

# The justice of separation procedures



*Contested divorces - ending in family dramas in extreme cases - get a lot of attention in the media. But each divorce has great impact. A divorce means the end of a main economic and emotional relationship in which people were committed to invest. How do people experience a separation procedure? To what extent do they find the state of affairs and outcomes fair? And does society manage to mitigate the negative effects of a divorce?*

*Justice is often the subject of heated debate. For the first time, proper research has been done into how Dutch people feel they are treated if things really get tense. Through population screening, HiiL Innovating Justice researched how the Dutch experience justice.*

*This report focuses on separation procedures. The data shows that these procedures are relatively often associated with mental and physical health problems, and are also accompanied by a relatively large amount of stress. The average rating of all the measured justice aspects of a divorce is low (2.81 on a scale of 1 to 5). This is considerably lower than the scores for procedures for other conflicts of a similar severity. People's needs and emotions only feel heard in a limited way by the professionals involved in their separation. The results (for example, the amount of child support) are not sufficiently transparent. That is likely to affect the degree to which agreements are met.*

*There is much reason to assume that the establishment of the legal process and the work method of lawyers play a key role. The separation process is strongly legalistic and puts disputes further on edge through a structure of*

*request against defence or argument against argument. People do not have sufficient information and knowledge and therefore not enough control over their separation process. They have to rely on the professionals who take over. The financing system for judicial power and lawyers still rewards extra procedures, instead of achieving durable solutions. There is some control over the actions of the judges and lawyers. However, citizens experience the entire process, with all participants working in their statutory roles. The correlation is not systematically monitored and evaluated which is - among other things - due to the political sensitivity of the subject. Partly because of this, there is not enough innovation in the legal chain of separation procedures.*

*The potential for improvement is enormous. Professionals have access to a lot of knowledge about risk factors and methods to better address a separation process. There seems to be room for consensus about the goals of the renewed treatment methods. The sustainable improvement of access to justice, in particular the core of formal legal procedures, however, is always a big challenge. According to recently published suggestions from 24 leading legal experts, providers of new methods should be able to "challenge" existing practices. A so-called IKEA test could increase the manageability of the rules for alimony.*

*Politics could set social objectives and funding frameworks in the legislation for the procedures; detailed laws that are too often an obstacle to the necessary innovation can then disappear. The industry can then live up to the largely shared ambition to support people better through one of the toughest stages of their lives.*

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# 1. Research method

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HiiL Innovating Justice researched legal issues and perceived fairness among 4,862 Dutch people over the age of 18. They were interviewed in January and February 2014 through the Ipsos Internet panel. The applied methodology (see [here](#) for a detailed explanation) is developed by HiiL to make the access to citizens' rights insightful. The method is now widely used around the world.

This report specifically focuses on how the Dutch experienced the separation process. This is the process from when the problem started to the achievement of a solution or a different final situation. During this process there may have been procedures in court, solutions between the parties, or there may have been assistance of legal experts and other service providers (e.g. mediators).

People were continually asked about aspects of justice that emerged from an extensive line of research on what people consider important when others (such as police, judges, executives), make decisions about them or where they had to make decisions with others (such as employers, doctors). One of the questions posed among the Dutch representatives in this study is the extent to which their opinions and feelings were taken into consideration during their separation process. There were also questions - always on a 5-point scale (1 = very small extent and in a very large extent = 5) - on the workability and timeliness of the solution. For example, there were questions about more than 40 aspects of justice, divided into three dimensions concerning the quality of the procedure, four

dimensions concerning quality of the result and three dimensions of accessibility of the procedure.

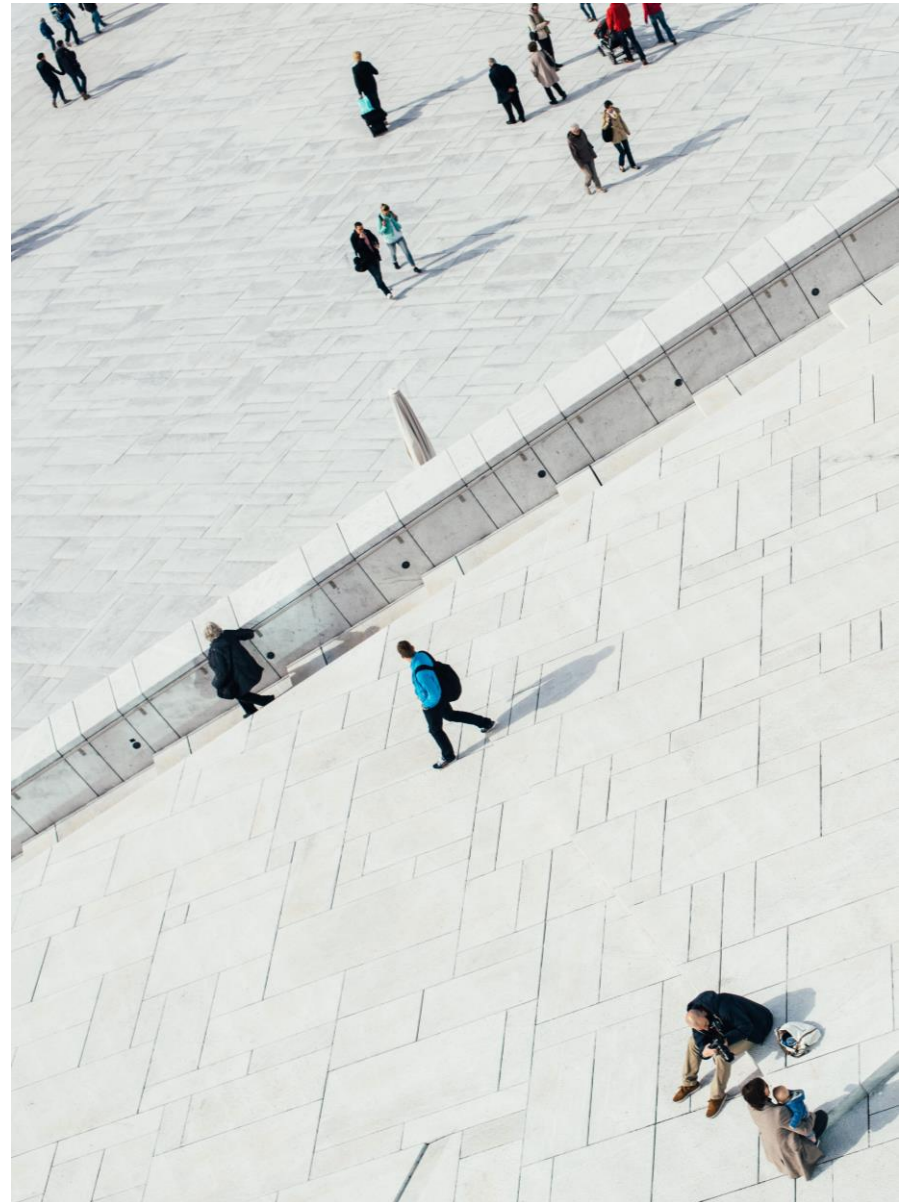
This method makes it possible to compare the justice of procedures for several problems with each other, and to present procedures for the same problem in different countries next to each other. A disadvantage is that the questions about justice have a certain level of abstraction, which some respondents had difficulty with. Some questions are only answered by a number of respondents. Furthermore, it is sometimes difficult for respondents to distinguish (as requested) between the effects of the procedure (the legal and other assistance in the divorce) and the effects of the problem itself (the break in the relationship). Especially for the problems that lie further back in time (maximum of four years ago); respondents have to rely on their long-term memory and memory effects may occur. When respondents are asked about sensitive subjects such as family problems, the risk of socially desirable response behaviour may occur. Finally, an Internet panel has well known restrictions (no interaction between respondent and interviewer for clarification; necessary measures to ensure representativeness), but must be weighed against the costs and limitations of different survey methods.

The results of this study were presented by HiiL in various projects to experts for interpretation. This interpretation will be regularly referred to in this document. This includes, amongst other, the project Rechtwijzer in which HiiL works together with the Legal Aid



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Council to develop an online support for divorce (where ex-partners can work together). One of the reasons why HiiL has (again) analysed the data on legal issues is to better understand the context in which Rechtwijzer is being developed as an online platform. The experience of the authors with projects in the areas of access to justice, and HiiL experts active in the field of separation procedures, was also used. Additionally, we will refer to recent reports and literature.



## 2. Divorce

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Of the nearly 5,000 interviewed Dutch people, almost half (48%) has had one or more serious problems in previous years. 8% of this group (n = 162) has (had) a problem related to a divorce. This means that the Dutch become involved in about 110,000 new divorce-related problems per year.

### 2.1 Impact

More than three quarters of the separation problems (85,000) are associated with the two most serious legal problems people experienced in the last four years. Other serious problems that people have (had) to deal with, according to the data, are: Domestic violence, debt, problems with behaviour and upbringing of the children, dismissal/disciplinary measures at work, and inheritance and other family issues.



*“Broke up with my girlfriend and separated fighting. We had a dog together and bought a few other things, all of which were claimed by my ex.”*

*“Ended relationship with my partner with whom I have a two year old daughter. I do not want to lose her”*



More than half of the Dutch who had a separation problem indicate that the separation problem has affected their lives to a large extent or to a very large extent. More than a third (31,000 problems) has physical health problems and almost three quarters are experiencing mental health problems (62,000 problems). In 22% of the cases (19,000 per year) violence also plays a role.

### 2.2 Many procedures

Mainstreaming separation is – worldwide - one of the key tasks of justice. In the Netherlands this is mainly in the hands of highly specialized services like legal aid, mediation, child welfare and mental health care. Divorces often lead to proceedings before the court: The Dutch courts dealt with, according to figures from the Council for the Judiciary, some 140,000 divorce-related procedures in 2013, an increase of 5% compared to 2012. The government jumped in 82,000 times a year with an addition for legal aid. Separation therefore forms an important part of the budget for justice, after criminal law, which has the largest share.

### 2.3 The role of proper procedures to reduce tensions

International research on the effects of divorce (for the children involved) has identified a number of risk factors. Research assumes that separation is a process that unfolds over a longer period of time. This means that the legal 'event' of separating itself has little impact, it is about the short and long-term tensions that accompany this process. Any major change can create tensions: a parent who leaves home, the loss or reduction of contact with one of the

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parents, a drop in income, the move to a different city, a new school, a new partner that comes into the picture, the continuous/hardened conflicts, and a lack of cooperation between the parents (Amato Research on divorce: continuing trends and new Developments, 2010). Children differ in their ability to deal with this type of situation. The intensity of the impact therefore varies. (Ter Voert and Geurts, WODC 2013).

The problems identified in the literature on the divorce proceedings are: lack of transparent costs (hourly rates), the polarization in court procedures, formal and complex court proceedings, ongoing 'appeals' and repeated and protracted litigation. During the (above-mentioned) changes that are part of a separation, it is important that the procedures do not trigger an additional conflict.

#### ***2.4 Difficult communication, a lot to organize and a need for procedural justice***

Difficult communication between both parties is frequently a part of a divorce. To be heard and recognized, and impartiality by a neutral third party become additional necessities. Life must again be organized fairly and effectively. This applies to caring for children, the fulfilment of the housing needs and the regulation of the financial impact. During the conversations about these topics- and if they do not come to an agreement, in the dispute settlement proceedings before the courts - people are looking for equality, respect and clarity about where they stand. Constitutional state's

values such as procedural and distributive justice will then be translated into reality.



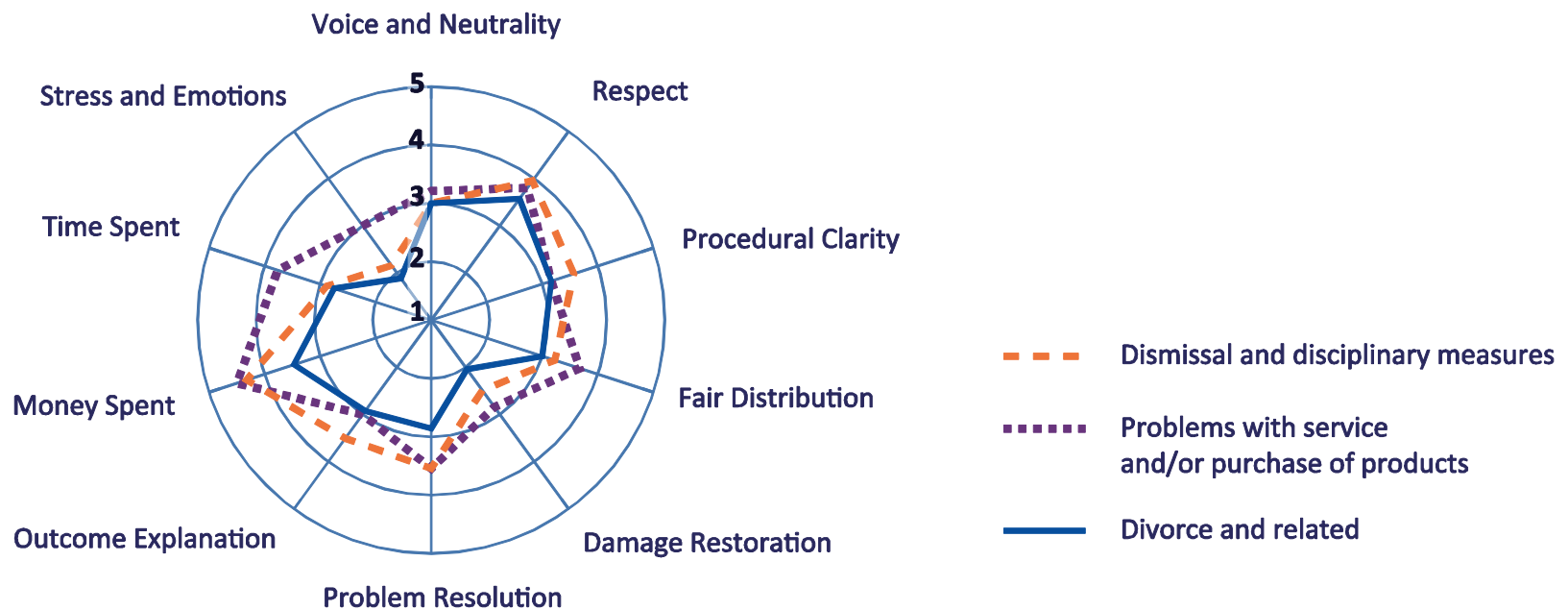
*“My daughter was evicted from her home when she was 9 months pregnant with her second child. Since then he didn't want to pay alimony and refused to return her possessions and the children's possessions. He had also changed the locks of the house, even though they both owned the house, so that she could not return to her own home.”*



### 3. Experienced justice of separation process is low

The data shows that the current procedure concerning separation is only partly able to fulfil these needs. On average, the process of divorce in the Netherlands scored around 2.81 (on a scale of 1 to 5). This makes it the legal issues with the lowest perceived fairness score. This is not surprising given the complexity of separation, but the score is considerably lower than that for justice around issues such as domestic violence of comparable gravity (3.26) and dismissal (3.23).

More positively: A better justice system concerning separation could add significant social value. The challenge might be to get as close as possible to the highest observed scores for each dimension of justice, which is almost four (3.95).

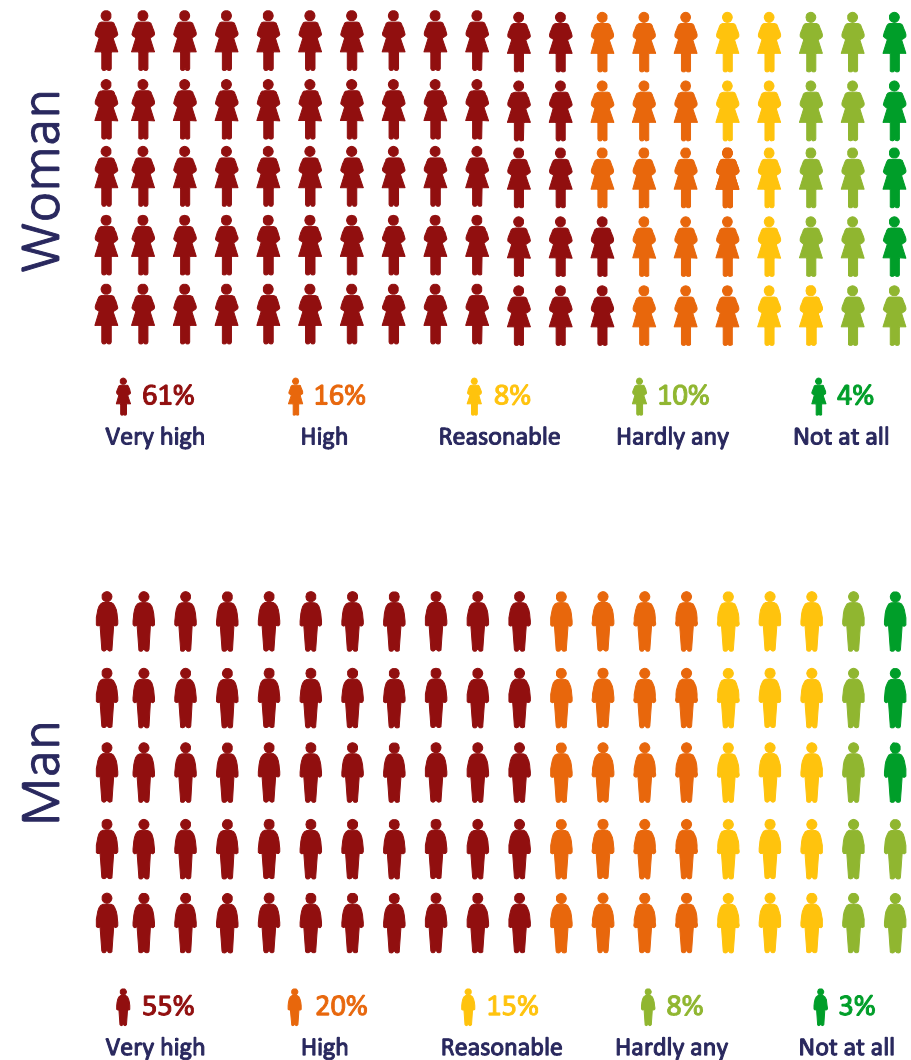




### 3.1 High stress and powerlessness

The data first draws attention to the high (and often perceived) level of extra stress in a separation process, on top of the stress that they are already experiencing from the divorce itself. 58% of the Dutch are experiencing a very high degree of stress during (and because of) the separation process. This percentage is slightly higher for women (61%) than for men (55%). With regard to the required communication and cooperation this is bad news. Experts from the field recognize that people become highly stressed. Besides losing sight of the big picture in an already difficult situation, it also affects the ability to jointly reach a good solution.

### Experienced amount of stress

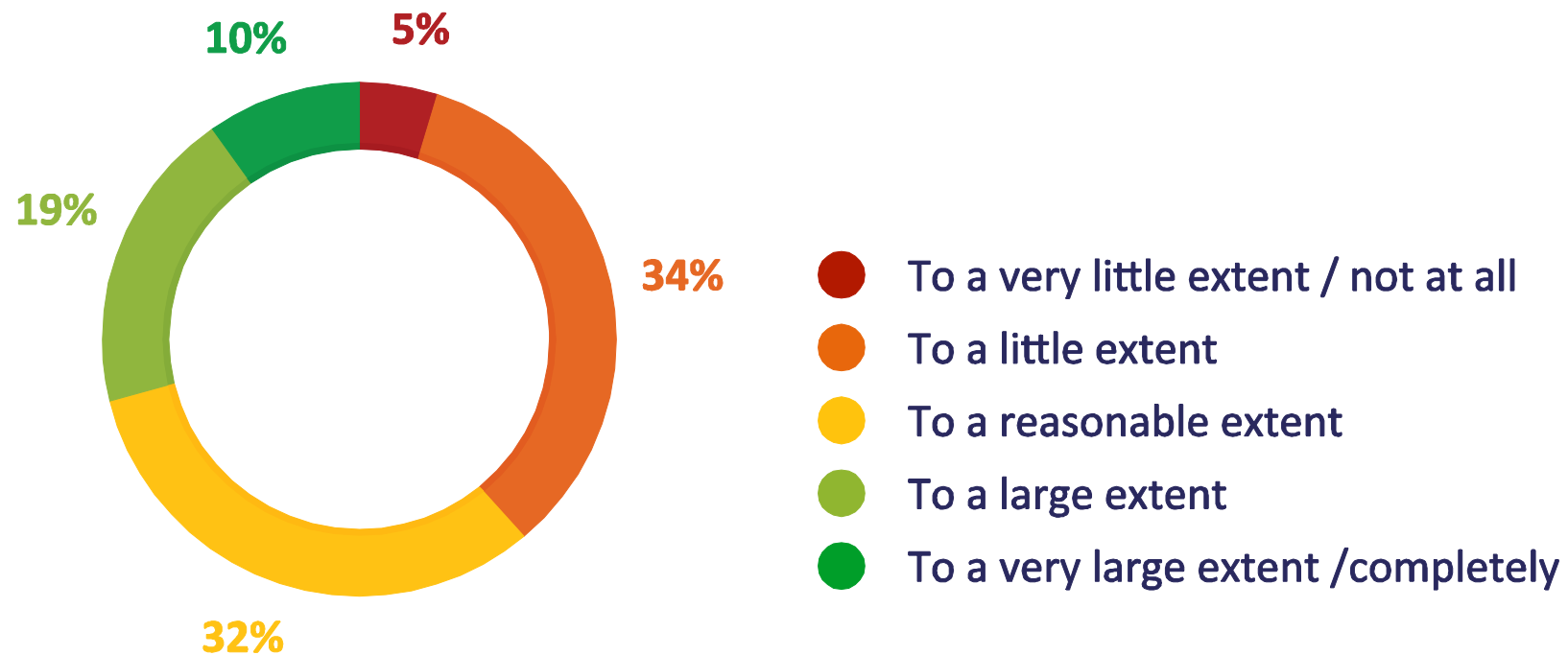


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### 3.2 Less than half really feels they are heard

Only 10% of people who have (had) to deal with a divorce felt to a very large extent/completely the ability to express their own opinions and feelings with the involved professionals. More than a third (39%) of people stated that his/her feelings were only (very) slightly taken into account during the process.

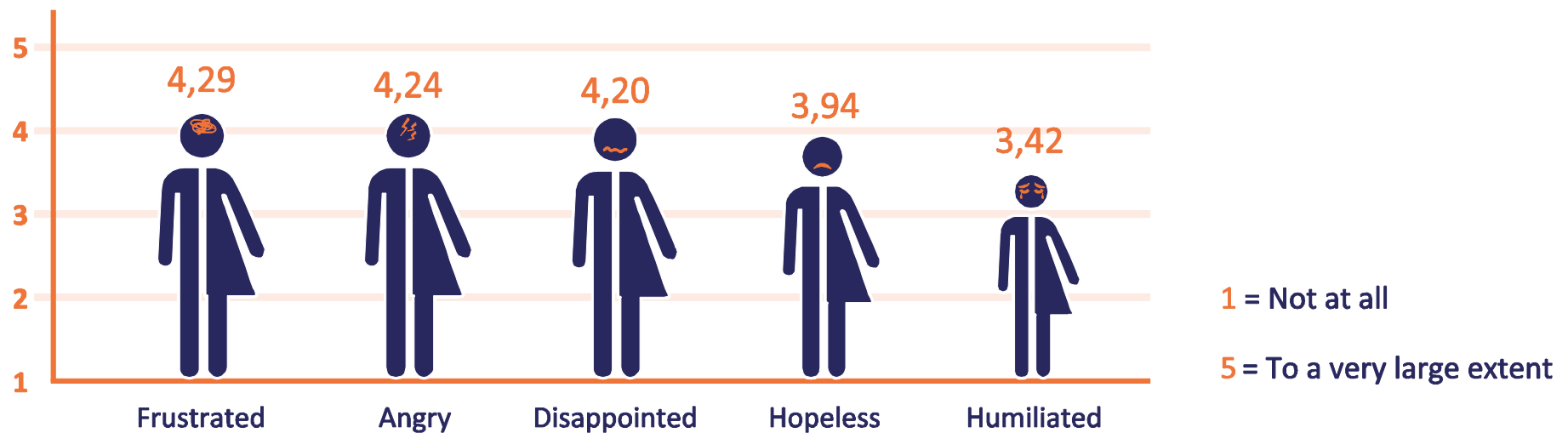
*Were you able to express your thoughts and feelings during the process?*



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The major stress, added to the feeling of not really being heard, indicates a high degree of powerlessness. The data also shows that people in a separation process mainly feel frustrated, angry and disappointed.

*Did you, at any point during the separation process feel frustrated / angry / disappointed / hopeless / humiliated?*

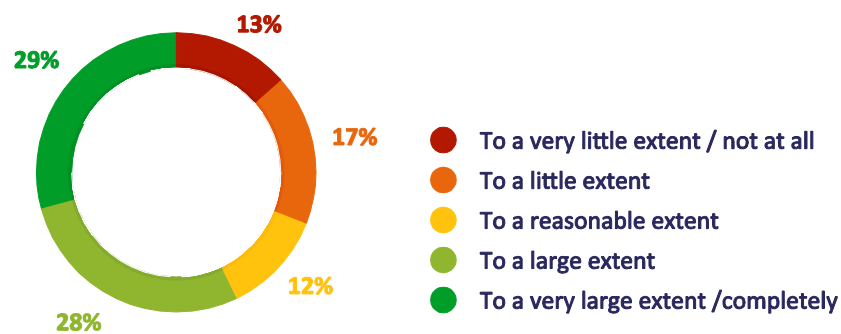


A good separation process enables people to take responsibility and reduce the feelings of powerlessness and gain more self-confidence and establish greater resilience.

### 3.3 Respectful involvement

Respectful and neutral involvement of professionals in the separation process is crucial. This goes fairly well. More than half (57%) of people feel treated with a (very) high degree of respect by the court or another neutral person (this may be a mediator). However, opinions are divided on this subject. Just under a third (30%) feel to a (very) small degree that they are treated with respect. Obviously, there is a lot to be gained here.

*Did the neutral person treat you with respect?\**

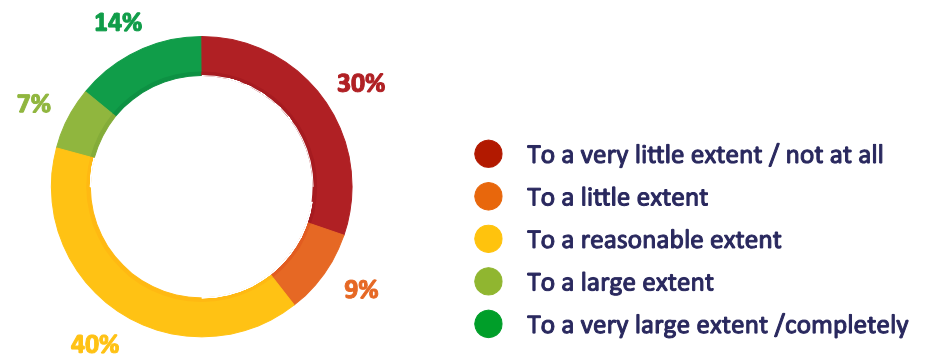


\* The explanation indicated that this could be a judge.

### 3.4 Result too often too late

For 39%, the result of the procedure comes too late, for just over a fifth (21%) the result is to a (very) large extent on time, and for 40% to an average extent. Separation procedures can sometimes take a long time. This may be because there are complex issues to be sorted out, or because the two parties disagree on, for example, contact arrangements or alimony.

*To what extent was the result on time, in other words: when you needed it?*



The above-mentioned figures from the Council for the Judiciary imply that the parties meet on average four times in court proceedings during a divorce. This is remarkable, since 60% of divorces happen based on agreements made by the parties (joint

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request). They spend an average of 33 hours on the separation procedure, but this time ranges from only 2 hours up to 500 hours.

### **3.5 Escalation not in control**

If the ex-partners do not come to an agreement, it often leads to a long series of procedures, which can be costly. And, just like the investment of time, costs can also vary strongly for procedures. One third of the respondents incurred no additional costs for the procedure, but those who did report a level of €75 up to €30,000. These collected data imply that 9,000 people spend more than €2,000 annually on separation procedures, with peaks of tens of thousands. Also, conflicts on agreements will still arise, such as new partners, change of residence or income.

### **3.6 Results often not realised and little emotional improvement**

The data shows that people experience recovery of financial loss and emotional damage only to a limited extent. The restoration of the relationship with the other party is also not really provided for in the current process. In 60% of cases, people experience only very little or no restoration of relations with the ex-partner/other party. The remaining 40% experiences a minor or moderate recovery in the relationship with the ex-partner.

Just over a third (35%) experience to (very) little extent or not at all that the result (e.g. distribution of household effects, determining the amount of alimony) is actually realized in practice and is respected. Only 15% experience that the result is realized to a very large extent or completely realized. This is relatively low.

Compliance with their agreements in disputes in general is pretty good, around 80% or higher, for example after mediation.



*“Despite numerous lawsuits with the ex-partner of my partner, he refuses to comply with the custody and contact arrangements. It is costly and ineffective and the children suffer tremendously.”*

*“Divorce: in the beginning a relatively rough process, after switching to mediation came to a solution which was acceptable to both. Main cause; determining alimony, distribution of household effects, selling home.”*



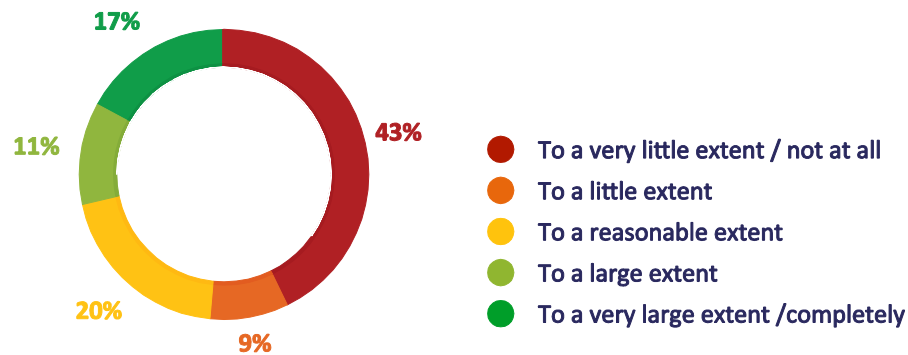
### **3.7 Results hard to compare to similar cases**

One of the main obstacles in separation procedures is the lack of reference points and comparability. For more than half (52%) of those with a separation problem it was not possible to compare the obtained solutions of the own separation with those of people in similar situations. People feel left in the dark about how common their outcomes are. Only 28% felt to a (very) large extent they were able to compare the outcome of the procedure with other similar cases.



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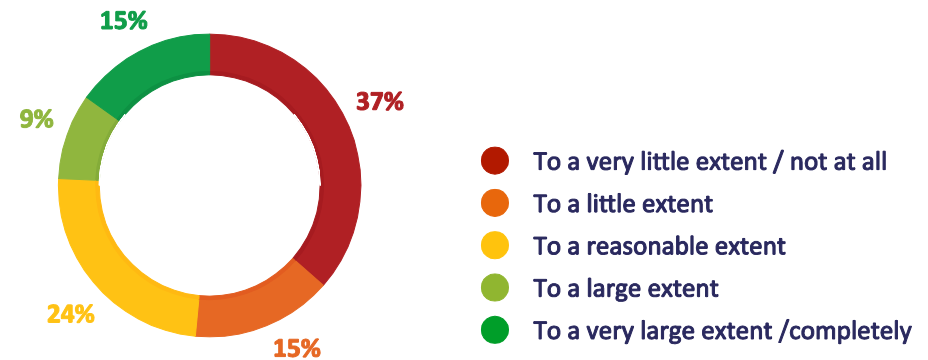
## Was it possible to compare your result to other similar cases?



In addition to the possibility of comparing the outcome of the separation at all, it is also important that, if comparison is possible, similar cases actually lead to the same/similar results. Less than a quarter (24%) feel to have got a result that is to a (very) large extent similar to that of others, 51% feel that their results were to a (very) little extent comparable to a similar case. One of the possible explanations for the perceived lack of comparability and equal treatment between cases is, according to experts, the difficulty in following the calculation that determines the amount of alimony

and child contribution. Judges motivate the decision in a limited way, that is to say: Not all calculations are included in the decision, only the data used in the determination are indicated.

## Was your result comparable to the result of other similar cases?



## 4. Next step? Suggestions for innovating the justice system concerning separation

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The way the justice system guides separation is improvable. The danger is that it remains at that conclusion, because to date there is no clear overall final responsibility for the separation procedure. Every professional party - judge, lawyer, and mediator - plays its own role, and is only accountable for the fulfilment of that role to their own client and within the profession. The Ministry of Security and Justice is responsible for the legal framework, but this is at a high legal level of abstraction of the Civil Code, the Code of Civil Procedure and the laws for the organization and financing of the legal professions. The Ministry is not accountable for how all these laws work together to properly guide divorces. There are no systematic evaluations of chains that provide access to the law, such as those concerning divorce.

The interpretation of these rules in the practice of law then soon becomes very detailed, without dealing with social goals. Moreover, the responsibility for laws is shared with parliament, i.e. busy MPs who cover the whole justice field with the associated extensive ad hoc agenda. The manner of termination of personal relationships, although a social reality, is still too sensitive a subject to the political agenda. Moreover, it is the question of whether a revision directed from above might work at all.

It is therefore no wonder that the system is often described as being “stuck” and not able to continue the many already developed and possible innovations. In June 2015, a group of leaders from the legal industry offered six suggestions for movement in the system so that

access to justice for these types of chains can improve. These were widely distributed in the legal industry, including through the *Nederlands Juristenblad* [Dutch Law Journal]. Below we will show how this approach could be applied to the divorce chain.

The opinion first focuses on improved services, aimed at craftsmanship in serving society and not just the application of detailed rules. A so-called IKEA test would help to make rules more practical (2). Why no incentives for solutions rather than to negotiate and litigate through the tournament model, the model of opposing, legalistic viewpoints (3)? A right to challenge should provide organizations/people with innovative procedures with a chance to standardize their procedure in the justice system (4). This also means setting an appealing set of goals (5) and a greater transparency of the market (6).

### *4.1 Legal expertise to serve a well-running divorce*

The low scores for fairness, combined with the high levels of stress, imply that lawyers should have a higher level of aspiration with regard to the design of divorce proceedings. A proper separation process is of great social value. It involves the recovery of security, both financially and emotionally, and the wellbeing of children now and in the distant future. Sometimes it is even a matter of life and death: in 2014, 16 women, 12 men, 8 boys and 3 girls were killed by their (ex) partner or parent (CBS). This is more than a quarter of the total number of cases of murder and manslaughter in the Netherlands.

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Lawyers could make a far greater contribution to the smooth handling of separation affairs; in individual cases, but also when it comes to a jointly organised system. The legal expertise could be challenged here to develop appropriate procedures. Prevention of contested divorces and optimal guidance of parents and children should be an explicit professed morality among lawyers.

*The Dutch Association of Family Lawyers and Separation Mediators (vFAS) has a brochure in which separation is presented as a process that you go through together. Attention is paid to the grieving process and for the gradual bringing things back into perspective. The elements of proper arrangements are explained. The brochure focuses on values such as reaching agreements, hoping to get and invest in a new life, stability for the children, emotional distance and objectivity. The website 'Verder Online' [Further Online], includes – next to news of new rules – a lot of practical and useful information for people who are separating. Posters at stations and commercials have the motto "Separation with respect for each other".*

*The legal framework and the experience within the profession are not always consistent with this. The Code of Conduct of the vFAS is first about their own role and its legal embedding. Only in Article 8 it states that members ought to pay "appropriate attention to emotional and relational aspects" and in Article 10 there is "appropriate attention for promoting mutual communication". So*

*far, the vFAS has not put their vision of the socially desirable separation procedure forward. The training requirements have a strong focus on legal knowledge.*

*Lawyers often profile themselves as technical and legal specialists. In the early autumn of 2014, the *Advocatenblad* [Lawyer's Journal] asked colleagues who they found was the best family law attorney. In the accompanying video – shot in a car park with an impressive car – this lawyer profiles himself primarily as an expert on jurisprudence.*

A proper justice system is accessible and not too onerous: in terms of cost, time schedules and in terms of emotional burdens (stress). Tension in and between the parents is indeed a risk factor for the child. Regarding the results, this concerns the classic distributive justice (fair distribution, according to need/contribution), which is secured by private law, but also the recognition and restoration of disadvantages, and workable, transparent solutions.

*The information that justice offers on its website about separation is primarily legal technical information ("how is the procedure?"). A lot of information is focused on the role of the judge, rather than on the situation of separating parties and their children.*

*Process regulations tell you which documents must be submitted. They seem to be written for lawyers. The header "Who gets the*

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*kids” in the public information section unfortunately suggests that children are used in the procedure.*

*A brochure on the "interrogation" of children is also presented from the view of the legal framework. The text is child-friendly, but prepares the child for a question that is controversial according to current insights: with whom you preferably want to live. The accompanying video is entitled "kid talk" and has many more elements supporting a smooth separation process.*

#### **4.2 An IKEA-test helps to make rules on the consequences of separation more practical**

The low figures for transparency and the comparability of results suggest that the rules on separation do not meet the so-called IKEA test. For most people these rules are not applicable in a way that you would put a piece of furniture together: With some efforts or with the help of someone you know. The law concerning separation hardly has the nature of a guide that helps people through this difficult phase of their lives: It is too much a complicated process that - in many cases - contributes to additional stress and negative emotions.

Reliable information can be key to reducing the perceived powerlessness resulting from the data. Experts say to use information by way of education and prevention (need and development of the child as a fundamental starting point). Especially information about the process: Which method of treatment of a

separation is good practice? What can and may divorcing parties expect emotionally, professionally, in a relational sense, and in terms of duty of care towards other family members? And, people are also curious about expected outcomes, so that they can test their own ideas about fair solutions: what happened to others who went through a separation procedure?

There is also a need for simple understanding and transparently applied standards/rules of law with possible individual deviation for visitation, pension division, alimony, division of debts etc. by chain partners. The method of calculating alimony is often designated as too complex and lacking transparency. Models for this are developed by the justice system and there are pending proposals with the House of Representatives to simplify the calculation. Still, much needs to be done to make sure the people in question can easily understand these rules.

*The Legal Aid Council and HiiL Innovating Justice jointly developed an innovative procedure for divorce (Rechtwijzer 2.0). After their diagnosis, parties go through an initial interview process. They do so in peace and quiet, in their own time and at a place that suits them.*

*During the interview, they get questions about what they want to achieve for the family and their initial ideas for solutions. These questions cover about twenty subjects that are part of almost*

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*every divorce (with children): from agreements on keeping each other informed to the distribution of pension.*

*Each partner answers these questions and answers are then matched. The parties do not respond to each other's wishes, but bring their solutions together. They can then elaborate the arrangements, aided by information per topic and tools to for example calculate alimony. They can each seek the assistance of a mediator or a binding advisor to help make decisions.*

*Once all topics are completed, the text with the agreements is forwarded to a reviewer. This lawyer-expert checks whether the appointments are complete, sufficiently balanced and legally tenable and helps parties improve it if necessary. Finally, the reviewer submits the documents to the court so that the separation becomes official.*

#### **4.3 Incentives to encourage solutions instead of procedures: Current financing system rewards elongation and coarsening**

The funding of the separation process as currently designed encourages juridicisation and even escalation. The system makes professionals choose between a socially responsible approach to divorce and the interests of their own organization. This produces dilemmas in which most professionals make good choices, but the kind of choice that they really should not be making. The funding is a barrier to the trend towards a better approach to divorce.

For higher incomes, lawyers often get paid by hours. Additional lawyers and courts are paid per procedure and therefore, in a sense, participate in a new stage of escalation. Judges and lawyers should be motivated to provide a good solution or process control. For example, in the financing system there is no room for practical, neutral help in the first phase of a separation. The road back is also less facilitated than separation. A “back together plan” can also be a desirable outcome.

*For unsubsidized services a process price for a lasting solution could be normal, discouraging hourly payment or payment per escalation step. For people who need subsidy, the government can introduce a budget/voucher: Based on income and risk profile; with personal contribution; for a programme including aftercare to adjust agreements as conditions change (e.g. three years). This budget can be spent on services certified by choice of the parties. There may be more governmental influence on the choice with a higher risk profile (e.g. domestic violence) or if the parties cannot come to a choice.*

#### **4.4 A right to challenge, beyond the many pilots**

The knowledge and expertise needed to guide people better through this difficult phase of their life is there. According to experts of the industry, there currently is a proliferation of pilot projects, driven by the personal motivation of specialists who daily feel the helplessness and pain of their clients. What is still lacking is a framework for systematic evaluation and scaling.



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According to the authors of the six suggestions, designs of renewed procedures should have a *right to challenge* to promote innovation. The government proposed such a right to challenge in response to developments such as Uber and AirBNB. Justice is also about giving new solutions the opportunity to demonstrate that they provide a level of (legal) protection that is at least equivalent of the existing provisions.

*On November 3, 2014, the responsible State Secretaries of VenJ and Social Affairs informed the House about the progress of the policy in the area of contested divorces. It is mainly used to raise awareness and further awaiting pilots and research (see the Implementation Plan “Improving situation children in a contested divorce”). The influence of (public) bodies in the manner of separation is deemed minimal:*

*“Parents are ultimately the only ones who can put a stop to a contested divorce. In a ‘contested divorce’, parents are no longer able to make the best interests of the child the primary consideration. Our actions are therefore aimed at the awareness of parents of the importance of the child: by making parents aware of this, contested divorces can be prevented and identified at an early stage. During this awareness process, professionals and the parents’ social network play an important role. Most of the factors that contribute to solving the problems are outside the scope of (governmental) bodies. Therefore, a moderate role and realistic level of ambition has been set.”*

*In a subsequent letter dated July 22, 2015 from the State Secretary of VenJ, a number of suggestions to make improvements to the procedure (mandatory mediation, parental education) are rejected. A literature study found insufficient research that demonstrates unequivocally specific effects. Interestingly, the current legal divorce process and its embedding are not screened for effects.*

Innovators in the divorce industry would be stimulated with a right to challenge – giving them the opportunity to really penetrate the system - to design new procedures. If they can demonstrate an equal level of protection, in terms of goals to be set in the law, such new treatments could be introduced in addition to, or instead of, the existing procedures. It can also involve facilities in specific areas: for instance, a need for good practices or protocols for dealing with allegations of (sexual) violence, shared custody in contested divorces, the GBA entry and impact of tax legislative changes concerning alimony.

#### **4.5 Set goals for a renewed procedure: the end of contested divorces?**

It would be good if the justice system for a chain, such as for divorce, would have explicit goals. For example, risk factors for children should not be reinforced by legal proceedings; two thirds of parties in divorces should feel the ability to compare their own results to those of others; fighting behaviour in divorce is channelled within three months.

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The authors of the six suggestions suggest that a work group should focus on dealing with these kinds of problems and develop a plan with indicators to track progress, similar to the action of the Millennium Development Goals of the United Nations, or the goal to reduce the number of road fatalities in the Netherlands. This plan will entice all kinds of actors to focus on the solution of these problems. Solutions can come from unexpected sources.

It should be possible to come to widely supported terms of reference for a renewed procedure: A list of values and goals, specifically for good developments concerning the separation. Given the wide degree of consensus on what people need during a divorce, it will not be difficult to draw up this list and recalibrate it periodically. Securing these common principles and vision is then important to guarantee that this procedure is implemented and monitored.

For contested divorces the tournament model – meaning request against defence, position against position, argument against argument - almost always seems unsuitable. Attacking each other's behaviour, person, and defence mechanisms are behaviour patterns that often recur in social science research as a cause for divorce. Isn't it irresponsible that the standard procedure offered by the government reinforces these patterns?

*The Ombudsman for Children refers to 11 bottlenecks that contribute to escalation (Fighting parents, the child was jeopardized, 2014). Six of these are directly linked to the establishment of the proceedings with the court:*

- *Families often only come into the picture in court and youth protection when escalation is already a fact;*
- *There are too many stacked procedures possible and lawyers de-escalate too little;*
- *Funding for legal aid has been too focused on additions and litigation while investing up front (e.g. in a special guardian) may prevent subsequent rising costs;*
- *Professionals are not always skilled or experienced enough to prevent being drawn into the conflict;*
- *There are not enough possibilities for youth protectors to motivate parents to do a psychological examination, or to persuade them to adhere to agreements. A written indication legalizes too.*
- *A court decision provides a winner and a loser: the fight does not stop;*

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*Solution of the other bottlenecks can be supported by proper framing and organisation of the procedure.*

- *Parents are focused on their former partnership and not on their joint parenthood;*
- *Parents are often unaware of their share of damage to their child, they have insufficient knowledge about loyalty problems with children;*
- *Assistance is often focused on the parents, and not enough on the children;*
- *There are indications that the emphasis of the current policy on an equal 50/50 distribution of care for the children leads to more conflict: equal parenting does not necessarily also mean an equal division of time. The interests of the child should be central and quantity is not necessarily quality;*
- *Failure Experiences because of improper interventions may result in loss of confidence in care or escalation of conflicts.*

The large number of separate procedures needed on average per separation also points to a lack of effectiveness. Ongoing conflicts, a lack of cooperation and lack of contact with one of the parents are among the main risk factors for children. Experts stress the importance of support for solutions. Divorce proceedings should not turn people further against one other and complicate contact: Their needs, interests and problems should be central. Mediation techniques can help to make conversations easier.

Psychologists and behavioural scientists observe that parents often supplant the best interests of the child in the divorce process. Out of powerlessness, they believe they have to fight to protect their children. This belief is confirmed in many cases by supporters of family, friends and also because of the interaction with lawyers. Therefore, events during separation should be more devoted to emotional processing, improvement of relationships, communication and finding workable solutions. According to the data, key concerns are that people want to be better heard and need a better explanation of achieved results (e.g. alimony).

#### ***4.6. An IENS for the judicial system: certification makes the market more transparent***

The quality of handling divorces is now left to individual judges and lawyers. For the consumer of legal services who will occasionally deal with a divorce, this market is not transparent. What steps does the service provider follow? What issues will they focus on? And how does this work for customers? The quality of service providers in the separation process, as experienced by customers, should be made insightful in a balanced way.

There are many possibilities here. For instance IENS: A website for restaurants where people are dealing with a divorce can share their experiences, while protecting their privacy and the reputation of service providers against unfounded outliers in the ratings.

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The handling of divorce cases may be subject to systematic assessment. Validation and research into what works can be based on the aforementioned terms of reference. This might be possible by setting up a commission, or an existing body such as the Supreme Court. The government can certify processes or protocols based on the terms of reference and based on evidence/plausibility of what works, as is done in the healthcare sector.

Here, quality care focuses less on people and their professions, but more on the effectiveness of services they actually deliver: coaching in the first phase, early mapping of the social situation, problem solving legal aid, financial planning, mediation, decide on alimony dispute, integrated handling of contested divorces. Good practices can be developed and implemented widely. Methods that do not help to realize the values and milestones should disappear.

In this way the professional independence and responsibility for procedure and treatment method(s) will be increased in courts. Specialized lawyers and other legal aid providers can also work within such a system, and better demonstrate to citizens that they carry out valuable and high-quality interventions.



## 5. Conclusions

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The research confirms that the impact of separation is high. A divorce means the end of the main economic and emotional relationship in which people were committed to invest. The emotional and relational stability of people is at stake, and people usually experience a great deal of stress. Only to a little extent do people feel heard in their needs and emotions. The results (for example, the amount of child support) are not sufficiently transparent. This is likely to affect the degree to which agreements are met.

For the first time there has been proper research into the feeling of fairness that Dutch people experience when it really gets tough in their lives. The screening shows that on average the Dutch do not experience the separation process as a very positive one. The values measured in all aspects of justice of the separation process are relatively low (2.81 on a scale of 1 to 5) compared to other serious legal problems.

Experts and also for example a report by the Ombudsman for Children on contested divorces, create a link between the establishment of the legal process and the work method of lawyers. The separation process is strongly legalistic. If disputes arise, they will continue to sharpen because of a structure of request against defence or argument against argument. The financing system for judicial power and lawyers still rewards extra procedures, instead of controlling the process and stimulating the search for sustainable solutions between the two parties.

There is some control over the conduct of the judges and lawyers to be encountered. However, citizens experience the entire process

with all participants in their statutory roles. Their cohesion is not systematically monitored and evaluated, which is among other things due to the political sensitivity of the subject. Partly because of this there is insufficient innovation of the procedures that are currently applied by the judge.

The potential for improvement is great. Professionals have access to a lot of knowledge about risk factors and methods to better address a separation process. There seems to be a possible consensus about the goals of renewing methods of treatment. The sustainable improvement of access to justice, in particular the core of formal legal procedures, however, is always a big challenge. According to recently published suggestions from 24 leading legal experts, providers of new treatments should be able to "challenge" existing practices. A so-called IKEA test could increase the manageability of rules.

Politics could set social objectives and funding frameworks in the legislation for the procedures; detailed laws that are too often an obstacle to the necessary innovation can disappear. The industry can then fulfil the commonly shared ambition to support people better through one of the toughest stages of their lives.



## About HiiL Innovating Justice

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HiiL is an international (non-profit) research and advisory institute in the legal sector, based in The Hague, city of Peace and Justice. HiiL aims to contribute to the effective operation of the law and to improve dispute settlement through innovation. Our professionals are leading scientists from different cultural backgrounds with many years of experience and a passion for letting the law work better. The core of HiiL's work is to improve law and dispute resolution processes through the use of data about the needs and experiences of citizens. We use our knowledge and data about the 'justice journeys' to support our customers to provide more accessible, fair and efficient access to justice.

HiiL has a unique and ever-expanding dataset with the justice needs of citizens in the Netherlands and other countries. This data provides insight into the experiences of legal proceedings, such as divorce, consumer disputes, and money or problems with public authorities. Some dimensions of 'justice journeys':

- The ability for people to express themselves on the 'path to justice'
- Whether the 'users' of justice feel that they can influence the outcome of the process
- Whether the same rules apply to all parties in the dispute

- Whether the process is seen as neutral, objective and impartial
- Whether the outcome of the process solves the problem
- Whether the outcome of the process is being implemented
- The extent to which the outcome of the process is considered to be fair in relation to the needs of users
- How much money and time people spend to get their right
- How much stress and negative emotions people experience on their 'path to justice'

Knowledge of all these aspects on the 'path to justice' that people follow is a powerful tool to make legal processes more accessible and fair. Best practices in law innovation show that innovations are most successful when they are based on specific needs, experiences, and perceptions of the users of the law.

We invite providers of formal and informal legal procedures to analyse together how their users rate their services. Our experience with redesigning legal proceedings and your specific expertise may result in fascinating legal innovations that reach millions of people!

For more information, go to: [www.hiil.org](http://www.hiil.org)



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