

## Topic outlines -- Country (or Regional) report The Netherlands

Country reports should address the following issues. We understand that some of the questions may not be applicable in certain situations.

### 1. Providers of Legal Aid

(a) Who are the providers of legal aid services in your country?

The Dutch legal aid system is basically a two-fold model in that it encompasses two 'lines' that provide legal aid. The Legal Services Counters, being the first line, provide front services, i.e. primary legal advice. Legal matters are being clarified to clients and information and advice given. If necessary, clients will be referred to a private lawyer or a mediator, who acts as the secondary line of legal aid. Clients can also apply for help from a subsidized lawyer directly. Private lawyers and mediators are paid by the Legal Aid Board to provide their services to clients of limited means. Generally they are paid a fixed fee, although exceptions can be made for more extensive cases. To some extent, trade unions and consumer organizations provide legal aid too.

(b) Does your organisation consolidate legal aid resources in your country, by carrying out legal aid work authorized by other government agencies?

No.

### 2. Organization

(a) How does your organisation organize its human resources?

(b) Is the legal aid scheme in your country funded by the government or the private sector? Is the scheme organized on a centralized level or regional level?

If the legal aid scheme in your country is organized by the government, how does it maintain independence from the government?

Under the European Convention on Human Rights and the Constitution of the Netherlands, each citizen of the Netherlands has the right to access courts, apply for legal advice and representation and, if means do not suffice, receive state-financed legal aid. Since 1994 legal aid has been regulated under the Legal Aid Act. This Act replaced the prior statutory system that dealt with the supply of legal aid and dates back as far as 1956. Residing under the competence of the Ministry of Justice, the Legal Aid Board is charged with the organization and administration of legal aid. This includes matching the availability of legal experts with the demand of legal aid, as well as the supervision and quality control of the actual services provided. Annually, a Monitor is published that reports on the previous year's situation.

The Legal Aid Board also advises the Ministry of Justice on matters concerning the supply and demand of legal aid. Being financed by the Ministry of Justice, the Legal Aid Board accounts to this Ministry for its budgetary allocations.

### 3. Financial Affairs

(a) What are the sources of legal aid funding in your country?

Legal Aid is paid from the national budget of the Ministry of Justice. It is an open end payment model, which means that everybody is entitled to receive legal aid.

(b) Does the legal aid scheme in your country adopt a charitable model or a rebate model? Are recipients of legal aid required to repay legal aid costs at the conclusion of court proceedings?

The costs of legal aid are partly covered by a fee from the client himself. This personal fee, though generally covering only a small part of the actual expenses, is meant to encourage clients to carefully weigh the pros and cons of taking a matter to court, and hence discouraging frivolous cases so as to remain in better control of the costs of the legal aid system at large.

In some cases a party who obtained legal aid has to pay the lawyer himself. This is when the result of the procedure substantially improves his financial situation.

(c) Are court fees/filing fees and security for costs covered by legal aid?

(d) If provided, does this assistance increase the burden on the government's budget?

Court fees/filing fees are paid by the parties themselves.

### 4. Supervision

(a) Is the operation of your organisation supervised by another authority?

(b) How does it supervise your organisation?

Residing under the competence of the Ministry of Justice, the Legal Aid Board is charged with the organisation and administration of legal aid. This includes matching the availability of legal experts with the demand of legal aid, as well as the supervision and quality control of the actual services provided. Annually, a Monitor is published that reports on the previous year's situation.

(c) What are the difficulties involved in dealing with the organization's supervising authority?

The legal board financially depends on the resources from the Ministry of Justice. Public expenditure on legal aid is increasing each year. In order to stop this trend, the government has ordered a cost reduction of € 50 million euro's per year.

In 2008 the Ministry of Justice initiated an 'interactive project', bringing together a large number of parties who were in one way or the other concerned with legal aid. Besides the Legal Aid Board, the Legal Services Counters and the Council for the Judiciary, insurance companies and consumer organizations were invited to take part, as well as private lawyers, mediators and scientists. The project parties have proposed several options the goal of which is to improve the Legal Aid System and cut its costs simultaneously.

## 5. Procedures and Criteria for Granting Legal Aid

(a) Please briefly describe your organization's criteria for granting legal aid.

(b) Are applicants means-tested? If so, please describe the financial eligibility criteria, any documentation required for applying, the procedures of application and assessment, and the timeframe for decision-making. Are there situations where means-testing is not required?

It is on the basis of this tax information and on the nature of the legal problem as outlined by the lawyer, that the Board decides whether or not legal aid will be granted. If legal aid is granted, a certificate is issued which allows the lawyer in question to deal with the case. The certificate also specifies the client's fee, which is based on the information concerning his income and other financial means. In 2009 the fees to be paid by clients varied from € 98 to € 732 per case (see Table3). Individuals whose income exceeds € 33,600 (partner income included) or € 23,800 (single) are not entitled to legal aid. Sometimes clients are exempted from individual fees. This applies to all cases where people have been deprived of their freedom.

Assessment of the applicant's income level (and hence his potential eligibility for legal aid) is based on his income two years prior to the application date. That is the so-called *reference year* ( $t-2$ ). The reason to use that year's income data, is that those data are the latest that are available from the tax authorities. Moreover, those data have generally been found correct and therefore final. So, for a certificate to be granted in 2009, the applicant's income in 2007 is leading.

Requests can be made for adaptation of the reference year, if the applicant's income in the year of application has decreased substantially compared to that in the reference year. This holds if the applicant's reference-year income would not make him eligible for legal aid, whereas his present income would. If an applicant wishes to be eligible for a lower fee, his income needs to have decreased by at least 15% since the reference year<sup>1</sup>.

Eligibility for legal aid, however, is not only subject to the level of income but to the availability of other financial means (such as savings) too. The applicant's capital must not exceed € 20,014 (with a supplementary allowance of € 2.674 per child under 18 in his care).

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<sup>1</sup> In 2008, 9,165 requests for reference year adaptation were made. This amounts to 2.2% of the total of legal aid certificates granted.

(c) If applicants are means-tested, has consideration been given to raise the financial eligibility criteria, thus increasing the number of people eligible for legal aid?

Thanks to online connections with the tax authorities, it has become possible – more accurately so than in the past – to assess the scope of the Legal Aid System and gain a better insight into the socio-economic characteristics of those who apply for legal aid. Estimates are that approximately 40% of the Dutch population would, on the basis of their financial means, qualify for legal aid.

Public expenditure on legal aid is increasing each year. In order to stop this trend, the government has ordered a cost reduction of €50 million per year. Despite this ordered cost reduction there have not been any plans to substantially change the eligibility criteria. Only minor changes are proposed in the amount people should pay as own contribution for legal aid.

(d) Who assess legal aid applications? How are these personnel recruited?

Employees of the Legal Aid Board assess legal aid applications. These employees, usually with a legal background are instructed within the organization how to fulfill their tasks.

(e) For court cases, is the prospect of success a consideration for deciding applications?

Yes, the case must have some chance to be completed successfully. If a case is prospectless, a certificate will not be provided.

(f) Is there a requirement that an application must be made by the applicant personally?

The lawyer makes the application on behalf of his client.

## 6. Models of Service Delivery

(a) How are legal aid cases assigned to lawyers?

As a rule a client chooses his own lawyers. In case of criminal law cases and other situations in which people have been deprived of their freedom against their will, a lawyer is assigned by the Legal Aid Board.

When a person approaches a Legal Aid Counter with his problem it can be decided that it is appropriate to refer this client to a lawyer. Referrals from the Legal Aid Counters to lawyers are made electronically, with the help of software that was specifically designed for this purpose. The software helps the Counter's staff to evenly distribute referrals among the lawyers that have been registered for referral. As stated before, selection of a lawyer is based on criteria concerning: (1)his availability on particular dates and times; (2)expertise in the law field of the case at hand; (3)accessibility for the client in terms of travel distance and (4)the number of referrals obtained within a set period of time.

Are legal aid services provided by salaried lawyers, contracted lawyers, or by lawyers or law firms in other ways?

**Payment of lawyers and mediators**

Legal aid is provided by private lawyers and mediators. They operate under the terms of the legal aid system and need to be registered with the Legal Aid Board and comply with quality standards that have collectively been set down by the Board, the Dutch Bar Association and the Ministry of Justice. As soon as a case is closed, the lawyer bills the Legal Aid Board for the services provided. The Board, however, does not pay an hourly rate but a fixed fee for different types of services. These fees are based on extensive analyses of legal aid cases from the past and are supposed to correspond with the average time spent on a specific kind of case by a lawyer. Broadly speaking, the fees in 2008 correspond to an hourly rate of approximately € 110 (see also Table 12 for the fees paid since 2000). This means that a lawyer is paid 10 times € 110 for legal aid in divorce proceedings. In 1994 the hourly rate was € 26. Over the last decade, fees have been raised substantially, because lawyers operating under the legal aid system were relatively underpaid. The last few years, fees have been raised following the current price index.

**7. Legal Aid Fees**

(a) Please compare the fees paid to legal aid lawyers with fees charged by private practitioners.

The fees of private lawyers are free. A quick scan of the site on which fees can be published shows that fees are between €70 and as high as €400. Not all lawyers have published their fees on this site yet, although this is encouraged by the Lawyers Board. The fixed fees that are paid by the Legal Aid Board correspond to an hourly rate of approximately € 110.

**8. Legal Aid for Specific Communities**

(a) Does your organisation tailor and provide legal aid services to specific communities (for example, aboriginal people, foreign workers, plaintiffs in environmental litigation)

There are special rules for plaintiffs in environmental litigation.

**9. Scope and Types of Services**

(a) Is legal aid available for the following matters:

(i) Litigation in civil law, criminal law, administrative law and claims for national compensation?

Yes

(ii) Alternative dispute resolution?

Yes

(b) Does legal aid provide the following services?

(i) Face-to-face or telephone legal consultation?

Yes

What are the procedures of providing these services? Are applicants for legal consultation means-tested? How are applicants' finance assessed?

The clients are following the general rules. In case of relatively simple legal problems, private lawyers are allowed to charge a standard three-hour legal advice fee, of which the client contributes € 39 or € 72, depending on his income (see Table 2). At present, only a rough appraisal is made of the number of hours that the lawyer is likely to spend on the case. Whether or not a client is entitled to three-hour legal advice, depends on his taxable annual income two years prior to the year of application (t-2). It is that income that is the most recent and reliable income information that the tax authorities have access to. A Board-registered lawyer submits an application to the Legal Aid Board on behalf of his client.

(ii) Assistance during interviews at police stations?

Recently the Supreme Court has decided that each person is entitled to talk to a lawyer before being investigated at police stations. Jurisprudence proscribes that young persons (<18) are entitled to be assisted during interviews.

(c) Is legal aid available for foreign nationals?

Yes, special asylum lawyers are available.

## 10. Innovative Legal Aid Initiatives

(a) What are the unique features of the legal aid practices in your country?

The two-fold model.  
The open end financing system.  
Fixed fees.  
Legal aid for mediation.  
High quality standard for lawyers and mediators providing legal aid.

(b) What are your organization's innovative legal aid initiatives in the recent years?

1. Introduction of mediation in 2004.
2. Establishment of 30 Legal Aid Counters beginning in 2005
3. In April 2006 the legal aid system was reformed. From then on, the eligibility for legal aid was based on both the client's annual income and his assets. The Legal Aid Board verifies the client's personal data with those in the municipal population register and checks the applicant's income with the tax authorities. Thanks to online connections with the tax offices, the Legal Aid Board is able to rapidly obtain information concerning the applicant's income and other available financial means.
4. In addition to the Counters, from 2007 there is also available an interactive online application called *Rechtwijzer* ("Roadmap to Justice"; see [www.rechtwijzer.nl](http://www.rechtwijzer.nl)). This, too, is an easy way to obtain legal information. It helps users to find their way towards solving a conflict. The application, developed by the Legal Aid Board

in close cooperation with the University of Tilburg, consists of a 'dispute roadmap' that, on the basis of a number of choices, guides users step by step along all the legal aspects of the conflict at hand. The software covers the fields of housing, labour, family, consumer and administrative law.

## **11. Access to Legal Aid**

(a) How does your organisation provide potential legal aid applicants with knowledge of the availability of legal aid services?

Lawyers, mediators and the Legal Aid Counters are expected to inform their clients about the possibilities and conditions to obtain legal aid.

The Legal Aid Board has a website: [www.rvr.org](http://www.rvr.org) . As mentioned there is also 'the Roadmap to Justice'; see [www.rechtwijzer.nl](http://www.rechtwijzer.nl) .

To inform stakeholders about the legal aid system, annually, a Monitor is published that reports on the previous year's situation.

(b) How are legal aid services provided to applicants who live in areas that lack legal resources?

The distance in the Netherlands, being a small country should not be a problem.

The 30 Legal Aid Counters focus on electronic means to provide legal aid. They also run a call-center.

(c) Does your organisation arrange outreach programs for legal aid lawyers? What is the performance of these programs?

Newly contracted lawyers and mediators are invited for an introduction session to inform them about the standard procedures to apply for legal aid. The Legal Aid Board regularly provides each lawyer with electronic newsletters, especially when there has been some changes in legislation or procedures concerning legal aid.

## **12. Legal Aid Lawyers**

(a) What are the sources of recruiting legal aid lawyers?

Legal aid lawyers are recruited from lawyers in the Dutch Bar Association. Each new lawyer receives a letter in which he is informed about the possibilities of registration at the Legal Aid Board. These lawyers subscribe voluntarily.

(b) Compared with lawyers in private practice, are legal aid lawyers as highly regarded by the police, prosecution and the courts? Do they provide facilities to make legal aid lawyers' work more convenient?

Legal aid lawyers are as highly regarded as private lawyers within the court system. Some private lawyers look down on legal aid lawyers, because of the kinds of clients and the kinds of cases.

No special facilities are provided.

### **13. Quality Assurance**

(a) How does your organization ensure the quality of legal aid lawyers' work?

To be entitled to accept legal aid cases, private lawyers need to be registered with the Legal Aid Board and comply with a set of quality standards. The Board's major requirement is submission to a three-year audit by the Dutch Bar Association that checks if the law firm works according to the Bar's standards of decent office practice. The audits are carried out by experienced lawyers who have received special audit training. If the auditor gave a negative judgement, a re-audit will be carried out a few months later. Should the re-audit still indicate serious deficiencies, the law firm in question is no longer allowed to provide legal aid. Lawyers that hold the quality mark of the Dutch *Foundation Viadicte* are also entitled to accept legal aid cases. They are under the obligation to participate in Viadicte's peer review system.

For some fields of law – criminal, mental health, asylum and immigration law, additional terms apply. These are mainly concerned with specific training: the lawyer must both have adequate expertise and sufficient experience in that particular field.

With the help of client surveys the satisfaction rates are established amongst clients of Legal Aid Counters and legal aid lawyers.

### **14. Participation in Reforms**

(a) Does your organization participate in campaigns for social reforms or law reforms, with a view to reduce legal disputes?

Yes. In 2008 the Ministry of Justice initiated an 'interactive project', bringing together a large number of parties who were in one way or the other concerned with legal aid. Beside the Legal Aid Board, the Legal Services Counters and the Council for the Judiciary, insurance companies and consumer organizations were invited to take part, as well as private lawyers, mediators and scientists. The project parties have proposed several options the goal of which is to improve the Legal Aid System and cut its costs simultaneously.

### **15. Challenges**

(a) What are the difficulties and challenges facing your organisation in promoting legal aid services?

1. The system is in balance. It's a challenge to continue this situation and to keep the quality of the legal aid provided on a high standard.



2. Promoting the use of ADR and encouraging Dutch citizens to solve their own problems (websites of Legal Aid Council and Roadmap to Justice).
3. Reducing the use of legal aid.