 45,000 to 56,000	15.0*	45.4	39.6	207
- € 56,000 to 91,000	6.1	52.8	41.0	212
- € 91,000 and more	3.7	43.2	53.1	81
Social group (N=1,317)				
- Self-employed	3.5	41.9	54.7	86
- Government employed	10.2	45.2	44.6	186
- Employed elsewhere	10.4	46.3	43.3	873
- Entitled to benefit	8.5	36.6	54.9	82
- Pensioner	12.2	51.1	36.7	90

Notes: See Tables 2 and 3.

### 5.3 Barriers to advice

The groups of lumpers, self-helpers and advised were asked a number of questions to gain a better understanding of the magnitude and nature of the barriers to accessing legal aid.

On average, 10% of all respondents indicated that they had once tried to get legal aid from an expert or organisation, without this resulting in any real contact. In addition, 31% of the respondents had at one point considered asking someone or some organisation for legal aid, without actually setting out to try and establish any contact.

It is striking that these percentages are almost identical for lumpers, self-helpers and advised alike. They are also almost identical when we make a distinction between the background characteristics of the people involved. We can only find a significant difference in the level of education, in the sense that the respondents at the lower vocational education level tried but failed to contact an expert just a little bit more often (13% and 10% on average).

The latter finding is interesting because we know from Table 4 that there are in fact relatively many advised among the respondents at the lower vocational education level. This suggests that, insofar as there are any barriers in seeking advice,<sup>9</sup> there are sufficient alternatives.

If we take a look at the reasons mentioned why no contact was sought or established with experts, the majority of these cases appears to be related to the nature and progress of the problem: the persons involved thought nothing could be done about the problem or that it was better to wait just a little bit longer, they were able to solve the problem themselves, they did not want lengthy drawn-out proceedings or they did not

<sup>9</sup> If we make a distinction between the various types of legal aid helpers then there are no real peaks.

want to harm the relationship with the other party. Only in an absolute and relatively limited number of cases (ranging from nearly 3 to 7%) poor accessibility, insufficient availability, doubts about the quality of the advice or previous bad experiences played a role.

A little bit more often, but still in a relatively modest number of cases (from 7 to 11%), the respondents mentioned reasons such as 'did not know how to handle it', 'thought that the person/organisation could/would not help', 'didn't feel at home in that world' and 'thought that it would take up too much time and effort'. These reasons are harder to pinpoint. However, the fact that they were unable to convince the respondents to complain more frequently about the accessibility, availability and quality of the help, suggests that it is more likely that the persons involved lack certain skills than that there are actual barriers which may be attributed to an inadequate functioning of the legal aid system.

Finally, 12% of the respondents mentioned that they decided not to get in touch with a certain expert, because they 'thought it would cost too much money'. In nearly half of these cases, the expert in question was a solicitor.

All in all, we come to the conclusion that there are little or no indications of any substantial barriers in the access to legal advice.<sup>10</sup> The reasons why no contact was sought or realised with legal advisers, can only to a very small extent be attributed to the functioning of the organisations themselves. Even if there are any such access barriers, the

<sup>10</sup> We would like to add that in the in-depth interviews in the context of this survey the respondents appeared to be pretty well informed of the total pallet of legal aid institutions. Nearly all of them reported that it is simple to find the right help or that there is no lack of certain forms of help. Only one respondent complained: 'They should take further action and also write the letters themselves.'

experience of the advised, who have encountered them just as often, indicate that these barriers can indeed be overcome or circumvented by going somewhere else. What, to a moderate extent, does seem to happen is that inadequate skills of the person seeking legal advice are in the way of seeking and realising contact with experts.

### 5.4 Patterns in the use of advisers

The Netherlands has a wide variety of general or specialised people and organisations where private citizens can go to for legal advice, which may be either their main or additional task. To investigate to what extent and in which order the advised make use of the advisory options, we presented the

respondents with a list of 22 persons and organisations (See Table 5).

	Approached as				Total	
	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup> , ff <sup>1</sup>	number	%
1. Social adviser	26	15	4	3	48	3.8
2. Social work	38	19	4	2	63	4.9
3. Legal aid centre	53	27	8	3	91	7.1
4. Law shop	23	8	3	2	36	2.8
5. Trade union, professional association	103	26	6	3	138	10.8
6. Royal Dutch Touring Club (ANWB)	8	0	2	0	10	0.8
7. Consumers' association	25	3	1	4	33	2.6
8. Association of homeowners (VEH)	26	3	0	1	30	2.4
9. Association of homeowners (VEH)	20	19	3	3	45	3.5
9. Legal adviser/ legal consultancy	51	15	9	2	77	6.0
10.	17	11	1	1	30	2.4
11.	15	2	0	0	17	1.3
12.	2	1	0	1	4	0.3
13.	4	4	1	1	10	0.8
14.	55	42	20	6	123	9.6
15.	2	4	5	2	13	1.0
16.	12	9	2	3	26	2.0
17.	11	1	2	1	15	1.2
18.	6	4	0	1	11	0.9
19.	72	26	10	3	111	8.7
20.	7	3	1	2	13	1.0
21.	13	11	6	3	33	2.6
22.	163	99	25	12	299	23.4
23. Other person / organisation						
Total number approached	752	352	113	59	1,276	100.0

<sup>1</sup> 45 respondents indicated that they had approached even more persons / organisations after their 3<sup>rd</sup> address. In all, they had approached 59 addresses as '4<sup>th</sup> or later'.

In all, 1,276 persons or organisations appeared to have been approached for the 752 problems where expert advice had been obtained. The distribution of the help requested is very wide. Topping the list are the trade unions (for work-related problems), with a market share of nearly 11%, followed at some distance by the legal profession (for various types of problems, with a peak for relationship and family matters), the police, the legal aid centres (the place for subsidised legal aid by the central government) and the legal expenses insurance companies. And as if the list with 22 persons and organisations provided to the respondents was not long enough, there is a large category of 'other' with a market share of 23%.

400 persons among the 752 advised (53%) were satisfied to go to just one organisation for advice. The other 352 visited more than one address: 239 of them approached two organisations, 68 three organisations and 45 four or more organisations (32%, 9% and 6% of the total, respectively). The average number of advisers approached per advised is 1.7.

If we take a closer look at the patterns in the referrals than there are no real peaks. Trade unions, police and consumers' organisations are relatively often approached as the first address for advice or help, solicitors, legal advisers and civil-law notaries comparatively more often as second or subsequent address. What is again clearly visible is that other organisations besides the more specific legal institutions also play a key role when asking for help in the context of dispute resolution, and certainly not just in the first instance.

It is striking to note that the number of experts approached by the advised, broken down according to problem type, shows a similar pattern as the extent of legal aid usage for problems (compare Table 4). When there are problems with the purchase of faulty goods and services, only 26% of the people apply for legal advice (compared to 44% on average for all problems), and those advised then only use 1.5 experts per

person (compared to 1.7 on average). By contrast, no less than 77% of the persons involved seeks for legal advice in cases concerning problems with children under 18, and then each person seeking advice addresses 2.1 experts.

As can be expected, experts appear to have some specialisations. The trade unions are relatively often used for work-related problems, the consumer organisations for problems with the purchase of faulty goods and services, and the legal profession for problems in the family arena. Other experts, such as the social advisers (a municipal facility), legal aid centres, law shops (an initiative taken by law students), legal advisors (a commercial facility, not a member of the Bar) and legal expenses insurers have no specialisation or are much less specialised.

In this context it is also interesting to mention that invoking the legal aid centre, the legal profession and legal expenses insurers appear to be communicating vessels. There are differences as to the extent in which groups of advised differentiated by income or level of education make use of each of these facilities. All in all, however, the usage of the three facilities combined shows little variation from the average of 0.38 contacts per problem.

Individuals in the lowest income category, who have access to the legal aid centres as a result of the Dutch Legal Aid Act (Wrb) and only have to pay a small contribution of their own for an assigned solicitor, have no interest in legal expenses insurance. This changes the moment the fee payable by the individual is higher as the income rises. This changes again when the income reaches such a level that it falls outside the parameters set by the Wrb, and the individual has to pay the full amount for a solicitor. The fact that the number of individuals with the highest income calling upon legal expenses insurance decreases again, may be attributed to the fact that the ease to bear the financial risk of legal aid increases with income.

## 5.5 Characteristics of and perceptions of legal aid

What do the advised hope to find with the experts they contact? To what extent are they being served? And are they satisfied with the service provided?

From the first expert, the persons involved wanted mostly information about rights and obligations (44%), advice on how to deal with the problem (49%), and guidance on how to approach the other party (29%). From the experts they selected as the second and subsequent source of help, they wanted some more information about legal proceedings and financial aspects, and assistance when taking legal action, without this becoming the dominant factor.

It is remarkable that the nature of the questions asked by individuals with the lowest level of education is somewhat different. They seek advice on ways to resolve problems and for guidance on how to approach the other party in a conflict situation and on how to approach other experts slightly more often than average; they are less interested in advice about rights and obligations and about legal proceedings. It is also interesting to note that they try to obtain this assistance from the social advisers more often than average, and less often than average from legal aid centres and law shops. This is in keeping with the conclusion that the social advisers primarily serve the weaker social groups. Apparently, an

expert advice or referral in itself is often insufficient for these people to deal with the problem themselves.

If we then look at the extent in which the advised have received help according to their own perception, the customers appeared to be quite satisfied. Regarding the usefulness of the advice and help provided, all institutions on average score 'quite sufficient'. The average score on a scale of 5 points, where 1=extremely unusable and 5=extremely usable, ranges from 3.4 for the police to 4.3 for the legal advisers. On average 72% of the respondents answered yes to the question of whether in a similar situation they would contact the expert consulted again. The legal expenses insurers score best on this question, the social advisers score worst (80 and 58% positive answers, respectively).

## 6 Results

The third survey question was: What are the results of the strategies used and how do they relate to the objectives of the advised?

### 6.1 Outcomes: agreement, adjudication, no result

At the end of the resolution path, we examined what the respondents were able to achieve with the problems experienced. In addition to figure 1, see Table 6.

Table 6: Outcomes, as to resolution strategy

	Agreement	Concluded by adjudication	No result			Total number
			no action taken	put up with it	total	
	%					
Total	48	7	10	36	46	1,704
Lumpers	0	0	100	0	100	163
Self-helpers	60*	2*	0	38	38	789
Advised	46*	13*	0	42	42	752

\* When we test the differences in endings between the three groups, the pattern of the lumpers appears to deflect significantly in all aspects from those of the other two groups. In second instance, we therefore looked at the differences among self-helpers and advised.

\*\* Indicates that the percentage is significantly (at the 0.05 level) higher/lower than the average of the two groups.

We first note that the 10% lumpers did not deal with their problems at all, and so in that sense also did not achieve any results. Then there are 36% in which the person involved did take one or more steps, but without that leading to any results. The methods used in these cases exhibit significant differences. The person involved may:

- have sufficed with contacting the counter-party as a 'self-helper' (17%),
- have obtained legal advice, but to no avail (18%),
- or have actually initiated official proceedings but given up on them (1%).

In 48% of the problems a form of agreement between the parties, whether full (39%) or partial (9%) was ultimately reached. These agreements were achieved in various ways:

- directly, as 'self-helper' (27%),
- after obtaining legal advice (18%),
- in the course of legal proceedings (2%),
- or even in follow-up negotiations after the conclusion of legal proceedings (1%).

Finally, in 6.5% of the problems a decision by a third party during official proceedings constituted the conclusion of the dispute resolution.

Table 6 breaks down the nature of the results according to the resolution strategy that has been adopted. Both self-helpers and advised were able to achieve results in 6 out of 10 problems. However, the method used to achieve these results varies. Advised had significantly more instances of the ultimate outcome being decided by a third party.

This finding raises the issue of cause and effect. Do private citizens initiate official legal proceedings on the advice of the professionals they consult, which they themselves never would have considered? Or do they understand immediately that the solution to their problem calls for drastic action and seek out the appropriate support? We cannot answer this question as such with the material available. We can, however, look at whether and how much the resolution of the problem correlates to the problem type.

In Table 7 we do indeed observe a significant correlation with the problem type. In problems relating to the purchase of faulty goods and services, agreement with the counter-party is reached relatively often. By contrast, problems with the ownership and renting out of residential property, and problems in the family arena are, relatively speaking, often adjudicated by official proceedings. Then, there are a number of problem categories for which dispute resolution is not pursued relatively often. This category includes work-related problems, but also, without reaching the significance threshold, rental problems and health problems due to work or accident, and to a lesser degree for the problems in the group 'Other,' with children under 18, and in family matters. Within this group there are also other differences. In a number of problem categories ('employment,' 'other' and 'family') the lack of results is primarily caused by a distinctly high degree of passivity. In other problem categories ('children under 18,' 'renting' and 'health') the lack of results is not so much due to the lack of any form of action as the failure to follow through on the action.

**Table 6: Outcomes of the resolution strategy, as to problem type**

	Agree-ment	Conclude d by adjudicati on	No results			Total num ber
			no action taken	put up with it	total	
	%					
<b>Total</b>	47.9	6.5	9.6	36.0	45.5	1,704
1. Employment	44.0	4.1*	14.0*	37.8	51.8*	436
2. Owning residential property	45.2	10.1*	9.7	35.1	44.8	248
3. Renting out rooms or property	60.0	16.7*	3.3	20.0	23.3*	30
4. Living in rented accommodation	42.3	5.1	8.0	44.5*	52.6	137
5. Faulty goods or services	58.0*	3.4*	7.6	31.0*	38.6*	381
6. Money	53.5	7.0	4.4*	35.1	39.5	228
7. Relationships and other family matters	40.8	12.0*	12.8	34.4	47.2	125
8. Children under 18	34.6	15.4	3.8	46.2	50.0	26
9. Health problems (due to accident or work)	37.0	5.6	9.3	48.1	57.4	54
10. Other (discrimination, immigration and the like)	35.9	12.8	12.8	38.5	51.3	39

\* Indicates that the percentage is significantly higher or lower than the average of the column. According to the Chi-square test there is at the 0.05 level a significant correlation between the way in which the problem ended and the problem type; the adjusted residuals in cases indicated are > +/- 2.

Table 8 shows that there is also a significant correlation between the resolution of judicable problems and various personal characteristics of the parties involved. For the purposes of this paper, the most interesting are the differences in level of education and income. In the second column from the right in Table 8 we see that the percentage of people who are unable to achieve any results is inversely proportionate to the level of education. Similarly, the percentage of people with problems who are unable to achieve any results is considerably smaller in the upper income classes than in the lower.

It is interesting to note that the differences cannot, certainly not principally, be ascribed to the use of official proceedings. The degree to which the decision in an official proceeding concludes the problem varies very little according to educational level; and, to the extent that there are any differences, there is no clear line to be drawn. The same applies for the different income levels. It is in fact the lowest income group that is most often

able to resolve disputes via decisions in official proceedings.

How can these differences be explained? Firstly, people with higher levels of education and higher incomes generally take a more active approach to problems. Presumably, they have a knowledge advantage by which they perceive at an earlier stage what can be done about the problem and the ways to go about it. Secondly, people with higher levels of education and higher incomes, when dealing with a problem, are less inclined to give up before achieving any results. Presumably they possess better negotiating skills. They probably also are better able to assess the value of professional advice.

Thus, any cracks in the legal infrastructure would not seem to lie in the capacity and the scope of the legal aid, nor in the access to judicial institutions, but in the nature of the services. These services may be less well-suited to the capacities of those with lower levels of education to utilise advice and proceedings to their own advantage (at least in a useable way).

Table 8: Outcomes of the resolution strategy, as to personal characteristics						
	Agreement	Concluded by adjudication	No results			Total number
			no action taken	put up with it	total	
	%					
Total	47.9	6.5	9.6	36.0	45.5	1,704
Age (N=1,704)						
- 18-24	51.8	0.7	11.5	36.0	47.5	139
- 25-34	49.1	4.0*	9.8	37.1	46.9	399
- 35-44	49.4	5.8	9.1	35.7	44.8	417
- 45-54	45.7	10.5*	8.2	35.5	43.8	352
- 55-64	44.7	8.7	11.2	35.4	46.6	206
- 65 and over	47.1	7.9	9.4	35.6	45.0	191
Marital status (N=1,670)						
- Unmarried	49.1	3.6*	11.3	36.0	47.3	336
- Cohabiting	48.9	2.2*	10.9	38.0	48.9	137
- Married <sup>1</sup>	48.3	8.0*	8.1*	35.6	43.7	1,061
- Divorced	40.0	9.5	14.7	35.8	50.5	95
- Widow/widower	41.5	4.9	12.2	41.5	53.7	41
Level of education <sup>2</sup> (N=1,699)						
- Primary	39.7	6.3	12.7	41.3	54.0	63
- Junior secondary vocational	42.4*	5.3	11.5	40.9*	52.4*	399
- Lower secondary (MAVO)	41.4	9.3	12.6	36.7	49.3	215
- Senior secondary vocational	47.9	6.3	11.5	34.3	45.8	443
- Higher secondary (HAVO)	48.6	8.3	4.9	38.2	43.1	144
- Higher professional (HBO) & university (WO)	57.2*	6.0	5.5*	31.3*	36.8*	435
Household income <sup>3</sup> (N=1,394)						
- less than 15.000	36.6*	10.7	9.8	42.9	52.7	112
- 15.000 tot 23.000	44.9	5.4	13.2	36.5	49.7	167
- 23.000 tot 28.500	48.3	6.3	8.4	37.1	45.5	143
- 28.500 tot 34.000	41.3*	3.9	11.7	43.2*	54.9*	206
- 34.000 tot 45.000	47.4	7.1	8.6	36.8	45.5	266
- 45.000 tot 56.000	52.2	6.3	15.0*	26.6*	41.5	207
- 56.000 tot 91.000	53.8	7.1	6.1	33.0	39.2	212
- 91.000 en meer	65.4*	6.2	3.7	24.7*	28.4	81
Social group (N=1,317)						
- Self-employed	54.7	7.0	3.5*	34.9	38.4	86
- Employed by the government	48.4	8.6	10.2	32.8	43.0	186
- Employed elsewhere	47.4	4.4*	10.4	37.8	48.2	873
- Entitled to benefit	45.1	14.6*	8.5	31.7	40.2	82
- Pensioner	38.9	12.2*	12.2	36.7	48.9	90

Notes: See Tables 3 and 8.

## 6.2 Evaluation of the outcomes

The fact that the resolution strategy is concluded with a decision by a third party or a form of agreement being reached is not to say that the person involved is completely satisfied. And by the same token, the fact that the person involved was unable to achieve any results due to passivity or 'putting up with it' does not by definition mean that the primary objective was not reached and that the problem will continue indefinitely.

Table 9 shows that 73% of the actives, according to their own judgement, reached their main objective, whether fully or partially. That percentage is remarkably high, given that Table 6 shows that only 56% of the persons involved were able to achieve an

agreement or a decision. In this regard it should be kept in mind that problems can also reach a more or less satisfactory end in other ways, such as through unilateral action by one of the parties or by the intervention of a third party, such as in the case of a noise problem in a rental apartment. This type of problem could be settled mutually or taken to court. But the problem could solve itself if the housing association evicts the noisemaker due to unpaid rent, or if the person himself, weary of all the complaints, just turns the volume down, or if the victim moves to another apartment. At the other end of the spectrum, a decision in official proceedings need not always be a satisfactory one and the obligations arising from an agreement or a decision are not always fulfilled.

Table 9: Achievement of main objective, by type of outcome (N=1,539)				
	Yes, fully or partly	No		Total number
		in %	Too early to tell	
Total	73	23	4	1,539
Agreement	90*	7*	3	816
Problem concluded by adjudication	66	32*	2	111
Putting up with the problem	52*	43*	5*	612

\*\* Signifies that the percentage is significantly higher or lower than the average of the column. According to the Chi-square test there is at the 0.05 level a significant correlation between achieving the main objective and the resolution strategy adopted; the adjusted residuals in cases indicated are > +/- 2.

Table 9 also shows that as far as achieving the main objective, there are significant differences according to the type of outcome. In the event of agreement (full or partial), 90% of the persons involved report that they were able to achieve their main objective either fully or partially, while only 66% were able to when a decision in official proceedings was the conclusion. Of those who do not follow through with their action but decide at some point to just put up with it, 52% report that their main goal was achieved (even if only partially).

We encounter similar results with the question of whether the problem continues. According to the respondents, that is the case in only 6% of the problems in which agreement was reached, as opposed to 22% in the case of a decision and 25% of those who 'put up with it.'

On average, 18% of the respondents who undertook some action say they regret it, while, as can be expected, those who opt to put up with the problem express a higher degree of regret than those who are able to reach an agreement. The main complaints of the respondents are that they should have

been more persistent, taken action earlier and should have stood up for themselves better. By contrast, the number of respondents who regret having engaged legal advice is extremely low. Insofar as there are any regrets pointing in the direction of legal advice, it is because respondents did not engage a legal advisor or solicitor.

### 7 General perception of the legal system

Finally, we examine the fourth survey question: How much confidence does the private citizen have in the functioning of the legal system?

The screening survey contained six statements on which the respondents could express an opinion of the legal system in the Netherlands. These statements related partly to the operation of the legal system as a whole and partly to the functioning of judges and solicitors. The six statements were as follows:

1. If someone with a problem goes to court, he or she can count on being treated fairly.
2. For citizens who want to enforce their rights, the courts are an important means to that end.
3. The legal system treats everyone equally, whether rich or poor.
4. Judges are honest and trustworthy.
5. Solicitors charge too much for the work they do.
6. Solicitors are honest and trustworthy.

These statements were put to the total group of 3,516 respondents, that is to

say, both those who did face (non-trivial) justiciable problems during the period of the study and either did or did not deal with them and resolve them, and those who were spared from legal problems.

Firstly, it can be observed that the perception of the honesty and trustworthiness of solicitors (statement 6) is on average rather low (2.9 on a five-point scale, see table 10), regardless of the personal characteristics of the respondents. In other areas, interesting differences can be noted. People aged 65 and over and people entitled to social benefits attach more importance than other groups to the courts for enforcing their rights (statement 2). But at the same time, people entitled to social benefits have less faith in the courts than those aged 65 and over for equal treatment of both rich and poor (statement 3). And, like divorcees, people entitled to social benefits have lower-than-average expectations of getting a fair hearing (statement 1).

The main point we wish to draw attention to, however, is the difference according to educational level and income. Not unsurprisingly, we see that respondents with the highest level of education and the highest incomes have the most appreciation for the going rates in the legal profession (statement 5). And perhaps the most significant result, statements 1 and 4 reveal that the confidence in an equal treatment by the courts and the trustworthiness of judges diminishes in direct proportion to the educational level and income.

**Table 10: Average perception of the functioning of the legal system, as to personal characteristics**

Statement	1.	2.	3.	4.	5.	6.
Total (N=3,516)	3.66	3.79	2.80	3.53	4.10	2.91
Age(N=3,516)	*	*	*	*	*	*
- 18-24 years	3.72	3.76	2.79	3.46	3.99	2.86
- 25-34	3.72	3.73	2.74	3.51	4.01	2.92
- 35-44	3.69	3.73	2.76	3.52	4.11	2.91
- 45-54	3.63	3.81	2.75	3.56	4.11	2.97
- 55-64	3.57	3.81	2.77	3.51	4.18	2.89
- 65 and over	3.60	3.89	3.00	3.57	4.16	2.87
Marital status (N=3,423)	*	*	*	*	*	*
- Unmarried	3.74	3.78	2.79	3.54	3.93	2.94
- Cohabiting	3.71	3.71	2.70	3.45	4.17	2.79
- Married <sup>1</sup>	3.64	3.80	2.80	3.54	4.13	2.90
- Divorced	3.46	3.87	2.89	3.41	4.15	2.94
- Widow/widower	3.61	3.73	2.81	3.57	4.17	2.99
Level of education <sup>2</sup> (N=3,480)	*	*	*	*	*	*
- Primary	3.53	3.74	2.80	3.35	4.30	2.74
- Junior secondary vocational	3.60	3.81	2.77	3.43	4.19	2.91
- Lower secondary (MAVO)	3.63	3.82	2.74	3.49	4.18	2.89
- Senior secondary vocational	3.65	3.80	2.75	3.49	4.14	2.91
- Higher secondary (HAVO)	3.60	3.75	2.87	3.48	4.10	2.87
- Higher professional (HBO) and university (WO)	3.78	3.75	2.87	3.73	3.84	2.94
Household income <sup>3</sup> (N=2,874)	*	*	*	*	*	*
- less than 15,000	3.56	3.82	2.77	3.48	4.15	2.95
- 15,000 to 23,000	3.52	3.82	2.72	3.47	4.16	2.92
- 23,000 to 28,500	3.69	3.88	2.74	3.52	4.09	2.92
- 28,500 to 34,000	3.67	3.81	2.78	3.50	4.17	2.88
- 34,000 to 45,000	3.67	3.80	2.81	3.59	4.08	2.93
- 45,000 to 56,000	3.71	3.77	2.80	3.48	4.09	2.82
- 56,000 to 91,000	3.69	3.79	2.80	3.63	4.02	2.87
- 91,000 and more	3.73	3.71	2.88	3.67	3.86	2.89
Social group (N=2,529)	*	*	*	*	*	*
- Self-employed	3.51	3.64	2.84	3.45	4.13	2.87
- Government employed	3.82	3.76	2.81	3.68	4.12	2.87
- Employed elsewhere	3.70	3.77	2.79	3.53	4.06	2.93
- Entitled to benefit	3.45	3.89	2.62	3.43	4.14	3.01
- Pensioner	3.61	3.90	2.94	3.61	4.19	2.91

<sup>a</sup> The average has been calculated on the basis of the respondents who provided their opinion, on a scale from 1 (disagree completely) to 5 (agree completely). The respondents who answered with 'could not tell', the number of these changed per statement, have not been included in the Table.

\* Indicates that the average opinion about the statement between the subgroups differs significantly ( $p < 0.05$ ).

See also the notes at Table 4.

### 8 Paths to justice in different countries

There appear to be remarkable differences between the results of the Dutch research and those of the UK-studies (see Table 11). Firstly, Dutch respondents experience more often

justiciable problems (67%) than the respondents from the UK (34% and 23%). Secondly, the Dutch appear to be more often self-helpers and are less often looking for advice. Thirdly, the

Dutch respondents more often reach an agreement with the other party and are less likely to put up with the problem.

In comparing the results of the studies we have to keep in mind that the data pertain to different periods. The dissimilarities may also be caused by methodological differences (see section 2). The Dutch respondents were a sample of people with access to the Internet. In line with the participation theory these people could be more socially active, and accordingly have a higher risk of disputes. However, other explanations might be possible too. First, if we look in more detail to the incidence of different types of problems, it is remarkable that the Dutch respondents report far more employment problems (30% compared to 7% and 4%), consumer problems (32% compared to 11% and 6%), money problems (22% compared to 9% and 7%), and problems with owning residential property (20% compared to 8% and 5%). So, it is notable that the differences are most profound with respect to transactions in the economic domain. With respect to problems about family matters, children, health and renting accommodation the differences are only slight or less substantial. So possibly differences in the economic

domain, i.e. amount of social/economic transactions (e.g. services industry, gross national product, level of consumption, household income, job mobility, home-ownership and mobility of housing market) between the countries partly cause the higher rates in the Netherlands. Also differences in legislation (e.g. more consumer or employee rights, all kinds of permits/taxes with respect to home-owners) might bring about a higher level of problems.

Genn and Paterson (2001) suggested explanations for the substantial reporting difference between the population of England and Wales and that of Scotland. The lower rate in Scotland was ascribed to possibly an actually lower incidence of problems in Scotland, but more likely a difference in the perceptions of problems. In the latter sense, they ascribed the lower incidence to a 'greater sense of fatalism or powerlessness' and more 'community-orientation' on the part of the Scottish population. They argued that these would lead to systematic under-reporting of problems and a lesser likelihood of disputes being perceived as individual matters rather than collective problems.

**Table 11: Incidence, strategy and outcome of justiciable problems in the Netherlands and UK (%)**

	Netherlands 1998-2002	England+Wales <sup>1</sup> 1992-1997	Scotland <sup>2</sup> 1992-1997
Incidence of (non trivial) problems	67	34 <sup>3</sup>	23
Strategy:			
- lumpers	10	5	3
- self-helpers	46	35	33
- advised	44	60	64
Outcome:			
- agreement	48	34	32
- concluded by adjudication	7	14	9
- putting up with the problem	36	49	54
- no action taken (lumper)	10	5	3

1 Genn (1999)

2 Genn and Paterson (2001)

3 A more recent study reported 37% justiciable problems over a 3.5 year period between 1998 and 2001 (Pleasence et al, 2004)

The differences in strategies to solve the problems can partly be attributed to the frequency of types of problems. The research shows that consumer and money problems are on average more often tackled by people themselves. The incidence of these types of problems is much higher than in the UK, and accordingly the amount of self-helpers in the Dutch study is higher.

For the same reason the level of problems that ended by agreement might be higher in the Netherlands. Consumer and employment problems on average are more often settled by agreement between the parties. The rate of these types of problems is much higher in the Netherlands. Additionally, these results might also reflect the finding from former studies that the Dutch go to court less frequently than other Europeans (Blankenburg, 1995). This is ascribed to the availability, accessibility and large 'filtering effect' of ADR procedures in the Netherlands.

## 9 Conclusion

In this paper, we have presented a number of main points of the Dutch *Paths to Justice* study.

Over a five year period about 67% of the Dutch population experienced one or more justiciable problems, the most common being problems with faulty goods and services (32%), work problems (30%), money problems (22%) and problems to do with home ownership (20%).

About 10% of the respondents made no attempt to resolve their problem, about 46% handled their problem alone without any help, and around 44% obtained advice to try and resolve their problem. A very wide range of advisers was used, but the choice and number of advisers used was heavily associated with the type of problem being experienced.

Overall about 48% of the problems were resolved by agreement and 7% concluded by adjudication. About 36% of the respondents eventually abandoned

the matter, and 10% did nothing from the beginning. Among all respondents who undertook action to resolve the problem, 73% said that their main objectives had been (partly) achieved.

On average, those who sought advice were positive about the help and advice received. The responses to questions concerning views on the legal system suggest that, on average, there is confidence in the fairness of hearings, the judiciary, and the courts as an important means to enforce rights. On the other hand, about 42% of the respondents thought that the rich and the poor were not equally treated by the courts. On average, lawyers are considered to be less trustworthy than judges. It was also strongly felt that lawyers' fees are too high.

The research indicates that although justiciable problems are quite common in the daily lives of Dutch citizens, people resolve most of their problems by themselves. They do not frequently seek advice and relatively few problems are resolved by a tribunal or court. The research revealed no shortcomings such as insufficient availability or poor quality of advice. People make use of a wide range of professional advisers and are, on average, satisfied with the help given.

With respect to the position of the weaker social groups, it can be noted that the picture of the situation is a varied one.

Firstly, people over the age of 65, pensioners, widows and persons with a low level of education are faced with fewer justiciable problems than average, while persons entitled to social benefits and divorcees actually experience more justiciable problems than average.

Secondly, there are differences in the approach to the problems. While those aged 65 and over, pensioners, widows, and those at the lowest educational levels turn to legal advice relatively rarely and deal with justiciable problems themselves comparatively often, the reverse is true for those entitled to social benefits, divorcees, those at the lowest

income level and people with low-level vocational education.

The data suggest that the accessibility and functioning of the relevant institutions do not constitute a real barrier in engaging legal advice. The range of legal advice available in the Netherlands is so broad that there is generally a myriad of alternatives for those who find solicitors too expensive. It is more often the type of problem that determines whether and what institutions are approached for help. Having said that, we do wish to point out one exception. It appears that insufficient skills on the part of the group with the lowest educational level impede the finding and utilising of contact with legal aid in a productive way. By the same token, the legal aid system seems to be insufficiently geared towards providing for the specific needs of this group, namely specific help in approaching and dealing with the counter-party.

Likewise, when looking at the outcomes of the dispute resolution strategies adopted, there are obvious differences. Persons entitled to social benefits achieve results comparatively often, mainly due to the fact that they often let it come down to a decision in official proceedings. In this context it should be noted that in the Netherlands conflicts relating to social benefits fall under administrative law, for which the threshold for initiating proceedings (representation in litigation, court fees) is fairly low.

By contrast, people with the lowest level of education and the lowest income levels achieve relatively little in the way of results. This is not because they are unable to commence official procedures, but because they are less often successful in reaching agreement with the counter-party. In short, here too it seems that the access to the judicial system is not impeded so much by the structure of the system but by the socio-psychological capacities of the persons involved to make use of it.

## References

Baird, D.C., R.H. Gertner and R.C. Picker, *Game theory and the law*, Cambridge MA/London, Harvard University Press, 1994

Blankenburg, E., *Access to Justice and alternatives to courts: European procedural justice compared*, *Civil justice quarterly*, 1995, 14, pp. 176-189.

Burt, R.S., 'The network structure of social capital', in: R.I. Sutton, M. Staw (eds.), *Research in organizational behavior*, Greenwich CT, JAI Press, 2000

Genn, H., *Paths to justice. What people do and think about going to law*, Oxford/Portland Oregon, Hart Publishing, 1999

Genn, H., and A. Paterson, *Paths to justice Scotland. What people in Scotland do and think about going to law*, Oxford/Portland Oregon, Hart Publishing, 2001

Pleasence, P. et al., *Causes of action: Civil law and social justice*, Legal services Commission, 2004

van Velthoven, B.C.J., and M.J. ter Voert, *Geschiedbeslechtingdelta 2003*, Den Haag, WODC, 2004