Summary

From district court to subdistrict court

In 1999, commercial civil disputes with a value between 5,000 and 10,000 Dutch guilders (Euro 2,268.90 to Euro 4,537.80), which used to be handled by district courts, became the competence of subdistrict courts. As a result, legal representation by an attorney-at-law was no longer compulsory in these cases. Whereas such representation is compulsory at the Dutch district courts, at the subdistrict courts parties can represent themselves or choose between several types of representation: by an attorney-at-law, a bailiff, or anyone educated in law. The purpose of raising the subdistrict courts' competence was to give parties the opportunity to choose cheaper types of legal aid, so the cost of legal aid could more easily be kept in balance with the amount of money involved in the dispute. The raise of the subdistrict courts competence to 10,000 guilders had been proposed as a first step. If successful, following steps would increase the competence of subdistrict courts to 25,000 guilders.

In this report, the measure taken in 1999 is being evaluated. Firstly, the effectiveness of the measure is established: have the choices parties make concerning legal aid and court representation changed and has this resulted in lower costs? Secondly, several possible side-effects have been taken into account. In this respect, the study focuses on the changes that occurred in the way cases are being handled, and on the way these changes are related to the change of courtroom and legal representation. Also, effects on the number of cases brought before the judges have been established, and their consequences for court capacity.

The backbone of the research is a comparative study of cases handled by district courts (cases settled in 1996) and cases handled by subdistrict courts (cases settled in 2000). All these cases have a financial value between 5,000 and 10,000 guilders, and stem from the same (six) districts. There is a variety of disputes behind these cases. However, most are collection cases. About 60% fits the general characteristic of a company or institution suing an individual. And in only one in three cases defendants actually do provide a statement of defence. Most of them do not show at all. Over time, these characteristics show little change.

In 1999, there were 19 district courts and 61 subdistrict courts. Most civil cases are handled in first instance by subdistrict courts. Until 1999, civil cases with a value above 5,000 guilders were handled in first instance by district courts. Rent and labor cases are exceptions to this rule: these cases are always handled by subdistrict courts in first instance, whatever their value. In 1998 the district courts handled about 39,000 commercial cases, the subdistrict courts 278,000 (including rent and labor cases).
The choice of legal aid
In the light of what the change of competence meant to achieve, the measure proves to be successful. Parties have taken the opportunity to use the services of other legal aids than attorneys-at-law. Among the plaintiffs, bailiffs are the most popular choice: bailiffs now handle 71% of their cases. The use of attorneys-at-law dropped from 100% (in the old situation, when parties had to be represented by an attorney-at-law) to 16%. Only 1% of the plaintiffs goes to court without any kind of legal representation. The final 12% is represented by someone from outside the traditional legal professions. For individuals, this may be a legally educated friend or relative, for companies this may be a company lawyer.
The choices made by defendants differ substantially. Half of the defendants that actually deliver a statement of defence, do so without legal representation. For those who make use of legal aid, attorneys-at-law are still the most popular choice (53%), followed by bailiffs (33%) and representatives from outside the traditional professions (14%).

Costs
Clearly, the choices parties make concerning legal help in court cases have changed substantially compared to the old situation. There can hardly be any doubt that their choices also result in lower costs. In general, attorneys-at-law are considered to be the most expensive choice, followed by bailiffs, non-traditional representatives and self-help. Cost reduction also comes from the lower court fee one has to pay at the subdistrict courts.
The cost reduction in the new situation is most impressive for defendants. In the old situation, they could only defend themselves if they hired an attorney-at-law and paid a court fee. Now, they are no longer obliged to invest in legal aid, nor do defendants have to pay a court fee at the subdistrict court. This has, however, not led to a significant change in the number of defended cases (which one would probably expect).

Number of cases
Due to the change of competence, in 1999 about 9,000 cases moved from district courts to subdistrict courts. For district courts, this is about 20% of their workload of commercial cases. To subdistrict courts this number is less impressive; they already handled 275,000 commercial cases a year.
Free choice of legal aid and lower costs can be seen as dropping some of the barriers that may withhold people from going to court. If there is a latent demand for judicial dispute resolution, the number of cases brought to court might rise. In fact, the number of cases with a financial value between 5,000 and 10,000 guilders rose steeply. In 1998, the last year before the change of competence, some 9,000 of
these cases were brought before the district courts. In 1999, 14,750 of these cases were brought before the subdistrict courts, 16,800 in 2000 and 18,800 in 2001. However, the sharp rise in the number of cases is not necessarily due to cases that before would not have found their way to court. Simultaneously with the sharp rise of cases with a value between 5,000 and 10,000 guilders, the number of cases with a value below 5,000 guilders dropped, even more sharply. So the rising number of cases with a value above 5,000 guilders could be the result of a migration of cases with a value below 5,000 guilders. From our interviews with attorneys-at-law and bailiffs we could establish that this effect is credible. Before the change of competence, plaintiffs sometimes reduced their claims to 5,000 guilders, in order to avoid the slow and expensive district courts and bring their case before a subdistrict court. Especially to bailiffs, who handle the complete trajectory of collection for their clients, this seems attractive, because they can handle their case at the subdistrict court themselves, without having to hire an attorney-at-law. With the raise of the district courts’ competence in 1999, there no longer was any necessity to reduce claims to a value of less than 5,000 guilders. Hence, an upward migration. Given the number of cases that were already handled by subdistrict courts, an upward migration of 5,000 or even 10,000 cases can be considered credible.

Unfortunately, while we found no evidence that the risen number of cases with a value above 5,000 guilders stems from cases that would not have been brought to court before 1999, we still cannot rule out that possibility. We can only say that, from the research, it has become less probable there is a vast effect stemming from a latent demand for judicial services.

Workload and court capacity
Our research has established several more ‘technical’ effects from the change of competence. In an explanatory statement by the law in which the change of competence was passed, the Minister of Justice said that, with the cases that would go from district courts to subdistrict courts, also a comparable number of personnel would go that way. In effect, the measure would be financially neutral. In reality, no shift of personnel from district courts to subdistrict courts has taken place. The main reason seems to be the scarcity of judges and other court personnel. The fact that the district courts lost about 20% of their workload in civil cases did not lead to overcapacity. The district courts have used the situation to reduce delay and improve quality.

At the subdistrict courts the effect of the extra workload from cases above 5,000 guilders was countered by a drop in the number of cases under 5,000 guilders. All in all, the total number of civil cases rose with less than 5,000. On the subject of the financial neutrality of the competence change, our analysis shows that the measure is in fact not financially neutral, but reduces costs. The subdistrict courts work more efficiently, so less personnel is needed to handle the cases.
A measure of the average processing time for several types of cases is used to establish the budgets of the Dutch courts. A change of competence affects the average processing time, which needs to be recalculated after such a change. For the district courts, the cases with values between 5,000 and 10,000 guilders were the less complicated cases; now that they are gone, the average case has become more complicated and the average processing time goes up. To the subdistrict courts, which used to handle cases with a financial value below 5,000 guilders, the average case has also become more complicated, so the average processing time will rise as well.

Comparing the way district and subdistrict courts handle their cases

In our research, we compared the way district courts used to handle the cases from 5,000 to 10,000 guilders, with the way they are handled now by subdistrict courts. Some of the rules differ among these courts. In district courts, 8% of the defended cases – generally the more complex ones – were handled by three judges. At subdistrict courts all cases are handled by one judge. As we saw already, at district courts both parties have to be represented by an attorney-at-law, while at the subdistrict court there is no such obligation.

In general, the way subdistrict courts handle cases is more standardized. In most cases, there are two rounds of conclusions followed by the verdict. In comparison to the district courts, less procedural complications take place. Also, the percentage of cases in which a public hearing is held dropped from 38 (at district courts) to 25 (at subdistrict courts) percent of the defended cases. The number of cases in which – inside or outside the court – a friendly settlement was reached dropped as well, from 50 to 24% of the defended cases. Finally, the throughput-time of the average case is much shorter at the subdistrict courts.

Some of these differences are due to the way the different courts, and their judges, do their work. For instance, the ‘standard’ of two rounds of conclusions and the small number of public hearings – especially the hearings after one round of conclusions – are an example of how subdistrict courts differ from district courts in the way they handle their cases.

Other differences can be attributed to the way professional court representatives work. For instance, if we take a look at defended subdistrict cases in which both parties are represented by an attorney-at-law (so court representation is comparable to that in district courts), the number of procedural complications as well as the number of cases in which a friendly settlement is reached come close to those in district court cases.

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2 In Dutch law, a public hearing is not necessary in civil cases. Many of the procedures only involve the exchange of written documents. Most public hearings at district courts are held after the first round of conclusions (in 34% of the cases). At subdistrict courts most hearings are held after (at least) two rounds of conclusions (in 17% of the cases).

3 The median throughput time in defended cases dropped from 420 (district courts) to 176 days (subdistrict courts). The mean dropped from 608 to 203 days.
The number of procedural complications and friendly settlements is low in cases where defendants represent themselves or are represented by someone from outside the traditional professions.

The difference in speed between district and subdistrict courts cannot be attributed to the different representatives. Whereas at subdistrict courts cases in which the defendant is represented by a bailiff or an attorney-at-law take more time, they do not even come near the throughput time measured at district courts. The difference in speed must be attributed to differences between the courts.

In earlier research, the slowness of the district courts has been explained by the large stock of cases in process. The smaller scale of the subdistrict courts and the practical way they handle their cases seem to provide better conditions to keep the stock in control.

Comparing the courts' performance

It is clear that subdistrict courts process their cases faster and in a more efficient way. More difficult to measure – and to quantify – is the quality of the courts’ performances. It leads to several notes in the study. The subdistrict courts’ judges are generally believed to be more practical, give less room for legal hairsplitting and cut the knots quickly. All cases are handled by one judge, while at the district courts 8% of these cases were handled by three judges.

The compulsory legal representation at district courts is meant to guarantee a fair trial and the equality of parties. From the study we learn that at subdistrict courts most plaintiffs have professional legal aid while most of the defendants do not. In comparison to the district courts, less public hearings are held and less friendly settlements are reached. These elements are generally believed to contribute in a positive manner to an effective resolution of dispute and to the acceptance of its outcome.

The choice of legal aid is up to the parties. They can take the cost in consideration and may go to court without legal representation. It involves the risk, however, of a less satisfactory procedure which may, eventually, harm their confidence in justice.

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4 For some of these courts, the number of cases in process is more than twice the number of new cases they get during a whole year. While the actual processing time is less than two days on average, throughput time can be two years on average.