

National report the Netherlands

Legal Aid in the Netherlands

a broad outline

Legal Aid Board

2016/2017

Legal Aid in the Netherlands

This brochure, issued by the Legal Aid Board, provides a broad outline of legal aid in the Netherlands, as well as a survey of the current facts and figures concerned with legal aid.

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.¹ The Dutch Legal Aid system provides legal aid to people of limited means. Anyone in need of professional legal aid but unable to (fully) bear the costs, is entitled to call upon the provisions as set down in the Legal Aid Act (in force since 1994; the last amendment in the regulations took effect on February 1st, 2015). The Legal Aid Act of 1994 replaced the prior statutory system that dealt with the supply of legal aid and dates back as far as 1957.

Given their financial means, approximately 39% of the Dutch population (with a total of 17 million people) would, according to the latest estimates, qualify for legal aid if circumstances so require. The legal aid itself is mainly financed by the state (the Legal Aid Fund) and only for a minor part by an income-related contribution of the individual client.

Residing under the competence of the Ministry of Security & Justice (S&J), an independent governing body called the Legal Aid Board ('Raad voor Rechtsbijstand', LAB) is entrusted with all matters concerning administration, supervision and expenditure as well as with the actual implementation of the Legal Aid System. This includes matching the availability of legal experts with the demand for 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 five years' situation. The LAB consists of five regional offices and one central office.

Being financed by the Ministry of S&J, the LAB accounts to this ministry for its budgetary allocations. The legal aid system operates according to an open end provision. In the past 20 years, spending on legal aid has more than doubled. However, this upward trend has come to an end in the last couple of years (see Table 1).²

Table 1 Dutch population and expenditure on legal aid

	1994	1998	2002	2006	2010	2012	2014	2016
Total Dutch population*	15,300	15,650	16,105	16,334	16,575	16,656	16,829	16,979
Total expenditure on legal aid in Euro*	184,000	195,000	315,000	398,000	472,000	486,000	432,000	423,000
Expenditure per capita in Euro	12	12	20	24	28	29	26	25

*in thousands

Threefold model

The Dutch legal aid system is basically a threefold model in that it encompasses three 'lines' that provide legal aid (see figure 1 for a schematic representation):

¹ Constitution of the Netherlands Art. 17: 'No one may be prevented against his will from being heard by the courts to which he is entitled to apply under the law'. Art. 18 '(1) everyone may be legally represented in legal and administrative proceedings. (2) Terms concerning the supply of legal aid to persons of limited means shall be laid down by Act of Parliament.'

² Both in 2008 and in 2010, the Parliament of the Netherlands have decided to cut the costs of legal aid by € 50 million euros per year in order to prevent them from becoming even higher. In the last couple of years, new ideas for cutbacks have been made and are still being made. At the end of this brochure the plans for cost reduction will be discussed in greater detail.

1. Online self-help, information and support is offered on the *Rechtwijzer* website (Rechtwijzer translates into Roadmap to Justice; see www.rechtwijzer.nl). Rechtwijzer is a preliminary provision and offers interactive 'decision trees' helping people to assess their situation. In addition Rechtwijzer provides easy-to-understand information and guidance on possible solutions for the most common legal problems. Separating couples were offered the online dispute resolution platform *Rechtwijzer Uit elkaar*. The innovation was piloted and implemented from 2014 to 2017, when it was taken over by a social business. The digital divorce platform will remain part of the services offered by Rechtwijzer.

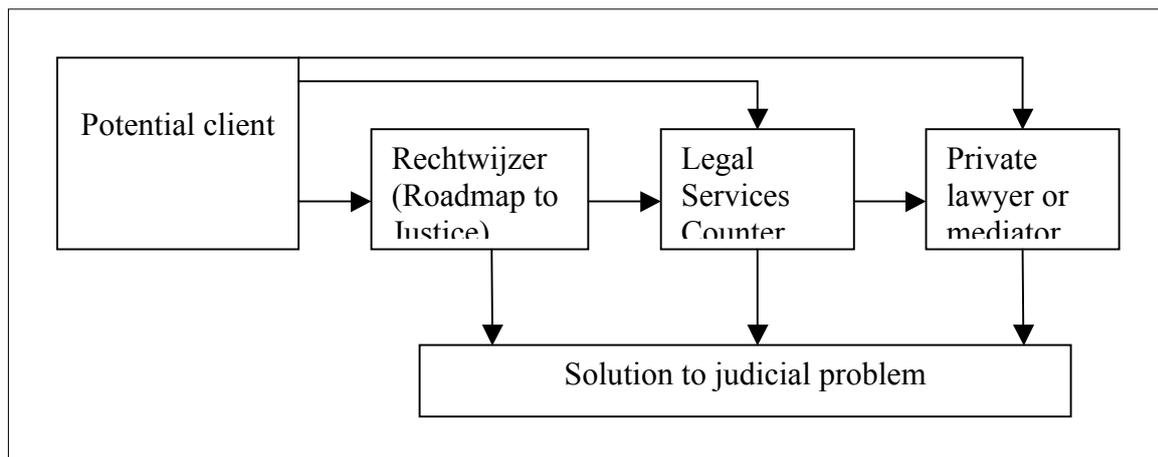
The Legal Services Counters (see section 2 below) also have a website that can be seen as a preliminary provision.

2. *The Legal Services Counters* act as what is commonly known as the 'front office' (primary help). Legal matters are being clarified to clients and information and advice given. Clients may be referred to a private lawyer or mediator, who act as the secondary line of legal aid. Clients may also apply for help from a subsidised lawyer or mediator directly. If necessary, clients can also be referred to other professionals or support agencies.

3. *Private lawyers and mediators* provide legal aid in more complicated or time-consuming matters (secondary help) in the form of certificates. A lawyer (or mediator) submits an application to the LAB on behalf of his client. If legal aid is granted, a certificate is issued which allows the lawyer in question to deal with the case. Lawyers and mediators are paid by the LAB to provide their services to clients of limited means. Generally they are paid a fixed fee according to the type of case, although exceptions can be made for more time consuming cases.

The legal aid system, therefore, is a mixed model, consisting of a public preliminary provision, public first-line and private second-line help.

Figure 1 Schematic representation of the legal aid system



To some extent, trade unions and consumer organisations also provide legal aid. The number of legal aid insurance policies continued to rise for a long time and has stabilized around 42% of the Dutch households since 2010.

1 Preliminary provision: Roadmap to Justice (Rechtwijzer)

The LAB remains committed to the development of innovative Web-based applications for citizens to help them to resolve their disputes early, easy and amicably. The LAB facilitates the website Rechtwijzer for citizens with a legal conflict or problem: a preliminary provision that helps people find solutions for their legal problems in an interactive manner. With the site www.rechtwijzer.nl citizens can actively work to find a solution to their conflict or problem. Where necessary, they will be referred to an appropriate person or organization.

During a three-year partnership the LAB co-developed with HiiL (Hague Institute for the Internationalisation of Law) and Modria Inc. the innovation Rechtwijzer *divorce*. The online divorce platform was launched in 2014. The innovation was successful, with high user satisfaction and the market taking over.

Rechtwijzer is continuously being further developed and improved through feedback from users and service providers. Taking on the role of facilitator of innovation even stronger, the LAB offers products and services that meet the accreditation criteria access to the Rechtwijzer website. In this way, citizens eligible for legal aid are able to navigate easy-to-use problem-solving processes in their own time, at their own pace, and against low or no cost.

2 First-line legal aid: Legal Services Counters

Establishment of Legal Services Counters

Between 2003 and 2006 a major reform took place in the Dutch legal aid system. Legal Services Counters were set up to take over the primary (informative) function of the former Legal Aid and Advice Centres³; the secondary function (extended consultation and actual legal aid) was to be dealt with by private lawyers only. The goal of this operation was to keep the focus on primary legal aid and achieve more transparency of the legal aid system as a whole.

The LAB set up the Legal Services Counters (LSC) as a separate body. The LSC are fully financed by the Board on the basis of a closed budget.

The organisation 'LSC' was established with 30 offices around the country. These 30 offices share a website and a call centre. They have been evenly set up geographically, so that every Dutch citizen is within easy reach of a Legal Services Counter, at a maximum of approximately one hour journey by public transport. The 30 offices have a uniform and recognisable appearance. The premises of the Counters have been designed to look as inviting to visitors as possible. Actually, they look more like a shop than an office. Inside is an open space with a waiting area and several desks. The call centre and rooms for private consultation are located at the back of the shop. There are also shelves with brochures containing information on legal matters.

In general, each LSC is staffed with legal advisers. Some Counters, particularly those in major cities, employ more staff. Since the services of the current Counters do not include extensive legal aid and representation in court, paralegals can also be employed. The Dutch bachelor education system started a law course to train students for this kind of job some years ago.

The legal advisers at the Counters work in turns, both in the call centre (inquiries both by telephone and e-mail), at the counter, and in the consultation rooms. The call centres of all the Counters are interconnected in order to spread the workload evenly. Sophisticated computer software, specifically designed for the LSC, is at the staff's disposal and helps them to answer the client's questions. In addition to the 30 offices, a large call centre was opened some years ago, which employs approximately 40 people. In 2015 a (political) discussion has led to the decision that there will be more focus on the call centre activities and less on the face-to-face activities where people can visit without appointment. The consultation hours, for which people have to make an appointment, remain intact.

Tasks and procedures of the Legal Services Counters

As outlined above, the LSC act as front offices that provide primary legal aid. They offer information concerning rules and regulations as well as legal procedures. They give advice and refer clients to private lawyers or mediators if their problems turn out to be more complicated or time-consuming. All services are free of charge. Although the LSC are basically open to any Dutch citizen, the aid is mainly intended for persons of limited means who qualify for legal aid. Clients can turn to the Counters with all kinds of judicial problems that concern civil, administrative, criminal as well as immigration law.

The initial contact at the Counters is meant to clarify the nature of the problems and helps staff members to find out:

- whether the problem is actually a legal problem and, if so,
- whether the problem is within the scope of the legal services provided by the Counters (not all legal problems – e.g. those between businesses – are dealt

³ The former Legal Aid and Advice Centres used to provide both information and legal aid. In the course of time, however, this multiple nature of the Centres caused an increasing loss of insight into the actual proceedings at the Centres. It was therefore considered necessary to maintain a strict distinction between informative services on the one hand and legal aid on the other.

with by the Counters);

- what kind of help is most suitable for the client.

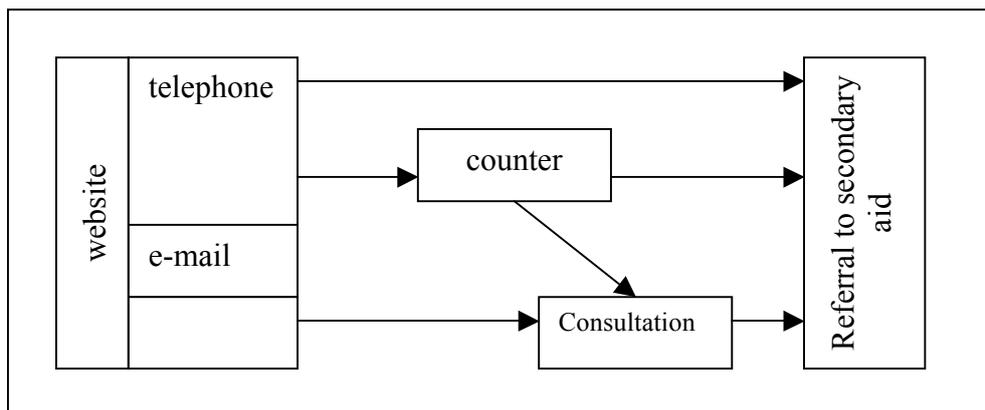
Staff of the LSC themselves are not allowed to act on behalf of the client.

The focus on primary legal aid is meant to serve two major goals. First, the help provided is readily available and free of charge. That is why the LSC are generally regarded as easily accessible and fairly informal. Secondly, they have an important screening function, in that they tackle disputes and legal problems at an early stage and thereby help to avoid escalation as well as minimise costs, both for the individual in question and for society at large. This latter aim has been reinforced since the diagnosis and triage measure took effect (1 July 2011), which encourages potential clients to contact the LSC before approaching a lawyer.

There are several channels available by which potential clients can apply to the LSC for help: the website, e-mail, telephone, counter or referral to a consultation hour (by appointment), see figure 2 below. If the case requires in-depth help by a professional the client can be referred to a private lawyer or a mediator, who has agreed to be available for these referrals. The choice of a specific professional is based on his availability, his specialism, the travel distance between his office and the client's home, and the number of referrals that he has recently obtained. Software that was specifically designed for this purpose helps the Counter's staff to evenly distribute referrals among the lawyers available for referral.

As soon as the referral is made, the lawyer receives an electronic message with information regarding the client and his problem, and with the preliminary advice (if any) that the client received from the LSC. The client has been informed by the Counter on the terms and procedures of the legal aid system.

Figure 2 Help provided by the Legal Services Counters



Legal Services Counters: facts and figures

The total number of 'client activities' performed by all 30 LSC in 2016 amounted to 733,900. This means that in 2016 the counter staff performed a specific activity for a client 733,900 times. A client activity may take place by direct contact with the client through any of the contact channels - 'the contact time' - or through other activities such as research needed in order to give proper advice in a certain case and consultation with the other party.

Below, figures can be found concerning the nature of these client activities at the LSC. Most client activities consist of contact by phone (58% of the client activities) (see table 2).

Table 2 Nature of client activities of Legal Services Counters (2016)*

	<i>Total number 2016</i>	<i>Percentages 2016</i>
<i>Contact time</i>		
Telephone 0900	429,000	58
Counter	85,000	12
Consultation hour	53,000	7
Telephone, other	16,000	2
E-mail	37,000	5
<i>Non-contact time</i>		
Consultation other party**	500	<1
Researching	113,000	15
Total	734,000	100

*All figures have been rounded off. That is why the total not exactly equals the sum of the separate figures.

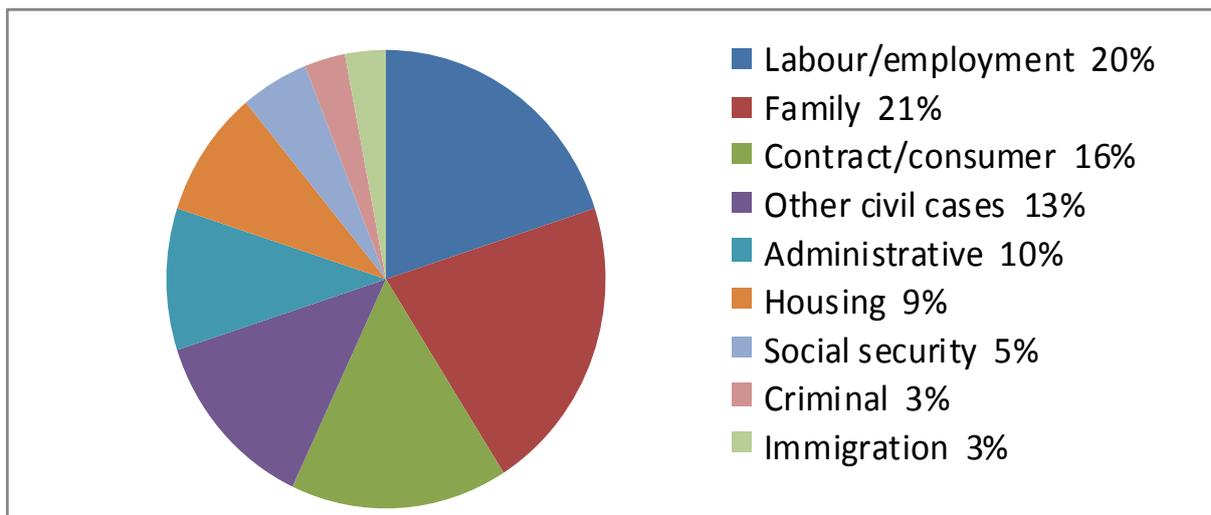
** Since April 1st this no longer is a client activity.

A client may have contacted the LSC on more than one occasion in 2016. That's why the number of clients is lower than the number of client activities shown above. Clients are estimated to contact LSC on approximately 2 to 3 occasions per person per year (about the same or different problems).

The LSC provide several kinds of services. The majority deals with providing information and answering questions (76%). Clients are also referred to the consultation hours (7%), to lawyers (15%), to mediators (<1%) or to other chain partners (2%).

Figure 3 shows how client activities at the Legal Services Counter are spread over the various fields of law. The majority of inquiries concern employment (20%), family law issues (21%), and contract/consumer law issues (16%),

Figure 3 Fields of law (2016)

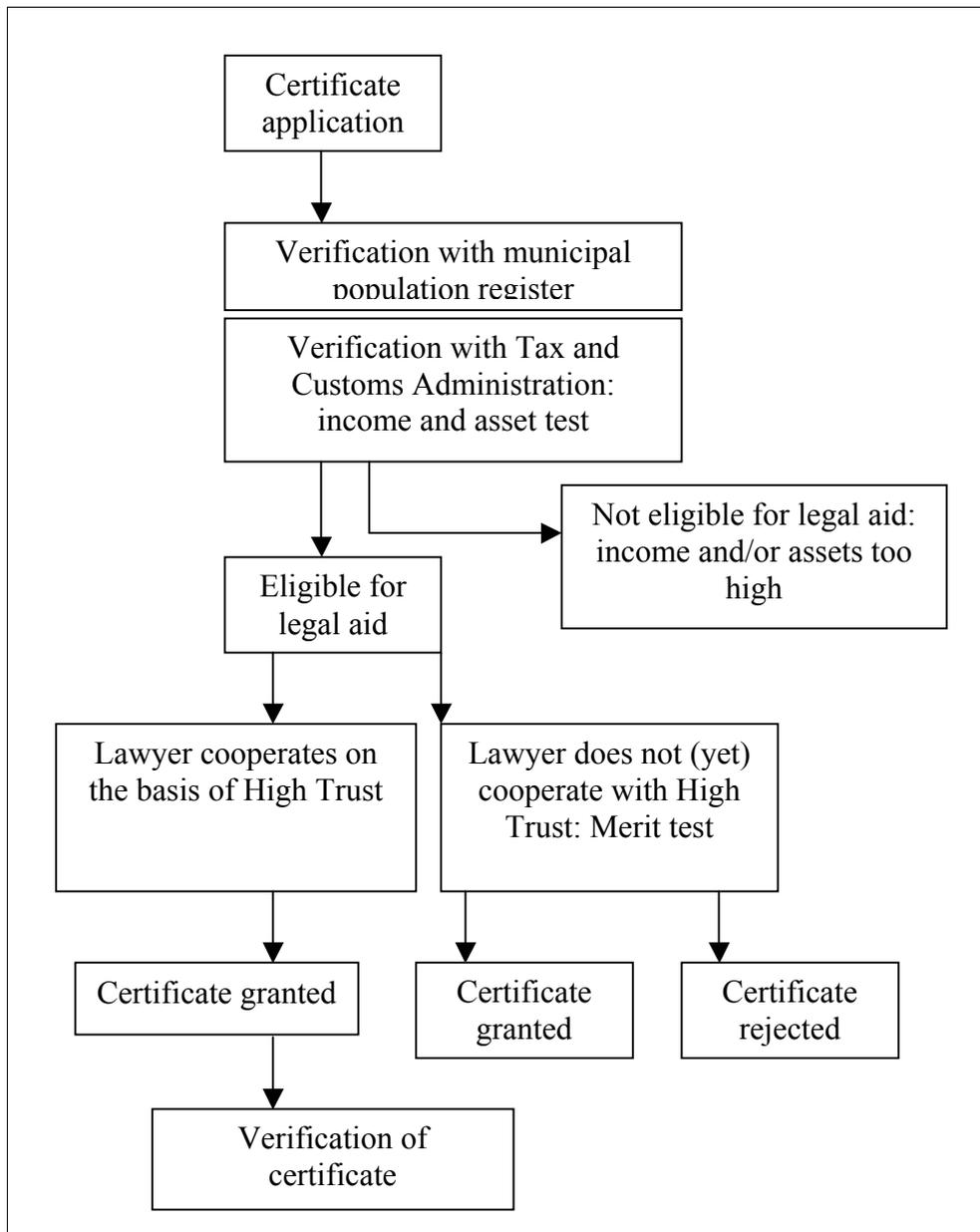


3 Secondary legal aid: Certificates

In order to obtain a certificate, a (Board-registered) lawyer needs to submit an application to the LAB on behalf of his client. Previously this was done on paper but now it is increasingly done electronically. By the end of 2016, more than 95% of all applications are submitted electronically and this number is still growing. The Board assesses each application both in terms of the client's income and assets and the (financial) significance of the legal problem in question.

Figure 4 shows the route followed by the application for a certificate.

Figure 4 Schematic representation of a certificate application



Financial assessment of the applicant: eligibility for legal aid

The eligibility for legal aid is based on both the client's annual income and his assets. The LAB verifies the client's personal data with those in the municipal population register and checks the applicant's income and assets with the tax authorities. It is able to do so with the aid of a 'burgerservicenummer' (citizen service number) (BSN); this is a unique

identification number, which every Dutch citizen receives when registering in the municipal population register. Thanks to online connections with the tax authorities, the Legal Aid Board is able to rapidly obtain information concerning the applicant's income and assets.

Additionally, also non-Dutch litigants receive legal aid when they have a problem that concerns the Dutch legal system.

Assessment of the applicant's income and assets level (and hence his eligibility for legal aid) is based on his situation two years prior to the application date, the so-called reference year (t-2). The reason to use that year's data, is that those data have generally been found correct and therefore final. So, for a certificate to be granted in 2016, the applicant's income in 2014 is decisive. In order to qualify for legal aid in 2016, the applicant's income in 2014 should not be higher than € 26,000 (single person) or € 36,800 (married persons / single person with children). The applicant's assets must not exceed € 21,139.⁴

However, requests can be made to change the reference year, if the applicant's income and/or assets in the year of application has decreased substantially compared to that in the reference year. This holds if the applicant's reference-year income and/or assets would not make him eligible for legal aid, whereas his present income and/or assets will. If an applicant wishes to be eligible for a lower contribution, his income needs to have decreased by at least 15% compared to the reference year.⁵

When a client receives a certain sum of money because of the result of a procedure, his certificate will be withdrawn retroactively. He will be expected to pay his own lawyer.

High Trust

Until recently, the significance of the legal problem in question was also reviewed in advance with each separate application for legal aid. However, since the introduction of the High Trust method (see below) this no longer applies to each separate application.

Many lawyers regarded the application for a certificate as burdensome and time consuming, and the verification as bureaucratic. Therefore alternatives were considered to simplify the verification of applications and expense statements. The LAB introduced a High Trust method for dealing with the applications for certificates. This High Trust method implies that the LAB and lawyers work together on the basis of transparency, trust and mutual understanding.

The High Trust method involves greater compliance on the part of the legal profession, both as to administrative proceedings of rules and working in accordance with the law, fixed procedures and support facilities such as Kenniswijzer (an online tool of the LAB with information about legislation, jurisprudence and guidelines for the application of certificates). The LAB develops specific tools for compliance assistance, such as information and instruction meetings, which are free of charge for lawyers under High Trust. The basic philosophy underlying High Trust is that trust among a larger group of people will more readily lead to positive cooperation and compliance than institutionalised distrust. The first results already confirm this. The number of offices that are time consuming for the LAB in dealing with applications is fast diminishing. At the same time, the number of offices that have a good relationship with the LAB is increasing fast. In 2009, the Board started with its first High Trust pilot. Since 2011, the Board has been implementing High Trust across the country in phases. At the end of 2016, 77% of the certificates are issued to an lawyer who works based on the principles of High Trust.

⁴ Under certain conditions, applicants of 65 or over are allowed higher maximum assets.

⁵ In 2016, more than 14,500 requests to change the reference year were made. This amounts to 3.3% of the total of legal aid certificates granted. This is checked two years after the application.

At present a pilot is being carried out in which lawyers can apply for certificates for (the first 50 hours of) time consuming cases on the basis of High Trust as well.

It has become easier for providers of legal aid to apply for certificates without having to send documents along with their applications. The Board grants the certificate shortly after assessing the client's eligibility for legal aid. The applications of the lawyers that work together with the Board according to High Trust are accepted automatically. This means that the client will very soon be confirmed whether or not his application is granted.

Verification takes place after the provider of legal aid has submitted the statement of expenses. There are two ways of verification: either verification on the basis of a random sample, or verification on a one-on-one basis of certificates granted.

Client's contributions and the 'diagnosis and triage' procedure

The costs of legal aid are not only paid by the LAB, but are partly covered by a contribution from the client himself. This personal contribution, though often covering only a small part of the actual expenses, is meant to incite clients to carefully weigh the pros and cons of taking a matter to a lawyer, and hence discouraging frivolous cases so as to remain in better control of the costs of the legal aid system at large.

In July 2011, the 'diagnosis and triage' procedure was implemented. The procedure encourages those seeking justice to first submit their problem or dispute to the Legal Services Counter. It was expected that it would be possible to solve more legal issues and problems at an early stage or via a different channel if they are first submitted to the Legal Services Counter. As a result, the number of future applications for certificates was expected to drop.

People seeking justice are encouraged to visit the Legal Services Counter before approaching a lawyer by offering them a discount of € 53 on the individual contribution, should it turn out that a certificate is needed after all.⁶

In 2016, the contributions to be paid by clients varied from € 143 to € 823 per case (according to their income, see Table 3). The third column shows what a person pays if he first submitted his problem to the LSC. Individuals whose household income exceeds € 36,800 (partner income included) or € 26,000 (single) are not entitled to legal aid.

Table 3 Income and client's contribution, from 01-01-2016

<i>Taxable annual income: married/single with child(ren)</i>	<i>Client's contribution</i>		<i>Taxable annual income: single</i>
	<i>Without discount</i>	<i>With discount</i>	
≤ € 25.600	€ 196	€ 143	≤ € 18.400
€ 25.601 t/m € 26.600	€ 360	€ 307	€ 18.401 t/m € 19.100
€ 26.601 t/m € 27.900	€ 514	€ 461	€ 19.101 t/m € 20.100
€ 27.901 t/m € 31.000	€ 669	€ 616	€ 20.101 t/m € 22.000
€ 31.101 t/m € 36.800	€ 823	€ 770	€ 22.001 t/m € 26.000

The client's contribution increased in recent years due to budget cuts. The same cuts have also led to higher client's contribution in case of certificates concerning divorce. For these separation-related certificates the following client's contributions apply:

Table 4 Income and client's contribution for divorce-related certificates, from 01-01-2016

<i>Taxable annual income:</i>	<i>Client's contribution</i>	<i>Taxable annual income:</i>
-------------------------------	------------------------------	-------------------------------

⁶ There are also cases in which the discount is automatically given, for example in criminal cases.

<i>married/single with child(ren)</i>	<i>Without discount</i>	<i>With discount</i>	<i>single</i>
≤ € 25.600	€ 340	€ 287	≤ € 18.400
€ 25.601 t/m € 26.600	€ 412	€ 359	€ 18.401 t/m € 19.100
€ 26.601 t/m € 27.900	€ 566	€ 513	€ 19.101 t/m € 20.100
€ 27.901 t/m € 31.000	€ 720	€ 667	€ 20.101 t/m € 22.000
€ 31.101 t/m € 36.800	€ 849	€ 796	€ 22.001 t/m € 26.000

Sometimes clients are exempted from individual contributions. This applies to all cases where people have been deprived of their freedom against their will. 'Have-nots' are also exempted from paying an individual contribution as well as victims of violent crime and sexual offenses.

In 89% of the certificates granted, the person seeking justice falls under the lowest individual contribution category.

It is also possible to apply for a mediation certificate. This allows a client to call in assistance of an independent mediator, so as to help him to settle a conflict between himself and another party. To stimulate the use of mediation, the client's contribution towards the costs of mediation is generally less than that of regular legal aid by a lawyer. In 2016 the contribution for mediation was set at a maximum of € 105.

In case of relatively simple legal problems, private lawyers can charge a standard three-hour legal advice fee, of which the client contributes € 77 or € 129, depending on his income (see Table 5). This is called a minor aid certificate.

Table 5 Client's income and contribution towards a minor aid certificate , from 01-01-2016

<i>Taxable annual income: married/single with child(ren)</i>	<i>Client's contribution to legal aid; max. 3 hours</i>	<i>Taxable annual income: single</i>
≤ € 26.600	€ 77	≤ € 19.100
€ 26.601 t/m € 36.800	€ 129	€ 19.101 t/m € 26.000

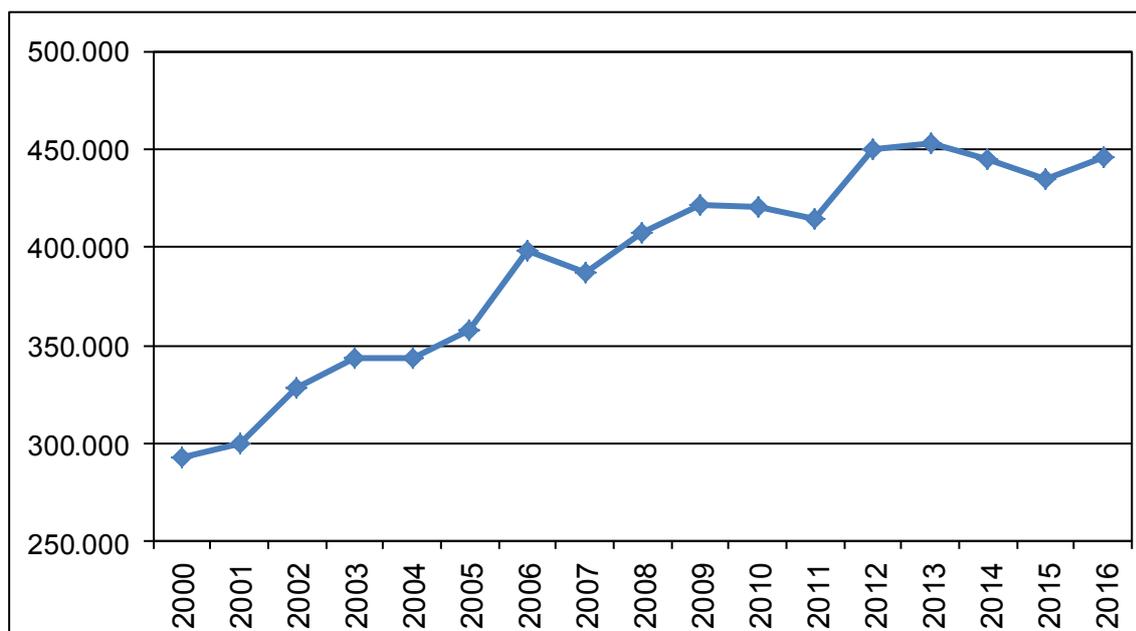
Certificates: facts and figures

In 2016 nearly 446,000 legal aid certificates were issued. Since 2000 the number of certificates has risen by 52%. This upward trend is disrupted in a couple of years. In 2006 the number of certificates shows a more than average upward trend.⁷ In 2010, 2011, and 2014, the number of certificates issued shows a decline. Whether this is due to the cutbacks in the system is not known with certainty.

Figure 5 shows the number of certificates issued since 2000.

⁷ This is probably due to the implementation of new procedures. Procedures to obtain a certificate have been simplified and terms slightly adapted. The number of certificates issued in the following years matches the upward trend since 2000.

Figure 5 Legal aid certificates issued since 2000



In addition to regular legal aid certificates – 419,442 in 2016 – 9,054 ‘minor aid’ certificates (i.e. for max. three-hour legal aid) have been issued as well as 17,209 mediation certificates. The number of mediation certificates is growing, although still marginally.

For every certificate issued, the LAB registrates the (major) field of law the certificate is concerned with (table 6). This table shows that almost half of the certificates concern criminal (28%) and family-related cases (21%).

Table 6: Types of cases represented in legal aid certificates (2016)

	<i>Number 2016</i>	<i>Percentage 2016</i>
Criminal	121,500	28
Family	91,500	21
Asylum	45,500	10
Psychiatric Hospitals (Compulsory Admissions) Act	27,000	6
Social benefits	25,500	6
Contract/consumer	25,500	6
Immigration	18,000	4
Social (security) insurance	12,500	3
Housing	12,500	3
Labour/employment	12,500	3
Administrative	12,000	3
Other civil cases	6,500	2
Pre-deportation detention	5,000	1
Debt restructuring	4,000	1
<i>Total regular legal aid certificates</i>	<i>419,500</i>	<i>100</i>
Mediation certificates	17,000	
Minor aid certificates	9,000	
<i>Total</i>	<i>445,500</i>	

Multiple use

Between 2000 and 2016 the average number of certificates issued per client per year increased from 1.33 to 1.45; this is an increase of 9%. However, since 2014 (average 1,55 certificates issued per client) this number has decreased. In 2000, as many as 78% of the clients had one certificate for legal aid, while in 2016 this had dropped to 75%.

Types of cases that occur relatively often with multiple users with more than ten certificates concern administrative law, social security benefits, disputes/complaints detainees, detention of aliens and immigration and asylum law.

Duty lawyers

Besides certificates, the LAB also provides duty lawyers. Each criminal suspect, alien or psychiatric patient who has been lawfully deprived of his liberty against his will is visited by a subsidised lawyer. The availability of lawyers is provided for through the duty solicitor scheme. Lawyers are scheduled according to a rotation system, so that a lawyer will always be available. In 2016, legal aid provision through duty lawyers took place 116,367 times.

Table 7 Legal aid various duty lawyers in 2016

<i>Kind of duty lawyer</i>	<i>2016</i>
Criminal, incl. juvenile	106,000
Psychiatric	8,000
Asylum	2,500
<i>Total</i>	<i>116,000</i>

Compared to 2009, this type of legal aid increased by 31% in 2016. The reason for this rise lies in the procedural adjustments following the Salduz case. Following this judgment of the European Court in 2009, suspects will be entitled, prior to their questioning by the police, to consult a lawyer.

Experiments within criminal law

To increase the effectiveness and impact of criminal law, the Dutch authorities took several initiatives. The Dutch Public Prosecution Service (Openbaar Ministerie - OM), for example, opted for a new approach to common crimes. To deal with these crimes, the OM experimented with the Zo spoedig mogelijk (ZSM) -"as soon as possible"- model. Objective of this model is a combined diagnosis and triage of the OM and the police, with the advice of the child protection (in case a minor is involved) and the probation office. New instruments are given to public prosecutors to impose light punitive measures (like fines and community service orders). In order to come to a careful non judicial way for early intervention, by means of out-of-court settlements within a period of a couple of days at the most.

For these common crimes to be dealt with prudently, it is important that sufficient lawyers are available. To guarantee this availability, the Board, OM and police were experimenting with means to offer support to apprehended suspects by means of video connections.

The LAB also participates in ZSM to ensure that eventually there will be fewer criminal cases and procedures.

4 Private lawyers and mediators working within the legal aid system

Legal aid in the Netherlands is usually provided by private lawyers/law firms that provide legal advice and represent clients in cases that deal with the major fields of legal aid: criminal, family, labour/employment, housing, social security, consumer, administrative, asylum and immigration. Private lawyers obtain legal aid cases in two ways: either one of the LSC refers a client to a lawyer, or a client contacts a registered lawyer on his own accord. In the latter case the lawyer will have to refer a client 'back' to the LSC to give them the opportunity to solve the problem and in order to qualify for a discount in the individual contribution, if a certificate for legal aid is needed.

To be entitled to accept legal aid cases, private lawyers need to be registered with the LAB and to comply with a set of quality standards. These standards are set by the Bar. For some fields of law – criminal, mental health, asylum and immigration law, youth, family law – additional terms apply. The lawyer must both have adequate expertise and sufficient experience in that particular field.

Payment of lawyers and mediators

As soon as a case is closed, the lawyer bills the LAB for the services provided. A lawyer does not charge for hours but works for a fixed fee which differs according to different types of cases. 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. A few examples are presented in Table 11. In cases that concern labour (dismissal), for example, lawyers will be paid 11 hours.

Table 8 Examples of types of cases and the corresponding fixed number of paid working hours

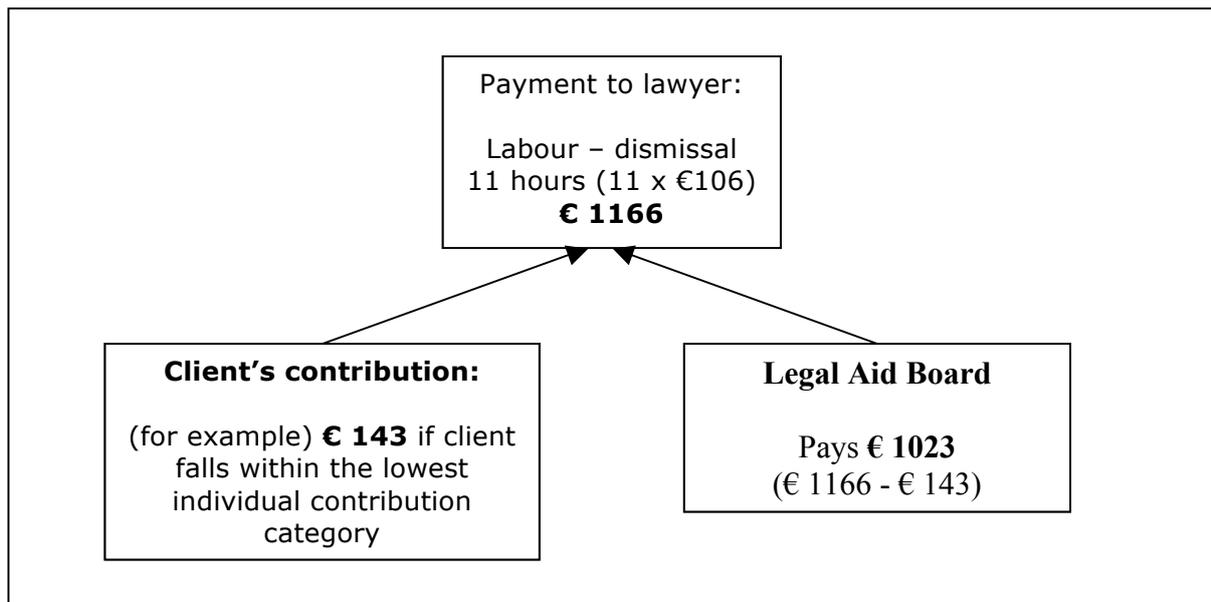
<i>Type of case</i>	<i>Fixed number of paid working hours</i>
Labour: dismissal	11
Divorce	10
Asylum	4
Felony	6/8
Criminal offence	5

In 1994 the hourly legal aid rate was € 26. In 2000 and 2002, fees have been raised substantially, because lawyers operating within the legal aid system were relatively underpaid. Since then, the Ministry determines the hourly rate every year following an annual price index. In 2016 the hourly rate was nearly € 106. This means that for each labour - dismissal case a lawyer is paid 11 times € 106 for legal aid. Previously this hourly wage was indexed every year. However, because of budget cuts, this amount has been reduced several times in recent years. Since 2012, the hourly wage is around € 106

Part of this fixed fee is paid by the client through the individual contribution; lawyers are responsible for collecting this contribution themselves.⁸ The remainder of the bill is paid by the LAB (see figure 6).

⁸ In the near future the LAB will be responsible for collecting the contribution of clients.

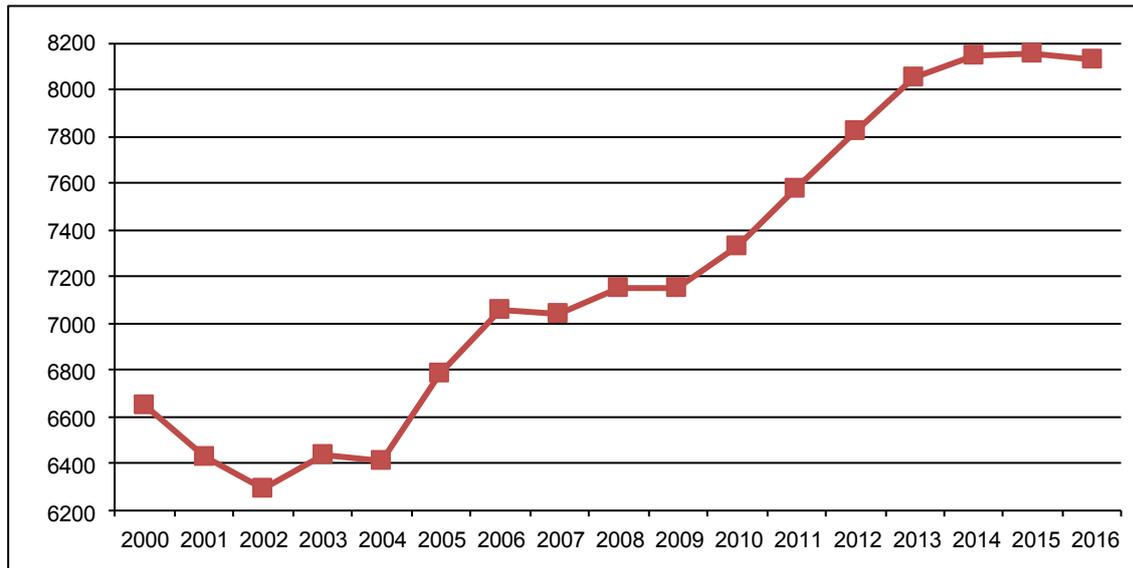
Figure 6 Schematic representation of the payment of the lawyer's bill



Number of lawyers and mediators

In 2016, as many as 8,100 lawyers and mediators provided legal aid in at least one case. This number has increased during the last decade; however it has stabilised over the last couple of years.

Figure 7 Number of legal aid lawyers (2000 – 2016)



In 2016, 42% of all Bar-members work within the legal aid system. The number of mediators has increased – by 219% – compared to 2007. In 2016, 1,019 mediators applied for a mediation certificate on behalf of their client(s). Often, the mediators working in the system also practise as lawyers.

Compared to 2000, the number of certificates issued has increased, and so has the number of lawyers in the legal aid system. The latter, however, has risen less fast. As a result, from 2000 to 2016 the average number of certificates per lawyer has risen by 30%, from 44 to 57 certificates per year.

The lawyers are quite loyal to the legal aid system. Figures indicate that the vast majority of legal aid lawyers (96%) remain active within the system for at least 5 consecutive years.

From this it can be concluded that, for the time being, there will be enough lawyers to provide legal aid.

5 Users of the legal aid system

Number of clients of the Legal Services Counters

Since the LSC does not always record client details, the exact number of clients is not known. In 2016 the LSC served at least 300.000 clients.

The website of the LSC was visited by 2.5 million persons in 2016.

Background characteristics of clients of the Legal Services Counter

Since we have the BSN of many clients of the LSC, we are able to identify the background characteristics of the clients of the LSC.

Compared to the average Dutch citizen, the average client of the LSC is more likely to be female, more likely to be between 25 and 55 years old, more likely to be a member of a non-Western ethnic minority group and more likely to be citizens of larger municipalities/(highly) urbanised areas. They are less likely to be married/more likely to be divorced and more likely to belong to a single person household or single parent family household. They are relatively often recipients of social benefits and less often pension recipients.

Number of legal aid applicants

Compared to 2000, last year (2016) showed an increase by 40% of the number of applicants that were granted at least one certificate per year. In 2016 more than 307,000 clients received a certificate.

Background characteristics of recipients of legal aid certificates

Thanks to online connections with the tax authorities in which case a BSN is necessary, 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 39% of the Dutch population would, on the basis of their financial means, qualify for legal aid.

Since we have the BSN of many legal aid recipients, we are also able to identify their background characteristics.

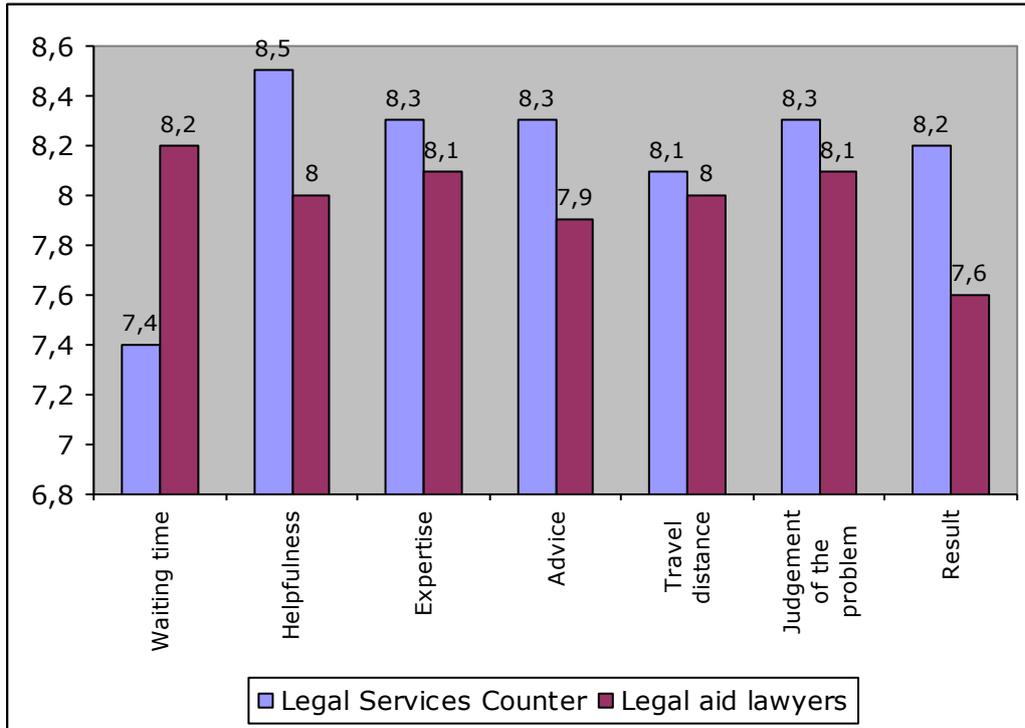
Holders of a legal aid certificate are predominantly male and between 20 and 55 years of age; certificate holders of over 65 are fairly infrequent. Employed and retired workers are found to be fairly underrepresented, whereas recipients of social benefits and other non-working persons are overrepresented. Certificate holders are also found to be more often divorced and less often married and certificate holders living in single-parent families are overrepresented. Furthermore, certificate holders are more likely to be members of non-western ethnic minority groups and live mainly in cities of over 250,000 residents and less often in cities under 50,000 residents.

Client satisfaction

Customer surveys in the past have shown that, in general, clients rate the services of the LSC as 'good' or even 'very good' (with an average score of 8.2, see figure 8). 'Waiting time' was the item that received the lowest score (7.4). This relatively low score can be explained by the surge of clients to the LSC on account of the 'diagnosis and triage' measure.

The services of the legal aid lawyers are also rated as 'good' (7.9).

Figure 8 Client satisfaction (LSC in 2012, lawyers in 2013)



6 Developments following cutbacks in the system

Compared to 2000, public expenditure on legal aid was increasing over the years. Therefore, in 2008, the government decided to cut the budget for legal aid by 50 million euros, both in 2008 as well as in 2010. Several budget cuts were implemented, like stimulating alternative ways of dispute settlement. Mediation and the 'Roadmap to Justice' (Rechtwijzer) were major steps in that direction. Also client's contributions were increased, especially in divorce cases.

The financial pressure on the system has increased even more due to the legal precedent that was set following the *Salduz* case. Following this judgment of the European Court in 2009, suspects will be entitled, prior to their questioning by the police, to consult a lawyer.

In 2011, the State Secretary for Security and Justice believed that the system of legal aid needed to be reviewed in due course. Therefore a policy was developed that should result in structural savings of 85 million euros annually. Several measures took effect in 2015, like the reduction of the hourly legal aid rate. However, most cutbacks have been suspended because the Senate filed a number of motions in 2015. A commission was established that issued an opinion after extensive research.

Towards a Durable System for Legal Aid

In 2015 the Government of the Netherlands set up the Commission for Legal Aid, chaired by Aleid Wolfsen. Although the Netherlands already has a good system for legal aid, the question under investigation was whether it could be done better and more durably.

In November 2015 the Wolfsen Commission submitted a report to the Dutch Minister of Security and Justice entitled 'Reassessing Legal Aid Towards a Durable System for Legal Aid'. The Commission indicated that reassessment of the system was in fact necessary so that the right legal aid provider can be assigned the right work, citizen access to the law can be improved, and tax revenues can be allocated in a more targeted way. In order to achieve these things it is important to strengthen the administration of the system and to take care of problem points. The Commission brought forward a large number of proposals that are both cohesive and mutually reinforcing; taken altogether they will ensure a better and more durable system for legal aid in the long term.

System-wide Problem Analysis

In its investigations the Wolfsen Commission analysed a number of weak points or problem points in the system, including the lack of proper coordination; flaws in the exchange of information between different parties and authorities; and the systemic failure of lawyers when it comes to collecting the personal contribution from their legal aid clients. The Commission referred to the number of those actively offering legal aid within the system as 'generous' in relation to demand. Regarding quality, the Commission noted that there is a very large group of highly dedicated legal aid providers who are delivering the so often indispensable legal aid at a qualitatively high level to those who are financially challenged. Nevertheless, the Commission received signals from different quarters that the level of quality is often still variable or sometimes even below par.

Proposals for Improvement

The Commission's proposals for improvement deal with areas such as these weak points. For example, in the area of improvement of quality, they propose that the Netherlands Bar Association (Nederlandse Orde van Advocaten) and the Legal Aid Board (LAB) must jointly take care of providing proper qualitative requirements within the system, and that expertise requirements in the different specialised areas of law have to be brought up to a higher level all across the board. The Commission also proposes the implementation of

a peer review process all across the board, as well as periodic independent investigations into the quality of lawyers. In addition, the fixed fee system needs to be reassessed so that legal aid providers receive proper remuneration.

In the area of administration the Commission proposes that the administration has to be strengthened and that the direction lies with the LAB. The LAB has to deliver customised solutions, particularly for citizens who have many interrelated problems, as well as for those in divorce proceedings. According to the Wolfsen Commission, more checks must be made than is currently the practice as to whether citizens can apply to legal expenses insurance, a union or another organisation of which they are members, prior to the decision granting subsidised legal aid. By their very nature situations consisting of multiple problems cannot be solved, or at least completely solved, within the system of legal aid; in addition to legal guidance, assistance will nearly always be required from partnering organisations outside the system, mostly from those in the social welfare field. Better cooperation and exchange of information between legal aid providers is a precondition for early stage recognition and analysis of multiple problem situations. Another condition is that the legal aid client has to collaborate in finding a structural solution to the problem. Finally, the Commission advises a more intense collaboration between LAB and the Legal Service Counter (LSC) in order to promote consistency in administration.

Many of the proposals of the Wolfsen Commission contribute to better cost management of the system. According to the Commission, the proposals in the report improve access to the law, in the sense that legal aid clients will receive assistance, including legal assistance, that is more appropriate to their particular, actual needs. The proposals make legal aid more durable and more balanced. Furthermore, it is the Commission's expectation that they will ensure a more targeted expenditure of funds to the system.

Follow-up of 'Wolfsen'

The Minister of Security and Justice reported to the Parliament of the Netherlands in May 2016 that he would be adopting most of the recommendations of the Wolfsen Commission. In February 2017 a draft legislative proposal for amendment of the Legal Aid Act was submitted for consultation.

Specific elements of the draft legislative proposal that can be named here, in addition to those listed above, are the inclusion from now on of the value of any owned residential property in the financial check for legal aid, and the evaluation of total family income in cases of divorce. Currently, marital partners are only evaluated with regard to their individual income. According to the Minister, the underlying idea here is the shared responsibility for carrying the costs of legal aid by the divorcing partners. From now on the LAB will also have the task of collecting the personal contribution for the costs of legal aid from their legal aid clients.