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The Decline in Commercial Court Cases in The Netherlands: 2001-2020

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Table of Contents

Executive Summary

Administrative data from the judiciary show that the volume of civil commercial lawsuits has been declining for many years in the Netherlands. This decline gives rise to a number of questions. In particular: 'What are the reasons for this decrease?', 'Does the decline of civil litigation numbers imply that courts are less relevant than before?' and 'Is the decline going to continue?' The decline of cases has also practical implications. For instance, the number of incoming cases directly affects the budget of the judiciary. Based on insight into the causes and effects of the decline of civil commercial cases, it can be determined whether the decline is desirable or undesirable and whether government institutions can and should formulate a policy response.

This report addresses the following main research question:

> *"In which manner has the number of commercial cases, which can be distinguished by categories of disputes and branches of industry, developed from 2001 to the present day, and which factors explain these changes?"*

To address these issues, a quantitative empirical analysis of administrative data of the judiciary at case level was conducted. The analysis is confined to commercial cases currently handled by the civil departments of the first instance courts in which the value exceeds EUR 25,000. These administrative data allow for an in-depth descriptive analysis of the different types of cases, the parties in the disputes, the value of the claim and the economic sectors involved. The data also forms the basis of an econometric analysis that serves to understand the nature of the current trends. Complete data is available from 2001.

Our main descriptive findings are the following:

1. In the last ten years the decline in litigation numbers occurred in virtually all types of cases and sectors of the economy.

2. The volume of cases involving at least one legal person shows a steeper decline than the volume of cases involving only natural persons.

3. The volume of several types of cases (debt recovery and bankruptcy in particular) is volatile and cyclical, and increased sharply in the first decennium of the century, only to decline afterwards. In 2020, the volume of these cases was extraordinarily low.

4. Less volatile types of cases such as tort *(onrechtmatige daad)* show a steady decline in their volume over the whole period between 2001 to 2020. This structural decline seems to affect also more volatile case types.

5. The most litigious sectors are the financial sector and the insurance sector and, due to its size, the public sector. Litigation volumes of larger companies in industry are very low, while real estate and energy sectors take an intermediate position. The main case type of the banks is debt recovery.

6. The median financial claim declined in the first decennium and strongly increased afterwards. The volume of small cases (between EUR 25,000 and 50,000) declined heavily, while the relatively small number of large cases hardly declined. Total claim value fluctuates enormously, but, disregarding outliers, shows an increasing trend.

The administrative data of the courts provide no information about what occurred before the disputes reached the courts. Moreover, the data do not capture all the patterns and changes that may have impacted litigation volumes. To remedy these limitations to some extent, this report also analyses existing research and data, such as those on the trends in the use of ADR. In addition, interviews were conducted with thirteen knowledgeable practitioners with at least fifteen years of experience in the area of dispute resolution, including legal counsel of major companies, lawyers and judges.

The main findings are the following as to the causes of the changes:

7. The increase in the first decennium and the decline over the last ten years can be largely attributed to macro-economic factors. In the latter period the economy recovered from the banking crisis, while interest rates remained very low. In particular debt recovery and bankruptcy cases are influenced by the cyclicality of the economy.

8. With regard to structural factors, two interrelated explanations are consistent with our data and had a large impact on litigation volumes. The first is that litigation is far more complex and costly than before. Interviewees observe that parties involve more lawyers who draft far lengthier submissions than before. They mention different causes for these developments, including the vast increase of regulation in many sectors as well as the increased digital availability of both factual evidence and legal sources.

9. The second explanation is that prospective litigants, including large banks, insurance companies, utilities companies and housing corporations are much more selective when considering litigation than before. This is *inter alia* a result of specialization, professionalization and concentration of the legal function within big firms. Many firms have adopted policies to avoid the escalation of disputes. Clear-cut cases are more often settled at an early stage. They no longer automatically bring cases to court and they are more concerned about safeguarding their reputation than before, as information spreads much more easily by, for instance, social media.

10. Both explanations lead to an increase of the complexity of court cases. This increase is strengthened by the relatively steep decline of small cases. The data on claim value shows this clearly.

11. Several other developments only had a limited impact on the decline of the total number of court cases. These include the rise of mass litigation, the use of traditional mechanisms of alternative dispute resolution and the growth of internet platforms for trade and dispute resolution. These developments, in particular the latter development, could become more important in the future.

As to expectations for the future:

12. Once the macro-economic conditions deteriorate, it is unavoidable that the volume of the relevant case types will increase again. This will have a large impact on the total volume of cases.

13. There is no reason to expect that the factors that led to the structural decline have run their course. Also, the impact of other factors such as internet platforms will grow.

On the basis of our data, it is difficult to assess the decline of civil commercial litigation from a normative perspective. It is equally difficult to determine whether the data require the judiciary to adopt policy changes. These are issues that would require more research. Based on our research, we can however make the following general observations:

14. The decline in litigation numbers does not necessarily mean that the role of the judiciary in the economy is less important than it was before. The median claim value of court cases has at the same time increased significantly, and also total claim value has been increasing.

15. It is a positive development that firms are more reluctant to litigate disputes that could be resolved far more effectively by an early settlement. On the other hand, the increasing cost of litigation has a negative impact on access to justice, in particular for cases with a value below EUR 100,000. There can be little doubt that this is a negative development.

1

Introduction

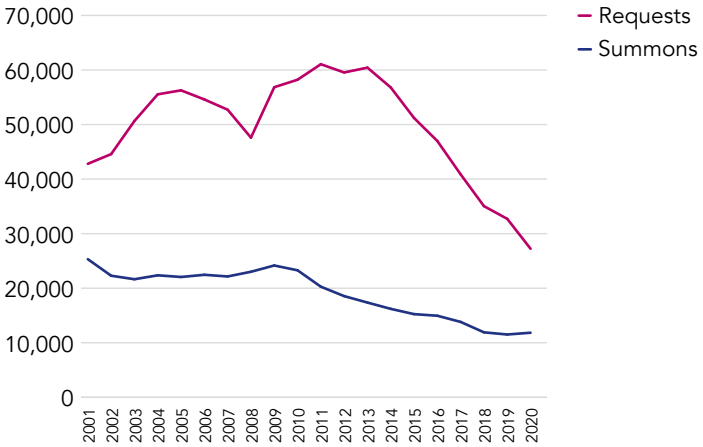
1.1. The Decline of Commercial Court Cases

As is depicted in Figure 1[1], administrative data from the judiciary show that the volume of commercial lawsuits handled by the civil departments of the first instance courts has been declining for several years in the Netherlands. This holds true both for civil lawsuits that are initiated by a writ of summons *(dagvaarding)* as well as civil cases initiated by a request *(verzoekschrift)*. These figures are in line with other data that also show a steep decline in the number of civil commercial cases.[2]

Although the pattern may not be fully consistent across the board[3], other jurisdictions have reported a decline in litigation numbers as well.[4] In Austria, litigation figures dropped by approximately 45 percent between 2002 and 2018 (Nogratnig and Zeiringer 2019). In Germany, there has been a decrease in the aggregate volume of civil cases of approximately 30 percent between 2008 and 2017 (Ippoliti and Sanders 2021).

1 See Chapter 3.1 below for a precise description of the dataset.
2 See e.g. Ter Voert and Hoekstra 2020, p. 11-12, also discussing lower claim cases. Also see the data on the number of writs served in the 2020 Annual Report of the Dutch Royal Association of Bailiffs (KBvG).
3 Between 1995 and 2010, litigation figures have risen in Spain (Rosales and Jiménez-Rubio 2017). This suggests that litigation patterns may differ in different jurisdictions.
4 The United States Court Statistics Project has published state court statistics for over four decades. For data on state courts see http://www.courtstatistics.org/csp-annual-caseload-reports. The data show a gradual increase in civil cases between 1998 and 2009. From 2009 onwards, there seemed to be a decline in the number of civil cases, with a small increase in 2017 and 2018. For federal caseload statistics suggest that there has been a gradual decline in the number of cases since 2009. Within Europe, much data has been gathered within the framework of the Council of Europe (CEPEJ). A 2018 CEPEJ report indicates that the average number of first instance civil cases per one hundred inhabitants decreased from 2.7 to 2.5 between 2010 and 2016 across Europe (CEPEJ 2018, Figure 5.1). Norwegian statistics e.g. show a decrease in the number of incoming civil cases in the period from 2016-2020. See https://www.domstol.no/contentassets/73ae7146b4094aa7a55cf4ec915deb2d/tingrettene-2020.pdf.

Figure 1 - Number of Cases Commenced per Year



The decline of civil commercial cases over a long period of time is surprising. Some models predicted that a growth in gross domestic product and population figures should ultimately lead to higher litigation rates.[5] The opposite seems to have happened: despite a steady growth of the population and the economy, litigation rates have dropped.

The decline of civil commercial gives rise to a number of different questions, like: 'What are the reasons for this decrease?', 'Does the decline of civil litigation numbers imply that courts are less relevant than before?'[6] The decline of cases can also have practical implications. In the Netherlands for instance, the number of incoming cases affects the budget of the judiciary. Based on insight into the causes and effects of the decline of civil commercial cases, it can be determined whether the decline is desirable or undesirable and whether government institutions can and should formulate a policy response.

5 See Chapter 0 below.
6 See e.g. Ippoliti and Sanders 2021, explaining that the German Ministry of Justice published a tender to explain the decrease in litigation figures.

1.2. Research Questions

This research report primarily concerns civil commercial cases with a value of at least EUR 25,000. It analyses data of all such cases handled by the civil chambers of the first instance courts. The current case administration system was applied in all commercial cases in 2001. As a result, consistent data are available as of that year. Due to data limitations, cases handled by cantonal judges are not included, and the current report is confined to the commercial cases before the civil chambers of the district courts, including bankruptcy cases.[7]

This report addresses the following main research question:

> *"In which manner has the number of commercial cases, which can be distinguished by categories of disputes and branches of industry, developed from 1998 to the present day, and which factors explain these changes?"*

This main research question can be broken down into three specific questions:

1. *What is the relative influence on the number of commercial cases of macroeconomic developments, changes in production and distribution processes and changes in litigation behavior, under the influence of the costs and time of litigation and the availability of alternative dispute resolution methods?*

2. *Do companies in different industries react differently to the factors mentioned under question 1?*

3. *What is the relative influence of cyclical economic factors and structural factors on the volume of courts cases?*

7 The initial project brief (*startnotitie*) also involved high-value cases that are handled by cantonal judges, as all labor, rental, consumer purchase and credit cases are, irrespective of value, brought before these judges.

1.3. The Structure of this Report

In order to address the research questions above, this report constitutes of three main parts: (i) an analysis of the earlier research on the volume of civil commercial cases, (ii) a quantitative empirical analysis of administrative data of the judiciary and (iii) qualitative empirical research by means of interviews.

Chapter 2 of this report summarizes findings of earlier research into the reasons for the increase or decrease of the volume of civil commercial court cases. The existing literature and data provide for a number of interrelated possible explanations for the steep decline in the number of civil commercial court cases. Chapter 2 discusses the available research and data on the (i) macro-economic (cyclical) factors, (ii) the costs of litigation, (iii) the early settlement of disputes, (iv) alternative dispute resolution and (v) potential other causes.

Chapter 3 concerns the quantitative analysis of the administrative data of the judiciary between 2001-2020. The judiciary has consistently registered data of all incoming cases, such as the names of the parties, the type of the case and the value of the claim. We have used these data to compose a dataset that is comparable over time (Chapter 3.1). The dataset contains all commercial cases handled by the civil judge in which the value of the claim is at least EUR 25,000. These data enable us to apply a disaggregated rather than an aggregated approach to explain changes to litigation volumes. The most important findings are that there is a decline of litigation figures across the board, for (virtually) all types of cases and all economic sectors. That said, different types of cases show a remarkably different pattern over time. In particular, debt collection cases are highly volatile and can explain to large extent the decline in litigation volumes ("*verbruiksleen zaken*"). Moreover, the data show that the median claim value increased.

Chapter 4 summarizes the findings of qualitative empirical research. We have conducted semi-structured interviews with thirteen experts with at least fifteen years of experience in conflict resolution and litigation. Interviewees had different backgrounds and often had differing views on the (potential) causes of the decline of litigation volumes. Nevertheless, a few conclusions stand out and were shared by a vast majority of all interviewees. Most interviewees believe (i) there is a clear link between macroeconomic developments and the volume of (specific categories) of cases brought before the courts, (ii) indicate that the complexity and the cost of litigation have increased and (iii) state that large firms have increasingly implemented policies to ensure the early settlement of disputes.

2

Current Knowledge and Hypotheses

2.1. Introduction

There is a large amount of research on the causes of changes in the volume of commercial court cases. Many researchers emphasize macroeconomic exogenous factors such as economic growth and the economic business cycle. Some studies focus on the microeconomic costs and benefits of litigation in comparison to those of alternative forms of dispute resolution. Other contributions seek to understand the effects of changes in specific government policies. All of these interrelated approaches could, in theory, provide (partial) explanations for the decline in the volume of cases.

2.2. Macroeconomic factors

It is generally accepted that the volume of commercial cases is affected by exogenous economic and demographic variables, such as the unemployment rate, population size, population density, consumption and GDP growth. This has been confirmed by researchers in numerous jurisdictions, such as Austria, the United States, Japan, and Spain (see e.g. Clemenz and Gugler, 2000; Shughart and Karahan, 2003; Gingsburg and Hoetker, 2006; and Rosales and Jimenez-Rubio, 2017). Research in The Netherlands confirmed that economic growth, the number of people that receive government unemployment benefits and population density all affect the volume of litigation (see e.g. Leertouwer et al., 2005; Croes et al. 2017; Moolenaar et al., 2020).

The underlying macroeconomic theory is that more commercial court cases are expected to emerge when more economic transactions are conducted. Economic growth is thus likely to lead to increased litigation figures. On the other hand, if economic activity is shrinking, businesses face liquidity problems and unemployment rises, we can expect more cases due to unpaid debts and to fewer honored contracts. There seems to be a consensus that the former effect tends to be more pronounced

in the long run, while the latter is more prevalent in the short run (see e.g. Nogratnig and Zeiringer, 2019; Ippoliti and Sanders, 2021).

No one doubts the relevance of macroeconomic factors. At the same time, models that use explanatory variables such as GDP and the size of the population to explain aggregate litigation figures cannot fully explain litigation figures.[8] In some jurisdictions, a long-term increase in gross domestic product went hand in hand with a sharp decline in the number of civil cases.[9] In the Netherlands, over the last two decades, both the GDP per capita and the population increased, whilst there has not been a consistent increase in litigation numbers.[10]

The key question is whether there have been structural economic or technological changes that could help to understand the recent decline of the volume of litigation, in addition to prolonged or delayed business cycle effects. Beyond doubt, there have been many changes in the way contracts and transactions are concluded. Some of these changes may be better suited to prevent future disputes (see e.g. Kagan, 1984; Fuchs, 2019).

The internet, in particular, changes the way in which business is done. In online transactions, the risk has largely shifted from the seller to the buyer. Buyers can mitigate these risks by dealing with organizations that have a solid reputation on the internet and thus have a lot to lose by cheating their customers. Internet platforms strengthen and extend reputation effects by providing incentives to keep promises among parties who do not know each other and often are in different countries. These platforms often also provide a form of insurance in case transactions go wrong. In this context, platforms also provide dispute resolution mechanisms. Such platforms can be seen as self-regulating mechanisms that could decrease the need for public dispute resolution (Gamito, 2017). Examples include eBay, Marktplaats, Amazon and bol.com. These platforms started with small consumer transactions but increasingly facilitate larger transactions and transactions among businesses. EBay for instance introduced eBay Business Equipment Purchase Protection which protects purchases

8 Forecasts are notoriously difficult to make. The Dutch judiciary uses a model "Prognose Justitiële Ketens" to make future predictions for policy and budget purposes. For example, in 2010, a prediction was made for the period 2010-2015, predicting an increase in the litigation figures (Moolenaar 2010, p 61). In 2015, a prediction was made for the period 2015-2020. It was expected that civil commercial litigation figures would remain more or less similar (Smit 2015).

9 See e.g. for long-term data on Austria, Fuchs 2019.

10 GDP per capita increased from USD 26.873 to USD 52.331 from 2001 to 2019.

for up to $100,000 and includes a protocol on how to resolve disputes.[11] The business-to-business platforms may still be relatively small, but are growing in size (Multiscope, 2020). Also, in the financial sector changes are taking place with new providers of, for instance, mortgages. US fin tech lenders seem to have less defaults (see Fuster et al. 2019 and Croux et al. 2020) but there are also findings from other jurisdictions showing the opposite (Claessens et al. 2018).

2.3. The Cost of Litigation

Not every dispute turns into a court case. The emergence and resolution of conflicts can be seen as a chain through which conflicts escalate (e.g. Van Dijk, 2019). The law and economics literature has formalized this in a wide range of models that capture the stages of dispute resolution (see e.g. De Mot et al., 2018). Some disputes are not solved at all or are resolved through other means, such as alternative dispute resolution mechanisms (ADR).

What determines if a dispute will be solved by courts or not? Some research has focused on the microeconomic cost-benefit analysis that prospective litigants face when bringing a case to court as well as the relative cost and benefits of alternatives (see e.g. Van Tulder, 2014; Koopmans and Gerritsen, 2014; Van Dijk, 2014; Ter Voert and Klein Haarhuis, 2015). If litigation is cheap and the odds of success are substantial, parties will be encouraged to litigate. If, however, litigation is expensive, has little prospect of success and takes years, parties might prefer to use alternative means of dispute resolution or simply choose to leave the matter unresolved (see e.g. Esenberg, 1991; Van Dijk, 2014; and Heise and Wells, 2016).

Previous research *inter alia* focused on the significant increase of court fees in 2009-2013 (Croes et.al., 2017). This research focused on the effect of higher court fees in commercial cases with a claim below EUR 25,000. The government intended to simplify the system and to create incentives to avoid "unnecessary appeal". The reform did not intend to affect the overall budget of the judiciary. Croes et al. concluded that the actual effects of the new rules on court fees were just the opposite of the intended ones. Court fees in first instance cases increased with 43 percent, whilst there was an overall decrease in court fees in appeal cases (see Croes et al. 2017, p.151). However, for first instance cases with stakes over EUR 100,000, there was a decrease in court fees. Van Tulder (2014) and Koopmans and Geritsen (2014)

11 https://www.ebay.com/help/buying/paying-items/ebay-business-equipment-purchase-protection?id=4637

indicate that the rule changes probably had little effect on the volume of cases in which the value of the claim exceeds EUR 25,000.

Other research initiatives have focused on the effects of changes in lawyer fees (see e.g. Van Tulder and Janssen, 1987; Van Tulder and Janssen, 1988; Van der Torre, 2005). Most of this research pertains to small claim cases. These studies indicate that the demand for lawyer services is inelastic: changes in lawyer fees have a relatively small impact on the demand for legal services and litigation numbers. This however seems to be less the case for cases in which the claim value is higher.

Natural persons and firms often do not cover all the costs of litigation themselves. Some natural persons are eligible for legal aid. There have been substantial changes with regard to the availability of legal aid over the course of the last decades. The legal aid system seems to be under pressure (see e.g. Eshuis en Van Tulder, 2014; Ter Voert and Klein Haarhuis, 2015; Van der Meer et al., 2017). In some categories of cases, it may be problematic for natural persons to access the justice system (see e.g. Nationale Ombudsman 2020[12]) At the same time, natural persons that may not be eligible for legal aid increasingly concluded insurance contracts to cover litigation costs *(rechtsbijstandverzekering)*. The number of persons with a legal insurance contract increased from slightly more than 1.5 million persons in 2004 to slightly more than 3 million in 2013 (Ter Voert and Klein Haarhuis, 2015). Insured individuals or those that can make use of a legal aid scheme may be more inclined to ignore the cost of litigation. On the other hand, the authorities that provide legal aid as well as the insurance companies that cover litigation costs may exert influence. They have an incentive to prefer settlements over litigation.

Existing Dutch literature suggests that the cases decided by the courts today have different characteristics than those that were litigated decades ago. Various (empirical) studies indicate that cases have become more complex and case files have become more voluminous. Legal norms are more difficult to apply, the amount of digital information available has grown considerably, case records are far more substantial, lawyers are more specialized and in some case types there seem to be more parties involved than before (see e.g. Van der Ploeg & De Wit 2015, Vranken 2018, Boston

12 This report concerns access to insolvency procedures for natural persons (wsnp).

Consultancy Group 2018[13] and Sylverster et al. 2019[14]). As a result, the costs of litigation seem to have increased.

2.4. The Early Amicable Resolution of Disputes

Economic theory suggests that rational parties would be inclined to settle the vast majority of (potential) disputes. As litigation will be costly to both parties, a settlement is likely to benefit both sides. Only if parties act irrational in the strict economic sense or if both parties are far too optimistic about the odds of success, they may be inclined to litigate (see e.g. Priest and Klein 1984).

There may well be developments that have prompted prospective litigants that act more rational as well as developments that have enabled both parties to make a better assessment of the odds of success of litigation. With the increasing modernization and globalization, big firms make up for an increasing share of the economy. Markets in developed countries have become more concentrated during the last decade (Autor et al., 2020; Bighelli et al., 2020, van Reenen, 2018). The emerge of larger firms may have fueled specialization of the legal function. That is: bigger firms may have more experience with disputes and can therefore adopt better policies to prevent them or to resolve them.

Ter Voert and Hoekstra conducted a large "*paths to justice*" study in which they interviewed citizens about their experience with the legal system (Ter Voert and Hoekstra 2020). The number of potential conflicts had not really changed between 2003 and 2019.The study showed that the percentage of respondents that chose not to resolve a conflict at all or to resolve it by themselves in an amicable manner had increased. At the same time, the number of respondents that had made use of formal public court proceedings had dropped from 6 percent to 3 percent from 2003 to

13 See the table on p. 59 and further explanation on e.g. p. 99 (complexity of cases in the financial sector) and p. 119 (the record is more substantial than before (66 percent increase between 2008 and 2014)).

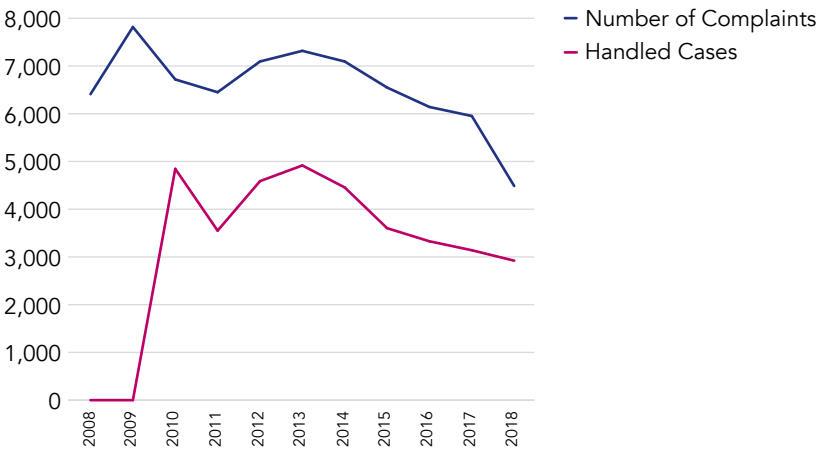
14 See p. 14, explaining that the decline in civil commercial cases has not led to a smaller workload. The researchers indicate that the relatively simple cases have "fallen away": "*Men zou verwachten dat door het afnemende aantal rechtszaken de werkdruk binnen de rechtspraak zou dalen. Dat is echter niet het geval. Dat komt doordat het vooral de eenvoudige straf- en civiele zaken zijn die bij de rechtspraak wegvallen. Voor de rechtspraak resteren zodoende de ingewikkelder zaken: dikke dossiers met veel beslispunten, die relatief meer lees- en zittingstijd (en dus tijd en menskracht) vergen. In zijn algemeenheid geldt ook dat zowel straf- als civiele zaken de laatste jaren ingewikkelder worden om af te handelen doordat een groeiende hoeveelheid informatie en kennis tijdens de procedure wordt ingebracht.*"

2019. Although these data primarily concern low value disputes, these do suggest that there is a clear decrease in the relative number of disputes resolved through court procedures.

2.5. Alternative Dispute Resolution Mechanisms

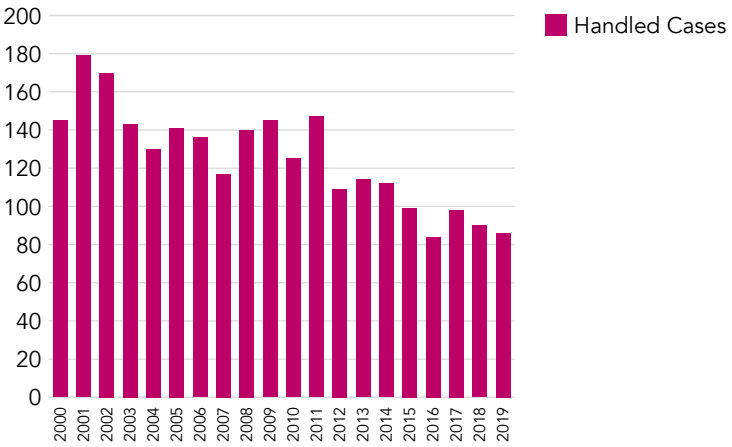
The steep decline in litigation rates begs the question whether prospective litigants more often opt for competing forms of dispute resolution, such as mediation, arbitration and binding advice procedures. After all, government policies have consistently promoted alternatives to the justice system for decades (Bauw and Roos 2021, Böcker, De Groot-Van Leeuwen and Laemers 2016). Similarly, one could wonder whether prospective litigants more often choose for modern forms of online dispute resolution (e.g. eCourt, Digitrage).

Figure 2 - Number of Complaints and Handled Cases - Kifid



The question on the precise impact of alternative dispute resolution is difficult to address, as reliable data are not widely available. This is particularly so for smaller or more recent institutions.

Figure 3 - Number of Handled Cases - NAI



A recent *"paths to justice"* study summarizes figures on alternative dispute resolutions for primarily natural persons. These data *inter alia* suggest that there has been a small decline in the number of citizens with a legal insurance policy that had approached their insurer for legal advice. These data also suggest that there has been a sharp increase in mediation, particularly in family law matters (Ter Voert and Hoekstra 2021). These data however primarily cover low value disputes or disputes other than civil commercial disputes.

The ADR-institutions that have published data on the resolution of 'commercial' disputes over a longer period also faced a decline in the number of incoming cases. These institutions cover specific types of cases. Kifid handles financial sector disputes between consumers and financial institutions (i.e banks and insurance companies). The Raad van Arbitrage voor de Bouw (RvA) provides for arbitration in high value construction cases. The Stichting Klachten en Geschillen Zorgverzekeringen (SKGZ) deals with (low value) healthcare insurance disputes. The Nederlands Arbitrage Instituut (NAI) is in a more general arbitration institute that handles a relatively small number of high value commercial cases. The number of incoming cases for each of these institutions is depicted in Figures 2 to 5.

Figure 4 - Number of Handled Cases - rva

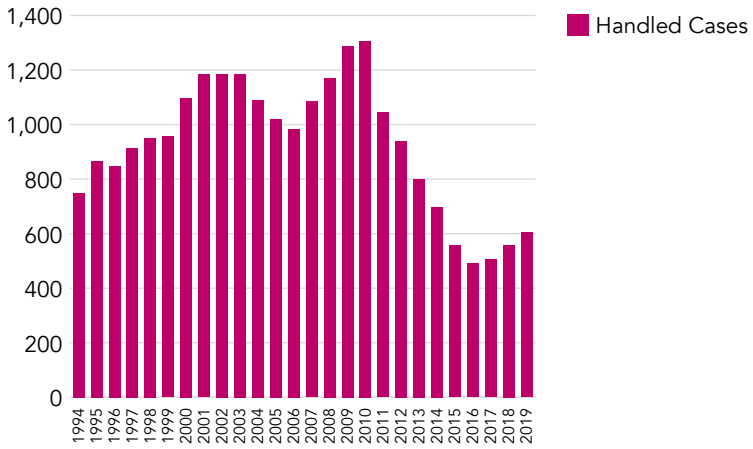
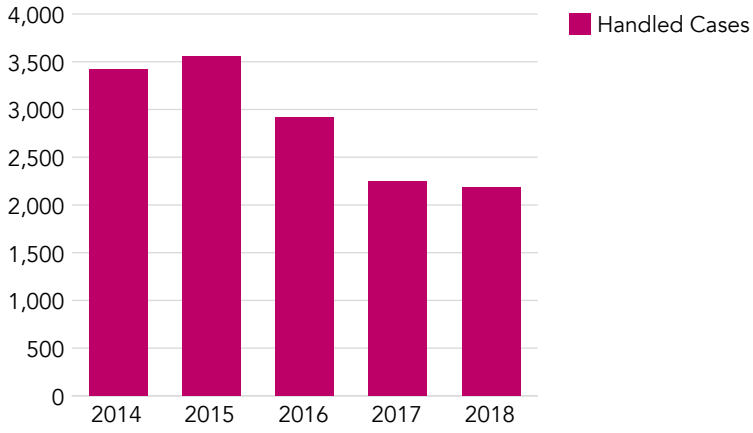


Figure 5 - Number of Handled Cases - SKGZ



To a large extent, these institutions 'compete' with the justice system. No doubt the introduction of new alternatives dispute resolution mechanisms could lead to a decline of the number of commercial court cases. It may well be that the court system has simply lost part of its market share to these or other institutions. The graphs however indicate that there seems to be no radical swift towards these traditional ADR-institutions. We note that there are no data on many modern institutions and modern forms of dispute resolution, such as e.g. through internet platforms as discussed above. It nevertheless seems unlikely that the steep decline in high value commercial court cases is in large part the result of the increased use of ADR or ODR (also see Bauw and Roos 2021).

2.6. Potential Other Explanations

Government regulations and policies have changed over the years. Many of those may have affected the volume of litigation. Eshuis and Geurts (2016) discussed seven different reforms introduced by the government. Three of these had a substantial effect on litigation figures for cases with a claim below EUR 25,000. These concerned two measures pertaining to court fees reforms and one measure that specifically addressed the collection of overdue premiums for healthcare insurance policies.

Before July 1st of 2011, only cases with a financial claim up to (and including) EUR 5,000 were handled by the small claims departments of the district courts (cantonal judges). After that date, the limit was increased to EUR 25,000. Moreover, consumer credit cases with a value below EUR 40,000 would also be decided by the cantonal judges. The main motivation for this reallocation of cases was to increase access to justice. One important difference is that cases handled by cantonal judges do not require a litigant to engage a lawyer. Eshuis and Geurts (2016) produced an extensive report to evaluate the effect of these changes. They found that the number of cases with a financial claim between EUR 5,000 and 25,000 increased after the rule change. It is conceivable that such changes may have led to strategic behavior, parties with a claim of EUR 30.000 may chose to bring a claim for only EUR 25,000 (see Chapter 4.3.3 below).

There have been numerous other policies that may have influenced litigation volumes. De Groot-Van Leeuwen (2019) and Böcker, De Groot-Van Leeuwen and Laemers (2016) analyzed a large number of legislative proposals and conclude that many smaller legislative changes seem to have "pushed" cases away from judges.

Most of these changes have not been the subject of previous empirical research.[15] It seems that many of these changes primarily affect low value cases. It is certainly conceivable however that certain rule changes may have affected the number of incoming civil commercial cases. One example concerns the gradual introduction of collective redress. The Dutch legislator introduced legislation in 1994 *(Wet collectieve actie)*, 2005 *(Wet collectieve afwikkeling massaschade)* and 2019 *(Wet afwikkeling massaschade in collectieve actie)*. This legislation serves to resolve large numbers of disputes in a cost-efficient manner. In fact, it offers collective mechanisms that seek to avoid that hundreds or even thousands of more or less similar cases are litigated separately.[16] To date there is little, if any research on the effects of these measures on the aggregate volume of cases.

15 Many legislative changes may have affected only specific categories of cases. For example, the legislator introduced new procedural rules for personal injury cases in 2010 *(deelgeschillenprocedure)*. These changes may have led to changes on the case volume. See Wesselink 2016, table 6.2.

16 See e.g. Kamerstukken II, 2016-17, 34 608, nr. 3 (MvT), *"Daarmee kan het voorstel een chaos van vele individuele vorderingen en het in meerdere procedures procederen door verschillende belangenorganisaties over dezelfde gebeurtenis, voorkomen."*

3

Analysis of Empirical Data of the Judiciary

3.1. Introduction, Data and Methodology

Most researchers have primarily considered aggregate litigation volumes. Others have applied a disaggregated approach: they have focused on specific categories of disputes, such as tort cases, contract law cases and patent cases (see e.g. Galanter, 2001, Bachmeijer et al. 2004, Cohen 2008 and Boyd et al. 2013, Marco et al., 2015). In some jurisdictions, disaggregated data are available with regard to case characteristics such as the type of case and the value of the claim (see e.g. Nogratnig & Zeiringer 2019).[17] This Chapter adopts a disaggregated approach in order to understand the decline of litigation volumes. Thereto, it analyses long term data from the judiciary in the Netherlands.

The Dutch judiciary has registered incoming cases in a consistent manner since 2001. For each court case, information is available on the parties involved in the case, whether they are legal or natural persons, the financial claim of the case (if any), the date the case commenced, the date it ended, the court that handled the case, the role of each one of the parties (defendant, plaintiff, other) and four levels of case typology.

17 The authors distinguish between case types (Fallcodes) with a strong decline: *„Sonstiger Anspruch -allgemeine Streitsache" (dh sonstige Maanklagen), „Lieferung/Kaufpreis", „Versicherungsvertrag", „Werklohn/Honorar" und „Darlehen/Kredit/Bürgschaft"* There is however an increase for *„Sonstiger Streitgegenstand – allgemeine Streitsache" (sonstige Volltextklagen), „Schadenersatc/ Gewährleistungsanspruch" „einstweilige Verfügungen" und „Besitzstörung – Allgemeine Streitsache"*. Austrian figures show there is a decline, regardless of the precise value of the claim. But the decline seems biggest for cases in the range EUR 500-5,000.

We analyze cases handled by the civil departments of the District Courts. As mentioned earlier, the competence of the cantonal divisions of civil courts was broadened in the middle of the period of research. To control for this, we exclude from the database all cases with a financial claim below EUR 25,000. We also excluded cases of the type consumer purchase *(consumentenkoop)* and consumer credit *(Wet op consumentenkrediet)* for the same reason. We have retained cases in which the claim is not expressed in monetary terms. It should be noted that the cases without a monetary claim were also reassigned to the cantonal divisions if the issues at stake were estimated to be worth less than EUR 25,000.[18] One cannot assess the value of non-monetary claims on the basis of the available data. We have chosen to leave all commercial cases without a monetary claim in the dataset. We further note that it is likely that some plaintiffs act strategically in order to ensure that the case can be handled by the cantonal judge. As noted before, they can for instance lower a claim of EUR 30,000 to EUR 25,000. As a result, the data with regard to these relatively small claims may not be entirely comparable over time (see Chapter 4.3.3).

There are two main categories of civil procedures: those that are initiated by a writ of summons *("dagvaarding")* and those that are initiated by means of a request (petition, *"verzoek"*). We have included all cases of all types in our database, except for a limited number of case types that clearly do not concern commercial disputes. We have also left out case types with extraordinary low volumes as well as those that have been classified as "*not applicable*" *("niet van toepassing")*.[19] Annex V lists the different types of cases as well as their volume and identifies those types that have not been included in the database.

The main dataset includes all court cases that fit the selection criteria described above (dataset 1). This set comprises of 1,379,816 cases in total. It concerns 997,112 request cases *("verzoekschriftzaken")* and 382,704 are summons cases *("dagvaardingszaken")*. Table 1 presents the volume of cases in this dataset for some of the most common case types.

18 See Article 93(b) DCCP, as amended in July 2011.

19 The volume of "not applicable" cases commenced per year is also declining since 2010, except for 2020. Thus, it does not seem that excluding these cases biases our conclusions. See Table A in Annex I.

Table 1 - Case Typology: Volume of Cases 2001-2020

	Volume 2nd Level Typology	Volume 3rd Level Typology
Summons		
Contract Law	164,949	
- Debt Recovery		31,070
- Rental Law		17,687
- Services Contract		39,766
- Buy and Exchange		34,929
Obligations Law	71,122	
- Tort		60,454
Intellectual Property	11,531	
Insurance Law	6,517	
Bankruptcy	11,488	
Other Summons	117,097	
Total	**382,704**	
Requests		
Procedural Law	303,847	
- Prejudgment Attachment		241,516
Bankruptcy	597,587	
Other Requests	95,678	
Total	**997,112**	
Total	**1,379,816**	

Most summons cases are contract law cases or obligations law cases *(verbintenissenrecht)*. The subcategories of contract law include debt recovery *(verbruikleen)*, services contract *(opdracht)* and buy and exchange *(koop en ruil)*, all of which have a volume of around 35,000 cases during the entire time frame. Most obligations law cases are tort cases: 60,454 out of the total of 71,122 cases.

The most common requests concern prejudgment attachments (permission to seize property; *verlof verhaalsbeslag)* and bankruptcy cases (241,516 and 597,587 cases respectively).

3.2. Disaggregation by Party Type: Natural or Legal Persons

Table B, in Annex I, shows the party composition of the cases in dataset 1 per year. A distinction is made between natural and legal persons. If the case has both a legal person and a natural person as a plaintiff or as a defendant, we classify the plaintiff or the defendant as a legal person. Moreover, if a case involves parties that cannot be easily classified as plaintiff or a defendant, the case is excluded from the table. Hence, the total of summons and requests cases are lower than the ones reported in Table 1. All combinations of party composition occur frequently.

In 2001, 73% of the summons cases involved at least one legal person, whilst 27% involved only natural persons. By 2020 the total volume of cases had halved from 23,762 to 11,824. By then, 64% involved at least one legal person and 36% of all cases involved only natural persons.

Figure 6 - Volume of cases by Party Composition per Year - Dataset 1 Summons Cases Only

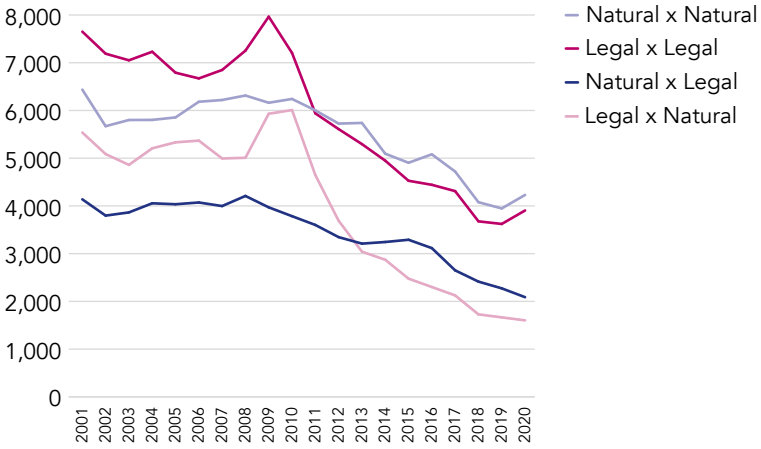
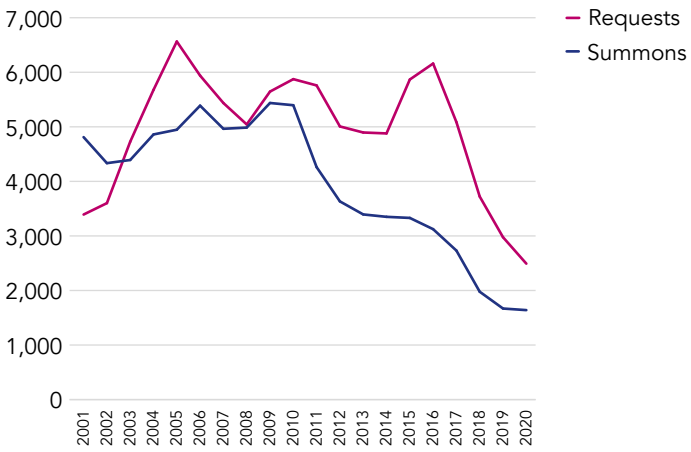


Figure 6 shows the changes over time for four categories of party composition, for summons procedures. There are four categories of case presented, where the one on the left is the plaintiff and the one on the right is the defendant. Thus, Legal x Natural refers to a case where one (or more) legal persons is suing one (or more) natural persons. If a case has both natural and legal persons on one side, we consider it to be a legal person on that side. This data is taken from the first 4 columns of Table B. All four categories had their volume declining over the period 2001 – 2020. However, cases where legal persons are the plaintiffs increased substantially during the financial crisis and, then, declined abruptly after 2010. Over the whole period, these cases showed the largest decline.

As explained in the introduction, we are also interested in the litigation behaviour of economic sectors. Unfortunately, the administrative data of the courts do not contain information about the economic sector(s) of the litigants.

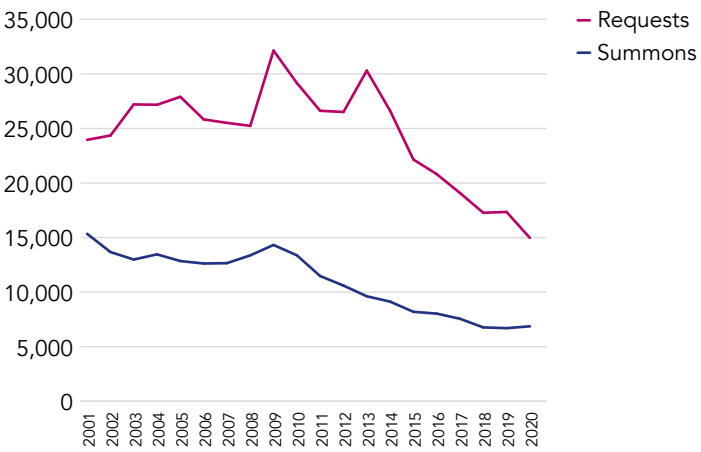
It is also not possible for the whole period to link litigants (legal persons) to (holding) companies by automated means. Companies often consist of a set of legal entities that varies over time. Also, new companies/legal entities arise and existing companies/legal entities disappear. The current information systems of the Chamber of Commerce do not provide the data to construct such a database.

Figure 7 - Number of Cases Commenced per Year - Dataset 2



In order to understand the (potential) differences between sectors we have created a subset manually: dataset 2. Dataset 2 includes cases from firms in fourteen economic sectors: Food, Manufacture, Finance, Insurance, Construction, IT/Telecom, Transport/ Logistics, Energy, Communication, Accounting/Consultancy, Multimedia, Debt Collectors and Real Estate and the Public Sector. Annex II lists all companies and organizations included in each of these sectors. We started by selecting the largest firms in each sector and subsequently added smaller and lesser-known medium sized firms until we had a reasonably sized number of companies. We will refer to these companies as "large" or "larger" companies, as they are on average much larger than all of those in database 1. The case data contains the names of the legal entities involved. In as far as these legal entities can be traced back to the holding/mother companies (by means of their names), it is possible to automatically select the cases of these companies. As a result of our selection process, big firms are overrepresented in this dataset. Firms that ceased to exist are also more likely to be left out of this dataset due to the lack of easily accessible information on firm history. By definition, in contrast to the first dataset, dataset 2 does not include cases without legal entities as parties. Due to these obvious selection biases, one must be careful to draw conclusions based on the data in this second data set.

Figure 8 - Number of Cases Commenced per Year - Difference between Dataset 1 and 2



The same selection criteria used in dataset 1 were used for dataset 2. Thus, Dataset 2 is a subsample of dataset 1, built with the purpose of analyzing sectoral patterns. Dataset 2 consists of 177,368 cases in total (out of the 887,176 cases in dataset 1). These concern 78,624 summons cases and 98,744 request cases (26.4 and 16.8 percent of the total cases involving legal persons in dataset 1, for summons and requests respectively). Figure 7 displays the volume of summons and requests cases per year for dataset 2. For summons cases, the decline after 2010 is clear. The volume of summons falls from 5,000 a year to under 2,000 in 2020.

One can question whether the cases in dataset 2 are representative of the total. That is, if the firms we included in dataset 2 still represent the pattern seen in the whole economy. For that reason, figure 8 shows the number of summons and requests cases that remain in dataset 1 after removing the cases from dataset 2 as well as the cases that do not involve any legal person. While there is substantially differences for requests cases, the decline in summons cases after 2010 is comparable across the three samples (Figure 1, 7 and 8).

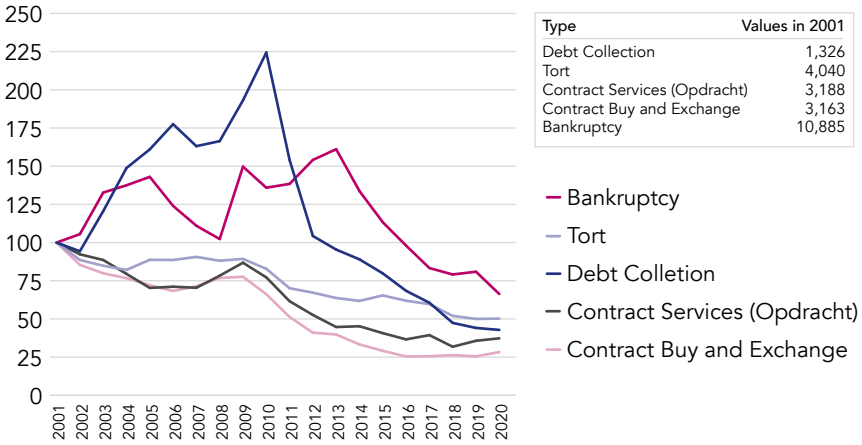
3.3. Disaggregation by Case Type: Debt Collection Cases are Volatile and Explain in Large Part the Steep Decline of Civil Commercial Cases

Different types of cases show a remarkably different pattern over time. Figure 9 depicts common types of cases initiated by a writ of summons and bankruptcies cases using dataset 1. The table next to it, shows the absolute value of each type in the first year (2001). Cases of all types show a decline in the long run. Some types show a far more volatile pattern, such as debt collection cases and bankruptcy cases.

A meaningful distinction that can be made is to distinguish debt collection cases from cases concerning a commercial dispute.

Many court cases are referred to as "*debt collection cases*". The notion as such has no clearly defined legal meaning. It mostly refers to cases in which the plaintiff files an action to collect a monetary claim. In most of such cases, there is no genuine dispute about the validity of the claim. The reason why such debt collection cases are brought to court is mostly because the debtor is unable to pay instead of not willing to pay. These cases are often the result of financial distress on the side of the debtor. In such instances, the creditor would ultimately like to enforce rights against the debtor. Litigation is needed to obtain an enforceable title ("*executoriale titel*"). The plaintiff needs the formal court judgment before he or she can instruct a bailiff to take enforcement measures, such as the seizure of the debtor's bank account or vehicle.

Figure 9 - Trend of Different Types



Certain types of cases more often qualify as simple debt collection cases. One clear example concerns loan cases *("verbruiksleen")*. Major banks often commence litigation against consumers or small firms to collect a loan. As the debtor generally signed a loan contract and received the loaned sum on a bank account, these cases generally are relatively simple in terms of evidence. The validity of the loan is often not disputed. The same is true for cases commenced by the tax collection officers *("Ontvanger van de belastingdienst")*. Such officers often collect tax debts that can no longer be contested on the merits. Another example concerns bankruptcy cases. Creditors that file for bankruptcy often have a valid uncontested claim. The bankruptcy filing often is the result of the inability of the debtor to pay his or her obligations.

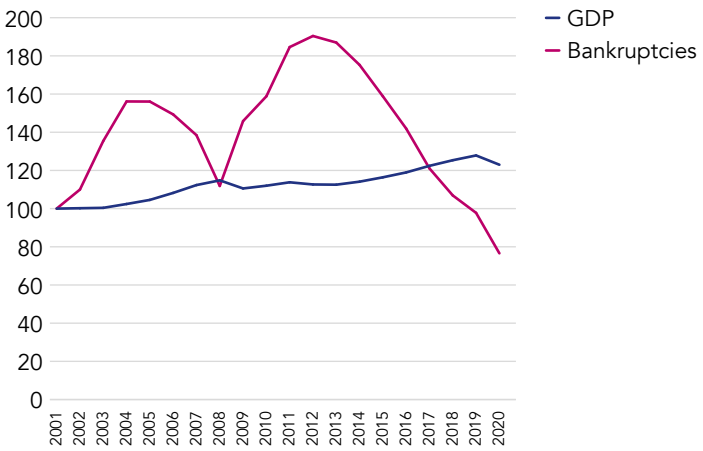
Debt collection cases can be distinguished from other types of cases in which there often is a genuine commercial dispute. In such cases, the emphasis is more on the resolution of a conflict than about the inability of a debtor to fulfill his or her obligations. In these cases, the plaintiff may seek judicial intervention to resolve the conflict. The emphasis is on the judicial determination of the validity of the claim. One example concerns disputes brought against an insurance company on the question whether damages are covered under the insurance contract. Another example may be a dispute brought by a patient in a malpractice case against a

doctor. Yet another example would be a tort case against a government body. Such cases are generally not a result of financial distress on the side of the defendant. In such cases, parties generally have differing views on the validity and size of the claim.

One cannot always make a strict and clear distinction between relatively simple debt collection cases and genuine commercial disputes. The detailed typology used by the judiciary is by no means conclusive. It seems likely that most loan cases brought by banks are simple debt collection cases in which the debtor is unable to fulfill his obligations. Some of these cases may however be genuine disputes about the validity of the claim. The same is true for most tort and insurance cases. It seems likely that many of these concern real disputes on the merits of the claim.

Debt collection cases show a far more volatile pattern. These cases show the steepest decline over the last decade (also see Ter Voert and Hoekstra 2021[20] and Chapter 4.2.2). Debt collection cases and bankruptcy cases very often seem to be the result of financial distress on the side of the debtor. As a result, it seems likely that the number of debt collection cases is directly linked to macroeconomic cyclical developments.

Figure 10 - Indices of GDP and Bankruptcies (Requests) in the Netherlands



20 See Ter Voert and Hoekstra 2021, p. 61 "*vooral incassozaken zijn afgenomen na 2010*".

Figure 10 illustrates the relationship between the business cycle in the Netherlands and the volume of bankruptcy cases. Both are presented as an index with base 100 for the sake of comparison. While the volume of bankruptcies varies substantially more than the GDP, it is possible to observe some negative correlation between both trends. When the economy is growing, the volume of bankruptcy requests tends to decrease and vice-versa. During the period of steeper growth around 2005, the number of bankruptcy request felt sharply. The correlation between these two variables is -0.236, however it is not statistically different from 0 (p-value = 0.316). Thus, statistically, the number of bankruptcy requests does not depend on the GDP. This could be a product of the small number of observations, but we should be careful when interpreting it. However, it does seems that during the recession caused by the financial crises (around 2009) the volume of bankruptcies grew expressively.

3.4. Disaggregation by Economic Sector: Financial, Insurance and Government Sectors are Predominant

3.4.1. The Biggest Litigators: Banks, Insurance Companies and Government Organizations

The data of the judiciary do not specify the economic sector in which the parties operate. The data do register the names of the parties involved. One can on the basis thereof count the number of cases in which individual litigants were involved. Some litigants are repeat players that have been involved in hundreds of commercial cases. Others are *"one shotters"* that have been involved in only a single commercial case.

Table 2 presents the top 20 litigants in the whole period of 2001 to 2020. Three of the top five litigants are the largest commercial banks within the country: ABN AMRO, Rabobank and ING. The list contains four other banks. Five major insurance companies are also among the largest litigators: Achmea, Aegon, Allianz, Delta Lloyd and Nationale Nederlanden. Many other entities in the list are public law organizations. Examples include the State of the Netherlands, the Municipality of Amsterdam and the Central Organization for the Reception of Asylum Applicants.

Table 2 - Top 20 litigants 2001-2020 (Selected Summons Only)

Party Name	Number of Cases
ALLIANZ	778
HEINEKEN	808
FINATA BANK	858
STEDIN	868
IDM BANK	881
SNS	891
GEMEENTE ROTTERDAM	983
DELTA LLOYD	1,012
AEGON	1,064
ENECO	1,070
GEMEENTE AMSTERDAM	1,178
NATIONALE NEDERLANDEN	1,332
FORTIS	1,333
VERENIGING BUMA	1,611
ACHMEA	1,776
CENTRAAL ORGAAN OPVANG ASIELZOEKERS	2,038
ING BANK	3,129
RABOBANK	5,100
STAAT DER NEDERLANDEN	7,283
ABN AMRO	7,633
Total	**41,626**
Total Volume of Summon Cases in Dataset 1	**380,404**

Table 3 displays the top 20 litigants for every 4-year period between 2001 and 2020. ABN AMRO, Rabobank and the State of the Netherlands always appear among the top 5 litigators. Other companies always appear among the top 20, such as ING, Achmea and Nationale Nederlanden. Apart from companies in the banking and insurance sector, the list contains of companies in the energy sector as well as a number of large housing corporations.

Table 3 - Top 20 litigants for every 4 years (Selected Summons Only)

Party Name	Number of Cases
Year 2001-2004	
ONTVANGER VAN DE BELASTINGDIENST	214
HEINEKEN	216
POSTBANK	225
GEMEENTE ROTTERDAM	242
GEMEENTE AMSTERDAM	261
DELTA LLOYD	275
AEGON	276
FINATA BANK	310
VERENIGING BUMA	318
ACHMEA	318
NATIONALE NEDERLANDEN	343
LANDINRICHTINGSCOMMISSIE	346
ESSENT	361
ING BANK	370
FORTIS	468
ENECO	529
RABOBANK	1,019
ABN AMRO	1,361
STAAT DER NEDERLANDEN	1,456
CENTRAAL ORGAAN OPVANG ASIELZOEKERS	1,487
Total	**10,395**
Total Volume of Cases in Dataset 1	**91,613**

Party Name	Number of Cases
Year 2005-2008	
DSB BANK	232
RIBANK	266
NATIONALE NEDERLANDEN	274
ESSENT	277
GEMEENTE AMSTERDAM	288
HEINEKEN	290
GEMEENTE ROTTERDAM	294
CENTRAAL ORGAAN OPVANG ASIELZOEKERS	306
ACHMEA	325
ENECO	337
AEGON	347
VERENIGING BUMA	376
FINATA BANK	390
ING BANK	461
IDM BANK	477
POSTBANK	552
FORTIS	659
RABOBANK	1,024
STAAT DER NEDERLANDEN	1,587
ABN AMRO	2,343
Total	**11,105**
Total Volume of Cases in Dataset 1	**89,673**

Year 2009-2012	
WONINGSTICHTING ROCHDALE	189
STIHO	195
HEINEKEN	219
DELTA LLOYD	221
ARENDA	229
FORTIS	230
DE NEDERLANDSE VOORSCHOTBANK	234
NATIONALE NEDERLANDEN	237
IDM BANK	244
NVF VOORSCHOTBANK	252
GEMEENTE AMSTERDAM	257
SNS	262
DEFAM	311
VERENIGING BUMA	423
ACHMEA	483
STEDIN	782
ING BANK	1,026
RABOBANK	1,227
STAAT DER NEDERLANDEN	1,487
ABN AMRO	2,237
Total	**10,745**
Total Volume of Cases in Dataset 1	**86,268**

Party Name	Number of Cases
Year 2013-2016	
ONTVANGER VAN DE BELASTINGDIENST	143
STICHTING WOONBRON	143
GEMEENTE ROTTERDAM	144
STICHTING WOONSTAD ROTTERDAM	144
ALLIANZ	165
AEGON	178
DELTA LLOYD	182
STICHTING TER EXPLOITATIE VAN NABURIGE RECHTEN	184
HOIST	192
WONINGSTICHTING EIGEN HAARD	198
GEMEENTE AMSTERDAM	206
NATIONALE NEDERLANDEN	247
STICHTING YMERE	249
VERENIGING BUMA	253
SNS	272
ACHMEA	439
ING BANK	763
ABN AMRO	1,169
RABOBANK	1,263
STAAT DER NEDERLANDEN	1,824
Total	**8,358**
Total Volume of Cases in Dataset 1	**63,776**

Year 2017-2020	
RENAULT	84
MAN TRUCK)	88
STICHTING WOONBRON	96
DAF	97
DELTA LLOYD	110
HOIST	122
ZILVEREN KRUIS	129
GEMEENTE ROTTERDAM	130
ALLIANZ	151
STICHTING YMERE	155
GEMEENTE AMSTERDAM	166
WONINGSTICHTING EIGEN HAARD	166
STICHTING TER EXPLOITATIE VAN NABURIGE RECHTEN	190
ACHMEA	211
NATIONALE NEDERLANDEN	231
VERENIGING BUMA	241
ING BANK	509
ABN AMRO	523
RABOBANK	567
STAAT DER NEDERLANDEN	929
Total	**4,895**
Total Volume of Cases in Dataset 1	**49,074**

3.4.2. Disaggregation by Economic Sector

Litigation patterns are likely to differ among economic sectors. These differences might explain the volatility of the number of court cases over time. As explained above, we have made a second dataset including cases with major companies of different economic sectors. Table 4 shows the annual volume of incoming summons cases per economic sector. The financial sector, followed by insurance and local government have, by far, the largest number of cases. Other large sectors such as manufacturing have relatively few cases.

We observe a decline across the board, especially in recent years, with few exceptions. Some sectors experienced a huge decrease, such as the financial sector, while in others, the decrease is more modest. The volume of incoming cases of the financial sector fell from 2,078 cases in 2009 to 365 in 2020, a decline of more than 80 percent. In the construction industry, the volume of cases fell by around 50 percent.

Table 4 - Number of Incoming Summons Cases per Economic Sector

Year	Food	Manufacture	Financial	Construction	IT/Telecom	Transport/ Logistics	Energy
2001	129	61	1,151	71	107	122	518
2002	106	83	1,102	76	107	136	201
2003	127	55	1,415	73	87	131	119
2004	158	86	1,859	99	95	112	228
2005	173	61	1,941	86	103	120	231
2006	149	70	2,240	92	143	164	227
2007	147	55	1,964	110	116	154	232
2008	94	63	1,981	128	87	149	219
2009	115	97	2,078	129	85	148	524
2010	137	67	2,056	115	80	125	553
2011	86	58	1,498	75	78	92	161
2012	80	61	1,083	96	72	88	134
2013	94	49	1,038	102	59	90	84
2014	61	43	1,013	93	69	84	82
2015	59	33	1,022	70	48	87	82
2016	33	43	929	72	43	70	82
2017	51	26	640	60	46	75	60
2018	37	30	488	52	26	63	68
2019	29	32	383	47	32	60	79
2020	28	22	365	66	29	57	57
Total	**1,893**	**1,095**	**26,246**	**1,712**	**1,512**	**2,127**	**3,941**

Year	Communication	Insurance	Real State	National Government	Local Government	Accountancy/ Consultancy	Debt Collectors	Multimedia
2001	80	549	170	972	936	62	0	74
2002	86	464	154	838	929	76	0	158
2003	59	561	137	843	790	81	0	78
2004	52	649	134	487	865	92	0	116
2005	83	611	194	610	760	70	0	117
2006	113	645	187	644	863	55	0	121
2007	82	524	247	508	894	67	3	121
2008	69	508	278	539	905	56	0	139
2009	82	555	279	467	902	61	1	154
2010	78	655	287	458	737	68	0	141
2011	53	592	304	515	693	80	1	119
2012	58	524	267	531	643	56	2	81
2013	43	514	287	444	619	62	3	56
2014	57	459	253	500	657	39	1	61
2015	38	524	255	681	480	38	8	36
2016	39	510	211	441	531	43	20	171
2017	35	447	200	583	445	42	15	132
2018	21	416	148	202	360	26	3	99
2019	31	329	136	165	332	31	5	53
2020	22	343	103	173	378	28	6	21
Total	**1,181**	**10,379**	**4,231**	**10,601**	**13,719**	**1,133**	**68**	**2,048**

The data suggests that the litigation patterns of the financial and the insurance sectors differ substantially from those of the other economic sectors. Not only do these two sectors have more cases than other sectors, but, as we will discuss in this section, the types of cases and their trends are different from those of other sectors. We stressed before that comparing the absolute number of cases among sectors can be misleading because not all firms in a sector are present in database 2. That being said, the volume of cases for the insurance and the financial sectors are larger by a meaningful margin and, banks and insurers are among the biggest litigators in each year.

Financial Sector: Debt Recovery Litigation is Predominant

Table 5 presents the volume per type for the financial sector (e.g. banks). Contract law cases *(bijzondere overeenkomst)* are by far the most common. This type also experiences the highest volatility, the volume of contract law cases decreased from 1,671 at its peak in 2009 to only 177 in 2020. This is a decrease of almost 90 percent. Within this broader category of contract law cases, debt recovery cases *(verbruikleen)* have both the highest volume and highest volatility. Most summons involving banks should be classified as debt collection cases.

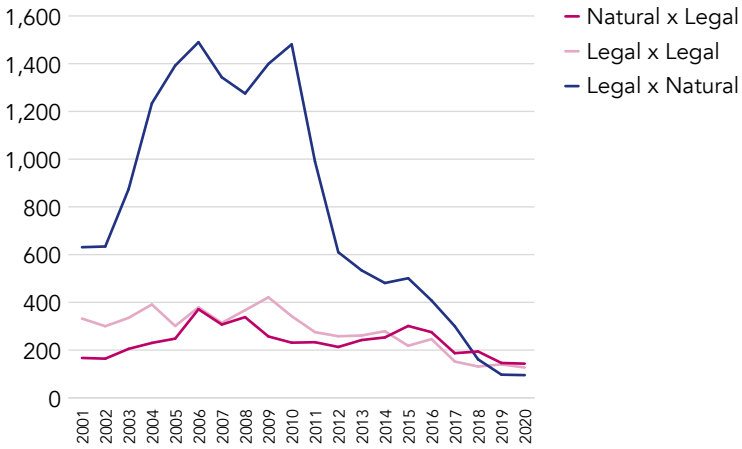
Prejudgment attachment procedures are request procedures to seize property prior to litigation *(verlof verhaalsbeslag)*. These cases also show a high volume and high volatility.

Table 5 - Volume of cases per Type - Financial Sector

	Summons									Requests	
	Obligations Law		Contract Law					Intellectual Property	Insurance Law	Procedural Law	Bankruptcy
Year	Tort	Other Verbintenissenrecht	Rental Law	Debt Recovery	Service Contracts	Buy and Exchange	Other Contract Law	.	.	Prejudgment Attachment	.
2001	88	26	17	609	85	30	102	1	29	1,252	222
2002	73	23	16	605	73	39	108	0	22	1,233	215
2003	90	28	30	805	65	26	192	1	41	1,372	198
2004	95	25	26	1,167	67	19	247	0	43	1,567	180
2005	103	32	20	1,290	53	25	207	2	35	1,429	192
2006	174	32	50	1,390	66	28	211	2	52	1,175	168
2007	123	27	40	1,292	46	23	171	1	50	1,057	178
2008	110	45	119	1,241	45	12	162	1	53	1,129	199
2009	107	31	19	1,354	40	28	249	2	40	1,172	271
2010	74	29	10	1,398	45	13	242	2	16	1,064	266
2011	76	25	5	883	29	11	210	1	13	798	246
2012	60	44	8	530	24	19	153	1	9	598	305
2013	66	39	14	451	21	21	152	3	14	528	300
2014	69	50	9	381	21	23	137	4	16	423	298
2015	92	49	20	337	12	32	159	2	16	326	272
2016	77	51	15	326	20	21	125	1	13	288	271
2017	57	24	10	213	24	21	119	1	12	201	224
2018	61	13	5	112	8	16	122	1	9	166	181
2019	78	5	4	88	9	6	85	0	7	191	178
2020	84	11	4	64	10	4	99	2	11	170	159

Another important characteristic of the financial sector is that financial firms usually have an offensive role in procedures. Moreover, banks litigate more often against natural persons than companies in other sectors do. Figure 11 presents the evolution of the party composition of summons cases of the financial sector throughout the years. The abrupt decline of cases where a legal person (the financial institution/bank) faces a natural person in 2011 and the constant decline thereafter. This sharp decline in 2011 might be explained partially by strategic behavior. Banks may have lowered higher claims to an amount of EUR 25,000. This way the case can be shifted to the cantonal departments. As a result, there is no obligation to involve (expensive) lawyers (see Chapter 4.3.3 below). The continuing decline afterwards matches the end of the financial crisis and the recovery of the economy.

Figure 11 - Volume of cases by Party Composition per Year - Financial Sector Summons Cases Only



As explained before, not every debt recovery case brought by a bank concerns a genuine dispute about the validity of the claim. In a significant share of these cases, the defendant may not even challenge the claim. These often are debt collection cases that serve to obtain an enforceable title *(executoriale titel)*. Banks are involved in a limited number of the types of cases that are common in other sectors, such as tort and intellectual property. This may not be surprising. After all, banks main commercial activity is to attract capital and to provide loans to firms as well as consumers. It makes sense that debt recovery cases are the bulk of its litigation.

3.4.3. Insurance Sector: a Different Pattern

Table 6 displays the volumes of cases per type for the insurance sector. As expected, insurance law cases are the most common type among summons procedures, followed by contract law *(bijzondere overeenkomst)* and obligations law *(verbintenissenrecht*, most of which are tort cases). Types that are common in the financial sectors, such as debt recovery and other contractual law cases, are rare for companies in the insurance sector.

Table 6 - Volume of cases per Type - Insurance Sector

	Summons									Requests	
	Obligations Law		Contract Law					Intellectual Property	Insurance Law	Procedural Law	Bankruptcy
Year	Tort	Other Verbintenissenrecht	Rental Law	Debt Recovery	Service Contracts	Buy and Exchange	Other Contract Law	,	,	Prejudgment Attachment	,
2001	157	10	6	12	31	7	36	1	223	107	34
2002	132	7	8	22	27	8	22	4	175	108	44
2003	148	11	8	33	35	12	36	3	189	137	94
2004	155	14	7	42	28	13	52	6	266	165	121
2005	143	20	13	47	34	8	59	5	204	141	106
2006	131	15	16	78	36	10	50	1	220	96	44
2007	143	16	13	30	22	12	46	1	164	88	63
2008	134	22	19	18	17	7	56	3	156	84	51
2009	136	28	15	19	25	10	82	1	148	134	78
2010	146	32	20	66	28	13	70	4	189	126	115
2011	100	55	6	28	29	6	64	3	224	94	50
2012	133	36	3	4	18	12	66	2	177	58	53
2013	108	31	1	4	13	4	43	2	226	50	67
2014	73	14	5	2	22	6	53	3	212	51	68
2015	125	21	8	7	20	7	44	3	208	62	63
2016	119	36	2	1	18	7	46	0	201	25	58
2017	100	32	1	9	14	1	37	2	169	47	44
2018	96	54	2	5	9	1	24	0	155	27	30
2019	80	18	2	2	9	1	29	0	130	22	56
2020	93	11	1	2	12	4	53	1	129	33	35

Figure 12 - Volume of cases by Party Composition per Year - Insurance Sector Summons Cases Only

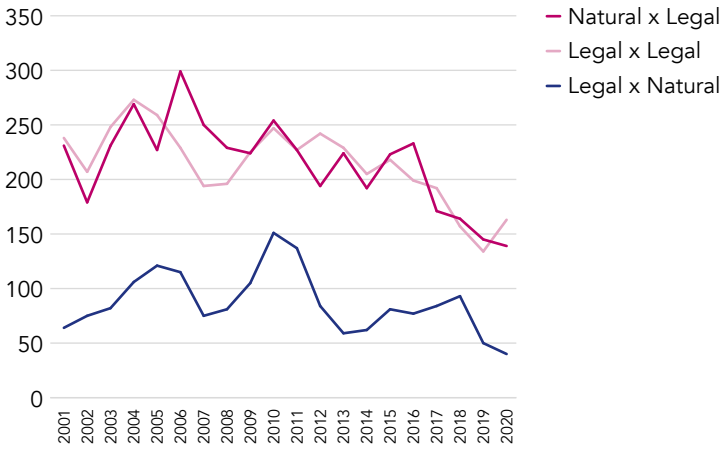


Figure 12 gives the development over time of the number of cases, differentiated by party composition for the insurance sector. This figure presents the summons cases. The pattern for the insurance sector is strikingly different from the financial sector. Insurance firms litigate more often against legal persons than natural persons. Insurers are also more on the defensive side than on the offensive side in cases against a natural person. The volatility is much less than in the banking sector.

3.4.4. Public Sector

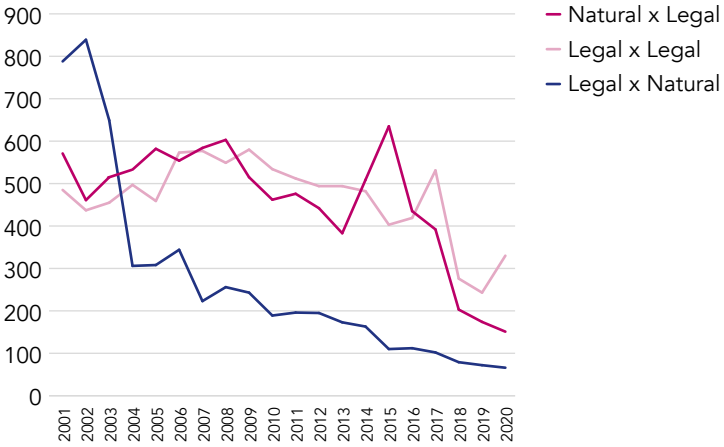
The public sector is often involved in civil litigation. This should come as no surprise, as it is very large in terms of the number of employees and its role in the economy. The public sector consists of numerous government bodies, ranging from the state, provinces, municipalities as well as numerous smaller entities that serve a public purpose *(zelfstandige bestuurs-organen)*. Table 7 shows the types of cases per year for the public sector. For this sector, the prevalence of tort cases is clear. The data shows a decrease in the number of cases across the board.

Table 7 - Volume of cases per Type - Public Sector

	Summons									Requests	
	Obligations Law		Contract Law					Intellectual Property	Insurance Law	Procedural Law	Bankruptcy
Year	Tort	Other Verbintenissenrecht	Rental Law	Debt Recovery	Service Contracts	Buy and Exchange	Other Contract Law	-	-	Prejudgment Attachment	-
2001	965	19	208	3	62	93	83	12	4	166	32
2002	916	31	211	5	44	73	108	4	6	173	215
2003	768	24	189	1	57	67	96	5	4	186	827
2004	507	50	104	3	50	51	85	6	18	244	1,136
2005	602	34	74	4	44	72	70	4	14	297	1,444
2006	642	40	50	6	44	34	87	13	12	312	881
2007	564	22	35	5	50	43	83	13	5	144	397
2008	575	48	40	5	32	39	73	16	8	185	59
2009	566	46	36	2	45	52	79	28	5	194	43
2010	528	40	35	2	51	48	64	11	2	174	39
2011	578	37	36	4	50	44	64	18	5	166	83
2012	553	37	24	2	48	33	69	12	4	128	59
2013	504	41	29	3	38	33	95	11	1	156	80
2014	605	31	28	2	29	37	87	4	3	126	69
2015	718	18	17	1	24	21	71	10	2	97	161
2016	536	19	23	3	29	23	54	4	3	100	368
2017	676	22	20	1	28	14	59	5	1	81	727
2018	278	13	13	0	21	14	37	8	0	85	602
2019	221	23	10	4	23	17	29	3	3	65	347
2020	260	18	19	1	25	14	39	3	3	79	257

Figure 13 shows the party composition for the summons cases that involve public sector organizations in different years. The steep decline of litigation in which public sector organizations sue natural persons in the beginning of the period is remarkable. As a result, the public sector is more often sued by natural persons than the other way around. However, the difference is declining.

Figure 13 - Volume of cases by Party Composition per Year - Public Sector Summons Cases Only



3.4.5. Other Economic Sectors

Firms in other sectors do not litigate as much as banks, insurance companies and government institutions. For this reason, and also because litigation (case type) patterns are more or less similar, we present the data together. Table 8 presents the aggregated volume per type for the other sectors. Other than the banking and insurance sectors, the other sectors are more diverse in terms of the types of cases. These more often seem to involve tort cases or intellectual property cases that are less volatile than e.g. debt recovery cases. Contract law and obligations law cases show a substantial decline in the long run. The number of intellectual property law cases initially decreased but increased again between 2016 and 2018. The number of prejudgment attachment cases shows a sharp decline since 2010. The data on bankruptcies may not be reliable as a result of the selection of our data.[21]

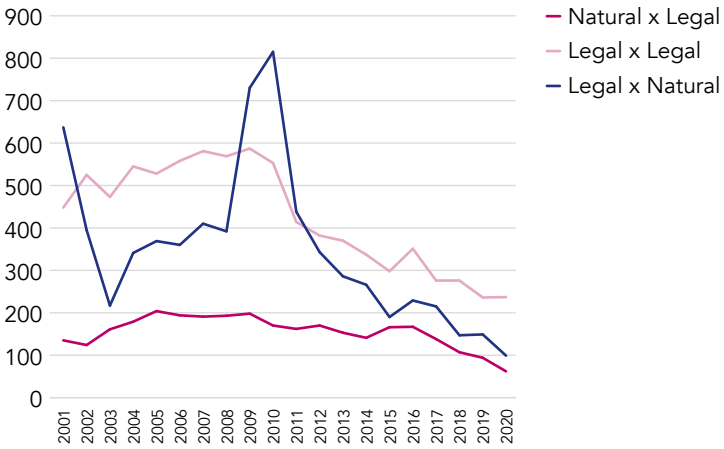
21 Our database consists of a relatively small number of larger firms. As a result there are far fewer bankruptcy cases than the whole database.

Table 8 - Volume of cases per Type - Other Economic Sectors

	Summons									Requests	
	Obligations Law		Contract Law					Intellectual Property	Insurance Law	Procedural Law	Bankruptcy
Year	Tort	Other Verbintenissenrecht	Rental Law	Debt Recovery	Service Contracts	Buy and Exchange	Other Contract Law	-	-	Prejudgment Attachment	-
2001	235	25	149	17	228	148	273	91	6	468	201
2002	133	17	132	23	301	78	107	160	1	501	204
2003	138	20	118	21	163	76	114	83	3	433	265
2004	163	21	111	45	268	77	114	115	3	509	253
2005	183	26	158	45	203	68	117	133	4	544	295
2006	221	24	163	27	176	48	92	175	5	616	321
2007	271	32	191	23	145	73	115	156	4	690	299
2008	245	37	154	16	172	74	102	179	1	647	277
2009	264	36	176	28	211	79	326	180	2	742	401
2010	246	41	177	34	166	74	420	160	1	715	427
2011	154	29	201	26	136	66	106	130	1	348	493
2012	140	25	189	22	119	61	97	85	1	300	405
2013	119	25	204	18	96	46	86	66	0	269	600
2014	95	22	148	7	89	38	97	69	0	211	550
2015	96	23	137	6	77	36	51	34	3	213	465
2016	116	21	107	5	68	20	78	178	0	181	642
2017	104	16	105	2	63	18	42	129	0	172	398
2018	60	15	71	4	50	31	56	112	1	148	363
2019	102	14	73	6	52	18	42	56	2	124	359
2020	74	11	45	5	60	20	59	32	1	128	296

Figure 14 presents the aggregated party composition of summons cases in which the selected firms in the remaining economic sectors have been involved. The pattern of these other 11 sectors is substantially different from the financial sector and the insurance sector. In these sectors, there are far more cases in which only legal persons are involved on each side. However, the volume of cases where a firm is litigating against another firm, or a firm sues a natural person is declining at a faster pace than cases where a natural person litigates against a legal person.

Figure 14 - Volume of cases by Party Composition per Year - Other Sectors Summons Cases Only



3.5. Disaggregation by Claim Value: The Median Claim Value Increased

If the plaintiff has filed a monetary claim, the amount claimed is registered in the administrative system. As a result of outliers, the average claim value is highly volatile. It is more fruitful to consider the median claim value. The median financial claim of dataset 1 is increasing in the last ten years (see figure 15).This pattern is also present, in a greater magnitude, in dataset 2 (see figure 16) and for the cases included in dataset 1 that are not in dataset 2 or only involve natural persons (see figure 17). Another relevant measure is the total value of the financial claims per year. While the mean/median can increase or decrease, this does not tell us much about the total economic value of the disputes handled by the courts. For that reason, Figure 18 exhibits the sum of all financial claims per year, after removing impleader cases *(vrijwaringszaak)* and cases with a claim above EUR 2 billion. We removed impleader cases to avoid that the same dispute is listed twice. There are a couple of cases in which the stakes exceed those of all other cases combined filed in the very same year. We therefore remove cases where the claim exceeds EUR 2 billion to decrease the impact of outliers in a year. This figure indicates that there was a subtantial increase close to the financial crisis and a decline after. However, it does seem that the total is slowly increasing during the last couple of years.

Figure 15 - Median Financial Claim per Year - Dataset 1

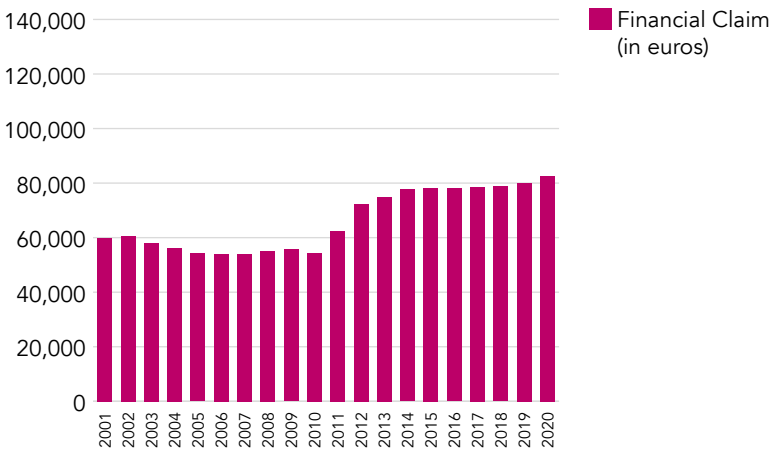


Figure 16 - Median Financial Claim per Year - Dataset 2

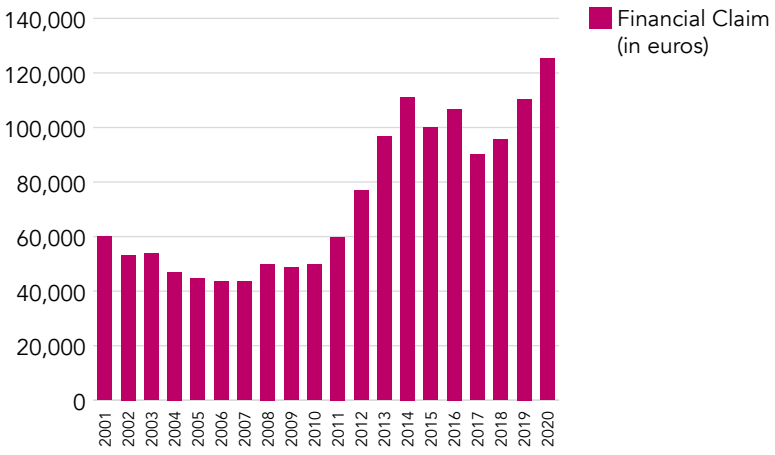


Figure 17 - Median Financial Claim per Year - Difference between Dataset 1 and 2

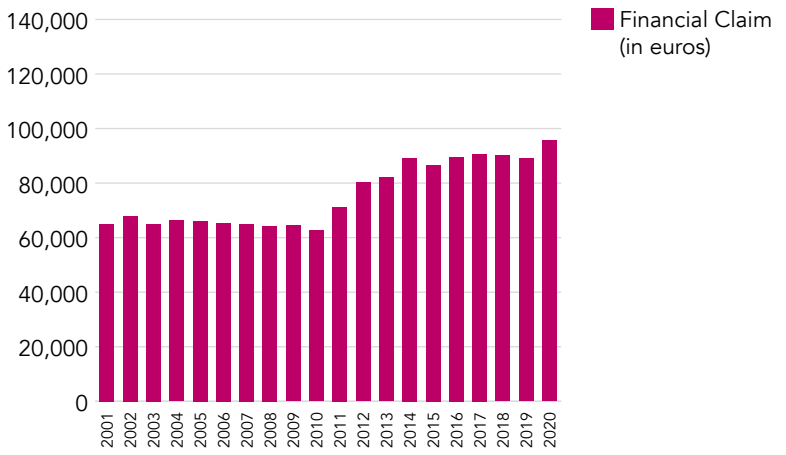


Figure 19 shows the volume of cases for three different financial claim bands. In this graph, cases are divided into the following three financial claim bands: between EUR 25,000 and 50,000, between EUR 50,000 and 500,000 and above EUR 500,000. The graphs shows that the volume of lower claim cases declined far more than the volume of higher claim cases.

The competence change may have led to strategic behaviour that could explain (in part) the steep decline for lower band cases around 2011 (see Chapter 4.3.3 above). The decreasing trend for low value cases however is persistent throughout the decade.

Besides looking at different financial claim bands, we can also look at the claim value for cases at the 10th, 25th, 50th, 75th or 90th percentile.Looking at the volume of different financial claim bands does not explain how the distribtion of financial claim changed with time. The percentiles provide us that information, so it is possible to know if the distribution of financial claim is moving up at all points or if, for example, only higher claim cases are getting more valuable. Figures 20 and 21 show these percentiles for tort and debt recovery cases, respectively. Figures 22 and 23 show the same percentiles but in relative terms, where the first year (2001) assumes the value of 100 and the subsequent entries represent the value as a percentage of this first year.

Figure 18 - Total Financial Claim per Year

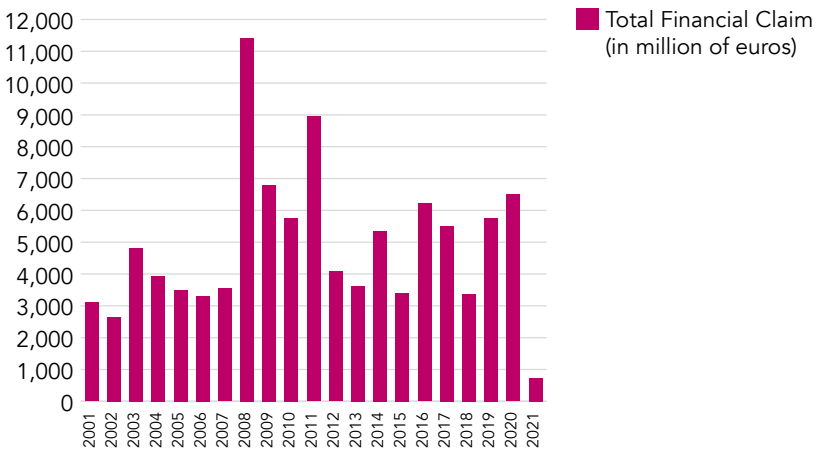
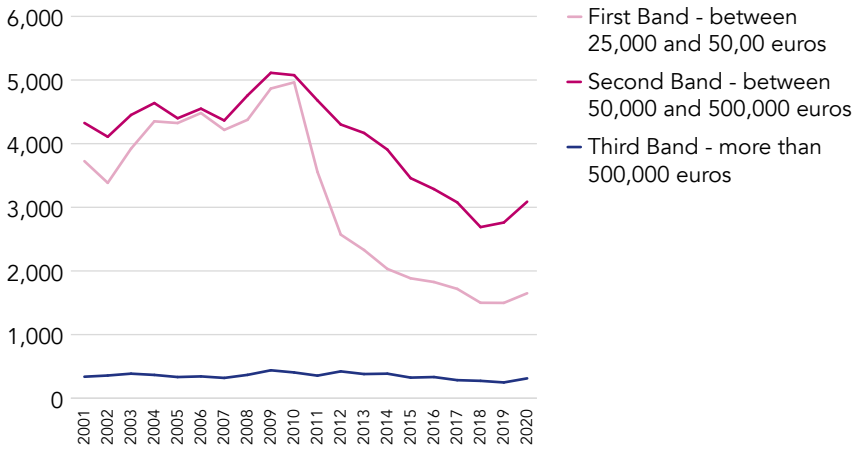


Figure 19 - Number of Cases per Financial Claim Band



Figures 20 and 22, show that tort cases usually have a higher financial claim and that their financial claim did not change significantly during the last two decades. The main exception concerns the value of cases in the 90th percentile. There are far more high value cases. As for debt collection cases *("verbruiksleen")*, the financial claim increased across the board. Low claim cases have now a higher claim than low claim cases 20 or 15 years ago. Again, we see a very significant increase in the 90th percentile.

Figure 20 - Financial Claim Percentiles per Year - Tort Cases

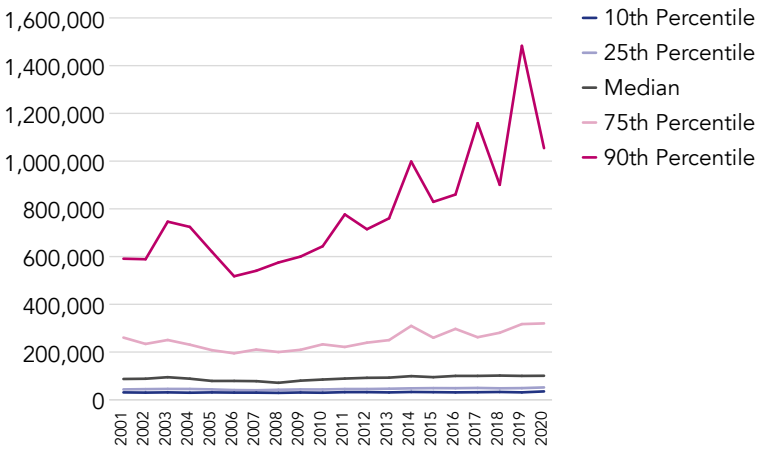


Figure 21 - Financial Claim Percentiles per Year - Debt Recovery Cases

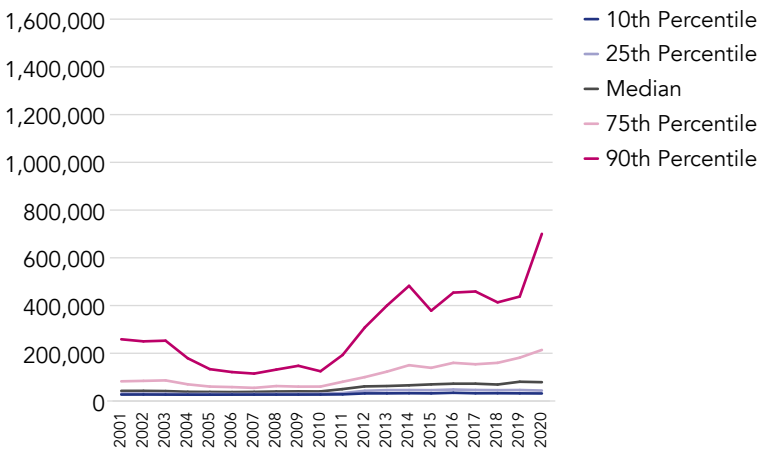


Figure 22 - Financial Claim Percentiles in Index per Year - Tort Cases

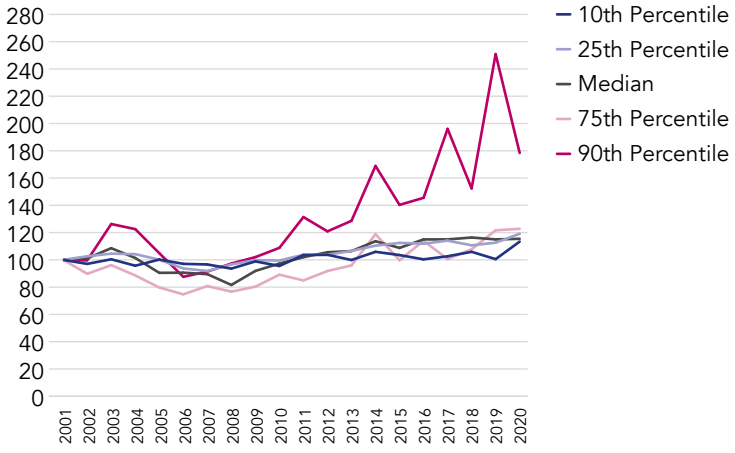
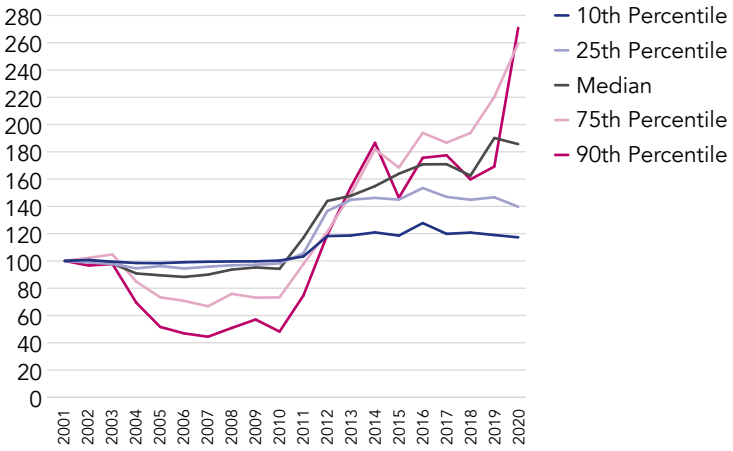


Figure 23 - Financial Claim Percentiles in Index per Year - Debt Recovery Cases



The decline of the number of low claim cases is observed in all sectors of the economy. Nevertheless, there are big differences between economic sectors. Figures 24 and 25 present the (relative) volume of incoming cases for the lowest (between EUR 25,000 and EUR 50,000) and second lowest claim band (between EUR 50,000 and EUR 500,000) for the financial sector, insurance sector, public sector and other sectors, respectively. The first year always has a value of 100 and the subsequent years present the volume of incoming cases relative to the first year of the sample. Firms in all sectors show an initial upwards trend, followed by a declining trend during the last decade. The public sector is the only exception: it shows a gradual decline right from the beginning.

Figure 24 - Relative Volume of Cases for The Lowest Financial Claim Band

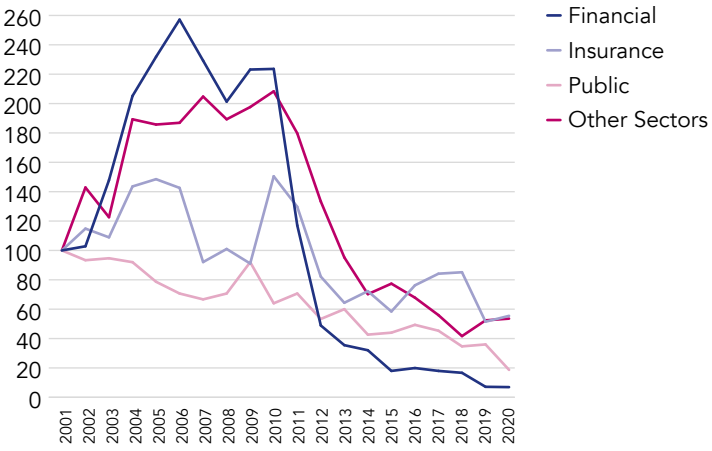
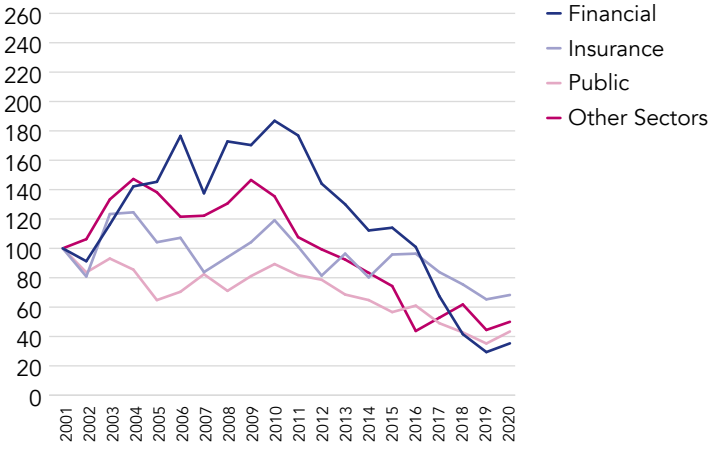


Figure 25 - Relative Volume of Cases for The Second Lowest Financial Claim Band



The volumes reported in figure 24 are more volatile than those in figure 25. This is especially the case for big firms in the financial sector. Most of these lower claim cases from the financial sector concern banks that litigate as a plaintiff against a natural person. These are usually debt recovery cases. Public sector cases on the contrary, are quite often tort cases.

3.6. Disaggregation at Firm Level: The Structural Decline of Litigation Volume

3.6.1. Introduction

So far, we have been observing trends in the volume and value of cases per year, per economic sector, per claim band and per type of case. These trends may be caused by sector or firm specific characteristics but could also indicate that there is a structural change throughout time. We used a regression model to investigate this further. We focus on two types with a very different pattern: debt recovery cases and tort cases. We disaggregate the volume of cases commenced per year, type and firm. For each of the types, the linear regression equation is the following:

$$\log of\ volume_{it} = \alpha_i + \beta_1 * t + \beta_2 * t^2 + u_{it} \quad \{i \in 1,\ldots,N;\ t \in 1,\ldots,20\}$$

Where subscripts i and t refer to firm and year, respectively. $\log of\ volume_{it}$ is the natural logarithm of the volume of cases involving firm i in year t. Each firm has a different unobserved effect: α_i is a variable that measures unobserved effects ("the fixed effect") for the i-th firm. The term t is a variable from 1 to 20 that measures the linear time trend, so that it has the value of 1 in 2001 and 20 in 2020. We also include t^2 to capture a quadratic relationship between volume and the time trend which the figures suggest. We ran both a regression with and one without this quadratic term. The variable u is an idiosyncratic error term, which registers unexpected shock across firms and over time. Estimation is by means of Ordinary Least Squares, for which the standard errors are clustered by firm. With this regression, we can infer through the size of the parameters β_1 and β_2 whether the variation in the volume of cases is due to firm-level characteristics or whether there are changes over time, and also whether the time effects are different for tort and debt recovery cases.

The next regression focuses on the natural logarithm of the financial claim of cases.

$$\log of\ claim_c = \alpha_i + \beta_1 * t + \beta_2 * t^2 + \beta_3 N\,of\,Nat_c + \beta_4 N\,of\,Leg_c + u_c$$
$$\{i \in 1,\ldots,N;\ t \in 1,\ldots,20\}$$

Where $\log of\ claim_c$ is the natural log of the financial claim of case c. α_i indicates a dummy that is equal to 1 if firm i is involved in the case c, t is a variable from 1 to 20 to measure the time trend, so that when year is 2001, t is equal to 1., $N\ of\ Nat_c$ is the number of natural persons per case c and $N\ of\ Leg_c$ is the number of legal persons per case c. u_c is the error term for case c. The standard errors are clustered by firm. We run both regressions using dataset 2, because we do not have firm and economic sector information in the whole sample. Furthermore, we use the log to reduce the impact of outliers on the results. The results of this regression allow us to infer if time effects are causing the value (and, thereby, complexity) of cases to increase.

For the volume regression, we apply three different approaches in relation to firms that do not have cases of a given type in one of the years. In the first approach, we leave these observations out. In the second approach, we include these in the regression with a value of 0. However, one possible issue is that we are including firms that ceased to exist or that did not exist yet. That is, a value of 0 in the volume of cases could be the product of a firm not existing in a given year, instead of this firm not having any cases. To (partially) fix this issue, our third approach includes only the 0 values observations in years we can be sure the firm existed. We only include observations with 0 value if: i) the firm had cases in years prior and later than the year of the observation; ii) the firm had cases of other types in the same year.

3.6.2. Results

Table 9 presents the estimated parameters β for the volume regressions including the 3 approaches explained above. Here only the coefficients for the time trend for each case type regression are shown, one with and another without the quadratic term. Additionally, we run one regression for tort cases *("onrechtmatige daad")* and another for debt recovery cases *("verbruiksleen")*. Thus, this table reports the results for 12 different regressions. We choose to present these two case types because they are the most relevant, as shown in the sections before.

Table 9 - Log of Volume of Cases per Year/Firm/Type with Firm Fixed Effects

	No Zeros				Including Zeros				Only True Zeros			
	Tort		Debt Recovery		Tort		Debt Recovery		Tort		Debt Recovery	
t	-0.0163 ***	0.0040	-0.0516 ***	0.0847 **	-0.0049 **	0.0228 ***	-0.0295 ***	0.0197	-0.0107 ***	0.0055	-0.0343 ***	0.0072
	(0.0048)	(0.0118)	(0.0105)	(0.0351)	(0.0022)	(0.0064)	(0.0051)	(0.0139)	(0.0026)	(0.0075)	(0.0058)	(0.0150)
t^2		-0.0010 **		-0.0070 ***		-0.0013 ***		-0.0023 ***		-0.0008 **		-0.0020 ***
		(0.0005)		(0.0017)		(0.0003)		(0.0007)		(0.0003)		(0.0007)
Including Zeros	No				Yes				Only True Zeros			
Including Quadractic Term	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes
Observations	2,335	2,335	664	664	7,140	7,140	2,320	2,320	6,027	6,027	2,053	2,053
Number of Firms	357	357	116	116	357	357	116	116	357	357	116	116
Number of Regressors	358	359	117	118	358	359	117	118	358	359	117	118
F-statistic (t = 0 and t^2 = 0)	-	31.733	-	70.164	-	37.989	-	127.819	-	42.807	-	120.366

*Note: *** P < 0.01; ** p < 0.05; * p < 0.1*

The first four columns show the results where we do not include any observations in which a firm did not have cases for a type in a given year, for the regressions using the volume of tort and the volume of debt recovery cases, respectively. The results indicate that, even after controlling for firm unobserved characteristics, the volumes of debt recovery and tort cases are decreasing. We find also that time has an inverted u-relationship with the volume of cases, especially for debt recovery cases. The main explanation for this, is evidently that the initial increase of the volume caused by the financial crisis was followed by a decrease when the economy recovered. The regression suggests that the volume of debt recovery is decreasing significantly more than the

volume of tort cases. We argue that this is due to the effect of the business cycle. The business cycle should affect debt recovery cases while it affects the quantity of tort cases much less. According to the regressions without the quadratic term (columns 1 and 3), the volume of tort cases decreased by 1.6 and 5.2 percent every year for tort and debt recovery, respectively. However, these regressions do not include firms that did not have a case in one of the years. This might be especially an issue because small firms will only have few torts or debt recovery cases per year, or not even once a year. For that reason, we include years where firms did not have any case in the regression.

Columns 5 to 8 present estimation results for the regression for torts cases and debt recovery cases, respectively. When using this approach, the results are the same, but the decline is less pronounced. As expected, the magnitude of the coefficients decreases due to the higher share of observations with a value equal to 0. For these reasons, we also apply a method that removes years where we cannot be sure the firm existed. Columns 9 to 12 show the results when we only leave the observations with 0 value which we can be sure is not a result of a firm not existing yet or ceasing to exist before. This approach is still vulnerable in some respects. For example, for observations in later years, we cannot be sure if a firm did not have any case or ceased to exist. It is natural that some small firms still operate but did not have any cases in these later years. That is, probability of having a case is decreasing for every firm, because the aggregate volume is decreasing. The results of this regression are similar to the other methods. The main difference is that the coefficients are between the values of the first and second approach and the non-linear relationship is less clear for debt recovery cases. Columns 9 and 11 indicates that the volume of tort cases decreased by 1.1 and 3.4 percent every year for tort and debt recovery, respectively. These regressions corroborate the trends seen in the graphs presented earlier and show that they are not the product of individual firms' characteristics. The variation is stronger for the volume of debt recovery cases. This indicates that both structural factors and the business cycle are relevant factors in explaining the decline. Unfortunately, these regressions cannot explain the weight of each factor in explaining the decline.

Table 10 presents the estimation results for the financial claim regressions. The dependent variable is the log of the financial claim. Similar to the volume regressions, we also run regressions for tort cases and debt recovery cases separately. The results indicate that the increase in the financial claim of debt recovery and tort are not due to firm's unobserved characteristics or due to a change in the number of parties. The median and mean of the financial claim of tort and debt recovery differs greatly.

The stakes in tort cases are much higher than those in debt recovery cases. They do however show a similar increase of 2.6 and 3.2 percent per year respectively (columns 1 and 3). Both increased more than the average annual inflation from 2001 to 2020 (1.84 percent according to CBS data). Thus, we can conclude that for both types the stakes are increasing to the same extent. By inference the cases concerned are getting more complex.

Both the number of parties and the value of the claim are indicators for the complexity of a case. The total number of parties seems in a case to be positively correlated with the value of the claim. This is clearly the case for the number of legal persons per case: one additional legal person corresponds with a higher financial claim by 8.2 for tort and 41.9 percent for loan recovery. For natural persons, the number does not have a statistically significant effect on the financial claim of tort cases. For debt recovery, one more natural persons involved corresponds with a higher financial claim of 5.2 percent. It is unclear whether there is a causal link between the number of parties and the value of the claim.

Table 10 - Log of Financial Claim Regressions with Firms Dummies

	Tort		Debt Recovery	
t	0.026*** (0.004)	-0.011 (0.015)	0.032*** (0.003)	-0.012 (0.008)
t^2		0.002** (0.001)		0.002*** (0.0004)
Number of Natural Persons	0.002 (0.018)	0.004 (0.018)	0.053*** (0.017)	0.052*** (0.017)
Number of Legal Persons	0.082*** (0.017)	0.082** (0.017)	0.419*** (0.031)	0.418*** (0.031)
Constant	11.462*** (0.076)	11.584*** (0.076)	10.864*** (0.075)	11.041*** (0.081)
Observations	5,394	5,394	9,219	9,219
Number of Firms	289	289	107	107
Number of Regressors	292	293	110	111
Median (absolute value)	114,400		52,031	
Mean (absolute value)	2,758,000		220,965	

*Note: *** P < 0.01; ** p < 0.05; * p < 0.1*

3.7. Further Empirical Observations

3.7.1. The Duration of Litigation Decreased Slightly

To understand the decline in civil litigation figures we have examined data on the duration of court cases as well. The judicairy registers the date the case was filed in the court docket as well as the date the case was resolved. These data enable us to calculate the time to disposition of all cases. The time to disposition may be a relevant factor for prospective litigants to consider. Earlier research clarifies that the time to disposition differs greatly and is unpredictable. Debt collection cases in which the defendant does not challenge the claim can be resolved in a number of weeks, whilst complex high value contested cases can take years (see Costello et al. 2021, Verkerk et al. 2020).

Table 11 - Mean Case Length per Year (in days)

	Dataset 1		Dataset 2	
Year	**Normal Proceedings**	**Summary Proceedings**	**Normal Proceedings**	**Summary Proceedings**
2001	138	50	198	35
2002	140	55	204	49
2003	138	46	181	44
2004	151	44	158	41
2005	135	43	153	34
2006	127	42	149	38
2007	116	41	158	36
2008	119	43	159	39
2009	105	42	139	38
2010	104	41	128	35
2011	104	39	143	34
2012	97	37	145	32
2013	102	37	166	35
2014	95	38	134	34
2015	100	37	125	32
2016	98	38	115	34
2017	99	41	128	38
2018	105	40	153	36
2019	106	41	158	37

Table 11 present the average case length for normal proceedings and summary proceedings *(bodemprocedure and kort geding)*. The table measures the length of a case at the year the case was decided, withdrawn or settled. The year 2001 in the table thus indicates the mean case length of all cases that were concluded in 2001. The table shows that the average duration of cases at first slightly decreased and subsequently remained more or less stable.

3.7.2. Collective Redress: Two Examples

As discussed above, the legislator has gradually introduced forms of collective redress in 1994, 2005 and 2019. It seems likely that new forms of collective redress can resolve pending litigation and can prevent new litigation.

Our data do not enable us to measure whether collective redress has become more prevalent, nor whether it has led to decrease in the number of incoming cases.[22] It is possible however to look at individual cases by analyzing how often a legal entity that is the defendant in a collective redress procedure has been involved in litigation. Until 2020 there were only nine collective settlement cases that were approved by the Amsterdam Court of Appeal under the 2005 Collective Settlement Act.[23] Not all of these are suitable to understand the potential effects of collective redress on litigation volumes.[24] On the basis of our data, we checked two major and often discussed settlement agreements: those concerning Dexia Bank Nederland and Shell Petroleum. Both settlement agreements affected thousands of individuals.

Dexia Bank Nederland was involved in thousands of cases concerning share leasing contracts concluded with consumers. In 2004, it was involved in 1018 incoming cases, pending before the commercial section of the District Courts. That figure accounts for almost 1.3 percent of the total number of incoming commercial cases in our database in that year. The Dexia collective settlement case seems to be an example in which

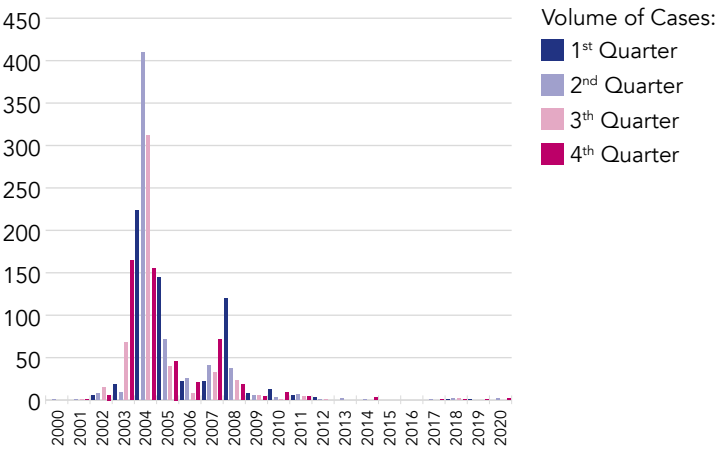
22 The courts' typology includes one entry of *"massaschade"*. This entry however is hardly used. Moreover, there are doubts as to whether this entry is used in a consistent manner. A related issue is that the typology is not sufficiently detailed and does not enable us to separate those disputes that have similar characteristics and that have been or could be resolved through collective mechanisms.

23 It concerns cases concerning DES (twice), Dexia, Vie d'Or, Shell, Vedior, Converium, DSB and Fortis.

24 E.g. the DSB case is a tough one as DSB's bankruptcy substantially affected the possibility to bring new claims. The DES-cases are also quite tough as there were two settlements involving many 'defendants'. Some other mass settlements involved relatively small number of individuals

collective redress 'flattened' a 'wave' of litigation. Shortly after the collective settlement became binding, the data show that numerous individual cases were withdrawn from the courts. Figure 26, shows the number of terminated cases in which the bank was involved each quarter. The data show a clear 'peak' shortly after the moment the collective settlement agreement became binding between the bank and thousands of its customers on 1 August 2007.[25] It seems likely that this settlement also prevented a fair amount of new civil commercial cases.

Figure 26 - Dexia Cases Terminated per Quarter



Shell Petroleum N.V. and affiliated group companies had a dispute with shareholders that claimed they had suffered damages because the company had overstated its oil reserves in its annual accounts in 2004. Shell companies and representatives of shareholders reached a collective settlement agreement which was approved by the Amsterdam Court of Appeal on 29 May 2009.[26] The agreement allegedly affected over 500,000 shareholders. Of course, we can only second guess as to what the

25 A main settlement agreement was concluded on 23 June 2005. A final agreement was made on 8 May 2006. This agreement was approved by the Amsterdam Court of Appeal on 25 January 2007, *NJ* 2007/427. Consumers that did not wish to be bound by the agreement, could opt out until 1 August 2007. On 2 August 2007 Dexia announced the agreement had been accepted by 165,300 of its customers whilst 24,700 customers had opted out of the settlement agreement.

26 Gerechtshof Amsterdam 29 mei 2009, ECLI:NL:GHAMS:2009:BI5744.

litigation figures may have looked like without the settlement, but there certainly were no large litigation volumes to start with. Our data show that the relevant entities of Shell were only involved as a defendant in civil commercial cases in at best a couple of dozens of cases annually both before and after the settlement. These figures include all cases, regardless of whether they had anything to do with the settlement. The data thus suggest that this is an example of a mass settlement that may have benefitted thousands of investors that otherwise never would have commenced litigation and that as a result had no genuine impact on civil litigation numbers. It may well be a case that shows that collective settlements enhanced access to justice.

The examples above certainly do not constitute a sufficient basis to understand the precise impact of collective redress on litigation volumes. Thereto, more research into other cases and forms of collective redress would be needed. These examples, however, make clear that collective redress has had limited impact on overall litigation volumes in the period studied.

4

Interviews

4.1. Introduction and Methodology

In addition to the quantitative analysis of data of the judiciary, we have conducted qualitative empirical research by means of interviews. We have selected interviewees with at least, fifteen years of experience in the area of conflict resolution and litigation. The interviewees work in different sectors and have different professional backgrounds. We interviewed thirteen experts in total. As the banking and insurance sectors are predominant in court litigation, we have spoken with four experienced professionals that hold a senior or managerial position at a litigation department of a major bank or insurance company. We have furthermore spoken to five senior judges, that have had a long-lasting experience at the commercial civil law sections of four different District Courts: The Hague, Gelderland, Amsterdam and Rotterdam. These judges are specialized in different areas of the law, such as construction law, company law, class actions and inheritance law. We have also spoken to two experienced managers of the legal department of a major utilities/energy company, a senior lawyer working in the construction industry and a representative of the Royal Association of Bailiffs.

We have approached potential interviewees by different means. We sent them a two-page letter in advance, explaining the background of the research project and with a graph depicting the decline of incoming commercial cases over the years (Annex III). The letter also briefly listed the general issues that we wished to discuss with them. We had prepared in advance a more detailed list of open-ended questions in order to conduct a semi-structured interview (Annex IV). We first showed the interviewees the graph and asked them whether they themselves recognized a decline in the number of court cases. Most interviewees would out of their own motion share all their views on virtually all topics, which effectively made the list of detailed questions redundant.

A couple of interviewees were aware of the steep decline in the volume of civil cases. A senior bailiff pointed at the annual data gathered over the years by the Royal Association of Bailiffs.[27] A senior manager of an insurance company could perfectly present the number and types of cases that his institution had been involved in. Two senior judges had access to management information of the department they worked in. However, most interviewees did not have a clear picture of long-term statistics. The institutions they worked for lacked data and had often changed considerably over the years.[28] Most of them were unaware of the steep decline in litigation numbers *("nooit gehoord over een forse daling")*. Some were surprised *("verbaasd", "val van mijn stoel")*. Lawyers, corporate lawyers and judges told us they are as busy as several years ago *("we zien niet dat het rustiger wordt")*. Their insights were nevertheless valuable to interpret the figures, to gain in depth knowledge of specific sectors, specific categories of cases and perceptions within the legal community. The interviews were helpful to understand the broader patterns and changes over time that are not captured in the available data.

We concluded all interviews in forty to sixty minutes. We took detailed notes and used these to draft a report of the interview that we forwarded to the interviewee for approval. In some cases, the interviewee would have (minor) suggestions or additions. We discuss the main findings from the interviews below. The authors inevitably had to make specific subjective choices on e.g. the structure of this text. The authors have tried to give an accurate description of all key points made by the interviewees. Issues that were shared by many interviewees and that they believed to be very prominent have been most thoroughly elaborated upon in this text.

27 https://www.kbvg.nl/cms/public/files/2021-05/kbvg-jaarverslag-2020-def.pdf?46ac122401 These data (also) show a sharp decline in the number of writs served in cases both above and below the threshold of EUR 25,000.

28 Departments increased or decreased in size; certain types of cases are more or less common than before, companies have decided to outsourced or insourced legal work, have hired different professionals etc.

4.2. Macroeconomic Factors

4.2.1. Does Litigation Come in Waves?

Interviewees have different conceptual perspectives of disputes and litigation. Many interviewees indicate that disputes and litigation come in 'waves'.[29] This seems to be especially the case in the financial sector. A single issue might result in hundreds or even thousands of similar disputes over the course of several years. Examples include (i) cases between consumers and financial institutions concerning stock lease instruments *(aandelenlease)* (ii) cases between consumers and financial institutions on stock mortgage loan products *(beleggingsverzekering)*, (iii) cases between banks and small and medium sized companies on interest rate derivatives *(rentederivaten)* and (iv) cases that result from certain 'new' forms of fraud such as whatsapp fraud and the use of money mules.

The basic idea is that new economic shocks, new technologies and new products give rise to new questions. The number of disputes and court cases on a particular issue increases and at a later point decreases again. Banks and insurance companies try to identify and resolve key issues as early as possible to 'flatten' these waves of litigation. As a result of new and different litigation waves, the cases that are dealt with today in the financial sector are different from those that were common years ago.

The idea that one cannot understand litigation figures without looking into specific 'waves' of specific cases is not new. It is for instance well known that asbestos gave rise to a big wave of personal injury cases around the world. The idea that such 'waves' can significantly impact the total number of disputes and court cases is also consistent with our data. One example concerns the example discussed above on the stock lease cases between consumers and Dexia Bank Nederland *(aandelenlease)*. It concerned a large number of disputes. At some point, many hundreds of cases were brought before the District Court of Amsterdam. In 2004, these cases amounted to approximately 1.3 percent of all cases filed before all District Courts. This shows that a single wave can have a significant effect on overall litigation figures.

Some interviewees give examples of other cases, unrelated to the financial sector, that they believe are more common than before. According to some, there currently is a 'wave' of disputes about inheritances and real estate. Two interviewees suggest this

29 Both judges and (corporate) lawyers tend to express the view that – in the long run – litigation should be understood as a sequence of waves.

is linked to the fact that real estate prices increased substantially. As a result, there is more to quarrel about.

Whilst many think primarily of disputes and litigation numbers in terms of waves, this view is certainly not shared by all interviewees for their field of work. For example, in the construction sector, there seems to be a steady flow of disputes and court cases relating to the financial settlement at the finalization of major construction projects. The cases handled today, are in essence no different from those handled two decades ago. Interviewees that primarily work in this sector do not observe that disputes and litigation come in waves. The same seems to be the case for typical problems that natural persons may encounter in the area of labor law, contract law or rental law. These disputes are similar to those that occurred in the past.

4.2.2. Macroeconomic Factors Affect the Volume of Court Cases

Several interviewees point at macroeconomic factors that affect the number of new disputes and thereby the number of potential court cases. The relatively good state of the economy leads in general to better payment behavior of debtors. One interviewee with vast experience in the debt collection sector had access to reliable data from the organization he worked in. He explained that debt recovery figures were extremely high in 2020. Debtors paid their bills. As a result, there are far less debt collection disputes. This ultimately results in a much lower number of debt collection cases before the small claims departments as well as the civil commercial departments of the District Courts.

Some other interviewees indicate that several 'waves' of litigation in the financial sector are linked to the state of the economy. In the past, the stock markets plunged, and many people suffered losses. Companies and consumers that suffered losses claimed that these losses were caused by inadequate advice or policies of financial advisors or financial institutions *("beleggingsklachten")*. The last ten of years, the stock markets have been doing fine and there are very few consumers and companies that have suffered heavy losses, which explains that these disputes are presently quite rare.

One interviewee with experience in the energy sector explained that during the banking crisis, some suppliers, customers and contractors were by far less accommodating and compliant *("strakker in de wedstrijd")*. Some companies that faced liquidity problems would for instance unilaterally decide that they would only pay outstanding invoices after 120 days. These decisions sometimes gave rise to disputes.

Under the current conditions, the extraordinary low interest rate explains low litigation numbers. This is not only because debtors can more easily meet their interest rate payment obligations, but also because major lenders are now more patient and take more time to solve debt collection disputes. As a result of low interest rates, the claim does not inflate over time and the dispute does not deepen. As a result, claimants may not feel an urge to litigate immediately. At the same time, several other interviewees refer to the recent 'wave' of interest rate derivative cases *("rentederivaten")*. It seems that these cases emerged precisely because of very low interest rates.

Some interviewees argue that it is too simplistic to assume that general economic developments always immediately affect litigation volumes. There may for instance be a delay of several years. One interviewee discussed litigation in the construction sector. The construction sector had a very tough time a decade ago as there were relatively few new construction projects. To mitigate immediate cash flow problems, some major construction companies agreed to long term contracts for big construction projects at too low prices. In the years that followed, they needed to execute these contracts, knowing that any delay or adverse event would in the end cause losses *("negatieve staart")*. The contractor would have to do everything to avoid losses and would typically try to "get money from anywhere". Some of them would start to 'push' in the direction of subcontractors or suppliers, e.g. by delaying payments. This could lead to disputes and litigation, many years after the crisis and the signing of the original contracts. If the original contract had been profitable, the litigation could have been avoided.

4.3. The Increased Complexity and Cost of Litigation

4.3.1. The Increased Complexity of Litigation

All interviewees have observed that the complexity of cases increased over the years.[30] Some interviewees indicate that the increased complexity is the result of the subject nature of specific types of common disputes. One interviewee mentions cases concerning interest rate derivatives as an example *(rentederivaten)*. Such cases require a judicial decision on several distinctive issues, some of which require the

30 Several interviewees indicate that they have themselves grown as professionals within their respective organizations. In the earlier years they handled simple cases. As they became more experienced, they would handle the more complex ones. Nevertheless, they all believe there is a clear trend. One judge for instance explains he faces difficulties to find relatively simple cases suitable to train new inexperienced judges.

examination of factual circumstances that occurred many years ago. Others cite examples of different types of cases, such as construction cases that concern numerous smaller issues. Other refer to cases on director liability or complex cross-border disputes that require the application of foreign laws.

Some interviewees observe that the legal and regulatory environment is far more complex than before. There simply are far more laws and regulations in e.g. the financial sector. There has for instance been a sharp increase in directives and regulations from the European Union. This affects all cases, even those in which claims are uncontested. One interviewee points at recent case law that requires judges to examine *ex officio* whether contracts are in conformity with consumer protection regulations.[31] This effectively means that claimants in relatively simple debt collection cases – even if the claim is not contested – need to provide more information in their writs of summons. This primarily affects low value cases, but also those that are brought before the civil commercial department of the District Courts.

Interviewees agree that the litigation record becomes more substantial.[32] One of them notes that this is the result of the increased availability of digital legal sources (i.e. case law, legislation, doctrinal works etc.). Others indicate that technological developments have made it far easier to store and process business information. A director of a legal department explained that it is very easy these days to hire an expert that will search the company's digital files. Within a matter of days numerous relevant old e-mails will be uncovered. If more information is available, the litigation record will become more voluminous.

These days, all potentially relevant aspects of the case are elaborated in (ever longer) written submissions. As a result of modern technology, it is relatively easy to "copy paste" materials from other sources and/or other submissions. Virtually all interviewees give recent examples in which lawyers draft written submissions in excess of a hundred pages: *"er wordt meer papier verschoven"*, *"net weer een dagvaarding van 350 pagina's binnengekregen"*. Some seem to blame lawyers for being overly and needlessly diligent. Others note the difficult position they are in. Lawyers are often afraid not to rebut certain arguments and/or issues that could at some stage become relevant.

31 It concerns the case law on *"ambtshalve toepassing"*. See e.g. Supreme Court 12 February 2016. NJ 2017/282 (Telefoon II), summarizing the case law of the ECJ.

32 See e.g. Van der Ploeg & De Wit 2015, Vranken 2018 and Boston Consultancy Group 2018 as discussed above in Chapter 2.3 above.

Most interviewees indicate that the stakes of litigation have increased over the years. Several judges explain that in the past there were very few cases in which the value in dispute would exceed EUR 1 million. Several District Courts applied an internal rule of thumb that such cases were handled by a panel of three judges. These days, there are many more cases in which the value of the claim exceeds EUR 1 million. At present, these are often decided by a single judge. The interviewees believe that the size of the financial claim is highly (but not perfectly) correlated with case complexity. Such cases are often inherently more complex. Moreover, once the stakes increase, it pays off to spend more time to explore all potential legal arguments *("er wordt meer uit de kast gehaald")*. Lawyers will leave no stone unturned.

Some courts register the complexity of the incoming cases for internal management purposes. Cases are registered as 'A cases' (relatively easy), 'B cases' (intermediate) and 'C cases' (complex cases). One judge explained that at the court she worked, the percentage of 'C cases' increased from 35 percent to 45 percent of all incoming cases during the last four years. The judge indicated that it is certainly not the case that the way in which complexity is measured has changed.

4.3.2. Parties Litigate Fewer Clear-cut Cases

Some interviewees clarify that there remains a substantial number of cases that could have been avoided if there would have been a better communication between the parties. Many but not all interviewees nevertheless believe there is a decline in the number of clear-cut cases going to court. Cases brought before the courts generally are hard to resolve, in the sense that they are neither "black" nor "white". As indicated above, interviewees point out that centralization and specialization of legal departments of companies leads to more rational decision-making (see below). One corporate lawyer explains that low value cases are not litigated for reasons of cost efficiency. A cost-benefit analysis prevails over the pursuit of principles. Cases in which it clear that one of the parties should prevail will generally be settled. What remains are the difficult cases. He indicates that he believes his institution litigates far less than before. Once a decision is made to bring a case to court however, no stone must remain unturned, and the company will muster enough 'firepower' to win it.

Judges and (corporate) lawyers indicate that the majority of incoming court cases is 'grey'. Support staff at the courts often complains that cases are difficult. As one judge put it: these days one can "*seldom lean backwards*" at the hearing because you already know all there is to know about a case. Interviewees consider this a positive development. Courts are no longer unnecessarily bothered by cases that do not really merit judicial intervention.

4.3.3. The Increased Costs of Litigation

All interviewees seem to agree that the cost of litigation increased. Most interviewees however believe that the impact of the court fees has been limited, save perhaps for certain categories of simple debt collection cases. Interviewees primarily stress that lawyer fees increased significantly. This increase in costs is clearly linked to the observation that cases and thus litigation has become more complex and lawyers file increasingly longer written submissions. Other interviewees indicate that there seems to be an increase in the number of stages in the proceedings. They believe there has been an increase in the number of times an extension of time is granted, (interim) motions are filed *(incidenten)* and cross claims are made *(reconventie)*.

In the past, a client would ordinarily be represented by a single lawyer. Many interviewees explain that it has become *"fashionable"* to involve two or three lawyers. Bigger law firms almost always involve at least one partner and a junior associate. Sometimes a case may involve two or three different areas of the law, which then leads to the involvement of senior lawyers specialized in each of these areas.

Litigants often complain about high lawyer fees. As one experienced litigator put it: *"The client often blames the court system for high litigation costs. The question is whether this is correct and whether the lawyer involved is part of the problem. Sometimes, it is the client's own choice, particularly so if the client wants to win at all costs. One often sees invoices amounting to several hundreds of thousands euros for only one instance. That was certainly not something that was common in the past."*

Interviewees note that it has becomes increasingly difficult to go to court with claims below EUR 100,000. The costs may well exceed the (expected) benefits. As one interviewee put it: "litigation has become unaffordable for ordinary people." One judge was particularly worried about this trend, but noted that he has no indication as to the number of cases that remain unresolved as a result of excessive costs. He and other interviewees indicate that the costs of litigation are such that access to justice is a serious issue. Litigants simply seek to avoid the expensive and unpredictable justice system altogether *("rechtsmijders")*.

Some repeat players do not avoid litigation altogether but adopt strategies to avoid lawyer fees. In debt collection cases, a claimant may well have a claim of EUR 50,000 or EUR 100,000. Large banks and debt collection firms often choose to commence litigation for an amount of EUR 25,000. As a result, the claim can be initiated without the intervention of a lawyer before the small claims department of the District Court

(cantonal judge, kantonrechter). Debt collection firms that have efficient automated processes are often able to litigate at substantially lower rates. Once an enforceable judgment is obtained for the first part of the claim, the claimant can often reach an agreement with the debtor pertaining to the entire debt.

Although all agree that costs have risen, not all are equally pessimistic. One corporate lawyer explains that his firm is very experienced in handling cases and well able to avoid excessive lawyer costs. Others point at recent initiatives that all seek to make justice available at lower costs, such as E-Court and Eve-law. Another example concerns legal insurance companies that seek to provide legal assistance to natural persons and companies at relatively low and predictable rates, such as BrandMr.

Others point at the legal aid system. There seems to be a shift in which there are fewer cases in which litigants are represented by a legal aid lawyer *("toevoegingszaken")*. At the same time, many individuals have a legal insurance policy *("rechtsbijstands-verzekering")*. Lawyers may have an incentive to litigate, but insurance companies that fund litigation have an interest to settle cases as early as possible. They often advise people not to litigate and they settle a large share of their cases at an early point in time.

Several interviewees indicate that court cases take very long and that not much has improved over time *("duurt verschrikkelijk lang")*. This is striking, as "just in time" has become the standard in many sectors of the economy. Lawyers don't mind, litigants however are very concerned. Delay requires them to spend money and allocate professionals within their organizations over a period of several years. Companies may also be required to make a provision in their balance sheet *(voorziening)*.[33] Interviewees seem to suggest that time weighs more heavily now than in the past.

Interviewees seem to agree that the costs of litigation are increasingly prohibitive. One corporate lawyer referred to a famous saying that the costs of litigation may well be equal to the stakes of litigation: *"wie procedeert om een koe, legt er een op toe"*. This saying is gaining ever more truth. Another interviewee stated that he had never met a corporate lawyer that disagreed with the statement that it is far better to settle than to litigate *"schikken is beter dan procederen"*. Most big firms act rational and seek to avoid unnecessary costs by settling the vast majority of all potential conflicts. The same is true for natural persons. One interviewee indicated that his firm recently

33 On the costs of lengthy commercial litigation, also see Van Dijk (2014) and Costello et al. 2021.

conducted market research. The results were clear: both natural persons and businesses are willing to spend far less on litigation than the amount that is ordinarily required to litigate a case.

Interviewees also stress that litigation sometimes has the form of an organized battle *("toernooimodel").* Litigants generally do not seek to fight a battle; they are in need of *"a solution"*. Potential litigants often understand that litigation may not lead to the desired end result. Litigation is uncertain. A judicial decision on a particular legal issue may not resolve the real dispute between the parties. Moreover, many judges often push the parties to reach a compromise anyway. As a result, litigants prefer an early settlement.

4.4. A Trend Towards the Early Amical Resolution of Disputes

4.4.1. Professionalization, Specialization and Centralization

Several interviewees indicate that there has been a trend of centralization and professionalization of the legal function within major companies. In the past, companies left it to the various individual or regional business units to determine their own legal and litigation policies. Over the years, many large companies have centralized their legal departments. Interviewees provide examples of companies in different sectors that have all at some point even set up their own internal corporate law firms, such as ING, Rabobank, NN, Gemeente Amsterdam and Prorail. These corporate law firms employ fully qualified specialized lawyers that have in depth knowledge of the business *("advocaten in loondienst").*This helps to contain litigation costs and to improve quality.

One interviewee explains that the entire financial sector has gone through a process of standardization. He points at the growing importance of general terms and conditions as well as self-regulating protocols that cover the entire sector.[34] All of these make it easier to predict the outcome of litigation and may – if professionals are involved – avoid litigation in individual cases. This development went hand in hand with an increase of regulation in the financial sector. There, the increase reached a peak at the aftermath of the banking crisis. In the past, litigation was conducted on a case-by-case basis *("casuïstisch")*, with a stronger tendency to litigate whenever

34 As for banks, reference is made to general terms used by all major banks *(Algemene Bankvoorwaarden).* As for the insurance sector, there is a lot of self-regulation in the sector *(Verbond van Verzekeraars),* amounting to at least 48 different regulations.

clients did not meet their obligations. These days, banks and insurance companies have far fewer employees than before and seek to avoid litigating individual cases. They rather focus on questions and cases that concern the general features of financial products and that could as a result impact numerous contracts and thereby their entire portfolio.

Several interviewees argue that the whole legal services industry has gone through a process of specialization and professionalization. The quality of the legal services provided by legal insurance companies has improved *("rechtsbijstandverzekeraars")*. The same holds true for the bar. In the past, most lawyers would work at extremely small law firms, handle a huge variety of cases. That seems to be less so today. On average, law firms have become larger. Many lawyers are specialized, and the quality of their work increased. Although there may be room for improvement, all seem to agree that there is a general trend towards professionalization and specialization within the bar.

As a result of these developments, qualified legal experts are involved at an earlier point in time. One interviewee works for a financial institution. She explained her company involves professionals at an earlier point and thus makes a better early assessment of a (potential) dispute. If the client makes a valid point, this will be acknowledged. If, however, the client is clearly wrong, more efforts will be undertaken to explain why the bank is not willing to meet the client's demands. As a result, litigation is avoided in clear black and white cases.

An interviewee that works in the utilities sector explains the legal department is no longer an ivory tower detached from the normal business operations. It is involved at an earlier stage than before. Someone in a business department may for instance be very confident about the firms position in a dispute and may be unwilling to give in. The legal department will explain that the dispute must be settled, for instance, because the amount in dispute amounts to EUR 90,000 and litigation costs will be at least EUR 30,000.

An interviewee that works for an insurance company observed that the quality of opposing counsel has increased as a result of specialization. In the past, the insurance company would litigate against lawyers that rendered poor quality. It often happened that they would bring hopeless cases or that they would simply miss good legal arguments. Today, the quality of their submissions is far better than before.

4.4.2. Repeat Players are more Reluctant to Litigate

Most interviewees indicate that repeat players such as banks, insurance companies, housing associations and utilities companies are more reluctant than before to bring cases to court. In the past, going to court was often more or less an automatic step in the generally applied debt recovery policies of many companies *("aanmaning, aanmaning en dan een dagvaarding").* Companies occasionally would litigate low value cases even if the costs would outweigh the likely benefits. They would sometimes seek to address and correct unjust behavior as a "*matter of principle*".

These days, banks, insurance companies, utility companies and housing associations wish to avoid the 'escalation' of disputes *("op de spits drijven").* Their general approach has become more careful and considerate *("meer behoedzame grondhouding").* Once a conflict emerges, companies more often use internal complaint mechanisms to address potential conflicts at an early stage. Some of them have put far more effort in this area, thereby mitigating the need to go to court. Large housing associations have for instance created special departments that seek to identify and address debt and liquidity related problems of their tenants at a very early stage.

Some interviewees indicate that firms in the financial sector focus more on conflict avoidance at an early stage *("kraan dicht draaien")* rather than conflict resolution *("achter dweilen").*[35] Since the financial crisis, banks and insurance companies have adopted a more careful approach towards taking risks. As a result, they are less inclined to conclude transactions that have a high probability to lead to future conflicts.

As noted before, several interviewees emphasized that specialized legal departments adopt policies in which they apply a rational cost benefit analysis. They no longer wish to litigate as a *"matter of principle"*. Several bigger companies, such as banks, make an early assessment of the debtor's financial position to determine whether it will be possible to successfully enforce a future judgment. As a result of big data and artificial intelligence this is easier and cheaper than before. This way, banks can avoid court procedures that ultimately have no real prospect of recovery.

35 This view is not shared by all interviewees. Another interviewee that worked in the financial sector indicated that conflict avoidance was also considered of great importance in the past.

Some interviewees indicate that companies seek to uphold their reputation and to preserve business relationships. It is one of the factors that is considered in their cost benefit analysis. Firms are cautious to litigate against authorities, customers, or joint venture partners with whom they seek to do future business. Similarly, most companies understand adverse court decisions could attract (social) media attention and affect their reputation with the broader public. Interviewees in the financial sector indicate that this is an important factor in their overall strategy. After all, society expects major financial institutions to take greater social responsibility.

4.4.3. Technological Changes: it is Easier to Gather Factual Information

It was already noted that several interviewees point at important technological developments that occurred over the years. One interviewee explained that these thoroughly changed the way in which businesses operate. It is far easier to store, gather and share digital information. This drives up costs as discussed before, but as it is easier to gather information and evidence, litigants can also make a far better early assessment of the case. If litigants can make a more accurate assessment of their case, they are less likely to be overly optimistic. As a result, they can avoid unsuccessful litigation.

4.5. Alternative Dispute Resolution's Important yet Limited Role

Many interviewees directly or indirectly refer to alternative forms of dispute resolution. Many agree that alternatives to the justice system play an important role. It is doubtful however whether there has been a clear shift away from the justice system towards alternative forms of dispute resolution. Interviewees generally believe that traditional and modern forms of alternative dispute resolution as well as collective redress have had a very limited impact on the overall number of incoming cases.

One interviewee points at the relevance of alternative dispute resolution in the financial sector by the Klachteninstituut financiële dienstverlening (Kifid). This institution makes it relatively easy for consumers to file a claim. It charges no fees for a procedure at first instance and consumers need not engage a lawyer. They can simply file a complaint online. Kifid was set up in 2007. Before that, most disputes between consumers and financial institutions were resolved by courts. The law presently requires financial institutions to agree to alternative forms of dispute resolution by the Kifid. Certain categories of cases that would ordinarily been resolved by the courts are presently handled by the Kifid. One interviewee refers to a "wave" of cases on stock mortgage loan products *(beleggingsverzekering)*. The Kifid handled the vast majority of these cases. It led to a "big wave" of newly initiated cases around 2009.

One interviewee points at various forms of alternative dispute resolution in the construction sector. *De Raad voor Arbitrage voor de Bouw* has been a popular arbitration institute for construction cases for many years. It may resolve cases more expediently than the courts. In public procurement cases, parties often approach an advisory body: *Commissie van Aanbestedingsexperts*. This organization charges no fees and does not require parties to hire a lawyer. It provides a non-binding advice. Such an advice often forms the basis to ultimately resolve a conflict.

Various interviewees discuss mediation. There seems to be a consensus that over the course of the years many legal professionals participated in a mediation training. Two interviewees that participated in such training programs indicated that both lawyers and judges were very enthusiastic about this relatively new form of dispute resolution. As a result, there are many more trained mediators today than there were two decades ago. Mediation has become big. One interviewee indicated that the advantages of mediation might have been exaggerated. Nevertheless, the institution he works for resolved a number of commercial conflicts through mediation. Several other interviewees however have little experience with mediation.

One of the current trends in the area of dispute resolution concerns the rise of internet platforms. Numerous large internet companies set up their own platforms and complaint procedures to avoid and resolve disputes (i.e. e-bay, booking.com etc.). One interviewee explained that he has seen only a couple of low value consumer cases that have been resolved through complaint procedures of such large internet platform companies. These for instance concern cases in which a consumer booked a vacation that was cancelled because of corona travel restrictions. Interviewees believe that these recent developments have not (yet) really influenced cases in which the stakes exceed EUR 25,000. Developments like Fintech have a large potential, but their impact on litigation numbers is not yet discernible.

4.6. Potential Other Explanations

Interviewees raised a wide range of possible explanations for the decline of specific categories of cases. Some referred to rule changes as discussed above (see Chapter 2.6). One interviewee noted that public authorities implemented economic policies to counter and mitigate the effects of the banking crisis and now the corona crisis. They *inter alia* recently requested banks to cease the forced sale of houses, which resulted in a dramatic decline in the number of foreclosure cases in 2020. These measures are likely to have (had) a substantial impact.

We asked the interviewees whether the gradual introduction of collective redress explains part of the decline of incoming commercial cases. New mass litigation legislation seeks to avoid that courts have to decide hundreds or even thousands of more or less similar smaller cases on an individual basis. It may well be that this collective redress explains in part the decline in litigation numbers. Some interviewees mention the claims on interest rate derivatives *(rentederivaten)*. The sector itself sought to resolve these all at once by means of a *"uniform herstelkader"*. Such collective solutions may well have flattened the wave of court cases. At the same time, several interviewees indicate that forms of collective redress may have led to more litigation. After all, collective redress seeks to enhance access to justice in cases in which a large number of claimants have each suffered little damages. Without forms of collective redress, individual claimants would not have been willing to bear the relatively high litigation costs to bring these cases to court.

Collective actions do seem to be relatively common before the District Court and Court of Appeal in Amsterdam. Interviewees provide examples of cases in which damages are claimed that are purportedly suffered as a result of the "*diesel scandal*" or as a result of "*truck- and aviation cartels*". At the same time, such actions seem to be quite rare in most other District Courts. One judge – in another court – lamented that she had followed several courses on collective redress but had had no real opportunity to put the knowledge to good use. In many sectors of the economy, there seem to be hardly any examples of cases that can be resolved through collective redress mechanisms. Most interviewees believe that the introduction of new forms of collective redress has probably not had a quantitatively relevant overall impact on the number of new commercial court cases.

5

Causes of Change: Main Findings

5.1. Decline of Commercial Court Cases: Parties, Types, Sectors and Claim Value

The number of cases involving at least one legal persons has steeply declined. The volume of cases only involving natural persons also declined, but the decrease was less pronounced.

Different types of cases show a different pattern over time. Debt collection cases and bankruptcy cases are volatile over time. The volume of these cases first increased until 2010, before steeply declining during the last decade. Other types of cases, such as tort cases, are less volatile. These cases show a gradual decline over time. All types of cases have declined over the total period 2001-2020.

The data show that firms in the banking sector and insurance sector litigate far more often than those in other sectors of the economy. Our data further show that government organizations are quite often involved in civil litigation. Each year, banks, insurance companies and government organizations dominate the list with the top 20 litigators. Although there is a decline of litigation volumes across all sectors, we do see that litigation volumes are more volatile in some sectors, such as in particular the banking sector. This should come as no surprise as banks are often involved in loan collection cases *("verbruiksleen")*.

The volume of cases with relatively low claims is volatile. In the last decade, there has been a sharp decline of low value cases. The volume of high claim cases varies much less. The number of cases with a very high claim is even increasing. As a result, the median financial claim increased over time.

5.2. Macroeconomic Factors: Cyclical and Structural Effects

It is generally accepted that the volume of civil commercial cases is affected by exogenous economic and demographic variables such as the business cycle, economic growth, unemployment rate, population growth and interest rates (see Chapter 2.2). It thus seems at the very least likely that the relatively good state of the economy for over a decade can (in part) explain the recent decline of civil commercial court cases.

Some types of cases have contributed greatly to the initial rise and later decline of litigation volumes. This is especially the case for the highly volatile debt recovery cases and bankruptcy cases. It seems likely that many of these cases do not consider a genuine dispute about the validity of a civil claim. Often, these cases are about collecting an uncontested debt.[36] Such litigation often is the result of financial distress on the side of the debtor. We first observe an increase in these cases, followed by a steep decline over the last decade (Chapter 3.2). The volumes of such cases seem to be highly affected by the business cycle. Once economic conditions deteriorate, it seems likely that more natural persons and companies will experience financial distress and will be unable to pay outstanding debts. As a result, there will most likely be a rise in the volume of debt collection cases that could substantially affect the overall volume of commercial cases.

Other types of cases are less volatile, but we still observe a decline in most of them. A clear example concerns tort cases. The volume of tort cases decreased gradually over time. We assume tort cases are less sensitive to economic activity and less affected by the business cycle. The gradual decrease present in the data might be the product of structural changes within specific firms and sectors.

5.3. The Duration, Complexity and Costs of Litigation

Several researchers explain litigation volumes by focusing on the microeconomic cost benefit analysis made by prospective litigants (Chapter 2.3). Undue delay may deter prospective litigants from filing a civil commercial action. Similarly, high court fees or lawyer fees could make litigation less attractive and could explain a decline in the volume of cases.

36 An example concerns loan collection cases brought by banks. Interviewees indicate that many of these cases are straightforward and legal professionals need relatively little time to draft a writ to initiate litigation.

Interviewees often indicated that ordinary court litigation takes years and is unattractive to those seeking a swift solution for their problems. Some do indicate that undue delay has been a problem for decades. The administrative data indicate that the median time to disposition has slightly decreased over time (Chapter 3.6.1). Delay does not seem to be more common than before. It is conceivable however that in our modern economy, the swift resolution of disputes is considered more important than it was before.

There are indications that there has been a considerable and structural change with regards to the cost of litigation. Interviewees all agree that litigation is far more complex and costly than before. They all explain that parties involve more lawyers and draft lengthier submissions than they did before. Interviewees all agree on this trend but do seem to point at different underlying reasons to explain these observations. Some explain that parties involve more lawyers and draft lengthier submissions because of the vast increase of regulation. They also point out that case law is more readily digitally available. As a result, specialized lawyers will be hired that can and do cite many more legal authorities to argue their case. Others point at the increased digital availability of facts and evidence. This enables parties to provide a far more detailed factual account in their submissions and to submit far more factual exhibits (Chapter 4.3).

The observations of interviewees on the cost of litigation are consistent with existing theories and other research on e.g. the increased volume of written submissions and case files (Chapter 2.3). These observations are also consistent with the administrative data of the judiciary. The median claim value increased over time. The increased cost of litigation can explain why cases in the lower claim bands face the steepest decline in volume (Chapter 3.4). In those cases, the potential benefits no longer outweigh the (increased) cost of litigation.

5.4. The Early Resolution of Disputes

As discussed above, surveys indicate that natural persons seem to be involved in as many civil law disputes as they were in the past. A far smaller percentage of these disputes is ultimately brought to court (see Chapter 2.4). These data suggest that disputes in which natural persons are involved are more often left unresolved or are more often settled at an early stage.

Interviewees indicate that many major companies as well as law firms went through a process of specialization and professionalization. Experts that make a rational and well-informed cost benefit analysis are involved at an earlier point in time. Several companies that used to file large numbers of commercial (debt collection) cases have abandoned policies in which litigation was commenced as a matter of principle. These days, they generally first make an analysis whether litigation will ultimately be effective. It could for instance well be that it is unlikely that a favorable judgment could ever be successfully enforced against a debtor. In such cases, litigation will not be pursued however strong and viable the case may be.

Interviewees indicate that many large firms have implemented policies to avoid the escalation of potential disputes. They have for instance set up larger and better internal complaint departments to resolve potential disputes. Some companies are more aware than before of the potential reputation risks that arise if litigation is pursued. As a result, clear-cut cases are more often settled at an early stage (Chapter 4.4). This is to some extent confirmed by our data. We observe that the volume of cases in which the largest repeat players are involved is declining (see Chapter 3.3.1). We also observe that the number of cases brought by legal persons declined more than the number of cases brought by natural persons (Chapter 3).

Changes is (litigation) behavior of individuals or large firms may be linked to the perceived increase of complexity and costs. Whatever the cause may be, these behavioral changes could in part explain the structural decline of court cases between 2001 and 2020.

5.5. Alternative Dispute Resolution

Disputes that cannot be settled at a very early stage, can be resolved in different ways. Alternatives to litigation include traditional forms of arbitration or mediation. The same is true for recent modern forms of online dispute resolution through internet platforms. Government policies have consistently promoted alternative forms of dispute resolution. One hypothesis is that the court system is simply losing market share: litigants more often opt for other means of dispute resolution.

Alternative dispute resolution is far more important than it was two decades ago. For example, in family law matters, there is clear evidence on the increased use of mediation. With regards to high value commercial cases, the evidence is far less clear. Some interviewees suggest that alternative dispute resolution has become far more important. At the same time, the scarcely available data reveal that several large

arbitration institutions also seem to cope with a decline in the volume of new cases. Alternative dispute resolution may have grown over the years, but the existing data, research and the interviews suggest that its impact on the overall volume of commercial civil court cases has most likely been limited (Chapters 2.5 and 4.5).

5.6. Other Explanations

5.6.1. Rule Changes on the Competence Limits

We have discussed earlier research that has evaluated the impact of different government measures on the number of incoming commercial cases above (see Chapter 2.6). Many of these measures have probably had an insignificant impact on high value cases. Previous research does suggest however that this may be different for the rule that changed the competence limit from EUR 5,000 to EUR 25,000. Some interviewees confirm that larger firms often opt to collect only part of the outstanding debt: the first EUR 25,000. These firms do so in order to avoid lawyer costs (see Chapter 4.3.3). It seems unlikely however that such strategic behavior by itself could explain the prolonged decline of debt collection cases way after 2011. After all, the number of low claim debt collection cases brought before the cantonal department of the courts also steeply declined over the recent years.

5.6.2. Collective Redress

As discussed above, the legislator has gradually introduced forms of collective redress in 1994, 2005 and 2019. There is little doubt that collective redress is far more prevalent than before. Some interviewees emphasize that litigation often comes in "waves". Examples include cases relating to specific types of complex financial products *(aandelenlease, belleggingsverzekering or rentederivaten)*. It is likely that new forms of collective redress can 'flatten the curve', as is illustrated by the data on the cases concerning Dexia Bank Nederland (Chapter 3.6.2). Collective redress can explain a decline in the volume of court cases. At the same time, collective redress may very well resolve disputes that otherwise would not have been brought to court at all. An example of the latter could be the collective settlement agreement concluded by Shell Petroleum (Chapter 3.6.2). The administrative data do not enable us to measure the precise impact of new legislation and practices in this area. Interviewees have the impression is that collective redress has grown, but that it has only had limited impact on the overall decline of the volume of commercial court cases.

5.6.3. The Rise of the Platform Economy

Structural change in the volume of disputes may be brought about by technological developments and their impact on economic arrangements. As discussed above, transactions through internet platforms could decrease the need for public dispute resolution mechanisms. Existing literature suggests that such platforms can be very successful to avoid and resolve disputes in an efficient manner. Our data do not enable us to test the hypothesis that technological and economic developments have affected litigation volumes. As discussed above, the interviews suggest that low value claims are increasingly resolved though modern online mechanisms. Interviewees, however, have indicated that internet platforms have not yet significantly impacted high value transactions and disputes. As a result, it seems unlikely that the rise of internet platforms caused the steep decline of commercial cases. Some of the interviewees do believe that this may be different in the future.

5.7. Implications

This research report answers descriptive and explanatory questions on the decline of civil commercial cases. It does not seek to answer the normative question whether the decline of civil commercial cases is desirable or undesirable. Nor does it discuss the question whether the judiciary should adapt its policies. To answer these questions adequately, further research would be needed. Our data do enable us to make some general observations.

The first observation is that a decline in litigation numbers as such does not necessarily mean that the role of the judiciary in the economy is less important than it was before. Our research shows that the median and average claim value have increased significantly. This suggests that the role of the commercial section of the courts changed from deciding many low value cases to deciding fewer high value cases.

The interviews that we conducted do indicate that the (structural) decline of litigation volumes had both positive and negative implications. It is a positive development if professional organizations make a better cost-benefit analysis before they commence litigation. It is equally positive if large firms, legal insurance companies or legal professionals promote the early resolution of (potential) disputes. After all, it is widely accepted that it is desirable if disputes are resolved fairly without judicial intervention. At the same time, interviewees do express worries about the high costs of litigation. These costs effectively deter prospective litigants to go to court in cases in which the claim is lower than EUR 100,000. Excessive costs do seem to have a negative impact on access to justice for both natural persons and (small) firms.

Tables

Table A - Volume of Cases with a "Not applicable" Type

Year	Volume
2001	3,844
2002	3,421
2003	3,099
2004	3,636
2005	3,993
2006	4,150
2007	3,884
2008	4,131
2009	4,166
2010	3,987
2011	3,875
2012	4,058
2013	3,452
2014	3,164
2015	3,293
2016	3,045
2017	3,026
2018	2,148
2019	2,566
2020	3,770

Table B - Person composition per Year - Dataset 1

	Summons				Requests			
Plaintiff	**Natural Person**		**Legal Person**		**Natural Person**		**Legal Person**	
Defendant	**Natural Person**	**Legal Person**	**Natural Person**	**Legal Person**	**Natural Person**	**Legal Person**	**Natural Person**	**Legal Person**
Year								
2001	6,436	4,138	5,537	7,651	4,607	2,748	8,526	9,746
2002	5,670	3,797	5,086	7,189	4,290	2,638	8,203	9,801
2003	5,800	3,864	4,860	7,051	4,388	3,320	9,381	10,795
2004	5,802	4,055	5,207	7,230	4,318	3,334	10,064	10,463
2005	5,854	4,035	5,332	6,791	4,353	3,275	10,819	11,343
2006	6,182	4,072	5,368	6,671	4,437	3,191	10,528	10,056
2007	6,219	3,997	4,994	6,848	4,210	3,417	10,057	9,892
2008	6,313	4,209	5,008	7,253	4,174	3,457	9,179	9,514
2009	6,161	3,970	5,931	7,964	3,985	4,192	9,798	12,355
2010	6,241	3,785	6,008	7,205	4,167	4,274	9,118	10,644
2011	6,002	3,601	4,646	5,939	4,091	4,252	8,084	8,682
2012	5,725	3,346	3,689	5,609	3,579	4,119	6,865	8,112
2013	5,738	3,210	3,042	5,295	3,394	4,655	6,438	8,088
2014	5,094	3,244	2,872	4,948	3,527	4,497	5,980	7,082
2015	4,904	3,291	2,476	4,527	3,034	4,178	6,178	6,574
2016	5,081	3,116	2,301	4,442	2,490	4,324	5,978	5,933
2017	4,720	2,650	2,125	4,310	2,890	3,945	4,584	5,554
2018	4,078	2,414	1,728	3,677	2,371	3,356	3,852	5,307
2019	3,947	2,273	1,665	3,622	2,395	3,433	3,730	5,484
2020	4,230	2,088	1,602	3,904	2,353	3,214	3,070	4,794
Total	**110,197**	**69,155**	**79,477**	**118,126**	**73,053**	**73,819**	**150,432**	**170,219**

Annex

II

List of Companies

List of sectors and companies in each sector:

Food: Sligro, Ahold (Albert Heijn), Heineken, Unilever, Jumbo, Campina, Friesland Foods, Douwe Egberts, Cosun, Aviko, Avebe, Iglo Mora, Heiploeg, Plukon, Numico/Danone, Valk Holding, De Vegetarische Slager, Grolsch, Nutreco, Witte Molen, Vion, Nidera, CSM, Hoogwegt, AB Mauri, Bunge Loders Croklaan, Cargill, Celavita, Dr. Oetker, Euroma, Hochwald, Intersnack, Intertaste, Koopmans Meel, Meneba, Marine Harvest Sterk, Mars, Nestle, Nizo Food Research, Olam, Poppies, Qlip, Quaker Oats, Struik Food, Sillevoldt Rijst, Refresco, Saturn Petcare, Tate & Lyle, Verstegen Spices & Sauces, Zaanlandse Olieraffinaderij, Agrifirm, Laurus.

Manufacture: Philips, AZKO, Unilever, ASML, DSM, NXP, Arcelor Mittal, Signify, VDL, Sikkens Verkoop, Industria Technische Verlichting, Alberto-Culver, Spectranetics. Accell, ASM International, Beter Bed, C&A, Dico, Draka, Hunkemöller, Hunter Douglas, Neways, Oce, Spyker Cars, Koninklijke Ten Cate, TomTom, Viking Schaatsenfabriek, Wavin, LyondellBasell, BMW, Jongeneel.

Finance: ABN AMRO, ING, Rabobank, Fortis, Finata, Postbank, SNS Bank, International Card Services, IDM Bank, Ribank, Direktbank, Dexia, Defam Financieringen, Ob, KBC, Staalbankiers, Argenta Spaarbank, BNP Paribas, Quion 9, Moneyou, Alpha Credit, Credivance, Oosteroever, BinckBank, KAS, Optiver, De Volksbank, Maxeda, IFN Finance, MNF Bank, VSB International, NMB Bank, Arenda, PSA Finance, CMV Bank, Vola, Friesland Bank, Comfort, Graydon, De Lage Landen, Voordeelbank, Mahuko, Paysquare, Levob, FGH Bank, Bank of Scotland, Hoist.

Construction: Ballast Nedam, Boskalis, van Oord, Heijmans, Strukton, Dure Vermeer, van Wijnen, BAM Groep, Volker Wessels, Fugro, TBI Holdings, Villaforte, AM Vastgoedontwikkeling, Wijs Beheer, VTN, 2Build, Redubel, Volker Bouwmaatschappij, HBG Civiel, Hollandsche Beton, Interbeton, HEC Holland, HABO GWW, Schakel & Schrale, De Ruiter Boringen en Bemalingen, Nelis Project, Ten Brinke, Aan de Stegge, Joh. Mourik & Co., Janssen de Jong, Van Wanrooij, Trebbe, Hurks, M.J. de Nijs en zonen, Friso, De Vries en Verburg, KlokHolding, ASK Romein, Plegt-Vos, Gebr. Van de Ven, Heembouw, Schagen, Nijhuis, Coen Hagedoorn, HSB Holding, Dijkstra Draisma, Hemubo, Vastbouw International, Giesbers, Van 't Hek, GMB Holding, VB Groep, Ter Steege, Sprangers, Jorritsma Beheer, Fraanje Beheer, Prins Aanneming, Thunnissen, Baggerbedrijf De Boer, ABB Bouwgroep, Dekker, Arcadis, Sedijko.

IT/Telecoms: KPN, IBM, Capgemini, Centric, Hewllet Packard, Atos, Microsoft, Getronics, Argeweb, Chello, Google, Edutel, RoutIT, Call-2, Qi ict, Reggefiber, Solcon, XS4ALL, Yes Telecom, AFAS, CTAC, Exact Software, HITT, Logica, Qurius, Royal Imtech, Autodesk.

Transport/Logistics: ECT Delta, Havenbedrijf Rotterdam, Maersk, DHL, TNT, TPG, Kuehne + Nagel, DB Schenker, XPO Supply, UPS SCS, Bakker Logistiek, DSV, Wim Bosman, Ceva Logistics, Vopak, Rhenus, KLM, Leaseplan Nederland, Pon Holdings, Nederlandse Spoorwegen, PostNL, Transavia, Martinair, Smit.

Energy: Shell, Essent, Nuon, Vattenfall, Liander, Eneco, Engie, Energiedirect, Oxxio, Greenchoice, Vitol, Gasterra, Stedin, Veka LNG, SHV, SBM Offshore, Enexis.

Communication: KPN, Ziggo, Ben Nederland, Telefort, Tele2, Vodafone, T-Mobile.

(Health) Insurance: Achmea, DSW, Aevitae, Menzis, ONVZ, VGZ, Zorg Zilveren Kruis, FBTO, Nationale Nederlanden, Aegon, ASR Nederland, CZ (Zorg), Delta Lloyd, Allianz, ANWB, AON Nederland, Centraal Beheer, Klaverblad, Reaal, Unive, Anderzorg, De Frielsand Zorgverzekeraar, De Amersfoortse, ASR, Azivo, De Goudse, VvAA, Unigarant, Interpolis, ZLM, ACE European Group, Agriver, AIG Europe, Anker Rechtshulp, Amlin, Ansvar, ARAG, Argenta Assuranties, Atradius, Avipol, AWP, AXA, Baloise, Befrank, Bos Fruit Verzekeringen, Bovemij, Burcht, Centramed, China Taiping, Chubb Insurance, CNA Insurance, Conservatrix, Credit Life AG, DAS Nederlandse, De Laatste Eer, DELA Natura, Donatus, EFO Paardenverzekering, EOC Schepenverzekering, Euler Hermes, Gartenbau, Giethoorn OBV, Hagelunie, HDI Global, Hiscox, De Hoop, IF P&C, JUWON, Klaverblad, LegalShared,

Leidsche Verzekering, Lifetri, Maas Lloyd, Markel, MediRisk, MERCURIUS Schadeverzekering, Midglas, Monuta, MSIG, MUNIS, Verzekeringsbedrijf Groot Amsterdam (VGA), Nederlandse Rechtsbijstand Stichting, Noordhollandsche van 1816, De Onderlinge van 1719, Achterhoek, OOM, OVM, Patronale, Proteq, The Prudential Assurance Company, Quantum Leben, Rheinland, Rijn en Aar, Robein Leven, RSA Nederland, SAZAS, Scildon, SOM, Squarelife, SRK, SRLEV, ZLM, VvAA, Tokio Marine, TVM, Twenthe, UVM, De Vereende, Vereinigte Hagel, VIVAT, Waard, Yarden, Zevenwouden, Zurich Insurance, Zwitserleven, Hippo Zorg, AMEV, Royal Nederland, Schepen Onderlinge Nederland.

Real Estate: Rodamco, Eurocommercial, Wereldhave, Bever, Nieuwe Steen, Woningcorporaties, Amstelland Vastgoed, Corio, Keij & Stefels, Heule, Dijkhuis, Libra International.

National Government: *Staat der Nederlanden* (The Dutch State).

Local Government: *Gemeenten* (Municipalities).

Accountacy/Consultancy: Deloitte, Ernst and Young, PwC, KPMG, BDO, Flynth, Accon AVM, Mazars, Alfa, De jong & Laan, ABAB, Grant Thornton, DRV, Countus, Crowe Horwath Foederer, MTH, Witlox van den Boomen, Schipper, RSM, van Oers, KroeseWevers, HLB van Daal & Partners, Koenen en Co, CROP, Visser & Visser, PKF Wallast, Verstegen, Ruitenburg, Bol.

Debt Collectors: Flanderijn & van Eck, Janssen & Janssen, Van Den Bergh & Partners, GGN Mastering, Van Arkel, Syncasso.

Multimedia: Vereniging Buma, Stichting Brein, Nederlandse Publieke Omroep, Persgroep, De Volkskrant, Algemeen Dagblad, Trouw, Het Parool, Dagblad Tubantia, De Gelderlander, Brabants Dagblad, Talpa Network, Holland Media, De Telegraaf, Sanoma Media, Sena, Stemra, De Thuiskopie.

Interview Letter

Geachte [naam],

In opdracht van de afdeling Strategie van de Raad van de Rechtspraak wordt onderzoek gedaan naar de daling van de instroom van handelszaken. Dit onderzoek wordt uitgevoerd door drs. Diogo Leitao, prof. Wolter Hassink, prof. Frans van Dijk en ondergetekende (Universiteit Utrecht). Ik ontving uw naam en contactgegevens van mw. Femke Doornbos. Ik begreep van haar dat u bereid zou zijn medewerking te verlenen aan het kwalitatieve deel van dat onderzoek. Dank daarvoor.

Sinds een aantal jaren is sprake van een forse daling van het aantal rechtszaken. Dat geldt ook voor de civiele handelszaken met een belang van meer dan 25.000 euro (bijlage 1). Over de hieraan ten grondslag liggende economische processen en/of oorzaken is weinig bekend. Het onderzoeksproject strekt ertoe inzicht te verkrijgen in de oorzaken van de daling zodat bepaald kan worden of een beleidsmatige reactie wenselijk en mogelijk is.

Het onderzoek is empirisch van aard. Om inzichten te verkrijgen in de daling van het aantal handelszaken en de mogelijke oorzaken daarvan wordt onder andere gebruik gemaakt van zaaksgegevens over een periode van circa twintig jaar die zijn verkregen via het landelijk dienstencentrum voor de rechtspraak. Naast kwantitatief empirisch onderzoek bestaat de wens interviews te houden met mensen uit de rechtspraktijk. Het gaat daarbij onder andere om bedrijfsjuristen, advocaten, rechters, deurwaarders etc. Wij hebben daarnaast ook een bijzondere interesse om te spreken met iemand [toelichting ten aanzien van ontvanger].

Wij zouden u op basis van een semi-gestructureerde vragenlijst gaarne vragen voorleggen over de ontwikkelingen die zich in hun waarneming al dan niet hebben voorgedaan gedurende de laatste twintig jaar. Het gaat daarbij om algemene vragen over de volgende onderwerpen: (i) het aantal rechtszaken (zijn er meer of minder geschillen, wordt op een andere manier zaken gedaan, wordt meer of minder waarde gehecht aan reputatie en/of werkrelaties etc.), (ii) de vraag hoe geschillen en/of betalingsproblemen worden opgelost (door een schikking, door een gang naar de rechter, schuldsaneringsmechanismen, door middel van mediation, arbitrage etc.), (iii) de complexiteit van geschillen die aan de rechter worden voorgelegd (zijn er ontwikkelingen ten aanzien van de complexiteit, aard en het belang van zaken die aan de rechter worden voorgelegd) en (iv) de vraag of sprake is van verschuivingen ten aanzien van de financiering van geschiloplossing. Deze vragen strekken ertoe om van u te vernemen wat er veranderd is en wat in uw ogen kan verklaren waarom bepaalde categorieën van zaken meer of minder aan de rechter worden voorgelegd.

Wij maken van ieder interview een kort zakelijk verslag waarvan wij u desgewenst een exemplaar voor commentaar toesturen. De interviews zullen voor geen ander doel worden gebruikt dan het verrichten van het onderzoek. Bij de verwerking en analyse van de interviews zal ervoor worden zorggedragen dat antwoorden uiteindelijk niet te herleiden zullen zijn tot specifieke personen. Desgewenst kunnen wij uw naam noemen aan het eind van het rapport en/of kunnen over de verwerking nadere afspraken worden gemaakt.

Wij staan uiteraard tot uw beschikking indien u naar aanleiding van deze brief vragen over het onderzoek heeft.

Wij zien ernaar uit elkaar te spreken.

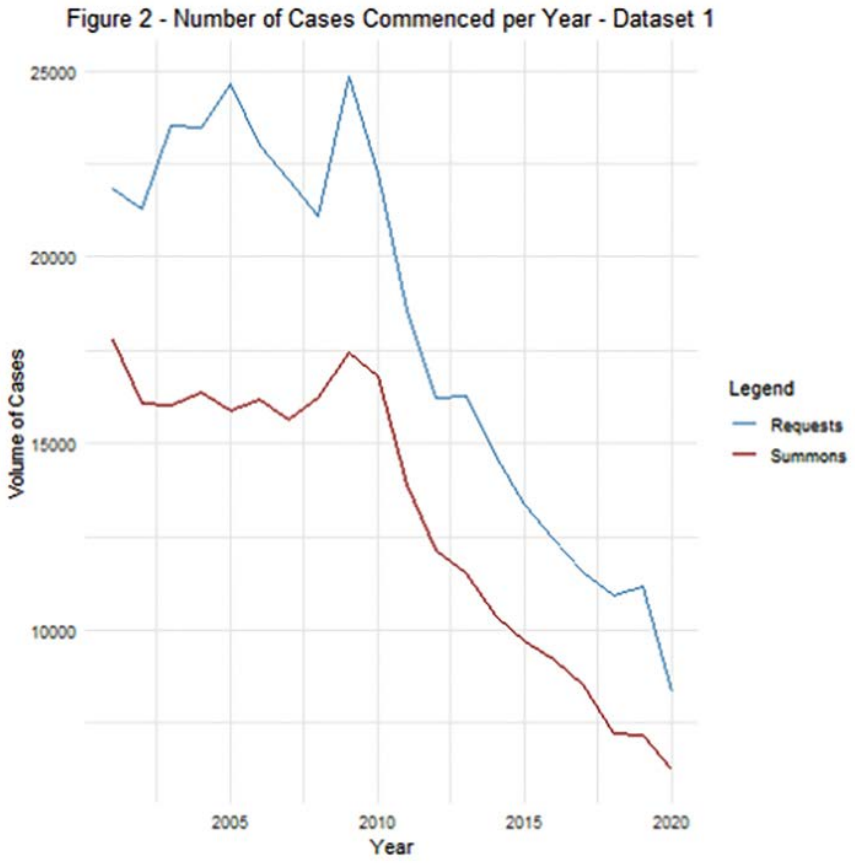
Met vriendelijke groet,

Mede namens Frans van Dijk,

Remme Verkerk

Bijlage 1

Grafiek met de aantallen handelszaken in Nederland. Het betreft een selectie van handelszaken met een belang van meer dan EUR 25.000.



Annex

IV

List of Interview Questions

Semi-gestructureerde vragenlijst daling aantal handelszaken

Introductie

- Toelichting op het onderzoek
- Opname van het gesprek
- Vertrouwelijke behandeling van gegevens, onherleidbare verwerking
- We maken een zakelijk gespreksverslag dat desgewenst toesturen
- Wij willen graag met uw spreken omdat …
- Ziet u zelf een daling of stijging van het aantal handelszaken?

Vragen over het ontstaan van geschillen

1. Ziet u belangrijke wijzigingen ten aanzien van de wijze waarop marktpartijen zakendoen en de voorwaarden waaronder zij contracteren? Wordt bijvoorbeeld meer of minder gebruik gemaakt van standaardcontracten? Worden andere afspraken gemaakt over betaling, garanties, zekerheden. Hebben deze naar uw inschatting invloed op het aantal geschillen dat ontstaat?

2. Ziet u belangrijke ontwikkelingen ten aanzien van de wijze waarop marktpartijen opereren? Bijvoorbeeld het belang dat zij hechten aan hun reputatie of de werkrelaties? Hebben deze naar uw inschatting invloed op het aantal geschillen dat ontstaat?

3. Ziet u belangrijke ontwikkelingen ten aanzien van de mogelijkheden vooraf een inschatting te maken van de kansen in een eventuele procedure? Is er meer of minder onzekerheid ten aanzien van het recht en/of de feiten dan tien à vijftien jaar geleden?

Vragen over alternatieven voor de overheidsrechter

4. Geschillen kunnen worden voorgelegd aan de rechter. Zij kunnen ook worden geschikt of voorgelegd aan een mediator of arbiter. Ziet u op dit punt ontwikkelingen of veranderingen de laatste tien à vijftien jaar?

5. Geschillen kunnen worden opgelost door online platforms die transacties faciliteren, zoals E-bay of Marktplaats. Heeft u ervaring met dergelijke methoden? Ziet u op dit punt ontwikkelingen of veranderingen de laatste tien à vijftien jaar?

6. Min of meer vergelijkbare geschillen kunnen 'collectief' worden opgelost door convenanten, collectieve schikkingen of collectieve acties. Ziet u op dit punt ontwikkelingen of veranderingen de laatste tien à vijftien jaar?

Vragen over zaken die aan de rechter worden voorgelegd

7. Wat kunt u zeggen over geschillen die vandaag aan de rechter worden voorgelegd? In welke mate zijn de zaken waarbij u betrokken bent anders dan zaken die bijvoorbeeld vijftien jaar geleden aan de rechter zijn voorgelegd?

8. Ziet u ontwikkelingen ten aanzien van de aard en soort van de geschillen die aan de rechter worden voorgelegd?

9. Ziet u ontwikkelingen ten aanzien van de complexiteit, de omvang van het dossier of het financiële belang van de geschillen die aan de rechter worden voorgelegd?

10. Ziet u ontwikkelingen ten aanzien van de (weder)partijen die in rechte optreden? Wordt meer of minder geprocedeerd tegen natuurlijke personen, kleine ondernemingen, grote ondernemingen, meerdere gedaagden tegelijkertijd?

11. Ziet u veranderingen in procesgedrag? Wordt bijvoorbeeld meer of minder aangestuurd op vertraging?

12. Ziet u ontwikkelingen op het terrein van de juridische bijstand, bijv. ten aanzien van de inzet van advocaten, rechtsbijstandverzekeraars of gefinancierde rechtsbijstand?

13. Hebt u de indruk dat het meer of minder aantrekkelijk wordt om zaken aan de rechter voor te leggen? Bijvoorbeeld ten aanzien van doorlooptijden of kosten?

Afsluitende vragen over de mogelijke oorzaken van veranderingen

14. Heeft u de indruk dat de aantallen zaken die aan de rechter worden voorgelegd stabiel zijn of juist sterk fluctueren? Kunt u dat wellicht toelichten aan de hand van bepaalde soort zaken waarmee u ervaring heeft?

15. Wat ziet u als belangrijke mogelijke verklaringen van een toe- of afname van het aantal handelszaken dat aan de rechter wordt voorgelegd?

16. Heeft u nog overige op- of aanmerkingen?

Annex

V

Case types Included

Table C - Selected Types

Type Name	Frequency	Include
schuldsanering natuurlijke personen	358138	yes
faillissement	323140	yes
verlof verhaalsbeslag	303050	yes
Niet van toepassing	121730	partially
(toelating) beëdiging	87828	no
onrechtmatige daad	84764	yes
geldvordering	58818	yes
overige familierecht	58448	no
opdracht	53768	yes
koop en ruil	49883	yes
verdeling gemeenschap	49677	partially
exequatur/ten uitvoerlegging	47950	yes
overige procesrecht	38445	no
verbruikleen (geldlening)	38256	yes
verlof beslag afgifte/levering	32582	yes
(doorhaling) te boek gestelde schepen	29580	no
huurrecht	28820	yes
executiegeschil	21661	yes
overige overige verzoekschrift inzake	19044	no
overige bijzondere overeenkomst	19004	yes
goedk. verklaring hypoth. (art.3:270BW)	18115	yes

Type Name	Frequency	Include
voorlopig getuigenverhoor	17800	yes
opheffing conservatoir beslag	16807	yes
Gerechtsdeurwaarderswet	14467	yes
zuivering (art. 3:273 BW)	14206	yes
arbeidsrecht	14175	yes
verlof inroepen huurbeding (art.3:264BW)	13593	yes
onderhand. verk.hypotheekh. (art.3:268BW)	11492	yes
surséance van betaling	10817	yes
nakoming overeenkomst	10262	yes
voorlopig deskundigenonderzoek	9583	yes
dwangbevel	9240	no
betwisting vordering (renvooizaak)	9191	yes
verklaring voor recht	8760	yes
Landinrichtingswet (ruilverkaveling)	8466	yes
benoeming	8388	no
rechtspersoon	7848	yes
aanneming van werk/bouwrecht	7803	yes
beperkte rechten	7409	yes
bijzonder verlof (verkorte termijn)	7287	no
wraking	6308	no

Type Name	Frequency	Include
hoger beroep vonnis kantonrechter	6200	no
burenrecht	5858	no
verbint. uit ander bron dan od of ovkmst	5857	yes
eigendomsrecht	5785	yes
auteursrecht	5713	yes
overige verbintenissenrecht	5688	yes
verzet WTBZ/WGBZ	5486	no
merkenrecht	5132	yes
rogatoire commissie	4818	no
dekking	4320	yes
wegens gewichtige redenen	3883	yes
overige verzekeringsrecht	3802	yes
Europees Betalingsbevel	3649	yes
overige faillissementsrecht	3576	yes
ander beslaggeschil	3491	yes
overige rechtspersonenrecht	3247	yes
deelgeschillenproc letselsch/ overlijden	3025	yes
pand en hypotheek	2815	yes
schadestaat (art. 612 Rv)	2790	yes
overige erfrecht	2761	no
bestuurdersaansprakelijkheid	2729	yes
niet bijzondere overeenkomst	2709	yes
huwelijkse voorwaarden art. 1:119 BW	2678	no
overige verzet dwangbevel	2598	yes
maatschap/v.o.f.	2470	yes
goederenvervoer	2462	yes
Wet op het notarisambt	2411	yes
borgtocht	2142	yes
octrooirecht	2139	yes
tijdelijk huisverbod	2075	no
Onteigeningswet	2064	yes
verkrijging erfenis	1730	no
verklaringsprocedure	1611	yes
verzet vonnis rechtbank	1592	no
ontbinding overeenkomst	1571	yes

Type Name	Frequency	Include
overeenkomst geneeskundige behandeling	1569	yes
handelsnaam	1558	yes
ontbinding rechtspersoon	1444	yes
Europese bewijsverordening	1429	no
straat- en contactverbod	1299	no
gerechtelijke bewaring (afzonderlijk)	1281	yes
fiscus als eiser	1280	yes
overdracht goederen	1276	yes
afgifte tweede grosse	1214	no
overige intellectuele eigendom	1152	yes
uitvoerbaar bij voorraad	1116	no
machtiging te gelde maken (art.3:174 BW)	1084	yes
voornaamswijziging	1077	no
vernietiging rechtshandeling (pauliana)	1036	yes
overige vermogensrecht	1034	yes
rangregeling	1031	yes
dading	953	yes
schadevergoeding	952	yes
fiscaal	915	yes
Wet bescherming persoonsgegevens	904	no
arbitrage/bindend advies	866	yes
overige zakelijke rechten	851	yes
schadevergoeding nader op te maken	832	yes
bruikleen	822	yes
Wet Voorkeursrecht Gemeenten	806	yes
Rijkswet Nederlanderschap	756	no
afw. wijze verk.pandhouder (art.3:251BW)	741	yes
rekening en verantwoording (art. 771 Rv)	721	yes
schadeverg. nader op te maken bij staat	647	yes
vernietiging rechtshandeling	599	yes
opheffing maritaal beslag	581	no

Type Name	Frequency	Include
modellenrecht	556	yes
WILG	550	yes
studiefinanciering/cursusgeld	541	yes
verkeerde opgave/verzwijging	519	yes
overige Europees recht	512	yes
zeerecht	497	yes
ontslag bestuurder	496	yes
vervoersrecht algemeen	476	yes
akte burgerlijke stand	452	no
onvoltooide levering/ onbetaalde facturen	446	yes
Alg. verordening gegevensbescherming	439	no
aanv./doorh./verbet.akte burg.st.1:24 BW	434	no
boedelbeschrijving	427	yes
reële executie ex art. 3:296 e.v. BW	381	yes
huurkoop	372	yes
verkoop buitenlands zeeschip (575 RV)	361	yes
verzet kort geding	304	no
bewaarneming	295	yes
fraude	288	yes
verrekening	282	yes
overige fiscaal recht	255	yes
mededinging	247	yes
overige huurzaak	231	yes
ex Algemene Bijstandswet (ABW)	221	yes
scheiding c.a. (oud)	214	no
klaagschrift justitiële documentatie	203	no
Zeerecht	201	yes
inbreuk communautair recht	182	yes
nietigheid uiterste wil	152	no
binnenvaartrecht	149	yes
Kadasterwet	145	yes
overige terugvordering bijstand (ABW)	145	yes

Type Name	Frequency	Include
reisovereenkomst	144	yes
bewind	136	no
kwekersrecht	136	yes
Paspoortwet	136	no
overige verkeersmiddelen en vervoer	133	yes
vaderschapsactie (oud)	133	no
vruchtgebruik	130	yes
pand	128	yes
volmacht art. 3:60 BW	127	yes
personenvervoer	122	yes
hypotheek	116	yes
ontkenning wettigheid (oud)	110	no
proceskosten	107	no
Wet Gemeentelijke Basisadministratie	97	no
uitgave-overeenkomst	90	yes
schenking	84	yes
aansprakelijkheid commissaris	79	yes
vernietiging boedelverdeling	75	yes
erkenning vaderschap	73	no
wegens gewichtige redenen + WOR	73	yes
bevelschrift nasalaris	66	no
wegvervoersrecht	61	yes
koop op afbetaling	57	yes
zaak ex Huurprijzenwet	56	yes
vaderschapsaktie	53	no
afkoelingsperiode	51	yes
WHOA	51	yes
wijziging geslacht in akte	48	no
Wet registratie politiegegevens	46	no
zaak ex Huurwet	46	yes
rechtsvermoeden van overlijden	40	no
overige ondernemingsrecht	38	yes
bodemrecht fiscus	26	yes
bodemprocedure tijdelijk huisverbod	19	no
provisionele bewindvoerder	19	no

Type Name	Frequency	Include
massaschade zaak	16	yes
verzoeken o.g.v. WOR	16	yes
bijzonder curator	14	no
overige huwelijk	14	no
verzet beschikking gemeente	13	yes
echtscheiding	12	no
ontkenning wettig vaderschap	11	no
huishoudgeld art. 1:84 BW	10	no
onderbewindstelling	10	no
subsidie/restitutie	10	yes
Wet Toezicht verzekeringsbedrijf 1993	10	yes
overige scheiding c.a.	9	no
verklaring van overlijden	9	no
verlenging ots	9	no
vernietiging erkenning vaderschap	9	no
opheffing ots	8	no
achternaamswijziging	7	no
doorh. akte Register Huwelijk & Echtsch.	7	no
homologatie van akkoord	7	yes
omgang	7	no
wijziging verhaalsbedrag	7	yes
belanghebbenden	6	no
curator	6	no
opheffing gemeenschap van goederen	6	no
partnerschapsvoorwaarden	6	no
adoptie	5	no
afwijkende bedingen ex art. 7A:1629 BW	5	yes
conflictbehandeling	5	no
gezag door één ouder	5	no
hersteluitspraak	5	no
overige invordering ex Wet Bejaardenoord	5	no
verzoek tot ots	5	no

Type Name	Frequency	Include
ontbinding huwelijk na sch.v.t.en bed	4	no
overige ondertoezichtstelling	4	no
overige verkeersmiddelen	4	no
uithuisplaatsing (uhp)	4	no
verlenging ots/uhp	4	no
formele verschoning	3	no
gezamenlijk ouderlijk gezag	3	no
heffing	3	no
inbewaringstelling	3	no
ondercuratelestelling	3	no
paspoortwet	3	no
voogdij/toeziende voogdij	3	no
ex Wet Werk en Bijstand (WWB)	2	no
kinderbijdrage minderjarige(n)	2	no
overige curatele	2	no
overige gezag en omgang	2	no
overige levensonderhoud	2	no
overige ontbinding partnerschap	2	no
pensioenverevening (afzonderlijk)	2	no
uitoefening ouderlijk gezag	2	no
voorl. voorzieningen, afzonderlijk verz.	2	no
voorlopige maatregel tot ots	2	no
Belemmeringenwet privaatrecht	1	no
hoofdverblijfplaats	1	no
mentorschap	1	no
overige registratie partnerschap	1	no
rechterlijke bestuursopdr. ex art.1:91 BW	1	no
scheiding van tafel en bed	1	no
stiefouderadoptie	1	no
vaststellen, t.a.v.	1	no
vernietiging rechtshandel. ex art.1:89 BW	1	no
voorlopige machtiging	1	no
wijzigen, t.a.v.	1	no

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