# Research proposal master thesis

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Version: 1

## Working title

Who decides? An analysis of the influence of judicial assistance on verdicts in Dutch courts

## Research questions

1. What is the predictive power of a judicial assistant on the verdict of a case?
2. Does this predictive power change in routine cases vs complex cases?
3. Does this predictive power change when we take into account the experience of the judges and judicial assistant involved with the case?

## Theoretical framework

The main starting point of my research is Holvast (2017, p. 163) who describes seven factors that determine the involvement and influence of a judicial assistant:

* Trust
* Role perceptions
* Experience and expertise
* Career perspectives and ambitions
* Type and complexity of cases
* Single-judge or panel decision-making
* Time pressure and workloads

The existence of this phenomenon means that the judicial assistant involved may be a predictive factor on the verdict of the case. With my first research question I want to see whether the involvement of a certain judicial assistant can have a significant effect on a verdict.

The second research question delves into the predictive power of an assistant on different types of cases. The amount of discretion available in routine cases is lower; differently said, the predictability of the outcome based on the circumstances of the case is higher. This makes the predictive power of the assistant lower.

The third research question controls performs the first research again, but controls for the experience of judges and judicial assistants. The reason why I believe this might be a factor that can determine the predictive power, is that more experienced legal assistants’ their proposed vrdict will be less often/thoroughly checked by judges (‘they are more experienced, so they will do a better job’). This increases their influence.

## **Methodology**

Firstly, the predictive power of a judicial assistant on a case would be measured by looking at all cases where a judicial assistant is involved with, based on data from rechtspraak.nl, and coding the outcome of the case. We then control for the presence of the involved judge(s) for that case. This results in the impact of the judicial assistant on the outcome of the case.

Preferably the population of cases would be as similar to each other as possible, both in time (to account for changing legislation) and in context (legal domain, type of case, involved judges et cetera).

Secondly, the encoding of a verdict would depend on the type of domain the research focusses on. The most ‘obvious’ encoding might be categorical (‘plaintiff wins’, ‘defendant wins’, ‘neither win’), but there are many subdomains in which the verdict might be different (i.e. in criminal cases the verdict might be an interval by the height of the punishment given).

Thirdly, the encoding of the involved people to a case would be done by checking a register of judges and legal assistants to the open data database from rechtspraak.nl over a set period of time. This would be done in three steps: (1) firstly a ‘rough’ dictionary-based approach would be used in which the last names of involved people would be matched against the verdict, (2) this outcome will be manually reviewed for a subset of cases, and (3) finally the dictionary-based approach will be corrected. The process repeats until a high number of cases can be accurately tagged with involved people (+90%).

The statistical method depends on the type of encoding used for the verdict. Certain types of methods work better for certain types of encoding (i.e. categorical encoding works better with multinomial logistic regressions while interval encoding could also work with general linear regressions).

Preferably the population of cases would be limited to *one section* of a court (or multiple not related sections) in a short amount of time. There are three considerations for this:

1. Legislation changes. People change. The world changes. If cases over a long period of time is taken, time can become a factor that cannot be controlled for. The most obvious possibility would be that with more experience, people become more influential.
2. External people bring new social dynamics within a section. New judicial assistants and new judges can bring a unbalance in the dataset that cannot be corrected for.
3. The same section deals with the same subdomain. That means we don’t need to correct for the subdomain (and if we have multiple not related sections, we can compare those sections relatively safely).

If the population of cases can be limited as mentioned above, but is still big enough to perform statistical testing on, than that’s a good starting point for research. There should be a few additional controls though:

* References / case law mentioned in the verdict; in Šadl & Sankari’s (2016, p. ) it appeared that the references mentioned has an influence on the power of the AG.
* Background of the judicial assistant; in Šadl & Sankari’s (2016, p. 12) it appeared that the background of the AG (i.e. academic or legal practice) has an influence on the power of the AG.
* The number of judges on the panel; in Šadl & Sankari’s (2016, p. 13) it appeared that the number of judges on the panelhas an influence on the power of the AG.

The second research question controls for routine vs. complex cases. This requires a set of cases that are highly routine – which might provide difficult to acquire because these are often not published on rechtspraak.nl. Additional research needs to be done before this can be concluded.

The third research question requires us to look at the same section in two different periods of time to see whether the experience of the people involved with the case has an effect on the verdict. It is uncertain as of now whether a large enough dataset is available for this.

## Literature

Holvast, 2017, *In the shadow of the judge*

Šadl & Sankari’s, 2016, *The elusive influence of the Advocate General on the Court of Justice: the case of European citizenship*

## Other possible research questions

1. **What is the verdict quality of judges and judicial assistants?**

We measure verdict quality by cases that ‘survived’ an appeal. By following cases from a judge in a district court in appeal, we can determine the ‘verdict quality score’ of a judge in appeal. Adding the judicial assistant – who often write the case according to Holvast’s *In the shadow of the judge* – we can extend the ‘verdict quality score’ to assistants as well.

This is an interesting metric to research, because verdicts that are overturned in appeal cause a longer period of strain on participating parties. That is most apparent in cases where a suspect receives a prison sentence in their first verdict, and is acquitted in appeal. Recognizing patterns where this is often the case, can help judges to identify the cases in which their first verdict will most likely be overturned in appeal.

1. **In objection cases (‘wrakingszaken’), does work history of the to ‘objected judges’ and the judges presiding the objection case influence the outcome of the objection case?**

There are quite some objection cases available (ca. 3.600 from 2012 onwards). The data of judge’s work history is also publicly available. I can cross-reference those to determine whether there’s an influence of work history on verdict. I would do so by (1) coding the outcome of the judgements, (2) extracting which judge(s) are objected, and which judges preside the case, (3) checking if those judges worked together on cases in the past, (4) checking if those judges worked at the same court in the past in the same period (open data), and (5) performing statistical analysis to see if the correlation is determinant.

If there would be a correlation, this would mean that greater care should be made in selecting the presiding judges, for example by selecting judges from other courts. Not doing so would undermine the impartiality of the judiciary.

1. **Repeat exactly Šadl & Sankari’s (2016) research, but then on Dutch AG’s.**

Šadl & Sankari measured the influence of the Advocate General on the outcome of a case. I could repeat the exact same research on Dutch AG’s at the *Hoge Raad*.

1. **Is there a difference in the reading ease of verdicts across various subdomains, through time, institution and by judge and judicial assistant**

The readability – and thereby the accessibility – of verdicts is a hot topic. Accessible verdicts improves trust in the judiciary and creates understanding for the decision made. In 2015 the Raad voor de Rechtspraak, together with various researchers, researched [this topic](https://www.rechtspraak.nl/sitecollectiondocuments/research-memorandum-2015-2-promis.pdf). This research only focussed on the accessibility of two criminal cases, in two styles, and was mainly done through interviews. It was done in context of the Promis scheme.

This research would be exploratory oriented: I would analyse the reading ease of verdicts quantitatively with a readability metric such as Flesch or Douma. The readability scores of verdicts would be analysed on four aspects:

* The subdomain of the verdict: civil vs. criminal vs. administrative
  + Null hypothesis: the same readability scores are measured over subdomain
  + Alternative hypothesis: there is an effect, most probably that criminal cases are easiest to read because of the high focus on readability in the past years, and civil verdicts are hardest to read.
* Time
  + Null hypothesis: the same readability scores are measured across time
  + Hypothesis: older verdicts are harder to read than newer verdicts because of increased attention to readability in the past years.
* Institution
  + Null hypothesis: the same readability scores are measured across institution
  + Alternative hypothesis: ??
* Involved people
  + Null hypothesis: the same readability scores are measured across various involved people
  + Alternative hypothesis: the involvement of certain judges or judicial assistants has an effect on the readability, because of their preferred writing style.