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Improved Performance Of The Netherlands Judiciary: Assessment Of The Gains For Society

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Abstract:

At the eve of the reorganization of the Netherlands Judiciary which led to fully responsible boards of the courts and a council for the Judiciary, in 1998 an inventory was made of bottle necks in the performance of the courts, as perceived by their users, and the gains for society of removing these bottlenecks were calculated in economic terms. Conceptually as well as from the perspective of data availability, this was not an easy undertaking. Now fifteen years later, it is of interest to evaluate whether the bottlenecks were solved and the then calculated gains reached. This paper reports the outcome of this evaluation with respect to civil and administrative cases. It shows that substantial progress was made, for instance, by reducing court delay and that a large part of the previously calculated gains was realized. But it also shows that the demands of society have increased further about timeliness, and, in particular, about digital access of the courts. And again substantial gains are possible and necessary. Within the Netherlands Judiciary it was recently concluded that these improvements require redesign of the laws of procedure to make procedures less formal and much faster, but also demand radical digitalization. As to the methodological aspects, the knowledge about the impact of the judicial function on the welfare of society is growing. However, the assessment of the economic impact of specific improvements such as reduction of court delay, let alone improved reasoning and consistency of judicial decisions, is still rare. The paper discusses possibilities and complications. While it is feasible to assess the direct gains to the parties in a court procedure, the gains resulting from a more effective "shadow of the law" due to the quicker and more predictable adjudication of cases are still elusive.

Keywords: judiciary, performance, Netherlands, societal gains, judicial function

1. Introduction[2]

In 1998 the renewal of the Netherlands Judiciary was being discussed in Parliament. It was decided that each court would get a board integrally responsible for the court and that a council for the Judiciary would be established. The report that formed the basis of this discussion made important and well-reasoned proposals about the organization of the Judiciary to strengthen its independence and capabilities, but did not provide an analysis of the gains to society that could be attained by the reorganization (Commissie Leemhuis, 1998). Therefore, a separate study was undertaken to identify improvements thought necessary and possible by the users of the courts and to assess the benefits in economic terms (Ministry of Justice, 1998). This study, further referred to as the 1998 study, is central to this paper. The idea was that the organizational changes would provide the courts with the capabilities to realize these improvements and to set clear objectives to that end. The study of which I was one of the authors had to be done in a short period of time – a couple of months – but had to enter uncharted terrain.

Now 15 years and several reforms (see Box 1) later, it is of interest to look back. There are two areas of interest. First, based on current knowledge, does the analysis and in particular its economic part still make sense? Second, have the improvements and the associated gains been realized? In addition, it is of importance to know whether the demands of society have changed. The analysis is confined to civil and administrative cases, as the 1998 study dealt with criminal law in a superficial manner. Below, I first take a brief look at economic methodology to give a broad outline of the approach followed. I then discuss the 1998 study in section 3. In section 4, the 1998 study is evaluated from a methodological point

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of view. Section 5 discusses the performance of the Netherlands Judiciary with regard to the removal of the bottlenecks, while section 6 examines whether new bottlenecks have formed. Section 7 concludes the paper.

Box 1. Judicial reform in the Netherlands

2002:	Establishment of integrally responsible boards of the courts and Council for the Judiciary
2002:	Introduction of output-based funding system and total quality system
2006:	Establishment of quality and lead-time standards
2011:	Increase of competence of small claims courts from 5,000 euro to 25,000 euro
2011/12:	Introduction of new method of handling administrative law cases
2008/12:	Gradual expansion of digital access to the courts
2013:	New judicial map: from 5 to 4 appeal courts from 21 to11 first-instance courts from 56 to 32 court venues
2013/17:	Reform of laws of procedure, simplification and digitalization of procedures, reorganization of the administration of the courts

2. Economic Methodology

At a very abstract level, maximizing social welfare[3] of a society requires an optimal allocation of resources in the whole of its economy. This in turn requires that all possibilities for exchange are utilized, in a market economy largely on a voluntary basis. If the legal infrastructure stands in the way, for instance because property rights are insecure, options for exchange are not pursued. This takes place in the static context of maximizing welfare in a particular moment in time, but also in a dynamic, inter-temporal context. Especially in the latter context, the consequences of a weak legal infrastructure may be dramatic, for instance if investments that have a long pay-out period are too risky due to ineffective legal protection. This can be a major impediment for economic growth. In advanced economies, insecure property rights are generally no longer an issue, although at the micro level, such situations may arise with new technology that cause legal issues not envisaged in the law (can a genome be owned?). In these societies, legal infrastructure challenges are about smaller issues such as the duration of lawsuits and the consistency of the application of the law, and the economic impact is both less glaring and more complex.

There are different approaches to analyzing the impact on the economy of the functioning of the legal infrastructure of which the Judiciary is a key component. A macro-economic approach uses data from different countries with differing growth performance and different performance of the legal infrastructure, and correlates these, while controlling for many other variables that have an impact on economic growth. It captures the general relationship between economic growth and the legal infrastructure, as defined by the chosen indicators. All direct and indirect effects are incorporated in an undifferentiated manner in as far, of course, as these effects are related to the indicators that describe the legal infrastructure. It is classic black box. The benefits accruing to a specific effort to improve the performance of the courts cannot be established. Many of the econometric relationships found in the literature stem from a comparison of wealthy countries with highly developed legal infrastructures and poor nations with weak legal infrastructures. The analysis shows, for instance, which part of economic growth can be attributed to the functioning of the legal infrastructure. In a meta study for the Netherlands, it was calculated that 0.7 percentage point of annual economic growth can be attributed to a legal infrastructure, better than the world average (Van Velthoven, 2005).[4] This study also provides an overview of the literature. However, for the Netherlands this method does not show the potential for improvement, as the legal infrastructure functions at the top of the scale. This thinking is reflected in the global competitiveness index of the World Economic Forum; institutional factors have a larger impact at lower levels of development than at higher ones (e.g. Schwab, 2012). Still, there are no reasons to assume that the possibilities for better performance are exhausted. A

[3] Social welfare is an economic concept that refers to the well-being of the whole of society. In a narrow interpretation it is often defined as to the total value of consumption. For example, Nordhaus and Tobin (1973) define it as “a comprehensive measure of the annual real consumption of households”. In a very broad definition it encompasses everything people value (e.g. Shavell, 2004).

[4] Ben van Velthoven, University of Leiden, received a research grant from the Netherlands Council for the Judiciary with the assignment to study the role of the courts in the economy, building upon the 1998 study discussed here. Several of his reports will be referred to below.

Judiciary may be one of the best in the world, but it may still lag behind the rest of society. Despite these limitations, the macro-economic approach is very relevant and remains in wide use.

The other, micro-economic approach looks at the traceable effects of specific improvements. It is much less used, and suffers from lack of theoretical and empirical development. It requires in-depth knowledge of how people behave. In practice, causalities are complicated. For example, the reduction of the duration of a procedure has a direct impact on the parties involved in the procedure. The analysis of this impact is relatively straightforward, as we will show below. Speeding up the procedures, however, also affects the behaviour of others than the parties. They have a stronger incentive to stick to the law and to avoid unnecessary legal procedures. See for instance Gravelle (1990). This longer shadow of the law, as it is commonly called, may well have a much larger impact than the direct effects on parties in many situations, but is very difficult to assess. Similarly, increased uniform application of the law reduces costs for the parties involved. They have less reason to appeal first-instance verdicts, and they do not have to bring similar cases to court and/or try other courts. The indirect effects stem from the law being more predictably enforced, leading to more law-conforming behaviour, fewer legal conflicts and fewer court cases. In this situation, the impact on the volume of legal conflicts is probably simpler to assess than in case of the reduction of court delay, but it is still difficult. The 1998 report used the micro-economic approach and confined itself largely to direct effects.

To set the stage, the major categories of costs that are affected by measures to improve the performance of the courts are briefly introduced here.

1. Transaction costs: transaction costs include the court costs of processing a case, the costs of legal representation and other costs incurred by the parties, such as the cost of time spent by the parties litigating the case. All the activities concerned consume resources and time, and as such do not contribute to the overall social welfare. These resources and time could have been used for welfare-enhancing activities, whether in production or consumption.
2. Costs of postponing activities: in many court cases, economic activities are stopped pending disposition of the case. These cases may concern disputes about (intellectual) property rights, but also about transactions. In administrative law disputes, the cases often have to do with permits of divers nature. Assuming these activities enhance welfare, postponement of them reduces welfare. Postponement sometimes leads to the abandoning of activities altogether.
3. Costs of uncertainty: uncertainty is a dominant feature of most court cases. Uncertainty itself may result in large welfare losses, even when there are no other costs. For instance, when a lawsuit is purely about money owed, this is redistribution in economic terms and, disregarding ethical concerns, welfare is not affected. However, the fact that a certain sum is at stake forces both parties, if they are rational, to take the eventuality of an adverse court ruling into account and provide for it. If both have sufficient access to capital, this has no impact. The party that loses the case can go to its bank and borrow the necessary funds. If one or both of the parties has no or limited access to capital, funds have to be set aside, and use of the money for other purposes has to be postponed. Opportunities for welfare-enhancing activities are temporarily missed. Of course, parties may not be prudent or may not be able to be prudent, as when they have to cover other debts. Then, the damage cannot be contained if the party loses; if it cannot pay, it may have to pursue bankruptcy proceedings. Meanwhile, the other party is not compensated and also may suffer adverse consequences. Under current economic conditions, access to capital is severely restricted, and liquidity constraints are prevalent.

Transaction costs can be estimated relatively easily, at least the part that concerns the courts. The assessment of both the costs of postponement and the costs of uncertainty requires an estimate of the economic value of the interests at stake in all lawsuits. In an individual case, this value is easy to establish if the case is about money. There is a monetary claim and, if approved by the judge, an awarded amount. Both amounts may differ considerably. Still, an approximation of the total value at stake in these cases is the sum of all monetary claims. It should be recognized, however, that in many cases such claims do not exist. For instance, in a legal conflict about the ownership of a patent, the economic value may be very large but may not be made explicit. In still other cases, the conflict is not economic in nature, for instance in cases about the custody of children, and it is therefore difficult to attach an economic value to these cases. The money parties spend on legal advice and representation serves in these cases as a minimum estimate of what the cases mean to them, expressed in monetary terms, but such estimates are a poor reflection of the real value.

The next step is to estimate the economic impact of improvements in court performance on these costs. But first the improvements thought necessary in the 1998 study will be discussed. After that the notions presented in this section will be applied.

3. Bottlenecks in 1998

The 1998 study consisted of a straightforward questionnaire among diverse organizations that have themselves practical experience with the courts or have collected the experiences of groups of clients. These organizations comprise companies in the major sectors of the economy; organizations representing them; organizations that represent the interests of citizens such as consumer organizations; government agencies; and legal intermediaries such as law firms and bailiffs. In total, 37 organizations were approached, of whom 29 completed the questionnaire. Subsequently, in-depth interviews were held with representatives of 21 of these organizations. The questionnaire and interviews dealt with civil, administrative and criminal law, but criminal law was studied in much less detail. I therefore focus the discussion on civil and administrative law. Questions concerned the problems and weaknesses encountered by the respondents in the functioning of the Judiciary and inquired about the solutions respondents thought desirable. With regard to these solutions, the potential for feasible improvement was assessed as much as possible in quantitative terms, and the economic benefits of these improvements were estimated. Thus, the steps were to identify bottlenecks and solutions, to define feasible improvements and to quantify the benefits to be gained by these feasible improvements. Obviously, questionnaires and interviews run the risk of soliciting superficial responses and even cheap talk. The economic analysis, however, was based on an objective method, and was thus not subject to exaggerated demands. Turning to the problems encountered by the respondents, the concerns in 1998 were the following.

Court Delay

Not surprisingly, by far the most serious and most frequently experienced problem then was the protracted duration of civil and administrative procedures. Respondents frequently mentioned lengthy periods of uncertainty and that they either had to postpone or sometimes abandon activities such as investments. In cases about liability, the accumulating damage due to continuing activities that caused the damage was often unnecessarily large, as well as, conversely, the compensation eventually to be paid. Long procedures also led to emotional damage as conflicts dragged on. In a work context, this emotional damage often resulted in lower productivity of individuals and organizations. It was in particular felt to be extremely frustrating when hearings or verdicts were postponed: parties braced themselves for the hearing or verdict, their emotions built up, only to learn, too often, that the court ordered a postponement of weeks or months. Many examples were given of repeated postponement.

In administrative law cases, government agency representatives complained that for lengthy periods of time, they had to pay out social security benefits to clients who were unable to repay them by the time the judge ruled in favour of the agencies. The converse situation was also often mentioned in which for long periods of time, citizens received no social security benefits resulting in liquidity problems before the judge decided in their favour. Also, negative effects of court delay such as slower reintegration at work after lengthy procedures about disability benefits were mentioned. Government agencies complained about the negative impact of court delay on effective enforcement of the law. In general, it was noted that protracted legal proceedings led to higher costs of legal representation. Even where the proceeding did not require additional legal steps, lawyers had to refresh their knowledge of the case and bill accordingly.

When it comes to quantifying the effects in monetary terms, respondents were generally not able to provide estimates. Obviously, effects are very diverse, and often complicated to estimate. The study therefore took the more general approach described in section 2, and made broad assumptions. The key variable is the total value at stake in all cases. Several studies were used to derive an estimate. A drawback of these studies was that they were all based on small samples, which had to be extrapolated to the total number of relevant cases. The cases in these studies were about monetary claims, and these claims were used to arrive at an estimate of the average value at stake in such cases. That average was used to calculate the total value. The same approach was used for administrative cases, but no studies were available about the financial interests in these cases. Therefore, the 1998 study asked those respondents that had pending or recently concluded administrative cases to estimate the monetary value of the interests at stake in these cases and used these figures to arrive at a rough, overall estimate. Using the estimates of the total value of the cases, the costs incurred during the court case were approximated by the average return on investment minus the legal interest rate used to calculate the compensation the losing party had to pay the winning party for the time delay[5], for the average time taken by the judges to adjudicate the cases.

[5] It can be readily seen that this deduction is not correct. For practical purposes this does not make much of difference (see section 4).

Table 1. Potential Benefits of Solving Bottlenecks

	Method of calculation in 1998 study	Potential benefits in million euro 1998	Updated potential benefits in million euro 1998	
Reduction of court delay				
- civil law	Contested value x (rate of return – legal interest rate) x feasible reduction of delay for contested cases) = 2.9B euro x 0.1 x 8/12 (large claims) plus 0.4B euro x 0.1 x 2/12 (small claims)	200	230	
- administrative law	5.2B euro x 0.1 x 6/12	230*	230	
Increased quality and consistency of judicial decisions				
- civil law	2 - 3% less cases, valued as above	90*	40	
- administrative law	2 - 3% less cases, valued as above	90*	35	
Increased expertise				
- in general	Increased expertise leads to higher quality and consistency of decisions and to lower lead-times, and has no independent effect	Not independent	Not independent	
- re bankruptcy cases	Increase debt recovery: 10% of estimated loss of funds of 450M euro	45	45	
Improved access to law by reducing procedural and financial thresholds		No estimate	No estimate	
Higher service levels, provided by the courts				
Reduced waiting time before hearings	Eliminating waiting times by 1.5 hours per case for two persons, thereby reducing loss of time for work/leisure and costs of lawyers: 1.5 hours x 2 persons x 45 euro per hour x 500,000 civil cases and 100,000 administrative cases	80	80	
Increased uniformity of procedures		No estimate	No estimate	
Total benefits of removing bottle necks		735	660	
As percentage of GDP		0.2	0.18	

Note: second and third column 1998 study; fourth column my update.
* In view of the large margin of uncertainty, figures were rounded in the 1998 study (in guilders).

As to the feasible reduction of the length of proceedings, it was determined that shortening the duration of contested[6] civil cases with claims above 5,000 euro by eight months at first and second instance could be achieved, while the length of contested small claims proceedings could be reduced by two months. Uncontested cases were already concluded very quickly, and substantial gains were not deemed possible. For administrative cases, a reduction of six months was thought to be feasible at first instance, and, where applicable, at the appeals level. With respect to administrative law, cases are nearly always contested, as the defendants are public agencies that could have settled beforehand but did not do so. These agencies chose to litigate the cases.

[6] In a contested case the defendant rejects the claim. In an uncontested case the defendant accepts the claim, but he may not be able to pay. In both types of cases uncertainty about the outcome exists.

Using these figures, the benefits of a feasible reduction of court delay for civil and administrative cases at the first-instance courts were estimated at approximately 430M euro annually in 1998. (See table 1.) It should be noted that the issue of court delay is larger than shown here. A source of delay reported by the respondents was the recurring accumulation and weak coordination of procedures in complex legal disputes. Where such accumulation occurred, lengthy and protracted proceedings prior to final disposition were inevitable. It was not possible to assess the magnitude of these problems, and this is not part of the estimate.

Quality and Consistency of Judicial Decisions
Other key elements are the quality and consistency of judicial decisions. Many respondents identified insufficiently substantiated and thus unclear verdicts, leaving the parties to speculate as to what the judge(s) intended. Also, numerous complaints were made about the lack of consistency of verdicts. Both situations led to uncertainty and more procedures in first instance and in appeal than necessary. The report assumed that the volume of civil as well as administrative cases would be reduced by 2-3% by higher quality and greater consistency of decisions. The total benefits were estimated at 180M euro, based on the total value of the cases.

Specialized Expertise
According to the respondents, judges did not always have enough knowledge to handle cases adequately. They blamed this on lack of specialization. Insufficient expertise led to decisions that did not thoroughly resolve the cases and sometimes resulted in inconsistent verdicts. It also led to the unnecessary use of expert witnesses, adding both to the cost of and delay in completing the proceedings.

Bankruptcies were singled out as a special category of cases in which lack of expertise resulted in very high costs to society. The level of debt recovery was seen as unnecessarily low, resulting in many creditors not being compensated. Given an estimate of annual bankruptcy fraud of 450M euro, the benefits of improved expertise in this area were assessed at 45M euro. It was noted that bankruptcy fraud could be considered merely as redistribution, but the same would hold for theft. Both were considered as costs to society.

High Procedural and Financial Thresholds
Especially consumer organizations reported that procedures were so cumbersome and intransparant that many citizens refrained from going to court. Financial barriers had a similar impact, particularly in civil law. Without insurance to help cover the costs, many citizens could not afford to go to court; as a result, conflicts remained unsolved, damages were not compensated and frustration continued. Court fees were felt to be high, but the costs of lawyers prohibitive.

Lack of Uniformity of Procedures
In 1998, legal procedures differed among the courts. Respondents noted that this led to unnecessary procedural mistakes by parties or their legal representation, resulting in delay and associated costs.

Low Quality of Service
Finally, many respondents complained about the lack of service the courts provided. They regularly had to wait before their scheduled hearing started; hearings were often postponed; documents were not provided timely; and requests for information were not answered quickly. Respondents missed the exchange of information by email and internet. The report concluded that courts were not yet professional providers of public services. This resulted in substantial costs for all users of the courts. The benefits of a reduction of waiting times before hearings were estimated at 80M euro.

Total Economic Benefits of Removing Bottlenecks
All in all the report arrived at an estimate of 735M euro (price level 1998) per annum. This was approximately 0.2% of GDP.

Solutions
The respondents were also asked to provide their ideas for solutions to the bottlenecks. Apart from increasing capacity, higher efficiency and other obvious measures, many suggestions called for redesign of procedures, such as the abolition of the summons in favour of a less-formal and less-cumbersome petition, a more active role of the judge, more choice as to the procedure and a broader scope of the small claims procedures. More uniform procedural rules set by the courts were proposed. Also, many thought better-reasoned verdicts and other decisions necessary. Specialisation to maximize specific expertise was also popular among the respondents. Mandatory representation at trial by a lawyer was thought not to be desirable anymore. Finally, respondents believed that for a range of cases ADR had inherent advantages above formal court procedures.

4. Validity of the Analysis

In this section I will discuss whether the analysis of 1998 has withstood the passage of time. The growth of knowledge may have thrown a new light on the prevalence and relevance of the bottlenecks themselves and especially on the economic analysis of their effects. I will examine both topics separately.

Has the Analysis of Bottlenecks Survived?

The bottlenecks that were identified by the clients of the Judiciary have in no way been questioned in the on-going public discussion about the functioning of the Judiciary. If anything, the criticism in the media and in politics of the Judiciary in general and with respect to the duration of procedures, in particular, has increased substantially. However, not much in depth research has been undertaken into the actual relevance of the bottlenecks: are they a nuisance or do they really have a large impact? A small study commissioned by the Ministry of Justice in cooperation with the Council for the Judiciary about the consequences of the long duration of judicial procedures for the parties has yielded a more nuanced view of the impact (Felso, 2007). In twelve court cases in three categories - social security, trade and arrangements for children at a divorce - parties and their legal representatives were interviewed. Only in trade cases were the negative effects large. In the other categories the duration of the court procedures was not a major issue, either because the content of verdicts was anticipated or because agencies other than the courts were involved and caused more severe delay. In the latter situation, much stress and irritation occurred anyway. Court delay apparently did not add much to the already severe problems in these cases. In the trade cases, this was very different, in particular, due to the liquidity problems the plaintiffs encountered. The size of the claim relative to the financial resilience of the companies concerned was of great importance. That determined the liquidity problems the plaintiffs experienced. Small and mid size companies are especially hit hard by long judicial procedures. The researchers note that if it is clear from the start that the plaintiff would not be able to survive the duration of the court case financially, it would be of no use to go to court, and the plaintiff could only accept an unfavourable settlement. Those cases did not show up in the sample. A striking result is that in two of the three trade cases, plaintiffs as well as defendants said they had incurred high costs due to the long duration of the cases. In both cases, the defendants expressed willingness to pay substantial amounts in the range of 2.000 and 3.000 euro to halve the duration of the case. Apparently, for these defendants the advantages of extra liquidity due to delay is outweighed by the benefits of resolving the conflict. In the third trade case, court delay was used by the defendant to shift assets out of the company. As a result the verdict in favour of the plaintiff, could not be executed. In all three cases, the parties experienced, apart from material damage, uncertainty, stress and frustration. These emotions were particularly strong among the small companies. As reported before, parties were particularly annoyed about repeated postponement of decisions by the courts. Stress builds up, as the date of the hearing or verdict approaches. If a hearing or verdict is postponed, frustration is the result, and stress builds up again when the new date draws near. To sum up the results, in one of the three categories of cases the effects, as described in the 1998 study, were found in full magnitude. These commercial cases are precisely the cases that were used to quantify the effects in the 1998 study. In the other categories of cases, the duration of court cases was found not to be a serious problem. Still, many questions remain, and larger scale research of this type is warranted.

An issue not considered in the 1998 study is the impact of the duration of cases on the volume of cases. As argued for instance by Gravelle (1990) court delay could act as a rationing device: the longer cases take, the fewer the cases that will be brought to court. Although this is not necessarily so in all situations, this effect is plausible. So far, this effect has, however, not been empirically demonstrated in the Netherlands. If such an effect occurs, determining the welfare implications will prove to be complicated. As Gravelle (1990) argues, in the context of damage causing behaviour, one has to look back at the level of care that determines the probability of an accident. When an accident has occurred, a claim may or may not follow, followed by settlement negotiations; when these fail, the plaintiff may or may not take the defendant to trial. All these decisions are influenced by court delay. A decrease of court delay will lead to plaintiffs taking defendants to court more often, and this could well lead to people taking more care. As a result, it is not obvious whether the volume of court cases will increase, but welfare does increase due to the decrease of accidents. Another often suggested negative effect of court delay that was not considered in the 1998 study is the deterioration of evidence as time progresses (see again Gravelle, 1990). As the facts are harder to establish, the quality of decisions will decline, the longer the duration of cases.

A different way to check the relevance of the bottlenecks is by means of the customer satisfaction surveys that have been conducted in the courts since 2001. What do the clients of the courts find important? From these surveys it follows that the general satisfaction of professional users of the courts, such as lawyers, is determined foremost by the functioning of the judge, in particular the way he or she treats parties and lawyers. Other important factors are the competent administrative handling of cases and the transparency and use of guidelines for the uniform application of the law. For the parties themselves, the functioning of the judge is also most important. Waiting time before a hearing, the duration of the whole procedure and the way court staff treat parties also are important, but less so. The next question is how do the clients evaluate the performance of the courts on these issues. The functioning of judges is evaluated very positively in all surveys. The reasoning and consistency of the decisions (uniform application of the law) is evaluated negatively, as is the duration of court cases and service in general. The courts are very good at what the users consider to be most important (functioning of the judge), while their weak spots (court delay, reasoning and consistency of decisions) are seen as less important. This is consistent with the positive overall appreciation of the courts that is found in all surveys, and it is also consistent with the bottlenecks found in the 1998 study. It should be noted that while users of the courts do not find court delay and reasoning/consistency of prime importance, these factors may well be dominant from an economic perspective. At the same time, it can be concluded from the preferences of the clients that promoting timeliness does not make sense, if this is at the expense of the interaction with the judge.

Has the Economic Analysis Survived?

The methodology to quantify the benefits of resolving the bottlenecks is vulnerable, given the wide range of cases and the broad assumptions made. The empirical economic (micro) analysis of the courts has not received much attention. The macro- economic approach, however, has flourished, and the outcomes of this approach can be seen as support. However, both approaches cannot be easily linked, as they focus on different aspects of the economy: static welfare versus economic growth. Also, the micro-economic approach addresses primarily direct effects, while the macro-economic approach captures in one sweep all direct and indirect effects (see section 2). Still, some work has been done to get into the indirect effects at a detailed level and to bridge the gap between micro and macro approaches. An example is payment behaviour. Van Velthoven (2006) found that a reduction of the duration of relevant court procedures leads to an improvement of payment behaviour in general. The consequence of the focus on direct effects is that the benefits of reducing the length of judicial procedures, but also of a higher quality and greater uniformity, are underestimated, because only the impact on the parties of the procedures is considered. The estimates of the 1998 study can thus be considered as a lower boundary in this respect.

Value of court cases

The economic analysis of the 1998 study depends critically on the value at stake in civil and administrative cases and its estimation. As noted above, the concept of the total value is difficult to operationalize and to measure. The 1998 study was based on shaky data. A much better estimate was made by Van Velthoven (2005) for civil cases in the first-instance courts. His calculation is based on the case-registration systems of the Judiciary, thus does not depend on small-scale samples. The value of all civil cases with explicit financial claims that were adjudicated by the first-instance courts in 2005 is 9B euro in 2005 prices. Of this 9B euro, 6.6B euro was actually contested in court. (See Table 2.) If we correct (backwards) for inflation and the growth of the volume of cases, this figure corresponds with 4.1B euro in 1998 prices and (lower) volume of cases, and can be compared with the estimate of 3.3B of the 1998 study itself. Both figures are in the same order of magnitude. Using the better 2005 data, benefits would be 230M euro (1998 prices and volume), using the same method of calculation as in the 1998 study, and thus would only be marginally larger than the original estimate. We can be reasonably comfortable with the original estimate for civil cases.

The estimation of the value of administrative cases has not improved. The court-registration systems are not of much help in this area, as these cases very often are not about direct financial claims. Administrative cases range from procedures about permits to operate industrial plants and to build highways with very large economic interests to permits to add a garage to a house at minor costs. Also, administrative law deals with tax cases with a very wide range of financial value at stake, as well as social security cases. It makes sense that the value of all cases together is very high. However, it would be helpful to know the dispersion of cases across the range of value. A more in depth study is warranted. For now, it must be concluded that the initial estimate cannot be validated.

Recent data show a large increase of the value of civil cases. Due to registration problems in the courts, it was not possible to fully replicate the estimate by Van Velthoven, but two key variables are available (Table 2). As the data are volatile due to some extreme large cases related to the economic crisis, an average is given for the years 2011 and 2012. The last column of Table 2 provides an extrapolation for 2013 of the contested value of all cases. The estimated value has increased to nearly 20B euro. As a result, the actually realised benefits have increased substantially (see section 5).

Table 2. Estimated value of (contested) civil and administrative cases, M euro in current prices: available data and extrapolation for 2013

	Estimates 1998		**Data 2005**		**Data average 2011 and 2012**		**Extrapolation 2013**	
	total	contested	**total**	**contested**	**total**	**contested**	**total**	**contested**
Civil cases: large claims								
• Summons			5,049	4,110	10,762		11,000	8,900
• Petitions			2,100	897			3,300	1,400
Total large claims		2,900	7,149	5,007			14,300	10,300
Civil cases: small claims								
• Summons			838	374	1,393		1,400	600
• Petitions			1,204	1,178			1,800	1,800
Total small claims		400	2,042	1,552			3,200	2,400
Total civil cases		3,300	9,191	6,559			18,400	12,700
Administrative cases	5,230	5,230					7,000	7,000
Total cases		8,530					25,400	19,700
Percentage of GDP		2.4%					4.2%	3.2%

Notes: the extrapolation for 2013 is based on an average rate of inflation of 2% for the whole period since 1998 and on the actual change of the volume of cases.

Legal Interest Rate and Rate of Return

When a critical look is taken at the details of the methodology of the 1998 study, some remarks are in order. It seems that the impact of court delay is underestimated, as there is no good reason to deduct the legal interest rate from the rate of return, and to calculate the benefits of the reduction of court delay by using this net rate of return. The legal interest rate is used to calculate the compensation to be paid by the party that lost the procedure to the other party. This is only a matter of redistribution between the parties. The rate of return as such should have been used. However, as a high net rate of return (10%) was used in the 1998 study, it seems inappropriate to use an even higher rate. It could even be argued that especially in the current economic climate a rate of return of 10% is already too high. The rate of 10% is retained here.

Quality and Consistency of Judicial Decisions

The quantification of the impact of a higher quality and greater consistency of judicial decisions also requires attention. In the 1998 study it rested entirely on assumptions. A reduced case volume of 2-3% was assumed. This raises several questions. First of all, is it certain that higher quality and greater consistency lead to a reduction of the number of cases? The reasoning of the 1998 study was that if the outcome of a court case is more predictable, there is less reason to go to court. This follows from the standard rational choice model of law and economics (see for the basic model Bone, 2003). As long as judicial decisions are predictable and the parties in a dispute know this, both parties benefit from avoiding the extra cost of going to court and settle out of court. However, this effect may be counteracted by a larger incentive to bring cases to court instead of doing nothing: some injured parties will not take legal action because the outcome is too uncertain. If uncertainty declines, more people will go to court for this reason. Following this reasoning to its conclusion, however, people also take more precaution to avoid, for instance, damage to others, and the volume of accidents and other damage inflicting events will decline (see Gravelle, 1990 and Shavell, 2004). Thus, the volume of "reasons" to go to court declines, but, if reason arises, people take more often legal action, while a higher percentage of these legal actions than before will be settled. The net impact on the volume of court cases is, strictly speaking, inconclusive. However, at

high levels of quality and consistency, a low level of litigation is the only possible outcome. Again, empirical studies are very scarce in this area. It seems reasonable to assume that the 1998 study still stands in this respect.

A second question is whether the assumed reduction of the number of cases by 2-3% makes sense. Intuitively, this reduction is quite moderate, noting that when uniformity is complete, judicial decisions are entirely predictable and only cases would go to court in which formal court decisions such as titles for enforcement are needed. The reduction is hard to ascertain empirically, and the assumption cannot be validated. A third question is what the benefits are of a lower level of litigation. I discussed already the way the benefits from the reduction of the volume was calculated in the 1998 study. A safer estimate would be to add up the avoided costs of court proceedings, the also avoided costs of legal representation and the avoided delay the activities would have incurred due to the legal conflict. For instance, an investment plan that is the subject of a legal conflict about property rights will be delayed, as long as the conflict is not resolved, while it can go straight ahead without legal wrangling. It should be noted that the time lost in a legal conflict is much longer than the duration of the court case, as parties generally start out by negotiating, getting legal assistance and further negotiating before going to court. Adding up these costs leads to a lower estimate of 40M euro (1998 prices) for civil cases and 35M euro for administrative cases.[7]

Other Benefits

As to the other benefits explored in the 1998 study, the higher debt recovery in insolvency cases resulting from a higher level of expertise of judges is based on a conservative estimate of the total amount of debt that was not recovered, and a likewise conservative assumption about the feasible reduction of this amount. Finally, the gains from reduced waiting times before hearings are straightforward.

The fourth column of Table 1 gives the updated estimate of the benefits in 1998 prices and volume of cases that follows from the discussion here. The total estimate of the potential benefits has been reduced somewhat, but basically stands.

5. Have the Bottlenecks been Resolved?

Expectations were high with regard to what could be achieved by the change of the governance structure of the judiciary. I will discuss here whether progress has been made with the removal of the bottlenecks and whether the benefits have been realized. Box 2 summarizes the improvements that have been made. With regard to the potential benefits, the increased contested value of civil cases has to be taken into account, as does the impact of inflation on the value of administrative cases[8]. The growing value expands the benefits of, for instance, the reduction of court delay. The fourth column of Table 3 gives the adjusted potential benefits at current prices and volume of cases, and the fifth column presents the realized benefits. In this section the progress made resolving each bottleneck will be discussed.

Box 2. Realized improvements 1998/2002–2013

Reduction of court delay:	
civil law	6 months
administrative law	3-6 months
Change of percentage of (very) satisfied clients about:	
Higher quality of verdicts	from 59% to 83% (parties)
Greater consistency of verdicts	from 38% to 56% (professionals)
Greater specialist expertise	from 70% to 82% (parties)
Waiting times	from 48% to 78% (parties)
General satisfaction	from 66% to 78% (parties) from 74% to 81% (professionals)

[7] For civil cases the three components are estimated at 7, 14 and 19M euro, assuming conflicts took overall two years to resolve for large claims and one year for small claims. For administrative cases the estimates are 3, 6 and 26M euro, assuming conflicts took two years.

[8] The volume of civil cases has increased as well as the average value of a civil case. The volume of administrative cases increased since1998, but declined in recent years. As a result, the volume of these cases in 2013 is roughly the same as in 1998.

Timely Justice

Since 1998, the measurement of the duration of cases has improved enormously. A consistent set of definitions was developed, these definitions were systematically applied in the case registration systems and the data were published for the Judiciary as a whole and for each court separately. Also, within the Judiciary, standards for the duration of cases were agreed upon for important categories of cases. These standards do not apply to individual cases. It is up to each judge to give cases the required attention. Also, the judge does not have full control over the procedure, as parties have much freedom to choose procedural steps. This is accommodated by standards of the form that *x*% of the cases are to be adjudicated within *y* days. For instance, at the first-instance courts, 70% of commercial cases with financial claims larger than 25.000 euro must be disposed of within a year[9]. A major impulse to actually reduce the duration of civil cases was given by offering a simplified civil procedure with a swift hearing aimed at settlement and, where not possible, collecting all information to adjudicate the case. The combined result of all these actions is that the length of contested civil cases has been reduced considerably. The original study used marginally reliable figures. Then, the average duration was estimated at 626 days. Currently the average is 436 days (same categories of cases, average over three years, 2010-2012). The duration has been reduced with 190 days or over six months. That is still two months short of the eight months anticipated in the 1998 study. The associated benefits in current euro's and at current volume of cases can be calculated at 530M euro annually, using the same methodology as in the 1998 study. It should be noted that civil cases take much less time if parties are willing to litigate efficiently by using the simplified procedure described above. In that situation, the procedure will not take more than six months. This procedure does not suit all cases. A more elaborate procedure is generally thought necessary in complex cases in which experts have to report and witnesses have to be heard, but it must also be recognized that often one of the parties unnecessarily complicates procedures by offering new evidence or asking for expert witnesses with the sole purpose to cause delay. The judge may be convinced that these offers are just to delay the case, but he or she cannot do much against it.

Table 3 Summary of Objectives and Associated Benefits

Objectives	Degree of success with removal of bottlenecks	Updated potential benefits in million euro 1998	Potential updated benefits in million euro, current prices and volume	Realized benefits in million euro, current prices and volume
Reduction of court delay				
- civil law	++	230	730	530
- administrative law	++	230	350	175-350
Increased quality and consistency of judicial decisions				
- civil law	+	40	95	No data
- administrative law	+	35	50	No data
Increased expertise				
- in general	+			Not independent
- bankruptcy		45	60	No data
Improved access to law by reducing procedural and financial thresholds				
Reduced procedural thresholds	+			No data
Reduced financial thresholds	-			Not analysed
Higher service levels, provided by the courts				
Reduced waiting time before hearings	+	80	135	90
Increased uniformity of procedures				
Increased uniformity	++			No data
Total benefits of removing bottle necks		660	1,420	795-970
As percentage of GDP		0.18	0.24	0.13 - 0.16

[9] For the standards and actual lead-times see Raad voor de rechtspraak (2013).

Notes: Column 2: explained in the text. Column 3: see Table 1 (column 4). Column 4: calculation based on extrapolation of contested value of all cases as in Table 2 and correction for inflation. Column 5: idem for realized improvements (explained in the text).

For small claims procedures, fewer gains have been realized. The duration of contested cases was 133 days and is now 117 days (three-year average). The reduction is only two weeks with small benefits of 10M euro, although it should be recognized that in 2011, the value threshold of the small claims procedure was increased from 5.000 to 25.000 euro. The reduction of the duration of the cases that were shifted to the small claims procedure is very large (from 436 days to 117 days). As parties do not need legal representation at the small claims departments of the courts, this is an additional source of cost savings for them. For the teams at the courts that handle the small claims, the new cases are more complicated and require more processing time. The actual improvement of the duration of all civil cases including the small claims is thus higher than reflected in the figures presented here.

For administrative-law disputes, the data on the duration of cases were even less reliable in 1998 than for civil cases. As to ordinary administrative cases, averages ranging between 324 and 378 days were used for the main categories of cases that remain relevant today. The duration is now 259 days on average. The acceleration is thus two to four months. So far, just a part of the reduction of six months deemed possible has been realized. However, much of the reduction was realized in the last year (from an average of 308 days in 2011 to 259 days in 2012). This is primarily the result of the nationwide implementation of the so-called new method of handling administrative cases, after extensive experimentation. This new method requires that in all cases, a hearing must take place within 13 weeks. At or shortly after the hearing, all but the most complex cases should be adjudicated, taking into account underlying conflicts and the resolution thereof. For the latter purpose, the judge uses mediation techniques. If cases are too complicated to decide at the first hearing, the judge agrees the further procedure with the parties and sets deadlines. When this method is fully implemented, the average duration of administrative cases will be reduced to six months, a goal already achieved in the one court that now uses the new method in all relevant cases. For all courts, this is within reach in 2013 or 2014, at the latest. At that time, the reduction envisaged in 1998 of six months will have been realized. The projected benefit for society would increase from the present 175M to 350M euro annually. Another factor that contributed to the reduction of the duration of administrative cases is the entry into force of the Crisis and Recovery Law in 2010. This law applies to large infrastructure projects and makes it possible to combine the judicial procedures about diverse aspects of these projects. This law also sets targets for the duration of these procedures. An evaluation (Marseille et al., 2012) has shown that this law has been effective, although the impact on the average duration of all administrative cases is small due to the small number of cases the law applies to.

The 1998 study assumed a reduction of the duration of appeal procedures necessary and possible. About this duration, not much was known. The respondents in the study reported that commercial law appeal cases took between one and two years. In recent years lead-times are decreasing rapidly at the appeal courts. The duration stands now at 55 weeks in commercial cases. The reduction is nearly six months. This is still very long. Parties can be embroiled in court cases that take several or more years to fully adjudicate, in particular when the time spent on negotiations and preparations by the lawyers is included in the calculations.

Content of Judicial Decisions

The 1998 study revealed considerable shortcomings in the reasoning and consistency of decisions, also with respect of the uniform application of the law, leading to uncertainty and forcing parties to appeal cases and to bring more new cases to court. Very recently, the courts have started with the direct measurement of the quality of civil verdicts, having developed criteria for what constitutes a good verdict. A comparison over time is not yet possible. It is, therefore, necessary to resort to indirect measurements that can be derived from the customer satisfaction surveys that the courts have regularly administered since 2001. Most courts have undertaken three surveys by now. The last in 2011 was simultaneously undertaken at all courts. Prior to that, each court could decide itself when to undertake a survey. The first wave of surveys took place between 2001 and 2004, the second between 2005 and 2008 and the third, as mentioned, in 2011. See Prisma (no date) which summarizes all customer satisfaction surveys from before 2011 and Synovate/Regioplan (2011) which is the survey for 2011. All survey results presented below stem from these publications.

The surveys distinguish between parties and professional participants such as lawyers and bailiffs.

The satisfaction of both groups about the reasoning of decisions has increased considerably. In the first wave of the surveys, 52% of the professionals were satisfied or very satisfied, while in 2011 67% were (very) satisfied. The satisfaction of the parties themselves about the intelligibility of verdicts increased from 59% to 83%. In 2011, the satisfaction about the

reasoning of decisions, which the parties was not asked in the earlier surveys, was 79%. Dissatisfaction was registered by fewer than 10% of the parties and 15% of the professionals. It is questionable whether these scores can be much improved upon, bearing in mind that a large part of the parties and the professionals will read the decisions very critically, as these went against them.

The uniform application of the law requires more attention. As only professionals have extensive experience on which to draw, they alone were asked to evaluate the performance of the courts in this respect. The percentage of (very) satisfied professionals increased from 38% in the first wave of surveys to 49% in the second wave and to 56% in 2011. In 2011 11% were (very) dissatisfied and 32% were neutral. Also, a very high percentage, 20%, answered that they did not know[10]. Judging from the inconclusive and the neutral answers, this question is difficult to answer. It is not obvious how to interpret the still relatively low satisfaction rate. What is clear, however, is that satisfaction has increased. It can be concluded that progress has been made to remove this bottleneck.

Has this improved quality and uniformity of decisions, as perceived by the clients of the Judiciary, led to the predicted benefits, i.e. the reduction of the number of cases? Unfortunately, it is not possible to disentangle the factors that influence the volume of lawsuits. Overall the volume of civil cases has increased, largely following economic trends.

Specialized Expertise

Again recourse needs to be taken to customer satisfaction surveys to get some idea of the developments in this area. Professional users of the courts have become somewhat more positive about the expertise of judges: the percentage of (very) satisfied professionals increased slightly from 72% in the first wave to 79% in 2011. In that year the percentage of (very) dissatisfied professionals was only 7%. The satisfaction of parties increased more, from 70% to 82%. Also, employee satisfaction surveys that have been conducted regularly at the courts are informative. Satisfaction with their own expertise increased from 61% tot 75%. These general surveys do not measure the satisfaction with knowledge intensive, specialized areas of the courts. A study commissioned by the Council of the Judiciary about the performance of specialized judges in areas such as patent law and maritime law, reveals a very high satisfaction of their clients and lawyers (Böcker et al., 2010). Specialization definitely has added value from the perspective of the clients. The redrawing of the judicial map of the Netherlands which came into effect on the first of January of 2013 and led to the merger of small courts with other small and sometimes larger courts must be seen in this context. It increases the possibilities for within-court specialization. The effects are not visible yet, but should become so in the coming years. Again, indications are that knowledge has improved, and will improve further. Lack of expertise is likely to result in many erroneous verdicts of first-instance courts that will be appealed, where competent verdicts would not have been appealed. This causes unnecessary costs to the parties and the Judiciary. It was, however, not possible to quantify these costs.

High Procedural and Financial Barriers

In civil law the procedural barriers have been lowered with the introduction of the simplified procedure, described above. In administrative law, this procedure was further developed, as was also discussed already. Further simplifications have been introduced by abolishing the need to have a local procurator (local lawyer) if a lawyer handles a case outside his own jurisdiction. Also, the broadening of the scope of the small claims procedures has led to lower barriers. As to the issue of the accumulation of uncoordinated procedures, in cases pertaining to youth information regarding the relevant civil, criminal and administrative law procedures about the same youth are shared among the judges, and all legal issues can be addressed at one hearing before one judge. Thus, substantial steps have been made, but more are necessary.

Financial barriers are another matter because these are largely determined by government and parliament. Court fees were increased several times to generate more revenue for the government and have, in all likelihood, led to a reduction of the volume of cases. Access to justice is, therefore, a major issue for the Judiciary. Obviously, the trends work against each other: the reduction of procedural barriers promotes access to justice, but the raising of financial barriers results in the opposite.

Uniformity of Procedures

By the introduction of uniform procedural rules for all courts, procedural differences between courts have largely disappeared, making life much easier for lawyers and other professionals. These rules were developed by meetings of judges in management positions within the courts for the different areas of law.

Waiting Times

[10] Deducted beforehand.

The 1998 study reported that according to the respondents, delays of one to two hours were usual. Delay was and is not measured systematically. Still, it is known that delay before the start of hearings has been reduced considerably. To find out what the clients themselves feel about this, the customer satisfaction surveys are again informative. According to the first wave of surveys, less than half of the clients were (very) satisfied. The satisfaction of parties increased from 48% at the first measurement to 58% at the second, while in 2011 78% of the parties were (very) satisfied, while 13% were (very) dissatisfied. Professional clients are more negative: the ratings improved from 31% to 38% and to 63% in 2011 with 16% being (very) dissatisfied. The performance of the courts improved considerably in the eyes of the clients. This fits in with the general observation by clients as well as the employees that the courts are becoming much more customer oriented. It seems safe to assume that waiting time has at least been reduced to half an hour on average, resulting in benefits to society of 90M euro.

Expansion of ADR

The potential benefits of a broader use of ADR were not part of the initial calculation of benefits but may still be of interest. Over the years much effort has been put into increasing the use of mediation either by referral by the courts or by promoting its application at an earlier stage in conflicts. Despite all these efforts, it was found that the impact of mediation on the volume of court cases was negligible (Gerritsen, Weda and Poort, 2009). Surprisingly, on average, mediation took longer to resolve a dispute, and the costs for courts and clients together did not decline. This result may be specific to the Netherlands where many traditional, informal ways exist to resolve conflicts, and the volume of court cases is relatively low (Van Velthoven and Klein Haarhuis, 2010). It was concluded that the use of mediation techniques by judges in court procedures to reach settlement would be more effective than further promotion of mediation. Given this state of affairs, ADR is not discussed here further.

Overall Results

In these fifteen years the bottlenecks have been reduced. Timeliness is the only bottleneck that was measured objectively. In both civil and administrative law, delay has declined, and in administrative law delay is expected to decline rapidly further. In civil law, the 1998 objectives have not been fully reached. The realized benefits for society are calculated at 795M euro in current prices and volume of cases annually. The benefits will increase with 175M euro when the new method for handling administrative cases is fully implemented. With respect to the other bottlenecks the words of the clients - parties and professionals - have to be taken as evidence. The customer satisfaction surveys show marked improvements in all respects. With the exception of waiting time before hearings, expressing these results in economic terms is very problematic at the current state of research. A fundamental issue is the impact of the quality (reasoning) and consistency of judicial decisions on the volume of cases. Although it is likely that the volume will decline when quality and consistency go up, there is no certainty about this relationship. This is definitely an urgent subject for empirical research.

Indirect Benefits

Again it needs to be stressed that only the direct benefits were estimated. The impact of improved performance by the Judiciary on the extent to which rules are adhered to and the volume of conflicts in society is difficult to address. Van Velthoven and Vervoert (2009, p. 218 and 219) report on the basis of a large questionnaire among the population of the Netherlands that over the period 2004 -2009 citizens older than 18 years had on average 1.9 “justiciable” problems, and that only 4.9% of these problems resulted in legal proceedings being filed with the courts. For small and mid-size companies, a similar study was undertaken by Croes and Maas (2009). This study shows that these companies experienced 2.1 potentially legal problems in one year (2006). Court proceedings were initiated for 8.5% of these problems. These data show that a large amount of conflicts occur, most of which are handled by means other than court adjudication but still under the shadow of the law. There seems to be much room for conflict prevention. It is likely that the courts have the potential to be more effective in preventing conflicts in general to the extent that they expedite their adjudicative functions and improve the quality and precision of the guidance they provide. The threat of being effectively summoned to court with predictable outcomes will affect behaviour. It would follow that the benefits for society of a reduction in conflicts as a consequence of improved court performance are potentially a multiple of the direct benefits, but this is speculation.

6. Have New Bottlenecks Emerged?

In the first place it can be argued that the anticipated and realized reductions of court delay are not sufficient anymore, given the speed and further acceleration of economic and other processes in society and the related increasing expectations. Some evidence of this can be found in the customer satisfaction surveys. In 2001-2004, 41% of the parties were (very) satisfied about the duration of cases; in 2005-2008 44%. In 2011 the satisfaction increased, but still was not

higher than 55% with 29% being (very) dissatisfied. Professionals were again more negative, but they did see a stronger improvement: at the first measurements, only 28% were (very) satisfied, the second 38% and in 2011 46% with 27% being (very) dissatisfied. One would have expected higher scores, given the objective improvements. A recent survey of the opinions of major decision makers and opinion leaders in the Netherlands about the Judiciary shows that for these persons, court delay is a major issue, although it should be noted that these views seem largely incident-driven (Frissen et al., 2012). In the original 1998 study, the business sector expressed the wish that a conflict for which a summary procedure was not applicable, be adjudicated within six to eight months. This fits in with the timeframe of budgeting and reporting processes of companies. This timeframe seems also reasonable for other parties in commercial and administrative cases. De Jong (2004, p. 198) found that plaintiffs as well as defendants in administrative cases prefer a duration of six months. As shown above, the practice of administrative cases is moving rapidly in this direction. In civil law, the simplified procedure takes six months, but many cases do not follow that route. Radical simplification and informalisation are necessary, but foremost judges must be empowered to really manage cases. Also, appeal procedures need to be shortened further. A specific challenge is mass tort litigation. Recent examples show that, despite several improvements, the legislative and judicial functions are not fully equipped to deal with these problems, and the plaintiffs have to wait unnecessarily long periods of time to obtain clarity about their legal positions. The phenomenon of mass tort litigation is spreading, and its spread is further promoted by the banking crisis. While the duration of normal civil cases is getting under control, the next step is to find more timely solutions for mass litigation.

In the 1998 study digital access of the courts was not a big issue: respondents mentioned in passing that email and internet were not effectively utilized to speed up and facilitate the exchange of information. The needs and expectations of society are rapidly increasing in this area. While the Judiciary offers a range of digital services, these services are far from complete. Digital filing of cases and exchange of documents, digital archives, apps to set the date of hearings and electronic payment of court fees are not yet widely available. Digital services have gradually expanded, but the expansion does not keep pace with demand, due in particular to a low sense of urgency and adaptability in the Judiciary and the legal system as a whole as well as technological problems. This definitely is a new bottleneck.

If a reduction of the duration of civil cases (large claims; summons procedure) from the current 436 days to 180 days (six months) would be possible, the benefits for society would be an additional 630M euro on top of what has been realized to date[11]. It is, however, neither possible nor desirable to push all cases into this timeframe. The Irish example of its commercial court, which applies very strict case management based on procedural decisions taken at a pre-trial conference, shows that it is possible to adjudicate very complex cases in a short period of time: the average duration of these cases was 21 weeks in 2009, while 50% were concluded within 15 weeks (ENCJ, 2013). Obviously, parties have to thoroughly prepare their cases before they appear in court. When this becomes the norm, many more cases can be handled within six months than occurs now. Still, the procedure will not be suitable for all cases. A reduction to an average duration of eight months is more realistic and would result in benefits of 480M euro. Digitalization will be needed to speed up procedures. It will also reduce the litigation costs for parties, as, for instance, communication with the courts becomes less time consuming. It may also become easier for parties to represent themselves at court. And it may lead to a higher efficiency of the courts, which in the current economic climate is an important objective.

7. Conclusions and Discussion

The 1998 study was, at least for the Netherlands, ambitious in trying to establish the economic impact of resolving the major bottlenecks in the functioning of the Judiciary. The analysis was hampered by lack of data. Looking back, the analysis still stands: it contains some questionable points, but these are not fundamental. Also, better data have become available, but these led only to minor improvements in the benefits as initially estimated. It must be recognized, however, that empirical in-depth knowledge about the economic impact of the functioning of the Judiciary has not improved very much. As a result, there is still uncertainty about issues such as the impact of the quality and consistency of judicial decisions on the volume of cases. In this respect, the 1998 study makes reasonable assumptions, and in the absence of contrary information there is no reason to discard them. The recalculated potential benefits amounted to 0.18% of GDP annually in 1998 and in current prices and current volume of cases amount to 0.24% of GDP (2013). It was shown that considerable progress has been made to resolve the bottlenecks, ranging from court delay and quality and consistency of judicial decisions to waiting times before hearings. Quantifying the actually realized benefits was only possible with respect to reduced court delay and waiting times before hearings. The realized benefits for society that can be calculated amount to 0.13-0.16% of GDP annually. This does not mean that the other improvements have not realized benefits; these cannot be calculated. In management-speak, the objectives were not very SMART (specific, measurable,

[11] 8.9B euro x 0.1 x 8.5/12 months, where the annual rate of return is 10%.

achievable, realistic en timely). However, by focusing solely on SMART objectives, essential bottlenecks would not have been addressed. Measurability cannot take the place of essence. Whether new bottlenecks have emerged was also discussed. It was argued that the demands with respect to timeliness have further increased, and that this raises the bar, especially in civil law. A real new bottleneck is digital access to the courts: the courts offer some digital services, but from the perspective of the clients these need to be expanded and their sophistication enhanced.

These rather practical outcomes raise three issues. The first is about the impact of the functioning of the Judiciary on the economy. In section 2 it was noted that the legal infrastructure of which the Judiciary is a key component has a large influence on economic growth. It has been calculated that 0.7% of economic growth of the Netherlands derives from a legal infrastructure better than the world average. For Italy it has been suggested that the weak performance of the Judiciary with respect to civil cases causes economic growth to be 1% lower than would be possible (Draghi, 2011, see also IMF, 2001, p 68). It was noted that the underlying macro-economic models do not show whether economic growth would benefit from a further improvement of Judiciaries that are already at the top of the scale. The global competitiveness methodology of the World Economic Forum assumes that further improvement is not very important (see Schwab, 2012, p 4 and 8). Our micro-economic approach shows that the direct benefits to society of better performance of the Judiciary are in the order of 0.2% (1998 targets) to 0.25% (realistic further improvements) of GDP annually, only measuring the direct effects. The potentially big impact on the extent to which rules are adhered to is left out of consideration. In section 5, it was argued that the indirect benefits are potentially a multiple of the direct benefits. It seems safe to conclude that also in the best-performing Judiciaries, further improvement has a large economic impact.

The second issue is whether the focus of reform is justified. Currently, there is a strong focus on timeliness. There are good reasons for this, as the performance of many Judiciaries is quite abysmal in this respect. However, attention is also drawn to timeliness, because lead-times are readily measurable and it is a rather technical and logistical matter. It stays away from the independence of the judge. It should be recognized, however, that in the situation of the Netherlands Judiciary, the clients of the courts find the interaction with the judge and the way they are treated by the judge of greater importance than timeliness of the proceedings. Improvement of lead-times should not be undertaken to the detriment of this interaction. Also, the quality (reasoning) and consistency (uniform application of the law) of judicial decisions is neglected. While it seems likely that higher quality and consistency result in fewer cases, this has not been researched properly. This topic is the essence of the work of judges and needs much more attention.

The third issue is whether the improvements and associated benefits seen in the Netherlands are caused by the change of the governance structure, an issue raised at the beginning of this paper. This is always a difficult question, as it cannot be known what would have happened, had the governance structure not been changed. The simplification of civil procedures was already well underway before the changes to governance. Although stimulated and funded by the Council of the Judiciary, the new method of dealing with administrative cases was developed by the judges themselves. In a sense, the changes were in the air. In other respects the new governance structure played a major role by making larger interventions possible, such as setting standards for the duration of cases and holding courts responsible for meeting the standards. Also organizational interventions such as the revision of the judicial map would not have been possible. The boards of the courts and the Council for the Judiciary have led the process of change in many respects, and they have supported judges to develop new ways of working. The change of the governance structure has increased the organizational capabilities of the Judiciary, and this made it possible to address the bottlenecks discussed here.

Finally, it should be noted that the value at stake in civil and administrative cases at the courts has increased since 1998 and is now in the order of 4.2% of GDP (see Table 2). This percentage points to the importance of the Judiciary for the economy, but it also stresses the responsibility of the Judiciary to deliver high-quality justice.

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