Innovating paths to justice

June 2015
ILAG Edinburgh

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Innovating paths to justice

• Why innovation?
• What to innovate?
• Policymaking for innovation?
Listening for justice needs...

Code of Conduct for Handling Personal Injury Claims

Maurits Barendrecht, Peter Kamminga and Corry van Zeeland
In cooperation with Janneke van der Linden and Sabrina van Willigenburg
Access to justice happens here ...

Neutral third party

Norms Procedure

Accountability

Complainant

Defendant

Coordination, negotiation
Fair court decisions ...
(Eurobarometer Justice 2013)

Q5.3. The civil and commercial courts are in charge of disputes, such as those concerning contracts or insolvency proceedings. From what you know, how would you rate the justice system in (OUR COUNTRY) when dealing with civil and commercial affairs on each of the following aspects? Would you say it is very good, fairly good, fairly bad or very bad?

Fairness of judgements

<table>
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<th>Country</th>
<th>Total ‘Good’</th>
<th>Total ‘Bad’</th>
<th>Don’t know</th>
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But ... unmet needs in process divorce/separation
(Average 2.81 on scale 1 to 5)

10 dimensions justice (3 procedural, 4 outcome, 3 accessibility)

41 questions. To what extent ....? (scale 1-5)

Survey 4862 people +18 Ipsos Internet panel

High score is positive, so time, money spent, stress: high score = good access
Legal aid helps
Some trends

1. Information, advice, support

2. Help with negotiation and many others ...

3. Litigation

80% solutions

80% budget
Hearings, Reports, Adjournments

**English Child**

Protection Order

Many lawyers £15,000 in legal aid

DCA Review 2006

Accountability

Coordination, negotiation
Dutch OTS procedure

7 points €735

Costs differ factor 10/15 per country for same problem
Procedural change?

1. Courts lack vision, power to change rules and incentives to innovate traditional procedures

2. Commissions, tribunals, ombudsmen tend to become legalistic as well

3. Lack of sustainable business models

See examples: Access to Justice Arrangements, Productivity Commission, 2014
Why innovate procedures? They are the problem

• Key for overall user experience and fair outcomes in negotiations
• 80% costs legal aid
• Resist innovation

Procedure is trialogue
What do you think your children will need in the coming years to be stable and happy?

To be stable and happy in the coming years I think my children will need...
You have one child who is younger than 18 years

For your child you are going to make agreements regarding when he/she will stay at which parents place.

What are your initial ideas for this? 🟢

**At father’s place**

Children habitually live at their father’s place and visit the mother regularly.

**At mother’s place**

Children habitually live at their mother’s place and visit the father regularly.

**Co-parenting**

Children stay at their mother’s and father’s place equally.

**Other**

My initial idea is not featured.
1. Getting the intake right

• Most procedures now
  – Complaint-claim < - > denial-defence-counterclaim
  – Reinforces destructive interaction pattern in relationships
  – Stimulates extreme claims/offers and escalation
  – Enables adjudicators to give yes or no answers

• Rechtwijzer approach
  – Issues to address > tell your interests > first ideas solutions
  – Each party independently, match answers
  – Stimulates cooperation and problemsolving
  – Enables adjudicators to decide open issues
## Visitation

**Work together on a good & stable future for you children**

We find it important that our children have a stable living situation. That is why we agree that our children...

<table>
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<th>Will live at</th>
<th>Rachel</th>
<th>She will visit</th>
<th>once every 14 days. This takes place in the</th>
<th>weeks. The weekend starts on Friday afternoon at</th>
<th>and ends on Sunday afternoon at</th>
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**Agreed**

**Mediation**

**Decision**

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### Nicholas

I find it of importance that Kimberly does not have to travel too much. How do you see that?
Separation plan of Nicholas and Rachel

A GOOD FUTURE FOR KIMBERLY

Visiting arrangements and living situation for our children
Kimberly will go to Nicholas during the weekend once every fourteen days, in the even weeks. The weekend starts on Friday afternoon at 16:00 and ends on Sunday evening at 19:00. The parent who the children stayed with last, takes the children to the other parent when a switch has to be made.

Housing registration
Kimberly will be registered at her mothers address.

Division of belongings
The belongings of Kimberley will go to her room at Rachel’s place. For Kimberly’s room at Nicholas’ place, both her parents will buy new belongings, including at least a bed, toys and some basic sets of clothing.
A complete justice journey

**Intake**
- Reflect, Select packaged solutions

**Diagnosis**
- Empower
- Assess situation

**Formalize**
- Documents at court

**Dialogue**
- Negotiate solutions > plan

**Mediate**
- Decide
  - If one party needs this

**Independent legal review of plan**

**Free**
- €0

**Optional**
- €240-€360

**Max**
- €1275

**Free**
- €285

**€300**

**€50-€100**

**€285**
2. Really support negotiation

• Most procedures now
  – Unstructured legal negotiation, under threat court decision
  – Negotiation and adjudication separate processes
  – 15 minute stressful settlement in court, referral mediation

• Rechtwijzer approach
  – Structured: issue by issue, price per stage, progress visible
  – Integrated process, all participants have same information
  – Growing towards decisions: negotiation, mediation, adjudication
2.

- Really facilitating negotiation

- Most procedures now

  - Adjudication and negotiation separate processes
  - Unstructured negotiation under threat decision
  - 15 minute settlement attempt, or referral mediation
  - No monitoring of settlement fairness

- Rechtwijzer approach

  - Adjudication on remaining issues parties cannot settle
  - Issues organized on screen, progress visible

- Gradual process: negotiation, mediation, adjudication

  - Settlement fairness monitored by reviewer
3. Rules as tools

- Most procedures now
  - No validated information about likely outcomes
  - Left to lawyers informed by one client and selling litigation
  - General laws, precedents, judge allocates concrete rights

- Rechtwijzer approach
  - Legally validated, neutral information, to both parties
  - Relevant information shown when issue comes up
  - Formulas, guidelines, statistics, easy to understand/apply by parties, mediators, adjudicators, reviewers
What? Huge gains possible

• A problemsolving intake, no further escalation
• Well-structured procedure, integrating negotiation + adjudication: issues, interventions, prices
• Monitoring fair outcomes instead of assuming
Rewarding ...

Innovation is systematic improvement:

- 5 months: 123 cases paid intake, 25 cases finalized
- Average user-rating platform between 7 and 8 out of 10
- What they like
  - Overview/dashboard, own time/own pace, government certified, clear pricing, independent review
- Reviewers learning how to work online
- Product backlog with many bugs and 100+ suggested improvements
Investing in justice journeys

- Public-private-research partnership
- Costs of continuously improving IT platform
- People eager to try out new services
- Configuring module for new dispute type or jurisdiction much less costly
- Costs of training professionals and developing best practices for integrating online and in person services
- Helpdesks, websites, marketing
- < 0.5 % legal aid budget, in the 100s of units of legal aid
Legal aid policy
Access to justice
International consortium for A2J technology
Policy making for innovating paths to justice?

- Investment needed and substantial
- A stronger coalition?
- International cooperation for access to justice