

Management summary

This research report focuses on the Dutch Act on court fees 'Wet griffierechten burgerlijke zaken' (hereafter: Wgbz). This act was implemented in two stages: fee rates were changed as from the 1st of November 2016 and procedures of payment of fees were changed as of the 1st of January 2011. This empirical study utilized different sources to evaluate its outcomes. In addition to using reports from the Chamber of Parliament, a questionnaire was sent out to officials of the courts (judges, and administrative staff), and legal aid workers (attorneys, bailiffs, and legal advisors). Furthermore, data on the number of court cases, and income and expenditure of the civil courts were provided by the Netherlands Council for the Judiciary. Besides the effect of court fees on the number of court cases over time, other policies, acts, and societal developments were taken into account as explanatory factors.

When evaluating an act, three aspects should be kept in mind: the objectives of the legislator, the tools used to implement them, and the outcomes (in relation to the outlined objectives). The Wgbz was meant to simplify the rather complex system of determining court fees. This new act would enhance clarity concerning the costs of civil cases. Moreover, it would decrease the workload of court clerks. Two conditions had to be met simultaneously: access to justice had to remain guaranteed and income from court fees had to balance expenditures of civil courts. Related to these conditions a secondary goal of the act pertained to effect a substantial raise of court fees in appeal cases: this was meant to discourage unnecessary appeal.

Measures

The act contained six measures

Measures	Objective
1 Fixed fees for all types of civil cases	Increase clarity, and decrease workload
2 Fixed fees for people with low income	Increase clarity, decrease workload, and safeguard the accessibility to court
3 Abolition of the 'indebetstelling' ¹¹³	Increase clarity, and decrease workload
4 Payment of court fees before the start of procedures	Decrease workload
5 Omittance of court clerks having to collect the courts costs	Decrease workload
6 Increase the fee for appellate courts	Keep the amount of income and expenditure even, and discourage unnecessary appeal

Theory Based Evaluation was used to bare and clarify the (behavioral) mechanisms involved in these measures. This method elicits how, in the eyes of the policy-makers, the developed policies ought to stimulate the realization of the outlined objectives. All in all this resulted in nine research questions. Chapter 7 of the main report answers these research questions. A compact overview of the results is presented in the next paragraph.

Results

Many legal aid workers did not comprehend the reasoning behind the measures that were intended to simplify court fee rates: a vast majority of the surveyed attorneys and bailiffs stated that before Wgbz was implemented it was already often or always

¹¹³ A scheme to limit court fees for people with limited financial resources.

clear what the court fees were going to be. Still, most respondents evaluated these alterations to simplify court fee rates as neutral or mildly positive. This was, however, not the case with one particular measure that states that the applicable court fees have to be paid before the case is handled in court. This policy brought about a lot of modifications: payment procedures had to be changed along with other rules and regulations, and IT-systems needed adjustments. As a result, the new payment procedure was not always followed accordingly.

Two other organizational factors also effected the cumbersome implementation of the new payment procedure: the emergence of a nationally coordinated center for legal administration (LDCR) in 2012 and a nationally organized transition account ('landelijke rekening-courant') in September 2014. This led to new procedural and technical adjustments not necessarily due to the Wgbz itself. In other words, an adequate system was needed to process court fees as the new act dictates, yet the two organizational factors mentioned turned out counterproductive.

All in all most respondents stated that, taking everything into account, the Wgbz was not an improvement. Judges' opinions were more negative in this regard than administrative staff's. Opinions from legal aid workers showed mixed results: bailiffs were largely negative while attorneys were mildly negative, and a vast majority of legal advisors reacted positively.

The eventual court fee rates are to some extent surprising when compared to the policy objectives of the legislator. The rates increased with 43% between 2009 and 2012 concerning commercial lawsuits (first instance). The increase of fees mostly relates to cases with financial stakes between € 500 and € 5.000. This increase in court fees has led to a 20% decrease in the number of court cases in commercial matters between 2009 and 2012. These numbers are quite different for appeal cases. The court fees decreased with 20% between 2009 and 2012. This is due to the abolition of a percentage based court fee, and the implementation of a relatively low fixed rate court fee concerning cases with high financial stakes. This development led to an increase in the number of appellate court cases, which does not correspond to the Act's intentions to cut unnecessary appeal cases. Regarding family law, the change in fee rates in appeal were better aligned with the objective to prevent unnecessary appeal.

Related to developments in court fee rates the income that was derived from it turned out substantially higher than anticipated. This means that one of the outlined prerequisites of the Wgbz, to keep an even balance between income and expenditure, was not met.