

Working Paper 3

Public Opinion about Law in the Netherlands (2000-2020)

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1. Introduction

In the context of the CITIZENS LAW project, the social foundations of the rule of law (the social reach and weight of the law)¹ are explored to give a more robust view of citizens' perspectives of law in their everyday lives. The project examines the legal consciousness of citizens, or 'the ways in which people experience, understand, and act in relation to law'.² To better prepare for this empirical undertaking, an exploration of public opinion data and literature is necessary as a precursor to the project fieldwork.

This country report provides a descriptive overview of studies relating to public opinion of the judiciary and legal system in the Netherlands in opinion polls (international, European and national surveys) and qualitative studies in the literature. It shows a discrepancy between the high trust in institutions shown in trust-based surveys and a more nuanced picture of aspects related to the judiciary shown in qualitative studies and surveys focused on other judiciary-related questions. These studies encompass a diverse range of methods in the Dutch scholarship on public opinion of the law. In relation to recent events affecting perceptions of confidence in the judiciary and the rule of law, the case of the Toeslagenaffaire is briefly highlighted as a remarkable case on the Dutch legal landscape. The case has captured the attention of international bodies and has the potential to affect national public opinion of the law. The report concludes with the relation of the described literature to the CITIZENS LAW project and its central concepts and a brief final assessment of the state of public opinion of the law in the Netherlands. This overview will be used as a basis for national opinions of the law going forward in a multi-method empirical legal study of Dutch citizens' perceptions of (rule of) law. As part of the comparative CITIZENS LAW project, the data reported and collected in the course of the empirical work will be compared with two extreme cases, that of Denmark (as a strong rule of law case) and Hungary (as a weak rule of law case). The results of the study will be used to develop a governance toolkit to strengthen the rule of law.

¹ Martin Krygier, 'The Rule of Law: Legality, Teleology, Sociology' in Gianluigi Palombella and Neil Walker (eds), *Re-locating the Rule of Law* (Hart 2009) 17.

² Lynette Chua and David Engel, 'Legal Consciousness Reconsidered' (2019) 15 Annual Review of Law and Social Science 335, 336.

2. Overview of Public Opinion Studies

The following section comprises a descriptive overview of studies related to Dutch people's perceptions of the law on the basis of international and European surveys, national surveys, as well as qualitative studies regarding public opinion of the Dutch population in relation to the legal system.

International surveys

The Rule of Law Index is an initiative of the World Justice Project that annually evaluates Rule of Law in 140 countries worldwide based on multiple indicators.³ It does so on the basis of four expert questionnaires given to experts and practitioners in each country as well as one household questionnaire – a General Population Poll (GPP) – through which polling companies in each country survey the general population.⁴ The GPP survey includes 127 perception-based questions and 213 experience-based questions and socio-demographic information on all respondents. In the Netherlands it is translated into Dutch and was last administered among the general population among 1113 participants in 2018 in a nationally representative sample in a survey conducted by YouGov.⁵ The data are combined with expert questionnaire data to form country-level scores based on eight factors. The Netherlands has scored consistently high on the Index, and is currently ranked seventh globally and sixth in Europe.⁶ However, the Index does not include specific views of the general population separate from the overall scores. More information specifically regarding the region will be available in two years. In 2024, the World Justice Project will launch a new project to gather 'people-centered indicators to assess justice, governance, and the rule of law in the EU at the subnational level' based on data gathered in 2023.⁷ Similar to the global index, specific EU Subnational Indicators will be calculated based on responses from a general population poll and qualified respondents' questionnaire in each country.

³ 'WJP Rule of Law Index' <<https://worldjusticeproject.org/rule-of-law-index>>.

⁴ 'WJP Rule of Law Index - How We Measure' <<https://worldjusticeproject.org/rule-of-law-index>>. <https://worldjusticeproject.org/rule-of-law-index/about#howwemeasure>

⁵ 'Methodology Snapshot: Steps to Produce the WJP Rule of Law Index' (2022) 186.

⁶ 'WJP Rule of Law Index - Constraints on Government Powers' <<https://worldjusticeproject.org/rule-of-law-index>>.

⁷ '[European Union Subnational Justice, Governance, and Rule of Law Indicators' \(World Justice Project\)](https://worldjusticeproject.org/our-work/research-and-data/european-union-subnational-justice-governance-and-rule-law-indicators) <<https://worldjusticeproject.org/our-work/research-and-data/european-union-subnational-justice-governance-and-rule-law-indicators>>.

European surveys

The standard Eurobarometer is a survey established in 1974 that is published bi-annually by the European Commission and consists of approximately 1000 interviews per country.⁸ The European barometer monitoring programme consists of four survey instruments: the Standard & Special Eurobarometer, the Flash Eurobarometer, and the Central & Eastern and Candidate Countries Eurobarometer.⁹ Several flash barometers have dealt specifically within the field of justice and public opinions on law. These barometers focused on Justice in the EU (flash barometer 385) as well as Perceived independence of the national justice systems among the general public (e.g. flash barometers 435, 474, 475, 483, 484 and 503) and rule of law (489). Within these reports, the Netherlands scores consistently high on positive perceptions on law and aspects of the legal system. Taking the Justice in the EU report (European Commission, 2013) as an example, the Netherlands scores consistently amongst the most positive perceptions of EU Member States across various aspects of the legal system. Results from the surveys show, for instance:

There are big differences between individual countries in terms of how well justice is believed to function. For example, 83% of people in the Netherlands, but only 22% in Italy, rate the independence of the courts and judges in the criminal justice system as good. (p.5)

In Belgium, Denmark, Finland, Luxembourg, the Netherlands, Sweden and the UK consistently high proportions of people think their system is good in relation to all the aspects discussed. (p.5)

In 13 countries, over 50% of respondents say that they tend to trust their national justice system, with people in Finland and Denmark (both 85%) demonstrating the highest levels of trust.¹⁰ (pp. 13-14)

An absolute majority of people in ten Member States agree that the law is applied to everyone equally and without discrimination. Over seven out of ten people agree in the Netherlands (75%) and Denmark (74%). (p. 29)

It is clear from these six sets of results than people in certain countries generally have a very positive impression of their country's justice system, while respondents in other countries tend to have little confidence in it. Denmark, Finland, Luxembourg, the Netherlands and Sweden are among the countries where people consistently show a very high level of confidence. (p.30)

⁸ 'Eurobarometer' (Eurobarometer, 2023) <<https://www.europarl.europa.eu/at-your-service/en/be-heard/eurobarometer>>.

⁹ 'Crime and Justice | Map and Data Library' (*University of Toronto Libraries*) <<https://mdl.library.utoronto.ca/subjects/crime-and-justice>>.

¹⁰ In the Netherlands 70% reported that they tend to trust in response to the question: Overall, would you say that you tend to trust or tend not to trust the justice system the justice system in (OUR COUNTRY)?

In 15 Member States, at least half of the respondents think that the independence of the courts and judges is good when dealing with civil and commercial affairs. They are most likely to do so in the Netherlands (82%), Finland (77%) and Luxembourg (76%) (p.34)

In 14 Member States, at least half the respondents think that the independence of the courts and judges is good in the administrative justice system. Scores are particularly high in the Netherlands (79%), Finland (76%) and Luxembourg (74%) (p.40)

In the same 12 countries over 50% of people think the execution of judgements is good. Finland (68%), the Netherlands (65%) and Luxembourg (65%) (p.41)

In 11 countries, at least 50% of respondents rate the fairness of judgements in the criminal system as good. The Netherlands (73%), Denmark (70%) and Sweden (70%) have the highest proportion of people who think this (p.48)

When it comes to the functioning of the criminal courts, in much the same way as with the civil and commercial courts and the administrative courts, Belgium, Denmark, Finland, Luxembourg, the Netherlands, Sweden and the UK stand out as having consistently high proportions of people who think that their system is good. (p.51)

In three Member States, at least half of the respondents say that their justice system is better than other countries': Germany (57%), Denmark (55%) and Sweden (53%). In four further countries, more people think their system is better than the same or worse than other systems: Finland (47%), the Netherlands (46%), Austria (41%) and the UK (41%). Germany (17%), Denmark (15%) and the UK (15%) have the highest proportions of people who think their national justice system is much better than other systems in the EU. (p.57)

This positive view of the legal system by the general public is echoed in the flash reports on perceived independence of the nation justice system. It is also reflected in the outcomes of reports in relation to the European Commission's Rule of Law Mechanism.¹¹ The 2022 country report for the Netherlands, based on data from the EU Justice Scoreboard,¹² concludes the justice system in the Netherlands 'continues to be characterized by a high level of perceived judicial independence' (p. 1) and 'continues to be perceived as one of the least corrupt countries in the EU and the world' (p. 1). In terms of judicial independence, the level of perceived judicial independence in the Netherlands continues to be very high among the general public, with 77% of the general population perceiving the level of independence

¹¹ See for instance the Country Chapter on the rule of law situation in the Netherlands 2022: '2022 Rule of Law Report - Communication and Country Chapters' (*European Commission*) <https://commission.europa.eu/publications/2022-rule-law-report-communication-and-country-chapters_en>.

¹² 'EU Justice Scoreboard' (*European Commission*, 19 May 2022) <https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en>.

of courts and judges to be 'fairly or very good'.¹³ The level remained the same as the previous year (2021) and has been consistently high since 2016 (p. 3).

National surveys

Netherlands Institute for Social Research (Sociaal en Cultureel Planbureau): Continu Onderzoek Burgerperspectieven (COB) 2008-2020 and related studies

The Netherlands Institute for Social Research (SCP) carries out a continuous survey of citizens' perspectives in the Netherlands based on a quarterly poll that captures the personal, political and social views of citizens.¹⁴ In the fourth quarter, the Institute also conducts a survey panel, alongside focus groups (from 2013 every even quarter) and follow-up interviews (from 2013 in odd quarters). Since 2008, this has resulted in quarterly reports as well as an annual in-depth study. The main objectives of the Continu Onderzoek Burgerperspectieven (COB), carried out by the SCP on behalf of the Voorlichtingsraad, are to provide the government with up-to-date information on developments in public opinion related to social and political problems, to inform politicians with detailed analyses on these developments in Dutch society and to contribute to public discussion. In addition, the SCP, together with the central bureau Statistics Netherlands (CBS) creates the 'Nederland in Beeld' through thematic surveys carried out every month among groups of residents in the the Netherlands over the age of eighteen. The information gathered in these studies is used in various SCP studies.¹⁵

In surveys carried out by and for the SCP, the Dutch population's views of the judiciary are included in questions about trust in institutions, which are higher in comparison to other institutions, with the exception of the police, which also scores high among the institutions of government. In the recurring 'Burgerperspectieven' survey, Dutch citizens are asked the following question in relation to trust in institutions: How much confidence do you currently have in the following institutions in the Netherlands? In recent SCP surveys, the trend towards trust in the judiciary is reported, with a majority of 76% reporting trust in the

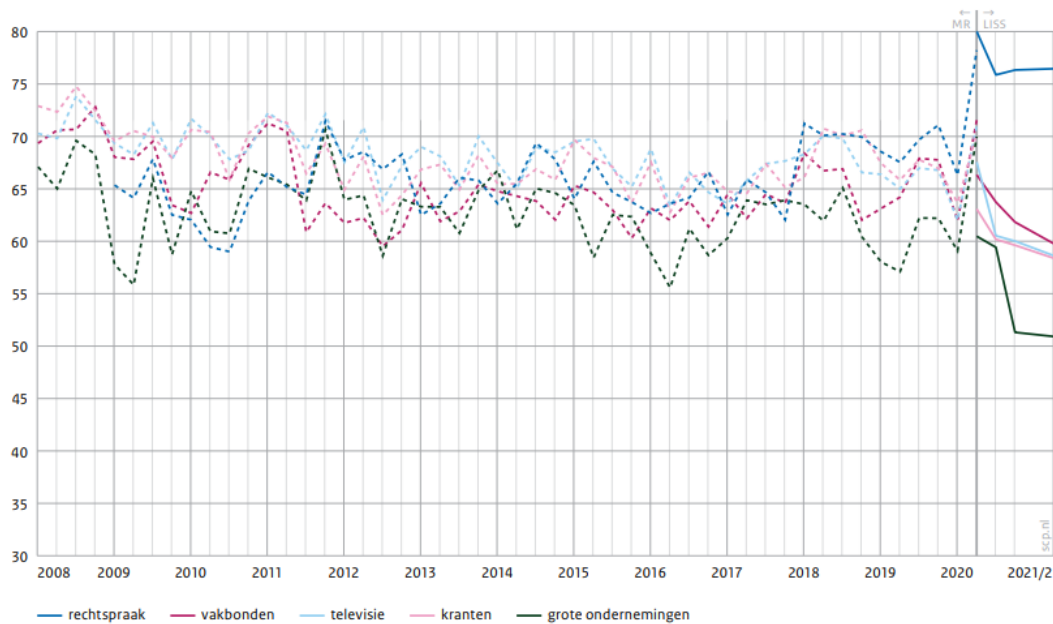
¹³ In particular, see Figures 50 and 52 of the EU Justice Scoreboard 2022, p. 40. The level of perceived judicial independence categories are: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%). This is based on the question: How the general public perceives the independence of courts and judges (*); see also annual Scoreboard reports 2016, 2017, 2018, 2019, 2020, 2021.

¹⁴ For an overview of Burgerperspectieven reports and respondents since 2016 see: Welzijn en Sport Ministerie van Volksgezondheid, 'Continu onderzoek burgerperspectieven (COB)' (Sociaal en Cultureel Planbureau, 4 February 2020) <<https://www.scp.nl/over-scp/data-en-methoden/onderzoeksbeschrijvingen/continuo-onderzoek-burgerperspectieven-cob>>.

¹⁵ 'Nederland in Beeld' (Centraal Bureau voor de Statistiek) <<https://www.cbs.nl/nl-nl/deelnemers-enquetes/personen/overzicht/nederland-in-beeld>>.

judiciary (2021). The range of responses in regards to trust in the judiciary in the period of 2008 (at the start of the Burgerperspectieven) until 2021 is shown in the following graph:¹⁶

Figuur 1.5 Vertrouwen in instituties, bevolking van 18+, 2008-2021/2 (in procenten)^{a, b}



- a Vermeld zijn percentages scores 6-10 op een schaal van 1 (geen enkel vertrouwen) tot 10 (alle vertrouwen) in antwoord op de vraag 'Hoeveel vertrouwen heeft u op dit moment in de volgende instellingen in Nederland?'
- b Voor drie instituties werd in 2021/2 de vraagstelling op twee manieren uitgevraagd, ieder aan de helft van de steekproef: de grote ondernemingen – de grote ondernemingen/bedrijven; de kranten – de kranten (papier, websites, apps); en de televisie – het nieuws op de televisie. Enkel voor de televisie kwamen de gemiddelde scores van de alternatieve vraagstelling niet overeen, vandaar dat voor dit item enkel de antwoorden van de oorspronkelijke vraagstelling (zoals ook in eerdere metingen) zijn meegenomen (n = 626). Voor de andere twee instituties is wel de volledige steekproef weergegeven.

Bron: COB 2008/1-2021/2

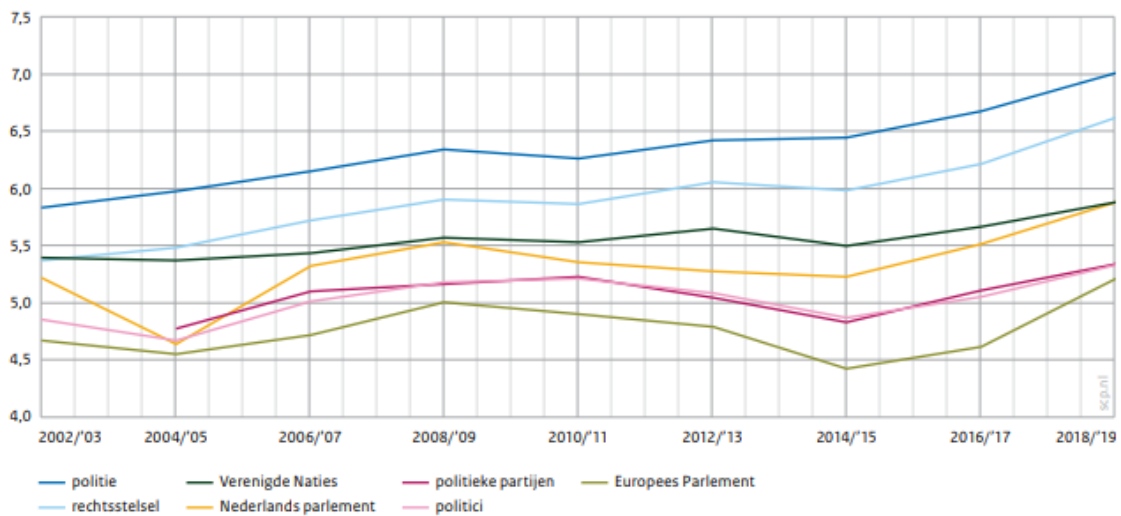
[translation a: Stated are percentage scores 6-10 on a scale of 1 (no confidence at all) to 10 (complete confidence) in response to the question 'How much confidence do you currently have in the following institutions in the Netherlands?'.]

This trust in the judiciary is seen in previous Burgerspectieven and has remained relatively stable over time. This has also been phrased as trust in the legal system (rechtsstelsel). The police are reported as the most highly trusted institution followed by the legal system. This can be seen over time in relation to the police (politie), United Nations (Verenigde Naties), political parties (politieke partijen), European Parliament (Europees Parlement), Dutch parliament (Nederlands parlement) and politicians (politici) in the period 2002 to 2019:¹⁷

¹⁶ This survey is based on a Random sample of 1200 net respondents age 18 years and older. One person per household. Overview of the response: Selected number of household members: 1,757 (100%) Non-response: 448 (25.5%) Response: 1,309 (74.5%) Complete: 1,287 (73.2%) Incomplete: 22 (1.3%) Date of data collection: April 2021. See Ministerie van Volksgezondheid, 'Burgerperspectieven 2021 | Kwartaal 2 - Publicatie - Sociaal en Cultureel Planbureau' (2021) 27.

¹⁷ Ministerie van Volksgezondheid, 'Burgerperspectieven 2020 | Kwartaal 1 - Publicatie - Sociaal en Cultureel Planbureau' (2020) 14.

Figuur 1.5 Institutioneel vertrouwen, bevolking van 18+, 2002/'03-2018/'19 (gemiddelde rapportcijfers op een schaal van 0-10)^a



a Kunt u op een schaal van 0 tot 10 aangeven hoeveel vertrouwen u persoonlijk heeft in elk van de instellingen...? (0 = helemaal geen vertrouwen en 10 = volledig vertrouwen).

Bron: ESS 1-9

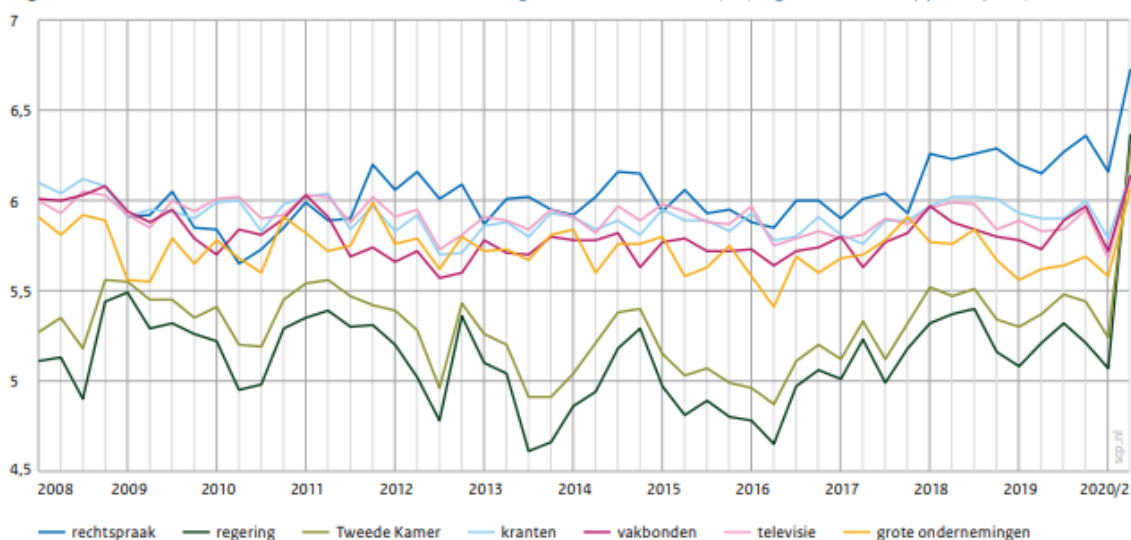
Trust in the judiciary is measured on a scale of 0 to 10, with 0 denoting no trust and 10 denoting full trust.

What can be seen from the national surveys of the SCP on the basis of trust of the Dutch population in the judiciary is an upward trend towards trust in the judiciary. The level of trust remained high following the Covid-19 pandemic, and at higher levels than before the onset of the pandemic.¹⁸ In general it is measured alongside trust in six other institutions, namely the government (regering), House of Representatives (Tweede Kamer), newspapers (kranten), unions (vakbonden), television (televisie) and large corporations (grote ondernemingen):¹⁹

¹⁸ Ministerie van Volksgezondheid, 'Burgerperspectieven 2020 | Kwartaal 4 - Publicatie - Sociaal en Cultureel Planbureau' (2020) 20.

¹⁹ Ministerie van Volksgezondheid, 'Burgerperspectieven 2020 | Kwartaal 2 - Publicatie - Sociaal en Cultureel Planbureau' (2020) 39.

Figuur 1.6 Vertrouwen in zeven instituties, bevolking van 18+, 2008-2020/2 (in gemiddelde rapportcijfers)^a



a Vermeld zijn gemiddelden op een schaal van 1 (geen enkel vertrouwen) tot 10 (alle vertrouwen) in antwoord op de vraag 'Hoeveel vertrouwen heeft u op dit moment in de volgende instellingen in Nederland?'

Bron: COB 2008/1-2020/2

The SCP in its surveys has further found that in times when trust has decreased in other national institutions, the trust in the judiciary has remained the same or increased. In the period 2008-2017, for example, decreasing levels of trust were found across all institutions with the exception of the judiciary. As such, a weak positive trend is seen for the judiciary in comparison to a weaker negative trend for the other six institutions (listed in the graph above).²⁰

This same trend is seen in the statistics from the CBS in relation to judges specifically as part of measuring institutional trust. The question used to determine institutional trust is: 'Now a few questions about your trust in various organizations and their functioning. For each of the following institutions, would you please indicate how much confidence you have in them? Churches, army, judges, press, police, House of Representatives, civil servants, banks, large companies, politicians and the European Union. The response options are: "a lot of confidence", "quite a lot of confidence", "not so much confidence" and "no confidence at all". For the description of the trends, the categories 'a lot of confidence' and 'quite a lot of confidence' are merged, as are 'not so much confidence' and 'no confidence at all'. The response in relation to judges shows an increase in trust in judges since 2012.²¹ The available data in regards to this trust can be further delineated among sections of the population (persoonskenmerken).

²⁰ Ministerie van Volksgezondheid, 'Burgerperspectieven 2018 | Kwartaal 4 - Monitor - Sociaal en Cultureel Planbureau' (2018) 18.

²¹ 'Vertrouwen in mensen en in organisaties; persoonskenmerken' (Centraal Bureau voor de Statistiek, 31 March 2022) <<https://www.cbs.nl/nl-nl/cijfers/detail/82378NED>>.

Onderwerp	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Vertrouwen in organisaties										
Rechters	% 68,8	69,0	68,0	69,0	71,5	72,9	72,6	73,6	77,3	79,2

Bron: CBS

In the Burgerperspectieven, reports of levels of trust in the judiciary are reported numerically but not published with corresponding data related to trust across different segments of the general population. The SCP produces a report of the social state of the Netherlands (De Sociale Staat van Nederland) annually which gives an indication of varying views across the population in relation to several factors. This gives a more detailed picture of public opinion related to the judiciary and other institutions. The report reflects the figures found in the Burgerperspectieven, with confidence in the judiciary (2019, 52%) showing an increase from previous years (2018, 46% and 2010, 41%). It further shows that trust in the judiciary and the police is higher than compared to other institutions (public and private) as well as in relation to comparable figures in other countries, as shown in the European Social Survey.²² Nevertheless, it also shows differing levels of trust between citizens. The largest differences in both trust of police and the judiciary is seen between education levels. The 2019 report shows, for example, a sizeable difference in trust related to the administration of justice between the higher educated (68%) and the lower educated (29%).²³ In addition, it shows that older people have less confidence and more distrust in the judiciary than younger people, and that men have more confidence in the judiciary than women.²⁴ In studies comparing the Netherlands to other countries in Europe, many other countries replicated the trend towards higher educated people having stronger levels of confidence in the justice system, with the notable exceptions of Italy, Spain and the UK.²⁵

Going back to earlier reports, the report gauged citizens' views on democracy and institutions. For example, the 2007 report summarized views on Political involvement and views on democracy, population 16 years and older in the period 1995-2006 (in percent). The percentages given for the question 'agrees with the statement "what we need are fewer laws and institutions and more courageous, tireless and dedicated leaders in whom the people can have confidence in":²⁶

²² 'De Sociale Staat van Nederland' (Sociaal en Cultureel Planbureau 2020) 112.

²³ *ibid* 117.

²⁴ *ibid*.

²⁵ Steven Van de Walle and Keiran Raine, *Explaining Attitudes towards the Justice System in the UK and Europe* (2008) 9 <<https://repub.eur.nl/pub/50064/>>.

²⁶ Rob Bijl, Jeroen Boelhouwer and Evert Pommer, *De Sociale Staat van Nederland 2007* (2007) 77 <<https://repository.scp.nl/handle/publications/890>>.

	1995	1996	1998	2000	2002	2004	2006
is het eens met de stelling 'wat we nodig hebben zijn minder wetten en instellingen en meer moedige, onvermoeibare en toegewijde leiders waar het volk vertrouwen in kan hebben'	.	29	.	32	.	59	54

The report also gives an overview trust in institutions, in the population 15 years or older, during the period 1997-2006 (in percent) based on data from the European Commission. Trust in institutions was seen to fall overall in 2003 but start to recover by 2005. Trust in 'the judiciary / the legal system' was recorded as follows:²⁷

	1997	1999	2001	2002	2003	2004	2005	2006
justitie/het rechtssysteem	55	61	63	57	51	58	61	61

And further:²⁸

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
justitie/het rechtssysteem	63	57	51	58	61	61	67	64	51	65

Towards the end of the decade, *distrust* was seen to less in the judiciary (18%) and the government (17%) than in social institutions (28%) and politics (26%).²⁹ This minority of the population with little to no reported trust in institutions could be further differentiated: men are more distrustful of the judiciary than women (though the difference is small), people in the big cities are less distrustful of the judiciary than the rest of the country, as are those with higher education and those with a leftist political orientation. Distrust in institutions was shown to increase with age (though unclear if this is life course or generational effect), with the biggest difference for political and judicial institutions.³⁰

Further information related how the Dutch population view specific aspects of the (criminal) justice system can be found in data collected by INO research (previously by Kantar) for the Dutch Ministry of Justice and Security, which surveys the Dutch population related to particular themes. These surveys are presented in the Justice and Security Monitor (Justitie en Veiligheid Monitor, JenV). In June 2022, the Ministry published the most recent report related to the themes of Security, Rule of Law, Migration and Corporate image.³¹ The data

²⁷ *ibid* 78.

²⁸ Rob Bijl and others, *De Sociale Staat van Nederland 2011* (2011) 61.

²⁹ Rob Bijl, *De Sociale Staat van Nederland 2009* (2009) 65.

³⁰ *ibid* 87–88.

³¹ 'I&O Research - Voorjaarsmeting 2022 JenV Monitor' (Ministerie van Justitie en Veiligheid 2022).

was collected online questionnaire of approximately 1200 Dutch respondents. In relation to the theme Rule of Law, the report shows a more nuanced picture of how the Dutch population perceives criminal justice in the Netherlands. This includes insights such as the following:³²

The Dutch are divided about everyone having equal opportunities to go to court. Over a third (36%) thinks everyone has equal opportunity to go to court. An almost equal group thinks not (37%).

A majority of the Dutch (60%) thinks the judges in the Netherlands are independent. More than one in ten (13%) think that this is not so.

About two-thirds of the Dutch believe that adopted sentences are too low in the Netherlands (64%) and about half think that the detainees have too much freedom in prison (52%).

The Dutch see the following two reasons as the most important to impose detention: 'making society safer by 'locking up criminals' (61%), and 'to show society that crime will be punished' (52%). Six out of ten Dutch people (59%) are supporters of the part of the new Punish and Protect Act, whereby detainees with a sentence of six years and longer are released a maximum of two years earlier.

Further topics covered by the Monitor in relation to Rule of Law include reintegration of prisoners and if citizens perceive what is being done for victims and surviving relatives of crimes. The latter shows that half of the Dutch population (51%) believe too little is being done for victims and surviving relatives of crimes.³³ This is not unlike other more critical views that despite high levels of trust in the judiciary (60%), court procedures are too slow (86%) or too expensive (67%) and the system makes too many mistakes (65%).³⁴ In the 2021 JenV monitor, other figures point to similar insights in its section on justice. It includes for example the following figures on access to justice, judicial independence, punishment, TBS, and victims and survivors:³⁵

Citizens are divided on whether everyone in Netherlands has the same opportunities to go to court: 38% think so, 31% think not.

³² *ibid* 6 (translation from Dutch by the author).

³³ *ibid*.

³⁴ M Koomen, 'Lekenparticipatie in de Strafrechtspraak' (TNS NIPO 2006); see also A Ettema, 'De Staat van Het Recht Anno 2008' (TNS NIPO 2008); on fairness of the justice see BCJ van Velthoven and CM Klein Haarhuis, 'Geschilbeslechtingdelta 2009 - Over Verloop En Afloop van (Potentieel) Juridische Problemen van Burgers' (TNS NIPO 2010).

³⁵ 'JenV Monitor - vierde meting' (Ministerie van Justitie en Veiligheid 2021) 6.

54% think that judges in the Netherlands are independent, while 12% think this is not the case.

Two thirds of citizens indicate that the punishments imposed in Netherlands are generally too low (71%). 62% think that inmates have too much freedom in prison. Over a quarter (26%) agrees that detainees should be granted leave during detention are given. A narrow majority of 54% support reintegration at the end of detention to take care of practical matters. 77% find it bad that convicts are released on parole after two-thirds of their sentence.

A majority of citizens (53%) feel that victims of crime and surviving relatives receive too little attention receive from the police and the judiciary.

The gathered data also includes differentiation between parts of the population. For example, men think more often than women that everyone has the same opportunity to go to court (41%, 36%), and higher educated people tend to think not everyone has the same opportunity to go to court than lower educated people (35%, 26%). More men than women agree with the statement ‘the judges in the Netherlands are independent’ (58%, 51%), and more higher educated people agree with it than lower educated (70%, 34%). Older people (65+) were more likely to agree that sentences imposed are too low than young people aged 18-24 (73%, 63%). Changing the law so that prisoners are released earlier is supported by the higher educated (57%) than lower educated people (26%).³⁶

This picture of citizen’s views – that men, the higher educated, and those interested in politics have *more* trust in the justice system – is reflected throughout the statistics of the SCP and in comparative reports with other EU Member States.³⁷ In comparative reports, the Netherlands is found alongside, among others, Austria, Belgium, Denmark, Germany, Ireland, in terms of the trend in higher education and higher trust, unlike Hungary, Poland and Spain, which show mixed results.³⁸ In the Netherlands, similar to France, high confidence in the justice system has been linked to high confidence in other institutions.³⁹ In this way, the confidence in the justice system is linked with the government more generally, including civil servants, parliament and the police.⁴⁰ In Denmark, for example, stronger links were seen to authority institutions such as the police or army.⁴¹ In line with previous data

³⁶ *ibid* 34.

³⁷ Van de Walle and Raine (n 25).

³⁸ *ibid* 25.

³⁹ *ibid* 13.

⁴⁰ PB Dekker, CJ Maas-de Waal and TWG van der Meer, *Vertrouwen in de Rechtspraak. Theoretische En Empirische Verkenningen Voor Een Monitor* (Den Haag : SCP 2004) 12.

⁴¹ Van de Walle and Raine (n 25) 20.

that showed citizens' confidence in the justice system remained stable since 1996, in some aspects it is seen as too lenient, for example in that four out of five think that punishment for criminals could be more severe.⁴²

These statistics overall reveal more nuanced and less positive view of the justice system than shown in more broad surveys that focus solely on trust in institutions. Furthermore, even studies focused on institutional trust show a shared attitudes of skepticism and dissatisfaction with the performance of the criminal justice system.⁴³ Such studies show underscore the importance of not oversimplifying the measurement of citizens' views. They show tension between on the one hand calls for a tougher approach and harsher sentencing, and on the other hand support for crime prevention initiatives and resocialization.⁴⁴

Qualitative studies

A range of literature in the Netherlands has focused on public opinion and attitudes towards the law.⁴⁵ Such studies while recognizing the high trust in the system purported by surveys also find attitudes of 'deeply rooted unease' among citizens and highlight negative views of those who experience the justice system.⁴⁶ As such the positive measurement of public opinion based on trust is seen to obscure the reality of Dutch legal culture.⁴⁷ Weyers and Hertogh have argued that the legitimacy of the justice system in the Netherlands is no longer self-evident and has become structurally contested.⁴⁸ Zouridis has referred to an institutional crisis of the judiciary,⁴⁹ though some see this as going too far.⁵⁰ Alongside the conclusions drawn from a longitudinal view of a series of quantitative studies, there have been several notable studies carried out in relation to the public's perception of the law in qualitative studies. One such study is Hertogh's (2018) study which signals a process of legal

⁴² *ibid* 10.

⁴³ Dekker, Maas-de Waal and Meer (n 40) 13.

⁴⁴ *ibid* 15.

⁴⁵ See for example the comparative study of Marc Hertogh, 'Loyalists, Cynics and Outsiders: Who Are the Critics of the Justice System in the UK and the Netherlands?' (2011) 7 *International Journal of Law in Context* 31.

⁴⁶ Theo A De Roos, *Het grote onbehagen : emotie en onbegrip over de rol van het strafrecht* (Amsterdam : Balans 2000) <<http://lib.ugent.be/catalog/rug01:000522460>>; Maurits Barendrecht, Krijn van Beek and Sam Muller, 'Menselijk En Rechtvaardig: Is de Rechtsstaat Er Voor de Burger?' (HiiL 2017) 2.; see also MJ ter Voert and CM Klein Haarhuis, 'Geschilbeslechtingdelta 2014 - Over Verloop En Afoop van (Potentieel) Juridische Problemen van Burgers.' (WODC 2015).

⁴⁷ Marc Hertogh, 'The Curious Case of Dutch Legal Culture: A Reassessment of Survey Evidence' (2011) 5 *Journal of Comparative Law* 146.

⁴⁸ H Weyers and M Hertogh, 'Legitimiteit Betwist' (WODC 2007)..

⁴⁹ Stavros Zouridis, 'Een rechter maakt nog geen rechtsstaat: Hoe rechters de institutionele crisis van de rechtsstaat kunnen keren' (2021) 2021 *Rechtstreeks* 14.

⁵⁰ Bijdrage van Thom de Graaf in 'Rechtstreeks', periodiek voor de rechtspraak, thema *Crisis in de rechtsstaat?* 2021, nr. 1.

alienation in everyday life in the Netherlands among citizens, businessmen and bureaucrats through a series of case studies.⁵¹

Many other studies related to the public perception are focused in the area of criminal justice. For example, public dissatisfaction with the justice system is linked in this way to degree in which judges are responsive to public opinion, often in terms of the severity of punishment.⁵² In a study of responsiveness, Elffers and De Keijser surveyed 27 Dutch criminal law judges and 529 members of the Dutch public to distinguish a gap between the perception of judges and the public.⁵³ The study showed the public preference for an independent judge isolated from public opinion, rather than more responsiveness.⁵⁴ Judges were viewed as not very responsive but this was not seen as a serious problem. This perceived lack of responsiveness is also shown in surveys on lay participation in the justice system, where public dissatisfaction or ‘annoyance’ is also linked with punitiveness.⁵⁵ Citizens were surveyed on seven aspects of lay participation in the criminal justice system as well as the presentation of four criminal cases and corresponding questions about appropriate participation.⁵⁶ Whilst punitiveness and responsiveness were seen as common complaint regarding the criminal justice system, lay participation was perceived as a way to achieve general improvements but not to tackle lenient sentencing.⁵⁷

Punitiveness was also the subject of De Keijser, Van Koppen and Elffers’ experimental study (carried out on behalf of the Council for the Judiciary) which showed that judges and lay people impose substantially different criminal sentences when given the same cases.⁵⁸ The finding that on average 84 to 96% of the participants imposed more severe sentences than judges is in line with the findings from the Justice Monitor that between 80-90% of Dutch people think judges are too lenient.⁵⁹ In this way, responsiveness and punitiveness are seen as deficits in the system. The lower educated are seen as more punitive than those higher

⁵¹ Marc Hertogh, *Nobody’s Law: Legal Consciousness and Legal Alienation in Everyday Life* (Palgrave MacMillan 2018).

⁵² Henk Elffers and Jan De Keijser, ‘Different Perspectives, Different Gaps: Does the General Public Demand a More Responsive Judge?’ (2008).

⁵³ *ibid* 448.

⁵⁴ *ibid* 467.

⁵⁵ Albert Klijn and Marnix Croes, ‘Public Opinion on Lay Participation in the Criminal Justice System of the Netherlands Some Tentative Findings from a Panel Survey’ (2007) 3 157.

⁵⁶ See Koomen (n 34).

⁵⁷ Klijn and Croes (n 55) 168.

⁵⁸ Jan W de Keijser, Peter J van Koppen and Henk Elffers, ‘Bridging the Gap between Judges and the Public? A Multi-Method Study’ (2007) 3 *Journal of Experimental Criminology* 131. (This article is based on their earlier published Dutch study: Jan W de Keijser, Peter J van Koppen & Henk Elffers, ‘Op de stoel van de rechter. Oordeelt het publiek net zo als de strafrechter?’, (2006).

⁵⁹ Klijn and Croes (n 55) 160.

educated but there is also an ‘information effect’ that shows once citizens are more informed, they become less punitive.⁶⁰ In this vein, an experimental study of 88 higher educated psychology students at a Dutch university and 71 lower educated service students were given the same case but with different amounts of information (a lot or a little). The study by Van der Maden, Malsch and De Keijser found that participants punitiveness decreased when given more information, and more strongly among those less educated.⁶¹ Other studies on the comprehensibility of judgments (using questionnaires) showed the use of language in judgments as a barrier but that acceptance of sentencing depends on more than understanding the judgment alone.⁶²

A number of studies have also been carried out in regard to testing perceived procedural justice and trust in the legal system. In an experimental field work study,⁶³ Liesbeth Hulst examined the trust and distrust in the judiciary, with her PhD research ‘Experimental legal studies on perceived procedural justice and trust in law and society’.⁶⁴ The findings showed differences in responses to the question of whether citizens have confidence in the judiciary depending on who the researcher presented as (i.e. an academic researcher or an ROC student).⁶⁵ Other studies have focused on perceived procedural justice in terms of the associations between it and respondents’ perceptions of everyday discrimination and their outcome judgments using face-to-face surveys. These studies show significant associations between perceived procedural justice and trust in judges and, which remained intact regardless of perceptions of everyday discrimination.⁶⁶ Further examination of perceived procedural justice has been carried out using interviews to infer whether defendants in

⁶⁰ M van der Maden, M Malsch and JW de Keijser, ‘Waarom wil de burger toch steeds dat rechters zwaarder straffen? De invloed van informatie en opleiding’ (2017) 2017 *Trema Tijdschrift voor de Rechterlijke Macht* 180.; see also M Van der Maden (2015) ‘Punitiviteit onder leken. Zijn lager opgeleide mensen punitiever dan hoger opgeleide mensen?’.

⁶¹ *ibid* 180.

⁶² J van der Schaaf and M Malsch, ‘Burgers over Strafvonnissen’ (2015) 3 *Tijdschrift voor de Rechterlijke Macht* 102. See also LE de Groot-van Leeuwen and others, ‘Het vonnis beter uitgelegd? Maatschappelijke effecten van beter motiveren in de strafrechtspraak’ [2015] Sdu uitgevers.

⁶³ For more on experimental studies related to procedural justice see: ‘On Experiments in Empirical Legal Research Law and Method *BJu Tijdschriften*’ <<https://www.bjutijdschriften.nl/tijdschrift/lawandmethod/2016/03/lawandmethod-D-15-00006/fullscreen>>.

⁶⁴ JE Hulst, ‘Experimental Legal Studies on Perceived Procedural Justice and Trust in Law and Society’ (PhD Thesis, Vrije Universiteit Amsterdam 2017).

⁶⁵ *ibid*.

⁶⁶ Lisa FM Ansems, ‘Procedural Justice on Trial: A Critical Test of Perceived Procedural Justice From the Perspective of Criminal Defendants’ (Utrecht University 2021).; See also Lisa FM Ansems, Kees van den Bos and Elaine Mak, ‘The Importance of Perceived Procedural Justice Among Defendants With a Non-Western Background Involved in Dutch Criminal Cases’ (2021) 12 *Frontiers in Psychology*.

single judge criminal cases mention aspects of procedural justice, with perceived neutrality being found to play a central role.⁶⁷ Similar studies have examined how litigants in courts come to trust judges and the role of procedural justice related to trust in criminal justice institutions among litigants who appeal decisions not to prosecute.⁶⁸ Meanwhile other studies have focussed on ‘class justice’ in the criminal justice system based on 45 interviews and focus groups with professionals along the criminal justice chain as well as interviews and focus groups with a small number of ‘critical citizens’.⁶⁹ The study found multiple indications of selectivity in parts of the Dutch criminal justice system, though not always illegitimate, frequently not consciously, and difficult to determine in its frequency.⁷⁰

Building on information from national surveys carried out by the SCP, a qualitative study relying on 50 in-depth interviews with respondents from seven regions in the Netherlands regarding ‘distrusting citizens’ explored the reasons behind *distrust* in institutions. On the basis of the quantitative data provided by the SCP, the study determined that citizens with lower trust in institutions are ‘lower educated, men, older than 50, and PVV and SP voters’.⁷¹ The central question of the study asked: What are the characteristics and stories of the (groups of) Dutch citizens who have no or little trust in the democratic constitutional state and its institutions? And what are the consequences of the insight into these characteristics for possible action perspectives to restore this trust? It found the characteristics of distrusting could be centered around five themes based on the narratives gathered through interviews with citizens in relation to institutions (i.e. not judiciary specific). These are: (1) Invisibility of government; (2) Invisibility of the citizen; (3) Unequal treatment; (4) The citizen does not get heard; and (5) Incompetence.⁷²

In his PhD dissertation, ‘Criminal justice and public opinion An inquiry into the relationship between the criminal justice system and the public, with special concern for the Public Prosecution Service’, Lucas Noyon explores the connection between public opinion and criminal justice in the Netherlands.⁷³ Of the four research questions central to his work, the second question - (ii) What are, relying on existing research, the relevant features of public opinion regarding criminal justice matters? – is the most pertinent.⁷⁴ In answer to this question, Noyon delves into a narrative literature review of existing literature and surveys

⁶⁷ Ansems (n 66).

⁶⁸ Hilke Grootelaar, ‘Interacting with Procedural Justice in Courts’ (Utrecht University 2018).

⁶⁹ K van den Bos and others, ‘Een Verkennend Kwalitatief Onderzoek Naar Klassenjustitie in de Nederlandse Strafrechtketen’ [2021] WODC 7.

⁷⁰ *ibid* 15–16.

⁷¹ T Peeters and others, ‘Van Persoonlijke Krenking Tot Vertrouwensbreuk’ [2020] WODC 5.

⁷² *ibid* 3–4.

⁷³ L Noyon, ‘Strafrecht en publieke opinie: een onderzoek naar de relatie tussen de strafrechtspleging en het publiek, met bijzondere aandacht voor het Openbaar Ministerie’ (Boom Juridisch 2021) <<https://hdl.handle.net/1887/3239250>>.

⁷⁴ See Noyon (2021) Summary (English) p. 507.

pertaining to public opinion. He produces an inventory based on five domains of research as follows:⁷⁵

- (i) Survey research on perceived performance. This is research in which respondents are asked, for example, whether the judiciary can be trusted or whether people think that punishment is generally too harsh or too lenient.
- (ii) Survey research on what people think is important in criminal justice. In this research people are asked, for example, what they believe are important qualities for a judge or what they think are important characteristics for a good criminal justice system.
- (iii) Survey research on background characteristics. This section contained research on group characteristics of people who complete surveys in the same way, on knowledge levels about crime and punishment, and on the influence of the media on those knowledge levels.
- (iv) Research that has used methods other than the traditional survey. Among these are ordinal proportionality research and more deliberative methods.
- (v) Research using open-ended questions. This includes, for example, research in which respondents are asked what they think are manifest 'problems', and the answers given are then coded afterwards.

In relation to this overview of public opinion research, Noyon draws several conclusions: (1) the Dutch public trusts criminal justice professionals; (2) the public is dissatisfied with the general punitive performance of criminal justice and sentences are widely perceived to be too lenient and large majority segments of the public endorse a wide range of punitive propositions; (3) the public supports rehabilitation of most offenders.⁷⁶ These are considered the most stable and lasting public opinions. In addition, there is a significant minority (around thirty percent of the Dutch population) that does not trust criminal justice actors and is dissatisfied with perceived levels of sentencing. This group is characterized 'by general uneasiness'.⁷⁷ Noyon finds that survey research develops a force through social discourse and reporting in media outlets, and opinions have the potential to develop force when emphasized and proliferated among the general public.⁷⁸ He summarizes the characterization of public opinion of the justice system as follows:⁷⁹

The public opinion on the criminal justice system has limited depth. She knows one sustainable core: the majority of the public trusts the judiciary, is majority dissatisfied with the punitiveness of the system as a whole, but is receptive to the thought that

⁷⁵ Noyon (2021) Summary (English) p. 11.

⁷⁶ *ibid* 511.

⁷⁷ *ibid* 511.

⁷⁸ *ibid* 512.

⁷⁹ Noyon (n 73).

— barring the case of sexual and violent crimes — resocialisation is an important goal the criminal justice system. These three lasting opinions probably form the sustainable generative basis from which emerge temporary public opinions form, for example in the context of an incident or a public debate. Adequate measurement methods to measure those temporary opinions are limited.

The picture formed here captures what is shown in the quantitative data and in some of the qualitative inquiries concerning the Dutch population. The inadequacy of methods in this regard is partially due to the difficulty in measuring trust in institutions as a main measure of public opinion of the law.⁸⁰

⁸⁰ Marc Hertogh, 'Vertrouwen in de rechtspraak: harde cijfers met een flinke korrel zout' (2004) 79 Nederlands Juristenblad 1164.

3. Methods

In the measurement of the general populations' opinion of law in the Netherlands, both quantitative and qualitative data is available and captures different aspects of the justice system. There is a steady stream of information collected from the European level (in European surveys such as the Eurobarometer) and even more so on the national level, mainly through the Netherlands Institute for Social Research and the Central Bureau of Statistics. Through surveys, these national agencies collect annual data on measurements of trust in the judiciary alongside other institutions or agencies (such as the police, government) or key actors (such as politicians, judges). Institutions are commonly listed asking the same question, such as for example: 'How much confidence do you currently have in the following institutions in the Netherlands?' Alternatively, surveys propose statements about the aspects of the legal system or institutions more generally with a response scale for level of agreement.

In terms of methods used, this quantitative research (surveys) carried out on a broader scale and pertaining to trust in institutions forms the majority of information available about how citizens view judges and the judiciary. Supplementary in-depth research that is carried out for the CBS or the SCP add further insight into statistics on trust by focusing on survey questions on sentencing, responsiveness and other aspects of the justice system. However, there is also qualitative research available regarding citizens' views of the law. Qualitative studies focus on the perceptions of citizens or their experiences with the justice system (such as procedural justice). In the Dutch context, the use of qualitative (or mixed-method) research in this domain is somewhat diverse. It includes case studies of different sectors of the population, as well as interviews and focus groups to gain deeper insight. On a number of occasions, experiments have been designed by Dutch scholars and used to gauge citizens' perspectives, for example when it comes to how they would judge cases or how they understand case judgments. A brief overview of qualitative, mixed-method and supplementary survey studies detailed in this report that fall within this purview are given at the end of this document.

4. Thematic Case: The Childcare Benefits Scandal

The above-mentioned quantitative and qualitative research investigate different aspects of the Dutch justice system, however few capture contemporary developments that have emerged more recently in Dutch society. One case that stands out in the Dutch legal landscape is the Toeslagenaffaire – the childcare benefits scandal. The scandal has been covered extensively by media and brought criticism to the Dutch legal system in regards to the rule of law as well as to the use of AI and algorithms in legal systems in a broader sense.⁸¹ Amnesty International has summarized the developments as follows:⁸²

The Dutch childcare benefits scandal was brought to public attention in 2018 and is an ongoing political scandal in the Netherlands today. It led to the fall of the Dutch Cabinet in 2021. The scandal involved improper government action, including but not limited to harsh rules and policies, rigid interpretations of laws, unjustified accusations of fraud, ruthless benefits recovery policies, obstruction of legal and investigative procedures, inadequate and incorrect information, opacity of the childcare benefits fraud system, and the failure of the Dutch authorities to take action in response to people who raised the alarm. Parents and caregivers who acted in good faith and accidentally made minor administrative errors on applications or renewals were wrongfully accused of fraud. A missing signature on the childcare services contract or a late or incomplete payment of the mandatory personal contribution had severe consequences. Parents and caregivers had to repay large sums of money (payable immediately and in a lump sum) and were labelled as fraudsters. This led to devastating financial problems for the families, ranging from debt and unemployment to forced evictions because people were unable to pay their rent or make payments on their mortgages. Others were left with mental health

⁸¹ According to Europe’s top digital official, European Commission Executive Vice President Margrethe Vestager, the Dutch scandal is exactly what every government should be scared of. “We have huge public sectors in Europe. There are so many different services where decision-making supported by AI could be really useful, if you trust it,” Vestager told the European Parliament in March. The EU’s new AI Act is aimed at creating that trust, she argued, “so that this big public sector market will be open also for artificial intelligence”; <https://www.politico.eu/article/dutch-scandal-serves-as-a-warning-for-europe-over-risks-of-using-algorithms/>

⁸² ‘Xenophobic Machines: Discrimination through Unregulated Use of Algorithms in the Dutch Childcare Benefits Scandal’ (Amnesty International 2021) 5–6 <<https://www.amnesty.org/en/documents/eur35/4686/2021/en/>>. See also: Goossens, Jurgen and others, ‘Netherlands’, *The I-CONnect-Clough Center 2020 Global Review of Constitutional Law* (I-CONnect-Clough Center 2021).

issues and stress on their personal relationships, leading to divorces and broken homes.

On 18 October 2021 the Venice Commission of the Council of Europe published its first Opinion (No. 1031/2021) on the Netherlands dealing with what they termed the ‘Childcare Allowance Scandal’, including a detailed list of proposals for legislative executive and judicial branches. The opinion was primarily generated on the basis of the national (2020) Report of the Childcare Allowance Parliamentary Inquiry Committee entitled "Unprecedented injustice" (Ongekend onrecht) and the report of the National Ombudsman (2017).⁸³ The former national report concluded the scandal as a breach of the fundamental breach of the rule of law. The Venice Commission in its report concluded that despite the Netherlands being ‘a well-functioning state with strong democratic institutions and safeguards for the rule of law’ that in this case there were serious and systematic breaches involving all branches of government in which ‘the rule of law mechanisms in the Netherlands did not work’.⁸⁴ Its opinion has been lauded for its ability to start from a ‘thick’ conception of the rule of law to a more robust provision of procedural shortcomings and need for ‘(judicial) fundamental rights protection’.⁸⁵ It includes among others the consideration to change Article 120 of the Dutch constitution to allow for constitutional review.⁸⁶

The scandal, seen as one of ‘unprecedented seriousness’ in November 2021 prompted the Netherlands highest court, the Raad van State, to issue an apology to the victims of the scandal for the ‘all or nothing’ approach it had taken.⁸⁷ It further outlined this view in a reflection report by the Raad van State (from the Afdeling Bestuursrechtspraak) which outlined the lessons learned from the scandal.⁸⁸ Bart Jan van Ettehoven, chairman of the department who had undertaken the report stated: “We could and should have changed the strict line sooner. We struggled with that, took half measures and did not follow through.

⁸³ ‘Eindverslag onderzoek kinderopvangtoeslag overhandigd’ (*Tweede Kamer*, 17 December 2020) <<https://www.tweedekamer.nl/nieuws/kamernieuws/eindverslag-onderzoek-kinderopvangtoeslag-overhandigd>>. For reports of the National Ombudsman see: ‘Eerste teken dat regering inziet dat gezinnen in grote financiële nood zijn’ (*Nationale Ombudsman*) <<https://www.nationaleombudsman.nl/nieuws/nieuwsbericht/2019/eerste-teken-dat-regering-inziet-dat-gezinnen-in-grote-financiele-nood>>.

⁸⁴ Venice Commission Opinion (No. 1031/202) 26-27. See the report further for a full overview of the developments and timeline of the childcare benefits scandal.

⁸⁵ Ingrid Leijten, ‘Constitutional Review in Sight?: The Venice Commission on the Dutch Childcare Allowance Scandal’ [2021] *Verfassungsblog* <<https://verfassungsblog.de/constitutional-review-in-sight/>>.

⁸⁶ *ibid.*

⁸⁷ ‘Highest Dutch Court Apologises to Childcare Benefit Scandal Victims’ (*DutchNews.nl*, 19 November 2021) <<https://www.dutchnews.nl/news/2021/11/highest-dutch-court-apologises-to-childcare-benefit-scandal-victims/>>.

⁸⁸ ‘Reflectierapport’ (*Raad van State*) <<https://www.raadvanstate.nl/reflectierapport/>>.

We apologize to parents who got into trouble because we applied the strict line for too long. We should have offered these parents better legal protection.”⁸⁹ The apology was seen as a step forward, without which citizens might turn away from the judiciary.⁹⁰ In May 2022, the Dutch government publicly admitted for the first time that institutional racism in part of the Dutch Tax and Customs Administration was the root cause of the scandal and that the victims had been subject to racial profiling.⁹¹

In the SCP’s Burgerperspectieven, the procedural justice failure of the government and violation of legal equity was reported a harmful but that the full effect of the scandal on public opinion is not yet known. As the report stated:⁹²

If citizens cannot count on procedural justice being in good hands with the government, the government may lose the trust of its citizens. It is therefore important to have a respectable and impartial government that trusts and listens to its citizens, but also a predictable government: the policy must be consistent and the government must be reliable in implementing that policy. Based on our data, we cannot say whether the benefits affair has (already) affected the assessment of the government and government agencies as being impartial. It is striking in people's open answers that the concern about a partisan government is still little mentioned at the moment, people mainly refer to the political aftermath (not disclosing information) and the formation (lying or forgetting 'function elsewhere '). Due to the consequences for the democratic constitutional state outlined above, the affair does have the potential to structurally undermine political confidence among the Dutch in the longer term. This structural impact depends on the extent to which the Dutch come to regard the scandal as characteristic of the functioning of government agencies.

While a remarkable case in the Netherlands, and one which has drawn international attention, the scandal has been seen as similar to other failures in Member States within Europe. In the Venice Commission opinion, the body pointed to similar scandals in countries that are also seen as typically strong rule of law countries.⁹³ It noted that similar elements of

⁸⁹ *ibid* (translation by the author).

⁹⁰ Michel Knapen, “De excuses van de Raad van State zijn een grote stap voorwaarts” (*Mr. Online*, 15 February 2022) <<https://www.mr-online.nl/de-excuses-van-de-raad-van-state-zijn-een-grote-stap-voorwaarts/>>.

⁹¹ ‘Parliamentary Question | The Dutch Childcare Benefit Scandal, Institutional Racism and Algorithms’ (*European Parliament*) <https://www.europarl.europa.eu/doceo/document/O-9-2022-000028_EN.html>.

⁹² Ministerie van Volksgezondheid, ‘Burgerperspectieven 2021 | Kwartaal 2 - Publicatie - Sociaal en Cultureel Planbureau’ (n 16) 27.

⁹³ Though the Netherlands has been seen widely a high trust country, the SCP President has previously suggested there might be a shift from a high trust country to a low trust country

the scandal, including rigid legislation and insufficient control of administrative agencies, were prominent features in other large-scale wrongful sanctioning of welfare benefit cases seen in Norway in 2019 and in the decades-long Irish Long Stay Care Affair. In doing so, it stated in its opinion that ‘the Dutch Childcare Allowance Case is not unique’ and that ‘many of the suggestions developed in [its] opinion may apply also to other countries’.⁹⁴

such as Germany or Belgium, see Schnabel (2008). Voorwoord. In Paul Dekker & Eefje Steenvoorden (Eds.), *Continue Onderzoek Burgerperspectieven (COB 2008/1)* (pp. 1–3). Den Haag: Sociaal en Cultureel Planbureau.

⁹⁴ Venice Commission Opinion (No. 1031/2021) 9.

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)031-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)031-e)

5. Relevance for CITIZENS-LAW

As mentioned in the opening of this report, the CITIZENS LAW project focuses on the social foundations of the rule of law to give a more robust view of citizens' perspectives of law in their everyday lives. The aim of the CITIZENS LAW project is to develop a new approach that uses empirical research into EU citizens' perceptions of law to develop a more effective governance toolkit to strengthen the rule of law in Europe. It takes as its central research question:

How do citizens' everyday experience of law in the Netherlands, Denmark and Hungary shape the level of public support for the legal foundations of the rule of law; and how can we incorporate these findings into a new governance toolkit to strengthen the rule of law in Europe?

To answer this question the project relies on examination of multiple facets of public opinion of the law in everyday life, from the legal consciousness of citizens to their experiences and views of substantive justice, procedural justice, and responsiveness of the justice system. This will lead to greater insight into the individual case study countries as well as a comparative citizens-based perspective of law across three countries that typically differ (high to low) in terms of their general rankings based on trust.

The Dutch case study constitutes the 'middle' of these three case studies (ranked sixth in Europe on the WJP Rule of Law Index) and offers ripe ground for further study of the complexity and reality of citizens' perspectives. In the Netherlands, what emerges is a picture of a 'high trust' country, where the public consistently report high trust in institutions (which grows despite decreasing trust in government) yet find aspects of the justice system problematic. When surveys rely on trust, the picture is positive and stable, and yet when questions focus on aspects of punitiveness or responsiveness, the judiciary scores less consistently highly. These two aspects – punitiveness and responsiveness – comprise a 'deficit', whereby citizens consider sentence too lenient and judges not very responsive. These aspects appear across surveys and qualitative studies that aim to gauge the perspective of Dutch citizens of the (criminal) justice system. In line with this, qualitative studies have furthered focussed in recent years on aspects of procedural justice and the experience of defendants in the courtroom. These studies reveal a significant relationship between citizens' experiences and confidence in judges as well as trust in institutions. Still, much of this qualitative research has been confined to or closely related to the courtroom setting. Broader and combined investigation of these underlying mechanisms (substantive justice, procedural justice, punitiveness and responsiveness) will be carried out in the CITIZENS LAW project to link citizens' experiences to their negative or positive perceptions of the law. These perceptions are more than ever apt in the Dutch legal setting, which has a

longstanding reputation for trust in judicial institutions. Yet with recent scandals affecting the judiciary, such as the Toeslagenaffaire and others,⁹⁵ the Netherlands has come to international attention for breaching the rule of law. The effects of such scandals are not yet fully known in relation to changing public opinion.

Central to the study of the Netherlands, and the other case study countries, are both legal consciousness and legal alienation. The former refers to ‘the ways in which people experience, understand, and act in relation to law’⁹⁶ whilst the latter refers to the perceived distance between ‘internal’ and ‘external’ understandings of law. Both theoretical underpinnings are of relevance in the Dutch context. In terms of legal consciousness, a focus on Dutch survey research (and its limitations) has driven a ‘European conception’ of legal consciousness.⁹⁷ As regards the latter, empirical research has already shown a contested view of the Netherlands in relation to trust in the system, indicating an erosion of legal legitimacy and a movement of people *away* from the law.⁹⁸ The CITIZENS LAW project will introduce new methods to the study of Dutch citizens’ legal consciousness, such as photo-elicitation interviews and social media analysis, in addition surveys and interviews, to cast a wide net. The combination of methods in addition to a broader focus offer the opportunity to go beyond the ‘trust’ surveys and to zoom out from the targeted qualitative studies to form a more general picture of citizens’ perspectives of the law.

⁹⁵ For example gas extraction in Groningen or the murder of high profile journalist Peter R De Vries. See e.g.amm ‘Groningers Boven Gas | Parlementaire Enquête Aardgaswinning Groningen’ <<https://rapportaaardgaswinning.tweedekamer.nl/conclusies-en-aanbevelingen>>.

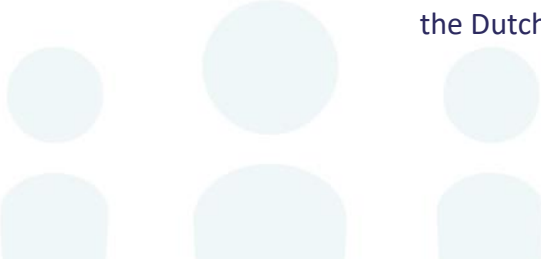
⁹⁶ Chua and Engel (n 2) 336.

⁹⁷ Marc Hertogh, ‘A “European” Conception of Legal Consciousness: Rediscovering Eugen Ehrlich’ (2004) 31 *Journal of Law and Society* 457.

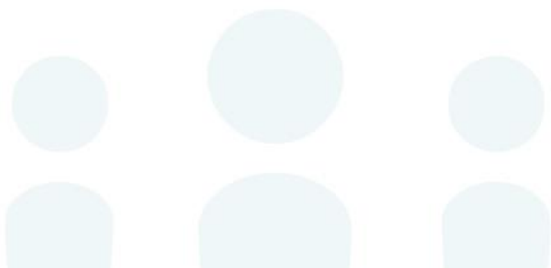
⁹⁸ Hertogh, *Nobody’s Law: Legal Consciousness and Legal Alienation in Everyday Life* (n 51).

Summary of Dutch Research

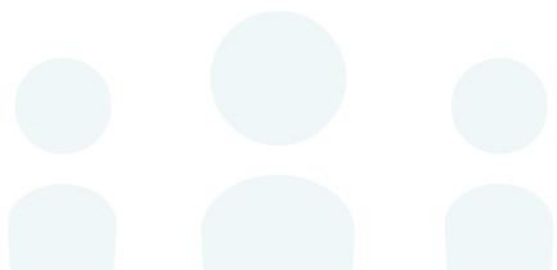
Author & (Year)	Participants	Method	Findings
Ansems L.F.M. (2021)	100 interviews with suspects in Dutch criminal law cases, 198 surveys with suspects in Dutch criminal law with a non-Western background, experiment with 239 citizens with a non-Western background	Interview, Survey, Experiment	Relevance of procedural justice. Significant relation with outcome satisfaction, protest intentions, and confidence in judges
Bos, K. et al. (2021)	Focus groups with 45 people professional involved with criminal law. 2 interviews with key citizens. Focus group with 5 key citizens	Focus groups, interviews	Definition of class justice and whether it is believed to arise frequently
De Keijser J.W., Van Koppen P.J. & Elffers H. (2007)	A survey among a sample from the Dutch population (N = 2,127), (b) a sentencing experiment with judges in Dutch criminal courts (N = 180), and (c) a sentencing experiment, using the same case materials as with judges, but now with a sample from the Dutch	Survey, experiment	Providing the public with detailed case information indeed reduces severity of sentences preferred



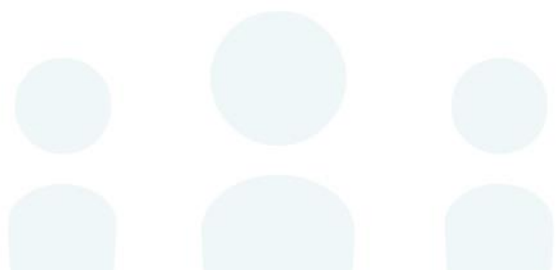
Elffers, H., & De Keijser, J. (2008)	population (N = 917) Surveys with 27 Dutch criminal law judges and 529 members of the Dutch public	Survey	The public preference for an independent judge isolated from public opinion rather than more responsiveness
Grootelaar H.A.M. (2018)	Pre- and post-hearing questionnaires with 483 litigants	Survey	A significant positive relationship between perceived procedural fairness and trust in legal institutions
Groot-van Leeuwen, M. Laemers & I. Sportel (2015)	18 interviews with lawyers, defendants, members of the public, prosecutor and victims	Interviews	Both in the experiences of process participants and in the broader context public giving more information in the judgments designed in the PROMIS way leads to more insight and more acceptance
Hertogh, M. (2018)	Case studies on a School Director and Non-discrimination Law, Contractors and Competition Law, Front-Line Officials and Public Law	Case studies	The school director and many other ordinary people feel disconnected from non-discrimination law, members of the Dutch construction industry feel disconnected from competition law (which leads to a process of legal alienation), local street-level bureaucrats perceive public law as distant, alien and illegitimate.



Hulst, L. (2017)	Court experiments with individuals petitioning for a court ruling on the basis of the Dutch Bankruptcy Act and defendants accused of criminal infractions, interviews with litigants, scenario experiments in non-courtroom settings	Experiment, Interviews	Procedural justice is important in the evaluative context of court hearings. Those surveyed differ in response to the question of whether they have confidence in the judiciary if the interviewer introduces herself as an academic researcher, than when she pretends to be an 'ROC student'
Koomen M. (2006)	A survey among a sample from the Dutch population 18 years and older (N = 1056),	Survey	Asked about the degree of trust in the Dutch (criminal) justice system as a whole, and in judges, police, civil servants and the House of Representatives, judges enjoy the most. The cause of dissatisfaction regarding the criminal justice system stems more from criticism of the response than of (the qualities of) the criminal judges. Actors in the criminal justice system need to work on their own logic of authority, in which a sharper distinction is made between actions that consist of promoting transparency - which
Noyon, L. (2021)	Perspectives of the criminal justice system	Focus groups, interviews, participant observation	



Peeters et al. (2020)	50 in-depth interviews with respondents from seven regions about the lack of trust in the democratic constitutional state and its institutions	Interviews	should be recommended - and those that are primarily focused on reputation - which should be rejected Respondents mainly base their trust in the government on its performance
Ter Voert, M., & Klein Haarhuis, C. (2015)	Respondents from the I&O Research panel and the LISS panel (N = 10, 156)	Surveys	Of all problems, 89% were closed in the sense that the respondent took no further actions. The probability of agreement is mainly related to the type of problem and the expected duration of the problem.
Van der Maden, M., Malsch, M. and De Keijser, J. (2017)	88 psychology students (higher educated), 71 ROC students (lower educated)	Experiment	Participants punitiveness decreased when given more information, and more strongly among those less educated
Van der Schaaf, J., and Malsch, M., (2015)	Respondents with no legal training (as only criteria), 19 respondents completed 31 questionnaires	Survey	The judgments presented were adequate in terms of general comprehensibility. The use of language is a major stumbling block. Parts of the verdict, such as the



indictment and certain standard legal phrases, remain distinctly complicated for the layman.

