



TISCO WORKING PAPER SERIES ON CIVIL LAW AND CONFLICT RESOLUTION SYSTEMS

Assessment of the Validity and Reliability of a Methodology for Measuring the Costs and Quality of Access to Justice

Martin Gramatikov

Tilburg University - Law School; Tilburg Institute for Interdisciplinary Studies of Civil
Law and Conflict Resolution Systems (TISCO); Hague Institute for the
Internationalisation of Law (HIIL)

M.A.Gramatikov@uvt.nl

&

Malini Laxminarayan

Tilburg University – Law School; Tilburg Institute for Interdisciplinary Studies of Civil
Law and Conflict Resolution Systems (TISCO); International Victimology Institute
Tilburg (Intervict); Hague Institute for the Internationalisation of Law (HIIL)

M.S.Laxminarayan@uvt.nl

&

Maurits Barendrecht

Tilburg University – Law School; Tilburg Institute for Interdisciplinary Studies of Civil
Law and Conflict Resolution Systems (TISCO); International Victimology Institute
Tilburg (Intervict); Tilburg Law and Economics Center (TILEC); Hague Institute for
the Internationalisation of Law (HIIL)

J.M.Barendrecht@uvt.nl

**TISCO Working Paper Series on Civil Law and
Conflict Resolution Systems**

No. 003/2010

February 26, 2010, Version: 1.0

&

Tilburg University Legal Studies Working Paper No. 003/2010

This paper can be downloaded without charge from the
Social Science Research Network Electronic Paper Collection

<http://ssrn.com/abstract=1559782>

Abstract

People use different mechanisms to solve their problems. Frequently the existing problems could be solved with legal means. If such is the case, people take on paths to justice with the intention to reach fair and just resolution of their problems. In this paper we discuss a methodology for measuring the costs and quality of paths to justice. Our starting point is that people use three indicators when reflecting on their experiences with justice: costs, quality of the procedure and quality of the outcome. In order to assess the validity and reliability of the methodology we collected perceptual information from users of two paths to justice. The first path is a municipal-level administrative review procedure in The Netherlands and the second is a judicial review procedure in the Supreme Administrative Court of Bulgaria.

We find that our indicators of the private costs of justice and the quality of procedure perform show sufficiently high level of internal consistency. An unexpected finding which necessitates further research is that the monetary and opportunity costs are negatively correlated with the intangible costs. Less convincing is the estimated consistency of the measures of the quality of the outcome. We hypothesized that the indicator consists of three dimensions – distributive justice, transparency and functionality. The results suggest that the distributive justice is a homogeneous concept but the transparency and functionality of the outcome are multi-dimensional concepts which merit further research. Further on we discuss in the paper the results of confirmatory principal component analyses which suggest a different structure in which the distributive justice items are the most important factor.

1. Measuring Justice

Many times in their lives, and often at key moments of change, people are involved in conflict solving procedures. As consumers, employees, neighbours, or citizens of a country, they try to obtain a fair outcome for themselves in a process where they may have to negotiate with an opponent, and where sometimes a third party makes influential decisions. These procedures may be part of the formal justice system, where people have to appear before courts, or face interventions by the administration. Or, procedures may be informal, when village elders, police, mediators, arbiters, or politicians intervene in relationships between people in order to manage conflicts. This system is the way we are governed, and how we actually experience the rule of law. Therefore, it seems logical to measure how well these procedures do. The ability to empirically distinguish badly functioning procedures from better ones would create a helpful tool for improving them.

Procedural justice and distributive justice have been extensively researched in the past decades. Psychologists have interviewed the users of procedures and set up experiments that show how users evaluate processes in which others make decisions about their interests.¹ Legal systems reflect ideas about procedural justice and about the fairness of outcomes, concepts that have also been studied by philosophers and economists.² From these extensive bodies of literature, it is possible to derive a measurement methodology that captures the way people generally feel about procedures and their

¹ J. A. COLQUITT, *On the dimensionality of organizational justice: A construct validation of a measure*, 86 *Journal of Applied Psychology* (2001). REBECA HOLLANDER-BLUMOFF & TOM R. TYLER, *Procedural Justice in Negotiation: Procedural Fairness, Outcome Acceptance, and Integrative Potential*, 33 *Law and Social Inquiry* 473(2008). TOM R. TYLER, *What is procedural justice?: criteria used by citizens to assess the fairness of legal procedures.*, 22 *Law & Society Review* (1988). JOHN THIBAUT & LAURENS WALKER, *Procedural justice: A psychological analysis* (Erlbaum. 1975).

² 2006 Update on U.S. Tort Cost Trends. pt. 19 (2006). ROBERT J. MACCOUN, *Voice, Control, And Belonging: The Double-Edged Sword of Procedural Fairness*, 1 *Annual Review of Law and Social Science* 171(2005).

outcomes.³ Simply put, individuals prefer procedures in which they have voice, can equally participate and have an influence on, are treated respectfully, and receive sufficient information.⁴ They also tend to rate outcomes according to their distributive equality, such as being treated similarly to other people in comparable situations, and that can work in practice.⁵ Finally, procedures may require time and money, and cause stress and negative emotions, so the costs of paths to justice – as we refer to them – are measured when assessing procedures.⁶

In this paper, we assess the validity and reliability of a methodology designed to study the costs and quality of paths to justice. We draw inferences from the results of the empirical application of the methodology on two different paths to justice, which take place in two countries – Bulgaria and The Netherlands. We assume that the experiences of the people who followed the paths to justice in order to solve their legal problems are informative about the accessibility of these procedures. Based on the belief that justice has high costs, unsatisfactory quality of the procedure and perceived low quality of the outcome indicate obstructed access to justice. Our major research question in this paper is to assess the power of the selected indicators and sub-indicators to measure the access to justice. We also intend to draw lessons from the empirical data, which will allow us to further improve the methodology for studying the costs and quality of access to justice.

In Section 2, we elaborate on the methodology for measuring the costs and quality of access to justice, and define the unit of analyses and the indicators with which paths to justice are measured. Section 3 provides details on the two studied dispute resolution processes and outlines the data collection methods. Section 4 presents descriptively the two paths to justice and demonstrates the possibilities for comparing procedures on their costs and quality. Section 5 discusses the validity and reliability of the measurement instrument. Finally, in section 6, we formulate the main lessons learned and conclude the paper.

2. Measuring the Costs and Quality of Justice: An Overview of the Methodology

The methodology employed in current research has operationalized access to justice with three general indicators: costs, quality of the procedure and quality of the outcome. Units of analysis of the research are paths to justice defined as “commonly applied process which users address in order to cope with their legal problems.” Solving a dispute of a specific nature with the possibilities for litigation at hand is one example of a path to justice – the aggrieved party brings the defendant to court with the expectation that the neutral third party (judge, panel of judges or jury) will solve the problem in a fair manner. There is ample evidence from empirical legal research that shows that litigation is only the tip of the dispute resolution iceberg.⁷ Most legal problems are solved through different forms, including negotiation, conciliation, mediation or arbitration. Empirical studies also show that a sizeable proportion of all grievances (or, as Hazel Genn calls them, justiciable events) are lumped without any action.⁸ When a person decides to take tangible actions to respond to, and eventually solve, a legal

³ MAURITS BARENDRECHT, et al., *How to Measure the Price and Quality of Access to Justice?* at <http://ssrn.com/paper=949209>. MARTIN GRAMATIKOV, et al., *Measuring the Costs and Quality of Paths to Justice: Contours of a Methodology* (Legal Services Research Center 2008).

⁴ LAURA KLAMING & IVO GIESEN, *Access to Justice: The Quality of the Procedure* at <http://ssrn.com/paper=1091105>.

⁵ JIN HO VERDONSCHOT, et al., *Measuring Access to Justice: The Quality of Outcomes* at <http://ssrn.com/paper=1298917>.

⁶ MARTIN GRAMATIKOV, *A Framework for Measuring the Costs of Access to Justice*, 2 *Journal Jurisprudence* 111(2009).

⁷ MARC GALANTER, *The Vanishing Trial*, 1 *Journal of Empirical Legal Studies* 459(2004);HAZEL GENN, *Paths to Justice. What people do and think about going to law?* (Hart Publishing. 1999). MARTIN GRAMATIKOV, *Multiple Justiciable Events in Bulgaria* (Legal Services Research Centre ed., 2008).

⁸ HAZEL GENN & SARAH BEINART, *Paths to justice : what people do and think about going to law* (Hart Pub. 1999);HAZEL GENN & ALAN PATERSON, *Paths to Justice Scotland. What People in Scotland Do and Think About Going to Law* (Hart Publishing. 2001);*Civil Justice in England and Wales.* (2008);PASCOE PLEASANCE, et al., *Causes of Action: Civil Law and Social Justice* (Stationery Office. 2004). GRAMATIKOV, *Multiple*

problem, we observe a path to justice. Whether at the end of the path the claimant will find justice is just one of several possible scenarios. Oftentimes, a path to justice could include several different stages, i.e. negotiation and then arbitration or mediation, or mediation followed by litigation. Sometimes, these forms take place in a parallel manner (leading to, for instance, settlement at the steps of the courthouse).

On a path to justice, a person goes through procedure/s, pays different costs and receives an outcome to his or her quest for justice. Based on their experiences, the users of justice form certain perceptions on each of the indicators. One of the principal goals of our methodology is to define these indicators and translate them into measurable terms. Our major methodological assumption is that the users of justice are the most authentic source of information regarding the costs and quality of the particular path to justice. In the following paragraphs we will briefly outline the content of each of the indicators.

2.1. Costs of access to justice

To elaborate, costs are defined as not only the monetary expenses needed for obtaining an outcome, but also the categories of opportunity and intangible costs. Out-of-pocket costs are all monetary outlays made by a user or someone else (i.e. insurer, legal aid fund etc.) in order to reach to the end of the path to justice. Most often, literature on costs of justice talks about legal costs and legal fees. However, we include other out-of-pocket expenses, such as money spent for travel, experts, witnesses, search and collection of information, translation and communication.⁹ The opportunity costs are defined as non-monetary costs for which markets exist and whose shadow costs could be estimated. Thus, the opportunity costs are expenses incurred in other units than money, but which could be monetized. The most frequent example of opportunity costs is the personal time expended. On each path to justice, a certain amount of time has to be invested. In the case of low value disputes, the prospect of losing too much time is one of the most significant barriers to justice. The value of time could be approximated through different methods. Other instances of opportunity costs are the countless instances of foregone earnings caused by the pending procedure. The third category of costs on paths to justice is called *intangible costs*. The main difference between the opportunity costs and the intangible costs is that the latter are much more difficult to assess and quantify. In our methodology, we focus on three instances of intangible costs which are assumed to most intensely impact the accessibility of paths to justice – stress, negative emotions and damage to relationships.

2.2. Quality of the procedure

Rather than solely focusing on the outcome, Thibault and Walker¹⁰ introduced the need to examine users' experiences with the procedure. Their research concluded that procedures providing litigants with input into the decision making process were preferential to procedures lacking this opportunity. Subsequently, negative outcomes are more likely to be accepted when fair procedures have been followed. Numerous theoretical and empirical studies support the notion that people do not only look for favourable outcomes, they want to reach these outcomes following fair procedures.¹¹ Studies suggest that the quality of the procedures has greater influence on the perception of justice than the

Justiciable Events in Bulgaria; AB CURRIE, *A National Survey of the Civil Justice Problems of Low and Moderate Income Canadians*, 13 *International Journal of the Legal Profession* (2006).

⁹ GRAMATIKOV, *A Framework for Measuring the Costs of Access to Justice*.

¹⁰ J. THIBAUT & L. WALKER, *Theory of Procedure*, A, 66 *California Law Review* (1978).

¹¹ TOM R. TYLER & YUEN J. HUO, Trust in the law: Encouraging public cooperation with the police and courts (Russell Sage Foundation, 2002). THIBAUT & WALKER, Procedural justice: A psychological analysis. LAURENS WALKER, et al., *The Relation between Procedural and Distributive Justice*, 65 *Virginia Law Review* 1401(1979). But see LARRY HEUER, et al., *The Role of Societal Benefits and Fairness Concerns Among Decision Makers and Decision Recipients*, 31 *Law and Human Behavior* 573(2007). (Differences are found in the way in which decision makers and decision recipients evaluate the role of procedural justice and outcome justice. For the groups of decision makers outcome fairness is more important than procedural justice in the overall assessment of the procedure). See also KEN-ICHI OHBUCHI, et al., *Procedural Justice and the Assessment of Civil Justice in Japan*, 39 *Law and Society Review* 875(2005). (finding that the perceived favourability of the outcome has stronger effect on the satisfaction with the outcomes than the perceived procedural justice).

distributive justice dimension.¹² Moreover, procedural justice is believed to foster law abiding behaviour and compliance with the law.¹³

We define the quality of the procedure using the concepts of procedural and interpersonal justice. Procedural justice is not a unidimensional construct. Research has confirmed that it includes two general parts: fair decision making and fair interpersonal treatment.¹⁴ Fair decision making consists of several facets – voice (opportunity to participate express concerns), consistency (procedures are applied consistently across people and across time), bias suppression (the decision-maker should be neutral), accuracy (procedures are based on accurate information), correctability (appeal procedures for correcting inaccurate outcomes), representation (procedures allow control at every stage of the process), and ethicality (the procedure implements general ethical and moral standards).

In addition to procedural justice components, we include the concept of interactional justice when examining the quality of the procedure. People want to be treated with respect and dignity on their paths to justice. Some authors insist that the quality of the interpersonal treatment is more important to the general view of the fairness of the procedure than the decision-making dimension.¹⁵ Interactional justice has been studied in terms of explanations and sensitivity. Klaming and Giesen define interactional justice “as the quality of the interpersonal treatment that people receive when procedures are implemented”.¹⁶ Interpersonal treatment consists of two components – interpersonal justice and informational justice. Interpersonal justice is “the degree to which people are treated with politeness, dignity and respect by the authority in question”.¹⁷ The concept has been operationalized into several sub-indicators – politeness, dignity, respect and propriety.¹⁸¹⁹ The second component of interactional justice is informational justice.²⁰ It refers to the “explanations and justifications provided to people”.²¹ The substantive content of informational justice is honesty, justification, justification (reasonable), justification (timely) and justification (specific).²² It has been suggested that the revelation of information and preferences during the procedure facilitates possibilities for integrative bargaining and value creation.²³

2.3. Quality of outcome

¹² ADAM LAMPARELLO, *Incorporating the Procedural Justice Model into Federal Sentencing Jurisprudence in the Aftermath of United States v. Booker: Establishing United States Sentencing Courts*, 4 New York University Journal of Law & Liberty 112(2009). E. ALLAN LIND & TOM R. TYLER, *The Social Psychology of Procedural Justice* (Plenum Pub Corp. 1988). THIBAUT & WALKER, *Procedural justice: A psychological analysis. But cf. MARTIN GRAMATIKOV & LAURA KLAMING, Justice as Experienced by the User: A Study of the Costs and Quality of a Path to Justice in The Netherlands TISCO Working Paper Series on Civil Law and Conflict Resolution Systems No. 004/2009 at <http://ssrn.com/paper=1118311>.* (finding that favourability of the outcome in a consumer dispute resolution mechanism is a better predictor of the general perceptions of the path to justice than the procedural justice).

¹³ TOM R. TYLER, *Legitimacy and Criminal Justice: The Benefits of Self-Regulation*, 7 Ohio State Journal of Criminal Law 307(2009). JOHN D. MCCLUSKEY, *Police requests for compliance: Coercive and procedurally just tactics* (LFB Scholarly Publishing, 2003).

¹⁴ TYLER, *Legitimacy and Criminal Justice: The Benefits of Self-Regulation*, 319. see also STEVEN L. BLADER & TOM R. TYLER, *A four-component model of procedural justice: Defining the meaning of a "fair" process*, 29 Personality and Social Psychology Bulletin 747(2003).

¹⁵ TYLER & HUO, *Trust in the law: Encouraging public cooperation with the police and courts*; TOM R. TYLER & JEFFREY FAGAN, *Legitimacy and cooperation: Why do people help the police fight crime in their communities?*, 6 Ohio State Journal of Criminal Law 231(2008).

¹⁶ KLAMING & GIESEN.

¹⁷ *Id.* at 18

¹⁸ Bies and Moag (1986 in Colquitt, 2001)

¹⁹ Colquitt, 2001

²⁰ HOLLANDER-BLUMOFF & TYLER, 476. (Bies & Shapiro, 1987; Colquitt, 2001; Lane, 1988; Shapiro, Buttner, & Barry, 1994)

²¹ KLAMING & GIESEN.

²² Colquitt, 2001

²³ HOLLANDER-BLUMOFF & TYLER, 476.

At the end of a path to justice the parties receive a certain result – i.e. a decision by a neutral person, an agreement or disagreement between the parties in the dispute, or an end to the path because one of the parties withdraws. Numerous evaluative frameworks could be used to assess the end-result – favourability, fairness, cost-benefit ratio etc. In our methodology, we explore and define the concept of the quality of the outcome. How do the users of justice decide which outcome is of high or low quality?

In order to answer this question, we study the criteria which are suggested to participate in the formation of the quality of the outcome assessment. Verdonchot et. al.²⁴ identify eight normative domains which generate indicators of justice – distributive justice, restorative justice, corrective justice, retributive justice, transformative justice, informational justice, legal pragmatism and formal justice. These criteria are grouped into three more general dimensions – distributive dimension, functionality dimension and transparency dimension.²⁵

The distributive justice dimension refers to how assets, damages and tasks were divided at the end of a path to justice. At the core of this dimension is the concern for fair allocation of the available resources. People credit qualitative outcomes as those which distribute the disputed value fairly in relation to their needs as well as the needs of the other parties. This view is based on the belief that people are not relentless self-interest seekers and, thus, are not indifferent to the outcomes that others receive. Another aspect of distributive justice is the restorative capacity of the outcome. An outcome which gives the aggrieved party compensation only for its pecuniary and non-pecuniary damages *mutatis mutandis* is perceived as one of a better quality.

The second dimension of the quality of the outcome is its functionality or, more precisely, the extent to which it delivers value to the user of justice. Central to this construct is the extent to which the outcome solves the problem that causes the legal need, thus forcing the user to step on a path to justice. Ideally, the outcome irons out the issue completely without causing additional damage. Outcomes of high quality should provide a resolution to the problem that does not further aggrieve the relationships with the other party or third persons. Enforceability is another important part of the functionality dimension. An outcome which could be enforced at an affordable cost is of higher quality than one in which the party cannot enforce it, or can only do so at prohibitively high costs. In the end, users value outcomes which make sure that future problems of the same type will not reoccur between other individuals.

Similar to the informational justice dimension of the quality of the procedure, we assume that the outcome should be predictable and motivated. An outcome could be distributively fair and affect the problem as expected, but still considered mediocre because the users of justice know nothing about its fairness as compared to the outcomes of similar paths to justice, or they did not receive a proper explanation. We call this dimension of the quality of the outcome *transparency*.

Using the framework of the three indicators, we assume, to a certain extent, all paths to justice can be assessed and quantified along the three indicators: costs, quality of the procedure and quality of the outcome. The universal character of the justice principles and values, which undergird the three indicators, provides a space for comparability. People belonging to different ethnicities, countries, legal systems or religious backgrounds are expected to share similar views on the most abstract justice values. In addition, the methodology is believed to yield comparable results because of the perceptual character of the collected data. When the perceptions of different populations and samples on comparable events (paths to justice) are measured with a standardized tool and methodology, the comparability of the results increases. While caution must be heeded in any comparison, conclusions can be drawn on the three elements – costs, procedure and outcome - and those indicators which define them.

²⁴ VERDONCHOT, et al.

²⁵ MARTIN GRAMATIKOV, et al., A Handbook for measuring the costs and quality of access to justice (Maklu. 2009).

3. Methodology of Data Collection

3.1. Study 1 – Judicial review, Supreme Administrative Court, Bulgaria

In Bulgaria, the research focused on a specific category of employment disputes between senior police officers and the minister of interior as their employee. Two practical reasons guided the choice of this particular category of cases. First, the Bulgarian Supreme Administrative Court (hereinafter referred to as SAC) is a pioneer among the Bulgarian courts of law in the use of internet to provide access to information. Allegedly, all of its case files have been published and are publicly accessible. This arrangement gave us easy access to the court files and, respectively, to the contact details of the appellants. Our second rationale for making this selection is that we wanted to investigate a subject matter in which the dispute is based on a long-term relationship between parties. From this perspective, the termination of public service is a legal problem based on quintessential relationships.²⁶

Art. 246 of the Ministry of Interior Act²⁷ stipulates that certain categories of senior officers could be dismissed from service only by ministerial order. Although the precise size of the police corps is not public information,²⁸ it could be assumed that a fairly large number of officers are subject to the norm of art. 246. The fact that the termination order has to be issued by the minister has significant procedural consequences. First, the labour dispute is encapsulated in an administrative procedure because the order has the properties of an individual administrative act.²⁹ Therefore, the subject matter, which in essence bears all attributes of an employment dispute, falls under the jurisdiction of the administrative courts. Compared to the general regime of public service, the orders of the Minister of Interior for termination of service are not subject to administrative review.³⁰ The only remedy to appeal such an act is the judicial review procedure adjudicated in SAC. In this way, a significant amount of relatively minor employment issues are concentrated for adjudication in one of the highest courts in Bulgaria. Disregarding the apparent workload and docket management problems, the centralization of the dispute resolution procedure leads to inconveniences for the appellants in terms of geographical access and higher legal fees for representation in the highest court.

In general, the appeals against the dismissal orders are based on two grounds. The more sizeable category of cases concerns appeals against the decisions of the minister to retire police officers when they have reached the necessary age³¹ and years of employment. Because of the income discrepancies, most police officers would prefer to avoid retirement and stay in service as long as they can. According to the law, retirement is not automatic, and is subject to a decision by the minister once an employee is eligible to retire, assuming the employee does not apply for it. In practice, there are allegations that this ministerial power has been used as a way to dismiss people for several reasons, which are at least not transparent. The second, less prevalent category of studied cases are appeals against imposed disciplinary sanctions, especially against disciplinary dismissal. The appellants invoke in their claims questions of substantive or procedural compliance with the law.

²⁶ See for termination of public service under Bulgarian Law: Костов, Д. и Д. Хрусанов, Административно право на Република България. Сиби, София, 2002; Къндева, Ем., и Б. Йорданов. Правен режим на държавната служба. Сиела, София, 2002.

²⁷ Promulg. Official Gazette, No. 17 of 24 February 2006

²⁸ On 19 January 2010 Mr. Tsvetanov, minister of interior announced that the ministry employs 61 170 persons (http://news.ibox.bg/news/id_875872636 last visited on 19/01/2010). Further breakdown of the personnel is not available.

²⁹ See for definition art. 21 Administrative Procedure Code, Promulg. Official Gazette, No. 30 of 11 April 2006.

³⁰ In general, the orders for termination of public service could be appealed before appointing administrative authority or before administrative courts according to art. 121, al. 1 of the Bulgarian Public Servants Act.

³¹ Under Bulgarian legislation the servants of the Ministry of Interior are provided with a privilege for earlier age retirement, if the eligible employee applies for it.

After hearing the case, the court has three options – 1) to dismiss the case on procedural grounds; 2) to sustain the appealed order; or 3) to overrule the administrative act of retirement or dismissal. Our data file contains cases with outcomes 2 and 3 that show a significant prevalence of court decisions rejecting the appeal. In essence, the outcome of the case is bivariate – the court confirms or repeals the appealed act of retirement or dismissal. There is no room for sharing or distributing the outcome between the parties in the dispute. Similar to the administrative review procedure in The Netherlands, one of the parties inevitably wins; the other one loses the case.

In order to estimate the population of interest, we searched the SAC database using different key words. In total, 277 cases disposed of between 1999 and 2008 provided sufficient details to be included in the sample. A questionnaire was mailed to each of the petitioners in the sample. Out of the 277 mailed questionnaires, 66 bounced back due to a wrong address or a missing recipient. From the remaining 211 questionnaires, we received 51 completed answers of which 50 were usable. This reaction resulted in a response rate of 23.70%.

3.2. Study 2 – Administrative review, Tilburg, The Netherlands

In 2008, 278 individuals filed claims with regard to different types of building permits, issued or rejected by the Municipality of Tilburg, The Netherlands. In particular, chapters 6 and 7 of the *Algemene Wet Bestuursrecht*³² outline the process of filing a complaint with the public authority which has issued the administrative act. All parties with vested interests in the dispute can file a complaint within six weeks from the issuance of the decision. Thus, complainants could not only be the person who initially asked the authority to make a decision but, dependent on the specific case, also neighbours, citizens' associations, as well as other public authorities.

The law gives the deciding authority a choice between two procedures for investigating a complaint: 1) internal hearing of the issue or 2) inquiry of the complaint by an independent hearing committee (*adviescommissie*). The municipality of Tilburg adheres to the former option – the complaints are reviewed by an internal commission. First, the complaint is reviewed with regard to its admissibility. Once it has been accepted, the hearing probes the procedural and substantive grounds of the reviewed decision on the basis of the objections filed by the complainant. The interested parties could require admission of evidence, such as witness statements or testimonies of expert witnesses. At the end of the procedure, the hearing committee could recommend to the authority to confirm or overturn the initial decision by issuing a revised decision ('*beslissing op bezwaar*'). The public authority has 6 weeks (12 weeks when the complaint has been heard by an independent advisory committee) to respond to the commission's advice. A peculiar characteristic of the procedure is that the outcome of the hearing is not binding for the public authority. However, if the revised decision does not comply with the advice, the complainant can appeal to the administrative court in first instance.

With the cooperation of the municipal authorities, we mailed a pencil and paper version questionnaire in 2009 to the whole population of appellants for this year. In total, 52 useful responses were returned, amounting to a response rate of 19%.

4. Descriptive and Comparative Analysis of the Studied Paths to Justice

4.1. Descriptive overview

At the descriptive level, the MA2J methodology provides information about the costs, the quality of the procedure and the quality of the outcome of a path to justice as they were perceived by the users. Such type of analysis affords insights into the interrelationships between the integral parts of a particular path. Were the various costs of travelling on a path a sizeable barrier? How fair and just was the procedure seen? To what extent did the outcome solve the problem, and how fair was it? The methodology answers these and similar questions through estimation of the tendencies reported by the

³² *Algemene Wet Bestuursrecht*, 4 June 1992

participants in the study. In the next section we briefly describe the numbers that reflect the opinions of the interviewed users of the two investigated paths to justice. Afterwards, we proceed with a demonstration of the comparative powers of the methodology.

4.1.1. Study 1

Before analysing the data from the Bulgarian study (Study 1), we must put the analysis into the broader context of the perceived functioning of the Bulgarian justice system. Slow court proceedings, overwhelmed dockets, rumours of corruption and general perception of ineffectiveness dominate the public opinion on the legal institutions. Distrust is the most characteristic feature of the relationships between the public and the courts. In this environment, it is not surprising to find that the studied judicial review procedure receives low scores from its users. On a scale from 1 (low) to 5 (high), the fairness of the procedure is rated with a mean score of 1.77 (See Annex: Table 14). About 71% of the respondents use the lowest possible category of the 5-point Likert scale when evaluating the fairness of the procedure. A figure this low is explicit evidence that the users are discontent with the procedural fairness. Similarly, the fairness of the outcome is assessed slightly higher at 1.85, but still well in the negative spectrum of the measurement scale. Reasonable questions arise with regard to the relationship of the fairness judgements to the favourability of the result of the path to justice.

Conventional wisdom dictates that people who receive an outcome which deviates qualitatively or quantitatively from the initial expectations will be less content/satisfied with the fairness. The collected data confirm the existence of very strong bivariate relationships³³ between perceived fairness and outcome favourability. Although causal inferences cannot be made on the basis of pure observational design, we could ask the greater part of the investigated path to justice to instil confidence and feelings of fairness. When the subjective judgement of fairness is almost a linear function of the favourability of the received outcome, the path to justice has failed to convince the losing party that this outcome had been achieved in an objective, impartial, equal and respectful process. The core of the procedural justice theory claims that a fair procedure will interact with the level of favourability in a way that mitigates the affections of loss and resentment.

What is the meaning of the individual item scores measuring the quality of the procedure in Study 1? Three items from the procedural justice dimension display particularly low mean values: process control (1.65), decision control (1.68) and objectivity (1.73).³⁴ On the other hand, the opportunity to express their views and feelings (2.47) and the accuracy of the facts on which the procedure has been based (2.40) receive higher mean scores. In the dimension of interpersonal justice, the respondents seem somewhat more satisfied with the followed path to justice: politeness of the judge/panel of judges (2.72), respectfulness (2.55) and refrain from improper comments (3.07). Similar to procedural justice, the informational justice items are perceived in a rather inconsistent way. The respondents tend to agree that the neutral decision maker was honest in the communication during the procedure. However, other aspects, such as whether the neutral explained the procedure (1.82) and the related applicant's rights, or the ability to ask for clarifications (1.67), were rated significantly lower.

The outcome in both studied paths to justice could be described in the language of game theory as zero-sum. One of the parties wins, the other loses. When almost 75% of the respondents assess the outcome as completely unfavourable, the evaluation of the outcome quality cannot follow a different trend. The distributive dimension of the outcome is viewed as particularly negative. The applicants see their needs (1.67) and efforts to resolve the problem (1.63) as neglected in the final result of the path to justice. Having an unfavourable outcome logically explains the lack of impact on the monetary and

³³ Fairness procedure/Outcome favourability $\rho = .99$ $p = .00$; Fairness outcome/Outcome favourability $\rho = .95$ $p = .00$

³⁴ See Appendix 1: Descriptive statistics: **Table 16**

non-monetary losses incurred from the problem.³⁵ Only one item scores high in the distributive justice dimension – whether the court considered the interests of the other party (4.07). Once again we see confirmation of the significance of the impact of the perceived favourability of the result of the path to justice.

Similarly, in the functionality dimension, the respondents perceive rather negatively the relationship between the outcome and its ability to solve the problem (1.7). A negative outcome means that the dismissal or retirement is confirmed and the individual has no other options for redress. Perhaps as confirmation of this factual situation is the higher level of agreement with the question asking for the enforceability of the outcome (see Annex: Table 17). A confirmed dismissal ordinance does not have to be enforced – the dismissal takes effect from the date of its enactment and hence has been enforced *ex-ante*.

The transparency of the outcome also receives mixed scores. In general, the respondents show slight agreement that it was possible to compare their outcome with the outcomes in similar cases (2.83), and these outcomes were comparable to their case (2.17). Visibly, the transparency of the outcome is perceived as low in terms of informational justice. The respondents share that they did not receive explanations about the outcome (1.49) or that when there were explanations these were not understood (1.91).

How big of a barrier are the costs of the studied path to justice? Looking at the nominal expression of the reported out-of-pocket time and expenses, the costs look prohibitively high. Before formulating conclusions we have to take into consideration the variability of the responses. The standard deviation for both the monetary and time expenses is quite high, which signifies large dispersion. At face value, some of the responses look unrealistic, questioning the reliability of the nominal measurement of the costs. It is possible that after contemplating other factors (i.e. fairness and quality of procedure and outcome, favourability of outcome) the respondents “punish” the procedure through picking high costs in the individual categories. The maximum values of all of the reviewed cost categories are at the edge of the factual possibilities in this particular country and path to justice. Instead of identifying outliers, we will analyse the costs as a relative concept and will measure their importance in relation to the other cost categories. We do this analysis through re-scaling, standardization and comparison of the cost categories in section 4.1.

4.1.2. Study 2

Significant monetary interests could be involved in the dispute which undergirds the path to justice in the Tilburg study (Study 2). Building permissions could concern a broad range of matters: from minor reconstructions or modifications to complex and expensive construction projects. As in Study 1, the procedure ends with a bimodal outcome – the commission issues advice in favour or against the appealed decision. On average, the fairness ratings of the procedure and the outcome are rather low – 1.82 and 2, respectively. Not surprisingly, we find that the outcome favourability is close to the rates in Study 1. On the 1 to 5 scale, the favourability of the result of the path to justice is rated with 1.9. In terms of percentages, almost 70% of those interviewed think that the outcome has been largely negative for them. What was said in the discussion above, with regard to the influence of the outcome favourability on the perceived characteristics of the procedure and the outcome (and to certain degree to the costs), is valid in this study.

In the procedural justice dimension, we find that the respondents of Study 2 tend to show slightly higher levels of appreciation as compared to Study 1. Only one item, decision control (1.86), has a mean score below 2.³⁶ Notably, the users of justice are rather satisfied with the abilities to articulate

³⁵ The Bulgarian legal system follows the English rule for allocation of legal fees – the party who loses pays the other party’s attorney fees as well as the expenses made in the course of the procedure, such as fees of expert witnesses, document discovery and production etc.

³⁶ See Annex: **Table 16**

their views and interests (voice=3.12) in the process. Other strong points in the procedural justice dimension are the correctness (2.79) and accuracy (2.71) items. Similar scores are given to the interpersonal aspects of the procedure. Politeness and respect are assessed with similar scores, 2.58 and 2.73, respectively, whereas the refrain of the neutral decision maker from inappropriate comments has been rated as high. Somewhat similar mean scores are given to the informational justice items. On the measurement scale, item scores range from 2.3 to 3.79. The users of the path to justice are rather dissatisfied with the information received during the course of the procedure.

The scores of the quality of the outcome items are lower than the quality of the procedure. Again, as in Study 1, the respondents report that their monetary (1.37), non-monetary (1.64) and relational (1.35) harms are largely uncompensated with the outcome. Another similarity between the two paths is the perceived high level of appreciation of the neutral decision maker to the interests of the other party in the dispute (3.89). The users see their interests as insufficiently protected and, at the same time, are concerned with the attention to the interests of the other disputant.

In terms of functionality of the outcome, the perceptions of the respondents are to some extent ambiguous. Higher mean scores are attributed to the item which measures whether the enforceability of the outcome have been taken under consideration (2.82). However, the impact of the outcome on the underlying problem is questionable (1.80). Not surprisingly, the correlation between outcome favourability and the impact of the outcome on the problem is almost perfect.³⁷

The data suggest that one dimension of the transparency aspect of the quality of the outcome scores particularly low. For the users of justice it has been difficult to compare their outcomes to decisions in similar cases (1.65). The related item of how similar the outcome is to comparable cases is in the same range of approval (1.80). The outcome is seen as a bit better in terms of the ability of the users to receive explanations (2.29).

Neither the out-of-pocket costs nor the time expenses could be seen as a considerable barrier for accessing the studied path to justice. Indeed, the legal fees are the highest monetary expense, but only a tiny proportion of the users actually used legal assistance.³⁸

4.2. Comparative power of the methodology

At the comparative level, various indicators of two different but comparable paths can be assessed. The primary advantages of these comparisons are the insights which may arise related to the reasons for such disparities and consequent policy implications. To illustrate the data that may result from the research, we provide several examples.

Figure 1 illustrates the comparative power of the methodology. First, one can observe the composition of the monetary and opportunity costs.³⁹ It is easily visible that the respondents of the two studied procedures consider the monetary costs differently. In Study 2, the most expensive out-of-pocket cost is communication – money spent on exchanging information with the other parties involved in the dispute. On the other hand, in Study 1 the legal fees followed by the travel expenses are the two most pressing sources of out-of-pocket expenses. Comparing the two procedures on the perceived monetary costs confirms the hypothesis derived from conventional wisdom that litigation is more expensive

³⁷ Impact on the problem/Outcome favourability $\rho = .99$ $p = .00$

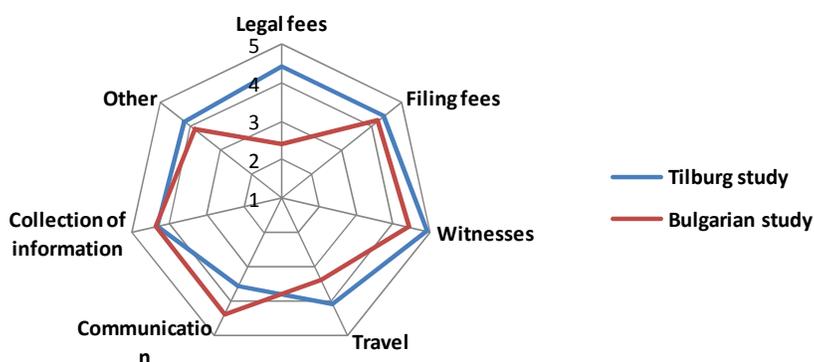
³⁸ About 8% of the respondents report that they had contracted a legal advisor for the procedure.

³⁹ In the questionnaire the monetary and the opportunity costs are measured in their natural units – money and time (number of hours). Thus, in the raw data, higher value on the particular item means higher costs. However, the two other indicators are measured with a scale on which low value has a negative connotation and high value has a positive one. For instance, a quality of the procedure item with score 1 means worse assessment than an item with score of 5. In order to match to three indicators on coherent scales, we rescale the costs accordingly. After the transformation of the monetary and opportunity costs, a value of 1 indicates high costs and value of 5 indicates low costs.

because of the inherent legal costs. In Study 2 we observe that few individuals used legal representation in the course of the appeal procedure.⁴⁰ Consequently, the legal costs in both absolute and relevant terms are low. To appeal a decision of the municipality requires little out-of-pocket expenses, which are predominantly concentrated in payments for communication with the involved parties and the necessary travel.

Further on, Figure 1 could be interpreted as evidence that the monetary costs of paths to justice could be measured through the perceptions of the users. People who follow procedures are able to rank the costs based on their amount and severity. A logical extension of this finding is to think that the reflections on the monetary costs and their interrelationships could be employed in a comparative framework. For instance, Figure 1 suggests that the experienced monetary costs of the two procedures could have different implications for the access to justice. Individuals who want to solve their problem through the studied procedure in Bulgaria will certainly face barriers in terms of legal fees and money for travel (here we concentrate exclusively on the out-of-pocket costs). These barriers have certainly prevented many people who have faced the same type of problem from stepping on the path to justice. The access to justice looks less restricted, in terms of monetary outlays, in the path investigated in Study 2.

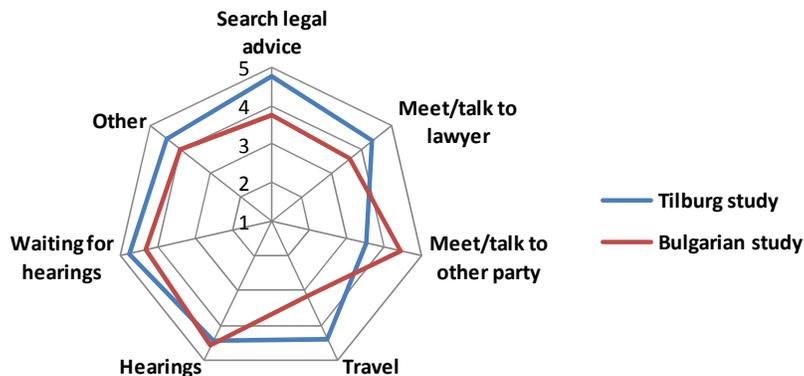
Figure 1: Comparison of Monetary Costs (1 indicates low costs, 5 indicates high costs)



Another confirmation of the initial expectations regarding the studied paths to justice comes from the comparison of the opportunity costs - Figure 2. Prior to the study, we anticipated that in the litigation procedure the most considerable out-of-pocket expenses would be the time spent for travel. The data confirm this hypothesis – most time has been spent on travelling. On the other hand, in the administrative review procedure, most time is reportedly invested in collecting documents and meeting authorities. Looking back at the characteristics of the particular path to justice, we can easily explain the predominance of the opportunity costs related to travel. Only the Bulgarian SAC, based in the country’s capital, has jurisdiction over this type of dispute. Therefore, plaintiffs who live in other parts of the country will have to make time consuming trips in their attempts to solve the problem. Objectively, travel is not a big problem for the decentralized administrative review, which takes place at the municipal level. In general, the respondents did not report high costs in terms of time, which is a good indicator for the accessibility of the procedure. The only exception in Study 2 is the category of Meeting/talking to the other party.

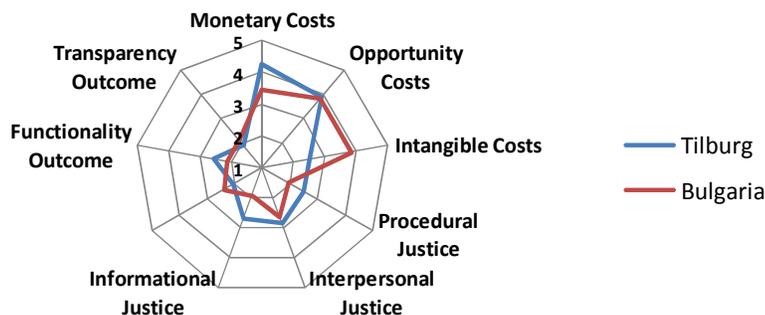
Figure 3: Comparisons of Opportunity Costs (1 indicates low costs, 5 indicates high costs)

⁴⁰ Only 7.7% of the respondents report that they were represented by a lawyer



While the above graphs illustrate the indicators of costs and quality of access to justice, a more holistic index for access to justice has been developed. The index is an aggregation of all variables believed to measure a user's path to justice. It summarizes the sub-indicators into three indicators – costs, quality of the procedure and quality of the item. Figure 4 illustrates an index of the two procedures based on their indicator scores. The data could be aggregated further on to a composite index of access to justice. Different modes of aggregations are possible. Gramatikov and Laxminarayan⁴¹ discuss four methods for extraction of meaningful weights – revealed preferences, factor loadings, regression scores and simple aggregation. In this paper, all index values are based on simple means calculations.

Figure 4: Index of Paths to Justice



5. Validity and Reliability of the Measurement Indicators

To what extent does the methodology accurately measure the costs and quality of the paths to justice? Can we attribute the differences in the responses of the users to variance in the procedures or to some other unobservable factors? These questions are discussed in the following section. Further on, we also discuss the power of the instrument to measure justice processes reliably and validly. What

⁴¹ MARTIN GRAMATIKOV & MALINI LAXMINARAYAN, *Weighting Justice: Constructing an Index of Access to Justice* Tilburg University Legal Studies Working Paper No. 18/2008 at <http://ssrn.com/paper=1344418>.

complicates the inquiry is that the costs and quality of the paths to justice are interpreted by the end-users. The scores do not reflect objective artefacts but perceptions about and attitudes towards paths to justice. Different people have different personalities, and, thus, different expectations and beliefs about justice, which is inevitably reflected in the accuracy (reliability) and truthfulness (validity) of the instrument. An excellent procedure for one person could be a dreadful experience for another. Another methodological challenge is that the paths to justice are tailored to respond to different problems from everyday life. *Ceteris paribus* the more severe problems are more difficult to solve and, therefore, will have a stronger impact on the perceived costs and quality of the procedure. Hence the question concerning the validity and reliability of the measurement instrument could be rephrased as: to what extent is the subjective evaluation of the costs and quality independent from the experiences with the underlying problem?

Reliability has been defined as the “degree of random error associated with a measure.”⁴² In order to estimate the random error, we need to have an overview on the true parameters of the studied path to justice. A challenge for the measurement of paths to justice is that there are no easily available population parameters that can be used to benchmark the reliability of the attitudinal scores. Therefore, we investigate the internal consistency of the items that measure related aspects of the paths to justice. In our measurement instrument, we study the quality of the procedure and the quality of the outcome through several attitudinal items which reflect related aspects of the same dimensions – i.e. procedural justice, interpersonal justice, distributive justice and outcome transparency. To do so, we are going to measure the internal consistency of the defined scales. We perform a reliability analysis using the Cronbach’s Alpha statistic,⁴³ by far the most widely used method for judging the reliability of the scales.

5.1. Costs of justice

In the measurement instrument, we ask the respondents to recall their actual expenditures in terms of money, time and other lost opportunities. For the sake of comparability, we transform the currency and time values into an ordinal scale on which 1 signifies high costs and 5 stands for very little to no costs.

Table 1 indicates that the internal consistency of the out-of-pocket and opportunity cost items in the two samples is sufficiently high. It should be noted that the item “Time spent to meet other party” in Study 1 significantly decreases the Cronbach’s alpha for the opportunity costs. When this variable has been deleted from the set, the measure of internal consistency settles at .73. Apparently, the respondents do not see this category as part of the opportunity costs. In this particular dispute, the other party is the former employer (Ministry of Interior), and it is likely that the plaintiffs did not have the opportunities to interact with the other party in the course of the path to justice. The rigid rules of dismissal set out in the Ministry of Interior Act and the relevant bylaws do not provide any room for dispute resolution modes other than judicial review. A more interpretative explanation is that the plaintiffs had difficulties to portray the Ministry as an equal disputant with whom one can meet, negotiate and solve a problem.

Table 1: Internal Consistency Out-of-pocket and Opportunity Costs

	Out-of-Pocket Costs	Opportunity Costs
Tilburg	.727 (7 items) ⁴⁴	.702 (8 items) ⁴⁵

⁴² ELIZABETHANN O’SULLIVAN & GARY RAYMOND RASSEL, *Research methods for public administrators* 107 (Longman 3rd. ed. 1999).

⁴³ Cronbach’s Alpha assesses how well a set of items measures a unidimensional phenomenon.

⁴⁴ Legal advisor fees, fees for other advisor, costs of public services (fees and taxes), travel costs, communication costs, documents retrieval costs and costs for witnesses. Excluded from the analysis are the items *translation* and *others* due to many missing values.

⁴⁵ Time for searching legal advisor, time for talking to legal advisor, time for talking to the other party, time for talking to authorities, time for collecting documents, time for travel, time for attending hearings, time for waiting for the hearings to begin. Excluded is *Other* due to many missing variables

Bulgaria	.873 (6 items) ⁴⁶	.671 (6 items) ⁴⁷
----------	------------------------------	------------------------------

The intangible costs pose significantly more difficulties in terms of operationalization and measurement. In the two studies, we use different approaches towards the estimation of the emotions experienced as a result of the ongoing procedure. In Study 1, a set of five negative emotions was constructed based upon the researchers' subjective estimation of their frequency on the measured path to justice. All items were measured on a 5-point Likert scale, which also indicates the strength of the experienced emotion. In Study 2, the respondents were offered a larger set of negative, but also positive, emotions measured at a dichotomous level. Not surprisingly, the five most recurrent emotions associated with the procedure are negative: frustration - 84,31% of all cases; anger - 56,86%; disappointment - 37,25%; ignorance - 33,33%; hopelessness - 17,65%. Cluster analysis groups the cases into two groups: the first group consists of cases with negative emotions and the second group consists of cases with predominantly positive emotions.

In terms of reliability, the latter approach of measuring the emotional states experienced on a path to justice bears little appeal. Table 2 shows that the Cronbach's alpha has a negative value, which means that the average covariance among the items is negative or, in other words, the individual questions measure different things.⁴⁸ On the contrary, we see that when emotions, stress and the negative impact on important relationships are measured with an ordinal scale, the reliability of the measure is high.

Table 2: Internal Consistency Intangible Costs

	Negative Emotions	Negative Emotions & Stress & Negative Impact on Important Relationships
Tilburg	-.147 ⁴⁹	-.528
Bulgaria	.913	.921

At face value, one might expect that the monetary, opportunity and intangible costs are positively correlated. An intriguing pattern emerges from the two studies (Table 3). The monetary and opportunity costs are positively correlated and, despite the small sample sizes in both studies, the bivariate relationships are strong and statistically significant at a 95% level. On the other hand, the intangible costs are negatively related to the other two instances of costs. The strength of the relationship varies and is statistically significant in only one of the pairs.

Table 3: Costs Inter-Correlations

	Tilburg			Bulgaria		
	Monetary	Opportunity	Intangible	Monetary	Opportunity	Intangible
Monetary costs		.58**	-.21		.70**	-.19
Opportunity costs			-.36*			-.03

5.2. Quality of the procedure

In our instrument, we largely borrow from the procedural justice measurement scale developed by Colquitt.⁵⁰ Numerous studies tested its validity and reliability and find that it performs sufficiently. In

⁴⁶ Lawyer's fees, witnesses' fees, court fees, travel expenses, communication expenses and costs for information gathering. We exclude from the analysis the category Other due to the many missing values. We exclude from the analysis the category Other due to the many missing values.

⁴⁷ Time spent for searching for legal help, meetings and talks to the lawyer, meetings and talks to the other party, travel, waiting in the court room and court hearings.

⁴⁸ Small sample sizes could be the cause of negative covariance even if the actual covariance between the analyzed items is positive.

⁴⁹ Reliability analysis is based on standardized items.

⁵⁰ COLQUITT.

the vast majority of these studies, the tool has been tested on justice processes in organizational environments. We contribute to further developing the tool through testing it in a different setting – paths to justice. The empirical data collected from the two samples of users of paths to justice (Table 4) support the hypothesis that the quality of the procedure scales exhibit a sufficient level of internal consistency.

Table 4: Quality of the procedure: Cronbach's Alpha

	Procedural Justice	Interpersonal Justice	Informational Justice
Tilburg	.804 (8 items)	.757 (4)	.874 (6)
Bulgaria	.866 (7)	.850 (4)	.915 (5)

5.3. Quality of the outcome

Testing the internal consistency of the quality of the outcome instrument presents greater challenges. As explained by Verdonschot et. al⁵¹ the quality of the outcome is perceived by the users of justice through a complex set of indicators. The most important of them – the fairness of the outcome - is just one of the dimensions which form the perceptions about the quality of the result of the procedure. Berry⁵² posits that in the area of services, the fairness perceptions and service quality are “inseparable issues”. We assume that there are other factors that participate in the evaluation of the quality of the outcome. These other factors are the functionality (the outcome capacity to generate the desired effects) and the transparency of the outcome. These three dimensions, however, could only partially explain the perceived quality of the outcome. First, the procedural justice theory supposes that the quality of the procedure intensively interacts with the evaluation of the outcome quality.⁵³ Given everything else equal, users who experience a more inclusive, fair, objective and ethical procedure are expected to rate the outcome as one of better quality. Then, as is the case with most other social and human phenomena, there are several unobservable factors that determine or impact the perceived quality of the outcome. For instance, the personalities of the users can affect the evaluation. A high maintenance individual could see an outcome differently from a low maintenance individual. Education and legal awareness could also play a role in the process of subjective evaluation of the quality. In the end, instrument related and sampling related errors are inevitable disturbance terms.

5.3.1. Distributive Justice

At least two challenges arise in the process of estimating the amount of measurement error related to the instrument. Our first dimension, distributive justice, is a composite measure of several components of the distributive justice construct – equity, equality and need. It is possible that at the level of operationalization the three dimensions blur, making it difficult for the respondents to delineate between the three. A second challenge is related to the use of self-reflexive and other-party focused items (emphatic). Self-reflexive are the items that ask the respondent to evaluate the fairness of the outcome according to her own interests, expectations and values. Examples for self-reflexive items are: “To what extent was your contribution to the problem taken into account in the outcome?” or “To what extent were your needs considered in the outcome?” On the other hand, the emphatic items solicit the respondent to assess the distributive justice according to a set of factors related to the other party. A typical example is: “Were the other party’s needs considered in the outcome?” Formulated in this manner, the emphatic items contain two cumulative assumptions. The first one is that the respondent has sufficient grasp on the informational and evaluative premises affecting the judgments of the other party. The second assumption is that the intrinsic biases of the respondent will not

⁵¹ VERDONSCHOT, et al.

⁵² LEONARD L. BERRY, *On great service : a framework for action* (Free Press. 1995).

⁵³ *Supra* note 8 Cf. RUSSELL CROPANZANO & JERALD GREENBERG, *Progress in organizational justice: tunneling through the maze*, in *International Review of Industrial and Organizational Psychology* (Cary L. Cooper & Ivan T. Robertson eds., 1997). MARY A. KONOVSKY, *Understanding procedural justice and its impact on business organizations*, 26 *Journal of Management* 489(2000).

interfere significantly with his ability to objectively assess the relationship between the outcome and the interests of the other party.

Both assumptions could be seriously challenged or at least relaxed. First, in certain types of disputes, the parties are not in a position to know the important facts that belong to the other party's private domain. Transactional paths to justice, such as consumer disputes, are typical examples in which the facts related to the other party could be estimated within certain confidence boundaries. In such cases, the justice evaluation should be based on the intrinsic values and beliefs of the particular respondent about justice. Because individuals or groups defined by class, ethnicity, gender or other criteria could have different normative values, the non-reflective items could introduce significant measurement error.

The second assumption regarding the empathic items states that the respondents are able and willing to provide a non-biased assessment of the distributive justice from the perspective of the opposing party. The assumption is substantiated by two streams of research. From a social psychological perspective, Messick⁵⁴ shows that people care that other parties in social interactions receive fair outcomes. This process, however, is not straightforward. According to Tesser, whether a person sees the outcomes of others in a positive or negative shade depends on the degree of self-comparison.⁵⁵ This implication means that a party in a particular dispute-resolution procedure sees the opponent as self-relevant – they both compete for the same resource – and may feel resentment about his or her positive outcome. When the self-relevance is low – i.e. the person disputes with someone else – the observant shows higher disposition to sympathize with the positive outcome.

Using the popular Ultimatum experiment, game-theorists consistently find that people are willing to share on average 40% of the disposable fixed resources.⁵⁶ Prof. Deborah Hensler puts the interaction between self-interest seeking and the social preferences for fair and equitable outcomes as: “people evaluate distributive outcomes in terms of their social meaning.”⁵⁷ A challenge to this assumption comes from the Economic man theories built on the assumption that individuals are rational self-interest seekers who prefer their own well-being against the interest of someone with whom they are in conflict. In other words, if one of these fragile assumptions has been violated, the consistency of the distributive justice scale will be compromised – its items will measure different things. As a result, the self-reflexive questions will gauge the perceived fairness of the distributive effects of the outcome and the non-reflexive questions will capture other phenomena.

In order to check the reliability of the measure of this effect, we conducted a pair wise comparison of the self-reflexive and empathy distributive justice items from the two data sets. Table 5 shows that none of the 5 pairs are positively correlated at statistically significant level. In addition, three of the pairs on the opposite side are negatively correlated and, despite the small samples, there is a statistically significant reverse relationship between the reflexive and emphatic items in Study 1. What does the lack of positive correlations tell us? First, the results suggest that the self-reflexive and the emphatic items measure different constructs. With the self-reflexive items, the instrument captures the perceived fairness of the outcome as it has been observed by the respondent.

⁵⁴ DAVID M. MESSICK, *Social interdependence and decision making*, in Behavioral decision making (George Wright ed. 1985).

⁵⁵ ABRAHAM TESSER, *Toward a Self-Evaluation Maintenance Model of Social Behavior*, in Advances in experimental social psychology (L. Berkowitz ed. 1988).

⁵⁶ TERRY L. BOLES, et al., *Deception and Retribution in Repeated Ultimatum Bargaining*, 83 *Organizational Behavior and Human Decision Processes* (2000). JOHN H. KAGEL, et al., *Fairness in Ultimatum Games with Asymmetric Information and Asymmetric Payoffs*, 13 *Games and Economic Behavior* (1996); MICHAEL MITZKEWITZ & ROSEMARIE NAGEL, *Experimental Results on Ultimatum Games with Incomplete Information*, 22 *International Journal of Game Theory* (1993).

⁵⁷ DEBORAH R. HENSLER, *Money Talks: Searching for Justice Through Compensation for Personal Injury and Death*, 53 *DePaul Law Review*, 424 (2003).

The emphatic items are much more difficult to interpret. One can hypothesize that these items are the mirror image of the self-reflexive distributive justice. The negative correlations make such a hypothesis plausible, but their strength is barely convincing. On the other hand, the lack of significant positive correlations between the items could be explained with the influence of some latent variables – i.e. respondent’s trust in the law and the institutions in general, aggravated relationship to the other party and the like.⁵⁸ Possible strategies for further investigation of the relationships between the self-reflexive and emphatic measures of distributive justice are to control for the level of outcome satisfaction and the properties of the underlying problem.

Table 5: Pair-wise comparisons self-reflexive vs. other-reflexive distributive justice items

	Own needs/Other party needs	Own contribution to the problem/Other party contribution to the problem	Own contribution to the solution of the problem/Other party contribution to the solution of the problem
Tilburg	-.196 (.192)	-.20 (.193)	.184 (.22)
Bulgaria	-.438** (.004)	.097 (.587)	

The analysis of the internal consistency of the distributive justice scales in the two data sets confirms the findings discussed above. When including reflexive and emphatic items, both scales miss the accepted .7 level of Cronbach’s Alpha statistic⁵⁹ (Study 1=.63 (7 items), Study 2=.56 (9 items)). When the emphatic measures are excluded from the scale, we see significant improvements. In Study 1, the reduced set of items has Cronbach’s Alpha of .78. However, one item appears to reduce the consistency of the whole set. A closer inspection of the equity item “Was your contribution to the problem taken into account in the outcome?” reveals that it is possible that the respondents understand the question differently.⁶⁰ It is also plausible that in labour related litigation this formulation of the question invokes self-blame and is therefore avoided by the respondents. Similarly, the item “Was your outcome similar to the outcome of other people in similar cases?” decreases the consistency of the whole scale.

After the two items are excluded from the scale, the measure of internal consistency reaches .95. Such a high level of Cronbach’s Alpha suggests very high internal consistency and even points to a possible redundancy in the battery of items. Excluding the other-party focused items from Study 2 also leads to a significant increase in the internal consistency of the scale for measuring the distributive justice dimension of the quality of the item .74 (see Table 6)

Table 6: Internal consistency of the distributive justice scales

Study 1	Study 2
Your own needs	Your own needs
Equity - contribution to the solution	Equity – role in the problem Equity - contribution to the solution Equality
Compensation of pecuniary harms	Compensation of pecuniary harms
Compensation of non-pecuniary harms	Compensation of non-pecuniary harms
Improvement relationship other party	Improvement relationship other party
.950	.742

⁵⁸ TOM R. TYLER & ALLAN E. LIND, *Intrinsic versus Community-Based Justice Models: When Does Group Membership Matter?*, 46 *Journal of Social Issues* 83(1990). SUSAN FOURNIER, et al., *Preventing the premature death of relationship marketing*, 76 *Harvard Business Review* 180(1998).

⁵⁹ Study 1=.630 (7 items), Study 2=.562 (9 items)

⁶⁰ With this item the alpha of the distributive justice dimension is .79

The distribution dimension is based on several notions of justice all pointing to the idea of fairness. Theoretically, the distributive items that we operationalized, need, equity, equality and restorative justice, are assumed to form a coherent multi-dimensional scale. However, it is also possible that two items return opposite scores for the same procedure. For instance, in certain cases equity could be the opposite of equality. An example is an outcome which properly considers the contribution of the two parties and, as a result, allocates different shares - equity. Such an outcome should score high on equity and low on equality. Alternatively, the equality dimension will receive a high score if the outcome is decreased by half. However, if the parties contributed differently to the underlying problem and its solution, the equity dimension of the outcome will attain a low mark.⁶¹

In order to test the homogeneity of the distributive justice scales, we perform an explorative principal component analysis with the items from the distributive dimensions in our data sets (see Table 7 and Table 8). The data from Study 2 suggest that there are two latent components in the distributive justice scale.⁶² In this two-dimensional construct, we find that three of the items (need, role in the problem, contribution to the solution) form a single component. Why is the equality item not grouping with the other three distributive justice dimensions? Keeping in mind the dichotomous outcome of both studied paths to justice, we see that even theoretically the outcome cannot reach equality. Therefore, like the empathy items, the equity adds a different valuation point into the assessment of the quality of the outcome. As a result, the analysis of the internal consistency suggests that the equality measures something else.⁶³

The compensatory aspects of the quality of outcome were anticipated to cluster together. As seen in Table 7, equality and financial compensation load on the second component, but the non-financial compensation adheres to the first component. Instead of explaining the components and their content and relationships, we should again look back at the properties of the studied path to justice. In an administrative review, the outcome can barely accommodate the idea of non-pecuniary losses and damaged relationships. What can be concluded is that some of the indicators of the distributive dimensions of the quality of the outcome are highly context specific. Compensation of non-pecuniary damages plays a significant role in tort cases but has no role in property disputes. Improvement of relationships will be a major restorative issue in disputes based on lasting relationships including family matters, domestic violence or labour. In transactional problems, such as consumer disputes or administrative grievances, the parties will rarely place significant value on their relationship with the other party.

Table 7: Study 2 Principal component analysis – distributive justice⁶⁴

	Component	
	1	2
Your own needs	.805	.195
Equity – role in the problem	.692	.110
Equity - contribution to the solution	.847	.325
Equality	.201	.791

⁶¹ See HENSLER, 434-446. (discussing evidence how the needs, equity and equality perspective on distributive justice contradict each other among people who claimed compensation from the September 11th Victim Compensation Fund. “Even in the context of catastrophic injury, when the nation’s sense of community seemed to be at its height – and psychological research suggests equality- and need-based compensation -would attract strong support – equitable principles of distributive justice trumped principles of equality and need.” p. 453). Cf. NANCY A. WELSH, *Perception of Fairness in Negotiation*, 87 *Marquette Law Review* 753(2004).

⁶² As a threshold for the eigenvalues of the components, the standard value of 1 is used.

⁶³ Theoretically, we can speculate that on some paths to justice, the equality makes part of the broader distributive justice dimension, along with need, contribution to the problem and contribution to the solution. When the outcome is not binary (as in the studied procedures), we could expect that equality becomes a meaningful indicator of the distributive effect of the outcome.

⁶⁴ Extraction Method: Principal Component Analysis. Rotation Method: Varimax with Kaiser Normalization.

Compensation of pecuniary harms	.027	.587
Compensation of non-pecuniary harms	.855	-.157
Improvement relationship other party	.063	.679

In Study 1 we observe a path to justice in which the distributive element is particularly visible. If we use the game-theory language, the outcome in employment litigation could be described as zero-sum. In a typical dismissal case, there are two possible but mutually exclusive outcomes. Depending on the form of the outcome, one party wins and the other loses. This core outcome could have many collateral effects that will additionally reflect on the perceived quality of the outcome – amount of compensation, attribution of the legal fees etc. Therefore, the distributive effect of the outcome is eminent for both parties. This hypothesis is confirmed with principal component analysis of the data from Study 1. Only one component ($\lambda = 4.23$, explained variance 84.5%) was derived from the 5 items, strongly suggesting that they measure a similar construct (Table 8). According to our theoretical framework, this construct is the distributive dimension of the outcome.

Table 8: Study 1 Principal Component Analysis – Distributive Justice

	Component
	1
Your own needs	.934
Equity - contribution to the solution	.880
Compensation of pecuniary harms	.898
Compensation of non-pecuniary harms	.943
Improvement relationship other party	.938

5.3.2. Functionality of the outcome

The functionality of the outcome measures its ability to rectify the underlying problem and to effectuate the intended change. In the language of quality management literature, the functionality of the outcome is the ‘goodness of fit’ of the process to prior expectations. In our instrument, the functionality is measured on 2 sub-dimensions or sets of items. The first one estimates the outcome impact on the existing problem – to what extent it is solved after the outcome occurred. Next, the tool collects information on the enforceability of the outcome or the extent to which the decision of the neutral has been or can be implemented in the real world. As Table 9 suggests, the functionality dimension faces significant challenges in both pilot studies. Both scales score low on internal consistency, suggesting reassessment of the structure and content of the measurement instrument.

Table 9: Consistency of the Functionality of the Outcome

Study 1	Study 2
Did the outcome solve your problem?	Did the outcome solve your problem?
Was the outcome effective in ensuring that, in the future, the other party will avoid the behaviour that caused the problem?	Reintegration of the other party
Was the outcome effectively enforced?	
Were the chances that the outcome would be enforced taken into account?	Were the chances that the outcome would be enforced considered into the outcome?
	Did the outcome allow you to continue with your life?
.614	.382

In both data sets the impact of the outcome on the problem reveals very low correlation with the rest of the items. This fact raises the question of whether the ability of the outcome to impact the problem and its functionality lie on the same evaluative level. A look from the reverse side of the equation could help to better understand this relationship. When is a legal problem deemed as resolved following a justice intervention? Whenever there is an outcome which closely responds to the needs of the plaintiff and is workable i.e. can channel the normative prescription into the acts and behaviours of the involved parties. The first requirement, however, is more fundamental. In order to solve the problem, the plaintiff needs an outcome which responds positively to the legal need. Indeed, the data shows that in the two studies there is an almost perfect correlation between favourability of the outcome and its ability to solve the problem.⁶⁵ Apparently, there is very little nuance in what the two concepts measure. Following the understanding that the favourability of the outcome is a category which reflects the facts but not values, we can exclude the item “Did the outcome solve your problem?” from the functionality scale.

5.3.3. Transparency of the outcome

An important dimension of the quality of the outcome is the extent to which it is motivated, clear and understandable for the particular user of justice. In addition to the properties of the outcome, our framework anticipates that the transparency has a comparative dimension. The extent to which the outcome could be compared to and is similar to the outcomes of similar cases should inform the fairness dimension.

Three items were used to measure the transparency of the outcome in Study 1 and Study 2. Analysis of the data from both studies indicates gaps in the internal consistency of the transparency scale (Table 10). The item-total statistics suggest that the comparability of the outcome is not well associated with the other two. When the item is removed from the scale, the Cronbach’s Alphas increase considerably - .723 for Study 1 and .718 for Study 2.

Table 10: Internal Consistency Transparency

Study 1	Study 2
Explanation outcome	Explanation outcome
Understand explanations	Understand explanations
Possibility to compare with similar outcomes	Possibility to compare with similar outcomes
Was the outcome similar to comparable outcomes	Was the outcome similar to comparable outcomes
.566	.606

Comparing the outcomes of other cases could be a challenging indicator for the quality of the outcome. It is built on the assumption that the users know the facts of the case, can sift through a representative sample of similar cases, analyze their outcomes and compare the mean outcome with their own. In practice, these complex knowledge computation processes are facilitated by the means of heuristics.⁶⁶ However, most of the users of justice are one time users, and it is unlikely that non-professional users will have an accurate idea of the distributions of the outcome in similar cases. Comparing a certain quantity (own outcome) with an uncertain quantity (the comparable outcomes of others) could cause dissonance and bias in the assessment. It is also possible that the phrasing of the items cause reliability issues.

On the other hand, Table 11 demonstrates that there are two identifiable components in the transparency dimension. Information on the outcome provided by the neutral decision maker comprises the first component. The second component groups the two items which assess the relationship of the received outcome to the outcomes in other similar cases.

⁶⁵ Bulgaria: $\rho = .97$ $p < .001$; Tilburg: $\rho = .95$ $p < .001$

⁶⁶ AMOS TVERSKY & DANIEL KAHNEMAN, *Judgment Under Uncertainty: Heuristics and Biases*, in *Judgment Under Uncertainty* (Daniel Kahneman, et al. eds., 1982). CHRISTINE JOLLS, et al., *A Behavioral Approach to Law And Economics*, 50 *Stanford Law Review* 1471(1998).

Table 11: Content of Transparency of the Outcome

Component	Study 1		Study 2	
	1	2	1	2
Explanation outcome	,88	,19	,84	-,33
Understand explanations	,91	,01	,78	-,47
Possibility to compare with similar outcomes	,06	,82	,53	,63
Was the outcome similar to comparable outcomes	,11	,83	,51	,62

5.4. Dimensions of the quality of the outcome

Following the review of the internal consistency of the quality of the outcome scale, we perform a confirmatory principal component analysis on the three factors structure. The data from Study 1 reveal two components with eigenvalues exceeding the conventional value of 1 (component 1 $\lambda = 5,26$; component 2 $\lambda = 1,06$). A third extracted components misses the threshold value by a small margin $\lambda = .091$. Cumulatively the first three components explain 81% of the variation in the scale. Table 12 reports the individual loadings of the items on the extracted components. Contrary to the theoretical framework, the items belonging to distributive justice and transparency load on the first component. An outcome which is described as fair is more likely to be seen as better explained and motivated. It is not possible to draw causal inferences from the available data about the relationships between distributive justice and transparency. This finding is not unexpected. In order to perceive and acknowledge the fairness of the outcome, the user must have access to or be supplied with timely, correct and sufficient information. Receiving more explanations is likely to increase the perceived fairness of the outcome.

Table 12: Principal Component Analysis With Varimax Rotation: Quality of Outcome Study 1

	Component		
	1	2	3
Your own needs	.920	-.085	.150
Compensation of pecuniary harms	.853	-.063	.072
Compensation of non-pecuniary harms	.878	.042	.243
Improvement relationship other party	.910	.052	.181
Equity - contribution to the solution	.840	.022	.229
Enforceability	.026	.940	.088
Prevent the other party in the future	.180	.083	.955
Explanation outcome	.727	.263	.006
Understand explanations	.754	.379	-.084

Enforceability is clearly a distinct facet of the quality of the outcome and justifies the functionality dimension. It is more difficult to interpret the third component. First, its marginal eigenvalue requires caution while its content is not less challenging. Only one item loads on this component – “Was the outcome effective in preventing the other party from doing the same?” Looking at the context of the measured path to justice, the item could be misinterpreted. Certainly the dismissal policy of a particular employer is not affected by an individual single court decision, even if it is unfavourable. It is also possible that the respondents interpret the question as “Will the outcome prevent the other party from inflicting similar harm to you?” Given the uncertainty of the item, it is more appropriate to reconsider its role as a contextual item, which only applies to some, but not all, paths to justice.

Somewhat similar findings can be observed in the component structure extracted from the data from Study 2 (Table 13). Three components have eigenvalues larger than one (component 1 $\lambda = 2.87$;

component 2 $\lambda = 1.40$; component 3 $\lambda = 1.20$). In total, the extracted components explain 72% of the variance in the scale. In the first component are grouped three items from the distributive justice dimension (need, equity, solution and compensation of intangible harms). Clearly, the second component clusters the two informational justice items – outcome information provided and outcome information understood. The ability of the outcome to improve the relationship with the other party and its capacity to deter the other party in the future are the two items that correlate with the third item.

Table 13: Rotated Component Matrix with Varimax Rotation: Quality of Outcome Study 2

	Component		
	1	2	3
Your own needs	.806	.246	.078
Compensation of pecuniary harms	.433	-.316	.035
Compensation of non-pecuniary harms	.810	.170	-.225
Improvement relationship other party	.127	.297	.601
Equity - contribution to the solution	.791	.142	.204
Enforceability	.256	.137	-.651
Prevent the other party in the future	.187	-.171	.641
Explanation outcome	.058	.844	-.164
Understand explanations	.438	.751	.122

In conclusion, we can summarize that there is one visible and relatively well definable facet of the outcome quality – distributive justice. It varies across the two studies, but apparently the users of justice use it in the evaluation of the received outcomes. It accounts for both the distributive effect of the outcome and its transparency. Contradictory to our hypothesized factor structure, the informational items in Study 1 adhere to the distributive justice items. However, in Study 2, the informational justice forms a tangible component. Its results suggest that the users of justice look at both the distributive and informational dimensions of the outcome. There is some evidence that the functionality defined as the enforceability and deterrence effect of the outcome is different from the distributive and transparency facets. However, the data from the studies does not lend sufficient evidence that the functionality is a distinct and discernable dimension of the outcome. Below, we further elaborate on the importance of this finding for the comparable power of the methodology for measuring the costs and quality of access to justice.

6. Discussion and Conclusions

6.1. Costs

With regard to the costs questions, the measurement scales show satisfactory reliability. Several issues have to be addressed to improve the methodology further. Failures in the development of the scales on which the out-of-pocket and opportunity costs are measured could cause distortions. Too narrowly or broadly defined intervals or inappropriate scale levels could decrease the level of precision of the estimate. Pre-testing and pilot studies with users of justice and experts could be viable strategies for reducing the risk. Another threat to the reliability of the scales is the affective influence on the estimation of the monetary and time expenditures. Users of justice, who are not satisfied with the procedural or outcome aspects of the dispute resolution process could “penalize” the path to justice, assigning costs which are higher than they actually experienced. In order to address this bias, we used non-linear normalization of the data. Other forms of normalization, such as z-scores, are possible and advisable in further application of the methodology.

As expected, the measurement of the intangible costs is a significant challenge. Difficulties not only arise from conceptualization, but from practical considerations as well. For instance, the reliability of measuring affective states long after the event is questionable. In Study 2, we measured emotions with

a simple dichotomous scale which failed to prove significant levels of reliability. As discussed above, the use of ordinal scales is more appropriate to assess the emotional costs of the paths to justice.

6.2. Quality of the procedure

The quality of procedure items demonstrate a high degree of reliability in accordance with the previous assessments of similar instruments. We are more concerned with the construct validity of the quality of the procedure. Our studies, as most of the comparable research have been, focused on third-party dispute resolution processes. There is a neutral party which is expected to conduct the process according to the values operationalized in the procedural, interpersonal and informational dimensions of the quality of the procedure. However, our definition of paths to justice is broader – it also includes dispute resolution processes as negotiations, in which the parties deal with the problem without the intervention of a neutral. How do the procedural justice theories fit into such context? In a relevant study, Hollander-Blumoff and Tyler⁶⁷ conclude that procedural justice plays a similar, if not identical, role in bilateral negotiations. An important finding with respect to our methodology is that the objectivity/neutrality items do not carry the same meanings as in the paths with neutral third parties. Each party in the negotiation sees the other party as a partisan player from whom one cannot expect objectivity and neutrality. Nevertheless, the other dimensions, input, respect/politeness and trust, play a significant role in the formation of the procedural justice perceptions in negotiation. With regard to the universality of the quality of the procedure indicators, this finding could have significant importance. Procedures with and without neutral third parties could be compared only on the mutually applicable items of procedural justice.

6.3. Quality of the outcome

Less confirmations of the theoretically defined model were discovered in the analysis of the quality of outcome items. Previous empirical research also fails to reach an agreement on the content and definition of outcome quality. In empirical studies of perceived outcomes of dispute resolution processes, outcome fairness has been defined in different ways. Sometimes it has been expressed as a success/failure ratio. A more global relative definition of fairness claims that two paths to justice are equal in terms of outcome fairness if, on the aggregate, the payout of the two procedures is equal.⁶⁸ Other approaches to define a fair outcome use the criterion of “fair allotment,” which, if followed in a fair process, results in fair outcome.⁶⁹ Hollander-Blumoff and Tyler⁷⁰ use outcome fairness, outcome favourability and objective monetary outcomes to assess the quality of the outcome.

Our approach to quality of outcome as a product of distributive justice, functionality and transparency finds some confirmation in the data, but also sees certain challenges. Distributive justice is a distinct and powerful criterion that the respondents employ when judging the quality of the outcome. People think about their needs and contribution when contemplating the outcome. At the same time, equality proves to be a problematic criterion. In many disputes, the simultaneous use of needs, equity and equality criteria leads to irreconcilable results.⁷¹ Specifically, we investigated two paths to justice that end with a dichotomous outcome which, objectively, cannot end with equal results. In further studies, it is advisable that the distributive justice dimension of the quality of the outcome omits the equality criteria.

Inclusion of self-reflexive and empathy items in the distributive justice dimension decreases the reliability of the measurement instrument. There are examples in which researchers used sufficiently

⁶⁷ HOLLANDER-BLUMOFF & TYLER.

⁶⁸ ALEXANDER J.S. COLVIN, *Empirical Research on Employment Arbitration: Clarity Amidst the Sound and Fury?*, 11 Employee Rights and Employment Policy Journal 405(2007).

⁶⁹ LAMPARELLO, 117.

⁷⁰ HOLLANDER-BLUMOFF & TYLER, 481.

⁷¹ *Supra* note 54

reliable combinations of the two types of questions to assess the fairness of the outcome.⁷² However, these studies report results from laboratory experiments with simulated disputes. In our studies, we observe the perceptions of individuals who used legal procedures to solve real and pressing legal problems. Several perspectives could inform us of why self-reflexive and emphatic items might not work on paths to justice, despite the findings of game-theory.⁷³ First, there could be a sizeable “fixed-pie” bias in disputes which result in dichotomous outcomes.⁷⁴ Parties in a dispute with a fixed-pie could assume that any gain for the other party is a loss for them. Furthermore, we studied third-party dispute resolution processes in which there were existing, but aggravated, relationships between the parties. In such an environment, it is likely that the fixed-pie bias takes effect. The role of the relationships could be different in bilateral negotiations: “If no relationships exist between negotiators, self-interest will guide their choice of the appropriate allocation principle to use in negotiation. A negotiator who does not expect future interactions with the other party will use whatever principles – need, generosity, equality, or equity – produces the better result for her.”⁷⁵ Another source of reliability concerning self-reflexive and emphatic items is the ego-centric bias. “People value their own contributions much more highly than they value the identical contributions of others”.⁷⁶

Although some experimental studies approve the combination of self-reflexive and empathy items, our data suggest that it does not fit the distributive justice dimension of the quality of the outcome. However, this does not mean that an emphatic, other-party focused assessment of the quality of the procedure does not merit measurement. The way that the users of justice see the fairness of the outcomes compared to the other party could be an important dimension of the quality of the outcome, which gives us a better idea of the distributive effect of the outcome.

There is evidence (particularly in Study 1) that the enforceability of the outcome makes a distinct dimension of the quality of the outcome. At the same time, the capacity of the outcome to solve the underlying problem is instead a function of the outcome favourability. Outcomes which favour the respondent are more likely to solve the problem. On the other hand, a high-quality dispute resolution procedure should take into consideration the problems of both parties and look for win-win solutions. Apparently, the two paths to justice that we studied are not exactly of this type.

Both studies show that the outcome transparency is not a single-dimensional concept. It is made of two components which reflect different types of judgments. Informational transparency assesses the extent to which the neutral motivates the specific outcome, as well as the ability of the user to justice to understand this information. Users who receive more information on why the path to justice ends with a specific outcome are assumed to be more satisfied with the outcome and, in general, with the dispute resolution process. The second distinct dimension of the transparency could be named external transparency (or fairness). On paths to justice, as in many other situations where justice judgments are made, “we compare our outcomes to others and register pleasure or satisfaction if the comparison is favourable [to us] and dissatisfaction if it is not.”⁷⁷ Research suggests that people prefer justice

⁷² See HOLLANDER-BLUMOFF & TYLER, 482. In their study, they use similar self-reflexive and empathy items to assess the outcome fairness (“The outcome was fair to my client”; “The outcome was fair to the other party”; “The outcome was equally fair to both parties” and “How fair was the outcome of the negotiation”). The researchers also define a Collaboration dimension of the outcome, including items such as “The outcome took my client’s/other parties’ needs into account,” and several pairs of questions asking about the outcome from two distinct perspectives. Reportedly, the internal consistency of the Collaboration dimension is high (0.84).

⁷³ See *supra* note 56

⁷⁴ MAX H. BAZERMAN & MARGARET A. NEALE, *Heuristics in negotiation: Limitations to effective dispute resolution*, in *Negotiating in organizations* (Max H. Bazerman & Roy J. Lewicki eds., 1983).

⁷⁵ WELSH, 756.

⁷⁶ *Id.* at 758.

⁷⁷ MESSICK.

processes in which their outcomes are likely to exceed those of the other party in the dispute.⁷⁸ Our data shows that the external transparency of the outcome is a distinct facet of the transparency indicator, and the users of justice employ it despite the heuristic challenges described above.

In conclusion, the empirical data show that the three-structure framework for measuring the costs and quality of paths to justice possesses satisfactory reliability and validity strengths. The model contributes to the body of knowledge focusing on measuring the interrelated facets of dispute resolution processes. Nevertheless, further efforts are needed for better conceptualization and operationalization of the individual items. We strongly advise further studies with larger samples on the construct validity of the measure. Other important directions of inquiry are the interactions between the perceived costs and quality of dispute resolution procedures, the objective properties of the paths to justice and the personal and cultural characteristics of the people who search for justice.

⁷⁸ SCOTT T. ALLISON & JENI L. BURNETTE, *Fairness and Preference for Underdogs and Top Dogs*, in *Social Decision Making : Social Dilemmas, Social Values, and Ethical Judgments* (David M. Messick, et al. eds., 2010).

Appendix 1: Descriptive statistics

Table 14: Fairness and favourability

	Study 1		Study 2	
	Mean	S.D.	Mean	S.D.
Procedure – Fair	1.77	1.38	1.82	1.16
Outcome – Fair	1.85	1.42	2.00	1.49
Outcome – Favourable	1.79	1.41	1.90	1.49

Table 15: Costs

		Mean	Min.	Max.	S.D.	Mean	Min.	Max.	S.D.
Monetary	Legal fees	261 ⁷⁹	0	5000	981	1501 ⁸⁰	0	10000	2509
	Filing fees	37	0	600	120	469	0	10000	1674
	Witnesses		0	2500	57	546	0	10000	2010
	Travel	36	0	500	106	455	0	2000	480
	Communication	26	0	150	38	155	0	1000	213
	Collection of information	95	0	2000	360	166	0	1000	244
	Other	57	0	1000	378	1706	0	10000	3630
Time	Search for legal advice	2	0	40	6	49	0	500	89
	Meet/talk lawyer	15	0	500	74	53	0	500	90
	Meet/talk other party	13	0	100	22	39	0	500	122
	Travel	3	0	20	6	79	0	500	115
	Hearings	3	0	30	6	29	0	500	107
	Waiting for hearings	1	0	25	4	27	0	500	78
	Other	5	0	100	16	63	0	500	142
Stress		2.44	1	5	1.28	3.71	1	5	1.6
Emotions	Frustration ⁸¹					4.08	1	5	1.51
	Angriness					3.94	1	5	1.66
	Humiliation					3.80	1	5	1.74
	Disappointment					4.02	1	5	1.65
	Hoplessness					3.38	1	5	1.89
Damage to relationship		2.82	1	5	1.33	3.57	1	5	1.8

Table 16: Quality of the procedure

QoP					
Procedural					

⁷⁹ In the Tilburg study, the monetary costs are measured in euro.

⁸⁰ Measured in the Bulgarian currency - leva

⁸¹ Different approach to measuring the emotions on paths to justice was used in the Tilburg study and therefore the results are not reported.

justice	Voice	2.47	1.24	3.12	1.24
	Process control	1.65	0.99	2.18	1.11
	Decision control	1.68	1.11	1.86	1.15
	Equality	1.85	1.27	2.53	1.43
	Objectivity	1.73	1.22	2.31	1.15
	Accuracy	2.40	1.44	2.71	1.35
	Correctability	2.02	1.30	2.79	1.21
Interpersonal Justice					
	Polite	2.72	1.13	2.58	1.2
	Refrain improper comments	3.07	1.20	4.06	1.40
Informational	Respect	2.55	1.17	2.73	1.24
	Honest	2.71	1.25	2.43	1.31
	Explained the procedure	1.82	1.13	2.61	1.22
	Explained the rights	1.95	1.14	2.31	1.19
	Did you understand?	2.31	1.22	3.79	1.12
	Timely information?	1.98	1.06	2.34	1.26
	Clarifications	1.67	1.07	2.79	1.18

Table 17: Quality of the outcome

Distributive					
	Your needs	1.67	1.17	1.65	0.98
	Other party needs	4.07	1.10	3.89	1.21
	Your contribution to the problem	2.97	1.77	2.11	1.23
	Other party contribution to the problem	2.13	1.50	2.85	1.36
	Your efforts	1.63	1.14	1.67	1.01
	Other party efforts			2.43	1.40
	Monetary harms repaired	1.45	1.02	1.37	0.72
	Emotional harms repaired	1.47	1.03	1.64	1.17
Functional	Damaged relationships improved	1.35	0.87	1.28	0.65
	Chances to enforce considered	3.80	1.52	2.82	1.40
	Was it effectively enforced	3.85	1.61		
	In the future the other party will refrain	1.47	0.99	1.56	0.87
Transparency	Did the outcome solve your problem	1.70	1.32	1.80	1.34
	Was it possible to compare to others	2.83	1.51	1.65	1.14
	Was it similar to others	2.17	1.48	1.80	1.19
	Did you receive explanations	1.49	0.94	2.29	1.39
	Did you understand the explanations	1.91	1.39		